

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 11:05 A.M. on February 17, 2006, in Room 514-S of the Capitol.

All members were present except:

Kay O'Connor, excused
Dwayne Umbarger, excused
Donald Betts arrived, 11:10 a.m.
Barbara Allen arrived, 11:17 a.m.
David Haley arrived, 11:17 a.m.

Committee staff present:

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

Others attending:

See attached list.

The Chairman announced the bills being worked have all had hearings in subcommittee and have recommendations. Copies of the Vratil Subcommittee Report (Attachment 1), the Bruce Subcommittee Report (Attachment 2), and the Donovan Subcommittee Report (Attachment 3) were distributed.

The Chairman called for final action on **SB 434--Extending Johnson county adult offender community supervision program to July 1, 2008.**

Senator Vratil reviewed the subcommittee hearing which recommended it for passage without amendments.

Senator Donovan moved, Senator Bruce seconded, to recommend SB 434 favorably. Motion carried.

The Chairman called for final action on **SB 435--Requiring a standardized risk assessment tool be used as part of a pre-sentence investigation.**

Senator Vratil reviewed the subcommittee hearing which recommended it for passage with two amendments (See attachment 1, 1-6 through 1-8).

Senator Goodwin moved, Senator Schmidt seconded, to adopt the amendments as recommended by the subcommittee. Motion carried.

Senator Bruce moved, Senator Donovan seconded, to recommend SB 435 as amended favorably for passage. Motion carried.

The Chairman called for final action on **HB 2609--Small claims; forms set forth by judicial council not office of judicial administration.**

Senator Vratil reviewed the subcommittee hearing which recommended it for passage and placement on the Consent Calendar.

Senator Bruce moved, Senator Goodwin seconded, to recommend HB 2609 favorably for passage and be placed on the consent agenda. Motion carried.

The Chairman called for final action on **HB 2485--Prohibited acts by notaries public related to services offered to non-English speaking persons.**

Senator Vratil reviewed the subcommittee hearing which made a technical amendment and recommended the bill favorably for passage.

Senator Donovan moved, Senator Schmidt seconded, to amend the bill on page 1, line 15 to insert the word

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 11:05 A.M. on February 17, 2006, in Room 514-S of the Capitol.

“new” before Section 1 so as to read “New Section 1”. Motion carried.

Senator Donovan moved, Senator Schmidt seconded, to recommend **HB 2485** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2555--Criminal justice recodification, rehabilitation and restoration project committee.**

Senator Vratil reviewed the subcommittee hearing which recommended it for passage.

Senator Bruce moved, Senator Schmidt seconded, to amend **HB 2555** to include the Frazier fix. Motion carried.

Senator Schmidt moved, Senator Bruce seconded, to recommend **HB 2555** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 354--Guardians and conservators, reports and accountings.**

Senator Bruce reviewed the subcommittee hearing which recommended it for passage and placement on the consent agenda.

Senator Bruce moved, Senator Betts seconded, to recommend **SB 354** favorably for passage and place it on the Consent Calendar. Motion carried.

The Chairman called for final action on **SB 431--Expungement of DUI ordinance violations and DUI convictions including diversions; prohibition.**

Senator Bruce reviewed the subcommittee hearing which recommended it favorably for passage with an amendment to delete the prohibition against DUI expungements and diversions. A balloon amendment was distributed (Attachment 4).

Senator Bruce moved, Senator Journey seconded, to adopt the amendment as reflected in the balloon. Motion carried.

Senator Goodwin proposed an amendment to limit the criminal decay factor to 15 years as reflected in a balloon amendment (Attachment 5). Following discussion the decay factor was changed to 12 years.

Senator Goodwin moved, Senator Betts seconded, to adopt the amendment reflected in the balloon. Motion carried.

Senator Bruce moved, Senator Donovan seconded, to limit the Department of Revenue records decay factor to 12 years. Motion carried.

Senator Donovan moved, Senator Goodwin seconded, to recommend **SB 431** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 432--Prosecution of juvenile traffic offenders; traffic offense includes violation of requirement of motor vehicle liability insurance coverage.**

Senator Bruce reviewed the subcommittee hearing which recommended it for passage without amendments.

Senator Bruce moved, Senator Goodwin seconded, to recommend **SB 432** favorably for passage. Motion carried.

The Chairman called for final action on **SB 351--Drug possession sentencing, drug abuse assessment after sentencing, not presentence; sentencing nonresidents and offenders not lawfully present in the U.S.**

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 11:05 A.M. on February 17, 2006, in Room 514-S of the Capitol.

Senator Bruce reviewed the subcommittee hearing which recommended it for passage without amendments.

Senator Bruce moved, Senator Goodwin seconded, to recommend **SB 351** favorably for passage. Motion carried.

The Chairman called for final action on **SB 450--Court not grant child custody/residency to a parent who is residing with registered offender or person convicted of child abuse; material change of circumstances.**

Senator Bruce reviewed the subcommittee hearing which took no action on the bill.

Following discussion Senator Journey moved, Senator Betts seconded, to table **SB 450**. Motion carried. Senator Goodwin and Senator Bruce voted no, and requested their votes be recorded.

The Chairman called for final action on **SB 220--Domestic battery; allowing one diversion during lifetime.** Senator Donovan reviewed the subcommittee hearing which recommended it for passage with an amendment as reflected in a balloon amendment (Attachment 6).

Senator Schmidt moved, Senator Donovan seconded, to adopt the amendment as reflected in the balloon. Motion carried.

Senator Donovan moved, Senator Haley seconded, to recommend **SB 220** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 355--Probate code; appeals.**

Senator Donovan reviewed the subcommittee hearing which recommended it for passage with an amendment as reflected in a balloon amendment (Attachment 7).

Senator Donovan moved, Senator Schmidt seconded, to adopt the amendment as presented in the balloon. Motion carried.

Senator Schmidt moved, Senator Goodwin seconded, to recommend **SB 355** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 366--Departure sentence; aggravating factors include offender playing a major role as the organizer.**

Senator Donovan reviewed the subcommittee hearing which recommended it for passage with an amendment as reflected in a balloon amendment (Attachment 8).

Senator Bruce moved, Senator Haley seconded, to adopt the amendment as presented in the balloon. Motion carried.

Senator Bruce moved, Senator Donovan seconded, to recommend **SB 366** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 462--Increasing domestic relation docket fees by \$9 to fund child exchange and visitation centers.**

Senator Donovan reviewed the subcommittee hearing which recommended it for passage with an amendment as reflected in a balloon amendment (Attachment 9).

Senator Donovan moved, Senator Schmidt seconded, to adopt the amendment as presented in the balloon. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 11:05 A.M. on February 17, 2006, in Room 514-S of the Capitol.

Senator Haley moved, Senator Donovan seconded, to recommend **SB 462** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 451--Medicaid cards, medicaid pharmacy claim forms and criminal acts and violations.**

Senator Donovan reviewed the subcommittee hearing which recommended it for passage with an amendment as reflected in a balloon amendment (Attachment 10).

Senator Donovan moved, Senator Schmidt seconded, to adopt the amendment as presented in the balloon. Motion carried.

Senator Donovan moved, Senator Schmidt seconded, to recommend **SB 451** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 536--Medicaid reimbursement.**

Senator Donovan reviewed the subcommittee hearing which recommended it for passage with an amendment as reflected in a balloon amendment (Attachment 11).

Senator Donovan moved, Senator Schmidt seconded, to adopt the amendment as presented in the balloon. Motion carried.

Senator Donovan moved, Senator Schmidt seconded, to recommend **SB 536** as amended favorably for passage. Motion carried.

The meeting adjourned at 12:10 p.m. The next scheduled meeting is February 20, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/17/06

NAME	REPRESENTING
Andy Shaw	KCDAA
Bill Brady	C.S.
Natalie Dixon	KSC
Brenda Harmon	KSC
MIKE PETERSEN	SENATE
Chris Meehl	OJA
Lisa Mendoza	JJA
Rodney Sparrow	Judicial Council
Kathy Damron	KS District Judges
Mario Bowen	Sen Betts
JIM CLARK	KBA
Lindsay Daigle	Hein Law Firm
Kathy Porter	Judicial Branch

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February 15, 2006

To: Senate Judiciary Committee
From: Senate Judiciary Subcommittee Chaired by Senator John Vratil
Re: Subcommittee Report

The Senate Judiciary Subcommittee chaired by Senator John Vratil held hearings and took the following actions on the bills noted.

1. **SB 434**—Extending the Johnson County adult offender community supervision program to July 1, 2008.

Testimony: Roger Werholtz, Secretary, Kansas Department of Corrections, testified in favor of the bill (see Attachment 1).

Subcommittee Action. The Subcommittee recommended SB 434 be passed favorably by the full Committee.

2. **SB 435**—Requiring a standardized risk assessment tool be used as a part of presentence investigation.

Testimony: Mark Gleason, Office of Judicial Administration, supported the bill and offered two amendments, *i.e.*, remove the requirement for offenders who will not be supervised in Kansas and change the effective date for the needs assessment instrument to July 1, 2007 (see Attachment 2).

Subcommittee Action. The Subcommittee recommended SB 435 be amended and be passed favorably as amended by the full Committee.

3. **HB 2609**—Small claims technical amendment.

Testimony: The bill was supported by Randy Hearrell, Kansas Judicial Council (see Attachment 3).

Subcommittee Action. The Subcommittee recommended passage of the bill and that it be placed on the consent calendar.

4. **HB 2485**—Notaries public and services offered to non-English-speaking persons.

Testimony: The bill was supported by El Centro Inc., the Consumer Protection Division of the Attorney General's Office, and Elias Garcia, Kansas Hispanic and Latino American Affairs (see Attachments 4a, 4b, and 4c).

Subcommittee Action. The Subcommittee made a technical amendment and recommended the bill for favorable passage by the full Committee.

5. **HB 2555**—Extending the life of the Kansas Criminal Justice Recodification, Rehabilitation, and Restoration Committee for one year.

Testimony: The bill was supported by the Secretary of Corrections and Representative Ward Loyd (see Attachments 5a and 5b).

Subcommittee Action. The Subcommittee recommended HB 2555 for favorable action by the full Committee. (Two in favor—one abstention).

Attachment I



KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 434
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

February 13, 2006

The Department of Corrections supports SB 434. SB 434 extends to July 1, 2008 the pilot program for community corrections placements administered by the District Court of Johnson County. The pilot program places offenders under community corrections supervision based upon a risk assessment. The data collected from the experience of Johnson County's allocation of community correction supervision resources will enable the Kansas Sentencing Commission to make recommendations regarding an effective and efficient use of community corrections supervision on a statewide basis.

The department urges favorable consideration of SB 434.

Alloc #2



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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Senate Judiciary Subcommittee
Testimony on SB 435

February 13, 2006

Mark Gleeson
Office of Judicial Administration

Thank you for the opportunity to testify on SB 435. I am appearing on behalf of the Office of Judicial Administration. Although we support the intent of SB 435 there are two amendments I ask the committee to consider in order to mitigate the significant workload impact of this bill.

The first amendment removes the requirement to conduct the risk needs assessment on offenders who will not be supervised in the State of Kansas. It should not be necessary to conduct the two-hour interview on offenders whose offense and criminal history indicate the offender's sentencing range is presumptive prison, offenders who do not reside in the State of Kansas and who will return to their home state, and those who are being detained and awaiting deportation. While this certainly does not represent a majority of offenders, relief from the obligation to perform a risk-needs assessment on these individuals will help us to manage this obligation.

Second, we request that the effective date of the Sentencing Commission's designation of a risk needs instrument not be effective before July 1, 2007. This gives us time to acquire funding to train Court Services Officers and to implement the use of the LSI-R over a reasonable period of time. Implementing the LSI-R in phases will greatly assist with the additional workload.

Although it sounds simple to move from our existing Risk Needs instrument to the LSI-R, the transition is anything but simple or cheap. The first step requires a week long "Train the Trainer" session and we would want to start with one trainer in each of the 31 judicial districts. The approximately 200 court services officers who will be using the instrument would each require a three-day training session followed by a period where they prepare taped interviews and submit those tapes for critique and approval, as is required. We also need to work out agreements with the company selling the LSI-R or with the Kansas Department of Corrections to acquire the rights to the instrument and website support.

Testimony – SB 435

February 13, 2006

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Funding is also a significant issue. Our 2005 effort to obtain the \$462,500 necessary to implement the LSI-R and the Youth Level of Service Inventory through a Byrne Grant failed. We plan to make another application in 2006, but do not hold out much hope for grant funding. If this fails, we will request funding as part of the FY 2008 Judicial Branch budget for training, software, and web site support.

It has long been our intention to move to the LSI-R and the Youth Level of Service Inventory. Funding for training, materials, and staffing have stopped these efforts. We believe the LSI-R and the Youth Level of Service Inventory are effective supervision tools and we have watched the success of the Johnson County project with considerable interest. It is important, however, to recognize that Johnson County's success is probably not solely the result of the LSI-R. A wide range of services and graduated sanctions contribute significantly to what Johnson County has been able accomplish. Communities that do not have these same advantages will have fewer benefits and may, in some of the resource poor communities, experience the LSI-R as a net loss to the amount of time available for supervision of offenders.

I appreciate the opportunity to testify and am prepared to answer questions.

SENATE BILL No. 435

By Committee on Judiciary

1-24

9 AN ACT concerning sentencing; relating to presentence investigation re-
10 ports; amending K.S.A. 2005 Supp. 21-4714 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 21-4714 is hereby amended to read as
15 follows: 21-4714. (a) The court shall order the preparation of the pre-
16 sentence investigation report by the court services officer as soon as pos-
17 sible after conviction of the defendant.

18 (b) Each presentence report prepared for an offender to be sen-
19 tenced for one or more felonies committed on or after July 1, 1993, shall
20 be limited to the following information:

21 (1) A summary of the factual circumstances of the crime or crimes
22 of conviction.

23 (2) If the defendant desires to do so, a summary of the defendant's
24 version of the crime.

25 (3) When there is an identifiable victim, a victim report. The person
26 preparing the victim report shall submit the report to the victim and
27 request that the information be returned to be submitted as a part of the
28 presentence investigation. To the extent possible, the report shall include
29 a complete listing of restitution for damages suffered by the victim.

30 (4) An appropriate classification of each crime of conviction on the
31 crime severity scale.

32 (5) A listing of prior adult convictions or juvenile adjudications for
33 felony or misdemeanor crimes or violations of county resolutions or city
34 ordinances comparable to any misdemeanor defined by state law. Such
35 listing shall include an assessment of the appropriate classification of the
36 criminal history on the criminal history scale and the source of informa-
37 tion regarding each listed prior conviction and any available source of
38 journal entries or other documents through which the listed convictions
39 may be verified. If any such journal entries or other documents are ob-
40 tained by the court services officer, they shall be attached to the pre-
41 sentence investigation report. Any prior criminal history worksheets of
42 the defendant shall also be attached.

43 (6) A proposed grid block classification for each crime, or crimes of

1 conviction and the presumptive sentence for each crime, or crimes of
2 conviction.

3 (7) If the proposed grid block classification is a grid block which pre-
4 sumes imprisonment, the presumptive prison term range and the pre-
5 sumptive duration of postprison supervision as it relates to the crime
6 severity scale.

7 (8) If the proposed grid block classification does not presume prison,
8 the presumptive prison term range and the presumptive duration of the
9 nonprison sanction as it relates to the crime severity scale and the court
10 services officer's professional assessment as to recommendations for con-
11 ditions to be mandated as part of the nonprison sanction.

12 (9) For defendants who are being sentenced for a conviction of a
13 felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto,
14 and meet the requirements of K.S.A. 2005 Supp. 21-4729, and amend-
15 ments thereto, the drug and alcohol assessment as provided in K.S.A.
16 2005 Supp. 21-4729, and amendments thereto.

17 (10) *A risk and needs assessment which shall include a state-wide,*
18 *mandatory, standardized risk assessment tool and shall measure the of-*
19 *fender's risk of reoffense. Such risk assessment tool shall be specified by*
20 *the Kansas sentencing commissiory*

*with an effective
date not earlier
than July 1, 2007.*

21 (c) The presentence report will become part of the court record and
22 shall be accessible to the public, except that the official version, defend-
23 ant's version and the victim's statement, any psychological reports, *risk*
24 *and needs assessments* and drug and alcohol reports and assessments shall
25 be accessible only to the parties, the sentencing judge, the department
26 of corrections, and if requested, the Kansas sentencing commission. If
27 the offender is committed to the custody of the secretary of corrections,
28 the report shall be sent to the secretary and, in accordance with K.S.A.
29 75-5220 and amendments thereto to the warden of the state correctional
30 institution to which the defendant is conveyed.

31 (d) The criminal history worksheet will not substitute as a present-
32 ence report.

33 (e) The presentence report will not include optional report compo-
34 nents, which would be subject to the discretion of the sentencing court
35 in each district except for psychological reports and drug and alcohol
36 reports.

37 (f) The court can take judicial notice in a subsequent felony proceed-
38 ing of an earlier presentence report criminal history worksheet prepared
39 for a prior sentencing of the defendant for a felony committed on or after
40 July 1, 1993.

41 (g) All presentence reports in any case in which the defendant has
42 been convicted of a felony shall be on a form approved by the Kansas
43 sentencing commission.

*Assessments will not be
required for offenders
with current assessments
or who are not expected
to be available for
probation supervision in
Kansas.*

- 1 Sec. 2. K.S.A. 2005 Supp. 21-4714 is hereby repealed.
- 2 Sec. 3. This act shall take effect and be in force from and after its
- 3 publication in the statute book.



Attachment 3

KANSAS JUDICIAL COUNCIL

JUSTICE DONALD L. ALLEGRUCCI, CHAIR, TOPEKA
JUDGE JERRY G. ELLIOTT, WICHITA
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ADMINISTRATIVE ASSISTANT

TESTIMONY ON 2006 HB 2609

February 13, 2006

2006 HB 2609 makes a technical change in K.S.A. 61-2707, which is a section in the Small Claims Procedure Act.

On page 1, at lines 31 and 32 of HB 2609, the sentence:

"The office of judicial administration shall develop the form to be used in submitting information to the clerk under this subsection."

is stricken because it conflicts with K.S.A. 61-2713, also in the Small Claims Procedure Act.

In 2005, K.S.A. 61-2713 was amended by SB 258 which removed the small claims forms from that section and inserted the following language:

"The forms to be utilized under the small claims procedure act shall be set forth by the Judicial Council."

The forms referenced in K.S.A. 61-2713 have been drafted and have been posted on the Judicial Council website since June of 2005. They will also be included in a new Judicial Council publication to be entitled Kansas Legal Forms, when it is published in the near future.

Attachment 4A

El Centro, Inc.

The Center for Continuous Family Improvement

**Administration and
Computer Learning Center**
650 Minnesota Avenue
Kansas City, KS 66101
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www.ElCentroInc.com

January 18, 2006

Chairman Vratil and Honorable Members of the Senate Judiciary Committee,

Thank you for the opportunity to appear before you in support of HB2485, legislation that would reduce the victimization of immigrants by predators who exploit our state's notary public program for their own criminal purposes. The crisis of fraud and exploitation perpetrated against immigrants, especially those who speak limited English, is one that has recently gained the attention of the Federal Trade Commission and several states. We are impressed and encouraged by these efforts in Kansas to address this growing problem within our own state but believe that additional protections are needed.

Language misunderstandings, vulnerability to pressure within isolated ethnic groups, mistrust of government authorities, and economic marginalization combine to make immigrants particularly vulnerable to many criminal schemes. A recent FTC survey suggests that Hispanics, in particular, are more than twice as likely to be victimized by fraud as non-Hispanic whites. Among the FTC's priorities related to immigrant consumers are insurance fraud, business and job opportunities, fraudulent international driving permits, and weight loss and health products, but the area of 'notario' fraud is distinguished for its widespread practice, deplorable exploitation of a recognized, state-supported process, and particularly devastating consequences. As the Texas Attorney General stated during a tour of the state to warn communities about this problem, "The abuses perpetrated by fraudulent 'notarios' and their likes have caused much suffering for Texas families. These schemes also create chaos in an already overburdened immigration system."

HB2485 addresses those who, using their status as notaries public, attempt to pass themselves off as attorneys and collect thousands of dollars in fees from individuals seeking assistance with legal matters. Because the word 'notario' connotes an attorney in Spanish, the Kansas notary public seal becomes, unintentionally, a tool that facilitates these criminals' activities. In fact, in many Latin American countries, the term 'notario' encompasses broad duties including preparation and filing of legal documents; many foreign 'notarios' actually have more credentials than other lawyers. Certainly we understand it to be beyond the purview of the Secretary of State's office to conduct extensive investigations of people applying for notary licenses, but we believe that, if HB2485 passes, fewer criminals who intend to use the license for ill purposes will be enticed to apply for them, thus reducing fraudulent demand. It will also give the Attorney General and other law enforcement entities new tools with which to punish those who have improperly used the notary public system to defraud consumers.

While addressing this problem conclusively will require taking criminal and civil action against some of the worst offenders, we believe that HB2485 performs an essential role in attempting to prevent the fraud before it occurs. While the

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913-371-1744
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**Academy for Children,
Donnelly College**
608 North 18th Street
Kansas City, KS 66102
913-281-1700

Casa de Rosina Apartments
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ECI Development, Inc.
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**El Centro, Inc. Family Center,
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Allo... 43



STATE OF KANSAS
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CONSUMER PROTECTION AND ANTITRUST DIVISION

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Testimony of
Ralph Mondonedo, Consumer Protection Division
Office of the Attorney General Phill Kline
Before the Senate Judiciary Committee
Re: HB 2485
February 13, 2006

Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Phill Kline and to provide testimony regarding House Bill 2658. My name is Ralf Mondonedo, and I currently serve in the Attorney General's Consumer Protection Division.

The Attorney General's office supports House Bill 2485.

In 2004 it came to the attention of the Attorney General's Office that Alicia Morales-Phillips was holding herself out as a notario publico in Kansas. She was preying on immigrants, primarily the Hispanic community, leading them to incorrectly believe that she was vested with the powers of an attorney. The Attorney General's office initiated litigation against Ms. Morales-Phillips for her actions. Included with my testimony are copies of the petition and the final judgment entered in that matter. The Attorney General's Consumer Protection Division endorses House Bill 2485 as a reasonable response to the actions of individuals such as Ms. Morales-Phillips.

Thank you again for allowing me to appear before you today. I will stand for questions.

Al...
4C

Testimony:
Senate Committee

HB 2485 Notary Public Bill

Elias L. Garcia, Exec. Director, Kansas Hispanic & Latino American Affairs (KHLAAC)

Thank you Mr. Chair and thank you honorable members of this committee for the opportunity to speak in support of the passage of HB 2485, a bill that would serve as deterrent to those criminals and would-be predators who illegally misrepresent themselves to members of our grass-root Kansas community and seek to take advantage of their cultural naïvete, lack of education, and their blind trust in individuals who pass themselves off as legal representatives or attorneys-at-law, when in fact, they are nothing more than notary publics.

You may or may not know that in Mexico, a individual with the title of Notary Public /Notario Publico is one who has official standing in their form of government. They are Attorneys-at-Law who have authority and jurisdiction to navigate in their respective legal and governmental pools. Conversely, in the United States a Notary Public is just that , a Notary Public, someone whose only authority is to serve as witness and substantiate identity or signature of person and officially does so via a notary stamp.

All of us in this room fully know and understand how Notary Publics function and the extent of their authority in our society. However, while we all certainly appreciate them, none of us would ever think of going to one to seek legal advice or legal representation. However, to new comers from Mexico, those who are unfamiliar with our system, when they hear or meet a person who claims to be Notary Publics and/or Notario Publico they automatically relate it to their familiar connotation, and view the Notario Publico as one who is an a member of the legal profession and one who is a practicing attorney.

Now lets insert in this scenario , a predator, a con, a flim-flam man or woman who see opportunity in this "cultural mis-conception", this state of confusion between cultures, titles and authority. These scam artists see a easy way profit by taking advantage of this cultural naïvete and lack of education by "selling" hope to desperate people by promising them legitimacy in the form of shortcuts to obtaining citizenship documents, visas, drivers licenses, work visas, student visas, and other bogus and illegal immigration services that they cannot possibly provide. Invariably new-comers end up placing their trust in these self proclaimed officials and unfortunately, they end up paying their hard earned money and meager savings to these human vultures who feed off the most helpless in our society

The intent of this bill is to compel those holding a Notary Public Certification to openly state that they are not legal counsel, cannot give legal advice nor represent anyone in any legal capacity. This bill further states that those individuals who violate this law will also then be in violation Consumer Protection statute K.S.A. 50-626 and therefore subject to all remedies and penalties applicable to same. HB 2485 does nothing more than seek to stop predatory practices of those who prey upon naïve, innocent, trusting, desperate people that think they are reaching for the brass ring.

It has been said that the true value of society can be found in how that society cares for its most vulnerable. Ladies and gentlemen of this committee, our most vulnerable are crying out for help. In 2005, with a resounding vote of 123 to 0, the Kansas House of Representatives stated very clearly that Kansas will not tolerate these predatory behaviors. We ask the Senate to concur with this position and also send a message that we will not allow such outlandish, predatory and deceptive behaviors to flourish in Kansas, not even in the shadows of our society. Furthermore, we will also send the message that should you chose to engage in these practices, Kansas will hold you accountable. We will proceed to prosecute you and on your way to jail, we make sure to notarize your identity, signature, and issue you a private number that we will verify belongs solely to you. Thanks you

February 13, 2005



KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2555
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

February 13, 2006

The Department of Corrections supports HB 2555. HB 2555 extends the existence of the Kansas Criminal Justice Recodification, Rehabilitation and Restoration Committee for one year. HB 2555 was passed by the House by a vote of 123 – 0.

The “Criminal Justice 3Rs Committee” is a bipartisan committee comprised of representatives from the legislative, judicial, and executive branches of government as well as prosecutors, law enforcement officers, criminal defense bar, law schools, corrections field, substance abuse treatment providers, and faith based service providers with ex officio involvement of the Attorney General, Secretary of Corrections, Juvenile Justice Commissioner and the Secretary of Social and Rehabilitation Services. The committee is tasked to review and make recommendations regarding the criminal code, rehabilitation of offenders, and offender reentry into society.

The committee has provided a forum for the bipartisan discussion and study of public safety policies involving the risk management and reentry of offenders. The committee’s work has served as a catalyst for changes in the department’s policies and programs regarding mentally ill offenders, substance abuse treatment, employment and housing needs and opportunities for offenders returning to their home communities. The department believes that additional work remains and that greater accomplishments can be achieved through the committee’s continued efforts.

Attention to reentry issues facing the criminal justice system is now on the national stage due to the efforts of such persons as U.S. Senator Brownback. The national interest in the cost savings and public safety benefits obtained through successful reentry of offenders and the reduction of recidivism has generated a significant potential for financial and research assistance from the federal government, private foundations and victim advocacy groups. Due in great part to the existence of the Criminal Justice 3Rs Committee, Kansas has emerged as a national leader in providing innovative solutions to address problems and barriers to the successful reintegration of

offenders. As secretary, I continually hear about the value of Kansas having a bipartisan committee using the expertise of officials from all branches of government and the community to address the important issues facing corrections. In my discussions with private foundations about financial resources they could provided to Kansas, the continued existence of the Criminal Justice 3Rs Committee and the sustained effort that committee provides are significant factors in their interest in providing resources to Kansas and the future status of Kansas as a leader in addressing offender reentry.

In addition to the positive benefits of the Criminal Justice 3Rs Committee expressed by those outside of the department, I must also point out that in the training and policy changes undergone by the department's staff regarding reentry initiatives to date, corrections staff appreciate the broad based professional support and expertise provided by the committee. I recommend that the Criminal Justice Recodification, Rehabilitation and Restoration Committee continue to be a valuable resource to the State.

I strongly urge favorable consideration of SB 2555.

Attachment 502



**KANSAS CRIMINAL JUSTICE
RECODIFICATION, REHABILITATION & RESTORATION
PROJECT COMMITTEE**

**300 SW 10TH STREET, ROOM 545-N
TOPEKA, KS 66612**

Chair

REP. WARD LOYD
Garden City

Vice-Chair

KEVIN GRAHAM
Topeka

Acting Project Coordinator

ATHENA ANDAYA
Topeka

Members

JOHN BADGER
Topeka

EDWARD G. COLLISTER
Lawrence

MARILYN COOK
Wichita

NOLA T. FOULSTON
Wichita

SEN. DAVID HALEY
Kansas City

L. CHRISTIAN HAUCK
Hays
Chair, Reentry Subcommittee

ACTING COMM. DON JORDAN
Topeka

REP. LANCE Y. KINZER
Olathe

CHIEF ED KLUMPP
Topeka

HON. CHRISTEL MARQUARDT
Topeka

PROF. WILLIAM RICH
Topeka
Chair, Behavioral Health Sub

SEN. DEREK SCHMIDT
Independence

HON. RICHARD M. SMITH
Mound City

PROF. TOM STACY
Lawrence
Chair, Recodification Sub

REP. JIM WARD
Wichita

SEC. ROGER K. WERHOLTZ
Topeka

Reporter - Recodification

Hon. David S. Knudson

Committee Secretary

Connie Burns

TO: THE HONORABLE JOHN VRATIL, CHAIRMAN
& MEMBERS, SENATE JUDICIARY SUB-COMMITTEE

FROM: WARD LOYD

RE: TESTIMONY IN SUPPORT OF HOUSE BILL 2555

DATE: FEBRUARY 13, 2006

Chairman Vratil and Committee Members,

Thank you for the opportunity to provide testimony in support of House Bill 2555, extending by one year the sunset of what we commonly refer to as the "3Rs Committee." [The legislative change in HB 2555 is found on page 4, at the end of line 33.]

The 3Rs Committee exists by virtue of the enactment of 2004 H. Sub. for S.B. 45, most of which is now embodied in law at Kansas Statutes Annotated 2004 Supp. 22-5101, which became effective July 1, 2004. Attached to this testimony are copies of the statute detailing the project's responsibilities, as well as legislative findings identifying its compelling need. This information will be of interest to those new to the Legislature. It is hard to believe it has been only 17 months since the organizational meeting of the committee.

3Rs has as its statutory charge the responsibility to

- (1) recodify the Kansas criminal code,
- (2) identify ways to rehabilitate offenders and work with offenders on community-based supervision, including programs to reduce prison population and recidivism, programs which modify criminogenic behavior, enhance education, and provide job training and substance abuse treatment, programs for mental health, drug abuse and alcohol abuse, and to provide for collaboration and cooperation among governmental agencies and services to such end,
- (3) identify ways to restore the offender into society as a productive member.

3Rs is not one committee, rather it is five. The project committee is required to be composed of a cross-section of governmental branches, agencies and communities of interest, as specified in the law. The membership is as represented on this letterhead.

Beyond that, having recognized needed areas of attention, the 3Rs Committee has taken advantage of the authority granted in SB 45 that allows the appointment of subcommittees and task forces. Three subcommittees and one task force have been authorized: 1) a Recodification Subcommittee, 2) Behavioral Health Subcommittee (addressing both mental illness and substance abuse), 3) Reentry Subcommittee, and 4) a task force denominated the Kansas Reentry Policy Council.

One aspect of the work of the 3Rs Committee of which we are justly proud is the association and collaboration that has developed with The Council of State Governments Criminal Justice Division, located in New York City. This CSG office has been the coordinating office for such landmark studies and reports as The Consensus Project, targeting the issue of mental illness in the offender population, and The Reentry Project, targeting the topic of its title. To date, CSG has provided the 3Rs Committee, and other state agencies, with invaluable technical assistance. This assistance has Kansas already on the reentry road.

The most visible product to date of the 3Rs work and our collaborations with CSG was the April 18, 2005, Kansas Legislative Policy Conference on Offender Reentry, in Wichita, jointly provided with Wichita State University and CSG. At that conference the results of the initial CSG technical assistance was presented, in the form of the community mapping, and the recommendations for community-based intermediate sanction initiatives. As a result, the community-based recommendations are in the process of being implemented in the Wichita-Sedgwick County reentry program.

Because of the foregoing, the Kansas Reentry Policy Council was created. Its charge and authority have been detailed in the form of a resolution adopted by the 3Rs Committee, and a copy of the resolution is presented for your consideration. An inter-agency agreement has as well been entered into by and among the 3Rs Committee, the Department of Corrections, Department of Social and Rehabilitation Services, Kansas Housing Resources Corporation, Department of Commerce, Department of Health and Environment, and the Kansas Parole Board. It takes, at the least, all of these agencies to insure reentry is done right.

H. Sub for S.B. 45 currently requires that the charge to the 3Rs Committee be completed, and a final report with recommendations be submitted to the 2006 Legislature, by January 9, 2006. We could not meet that deadline, but not because our committee members would not prefer it to be so. There are several fundamental reasons, all of which are about adequacies of time and resources. The reasons are basis for H.B. 2555¹.

First – the unanticipated 2005 Special Session. Given the committee structure, and how we anticipated we would function, we effectively lost the whole of the past Summer during which to meet and bring issues into focus. By October 3Rs was where it had hoped to be last June.

Second – our committee staffing. SB 45 authorized 3Rs to hire staff, but it also authorized members of the Legislative Research and Revisors Office to provide assistance. Athena Andaya is the lead staff member from KLRD, and is joined by Jerry Ann Donaldson and Becky Krahl. From the Revisors Office we are assisted by Jill Wolters, Helen Pedigo, and Diana Lee. In addition, Jeremy Barclay, special assistant to Department of Corrections Roger Werholtz, has assisted greatly. The 3Rs Committee was fortunate to secure the services of

¹An Interim Report dated April 1, 2005, was filed with the Secretary of the Senate, and the Clerk of the House, as well as with both the Legislative Research Department and the Revisor of Statutes, and are there available for review.

Cheryl Kingfisher as Project Coordinator, but sadly for 3Rs, this past August Cheryl accepted a position as a municipal judge for the City of Topeka. 3Rs has had no full-time assistance since that event.

Third – scheduling conflicts. For reasons presently unknown to me, the 3Rs Committee was said not to be a legislative committee, and as such its meeting schedule was not noted or published by Legislative Services or KLRD. The result has been that meetings of other committees have been scheduled on top of meetings of the 3Rs Committee, and not only have committee members not been able to attend our meetings, but staff we depend upon have been unavailable. That has caused much in the way of coordination of the 3Rs effort to be lost.

Fourth – the sheer volume of information that needed to be gathered, but frankly which we discovered now exists, was identified, and is being appropriately and carefully analyzed and fitted to Kansas' needs.

Finally – adequacy of operational funding. In my testimony before the Legislature in support of what was then House Bill 2941, I advised that

We estimate the cost of the 18 to 24-month project to be \$250,000 on the low side, up to a maximum amount of \$500,000 on the high side. We intend to seek funding for this effort on the Federal level, and will carry the request to members of our Congressional delegation.

Because the measure came up late in the session, and because of the condition of the state's fiscal resources at the time, we deliberately chose not to request any state general funding, at least beyond the costs associated with the LCC authorizing Kansas Legislative Research Department and Revisor of Statutes staff to be assigned to work with our committee.

Frankly, in becoming acquainted with representatives of the CSG office, who in turn were working closely with members of the Kansas Congressional Delegation to secure the passage of and funding for what is referred to as the Second Chance Act, we felt relatively confident that the resources for our committee's work would be available. That was naive, apparently; as the Second Chance Act is yet to be passed, much less funded, and 2005 fiscal demands on the Federal government did not allow such an initiative. The measure is now moving forward in Congress, and we continue to work to keep Kansas on the leading edge.

This past Fall we concluded the 3Rs work currently underway could likely be completed with an additional \$125,000 - \$150,000, not considering either the hiring of a Project Coordinator or the value of technical assistance provided by CSG. To complete the work the 3Rs Committee has expressed an interest in doing to date, such as statewide mapping by The Justice Mapping Center at Columbia University, and recommendations regarding social marketing, such as from Dr. Dennis Embry and the PAXIS Institute, might more realistically require \$275,000. At that, that represents a final cost well within the range of our original estimate. But, that is a subject for a separate presentation.

It is anticipated the 3Rs Committee will have recommendations for the Legislature this session, albeit limited in scope, and we look forward to presenting and advocating for those recommendations. Copies of the 2006 report should return from the printer today; it soon will be made available on-line at the committee's web-site.

Our committee, and the Recodification Subcommittee in particular, has been fortunate to secure the services of Judge David S. Knudson as Recorder. Judge Knudson served many years as a District Judge in Saline County, and recently retired as a Judge of the Kansas Court of Appeals. He brings much experience and credibility to our work.

Even with the assistance of Judge Knudson, the financial limitations constricted the volume of recodification work that could be accomplished. It was the Recodification Subcommittee that first recognized the 3Rs Committee could not be finished with its work by this date. Nonetheless, the subcommittee believes in the important task it has been assigned, and is anxious to get on with its work, as exemplified in its subcommittee report, which is the final attachment to this testimony.

However, if we are to take seriously the legislative intent and directives expressed in the passage of SB 45, our committee members want to make certain that the job is done right, and that you do not receive half measure of our efforts.

Consider the following which the 3Rs Committee has identified as issues on which it may be appropriate to make policy recommendations, if not legislative recommendations, but as to which it needs additional information:

- ▶ Victims – ensuring support for; permitting participation in release planning,
- ▶ Offender Evaluation and Risk Assessment,
- ▶ Classification of Inmates,
- ▶ Information Database – access to and sharing of data,
- ▶ Jails – standards, capacity, training (i.e., mental illness, infectious disease),
- ▶ Mapping,
- ▶ Sex Offender – assessment, treatment, management,
- ▶ Kansas Criminal Justice System Resource Directory – compile & maintain,
- ▶ Services and Treatment – education (minimum standards re attainment), job training, cognitive therapy, employment; cost and cost benefit,
- ▶ Educational Attainment and Skills/Interest assessment of all offenders to identify needs,

- ▶ Work release centers – community corrections centers, intermediate sanction facilities, accredited halfway houses, transitional living centers,
- ▶ Problem Solving (Therapeutic Jurisprudence) Courts, such as mental health courts, drug courts, and teen courts,
- ▶ Intermediate and/or Graduated Sanctions – residential treatment, community service, electronic monitors, curfew, counseling, increased drug testing, formal reprimand, etc.
- ▶ Intermediate Sanction Centers – use of (see prior information re work release centers),
- ▶ Sentencing Strategies – community sentencing options, length of stay,
- ▶ Supervision of Offenders – intensive, coordinated and/or specialized,
- ▶ Family Unification – breaking the cycle of crime,
- ▶ Program Performance Accountability Systems – evaluation protocols as a program is designed and implemented that identify what data are to be collected, and what program and comparison groups need to be tracked.

To do the 3Rs job right we need adequate time for thorough deliberation and thought and for formulation of recommendations supported by documented need and cost analysis. We need an opportunity to take the issues to the public, to be vetted as required by SB 45.

The 3Rs Committee recognizes that smart correctional reforms are those that can reduce incarceration without jeopardizing public safety. Those that more effectively manage the risk posed by certain offenders, provided that risk is properly assessed and evaluated. Those that better deploy resources. And, those that provide systems to measure accountability for results. We are working hard to understand how all this might best be accomplished, in the best interests of public safety, and how to formulate appropriate recommendations.

The Kansas Criminal Justice 3Rs Committee asks your favorable consideration of House Bill 2555.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 15, 2006

To: Senate Judiciary Committee
From: Senate Judiciary Subcommittee Chaired by Senator Terry Bruce
Re: Subcommittee Report

The Senate Judiciary Subcommittee chaired by Senator Terry Bruce held hearings and took the following actions on the bills noted.

1. **SB 354**—Guardian and conservator reports and accounting technical change.

Testimony: Randy Hearrell, Kansas Judicial Council, testified in favor of the technical change covering voluntary conservatorships (see Attachment 1).

Subcommittee Action. The Subcommittee recommended SB 354 for favorable action by the full Committee and recommended the bill be placed on the consent calendar.

2. **SB 431**—Prohibits expungement of DUI convictions and DUI diversion agreements, and requires applicants for law enforcement positions to disclose expunged arrests, convictions, and diversions of municipal ordinance violations.

Testimony: An Overland Park municipal judge spoke in favor of the bill (see Attachment 2).

Subcommittee Action. The Subcommittee amended SB 431 by deleting the prohibition against DUI expungements and diversions and recommended the bill for favorable action as amended to the full Committee.

3. **SB 432**—Amends the definition of “traffic offense” to include proof of insurance violations and thereby, would give jurisdiction to municipal courts of these offenses committed by juveniles ages 14 to 17.

Testimony: An Overland Park municipal judge testified in favor of the bill (see Attachment 3).

Subcommittee Action. The Subcommittee recommended SB 432 for favorable action by the full Committee.

4. **SB 351**—Timing of when drug abuse assessments are done.

Testimony: None. See 2005 interim report of the Joint Committee on Corrections and Juvenile Justice (see Attachment 4).

Subcommittee Action. The Subcommittee recommends SB 351 for favorable action by the full Committee.

5. **SB 450**—Sex offenders, child custody, and divorce—prohibiting placement of children with ex-spouse residing with sex offender.

Testimony: An Olathe resident testified in favor of the bill (see Attachment 5).

Subcommittee Action. The Subcommittee took no action on the bill.

Attache 1



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: Senate Subcommittee on Judiciary
FROM: Kansas Judicial Council - Randy M. Hearrell
DATE: February 13, 2006
RE: 2006 SB 354 Relating to Guardians and Conservators

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

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

Atty. General

SB 431
Testimony Before the Senate Judiciary Committee
Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court
February 13, 2006

My name is Karen Arnold-Burger, and I am here today to speak in support of SB 431. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

Thank you for the opportunity to address you on this important topic.

Expungement is the legal process by which persons convicted of a crime are able to have the fact of their conviction or arrest removed from their criminal history record for all but a limited number of purposes. It is a legislatively recognized way to give offenders a "new start" when such action is not against the public interest. In order to grant an expungement the judge must make certain findings. In most cases (and there are a few variations) a person can have their conviction expunged 5 years after they have satisfied their sentence. A hearing is conducted to determine if the expungement should be granted and the judge must find that requisite time has elapsed, that the applicant has not been convicted of a felony in the preceding two years and no felony has been filed or is being filed against the applicant, the applicant's behavior warrants expungement and the expungement is consistent with the public welfare. Once expunged, the conviction or arrest is only available to certain entities for certain purposes, usually related to sensitive jobs or subsequent criminal offenses.

Kansas has two "sets" of expungement statutes. One set is contained at K.S.A. 2005 Supp. §12-4516 and K.S.A. §12-4516a and deals with expungement of municipal court convictions. The other set is contained at K.S.A. 2005 Supp. §21-4619 and deals with convictions or arrests through the state district court system. These provisions have usually substantively mirrored each other.

SB 431 accomplishes two things with regards to these expungement statutes.

1. It prohibits the expungement of DUI convictions.

Since the legislature did away with the 5 year "decay" on DUI convictions, lifetime convictions are counted in determining what number offender a defendant is for sentencing purposes. Allowing these convictions to be expunged after five years, which is the current law, makes it very difficult for a court or prosecutor to discover prior convictions in order to properly sentence the defendant. Although these convictions are subject to disclosure under the expungement law, the defendant is under no legal obligation to disclose his or her prior criminal history prior to or at sentencing. In fact, the case law is clear, that the defendant can even lie about his or her prior criminal history. The prosecution bears the entire burden of "proving up" priors. Since courts have placed the conviction information "under seal" as required, it is often impossible to discover prior expunged convictions. The result is that serious offenders are

Attad 13

SB 432
Testimony Before the Senate Judiciary Committee
Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court
February 13, 2006

My name is Karen Arnold-Burger, and I am here today to speak in support of SB 432. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

Thank you for the opportunity to address you on this important topic.

Municipal Courts in Kansas have jurisdiction over traffic offenses committed by persons 14 and over. K.S.A. §8-2117 is the statute that gives municipal court this jurisdiction. The statute defines "traffic offense" as any violation that appears in the uniform act regulating traffic (which are all the basic, traditional traffic violations) and also includes in the definition DUI, and the various driver's license violations. The one obvious omission from the list is "driving without proper proof of insurance." Since this violation is codified in Chapter 40, under the insurance provisions, it was not included in the list of traffic offenses contained in K.S.A. §8-2117. We believe this to be a mere oversight.

By excluding this provision, officers are not able to write tickets to juveniles for driving without automobile insurance, unless they want to file the case through the district court juvenile division. Our experience around the state has been that they simply choose to overlook the violation rather than take that route. By adding the insurance provision to the list of "traffic offenses" these cases can go through municipal courts just like all other traffic violations and those who choose to drive without liability insurance will be held accountable.

Thank you for your consideration.

assisted in the Kansas Legislative Policy Conference on Offender Reentry in conjunction with Wichita State University.

Representative Loyd noted that the 3Rs Committee needs adequate time for thorough deliberations and thought for formulation of recommendations supported by documented need and cost analysis and the opportunity to take the issues to the public. To complete the work of the 3Rs Committee, such as statewide mapping by the Justice Mapping Center at Columbia University, and recommendations regarding social marketing, additional time and funding will be needed to complete the 3Rs Committee functions.

COMMITTEE RECOMMENDATIONS

The Joint Committee recommends legislation for the extension of the Kansas Criminal Justice Recodification, Rehabilitation and Restoration Project Committee for one year to expire on June 30, 2007. The Committee also encourages the appropriations committees to provide State General Fund assistance to support the continuing work of the Kansas Criminal 3Rs Project Committee.

**2003 House Sub. for SB 123-
Alternative Sentencing
Policy for Drug Offenders**

The Executive Director of the Kansas Sentencing Commission and the Director of Community Corrections from the Department of Corrections updated the Committee on 2003 House Sub. for SB 123. 2003 House Sub. for SB 123 (SB 123) set mandatory treatment for a target population of non-violent offenders convicted of drug possession and was implemented on November 1, 2003. As of October 3, 2005, 2,334 offenders have received SB 123 related sentencing, with a total of 2,516 cases, as some offenders have multiple SB 123 cases. In FY 2005, the Kansas Sentencing

Commission has experienced a shortfall of \$411,114. The Kansas Sentencing Commission has requested a FY 2006 supplemental request of \$3,871,114 from the State General Fund for anticipated additional funding to pay for the substance abuse treatment for those offenders sentenced under the provisions of SB 123. Level of Services Inventory-Revised (LSI-R) Assessments have totaled 3,121 completions as of October 3, 2005. The LSI-R identifies risk for re-offending and criminogenic needs and currently is used prior to conviction, at six months and at discharge.

Representatives from community corrections agencies from across the state provided the Committee overviews of the progress of SB 123 in their districts. The representatives from the community corrections agencies stated that treatment assessments were going as expected and the Kansas Sentencing Commission and the Department of Corrections were very helpful, plus provided guidance and information as needed. Also stated was that SB 123 was one of the single most important pieces of legislation benefitting adult offenders and assisting the offenders in changing their behavior. Some concerns mentioned were that language is needed to address defendants residing outside of the State of Kansas or non-U.S. citizens facing deportation. The language would direct the courts to depart from SB 123 sentencing when the offender will not be remaining in Kansas and thus not be available for a Department of Corrections' certified treatment program. Another concern addressed was the requirement that risk/need assessments and substance abuse evaluations be complete prior to sentencing. This causes problems, including unnecessary costs and less than accurate assessments.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee acknowledges and supports the continued efforts of the policy

implemented by SB 123 and supports the supplemental funding request of the Kansas Sentencing Commission to continue providing substance abuse treatment.

The Joint Committee recommends a bill in which language would direct the courts to depart from SB 123 sentencing when the offender will be not remaining in Kansas and thus will not be available for a Department of Corrections' certified treatment program. The bill also would address the requirement that the risk/needs assessments and substance abuse evaluations be completed after sentencing.

The Joint Committee also recommends that community corrections programs should model methamphetamine treatment after the treatment model used at the Northwest Community Corrections.

Extension of the Joint Committee on Corrections and Juvenile Justice Oversight

Under the provisions of KSA 46-2801, the authorization for the Joint Committee on Corrections and Juvenile Justice Oversight expires in December, 2005.

The Committee recommends legislation for the extension of the Joint Committee on Corrections and Juvenile Justice Oversight and the removal of the sunset provision.

Void Between SB 123 and the Kansas Criminal Justice 3R's Project

Representative Tim Owens reviewed the proposed legislation concerning a DUI/Drug treatment facility. The bill would establish a prison sanction of drug and alcohol treatment programs in a Department of Corrections' (DOC) drug and treatment facility for adult offenders placed by the courts. The policy decisions made in SB 123 would remain in place. An offender would

be able to have two attempts at treatment under SB 123, then on a third violation of a drug possession, the offender would be sentenced to the DOC drug and alcohol treatment facility. The length of sentence for treatment would be 18 months. On a fourth or subsequent offense, the sentence would be presumed imprisonment.

The Joint Committee makes no recommendations on this topic.

Faith-based Programs in Adult and Juvenile Facilities

Testimony was heard at the October meeting from the Director of the Freedom Ministries of Kansas, Inc., the Director of InnerChange Freedom Initiative (IFI) of Kansas, three IFI members, the Warden of El Dorado Correctional Facility about faith-based programs in adult correctional facilities. Representative Dick Kelsey presented testimony concerning faith-based programs for juveniles.

Each of the conferees discussed how these faith-based programs changes the lives of the inmates and keeps them from returning to prison. The programs provide education, including computer training, bible courses and life skills training as part of a pre-and post-release program once the inmate has returned to the community. Faith-based programs also are offered to juvenile offenders. Representative Dick Kelsey shared the importance of addressing the spiritual needs of young people in the JJA system.

The Committee recommends the continuation of faith-based programs in the states' adult and juvenile correctional facilities. The Committee also commends the programs and staff for their success and recognizes the importance of the offenders' programs provided to inmates especially during the economic difficulties recently encountered by the state.

Attached

BRIAN LOWE

15935 S. Avalon Street
Olathe, Kansas 66062
Home Telephone: (913) 390-7870
Work Telephone: (913) 780-7350

February 13, 2006

The Honorable Senator Terry Bruce and Senate Judiciary Committee Members
300 SW 10th Avenue
Room 141-E
Topeka, KS 66612-1504

Regarding Senate Bill 450: In child custody/residency, Court shall not grant child custody/residency to a parent who is residing with registered offender or person convicted of child abuse; material change of circumstances.

Dear Senator Bruce,

I would like to take this opportunity to share my passion regarding this important child safety issue. I testified before the Senate Judiciary committee in January of last year regarding Senate Bill 7 and Senate Bill 450 is the follow up to that law. The following is a review of my testimony, including additional details and supporting materials I hope you find helpful. I have included copies of statutes from other states that have already passed through their respective legislatures regarding this issue. Thank you for your sincere consideration of this extremely important safety bill.

BACKGROUND: My name is Brian Lowe, an elementary school principal in Olathe, Kansas and father of two wonderful children. I was divorced in November of 2001. Since then, I have remarried as well as my ex-wife Erin. The purpose of this communication is to seek your support for Senate Bill 450. The sex offender in question is Mr. Brett Ricky, a registered sex offender in Kansas since August, 2002. The following is a quick review of my situation:

- I found out in October, 2003 that my children were living with a registered sex offender. I found out through my role as principal of Brougham Elementary in Olathe. As a principal, my primary role is to protect the safety and welfare of children. We regularly hold safety meetings for parents in which we talk about strategies to keep kids safe. We have had an extra emphasis at Brougham because a sex offender lives within our neighborhood and my Parent Teacher Organization requested additional programs aimed at keeping kids safe. I found out about Mr. Ricky by surfing the accesskansas website. My ex-wife, Erin, did not disclose this information to me. She had been dating this man for over 8 months. She married Mr. Ricky in 2004.
- An emergency hearing was held in late October with Judge Larry McClain. Judge McClain did not grant me immediate custody (basically just said we need to get along), and sent us to mediation. The legal process is still continuing to this day, complicated by the fact the legal system hasn't upheld the intent of Senate Bill 7.

- We conducted depositions on March 8th, 2004 involving Mr. Ricky. Shortly after March 8th, 2004 the severity of the case increased. It was at that time I discovered Mr. Ricky was a REPEAT sex offender. I learned he abused a 12 year-old girl at Oceans of Fun. I have confirmed the 1988 case is on microfilm at the Clay County, MO Courthouse in Liberty. I couldn't gain access to that file as it is a closed case. I do have newspaper articles from that arrest. His past behavior is strong evidence of his criminal tendencies. My children, or any child, shouldn't have to be in the presence of a convicted sex offender in my opinion. The Supreme Court has ruled that sex offenders, in essence, aren't allowed to a hearing to determine if they are at low risk.
- Senate Bill 7 passed unanimously and became law as a result of the endorsement of the 2005 legislature. The bill created a "presumption of unfitness" in regards to sex offenders and child custody. It specifically stated that "there shall be a rebuttable presumption of unfitness that it is not in the best interests of a child to have custody granted to someone residing with a registered sex offender."
- We went back to court in August of 2005 after filing a motion for sole custody as a result of the new legislation and continued concerns regarding Mr. Ricky. Amazingly, Judge James Vano declined our motion. Although my motion was excellently prepared and argued by my attorney, Mr. Joe Norton, the judge dismissed my motion for custody. Specifically, he stated that sex offenders can change. He went on to say that he had a hard time believing the legislature would want to create more work for the already "overworked" court system. The bench note from that date states, "*Admonished case must be more than Ricky's history to change status quo. Senate Bill 7 does not apply. Motion denied.*" He made it clear that people do change and said that I would need more than Ricky's history (even though it hasn't been fully heard in court) to get custody. Needless to say, I was in complete shock. The intent of the legislature is clear and the judge ignored it.

I've researched what the KS Supreme Court has said regarding legislative intent and here are a few excerpts from that information:

"Older statutes are subordinate to new enactments, as the newer statutes are the later expression of the legislative intent and so will control if there is a possible conflict between the two."

"Courts do not strike down legislative enactments on the mere ground they fail to conform with a strictly legalistic definition on technically correct interpretation of constitutional provisions. The test is rather whether the legislation conforms with the common understanding of the masses at the time they adopted such provisions and the presumption is in favor of the natural and popular meaning in which the words were understood by the adopters. [Hunt v. Eddy, 150 Kan. 2, Syl. ¶ 6; Leek v. Theis, 217 Kan. at 793; State, ex rel., v. Highwood Service, Inc., 205 Kan. 821, 825, 473 P.2d 97 (1970); Wall v. Harrison, 201 Kan. 600, 603, 443 P.2d 266 (1968); Higgins v. Cardinal Manufacturing Co., 188 Kan. 11, 360 P.2d 456 (1961).]"

When the legislature revises an existing law, it is presumed that the legislature intended to change the law from how it existed prior to the amendment, and it is presumed that the legislature does not intend to enact useless or meaningless legislation. The court should avoid interpreting a statute in such a way that part of it becomes surplusage. from State v. Sedillos

?
Bond
lawyer
?

"It is fundamental that our state constitution limits rather than confers powers. Where the constitutionality of a statute is involved, the question presented is, therefore, not whether the act is authorized by the constitution, but whether it is prohibited thereby. [Hunt v. Eddy, 150 Kan. 1, 90 P.2d 747 (1939); see Leek v. Theis, 217 Kan. 784, 539 P.2d 304 (1975); Schumacher v. Rausch, 190 Kan. 239, 372 P.2d 1005 (1962); State, ex rel., v. Anderson, 180 Kan. 120, 125, 299 P.2d 1078 (1956).]

"The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution. [Leek v. Theis, 217 Kan. at 784, Syl. ¶ 2; see Rogers v. Shanahan, 221 Kan. 221, 223, 565 P.2d 1384 (1976); State, ex rel., v. Bennett, 219 Kan. 285, 289, 547 P.2d 786 (1976); Brown v. Wichita State University, 219 Kan. 2, 9-10, 547 P.2d 1015 (1976).]

"In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and if there is any reasonable way to construe the statute as constitutionally valid, that should be done. [State, ex rel., v. Fadely, 180 Kan. 652, Syl. ¶ 2, 308 P.2d 537 (1957); see Brown v. Wichita State University, 219 Kan. 2, Syl. ¶ 3; Leek v. Theis, 217 Kan. at 792; Shelton v. Phalen, 214 Kan. 54, Syl. ¶ 5, 519 P.2d 754 (1974).]

"Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt. [Hunt v. Eddy, 150 Kan. 2, Syl. ¶ 7; see also In re Estate of Diebolt, 187 Kan. 2, 13, 353 P.2d 803 (1960); State, ex rel., v. Urban Renewal Agency of Kansas City, 179 Kan. 435, Syl. ¶ 1, 296 P.2d 656 (1956); State, ex rel., v. Board of Education, 173 Kan. 780, 790, 252 P.2d 859 (1953).]

The priority to strengthen the law regarding sex offenders is a growing and necessary trend across the country. Several states already have this as a law. This is from California: (a) No person shall be granted physical or legal **custody** of, or unsupervised visitation with, a **child** if the person is required to be registered as a **sex offender** under Section 290 of the Penal **Code** where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal **Code**. Senate Bill 450 includes those that choose to live with sex offenders as well.

CONCLUSION: We can't give judges the authority to ignore Kansas law or interpret laws according to their own agenda. We need to make it very clear to judges that children shouldn't be around sex offenders. I've spent the last two years researching sex offenders. As Supreme Court Justice Anthony M. Kennedy has said, "Sex offenders are a serious threat in this nation." Research suggests sex offenders are more likely to repeat offenses more than any other type of crime. Other states have passed no custody legislation aimed at protecting children from these dangerous individuals relating to child custody situations. I have one around my children on a daily basis. I am at a loss to explain why it has to take so much for me to get my children. I am an elementary school principal that dedicates my life to children. My wife is an award-winning fourth-grade teacher in Olathe. We must do everything we can in the state of Kansas to protect children, especially from convicted child molesters. This situation will happen again, and it can be prevented with the passage of this bill.

Thank you so much for your time. We share a common concern: the safety and welfare of children. Thank you for serving on a daily basis and I thank you for your support of this vital bill. Please let me know if I can be of any further assistance. I will eagerly follow the status of this bill and urge you to give it your highest consideration.

Sincerely yours,



Brian Lowe

pc: Senator Karin Brownlee

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February 16, 2006

To: Senate Judiciary Committee
From: Senate Judiciary Subcommittee Chaired by Senator Les Donovan
Re: Subcommittee Report

The Senate Judiciary Subcommittee chaired by Senator Les Donovan held hearings and took the following actions on the bills noted.

1. **SB 220** – Limits diversions to one time during a person's lifetime for the crime of domestic battery.

Testimony. A representative of the Kansas Coalition Against Sexual and Domestic Violence supported the bill (Attachment 1). A representative of the Kansas County and District Attorney's Association opposed the limit (Attachment 2).

Subcommittee Action. The Subcommittee amended the bill to provide for no more than two diversions for domestic battery within a three-year period and recommended the bill as amended to the full committee.

2. **SB 355** – The bill deals with appeal procedures in probate cases in Chapter 59 of *Kansas Statutes Annotated*.

Testimony. A representative of the Kansas Judicial Council's Guardianship and Conservatorship Advisory Committee said the bill was recommended to deal with unique problems in Chapter 59 appeals (Attachment 3).

Subcommittee Action. The Subcommittee agreed to amend the bill on page 3, line 27, by striking "refund" and inserting "payments or contributions" as a technical amendment, and to recommend favorable action on the amended bill by the full committee.

3. **SB 366** – The bill would add an aggravating factor of an offender "playing a major role as an organizer" in criminal sentencing.

Testimony. The bill was supported by Senator Mike Petersen (Attachment 4), the Kansas Attorney General's Office (Attachment 5), and the Kansas Securities Commissioner (Attachment 6).

Subcommittee Action. The Subcommittee agreed to make a technical amendment and to recommend the bill for favorable action by the full committee.

4. **SB 462** – The bill would increase docket fees by \$9 to fund child exchange and visitation centers.

Testimony. Representatives of the Topeka Visitation and Exchange Center (Attachment 7), Safe Visit, the Kansas Coalition Against Sexual and Domestic Violence (Attachment 8), and TFI Family Services (Attachment 9) supported the bill. The Shawnee County District Court trustee requested language in the bill be clarified regarding child support (Attachment 10).

Subcommittee Action. The Subcommittee made a technical amendment and recommended the bill to the full committee.

5. **SB 451** – The bill would expand and clarify the crime of Medicaid fraud to cover, among other things, benefit providers, as well as recipients, knowingly dividing or sharing any funds illegally obtained.

Testimony. The bill was supported by Senator Mike Petersen (Attachment 11) and by a representative of the Medicaid Fraud and Abuse Division of the Office of the Attorney General (Attachment 12). The latter conferee suggested clarifying amendments.

Subcommittee Action. The Subcommittee made clarifying amendments and recommended the bill to the full committee for favorable action.

6. **SB 536** – The bill would add the requirement that administrators of estates and conservators must verify any Medicaid reimbursement requirement has been met.

Testimony. Wyandotte County Judge David Mikesic supported the bill in a written statement (Attachment 13). A representative of the Medicaid Fraud and Abuse Division of the Office of Attorney General suggested an amendment.

Subcommittee Action. The Subcommittee amended the bill by deleting Section 1, dealing with the crime of Medicaid fraud, and made a clarifying amendment. The Subcommittee recommends favorable action on the bill as amended by the full committee.

Attached 1

kcsdv

Kansas Coalition Against Sexual and Domestic Violence



634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

**Senate Judiciary Subcommittee
Senate Bill 220
Proponent**

The Kansas Coalition Against Sexual and Domestic Violence fully supports SB 220.

For those of us who have worked with victims of domestic violence, we see the option of diversion as both a blessing and a curse.

On the one hand, a prosecutor may have very good reasons for allowing a perpetrator to enter into a diversion agreement in the domestic violence related criminal case: Lack of evidence, prison or jail is not the best answer for the situation, conserving judicial and prosecutorial resources for the more lethal case. Because each situation and each case is different, advocates and victims have reluctantly participated in the less-than-perfect option of diversion.

On the other hand, there are major problems with the diversion process as it relates to domestic violence-related offenses. The problems are basically two-fold. First, diversions are over-used. This over-use results in the "worthless revolving door diversion." Prosecution of the domestic violence offense is intended to not only punish the abuser but a policy of prosecution of domestic violence is also a message from society that this issue is no longer "a private family matter." Society, through the advocacy, criminal justice, and legislative process, has worked hard to change this attitude of impunity and denial. Many strides have been made. However, revolving-door diversions make all of this work a joke. Again, we believe diversions should remain a viable option but not the only option. The second problem with diversions is that the inappropriate diversion plan has little or no teeth and is rarely monitored. For example, a good solid domestic violence diversion program would include compliance monitoring by court services officers, a solid system of accredited batterer intervention programs, and a community-wide response that monitors and provides oversight so that the perpetrator of domestic violence is truly accountable for the violence.

SB220 is an attempt to get a handle on a piece of this problem. This diversion provision would apply to domestic battery charges in both municipal and district courts. It would allow for the option in appropriate situations but would reduce the revolving-door diversion problem. It is hoped that at some point in the future the legislature will look more broadly at the issue of diversions in domestic violence-related cases. We applaud the first steps contained in this bill.

Respectfully submitted,

Sandra Barnett, Executive Director

OFFICERS

Douglas Witteman, President
Edmond D. Brancart, Vice President
Thomas Stanton, Secretary/Treasurer
Steve Kearney, Executive Director
Thomas J. Drees, Past President



Attachment 2

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February 10, 2006

Senate Judiciary Subcommittee

Senate Bill 220

Chairman Donovan and Members of the Committee:

Thank you for the opportunity to submit written testimony today. SB 220 concerns penalties that are assessed against individuals who violate KSA 21-3412a, Kansas' law on domestic battery.

The objection that the KCDA A has with SB 220 is the language that limits the number of diversions an individual can receive under these sanctions. The KCDA A opposes any change in state statute that would limit the discretion of the elected prosecutor.

Domestic battery cases can be very difficult to prosecute. Domestic battery cases can be difficult to take to trial because of the lack of evidence. By limiting the number of diversions in domestic violence cases, you may actually create the opportunity to have more dismissals in these types of cases because of the lack the evidence. Many times prosecutors can secure a tough sanction through a diversion without taking the case to trial. Remember, it is not until a third or subsequent conviction for domestic battery that a person can be charged with a felony.

Special circumstances arise in all cases across Kansas. No two criminal cases are alike. As an elected county attorney or district attorney, KCDA A members review all criminal cases and proceed forward with the most appropriate punishment for the crime and the public interest of the community.

Everyday the elected prosecutors around this state make decisions that are in the best interest of Kansas. They have to constantly balance the resources of the Kansas justice system with the best public safety. The KCDA A would ask that you remove the provisions of the bill that limit the number of diversions and consider increasing the penalties for people who commit domestic battery.

Thank you for your consideration,

Steve Kearney
Executive Director

3-4

February 10, 2006

**JUDICIAL COUNCIL TESTIMONY
ON 2006 SB 355**

GENERAL COMMENT

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

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

In determining the structure of the proposed amendments, the Committee reviewed how appeals are handled in other chapters of the Kansas Statutes Annotated. The Committee specifically looked at Chapter 38 and incorporated some of that chapter's direct method of separately handling appeals from magistrate judges to district court and clearly stating that appeals from district court

are governed by Article 21 of Chapter 60 of the Kansas Statutes Annotated. The Committee also separated cases involving a decedent's estate from other cases arising under other articles of Chapter 59.

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

Comment to Section 1.

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

Comment to Section 2.

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

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

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

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

Comment to Section 3.

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

Comment to Section 4.

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

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

Comment to Section 5.

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

SECTIONS NOT AMENDED

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

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

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

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

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

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

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

Randy Heald -

2-9

1 involving a decedent's estate:

2 (1) An order admitting or refusing to admit a will to probate.

3 (2) An order finding or refusing to find that there is a valid consent
4 to a will.

5 (3) An order appointing, refusing to appoint, removing or refusing to
6 remove a fiduciary other than a special administrator.

7 ~~(3)~~ (4) An order setting apart or refusing to set apart a homestead or
8 other property, or making or refusing to make an allowance of exempt
9 property to the spouse and minor children.

10 ~~(4)~~ (5) An order determining, refusing to determine, transferring or
11 refusing to transfer venue.

12 ~~(5)~~ (6) An order allowing or disallowing a demand, in whole or in
13 part, when the amount in controversy exceeds ~~\$500~~ \$5,000.

14 ~~(6)~~ (7) An order authorizing, refusing to authorize, confirming or re-
15 fusing to confirm the sale, lease or mortgage of real estate.

16 ~~(7) Judgments for waste.~~

17 (8) An order directing or refusing to direct a conveyance or lease of
18 real estate under contract.

19 ~~(9) Judgments for waste.~~

20 ~~(9)~~ (10) An order directing or refusing to direct the payment of a
21 legacy or distributive share.

22 ~~(10)~~ (11) An order allowing or refusing to allow an account of a fi-
23 duciary or any part thereof.

24 ~~(11)~~ (12) A judgment or decree of partial or final distribution.

25 ~~(12)~~ (13) An order compelling or refusing to compel a legatee or
26 distributee to refund.

27 (14) An order compelling or refusing to compel a refund of property
28 required to satisfy the elective share of a surviving spouse pursuant to
29 K.S.A. 59-6a201 et seq., and amendments thereto.

30 ~~(13)~~ (15) An order directing or refusing to direct an allowance for the
31 expenses of administration.

32 ~~(14)~~ (16) An order vacating or refusing to vacate a previous appealable
33 order, judgment, decree or decision.

34 ~~(15)~~ (17) A decree determining or refusing to determine the heirs,
35 devisees and legatees.

36 ~~(16)~~ (18) An order adjudging a person in contempt pursuant to K.S.A.
37 59-6a201 et seq., and amendments thereto.

38 ~~(17) An order adjudging or refusing to adjudge a person an impaired
39 person.~~

40 ~~(18) The granting or refusing to grant an order for treatment.~~

41 ~~(19) An order granting or denying restoration to capacity.~~

42 (19) An order finding or refusing to find that there is a valid settle-
43 ment agreement.

Strike and insert "payments or contributions"

COMMENT

Payments and contributions are the terms used in the elective share statutes.

Attachment 4

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COMMITTEES
ELECTIONS & LOCAL GOVERNMENT
TRANSPORTATION
UTILITIES

JT. COMMITTEE ON
INFORMATION TECHNOLOGY

SENATOR MIKE PETERSEN

SB366

Mr. chairman and members of the committee I want to thank you for letting me have the opportunity to appear before you today.. SB366 is the result of A supreme court decision in June of 2005 which basically states that a defendants role as the leader and organizing force of a criminal enterprise is not in the list of aggravating factors that can be used to enhance sentences.

While I believe it may have been used in the past. This decision made it clear that it can not be used to override the sentencing guidelines and enhance a sentence if it is not on the list of aggravating factors. SB366 puts this on the list in 21-4716.. It is interesting to note that playing a passive or minor role in a crime is a mitigating factor to reduce a sentence. If a jury finds someone guilty of being a leader, recruiter or manager of a crime beyond a reasonable doubt. Our sentencing judges should have the ability to extend the sentence.

I have attached an article from the Kansas City Star on this case and the fiscal note on this bill. Thanks for your consideration.

Senator Mike Petersen

Sentence violated guidelines, court rules; Theft-ring leader got prison term

By Tony Rizzo

Source:

KCS

Tuesday, June 7, 2005

Edition: METROPOLITAN, Section: METROPOLITAN, Page B3

Edward B. Martin is no Al Capone.

He is the convicted leader of a multistate identity theft ring, and he did go to prison for orchestrating the criminal acts of his underlings.

But the Kansas Supreme Court has ruled that a Johnson County judge was wrong to send Martin to prison for 34 months.

In Friday's ruling, the Supreme Court said that Martin's leadership role in the ring was not an appropriate reason to override sentencing guidelines and send him to prison. The guidelines had called for probation.

In a dissenting opinion, Chief Justice Kay McFarland compared Martin's situation to that of the notorious Depression-era gangster, but she was outvoted by her colleagues.

The court ordered that Martin be returned to Johnson County to be resentenced, although he is now on parole in California.

Records show that Martin spent 29 months in custody from the time of his arrest until he was paroled in June 2004. Fifteen percent of the sentence was cut because of "good time" allowed under Kansas law.

Martin, 36, ran the identity theft ring from California, recruited its members and instructed them in what to steal and how to steal it, according to testimony at his trial in Johnson County District Court in 2002.

A jury found him guilty of conspiracy to commit identity theft and four counts of identity theft. Jurors also found that Martin "acted as the organizing force and directed the criminal activities of the accomplices."

Using that finding as the basis, District Judge James Franklin Davis denied probation and sentenced Martin to 34 months.

But the Supreme Court said that it should be up to the Legislature to include a

<http://merlinfs.kcstar.inside/scripts/foxisapi.dll/wmsql.wm.request?ONEIMAGE&imageid...> 1/12/2006

defendant's role as leader of a criminal enterprise in the list of "aggravating factors" that can be used to enhance sentences.

The Legislature has not done that, but it has included a defendant's passive or minor role in a crime as one of the listed "mitigating factors" that can be used to lower a sentence.

In her dissent, McFarland said that under the majority opinion, Capone and the truck drivers who transported his illegal alcohol would have been equally culpable. Capone, shielded from arrest because of his behind-the-scenes role, would have had less of a criminal record and probably would have received a shorter sentence than his minions, she said.

To reach Tony Rizzo, Johnson County courts reporter, call (816) 234-7713 or send e-mail to trizzo@kcstar.com.

First glance

A gang member's leadership role is not enough to enhance sentences, the Kansas Supreme Court rules.

Photo Caption:

Filename: **ringleader07_ks**
Service:
Category:
Supplemental Category: **News**

Instructions:
Created: **June 7, 2005**
City:
Country:
Reference:
Merlin ID: **1675316**
Keywords:
Library enhanced? **No**
Rights? **No**
Input Date: **06/07/2005**

February 3, 2006

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 281-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 366 by Senator Petersen

In accordance with KSA 75-3715a, the following fiscal note concerning SB 366 is respectfully submitted to your committee.

Current law specifies a list of aggravating factors that may be considered in determining whether substantial and compelling reasons exist for departure from the sentencing guidelines. SB 366 would add to that list whether the offender played a major role in the crime as the organizer, leader, recruiter, manager, or supervisor.

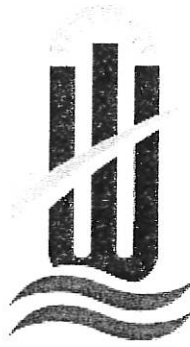
The Kansas Sentencing Commission cannot estimate the fiscal effect of this bill. No data are available regarding offenders who play major roles in the crime. As a result, any change in the number of prison beds cannot be estimated.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Mary Rinehart, Judiciary
Jeremy Barclay, Corrections
Patti Biggs, Sentencing Commission
Marshall Kennedy, Attorney General's Office



Wichita Police Department
Police Chief Norman D. Williams

Sen. Mike Petersen
State Capitol
Topeka Kansas

Subject: SB 366 - Departure Sentencing

Dear Senator Petersen:

Thank you very much for your support and comments on SB 458 before the Senate Judiciary Committee. The adoption of that bill will be an important step in our continuing efforts to combat gang violence and recruitment in Wichita and throughout Kansas.

SB 366, which you have introduced, is another tool that can be helpful in law enforcement efforts against gangs, as well as in other types of crime. The addition of an aggravating factor to be considered in the sentencing of an offender who has played a "major role" in a crime could be used in the sentencing for some criminal gang leaders. Therefore, SB 366 is consistent with our efforts in 458, and we would also support its adoption.

Sincerely, J.C.

Norman D. Williams, Chief
Wichita Police Department

Attachment 5



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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February 9, 2006

SENATE JUDICIARY SUB-COMMITTEE
Testimony of Kevin A. Graham
in support of
Senate Bill No. 366

Dear Chairman Donovan and Members of the Sub-Committee:

Thank you for allowing me to submit testimony on behalf of Attorney General Phill Kline in support of SB 366, a bill designed to provide prosecutors with the ability to seek more severe "upward departure" sentences for individuals who could be described as "ringleaders" of criminal enterprises.

SB 366 amends K.S.A. 2005 Supp. 21-4716, which is the statute in the Kansas Sentencing Guidelines Act which lists "mitigating factors" and "aggravating factors" that may be considered by juries when weighing whether to impose a departure sentence in a felony case to be sentenced under the Guidelines. SB 366 adds a new "aggravating factor" that may be considered by a jury which would specify "*the offender played a major role in the crime as the organizer, leader, recruiter, manager or supervisor.*" This new upward departure factor would allow prosecutors to seek tougher sentences for so-called "kingpins" or "ringleaders" who arrange for others to be involved in the commission of crimes. For example, under current law a gang leader who plans crimes and directs other gang members to carry out those crimes may be prosecuted as a co-conspirator in the commission of the crime(s). Under SB 366, if the prosecutor can prove to the jury that the gang leader "played a major role in the crime as the organizer" etc., then the jury could recommend the gang leader receive an enhanced sentence for being the leader/major role player in the criminal activity.

Under the KSGA the sentence lengths found on the nondrug grid and the drug grid are "presumptive" which means in some cases the sentences can be lessened or increased through a "departure" from the Guidelines sentence. Departure sentences can include "dispositional" or "durational" in nature. A dispositional departure would occur in a case where the presumptive sentence would place the offender in prison, but the court departs downward and grants the offender probation instead. Likewise, if the prosecutor timely files a notice for an upward dispositional departure and jury is convinced of the need to depart upwards an offender whose sentence would presumptively be probation under the Guidelines could be sentenced to confinement in prison. "Durational" departures refer to the length of the sentence the offender will

receive. An upward durational departure would involve an offender receiving a longer sentence than is standard under the Guidelines, while a downward durational departure would provide for a shorter than standard sentence.

SB 366 provides a means to enhance sentences for those offenders who are the leaders or "masterminds" behind the commission of crimes. On behalf of Attorney General Phill Kline, I encourage the sub-committee to support SB 366 and to recommend the bill to the full committee favorably for passage.

Respectfully,
OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Kevin A. Graham
Assistant Attorney General
Director of Legislative Affairs

attach #6



OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

TESTIMONY IN SUPPORT OF SENATE BILL No. 366
Senate Judiciary Committee

Scott M. Schultz, Associate General Counsel
Office of the Securities Commissioner
February 10, 2006

Mr. Chairman and members of the committee,

Investor protection for Kansans is paramount to our mission at the Office of the Securities Commissioner. The interests of the investing public are met by passage of this addition to the existing departure factors. It would allow a court to impose more responsibility on defendants based upon their level of involvement in the crime.

Thank you for this opportunity to testify in support of Senate Bill 366 which would add another important departure factor to the list in K.S.A. 21-4716 (c)(1). My name is Scott Schultz. I am an associate general counsel with the Commissioner's office. My job responsibilities include trial and appellate criminal securities prosecutions on behalf of the State of Kansas. In addition to prosecuting at the state level, I am also cross-designated to prosecute federal white-collar violations as a Special Assistant United States Attorney for the District of Kansas.

In my travels throughout the state to prosecute those violating the Kansas Uniform Securities Act, it is evident that in many of the cases, securities fraud and other securities offenses are a "team sport." Simply put, usually two or more people are involved in creating and promoting the scam. Under current law, a prosecutor cannot assign more liability to the most culpable team member. Each defendant, regardless of the degree of their involvement or enrichment, must be legally treated the same.

Senate Bill 366 provides a solution to this quandary. As the "Leader of the Pack," the mastermind of the operation or any supervisor can be sanctioned more harshly than a simple agent or subordinate that is trained and instructed by the kingpin of the criminal enterprise to promote and sell the illegal investment.

Presently, the office has used the current departure factors, such as fiduciary duty and the victims being of vulnerable age, to successfully enhance the sentences of defendants that would

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otherwise have received only the base sentence. In some instances, the promoter is a licensed securities dealer and possesses superior knowledge of the industry. In others, the victims are elderly and have been taken advantage of by unscrupulous thieves. The addition of this new departure factor allows us to pursue those who benefit the most from the fraudulent scheme, even in the absence of the two other factors I previously mentioned.

Mr. Chairman and members of the committee, on behalf of the Office of the Securities Commissioner I respectfully request that you recommend Senate Bill 366 favorably for passage.

Testimony in Support of Senate Bill 462
Friday, February 10, 2006
Senate Judiciary Subcommittee, Chairman Les Donovan

Senator Donovan and members of the subcommittee:

I am Connie Sanchez , the administrator of the local Topeka visitation and exchange center – Safe Visit – and I also serve as the President of the Kansas Network for Visitation and Exchange Centers in Kansas. The bill that is before you this morning is legislation we are hoping will be enacted this year as we struggle to operate our programs throughout the state. We sincerely appreciate the time you are taking to hear this important matter.

Visitation and exchange programs serve children and families – often referred by the Court – due to domestic conflict. The programs provide a safe, structured, neutral environment for children to visit their parent or family member. Without the centers, children would often be prohibited from any parental contact or communication.

All program participants are required to pay for services, based on ability to pay. Kansas currently has 11 programs funded through CEVC grants administered by the Kansas Attorney General. **But these programs are at risk of closing due to declining grant dollars. That is why passage of SB 462 is so critical.**

2003-2004 saw the state awarding \$201,558 which was revenue generated via the 20% or \$10 from all marriage license fees. Just two years later, 2004-2005, this revenue dropped to \$158,000 and the trend is not expected to change. These state resources are combined with federal grant dollars (usually around \$100,000/year) but we are told the federal grant dollars are to be declining also.

The \$9 fee embodied in Senate Bill 462 is a modest fee, estimated to generate some \$200,000 each year. These additional resources would be administered by the Attorney General's office, providing appropriate oversight and review of the dollars granted.

In closing, let me thank you again for your time and I would be pleased to respond to any questions you might have.

kcsdv Kansas Coalition Against Sexual and Domestic Violence



634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

Senate Judiciary Subcommittee Senate Bill 462 Proponent

The Kansas Coalition Against Sexual and Domestic Violence fully supports SB 462.

In the past decade courts have increasingly relied upon supervised visitation and child exchange centers in cases involving domestic violence and child sexual abuse.

Even in these types of cases, children generally fare better when they can have a safe relationship with both parents. But, orchestrating a safe visitation or a safe exchange of a child/children can present many serious problems, especially when domestic violence or sexual abuse is an issue. The use of children as tools of control is perhaps one of the most universal tactics employed by batterers to gain compliance from their victims. Batterers use the visitation exchange as an opportunity to have access to the victim. They use that time to harass, injure, and threaten their child(ren's) mother. On other occasions, batterers will simply not show up to exercise their visitation after making arrangements to meet the other parent, leaving them sitting for long periods of time with disappointed or fearful children.

Child exchange and visitation centers are a critical resource to many parents and children that allow the opportunity to maintain a relationship with a parent who may otherwise be unable to do so because they pose a threat to the child or the other parent. Without CEVC's courts will be forced to either curtail visitation or place victims of domestic violence and child abuse in dangerous situations.

Without a doubt, CEVC's are part of a community and court response to domestic violence and child abuse. They are critical tools to safety. Yet, there are only eleven CEVC's in the entire state and those that do exist operate limited hours because trained staff or volunteers are not available or because no funds exist to pay the required security personnel. The increase of docket fees on divorce cases will generate funds to expand the operating hours making child exchange and visitation services available for more children.

KCSDV wholeheartedly supports SB 462.

Respectfully Submitted,
Sandy Barnett
Executive Director

Building Brighter Tomorrows for Families and Children

Testimony to the Senate Judiciary Subcommittee

SB 462

February 10, 2006

TFI Family Services supports SB 462 as it encourages the development and maintenance of Visitation and Exchange Centers in Kansas.

TFI Family Services is a statewide child welfare agency, providing family preservation, reintegration/foster care, and adoption services to approximately 50 counties in most of eastern Kansas. We currently sponsor over 620 family foster homes, providing care for nearly 900 children throughout the state. TFI Family Services is a Child Placing Agency licensed by the Kansas Department of Health and Environment and is accredited for adoption, foster care, and mental health services by the National Council on Accreditation. Our mission is to support effective services for helping children and families live safe and productive lives. We believe Visitation and Exchange Centers provide for safety in the community and assist families in maintaining connections under difficult circumstances.

The Douglas County Visitation & Exchange Center was established by TFI Family Services in October of 1998. Since its inception the Center has provided a range of services to ensure both a safe environment for children during court ordered supervised visits and an exchange service in which children can be transferred in a safe and secure setting, free from parental violence and conflict. Both types of intervention are implemented to protect children 0-18 from being a victim of or witness to abuse or violence.

We believe that there is a strong need to generate new sources of revenue for these critical services. During the 2005 fiscal year, the program operated a total budget of \$75,278. The sources of revenue that were generated totaled, \$7,500 from the City of Lawrence general fund, \$7,000 from the City of Lawrence alcohol and tax fund, \$9,000 from mandatory client fees, \$8,750 from the State Child Exchange and Visitation Centers grant and \$20,000 from the Federal State Access and Visitation Program fund. Money awarded to the program for the 2006 fiscal year has decreased by \$12,000. While access to our services has been made available in Douglas County due to partial support from local resources, it is essential that a stronger effort be made to assure access to all individuals of Kansas.

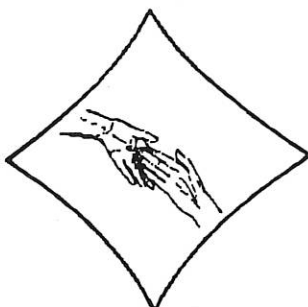
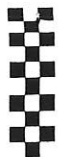
The Douglas County program at this time is coordinated by a part-time Director. An increase in state funding would enhance services through the expansion of hours of operation and full-time staff. We believe that increased funding would strengthen collaboration with local community partners of Douglas County and extend hours of operation for the program.

During the 2005 fiscal year, the Douglas County Visitation & Exchange Center served 164 new and returning adults and 119 children. Over 220 supervised visitations and 200 monitored exchanges were conducted at the program. An increased visibility in District Court would facilitate the referral process and make this program more available for families needing support and the security our program can offer.

We believe that there is a significant need to expand services in surrounding areas as well. Franklin County courts and social service agencies have expressed a great concern and need for services in the area. The Douglas County Visitation & Exchange Center has had preliminary discussions with Franklin County officials and the opportunity for sharing resources for a bi-county program is being reviewed. This potential partnership on behalf of both Douglas and Franklin Counties represents similar opportunities across the state that would be promoted by the passage of SB 462; we urge your support.

I would be pleased to provide additional information upon request.

Steven J. Solomon, PhD
Vice President/Public Policy
TFI Family Services
steves@the-farm.org
785-749-2664



Hope Unlimited, Inc.



P.O. Box 12 • 206 South Jefferson
Iola, KS 66749
620-365-7566 • Fax: 620-365-2016

PROGRAMS:

- Crisis Intervention
- Emergency Shelter
- Outreach
- Visitation Center
- Prevention
- OARS

February 9, 2006

Hon. Senator John Vratil, Chairman
Senate Judiciary Committee
Room 281 E
Capitol
Topeka, Kansas 66612

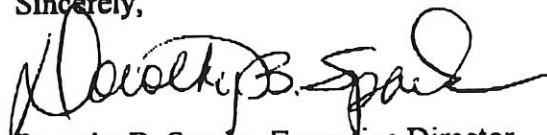
Dear Honorable Senator Vratil:

I am writing to request your support of bill 462 regarding visitation centers in Kansas and funding through docket fees. Through our Child Exchange and Parenting Center, we have been able to assist numerous children and their families in the 31st Judicial District (Allen, Neosho, Wilson and Woodson Counties) and Anderson County in the 4th Judicial District.

The funds generated as a result of the bill will help the visitation centers to attain financial stability and meet the ever-rising costs of maintaining such a facility. Due to decreases in federal grant funding, many programs, including Hope Unlimited, have suffered substantial financial budget cuts. Some services have had to be decreased and outreach efforts have been adversely affected in many programs.

The bill will allow programs to focus on program development, staff investment, outreach and facility maintenance which will result in better services to children in need. Therefore, I ask that you support bill 462 to help Kansas children and their families in need of visitation and exchange services. Thank you for your time, consideration and support.

Sincerely,


Dorothy B. Sparks, Executive Director

3-24

February 9, 2006

Dear Senator Vratil,

I am requesting your support for Senate Bill No. 462. This is an amended bill concerning child exchange and visitation centers, relating to docket fees.

Following my retirement from teaching, I became the director of the SOS Child Visitation and Exchange Center. The Emporia Visitation Center is currently one of twelve centers in Kansas that receives funding from marriage license fees, federal support dollars, and local foundations. However, with decreasing funding, many centers are finding it difficult to support all the services that are needed by our clients. A new source of revenue generated through Senate Bill No. 462 would help support visitation and exchange services for Kansas communities. It would help us to continue providing a safe neutral environment for parent/child contact.

Please help our Kansas centers provide victims of family violence and child abuse a safe alternative.

Thank you for your time and support of Senate Bill No. 462.

Sincerely,

Sharon Allemang

Child Visitation & Exchange Center

400 West 2nd, Suite B
Hutchinson, KS 67501



Phone: (620) 665-1471
Fax: (620) 665-3609

February 9, 2006

Senator John Vratil
Chairman Senate Judiciary Committee
Room 281-E Statehouse
Topeka, Kansas 66612

RE: Divorce filing bill for Child Visitation and Exchange Centers

Dear Senator Vratil,

The Kansas Child Visitation and Exchange Centers desperately need more funding from the state to keep this service available to our communities. We are a very valuable service to parents who need a buffer between each other for the benefit for their children. Our services decrease the threat of violence to children who have to witness conflict between their parents while being exchanged between them or being left alone with them. The children benefit from the services the Child Visitation and Exchange Centers offer because they are able to maintain a relationship with both parents. The neutral atmosphere is child friendly and promotes positive, consistent contact. The community benefits by the decrease in public exchanges, such as those at the law enforcement center or fast food restaurants.

Please support Senate Bill #462, which is meant to generate much needed revenue for Kansas Child Visitation and Exchange Centers.

Thank-You

Sincerely,

A handwritten signature in cursive script that reads "Susan Guiot".

Susan Guiot
CVEC Program Coordinator
Reno County/Hutchinson, Kansas

CHIEF JUDGE
DAVID J. KING

FIRST JUDICIAL DISTRICT

COURT ADMINISTRATOR
RON CHANCE

DISTRICT JUDGES
FREDERICK N. STEWART
ROBERT J. BEDNAR
MARTIN ASHER
PHILIP C. LACEY
GUNNAR A. SUNDBY



CLERK OF THE DISTRICT COURT
DARLA FARNSWORTH

From Chambers of
Gunnar A. Sundby
Division One

LEAVENWORTH DISTRICT COURT
LEAVENWORTH JUSTICE CENTER
601 SOUTH 3RD STREET
LEAVENWORTH, KANSAS 66048-2868
(913) 684-0700 • FAX (913) 684-0492

Administrative Assistant
Anita Scarborough
(913) 684-0408

February 9, 2006

(Via Facsimile - 785 234 5466)

Senator John Vratil
Chairman Senate Judiciary Committee
Room 281-E, Statehouse
Topeka, KS 66612

Senator Vratil:

I am writing to express my support of the bill that designates a portion of the divorce filing fees as a method of funding visitation centers in Kansas. This certainly has a higher priority over the bill to increase law library fees.

As the judge who presides over domestic family matters I realize that there is a great need for such centers in this state.

Please feel free to contact my office if I can be of any assistance or provide additional information regarding this issue.

Very truly yours,

Gunnar A. Sundby
District Judge

GAS/als

TESTIMONY OF MARC A. WHITE
FEBRUARY 10, 2006

Senator's Good Morning,

My name is Marc White. I am the District Court Trustee for the Third Judicial District - Shawnee County.

I would like to thank you for the opportunity to testify before you this morning. My comments will be brief.

I am sure that everyone would support the overall intent of this bill which I believe is to support child exchange and visitation centers. It undoubtedly would benefit custodial and non-custodial parents and their children for these centers to be funded appropriately and I applaud this effort. However, I am here this morning to request clarification of the language found in Section 2(a)(1),

As the District Court Trustee I am charged with all matters relating to the establishment, modification, and enforcement of support orders issued by the Shawnee County District Court which are not Title IV-D cases enforced by the State of Kansas, Department of Social and Rehabilitation Services (SRS). Further, as the District Court Trustee I am empowered to pursue all civil remedies which are available to a custodial person in establishing and enforcing payments of support. (K.S.A. §23-496)

So, why have I asked to testify before the committee this morning? I, as well as many domestic law attorneys, am concerned with the language of Section 2(a)(1) not only with regard to the apparent discrepancy between the increase of fees in Section 2(a)(1) and in Section 2(a)(2), but most especially with regard to the language regarding child support enforcement.

I stand before you this morning respectfully requesting clarification of the language. Section 2 (a)(1) reads as follows: "For cases filed or docketed for divorce or separate maintenance, pursuant to K.S.A. 60-1601, and amendments thereto; for annulment, pursuant to K.S.A. 60-1602, and amendments thereto; pursuant to the Kansas parentage act, K.S.A. 38-1110 *et seq.*, and amendments thereto; **and for the enforcement of child support; \$115; . . .**"

If passed does this Bill require that all post decree motions be accompanied with payment of \$115.00 in lieu of the current \$26.00 fee that is charged for post decree motions? At first glance this language appears to require just that.

If the intent is to require payment of \$115.00 for the **enforcement** of child support, i.e., motions to enforce, motions to modify child support, motions to modify income withholding orders, motions for failure to pay child support, then I assure you that this will have an adverse affect on many individuals throughout the State of Kansas and I stand before you in opposition of the Bill in its present form.

Many individuals who are not receiving child support are at or below the poverty level and do not have the money to pay a fee to have their child support order enforced. This is why the Social and Rehabilitation Services and the District Court Trustees are empowered to enforce these orders. I understand that there is the Poverty affidavit in lieu of a docket fee provision within the proposed Bill however even those individuals who are not indigent would have a difficult time coming up with \$115.00 for enforcement of a Support Order that has already been ordered by the Court.

In addition to the economic impact that this would have on families not receiving child support, and in need of enforcement, this bill would potentially raise the number of people on the state's welfare role as child support is looked upon as a safety net so that families are not on cash assistance.

With my written testimony which has been provided you will find a Fees and Distribution Chart which outlines all docket fees pertaining to chapter 60 of the Kansas Statutes Annotated. If in fact the true intent is to charge a \$115 fee for the **ENFORCEMENT** of Child Support then I would respectfully suggest that there are other avenues to help fund the centers than to increase or place a fee on post decree motions to enforce support.

Again I thank you for the opportunity to testify before you.

FEES AND DISTRIBUTION CHART

(Revised 06/29/2005)

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CASE TYPE	#	TOTAL Docket Fee & JBS	JUDICIAL BRANCH SURCHARGE	DOCKET FEE	CITE	STATE	COUNTY	LAW LIBRARY FUND	PATF	IDS	LETC
			2005 SC 41			20-367 20-362(f)	20-362(a)	20-3129 20-362(b)	20-362(C) 28-170a	20-362(d) 28-172b	20-362(e)
Bar Discipline Fee Fund (out of state attorney)		\$100.00	0	0	2005 SC 28	100.00	0	0	0	0	0
Appeals (municipal court)	1	\$67.50	5.00	62.50	28-172a	Balance	0	X	1.00	.50	9.00
Appellate Court Review	2	\$130.00	5.00	125.00	SCR 2.04	125.00	0	0	0	0	0
Civil	5	\$111.00	5.00	106.00	60-2001	Balance	10.00	X	0	0	0
Foreign Judgment (another state)	6	\$111.00	5.00	106.00	60-3005 60-2001	Balance	10.00	X	0	0	0
Foreign Judgment (another county)	7	\$5.00	0	5.00	28-170 60-2001	5.00	0	0	0	0	0
Tax Warrant	1 0	\$20.00	5.00	15.00	28-170	15.00	0	0	0	0	0
Personal Property Tax	1 1	\$10.00	5.00	5.00	28-170	5.00	0	0	0	0	0
Statutory Bond	1 2	\$10.00	5.00	5.00	28-170	5.00	0	0	0	0	0
Hospital Lien	1 3	\$10.00	5.00	5.00	28-170	5.00	0	0	0	0	0
Lis Pendens	1 4	\$10.00	5.00	5.00	28-170	5.00	0	0	0	0	0
Mechanic's Lien	1 5	\$10.00	5.00	5.00	28-170	5.00	0	0	0	0	0
Intent to Perform	1 6	\$10.00	5.00	5.00	28-170	5.00	0	0	0	0	0
Notice of Extension to File Lien	1 7	\$5.00	5.00	0	60-1103	0	0	0	0	0	0
Oil & Gas Mechanic's Lien	1 8	\$10.00	5.00	5.00	28-170	5.00	0	0	0	0	0
Divorce/Paternity	2 1	\$111.00	5.00	106.00	60-2001	Balance	10.00	X	0	0	0

2-31

CASE TYPE	#	TOTAL Docket Fee & JBS	JUDICIAL BRANCH SURCHARGE	DOCKET FEE	CITE	STATE	COUNTY	LAW LIBRARY FUND	PATF	IDS	LETC
			2005 SC 41			20-367 20-362(f)		20-362(a)			
Post Decree Motion	2 2	\$26.00	5.00	21.00	60-1621	21.00	0	0	0	0	0
Limited Action (\$500 or less)	2 5	\$31.00	5.00	26.00	61-4001	Balance	5.00	X	0	0	0
Limited Action (\$500.01 - \$5,000)	2 6	\$51.00	5.00	46.00	61-4001	Balance	10.00	X	0	0	0
Limited Action (\$5,000.01 - \$25,000) no limit on contract that is NOT secured by lien	2 7	\$81.00	5.00	76.00	61-4001 61-2802	Balance	10.00	X	0	0	0
Transfer LM to CV (original \$31.00)	2 8	\$80.00	0	80.00	61-2910 60-2001	Balance	5.00	X	0	0	0
Transfer LM to CV (original \$51.00)	2 9	\$60.00	0	60.00	61-2910 60-2001	Balance	0	X	0	0	0
Transfer LM to CV (original \$81.00)	3 0	\$30.00	0	30.00	61-2910 60-2001	Balance	0	X	0	0	0
Post-Judgment Promotion of Ch 61 to Ch 60	3 1	\$20.00	5.00	15.00	28-170	15.00	0	0	0	0	0
Small Claims (\$500 or less)	3 5	\$31.00	5.00	26.00	61-2704	Balance	5.00	X	0	0	0
Small Claims (\$500.01 - \$4,000)	3 6	\$51.00	5.00	46.00	61-2704	Balance	10.00	X	0	0	0
Hearing in Aid of Execution & Alias Orders for Hearing		\$5.00	5.00	0	60-2419 61-3604	0	0	0	0	0	0
Writs/Orders of Sale or Execution & Alias Orders or Writs		\$5.00	5.00	0	60-2401 61-3602	0	0	0	0	0	0
Attachments		\$5.00	5.00	0	60-703 61-3501	0	0	0	0	0	0
Garnishments		\$5.00	5.00	0	60-730 60-731 61-3503 61-3504	0	0	0	0	0	0
Criminal (murder/manslaughter)	4 0	\$169.50	5.00	164.50	28-172a	Balance	0	X	1.00	.50	9.00

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CASE TYPE	#	TOTAL Docket Fee & JBS	JUDICIAL BRANCH SURCHARGE	DOCKET FEE	CITE	STATE	COUNTY	LAW LIBRARY FUND	PATF	IDS	LETC
			2005 SC 41			20-367 20-362(f)	20-362(a)	20-3129 20-362(b)	20-362(C) 28-170a	20-362(d) 28-172b	20-362(e)
Criminal (felony)	4 1	\$152.00	5.00	147.00	28-172a	Balance	0	X	1.00	.50	9.00
Criminal(misdemeanor)	4 2	\$117.00	5.00	112.00	28-172a	Balance	0	X	1.00	.50	9.00
*KBI Lab Fee		\$400.00	0	0	28-176	0	0	0	0	0	0
BIDS Admin. Fee		\$100.00	0	0	22-4529	100.00	0	0	0	0	0
Probation Fee – misd.		\$25.00	0	0	21-4610a	25.00	0	0	0	0	0
Probation Fee – felony		\$50.00	0	0	21-4610a	50.00	0	0	0	0	0
Expungement		\$50.00	50.00	0	22-2410 21-4619 38-1610	0	0	0	0	0	0
Children's Advocacy Center Fund		\$100.00	0	0	20-370	100.00	0	0	0	0	0
Traffic	4 5	\$60.00	5.00	55.00	28-172a	Balance	0	X	1.00	.50	9.00
DL Reinstatement		\$55.00	5.00	50.00	8-2110	50.00	0	0	0	0	0
**ADSAP Fee		\$150.00	0	0	8-1008	0	0	0	0	0	0
Fish & Game	4 6	\$60.00	5.00	55.00	28-172a	Balance	0	X	1.00	.50	9.00
Child in Need of Care	5 0	\$30.00	5.00	25.00	38-1511	Balance	0	X	1.00	.50	0
Juvenile Offender	5 1	\$30.00	5.00	25.00	38-1613	Balance	0	X	1.00	.50	0
Juvenile Tobacco	5 2	\$60.00	5.00	55.00	28-172a	Balance	0	X	1.00	.50	9.00
JV Probation Fee-misd.		\$25.00	0	0	20-167	0	25.00	0	0	0	0
JV Probation Fee - fel.		\$50.00	0	0	20-167	0	50.00	0	0	0	0
Adoption	6 0	\$39.50	0	39.50	59-104	Balance	0	X	0	0	0
Foreign Adoption	6 1	\$5.00	0	5.00	28-170 59-2144	5.00	0	0	0	0	0

CASE TYPE	#	TOTAL Docket Fee & JBS	JUDICIAL BRANCH SURCHARGE	DOCKET FEE	CITE	STATE	COUNTY	LAW LIBRARY FUND	PATF	IDS	LETC
			2005 SC 41			20-367 20-362(f)		20-362(a)		20-3129 20-362(b)	20-362(C) 28-170a
Conservatorship &/or Guardianship	6 5	\$65.50	5.00	60.50	59-104	Balance	0	X	0	0	0
Annual Reports		\$5.00	5.00	0	59-3083	0	0	0	0	0	0
Annual Accountings of Conservatorship		\$5.00	5.00	0	59-3083 SCR 109	0	0	0	0	0	0
Closing Conservatorship or Guardianship		\$5.00	5.00	0	59-3083	0	0	0	0	0	0
Probate Trust	6 6	\$65.50	5.00	60.50	59-104	Balance	0	X	0	0	0
Annual Accountings of Trusteeship		\$5.00	5.00	0	59-1005 59-2703 59-3083 SCR 109	0	0	0	0	0	0
Closing Trusteeship		\$5.00	5.00	0	59-1603	0	0	0	0	0	0
Filing Will & Affidavit	6 7	\$44.50	5.00	39.50	59-104	Balance	0	X	0	0	0
Probate Descent	6 8	\$45.50	5.00	40.50	59-104	Balance	0	X	0	0	0
Probate Estates	6 9	\$105.50	5.00	100.50	59-104	Balance	0	X	0	0	0
Probate Transcript (another county)	7 0	\$14.50	0	14.50	59-104	Balance	0	X	0	0	0
Probate Transcript (another state)	7 1	\$104.50	5.00	99.50	59-104	Balance	0	X	0	0	0
Refusal to Grant Letters	7 2	\$44.50	5.00	39.50	59-104	Balance	0	X	0	0	0
Termination of Joint Tenancy	7 3	\$44.50	5.00	39.50	59-104	Balance	0	X	0	0	0
Termination of Life Estate	7 4	\$44.50	5.00	39.50	59-104	Balance	0	X	0	0	0
Treatment of Alcoholism, Drug Abuse or Mentally Ill	8 0	\$30.50	5.00	25.50	59-104	Balance	0	X	1.00	.50	0

* Paid monthly to Kansas Bureau of Investigation (report showing defendant's name and case number is accompanied)

3-34

* The clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court.

Attachment 11

STATE OF KANSAS

2608 S. E. DRIVE
WICHITA, KANSAS 67216
(316) 264-1817

STATE CAPITOL, ROOM 242-E
TOPEKA, KANSAS 66612
(785) 296-7355
petersen@senate.state.ks.us



COMMITTEES
ELECTIONS & LOCAL GOVERNMENT
TRANSPORTATION
UTILITIES

JT. COMMITTEE ON
INFORMATION TECHNOLOGY

SENATOR MIKE PETERSEN

SB451

Mr. chairman and members of the committee I want to thank you for letting me have the opportunity to appear before you today. SB451 is an attempt to deter and prevent Medicaid fraud by declaring certain acts to be crimes and providing measures to prevent people from using stolen identities to fraudulently obtain benefits.

The Dept. of Revenue has a system in place which uses multiple sources and methods to verify a persons identity when obtaining a State of Kansas ID card or drivers license. Sec.3 of this bill is a method of preventing fraud by using a readily available system that is already in place. Attached is a pamphlet from the vendor of the software used to detect fraud. I believe using resources that we have in place is a cost effective way to insure our Medicaid dollars go to the people who deserve them.

. Thanks for your consideration.

A handwritten signature in cursive script that reads "Mike Petersen". The signature is written in black ink and is positioned above the printed name.

Senator Mike Petersen

SENATE BILL No. 451

By Senators Huelskamp and Petersen

1-25

3-36

9 AN ACT concerning medicaid; relating to the state medicaid plan; de-
10 claring certain acts to be crimes and providing penalties for violations;
11 amending K.S.A. 2005 Supp. 21-3847 and 39-7,121d and repealing the
12 existing sections.

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

14 Section 1. K.S.A. 2005 Supp. 21-3847 is hereby amended to read as
15 follows: 21-3847. (a) No person nor family member of such person shall:

16 (1) Knowingly and intentionally solicit or receive any remuneration,
17 including but not limited to any kickback, bribe or rebate, directly or
18 indirectly, overtly or covertly, in cash or in kind;

19 (A) In return for referring or refraining from referring an individual
20 to a person for the furnishing or arranging for the furnishing of any goods,
21 service, item, facility or accommodation for which payment may be made,
22 in whole or in part, under the medicaid program; or

23 (B) in return for purchasing, leasing, ordering or arranging for or
24 recommending purchasing, leasing or ordering any goods, service, item,
25 facility or accommodation for which payment may be made, in whole or
26 in part, under the medicaid program.

27 (2) Knowingly and intentionally offer or pay any remuneration, in-
28 cluding, but not limited to, any kickback, bribe or rebate, directly or
29 indirectly, overtly or covertly, in cash or in kind to any person to induce
30 such person

31 (A) To refer or refrain from referring an individual to a person for
32 the furnishing or arranging for the furnishing of any goods, service, item,
33 facility or accommodation for which payment may be made, in whole or
34 in part, under the medicaid program; or

35 (B) to purchase, lease, order, or arrange for or recommend purchas-
36 ing, leasing, or ordering any goods, service, item, facility or accommo-
37 dation for which payment may be made, in whole or in part, under the
38 medicaid program.

39 (b) No medicaid client shall knowingly and intentionally trade a med-
40 icaid number for money or other remuneration for sign for services that
41 are not received by the medicaid client

42 (c) A violation of this section is a severity level 7, nonperson

recipient of medicaid benefits,

or provider of medicaid services

or entity

or entity

(3) Knowingly divide or share any funds illegally obtained from the
medicaid program.

recipient

recipient or sell or exchange for value goods purchased or provided under
the medicaid program

1 felony.

2 ~~(e)~~ (d) This section shall not apply to a refund, discount, copayment,
3 deductible, incentive or other reduction obtained by a provider in the
4 ordinary course of business, and appropriately reflected in the claims or
5 reports submitted to the medicaid program, or its fiscal agent, nor shall
6 it be construed to prohibit deductibles, copayments or any other cost or
7 risk sharing arrangements which are a part of any program operated by
8 or pursuant to contracts with the medicaid program.

9 Sec. 2. K.S.A. 2005 Supp. 39-7,121d is hereby amended to read as
10 follows: 39-7,121d. (a) The state medicaid plan shall include provisions
11 for a program of differential dispensing fees for pharmacies that provide
12 prescriptions for adult care homes under a unit dose system in accordance
13 with rules and regulations of the state board of pharmacy and that par-
14 ticipate in the return of unused medications program under the state
15 medicaid plan.

16 (b) The state medicaid plan shall include provisions for differential
17 ingredient cost reimbursement of generic and brand name pharmaceu-
18 ticals. The director of health policy and finance shall set the rates for
19 differential cost reimbursement of generic and brand name pharmaceu-
20 ticals by rules and regulations.

21 (c) *On and after January 1, 2007, the state medicaid plan shall require*
22 *that every pharmacy claim form under the plan include the prescriber's*
23 *unique identification number.*

24 New Sec. 3. On and after January 1, 2007, the state medicaid plan
25 shall require that medicaid consumers provide in addition to the monthly
26 medical identification card a Kansas current resident driver's license or
27 state-issued identification card each time care is received.

28 Sec. 4. K.S.A. 2005 Supp. 21-3847 and 39-7,121d are hereby
29 repealed.

30 Sec. 5. This act shall take effect and be in force from and after its
31 publication in the statute book.



Attachment '2

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

February 10, 2006

Senate Judiciary Subcommittee Committee on SB 451

Dear Chairman Donovan, Members of the Committee:

Thank you for allowing me to appear today on behalf of Attorney General Phill Kline to support Senate Bill No 451 with the balloon. My name is Loren Snell. I am an Assistant Attorney General in the Medicaid Fraud and Abuse Division of the Office of Kansas Attorney General Phill Kline. Our Division is the Medicaid Fraud Control Unit (MFCU) required of the states by the Medicare-Medicaid Anti-Fraud and Abuse Amendments (P.L. 95-142), enacted by Congress in 1977. Along with establishing the state Medicaid Fraud Control Units, Congress provided the states with incentive funding to investigate and prosecute Medicaid provider fraud, and to investigate fraud in the administration of the Medicaid program. The Kansas Medicaid Fraud Control Unit needs more legislative tools to fulfill the mission envisioned for it by Congress - tools that Medicaid Fraud Control Units in other states already have and are using to their advantage in protecting their states' Medicaid dollars. Senate Bill 451 with the balloon does several things that will assist in preserving Medicaid funds in Kansas.

First, it makes it clear that the prohibition from receiving illegal bribes, kickbacks and rebates in the current statute applies to providers as well as recipients of Medicaid benefits and families of such person. There is no reason why any person or entity involved in the Medicaid program should be allowed to receive or solicit illegal bribes, kickbacks or rebates. Current law allows however, for refunds, discounts, copayments, deductibles, incentives or other reductions obtained by a provider in the ordinary course of business, and appropriately reflected in the claims reports submitted to Medicaid or deductibles, copayments or other cost or risk sharing arrangements which are part of any program operated by or pursuant to contracts with the Medicaid program. That is not changed by the amendments

Second, the amendments recognize that not all providers are natural persons, and correct what may have been a potential gap in the protection of Medicaid dollars.

Third, new section (a)(3) in the amendments prohibits agreements to divide or share funds illegally obtained from the Medicaid program. Such agreements are a practice that the Medicaid Fraud Control Unit sees frequently. An example of this type of an agreement is where a Medicaid recipient and a Medicaid provider agree to submit claims to the Medicaid program for

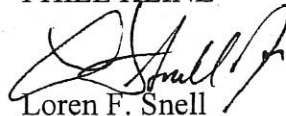
more services than are actually delivered by the Medicaid provider and then to divide or share the money paid for those undelivered services:

Fourth, new section (b) prohibits trading or selling Medicaid numbers for money or other remuneration and the selling or exchanging for value goods purchased or provided under the Medicaid program. Unfortunately those practices are currently occurring in the Medicaid program and the Medicaid Fraud Control Unit is involved in investigating and prosecuting such cases when discovered. Examples include Medicaid recipients who engage in the sale or trade of goods, such as narcotics, purchased with Medicaid money, and providers who give items of value to Medicaid recipients in order to obtain those persons' Medicaid numbers. Once in possession of the Medicaid numbers the providers have billed the Medicaid program for goods or services that were not needed nor provided.

Finally, new section 2 (c) is needed to solve a problem that currently exists in auditing claims and investigating possible fraud or abuse. Currently claims from pharmacies for items sold pursuant to prescriptions do not contain the prescriber's unique identification number. Every pharmacist should have the prescriber's unique identification number at the time the prescriptions are filled. Not having the prescriber's unique identification number on the pharmacy claim form makes it difficult, but not impossible, to audit the validity of the claim or to verify the medical necessity of the goods prescribed. Having the prescribers' unique identification numbers on pharmacy claims will significantly aid those of us whose job it is to look after and protect the integrity of the Medicaid program.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Loren F. Snell

Assistant Attorney General
Director, Kansas Medicaid Fraud Control Unit

Attachment 13

DISTRICT COURT OF KANSAS

CHAMBERS OF
DAVID P. MIKESIC
DISTRICT JUDGE

February 13, 2006



COURTHOUSE
KANSAS CITY, KANSAS
66101

WYANDOTTE COUNTY

Senator Derek Schmidt
Majority Leader
Kansas Senate
State Capitol

RE: SENATE BILL 536

Dear Senator Schmidt:

Thank you for your introduction of the above captioned bill. I regret I will not be able to attend the hearing, when set, as I will be out of town on vacation.

The purpose of this proposed legislation is to simply make the courts and interested parties aware that there may be Medicaid reimbursement due to the State from a decedent's estate or conservatorship account before any case can be settled and closed. The courts are already performing this duty as to our inheritance tax and it should not be any hardship for a judge to inquire as to Medicaid reimbursement.

There should not be any fiscal note other than educating the trial bench and bar, and interested parties as to this law change. This education can be accomplished at Continuing Education Programs for judges and attorneys. SRS can advise interested parties when there is an application for Medicaid.

In reviewing SB 536, I believe it can be "tweaked" on page 2, line 11 by striking the remainder of the sentence after 'all' and inserting the following 'Medicaid reimbursement has been determined and paid, and taxes payable by the estate have been paid, so far as there are funds to pay them, and the account is correct, it shall be settled and allowed'.

The new sentence would then read, "If all Medicaid reimbursement has been determined and paid, and taxes payable by the estate have been paid, so far

3-40

as there are funds to pay them, and the account is correct, it shall be settled and allowed.”

I believe this change and proposed change in subsection (b), should give all parties ample notice to make sure Medicaid reimbursement has been considered and ordered if appropriate. I feel SB 536 is a good piece of needed legislation. It should not be burdensome and it does “the right thing” namely collect money owed to Medicaid so that it can be used for other needy persons in future years.

Please feel free to circulate my comments to other members of the committee. Thank you for your consideration of these comments.

Sincerely,



DAVID P MIKESIC
DISTRICT JUDGE
WYANDOTTE COUNTY

SENATE BILL No. 431

By Senator Emler

1-23

PROPOSED AMENDMENT
SENATE JUDICIARY SUBCOMMITTEE
Senator Bruce, Chairman
February 15, 2006

Senate Judiciary
2-17-06
Attachment 4

9 AN ACT concerning expungements: relating to convictions and diver-
10 stions: amending K.S.A. 2005 Supp. 12-4516 and 21-4619 and repealing
11 the existing sections.

12
13 Be it enacted by the Legislature of the State of Kansas:

14 Section 1. K.S.A. 2005 Supp. 12-4516 is hereby amended to read as
15 follows: 12-4516. (a) (1) Except as provided in subsection (b) or (c), any
16 person who has been convicted of a violation of a city ordinance of this
17 state may petition the convicting court for the expungement of such con-
18 viction and related arrest records if three or more years have elapsed
19 since the person:

- 20 (A) Satisfied the sentence imposed; or
21 (B) was discharged from probation, parole or a suspended sentence.

22 (2) Except as provided in subsection (b) or (c), any person who has
23 fulfilled the terms of a diversion agreement based on a violation of a city
24 ordinance of this state may petition the court for the expungement of
25 such diversion agreement and related arrest records if three or more years
26 have elapsed since the terms of the diversion agreement were fulfilled.

27 (b) No person may petition for expungement until five or more years
28 have elapsed since the person satisfied the sentence imposed or the terms
29 of a diversion agreement or was discharged from probation, parole, con-
30 ditional release or a suspended sentence, if such person was convicted of
31 the violation of a city ordinance which would also constitute:

32 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-
33 ments thereto;

34 (2) ~~a violation of K.S.A. 8-1567, and amendments thereto;~~

35 ~~(3) driving while the privilege to operate a motor vehicle on the public~~
36 highways of this state has been canceled, suspended or revoked, as pro-
37 hibited by K.S.A. 8-262, and amendments thereto;

38 ~~(4) (3) perjury resulting from a violation of K.S.A. 8-261a, and amend-~~
39 ments thereto;

40 ~~(5) (4) a violation of the provisions of the fifth clause of K.S.A. 8-142,~~
41 and amendments thereto, relating to fraudulent applications;

42 ~~(6) (5) any crime punishable as a felony wherein a motor vehicle was~~
43 used in the perpetration of such crime;

A violation of K. S. A. 8-1567, and amendments thereto;
(3)

Renumber remaining paragraphs.

1 ~~(6)~~ falling to stop at the scene of an accident and perform the
 2 duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments
 3 thereto:

4 ~~(7)~~ a violation of the provisions of K.S.A. 40-3104, and amend-
 5 ments thereto, relating to motor vehicle liability insurance coverage; or

6 ~~(8)~~ a violation of K.S.A. 21-3405b, and amendments thereto.

7 (c) ~~There shall be no expungement of convictions or diversions for a~~
 8 ~~violation of a city ordinance which would also constitute a violation of~~
 9 ~~K.S.A. 8-1567 or 8-2-144, and amendments thereto.~~

10 ~~(d)~~ When a petition for expungement is filed, the court shall set a
 11 date for a hearing of such petition and shall cause notice of such hearing
 12 to be given to the prosecuting attorney and the arresting law enforcement
 13 agency. The petition shall state: (1) The defendant's full name;

14 (2) the full name of the defendant at the time of arrest, conviction or
 15 diversion, if different than the defendant's current name;

16 (3) the defendant's sex, race and date of birth;

17 (4) the crime for which the defendant was arrested, convicted or
 18 diverted;

19 (5) the date of the defendant's arrest, conviction or diversion; and

20 (6) the identity of the convicting court, arresting law enforcement
 21 agency or diverting authority. A municipal court may prescribe a fee to
 22 be charged as costs for a person petitioning for an order of expungement
 23 pursuant to this section. Any person who may have relevant information
 24 about the petitioner may testify at the hearing. The court may inquire
 25 into the background of the petitioner and shall have access to any reports
 26 or records relating to the petitioner that are on file with the secretary of
 27 corrections or the Kansas parole board.

28 ~~(e)~~ At the hearing on the petition, the court shall order the peti-
 29 tioner's arrest record, conviction or diversion expunged if the court finds
 30 that:

31 (1) The petitioner has not been convicted of a felony in the past two
 32 years and no proceeding involving any such crime is presently pending
 33 or being instituted against the petitioner;

34 (2) the circumstances and behavior of the petitioner warrant the
 35 expungement; and

36 (3) the expungement is consistent with the public welfare.

37 ~~(f)~~ When the court has ordered an arrest record, conviction or
 38 diversion expunged, the order of expungement shall state the information
 39 required to be contained in the petition. The clerk of the court shall send
 40 a certified copy of the order of expungement to the Kansas bureau of
 41 investigation which shall notify the federal bureau of investigation, the
 42 secretary of corrections and any other criminal justice agency which may
 43 have a record of the arrest, conviction or diversion. After the order of

Reletter remaining subsections.

1 fulfilled the terms of a diversion agreement may petition the district court
2 for the expungement of such diversion agreement and related arrest re-
3 cords if three or more years have elapsed since the terms of the diversion
4 agreement were fulfilled.

5 (b) Except as provided in subsection (c), no person may petition for
6 expungement until five or more years have elapsed since the person satis-
7 fied the sentence imposed, the terms of a diversion agreement or was
8 discharged from probation, a community correctional services program,
9 parole, postrelease supervision, conditional release or a suspended sen-
10 tence. If such person was convicted of a class A, B or C felony, or for
11 crimes committed on or after July 1, 1993, if convicted of an off-grid
12 felony or any nondrug crime ranked in severity levels 1 through 5 or any
13 felony ranked in severity levels 1 through 3 of the drug grid, or:

14 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-
15 ments thereto, or as prohibited by any law of another state which is in
16 substantial conformity with that statute;

17 ~~(2) a violation of K.S.A. 8-1567, and amendments thereto, or a vio-~~
18 ~~lation of any law of another state, which declares to be unlawful the acts~~
19 ~~prohibited by that statute;~~

20 ~~(3) driving while the privilege to operate a motor vehicle on the public~~
21 ~~highways of this state has been canceled, suspended or revoked, as pro-~~
22 ~~hibited by K.S.A. 8-262, and amendments thereto, or as prohibited by~~
23 ~~any law of another state which is in substantial conformity with that~~
24 ~~statute;~~

25 ~~(4) perjury resulting from a violation of K.S.A. 8-261a, and amend-~~
26 ~~ments thereto, or resulting from the violation of a law of another state~~
27 ~~which is in substantial conformity with that statute;~~

28 ~~(5) violating the provisions of the fifth clause of K.S.A. 8-142, and~~
29 ~~amendments thereto, relating to fraudulent applications or violating the~~
30 ~~provisions of a law of another state which is in substantial conformity with~~
31 ~~that statute;~~

32 ~~(6) any crime punishable as a felony wherein a motor vehicle was~~
33 ~~used in the perpetration of such crime;~~

34 ~~(7) failing to stop at the scene of an accident and perform the~~
35 ~~duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments~~
36 ~~thereto, or required by a law of another state which is in substantial~~
37 ~~conformity with those statutes;~~

38 ~~(8) violating the provisions of K.S.A. 40-3104, and amendments~~
39 ~~thereto, relating to motor vehicle liability insurance coverage; or~~

40 ~~(9) a violation of K.S.A. 21-3405b, prior to its repeal.~~

41 (c) There shall be no expungement of convictions for the following
42 offenses or of convictions for an attempt to commit any of the following
43 offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;

A violation of K. S. A. 8-1567, and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;
(3)

Renumber remaining paragraphs.

1 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and
 2 amendments thereto; (3) aggravated indecent liberties with a child as
 3 defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy
 4 as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-
 5 ments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-
 6 3506, and amendments thereto; (6) indecent solicitation of a child as
 7 defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated in-
 8 decent solicitation of a child as defined in K.S.A. 21-3511, and amend-
 9 ments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-
 10 3516, and amendments thereto; (9) aggravated incest as defined in K.S.A.
 11 21-3603, and amendments thereto; (10) endangering a child as defined
 12 in K.S.A. 21-3608, and amendments thereto; (11) abuse of a child as
 13 defined in K.S.A. 21-3609, and amendments thereto; (12) capital murder
 14 as defined in K.S.A. 21-3439, and amendments thereto; (13) murder in
 15 the first degree as defined in K.S.A. 21-3401, and amendments thereto;
 16 (14) murder in the second degree as defined in K.S.A. 21-3402, and
 17 amendments thereto; (15) voluntary manslaughter as defined in K.S.A.
 18 21-3403, and amendments thereto; (16) involuntary manslaughter as de-
 19 fined in K.S.A. 21-3404, and amendments thereto; (17) involuntary man-
 20 slaughter while driving under the influence of alcohol or drugs as defined
 21 in K.S.A. 2005 Supp. 21-3442, and amendments thereto; (18) sexual bat-
 22 tery as defined in K.S.A. 21-3517, and amendments thereto, when the
 23 victim was less than 18 years of age at the time the crime was committed;
 24 (19) aggravated sexual battery as defined in K.S.A. 21-3518, and amend-
 25 ments thereto; ~~(20) a violation of K.S.A. § 1567, and amendments thereto,~~
 26 ~~including any diversion for such violation; (21) a violation of K.S.A. §-~~
 27 ~~2.144, and amendments thereto, including any diversion for such viola-~~
 28 ~~tion; or (20) (22) any conviction for any offense in effect at any time prior~~
 29 ~~to the effective date of this act, that is comparable to any offense as~~
 30 ~~provided in this subsection.~~

31 (d) When a petition for expungement is filed, the court shall set a
 32 date for a hearing of such petition and shall cause notice of such hearing
 33 to be given to the prosecuting attorney and the arresting law enforcement
 34 agency. The petition shall state: (1) The defendant's full name;

35 (2) the full name of the defendant at the time of arrest, conviction or
 36 diversion, if different than the defendant's current name;

37 (3) the defendant's sex, race and date of birth;

38 (4) the crime for which the defendant was arrested, convicted or
 39 diverted;

40 (5) the date of the defendant's arrest, conviction or diversion; and

41 (6) the identity of the convicting court, arresting law enforcement
 42 authority or diverting authority. There shall be no docket fee for filing a
 43 petition pursuant to this section. All petitions for expungement shall be

SENATE BILL No. 431

By Senator Emler

1-23

PROPOSED AMENDMENT
Senator Goodwin
February 16, 2006

Senate Judiciary
2-17-06
Attachment 5

9 AN ACT concerning ~~expungements relating to convictions and diver-~~
10 ~~sions~~; amending K.S.A. 2005 Supp. ~~12-4516 and 21-4619 and repealing~~
11 the existing sections.

[8-1567,

driving under the influence of alcohol or drugs;
relating to sentencing and expungement;

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 12-4516 is hereby amended to read as
15 follows: 12-4516. (a) (1) Except as provided in subsection (b) or (c), any
16 person who has been convicted of a violation of a city ordinance of this
17 state may petition the convicting court for the expungement of such con-
18 viction and related arrest records if three or more years have elapsed
19 since the person:

- 20 (A) Satisfied the sentence imposed; or
- 21 (B) was discharged from probation, parole or a suspended sentence.
- 22 (2) Except as provided in subsection (b) or (c), any person who has
- 23 fulfilled the terms of a diversion agreement based on a violation of a city
- 24 ordinance of this state may petition the court for the expungement of
- 25 such diversion agreement and related arrest records if three or more years
- 26 have elapsed since the terms of the diversion agreement were fulfilled.
- 27 (b) No person may petition for expungement until five or more years
- 28 have elapsed since the person satisfied the sentence imposed or the terms
- 29 of a diversion agreement or was discharged from probation, parole, con-
- 30 ditional release or a suspended sentence, if such person was convicted of
- 31 the violation of a city ordinance which would also constitute:

- 32 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-
- 33 ments thereto;
- 34 (2) ~~a violation of K.S.A. 8-1567, and amendments thereto;~~
- 35 ~~(3) driving while the privilege to operate a motor vehicle on the public~~
- 36 ~~highways of this state has been canceled, suspended or revoked, as pro-~~
- 37 ~~hibited by K.S.A. 8-262, and amendments thereto;~~
- 38 ~~(4) (3) perjury resulting from a violation of K.S.A. 8-261a, and amend-~~
- 39 ~~ments thereto;~~
- 40 ~~(5) (4) a violation of the provisions of the fifth clause of K.S.A. 8-142,~~
- 41 ~~and amendments thereto, relating to fraudulent applications;~~
- 42 ~~(6) (5) any crime punishable as a felony wherein a motor vehicle was~~
- 43 ~~used in the perpetration of such crime;~~

1 cations: (A) To be an employee of the state gaming agency; or (B) to be
2 an employee of a tribal gaming commission or to hold a license issued
3 pursuant to a tribal-gaming compact;

4 (12) the Kansas securities commissioner or a designee of the com-
5 missioner, and the request is accompanied by a statement that the request
6 is being made in conjunction with an application for registration as a
7 broker-dealer, agent, investment adviser or investment adviser represen-
8 tative by such agency and the application was submitted by the person
9 whose record has been expunged;

10 (13) the Kansas law enforcement training commission and the re-
11 quest is accompanied by a statement that the request is being made to
12 aid in determining certification eligibility as a law enforcement officer
13 pursuant to K.S.A. 74-5601 et seq., and amendments thereto; or

14 (14) a law enforcement agency and the request is accompanied by a
15 statement that the request is being made to aid in determining eligibility
16 for employment as a law enforcement officer as defined by K.S.A. 22-
17 2202, and amendments thereto.

18 Sec. 3. K.S.A. 2005 Supp.\12-4516 and 21-4619 are hereby repealed.

19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the statute book.

Insert K. S. A. 8-1567 here as Sec. 3 and renumber remaining sections.

[8-1567,

Sec. 3. K.S.A. 2005 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive

lays' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. 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. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2, 500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires

uch person to return to confinement at the end of each day in the work release program. At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court.

The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(k) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(1) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to

convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may

entencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(m) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) ~~[any convictions occurring during a person's lifetime]~~ shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

only convictions occurring in the immediately preceding 15 years

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offender

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(o) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

Any such ordinance or resolution shall authorize the court to order that the

lect one or two of the three prior to submission of the case to the fact finder.

(r) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(s) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-4165, and amendments thereto.

(t) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

Your copy of all of Sen. Donovan's Subcom
bill

SENATE BILL No. 220

By Committee on Judiciary

2-8

Subcommittee Recommendation
February 15, 2006
Senator Donovan, Chairman
Senator D. Schmidt and Senator Haley

Senate Judiciary
2-17-06
Attachment

9 AN ACT concerning the criminal code; relating to domestic battery;
10 amending K.S.A. 2004 Supp. 21-3412a and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 2004 Supp. 21-3412a is hereby amended to read
15 as follows: 21-3412a. (a) Domestic battery is:

16 (1) intentionally or recklessly causing bodily harm by a family or
17 household member against a family or household member; or

18 (2) intentionally causing physical contact with a family or household
19 member by a family or household member when done in a rude, insulting
20 or angry manner.

21 (b) (1) Upon a first conviction of a violation of domestic battery, a
22 person shall be guilty of a class B person misdemeanor and sentenced to
23 not less than 48 consecutive hours nor more than six months' imprison-
24 ment and fined not less than \$200, nor more than \$500 or in the court's
25 discretion the court may enter an order which requires the person enroll
26 in and successfully complete a domestic violence prevention program.

27 (2) If, within five years immediately preceding commission of the
28 crime, a person is convicted of a violation of domestic battery a second
29 time, such person shall be guilty of a class A person misdemeanor and
30 sentenced to not less than 90 days nor more than one year's imprisonment
31 and fined not less than \$500 nor more than \$1,000. The five days' im-
32 prisonment mandated by this subsection may be served in a work release
33 program only after such person has served 48 consecutive hours' impris-
34 onment, provided such work release program requires such person to
35 return to confinement at the end of each day in the work release program.
36 The person convicted must serve at least five consecutive days' impris-
37 onment before the person is granted probation, suspension or reduction
38 of sentence or parole or is otherwise released. As a condition of any grant
39 of probation, suspension of sentence or parole or of any other release,
40 the person shall be required to enter into and complete a treatment pro-
41 gram for domestic violence prevention.

42 (3) If, within five years immediately preceding commission of the
43 crime, a person is convicted of a violation of domestic battery a third or

1 subsequent time, such person shall be guilty of a person felony and sen-
2 tenced to not less than 90 days nor more than one year's imprisonment
3 and fined not less than \$1,000 nor more than \$2,500. The person con-
4 victed shall not be eligible for release on probation, suspension or reduc-
5 tion of sentence or parole until the person has served at least 90 days'
6 imprisonment. The court may also require as a condition of parole that
7 such person enter into and complete a treatment program for domestic
8 violence. The 90 days' imprisonment mandated by this subsection may
9 be served in a work release program only after such person has served
10 48 consecutive hours' imprisonment, provided such work release program
11 requires such person to return to confinement at the end of each day in
12 the work release program.

13 (c) As used in this section:

14 (1) Family or household member means persons 18 years of age or
15 older who are spouses, former spouses, parents or stepparents and chil-
16 dren or stepchildren, and persons who are presently residing together or
17 who have resided together in the past, and persons who have a child in
18 common regardless of whether they have been married or who have lived
19 together at any time. Family or household member also includes a man
20 and woman if the woman is pregnant and the man is alleged to be the
21 father, regardless of whether they have been married or have lived to-
22 gether at any time; and

23 (2) for the purpose of determining whether a conviction is a first,
24 second, third or subsequent conviction in sentencing under this section:

25 (A) "Conviction" includes being convicted of a violation of this sec-
26 tion or entering into a diversion or deferred judgment agreement in lieu
27 of further criminal proceedings on a complaint alleging a violation of this
28 section;

29 (B) "conviction" includes being convicted of a violation of a law of
30 another state, or an ordinance of any city, or resolution of any county,
31 which prohibits the acts that this section prohibits or entering into a di-
32 version or deferred judgment agreement in lieu of further criminal pro-
33 ceedings in a case alleging a violation of such law, ordinance or resolution;

34 (C) only convictions occurring in the immediately preceding five
35 years including prior to the effective date of this act shall be taken into
36 account, but the court may consider other prior convictions in determin-
37 ing the sentence to be imposed within the limits provided for a first,
38 second, third or subsequent offender, whichever is applicable; and

39 (D) it is irrelevant whether an offense occurred before or after con-
40 viction for a previous offense.

41 ~~(E) A person may enter into a diversion agreement in lieu of further~~
42 ~~criminal proceedings for a violation of this section, and amendments~~
43 ~~thereto, or an ordinance which prohibits the acts of this section, and~~

1 ~~amendments thereto, or a resolution which prohibits the acts of this sec-~~
2 ~~tion, and amendments thereto, only once during the person's lifetime.~~

3 Sec. 2. K.S.A. 2004 Supp. 21-3412a is hereby repealed.

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

(E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any three year period.

SENATE BILL No. 355

By Committee on Judiciary

1-11

Subcommittee Recommendation
February 15, 2006
Senator Donovan, Chairman
Senator D. Schmidt and Senator Haley

Senate Judiciary
2-17-06
Attachment 7

9 AN ACT concerning the probate code; relating to appeals; amending
10 K.S.A. 59-2401, 59-2402a and 59-2408 and repealing the existing sec-
11 tions; also repealing K.S.A. 59-2407.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) An appeal by an interested party from a district
15 magistrate judge to a district judge may be taken no later than 10 days
16 from any final order, judgment or decree entered in any proceeding pur-
17 suant to:

18 (1) The Kansas adoption and relinquishment act (K.S.A. 59-2111 et
19 seq., and amendments thereto);

20 (2) the care and treatment act for mentally ill persons (K.S.A. 59-
21 2945 et seq., and amendments thereto);

22 (3) the care and treatment act for persons with an alcohol or sub-
23 stance abuse problem (K.S.A. 59-29b45 et seq., and amendments
24 thereto); or

25 (4) the act for obtaining a guardian or conservator, or both (K.S.A.
26 59-3050 et seq., and amendments thereto). The appeal shall be heard no
27 later than 30 days from the date the notice of appeal is filed. If no record
28 was made of the proceedings, the trial shall be de novo. If a record was
29 made of the proceedings, the district judge may conduct the appeal on
30 the record or hold a trial de novo.

31 (b) An appeal by an interested party from the district court to an
32 appellate court shall be taken pursuant to article 21 of chapter 60 of the
33 Kansas statutes annotated from any final order judgment or decree en-
34 tered in any proceeding pursuant to:

35 (1) The Kansas adoption and relinquishment act (K.S.A. 59-2111 et
36 seq., and amendments thereto);

37 (2) the care and treatment act for mentally ill persons (K.S.A. 59-
38 2945 et seq., and amendments thereto);

39 (3) the sexually violent predator act (K.S.A. 59-29a01 et seq., and
40 amendments thereto);

41 (4) the care and treatment act for persons with an alcohol or sub-
42 stance abuse problem (K.S.A. 59-29b45 et seq., and amendments
43 thereto); or

1 (5) the act for obtaining a guardian or conservator, or both (K.S.A.
2 59-3050 et seq., and amendments thereto). Except for cases otherwise
3 specifically provided for by law, appeals under this section shall have
4 priority over all others.

5 (c) Pending the determination of an appeal pursuant to section (a) or
6 (b) of this section, any order appealed from shall continue in force unless
7 modified by temporary orders entered by the court hearing the appeal.
8 The supersedeas bond provided for in K.S.A. 60-2103, and amendments
9 thereto, shall not stay proceedings under an appeal from the district court
10 to an appellate court.

11 (d) In an appeal taken pursuant to section (a) or (b) of this section,
12 the court from which the appeal is taken may require an appropriate
13 party, other than the state of Kansas, any subdivision thereof, and all cities
14 and counties in this state, to file a bond in such sum and with such sureties
15 as may be fixed and approved by the court to ensure that the appeal will
16 be prosecuted without unnecessary delay and to ensure the payment of
17 all judgments and any sums, damages and costs that may be adjudged
18 against that party.

19 (e) As used in this section, "interested party" means:

20 (1) The parent in a proceeding pursuant to the Kansas adoption and
21 relinquishment act (K.S.A. 59-2111 et seq., and amendments thereto);

22 (2) the patient under the care and treatment act for mentally ill per-
23 sons (K.S.A. 59-2945 et seq., and amendments thereto);

24 (3) the patient under the care and treatment act for persons with an
25 alcohol or substance abuse problem (K.S.A. 59-29b45 et seq., and amend-
26 ments thereto);

27 (4) the person adjudicated a sexually violent predator under the sex-
28 ually violent predator act (K.S.A. 59-29a01 et seq., and amendments
29 thereto);

30 (5) the ward or conservatee under the act for obtaining a guardian or
31 conservator, or both (K.S.A. 59-3050 et seq., and amendments thereto);

32 (6) the parent of a minor person adjudicated a ward or conservatee
33 under the act for obtaining a guardian or conservator, or both (K.S.A. 59-
34 3050 et seq., and amendments thereto);

35 (7) the petitioner in the case on appeal; and

36 (8) any other person granted interested party status by the court from
37 which the appeal is being taken.

38 (f) This section shall be part of and supplemental to the Kansas pro-
39 bate code.

40 Sec. 2. K.S.A. 59-2401 is hereby amended to read as follows: 59-
41 2401. (a) An appeal from a district magistrate judge to a district judge
42 may be taken ~~within~~ no later than 30 days from the date of entry of any
43 of the following orders, judgments, or decrees ~~and decisions~~ in any case

1 *involving a decedent's estate:*

- 2 (1) An order admitting or refusing to admit a will to probate.
- 3 (2) *An order finding or refusing to find that there is a valid consent*
- 4 *to a will.*
- 5 (3) An order appointing, refusing to appoint, removing or refusing to
- 6 remove a fiduciary other than a special administrator.
- 7 ~~(3)~~ (4) An order setting apart or refusing to set apart a homestead or
- 8 other property, or making or refusing to make an allowance of exempt
- 9 property to the spouse and minor children.
- 10 ~~(4)~~ (5) An order determining, refusing to determine, transferring or
- 11 refusing to transfer venue.
- 12 ~~(5)~~ (6) An order allowing or disallowing a demand, in whole or in
- 13 part, when the amount in controversy exceeds ~~\$500~~ \$5,000.
- 14 ~~(6)~~ (7) An order authorizing, refusing to authorize, confirming or re-
- 15 fusing to confirm the sale, lease or mortgage of real estate.
- 16 ~~(7)~~ *Judgments for waste.*
- 17 (8) An order directing or refusing to direct a conveyance or lease of
- 18 real estate under contract.
- 19 (9) *Judgments for waste.*
- 20 ~~(9)~~ (10) An order directing or refusing to direct the payment of a
- 21 legacy or distributive share.
- 22 ~~(10)~~ (11) An order allowing or refusing to allow an account of a fi-
- 23 duciary or any part thereof.
- 24 ~~(11)~~ (12) A judgment or decree of partial or final distribution.
- 25 ~~(12)~~ (13) An order compelling or refusing to compel a legatee or
- 26 distributee to refund.
- 27 (14) *An order compelling or refusing to compel ~~[a refund]~~ of property*
- 28 *required to satisfy the elective share of a surviving spouse pursuant to*
- 29 *K.S.A. 59-6a201 et seq., and amendments thereto.*
- 30 ~~(13)~~ (15) An order directing or refusing to direct an allowance for the
- 31 expenses of administration.
- 32 ~~(14)~~ (16) An order vacating or refusing to vacate a previous appealable
- 33 order, judgment, decree or decision.
- 34 ~~(15)~~ (17) A decree determining or refusing to determine the heirs,
- 35 devisees and legatees.
- 36 ~~(16)~~ (18) An order adjudging a person in contempt *pursuant to K.S.A.*
- 37 *59-6a201 et seq., and amendments thereto.*
- 38 ~~(17)~~ *An order adjudging or refusing to adjudge a person an impaired*
- 39 *person.*
- 40 ~~(18)~~ *The granting or refusing to grant an order for treatment.*
- 41 ~~(19)~~ *An order granting or denying restoration to capacity.*
- 42 (19) *An order finding or refusing to find that there is a valid settle-*
- 43 *ment agreement.*

payments or contributions
 [Judicial Council Comment: Payments and contributions are the terms used in
 the elective share statutes.]

1 (20) An order granting or denying *final discharge of a fiduciary.*
 2 ~~(21) An order finding or refusing to find that there is a valid consent~~
 3 ~~to a will.~~
 4 ~~(22) An order finding or refusing to find that there is a valid settle-~~
 5 ~~ment agreement.~~
 6 ~~(23) An order decreeing or refusing to decree an adoption.~~
 7 ~~(24) (21) Any other final order, decision or judgment in any probate~~
 8 ~~a proceeding ~~involving~~ a decedent's estate.~~

involving

9 ~~(b) Notwithstanding the provisions of K.S.A. 60-2103 and amend-~~
 10 ~~ments thereto relating to bonds, the appellant, other than the state or~~
 11 ~~municipality or a fiduciary appealing on behalf of the estate, shall file in~~
 12 ~~the court from which the appeal is taken a bond in such sum and with~~
 13 ~~such sureties as may be fixed and approved by the court, conditioned that~~
 14 ~~the appellant will without unnecessary delay prosecute the appeal and~~
 15 ~~pay all sums, damages and costs that may be adjudged against the~~
 16 ~~appellant.~~

17 ~~(c) Except as otherwise provided in this section, appeals taken pur-~~
 18 ~~suant to this section shall be taken in the manner provided by chapter 60~~
 19 ~~of the Kansas Statutes Annotated for other civil cases.~~

20 ~~(b) An appeal from the district court to an appellate court taken pur-~~
 21 ~~suant to this section shall be taken in the manner provided by chapter 60~~
 22 ~~of the Kansas statutes annotated for other civil cases.~~

23 ~~(c) Pending the determination of an appeal pursuant to section (a) or~~
 24 ~~(b) of this section, any order appealed from shall continue in force unless~~
 25 ~~modified by temporary orders entered by the court hearing the appeal.~~
 26 ~~The supersedeas bond provided for in K.S.A. 60-2103, and amendments~~
 27 ~~thereto, shall not stay proceedings under an appeal from the district court~~
 28 ~~to an appellate court.~~

29 ~~(d) In an appeal taken pursuant to section (a) or (b) of this section,~~
 30 ~~the court from which the appeal is taken may require an appropriate~~
 31 ~~party, other than the state of Kansas, any subdivision thereof, and all~~
 32 ~~cities and counties in this state, to file a bond in such sum and with such~~
 33 ~~sureties as may be fixed and approved by the court to ensure that the~~
 34 ~~appeal will be prosecuted without unnecessary delay and to ensure the~~
 35 ~~payment of all judgments and any sums, damages and costs that may be~~
 36 ~~adjudged against that party.~~

37 Sec. 3. K.S.A. 59-2402a is hereby amended to read as follows: 59-
 38 2402a. When a petition is filed in the district court and a district magis-
 39 trate judge is assigned to hear such petition, any interested party may
 40 request the transfer of the matter to the chief judge for assignment to a
 41 district judge if the petition is:

- 42 (1) To admit a will to probate;
 43 (2) to determine venue or a transfer of venue;

- 1 (3) to allow any claim exceeding ~~500~~ \$5,000 in value;
- 2 (4) for the sale, lease or mortgage of real estate;
- 3 (5) for conveyance of real estate under contract;
- 4 (6) for payment of a legacy or distributive share;
- 5 (7) for partial or final distribution;
- 6 (8) for an order compelling a legatee or distributee to refund;
- 7 (9) for an order to determine heirs, devisees or legatees; or
- 8 (10) for an order which involves construction of a will or other
- 9 instrument.

10 When a request for such transfer is filed less than three days prior to
11 the commencement of the hearing, the court shall assess the costs occa-
12 sioned by the subpoena and attendance of witnesses against the party
13 seeking the transfer. Such request may be included in any petition, answer
14 or other pleading, or may be filed as a separate petition, and shall include
15 an allegation that a bona fide controversy exists and that the transfer is
16 not sought for the purpose of vexation or delay. Notice of such request
17 shall be given as ordered by the court.

18 Sec. 4. K.S.A. 59-2408 is hereby amended to read as follows: 59-
19 2408. *Except as provided for in section 1, and amendments thereto*, when-
20 ever an appeal has been taken from an order, judgment, decree or de-
21 cision of a district magistrate judge, the district judge to which the appeal
22 is assigned by the chief judge, without unnecessary delay, shall proceed
23 to hear and determine all issues in the matter de novo and shall allow and
24 may require pleadings to be filed or amended. The right to file new
25 pleadings shall not be abridged or restricted by the pleadings filed, or by
26 failure to file pleadings, in the proceedings before the district magistrate
27 judge; nor shall the trial or the issues to be considered by the district
28 judge be abridged or restricted by any failure to appear or by the evidence
29 introduced, or the absence or insufficiency thereof, in the proceedings
30 before the district magistrate judge.

31 ~~All appeals from a district magistrate judge other than those from the~~
32 ~~allowance or disallowance of a demand, adjudging or refusing to adjudge~~
33 ~~a person an incapacitated person, and the granting, or refusing to grant,~~
34 ~~of an order for care or treatment, shall be tried by the court without a~~
35 ~~jury, but the court may call a jury in an advisory capacity or in a proper~~
36 ~~case may refer the matter or part thereof to a referee.~~

37 Sec. 5. K.S.A. 59-2401, 59-2402a, 59-2407 and 59-2408 are hereby
38 repealed.

39 Sec. 6. This act shall take effect and be in force from and after its
40 publication in the statute book.

SENATE BILL No. 366

By Senator Petersen

1-13

Subcommittee Recommendation
February 15, 2006
Senator Donovan, Chairman
Senator D. Schmidt and Senator Haley

Senate Judiciary
2-17-06
Attachment 8

10 AN ACT concerning crimes, punishment and criminal procedure; relat-
11 ing to departure sentencing; amending K.S.A. 2005 Supp. 21-4716 and
12 repealing the existing section.
13

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

15 Section 1. K.S.A. 2005 Supp. 21-4716 is hereby amended to read as
16 follows: 21-4716. (a) Except as provided in subsection (b), the sentencing
17 judge shall impose the presumptive sentence provided by the sentencing
18 guidelines for crimes committed on or after July 1, 1993, unless the judge
19 finds substantial and compelling reasons to impose a departure. If the
20 sentencing judge departs from the presumptive sentence, the judge shall
21 state on the record at the time of sentencing the substantial and com-
22 pelling reasons for the departure.

23 (b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and
24 amendments thereto, any fact that would increase the penalty for a crime
25 beyond the statutory maximum, other than a prior conviction, shall be
26 submitted to a jury and proved beyond a reasonable doubt.

27 (c) (1) Subject to the provisions of subsection ~~(b)(2)~~ (c)(3), the fol-
28 lowing nonexclusive list of mitigating factors may be considered in deter-
29 mining whether substantial and compelling reasons for a departure exist:

30 (A) The victim was an aggressor or participant in the criminal conduct
31 associated with the crime of conviction.

32 (B) The offender played a minor or passive role in the crime or par-
33 ticipated under circumstances of duress or compulsion. This factor is not
34 sufficient as a complete defense.

35 (C) The offender, because of physical or mental impairment, lacked
36 substantial capacity for judgment when the offense was committed. The
37 voluntary use of intoxicants, drugs or alcohol does not fall within the
38 purview of this factor.

39 (D) The defendant, or the defendant's children, suffered a continuing
40 pattern of physical or sexual abuse by the victim of the offense and the
41 offense is a response to that abuse.

42 (E) The degree of harm or loss attributed to the current crime of
43 conviction was significantly less than typical for such an offense.

1 (2) Subject to the provisions of subsection ~~(b)(2)~~ (c)(3), the following
2 nonexclusive list of aggravating factors may be considered in determining
3 whether substantial and compelling reasons for departure exist:

4 (A) The victim was particularly vulnerable due to age, infirmity, or
5 reduced physical or mental capacity which was known or should have
6 been known to the offender.

7 (B) The defendant's conduct during the commission of the current
8 offense manifested excessive brutality to the victim in a manner not nor-
9 mally present in that offense.

10 (C) The offense was motivated entirely or in part by the race, color,
11 religion, ethnicity, national origin or sexual orientation of the victim or
12 the offense was motivated by the defendant's belief or perception, entirely
13 or in part, of the race, color, religion, ethnicity, national origin or sexual
14 orientation of the victim whether or not the defendant's belief or per-
15 ception was correct.

16 (D) The offense involved a fiduciary relationship which existed be-
17 tween the defendant and the victim.

18 (E) The defendant, 18 or more years of age, employed, hired, used,
19 persuaded, induced, enticed or coerced any individual under 16 years of
20 age to commit or assist in avoiding detection or apprehension for com-
21 mission of any person felony or any attempt, conspiracy or solicitation as
22 defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto
23 to commit any person felony regardless of whether the defendant knew
24 the age of the individual under 16 years of age.

25 (F) The defendant's current crime of conviction is a crime of extreme
26 sexual violence and the defendant is a predatory sex offender. As used in
27 this subsection:

28 (i) "Crime of extreme sexual violence" is a felony limited to the
29 following:

30 (a) A crime involving a nonconsensual act of sexual intercourse or
31 sodomy with any person;

32 (b) a crime involving an act of sexual intercourse, sodomy or lewd
33 fondling and touching with any child who is 14 or more years of age but
34 less than 16 years of age and with whom a relationship has been estab-
35 lished or promoted for the primary purpose of victimization; or

36 (c) a crime involving an act of sexual intercourse, sodomy or lewd
37 fondling and touching with any child who is less than 14 years of age.

38 (ii) "Predatory sex offender" is an offender who has been convicted
39 of a crime of extreme sexual violence as the current crime of conviction
40 and who:

41 (a) Has one or more prior convictions of any crimes of extreme sexual
42 violence. Any prior conviction used to establish the defendant as a pred-
43 atory sex offender pursuant to this subsection shall also be counted in

1 determining the criminal history category; or
 2 (b) suffers from a mental condition or personality disorder which
 3 makes the offender likely to engage in additional acts constituting crimes
 4 of extreme sexual violence.

5 (iii) "Mental condition or personality disorder" means an emotional,
 6 mental or physical illness, disease, abnormality, disorder, pathology or
 7 condition which motivates the person, affects the predisposition or desires
 8 of the person, or interferes with the capacity of the person to control
 9 impulses to commit crimes of extreme sexual violence.

10 (G) The defendant was incarcerated during the commission of the
 11 offense.

12 (H) ~~The offender~~ played a major role in the crime as the organizer,
 13 leader, recruiter, manager or supervisor.

The crime involved two or more offenders and the defendant

14 In determining whether aggravating factors exist as provided in this
 15 section, the court shall review the victim impact statement.

16 (3) If a factual aspect of a crime is a statutory element of the crime
 17 or is used to subclassify the crime on the crime severity scale, that aspect
 18 of the current crime of conviction may be used as an aggravating or mit-
 19 igating factor only if the criminal conduct constituting that aspect of the
 20 current crime of conviction is significantly different from the usual crim-
 21 inal conduct captured by the aspect of the crime.

22 ~~(e)~~ (d) In determining aggravating or mitigating circumstances, the
 23 court shall consider:

- 24 (1) Any evidence received during the proceeding;
- 25 (2) the presentence report;
- 26 (3) written briefs and oral arguments of either the state or counsel
- 27 for the defendant; and
- 28 (4) any other evidence relevant to such aggravating or mitigating cir-
- 29 cumstances that the court finds trustworthy and reliable.

30 Sec. 2. K.S.A. 2005 Supp. 21-4716 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its
 32 publication in the Kansas register.

Mike -
Senate Subcommittee
2-16-06
BPA
HP

Proposed amendment
February 10, 2006

Senate Judiciary
2-17-06
Attachment 9

SENATE BILL No. 462

By Committee on Judiciary

1-26

9 AN ACT concerning child exchange and visitation centers; relating to
10 docket fees; amending K.S.A. 60-2001 and K.S.A. 2005 Supp. 20-367
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2005 Supp. 20-367 is hereby amended to read as
15 follows: 20-367. Of the remittance of the balance of docket fees received
16 by the state treasurer from clerks of the district court pursuant to sub-
17 section (f) of K.S.A. 20-362, and amendments thereto, the state treasurer
18 shall deposit and credit to the access to justice fund, a sum equal to ~~5.00%~~
19 ~~5.84%~~ 5.84% of the remittances of docket fees; to the juvenile detention facilities
20 fund, a sum equal to ~~3.27%~~ 3.23% of the remittances of docket fees; to
21 the judicial branch education fund, the state treasurer shall deposit and
22 credit a sum equal to ~~2.52%~~ 2.49% of the remittances of docket fees; to
23 the crime victims assistance fund, the state treasurer shall deposit and
24 credit a sum equal to ~~.67%~~ .66% of the remittances of the docket fees;
25 to the protection from abuse fund, the state treasurer shall deposit and
26 credit a sum equal to ~~3.22%~~ 3.19% of the remittances of the docket fees;
27 to the judiciary technology fund, the state treasurer shall deposit and
28 credit a sum equal to ~~5.10%~~ 5.04% of the remittances of docket fees; to
29 the dispute resolution fund, the state treasurer shall deposit and credit a
30 sum equal to .41% of the remittances of docket fees; to the Kansas ju-
31 venile delinquency prevention trust fund, the state treasurer shall deposit
32 and credit a sum equal to ~~1.49%~~ 1.47% of the remittances of docket fees;
33 to the permanent families account in the family and children investment
34 fund, the state treasurer shall deposit and credit a sum equal to .25% of
35 the remittances of docket fees; to the trauma fund, a sum equal to ~~1.77%~~
36 1.75% of the remittance of docket fees; to the judicial council fund, a
37 sum equal to ~~1.33%~~ 1.32% of the remittance of docket fees; *to the child*
38 *exchange and visitation centers fund, a sum equal to 1.08% of the remit-*
39 *tance of docket fees; and to the judicial branch nonjudicial salary initiative*
40 *fund, the state treasurer shall deposit and credit a sum equal to ~~21.41%~~*
41 *21.18% of the remittance of docket fees. The balance remaining of the*
42 *remittances of docket fees shall be deposited and credited to the state*
43 *general fund.*

1 Sec. 2. K.S.A. 60-2001 is hereby amended to read as follows: 60-
2 2001. (a) *Docket fee.* Except as otherwise provided by law, no case shall
3 be filed or docketed in the district court, whether original or appealed,
4 without payment of a docket fee in the following amount of ~~\$106~~ to the
5 clerk of the district court:

6 (1) For ~~cases~~ filed or docketed for divorce or separate maintenance, petitions
7 pursuant to K.S.A. 60-1601, and amendments thereto; for annulment, pur-
8 suant to K.S.A. 60-1602, and amendments thereto; pursuant to the Kansas
9 parentage act, K.S.A. 38-1110 et seq., and amendments thereto; and for
10 the enforcement of child support; \$115; or

11 (2) for all other cases, \$106.

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

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

34 State of Kansas, _____ County.

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

38 (c) *Disposition of fees.* The docket fees and the fees for service of
39 process shall be the only costs assessed in each case for services of the
40 clerk of the district court and the sheriff. For every person to be served
41 by the sheriff, the persons requesting service of process shall provide
42 proper payment to the clerk and the clerk of the district court shall for-
ward the service of process fee to the sheriff in accordance with K.S.A.

1 28-110, and amendments thereto. The service of process fee, if paid by
2 check or money order, shall be made payable to the sheriff. Such service
3 of process fee shall be submitted by the sheriff at least monthly to the
4 county treasurer for deposit in the county treasury and credited to the
5 county general fund. The docket fee shall be disbursed in accordance
6 with K.S.A. 20-362 and amendments thereto.

7 (d) *Additional court costs.* Other fees and expenses to be assessed as
8 additional court costs shall be approved by the court, unless specifically
9 fixed by statute. Other fees shall include, but not be limited to, witness
10 fees, appraiser fees, fees for service of process, fees for depositions, al-
11 ternative dispute resolution fees, transcripts and publication, attorney
12 fees, court costs from other courts and any other fees and expenses re-
13 quired by statute. All additional court costs shall be taxed and billed
14 against the parties as directed by the court. No sheriff in this state shall
15 charge any mileage for serving any papers or process.

16 Sec. 3. K.S.A. 60-2001 and K.S.A. 2005 Supp. 20-367 are hereby
17 repealed.

18 Sec. 4. This act shall take effect and be in force from and after its
19 publication in the statute book.

SENATE BILL No. 451

By Senators Huelskamp and Petersen

1-25

Subcommittee Recommendation
February 15, 2006
Senator Donovan, Chairman
Senator D. Schmidt and Senator Haley

9 AN ACT concerning medicaid; relating to the state medicaid plan; de-
10 claring certain acts to be crimes and providing penalties for violations;
11 amending K.S.A. 2005 Supp. 21-3847 and 39-7, 121d and repealing the
12 existing sections.

recipient of medicaid benefits,
or provider of medicaid services

13
14 *Be it enacted by the Legislature of the State of Kansas:*
15 Section 1. K.S.A. 2005 Supp. 21-3847 is hereby amended to read as
16 follows: 21-3847. (a) No ~~person nor~~ family member of such person shall:

17 (1) Knowingly and intentionally solicit or receive any remuneration,
18 including but not limited to any kickback, bribe or rebate, directly or
19 indirectly, overtly or covertly, in cash or in kind;

or entity

20 (A) In return for referring or refraining from referring an individual
21 to a person for the furnishing or arranging for the furnishing of any goods,
22 service, item, facility or accommodation for which payment may be made,
23 in whole or in part, under the medicaid program; or

24 (B) in return for purchasing, leasing, ordering or arranging for or
25 recommending purchasing, leasing or ordering any goods, service, item,
26 facility or accommodation for which payment may be made, in whole or
27 in part, under the medicaid program.

or entity

28 (2) Knowingly and intentionally offer or pay any remuneration, in-
29 cluding, but not limited to, any kickback, bribe or rebate, directly or
30 indirectly, overtly or covertly, in cash or in kind to any person to induce
31 such person.

(3) Knowingly divide or share any funds illegally obtained from the
medicaid program.

32 (A) To refer or refrain from referring an individual to a person for
33 the furnishing or arranging for the furnishing of any goods, service, item,
34 facility or accommodation for which payment may be made, in whole or
35 in part, under the medicaid program; or

recipient

36 (B) to purchase, lease, order, or arrange for or recommend purchas-
37 ing, leasing, or ordering any goods, service, item, facility or accommo-
38 dation for which payment may be made, in whole or in part, under the
39 medicaid program.

recipient or sell or exchange for value goods purchased or provided under
the medicaid program

40 (b) No medicaid ~~client~~ shall knowingly and intentionally trade a medi-
41 cicaid number for money or other remuneration ~~or~~ sign for services that
42 are not received by the medicaid ~~client~~

43 (c) A violation of this section is a severity level 7, nonperson

1 felony.

2 ~~(d)~~ (d) This section shall not apply to a refund, discount, copayment,
3 deductible, incentive or other reduction obtained by a provider in the
4 ordinary course of business, and appropriately reflected in the claims or
5 reports submitted to the medicaid program, or its fiscal agent, nor shall
6 it be construed to prohibit deductibles, copayments or any other cost or
7 risk sharing arrangements which are a part of any program operated by
8 or pursuant to contracts with the medicaid program.

9 Sec. 2. K.S.A. 2005 Supp. 39-7,121d is hereby amended to read as
10 follows: 39-7,121d. (a) The state medicaid plan shall include provisions
11 for a program of differential dispensing fees for pharmacies that provide
12 prescriptions for adult care homes under a unit dose system in accordance
13 with rules and regulations of the state board of pharmacy and that partici-
14 pate in the return of unused medications program under the state
15 medicaid plan.

16 (b) The state medicaid plan shall include provisions for differential
17 ingredient cost reimbursement of generic and brand name pharmaceu-
18 ticals. The director of health policy and finance shall set the rates for
19 differential cost reimbursement of generic and brand name pharmaceu-
20 ticals by rules and regulations.

21 (c) *On and after January 1, 2007, the state medicaid plan shall require*
22 *that every pharmacy claim form under the plan include the prescriber's*
23 *unique identification number.*

24 New Sec. 3. On and after January 1, 2007, the state medicaid plan
25 shall require that medicaid consumers provide in addition to the monthly
26 medical identification card a Kansas current resident driver's license or
27 state-issued identification card each time care is received.

28 Sec. 4. K.S.A. 2005 Supp. 21-3847 and 39-7,121d are hereby
29 repealed.

30 Sec. 5. This act shall take effect and be in force from and after its
1 publication in the statute book.

10-2

SENATE BILL No. 536

By Committee on Judiciary

2-9

Subcommittee Recommendation
February 15, 2006
Senator Donovan, Chairman
Senator D. Schmidt and Senator Haley

Senate Judiciary
2-17-06
Attachment II

9 AN ACT concerning medicaid; relating to reimbursement; amending
10 K.S.A. 59-2249 and 59-3086 ~~and K.S.A. 2005 Supp. 21-3847~~ and re-
11 pealing the existing sections.
12

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

14 ~~[Section 1. K.S.A. 2005 Supp. 21-3847 is hereby amended to read as~~
15 ~~follows: 21-3847. (a) No person nor family member of such person shall:~~

16 ~~(1) Knowingly and intentionally solicit or receive any remuneration,~~
17 ~~including but not limited to any kickback, bribe or rebate, directly or~~
18 ~~indirectly, overtly or covertly, in cash or in kind:~~

19 ~~(A) In return for referring or refraining from referring an individual~~
20 ~~to a person for the furnishing or arranging for the furnishing of any goods,~~
21 ~~service, item, facility or accommodation for which payment may be made,~~
22 ~~in whole or in part, under the medicaid program; or~~

23 ~~(B) in return for purchasing, leasing, ordering or arranging for or~~
24 ~~recommending purchasing, leasing or ordering any goods, service, item,~~
25 ~~facility or accommodation for which payment may be made, in whole or~~
26 ~~in part, under the medicaid program.~~

27 ~~(2) Knowingly and intentionally offer or pay any remuneration, in-~~
28 ~~cluding, but not limited to, any kickback, bribe or rebate, directly or~~
29 ~~indirectly, overtly or covertly, in cash or in kind to any person to induce~~
30 ~~such person:~~

31 ~~(A) To refer or refrain from referring an individual to a person for~~
32 ~~the furnishing or arranging for the furnishing of any goods, service, item,~~
33 ~~facility or accommodation for which payment may be made, in whole or~~
34 ~~in part, under the medicaid program; or~~

35 ~~(B) to purchase, lease, order, or arrange for or recommend purchas-~~
36 ~~ing, leasing, or ordering any goods, service, item, facility or accommo-~~
37 ~~dation for which payment may be made, in whole or in part, under the~~
38 ~~medicaid program.~~

39 ~~(3) Knowingly and intentionally file a statement pursuant to K.S.A.~~
40 ~~59-2249 or 59-3086, and amendments thereto, falsely stating that no re-~~
41 ~~imbursement of medicaid funds is owed.~~

42 ~~(b) A violation of this section is a severity level 7, nonperson felony.~~

43

1 ~~(c) This section shall not apply to a refund, discount, copayment,~~
 2 ~~deductible, incentive or other reduction obtained by a provider in the~~
 3 ~~ordinary course of business, and appropriately reflected in the claims or~~
 4 ~~reports submitted to the medicaid program, or its fiscal agent, nor shall~~
 5 ~~it be construed to prohibit deductibles, copayments or any other cost or~~
 6 ~~risk sharing arrangements which are a part of any program operated by~~
 7 ~~or pursuant to contracts with the medicaid program.~~

Renumber remaining sections accordingly.

8 Sec. 2. K.S.A. 59-2249 is hereby amended to read as follows: 59-
 9 2249. (a) On the hearing, unless otherwise ordered, the executor or ad-
 10 ministrator shall, and other persons may, be examined relative to the
 11 account and the distribution of the estate. If all ~~the~~ taxes payable by the
 12 estate have been paid, so far as there are funds to pay them, and the
 13 account is correct, it shall be settled and allowed. If the account is incor-
 14 rect, it shall be corrected and then settled and allowed. Upon settlement
 15 and allowance, the court shall determine the heirs, devisees and legatees
 16 entitled to the estate and assign it to them by its decree, pursuant to the
 17 terms of the will, the laws of intestate succession in effect on the date of
 18 the decedent's death or a valid settlement agreement. The decree shall
 19 name the heirs, devisees and legatees; describe the property; and state
 20 the proportion or part thereof to which each is entitled. The decree shall
 21 be binding as to all the estate of the decedent, whether specifically de-
 22 scribed in the proceedings or not. In the estate of a testate decedent, no
 23 heirs need be named in the decree unless they have, as such, an interest
 24 in the estate.

medicaid reimbursement has been determined and paid, and

25 (b) No final decree shall be entered for decedents dying before July
 26 1, 1998, until after the determination and payment of inheritance taxes,
 27 *and no final decree shall be entered until after the determination and*
 28 *reimbursement of any medicaid funds owed to the state of Kansas.* When
 29 the final decree includes real estate, such decree, or a certified copy of
 30 it, may be entered on the transfer record of the county clerk of the proper
 31 county. When any such decree which includes real estate shall become
 32 final, it shall be the duty of the court to transmit a certified copy of it to
 33 the county clerk and the county clerk shall enter it on the transfer record
 34 in the clerk's office.

35 (c) If any person entitled to receive a distributive share of an estate
 36 pursuant to a decree hereunder is the defendant in a garnishment action
 37 or proceeding in which the executor or administrator of the estate is the
 38 garnishee, the person's distributive share shall be subject to the order of
 39 garnishment served upon the executor or administrator, and no property
 40 or funds of the estate shall be delivered or paid over to the person until
 41 further order of the court from which the order of garnishment was
 42 issued.

43 Sec. 3. K.S.A. 59-3086 is hereby amended to read as follows: 59-

1 3086. (a) At the time of or at any time after the filing of an accounting
2 by the conservator, the conservator may file with the court a verified
3 petition requesting a hearing on that accounting for the purposes of al-
4 lowance and settlement. The petition shall include:

5 (1) The conservator's name and address, and if the conservator is also
6 the guardian, that fact;

7 (2) the conservatee's name, age, date of birth, address of permanent
8 residence, and present address or whereabouts, if different from the con-
9 servatee's permanent residence;

10 (3) the name and address of the court appointed guardian, if different
11 from the conservator;

12 (4) the names and addresses of any spouse, adult children and adult
13 grandchildren of the conservatee, and those of any parent and adult sib-
14 lings of the conservatee, or if no such names or addresses are known to
15 the petitioner, the name and address of at least one adult who is nearest
16 in kinship to the conservatee, or if none, that fact. If no such names or
17 addresses are known to the conservator, but the conservator has reason
18 to believe that such persons exist, then the petition shall state that fact
19 and that the conservator has made diligent inquiry to learn those names
20 and addresses;

21 (5) the names and addresses of other persons, if any, whom the con-
22 servator knows to have an interest in the matter, or a statement that the
23 petitioner knows of no other persons having an interest in the matter;

24 (6) designation of the accounting period for which allowance and set-
25 tlement is sought; and

26 (7) a request that this accounting be accepted and that the court issue
27 an order providing that all matters related thereto are finally allowed and
28 settled.

29 (b) Upon the filing of such a petition, the court shall issue an order
30 fixing the date, time and place of a hearing on the petition, which hearing
31 may be held forthwith and without further notice if those persons named
32 within the petition pursuant to the requirement of subsections (a)(3),
33 (a)(4) and (a)(5), as applicable, have entered their appearances, waived
34 notice, and agreed to the court's accepting the accounting and issuing an
35 order of final allowance and settlement. Otherwise, the court shall require
36 the conservator to give notice of this hearing to such persons in such
37 manner as the court may specify, including therewith a copy of the con-
38 servator's petition and a copy or copies of the accounting or accountings
39 for which the conservator requests an order of final allowance and settle-
40 ment. This notice shall advise such persons that if they have any objections
41 to the accounting or accountings for which final allowance and settlement
42 is sought that they must file their written objections with the court prior
43 to the scheduled hearing or that they must appear at the hearing to pres-

1 ent those objections. The court may appoint an attorney to represent the
2 conservatee in this matter similarly as provided for in subsection (a)(3) of
3 K.S.A. 59-3063, and amendments thereto, and in such event, the court
4 shall require the conservator to also give this notice to that attorney.

5 (c) In the absence of a petition having been filed by the conservator
6 pursuant to this section, the court may set a hearing to determine whether
7 an order of final allowance and settlement should be issued with regard
8 to any accounting which has been previously filed by the conservator, and
9 may require the conservator or some other person to give notice thereof
10 as provided for herein.

11 (d) The hearing shall be conducted in as informal a manner as may
12 be consistent with orderly procedure. The court shall have the authority
13 to receive all relevant and material evidence which may be offered, in-
14 cluding the testimony or written report, findings or recommendations of
15 any professional or other person who has familiarity with the conservatee
16 or the conservatee's estate. The court may review the court's prior orders,
17 any conservatorship plan which has been filed pursuant to K.S.A. 59-3079,
18 and amendments thereto, and any reports and accountings which have
19 been filed by the guardian or conservator, or both, even if previously
20 approved or allowed, to determine whether the current accounting seems
21 reasonable in light of the past reports or accountings, and to determine
22 whether any further proceedings under this act may be appropriate. The
23 court shall give to the conservator, to the conservatee, and to other in-
24 terested persons, the opportunity to present evidence to the court con-
25 cerning the actions of the conservator, the conservatee's estate and the
26 recommendations of such persons.

27 (e) At the conclusion of the hearing, if the court finds, by a prepon-
28 derance of the evidence, that the accounting accurately accounts for the
29 conservatee's estate, shows appropriate administration on the part of the
30 conservator, that any fees of the conservator are reasonable, and that due
31 notice and an opportunity to be heard has been provided to any interested
32 parties, the court shall approve the accounting and order that it is allowed
33 and settled. Such allowance and settlement shall relieve the conservator
34 and the conservator's sureties from liability for all acts and omissions
35 which are fully and accurately described in the accounting, including the
36 investments of the assets of the conservatee's estate.

37 (f) If the court finds by a preponderance of the evidence that the
38 conservator has innocently misused any funds or assets of the conserva-
39 tee's estate, the court shall order the conservator to repay such funds or
40 return such assets to the conservatee's estate. If the court finds that the
41 conservator has embezzled or converted for the conservator's own per-
42 sonal use any funds or assets of the conservatee's estate, the court shall
43 find the conservator liable for double the value of those funds or assets,

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1 as provided for in K.S.A. 59-1704, and amendments thereto. In either
 2 case, the court may order the forfeiture of the conservator's bond, or such
 3 portion thereof as equals the value of such funds or assets, including any
 4 lost earnings and the costs of recovering those funds or assets, including
 5 reasonable attorney fees, as the court may allow, and may require of the
 6 surety satisfaction thereof. Neither the conservator, nor the conservator's
 7 estate or surety, shall be finally released from such bond until the satis-
 8 faction thereof.

9 (g) At no time shall the conservator, or the conservator's estate or
 10 surety, be finally released from the bond required by the court pursuant
 11 to K.S.A. 59-3069, and amendments thereto until a final accounting has
 12 been filed, allowed and settled as provided for herein.

13 (h) Upon the filing of a final accounting, delivery of any remaining
 14 funds and assets of the conservatee's estate to the person entitled thereto
 15 *and reimbursement of any medicated funds owed to the state of Kansas,*
 16 and presentation to the court of a receipt for such, the court may issue a
 17 final order of allowance and settlement as provided for herein, and only
 18 thereby finally shall release the conservator, the conservator's estate and
 19 the conservator's surety.

20 Sec. 4. K.S.A. 59-2249 and 59-3086 ~~and K.S.A. 2005 Supp. 21-3847~~
 21 are hereby repealed.

22 Sec. 5. This act shall take effect and be in force from and after its
 23 publication in the statute book.