

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:39 A.M. on January 11, 2007, in Room 123-S of the Capitol.

All members were present except:

Phil Journey arrived, 9:40 A.M.
Julia Lynn arrived, 9:41 A.M.
Dwayne Umbarger arrived, 9:45 A.M.
David Haley arrived, 9:50 A.M.
Les Donovan- excused
Derek Schmidt- excused

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Others attending:
See attached list.

Bill Introductions

Debbie Rosacker representing the Board of Indigent Defense Services requested the introduction of a bill regarding compensation for attorneys representing indigent defendants. Senator Bruce moved, Senator Betts seconded to introduce the bill as a committee bill. Motion carried.

Presentation of Overview of the Special Committee on Judiciary to the 2007 Kansas Legislature

Athena Anadaya, Legislative Research Department provided the committee a brief overview of the topics, conclusions and recommendations of the Special Committee on Judiciary to the 2007 Kansas Legislature (Attachment 1).

Following the presentation Chairman Vratil request copies of the Kansas Legislative Research Department's Disposition of District Court Docket Fees be distributed to the committee members (Attachment 2).

Senator Bruce moved, Senator Betts seconded to approve the minutes of January 9, 2007. Motion carried.

The meeting adjourned at 10:12 A.M. The next scheduled meeting is January 16, 2007.

Report of the Special Committee on Judiciary to the 2007 Kansas Legislature

CHAIRPERSON: Representative Lance Kinzer

VICE-CHAIRPERSON: Senator John Vratil

RANKING MINORITY MEMBER: Representative Harold Lane

OTHER MEMBERS: Senators Terry Bruce, Greta Goodwin, Vicki Schmidt, and Ruth Teichman; and Representatives Tom Burroughs, Delia Garcia, Kasha Kelley, Charlie Roth, Jason Watkins, and Kevin Yoder

STUDY TOPICS

- Court Docket Fees
- Eminent Domain
- Enhanced Penalties for Driving Under the Influence of Alcohol or Drugs
- Establishment of Kansas Crime Stoppers Council
- Guardians and Conservators
- Residency and Proximity Restrictions for Sex Offenders
- Revised Uniform Anatomical Gift Act (RUAGA)
- Uniform Child Abduction Prevention Act (UCAPA)

December 2006

Special Committee on Judiciary

COURT DOCKET FEES

CONCLUSIONS AND RECOMMENDATIONS

The Committee reviewed the various aspects of the court docket fees issue and agreed to introduce a bill that would delete certain funds from district court docket fees as follows:

- Indigents' Defense Services Fund;
- Crime Victims Assistance Fund;
- Protection from Abuse Fund;
- Kansas Juvenile Delinquency Prevention Trust Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Centers Fund;
- Juvenile Detention Facilities Fund; and
- Trauma Fund.

Those funds that would continue to be funded by docket fees include the funds that are related to the functioning of the courts as follows:

- Access to Justice Fund;
- Judicial Branch Nonjudicial Salary Initiative Fund;
- Judicial Branch Education Fund;
- Judicial Technology Fund;
- Dispute Resolution Fund;
- Judicial Council Fund; and
- Judicial Performance Fund.

Proposed Legislation: The Committee recommends one bill to be introduced in the Senate.

BACKGROUND

The Special Committee on Judiciary was charged to review the amount of each docket fee; how Kansas docket fees compare to those of other states; the impact on litigants and our judicial system of increasing or decreasing docket fees; whether docket fee revenue should be used solely for funding the Judicial Branch; whether non-judicial recipients of docket fee revenue should be required to annually justify their receipt of that revenue; and the impact on non-judicial docket fee recipients of submitting their annual revenue request to the appropriations process.

COMMITTEE ACTIVITIES

The Committee held a hearing on the issue of docket fees on November 16, 2006. Conferees included Alicia Lange, Grants Administrator, Attorney General's Office; Randy Hearrell, Judicial Council; Richard Hayse, Kansas Bar Association; Don Jordan, Commissioner, Juvenile Justice Authority; Lee Woodard, Sedgwick County Law Library; John Pickett, Johnson County Law Library; Dick Morrissey, Deputy Director, Kansas Department of Health and Environment; Joyce Grover and Dodie Wellshear, Kansas Coalition Against Sexual and Domestic Violence; and Marilyn Harp, Kansas Legal Services.

Carolyn Rampey, Kansas Legislative Research Department, provided an overview of the disposition of district court docket fees along with the distribution breakdown of which funds receive docket fees, the percentage they receive and the dollar amounts they will receive in FY 2007.

Alicia Lange addressed the mechanisms of the five funds that the Attorney General's Office oversees. The conferee stated that individuals from each of the funds has to reapply every year for a grant. The Attorney General holds a percentage of docket fee funds out each month to make sure there are enough funds to last throughout the year.

Randy Hearrell explained the mechanism of the Judicial Council's funding process. Part of the Judicial Council's operating expenses come from the sale of its publications. In addition, the Judicial Council does receive some State General Funds.

Rich Hayse supported uniform docket fees but stated a belief that only court related activities should receive docket fee funding.

Don Jordan stated that, whatever the source, juvenile justice programs need to be adequately funded. In addition, written testimony was provided by J. Russell Dennings regarding funding for regional juvenile detention centers.

Lee Woodard and John Pickett addressed the funding of their respective county law libraries. Each library charges a registration fee to attorneys.

Joyce Grover focused on funding for sexual and domestic battery programs that are funded through the Attorney General's Office. Application for funding needs to be made each year.

Dick Morrissey explained the need for funding to establish and maintain the

infrastructure for a statewide trauma system.

Marilyn Harp supported continuation of docket fee funds for the Access to Justice Fund and the need for certain legal services to be available for those who cannot afford it.

The Kansas Trial Lawyers Association submitted written testimony encouraging the Legislature to require programs that receive docket fees to go through the budget process.

CONCLUSIONS AND RECOMMENDATIONS

The Committee reviewed the various aspects of the court docket fees issue and agreed to introduce a bill that would delete certain funds from district court docket fees as follows:

- Indigents' Defense Services Fund;
- Crime Victims Assistance Fund;
- Protection from Abuse Fund;
- Kansas Juvenile Delinquency Prevention Trust Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Centers Fund;
- Juvenile Detention Facilities Fund; and
- Trauma Fund.

Those funds that would continue to be funded by docket fees include the funds that are related to the functioning of the courts as follows:

- Access to Justice Fund;
- Judicial Branch Nonjudicial Salary Initiative Fund;
- Judicial Branch Education Fund;
- Judicial Technology Fund;
- Dispute Resolution Fund;
- Judicial Council Fund; and
- Judicial Performance Fund.

Special Committee on Judiciary

EMINENT DOMAIN

CONCLUSIONS AND RECOMMENDATIONS

After much discussion on the topic of eminent domain and the specific issues involved in urban, as opposed to rural, eminent domain instances, and in consideration of the fact that legislation will be introduced on this topic during the 2007 Legislative Session, the Committee decided to make no recommendations at this time.

Proposed Legislation: None.

BACKGROUND

The Committee was directed to study the current status of eminent domain and monitor the implementation of 2006 SB 323, including a review for any needed modifications.

COMMITTEE ACTIVITIES

The Committee held a hearing on the topic of eminent domain on December 13, 2006. Conferees included Brad Harrelson, Kansas Farm Bureau; Brent Haden, Kansas Livestock Association; Jill Benson, citizen; Sandy Jacquot, League of Kansas Municipalities; Mike Taylor, Unified Government of Wyandotte County; Cindy Cash, Kansas City, Kansas Chamber of Commerce; Ashley Jones, Greater Kansas City, Local Initiatives Support Corporation (LISC); Kevin Morris, Community Housing, Wyandotte County; and Reid Holbrook, Indian Springs Business Park.

Written testimony was received from Christy Caldwell, Greater Topeka Chamber of Commerce; and Ashley Sherard, Lenexa Chamber of Commerce.

After staff review of the topic, the Committee took testimony from the conferees.

Brad Harrelson and Brent Haden expressed support for SB 323 and urged no changes. Mr. Haden expressed a need for caution in any redraft of the definition of blight which, according to the conferee, should be restricted to urban blight. The citizen conferee addressed her situation in an unsatisfactory eminent domain instance.

Sandy Jacquot expressed concern with SB 323. According to the conferee, these concerns primarily involve the inability of cities to remediate private properties without the consent of the Legislature and the requirement that the Legislature give consent to projects not enumerated in the bill.

Mike Taylor stated support for the use of eminent domain for economic development projects. He emphasized the difference between urban eminent domain and agricultural eminent domain.

Cindy Cash spoke on behalf of three entities to state that she supports the use of eminent domain but SB 323 went too far in its application of limitations on the use of eminent domain.

Ashley Jones and Kevin Morris expressed strong support for the use of eminent domain in dealing with blighted neighborhoods and for revitalization and

redevelopment purposes. Restrictions imposed by SB 323 would hamper the governmental units' efforts.

Reid Holbrook addressed an incident contrary to the intent of SB 323.

Christy Caldwell and Ashley Sherard provided written testimony to urge a reinstatement of local control for eminent domain purposes, a redefinition of blight or blighted areas, and the need for another entity to approve eminent domain when the Legislature is not in session.

CONCLUSIONS AND RECOMMENDATIONS

After much discussion on the topic of eminent domain and the specific issues involved in urban, as opposed to rural, eminent domain instances, and in consideration of the fact that legislation will be introduced on this topic during the 2007 Legislative session, the Committee decided to make no recommendations at this time.

Special Committee on Judiciary

ENHANCED PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

CONCLUSIONS AND RECOMMENDATIONS

After discussion of the issue, the Committee believes there is a problem with the statutes regarding those individuals who drive while their license is suspended as evidenced by the increasing number of convictions in this area. The Committee encourages the Legislature to consider statutory changes for driving with a suspended drivers license. Further, the Committee recommends the introduction of a 2007 bill that would implement all of the suggested changes by the Subcommittee regarding 2006 SB 341 as follows:

- Strike new section one of the bill. The Subcommittee felt that this issue was already addressed by the involuntary manslaughter statute;
- Adopt the changes in KSA 8-1567 and include language that would require that the courts follow the alcohol and drug evaluation as it pertains to alcohol and drug safety education programs or treatment programs on first, second and third offenses;
- Allow for the doubling of sentences for those who refuse to take the blood alcohol content (BAC) test or have a BAC of 0.15 or greater;
- Amend KSA 8-1567(h) by allowing the court to impose one month of imprisonment for each child in the vehicle at the time the offense occurred;
- Allow evidence, in KSA 8-1005, of assessment performed by a Drug Recognition Evaluator to be admissible in court to indicate that a person may have been under the influence of something other than alcohol;
- Provide for a one-year suspension of driving privileges, followed by a one-year restriction to driving a vehicle with an ignition interlock device on first occurrence test refusal. The same procedure would follow on a second offense (two-year suspension, two-year ignition interlock), and on a third violation (three-year suspension, three-year ignition interlock);
- Subject a person under the age of 21 to the same sanctions on a second or subsequent test failure or driving under the influence of alcohol or drugs (DUI) conviction as a person over the age of 21;
- Allow administrative hearings to be held by telephone conference;
- Provide for explanation, oral and written, of enhanced sanction for a 0.15 BAC or greater and new interlock restrictions;
- Allow a search warrant, not to be required if there is any person injured, or a death occurs to another person;

- Provide additional funding to Kansas Department of Health and Environment (KDHE) and Kansas Department of Revenue (KDOR) to address the anticipated increase in litigation;
- Establish a funding source for county sheriffs to address anticipated increased incarceration in county correctional facilities; and
- Encourage the Legislature to be aware that the numbers of those who are driving with a suspended license are increasing, and suggest it look at possible changes to deal with this.

Proposed Legislation: The Committee recommends one bill to be introduced in the House.

BACKGROUND

The Special Committee was charged to study and review the changes in penalties for driving under the influence of alcohol as proposed in 2006 SB 341.

COMMITTEE ACTIVITIES

The Committee held a hearing on the issue of enhanced DUI penalties on September 20, 2006. Conferees included Karen Wittman, Senior Assistant District Attorney, Shawnee County District Attorney's Office; Richard Howard, KDHE; Lieutenant David Weed, Kansas Highway Patrol (KHP); Major Mark Goodloe, KHP; Terri Roberts, Kansas State Nurses Association (KSNA); James Keller, KDR; and Mike Clarke, Attorney.

Written testimony was received on behalf of Representative Tim Owens, District Chief Judge Stephen R. Tatum, Tenth Judicial District, Olathe, Kansas, and Randy Rogers with the Kansas Sheriff's Association (KSA).

Chief Judge Stephen Tatum provided the following written comments on proposed new legislation:

- Enhanced penalties would probably result in more intoxilizer refusals.
- Responses to different levels of alcohol will differ among individuals depending on a number of variables.

- Considered factors that a judge should weigh in sentencing a person could include the level of alcohol consumed, whether the DUI resulted in an injury accident, passengers in the car at the time of the DUI, passengers in the car who were children, and level of erratic driving displayed, among other factors.

Judge Tatum also suggested changes to KSA 8-1567 and that, for a fourth or subsequent DUI, a person would have to serve the entire sentence imposed and then go to the Department of Corrections (DOC) for the twelve-month post release, including substance abuse counseling and treatment.

Representative Owens' comments primarily concerned third and subsequent DUI offenders. He suggested that anyone with a third time offense and who fails twice in the alcohol and drug treatment program, would be incarcerated for not less than 18 months unless the treatment program could be completed in less time than the 18 months, as certified by treatment professionals.

Karen Wittman, prosecutor, expressed support for the provisions of SB 341 as a step in the right direction.

Richard Howard, KDHE, spoke in support of SB 341 and stated that KDHE provides support for the law through the Breath Alcohol Testing Program.

Major Mark Goodloe, KHP, stated the Patrol supports the intent of SB 341, but there is concern that penalties may be less for offenders who refuse to take the BAC test, and therefore, more offenders will soon refuse to submit to testing. Another concern is the likelihood of increased litigation.

Terri Roberts, KSNA, stated that SB 341 had a number of provisions that need to be tweaked, rewritten, or added to, to be a truly enhanced BAC law. She provided information on the level of consumption it takes to reach a BAC of 0.15. Additional information was offered about other states with different sanctions for persons with a higher BAC than Kansas.

James Keller, DHR, addressed the problem of enacted sanctions for those with an alcohol level of double the current 0.08 level who choose to drive, without creating new issues that could reduce the effectiveness of laws intended to combat drunk driving. Other problems for the agency charged with administering the drivers' license suspensions were enumerated.

Randy Rogers, KSA, in his written comments, spoke about the main concern of sheriffs across the state, which is the length of incarceration. County jails, he stated, are intended to hold prisoners for short times only. By doubling the sentence of 0.16 DUI offenders, many sheriffs have concerns of overcrowding.

Interested conferees held separate meetings in order to resolve the various approaches to the merits and concerns regarding SB 341. Recommendations from this subcommittee group were presented to the Committee at the November 16 meeting by Karen Wittman of the Shawnee County District Attorney's Office, a member of the Subcommittee.

CONCLUSIONS AND RECOMMENDATIONS

After discussion of the issue, the Committee believes there is a problem with the statutes regarding those individuals who drive while their license is suspended as evidenced by the increasing number of convictions in this area. The Committee encourages the Legislature to consider statutory changes for driving while suspended situations. Further, the Committee recommends the introduction of a 2007 bill that would implement all of the suggested changes by the Subcommittee as follows:

- Strike New Section 1 of 2006 SB 341. The Subcommittee felt that this issue was already addressed by the involuntary manslaughter statute;
- Adopt the changes in KSA 8-1567 and include language that would require that the courts follow the alcohol and drug evaluation as it pertains to alcohol and drug safety education programs or treatment programs on first, second and third offenses;
- Allow for the doubling of sentences for those who refuse to take the BAC test or have a BAC of 0.15 or greater;
- Amend KSA 8-1567(h) by allowing the court to impose one month of imprisonment for each child in the vehicle at the time the offense occurred;
- Allow evidence, in KSA 8-1005, of assessment performed by a Drug Recognition Evaluator to be admissible in court to indicate that a person may have been under the influence of something other than alcohol;
- Provide for a one-year suspension of driving privileges, followed by a one-year restriction to driving a vehicle with an ignition interlock device on first occurrence test refusal. The same procedure would follow on a second

offense (two-year suspension, two-year ignition interlock), and on a third violation (three-year suspension, three-year ignition interlock);

- Subject a person under the age of 21 to the same sanctions on a second or subsequent test failure or DUI conviction as a person over the age of 21;
- Allow administrative hearings to be held by telephone conference;
- Provide for explanation, oral and written, of enhanced sanction for a 0.15 BAC or greater and new interlock restrictions;
- Allow a search warrant not to be required if there is any person injured, or a death occurs to another person;
- Provide additional funding to KDHE and KDR to address the anticipated increase in litigation;
- Establish a funding source for county sheriffs to address anticipated increased incarceration in county correctional facilities; and
- Encourage the Legislature to be aware that the numbers of those who are driving with a suspended license are increasing, and suggest it look at possible changes to deal with this issue.

Special Committee on Judiciary

ESTABLISHMENT OF KANSAS CRIME STOPPERS COUNCIL

CONCLUSIONS AND RECOMMENDATIONS:

The Special Committee on Judiciary makes no recommendation on the topic of establishment of a Kansas Crime Stoppers Council. The Committee believes that there was not an overwhelming need for a statewide council, and there were concerns with the funding of such a council.

Proposed Legislation: None.

BACKGROUND

The Committee was charged with the responsibility to study 2006 HB 2992, which would provide for the establishment and funding of a Kansas Crime Stoppers Council. HB 2992 was introduced by and referred to the House Federal and State Affairs Committee. The bill died in Committee.

The bill would have created the Kansas Crime Stoppers Council within the Attorney General's Office and would have been comprised of two people appointed by the Attorney General and the board of directors of the Kansas Crime Stoppers Association, Inc. The Council would have performed the following, when resources were available:

- Advised and assisted in creating local crime stoppers programs;
- Promoted the detection of crime and encouraged people to report information about criminal acts;
- Encouraged news and other media to promote local crime stoppers programs and to inform the public about the functions of the Council;
- Assisted local crime stoppers programs in forwarding information about criminal acts to the appropriate law enforcement agencies;
- Helped law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies;
- Assessed training needs for local crime stoppers programs and provided support and training to all programs within the state;
- Assisted local crime stoppers programs in acquiring resources needed to keep and report statistical data and to communicate between local programs, law enforcement agencies, other crime stoppers programs, and other agencies; and
- Provided other appropriate assistance to enhance public safety in Kansas.

The Council's activities would have been financed through a \$35 fee collected from offenders placed on probation, community corrections or diversion and deposited into the Crime Stoppers Trust Fund created by the bill.

The bill would have created a new class A nonperson misdemeanor, for a member or employee of the Council, or a person who accepts a report of a criminal activity on

behalf of a local crime stoppers program, to intentionally or knowingly give the information to a person who is not employed by a law enforcement agency. A person convicted of this crime would not be eligible for state employment for five years after the conviction is final.

COMMITTEE ACTIVITIES

The Committee held a hearing on September 20, 2006.

Those conferees who testified in support of creating a Kansas Crime Stoppers Council included Kevin Graham, Attorney General's Office; Debra Billingsley, Board Member of Crime Stoppers of Topeka, Inc.; and Kyle Smith, Legal Counsel to Kansas Crime

Stoppers Board. Also appearing in support of the bill was Terry Symonds, Police Coordinator of Crime Stoppers of Topeka, Inc.

There were no conferees appearing in opposition to creating a Kansas Crime Stoppers Council.

CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Judiciary makes no recommendation on the topic of establishment of Kansas Crime Stoppers Council. The Committee believes that there was not an overwhelming need for a statewide council and there were concerns with the funding of such a council.

Special Committee on Judiciary

GUARDIANS AND CONSERVATORS

CONCLUSIONS AND RECOMMENDATIONS

After a review of the issues involved, the Committee has authorized the Chairman of the Committee to draft a request for study of this matter by the Judicial Council. Specifically, the request will ask for a study of 2005 SB 240, balloon amendment version, with emphasis on the following language:

- Page one, lines thirty three through forty three; and
- Page two, lines one through three.

In addition, the request will ask the Judicial Council to take testimony on the bill to see whether such a measure is warranted. Such an examination of the measure also should emphasize the education and training needed for a guardian or conservator.

Proposed Legislation: None.

BACKGROUND

The Special Committee was charged to study possible conflicts of interest and the need for oversight and training with regard to guardians or conservators.

COMMITTEE ACTIVITIES

The Committee held a hearing on the topic of guardians and conservators on December 13, 2006. Conferees included Judge Sam Bruner, Chairperson of the Kansas Judicial Council Guardianship and Conservatorship Advisory Committee; Rocky Nichols, Executive Director of the Disability Rights Center; David Hollis, citizen; and Representative Bonnie Huy.

Judge Bruner reviewed the pertinent statutes regarding guardians and conservators. Rocky Nichols spoke about specific parts of Kansas law that allow conflicts of interest between a guardian and a ward. Another problem area cited by the conferee is that, under Kansas law, guardians or conservators are allowed too

much power over people with disabilities with the potential to put people with disabilities at risk of abuse, neglect, and exploitation. The Committee was urged to recommend a bill similar to 2005 SB 240, balloon amendment version. The bill dealt with the appointment of guardians or conservators.

David Hollis and Representative Bonnie Huy reviewed a case example that illustrated abusive behavior on the part of a non-family guardian as well as inter-family struggles.

CONCLUSIONS AND RECOMMENDATIONS

After a review of the issues involved, the Committee has authorized the Chairman of the Committee to draft a request for study of this matter by the Judicial Council. Specifically, the request will ask for a study of 2005 SB 240, balloon amendment version, with emphasis on the following language:

- Page one, lines thirty three through forty three; and
- Page two, lines one through three.

In addition, the request will ask the Judicial Council to take testimony on the bill to see whether such a measure is warranted. Such an examination of the measure also

should emphasize the education and training needed for a guardian or conservator.

Special Committee on Judiciary

RESIDENCY AND PROXIMITY RESTRICTIONS FOR SEX OFFENDERS

CONCLUSIONS AND RECOMMENDATIONS

After extensive testimony on the issues surrounding residency requirements for sex offenders, the Committee expressed an awareness that the Sex Offender Policy Board, created by the 2006 Legislature, is charged with studying these issues and reporting back to the Legislature in 2008.

As a consequence, the Committee:

- Encourages the Legislature to wait and receive the report from the Sex Offender Policy Board before any action is taken on residency requirements;
- Suggests the 2007 Legislature consider the following:
 - Creation of safety zones patterned after the Illinois statutes;
 - Development of more complete risk assessment tools;
 - Narrowing the scope of application for offenses against children instead of minors;
 - Preemption of local ordinances from establishing residency restrictions; and
 - Creation of programs that focus on the dangers that lie within a child's family.

The Committee encourages the Sex Offender Policy Board to explore the classifications of sex offenders by risk levels, reclassification of the sex offender registry, and to research whether sex offenders would be allowed to go into safety zones if such a statute as the Washington law were enacted.

Proposed Legislation: None.

BACKGROUND

The Special Committee was charged to study actions by other states and local jurisdictions regarding residency and proximity restrictions for sex offenders to discover any serious unintended consequences and identify actions Kansas might take that actually achieve the intended outcome of increasing public safety.

COMMITTEE ACTIVITIES

The Committee held a hearing on November 15, 2006, on sex offender restrictions. This interim committee topic

was heard in conjunction with the Sex Offender Policy Board, which was created by a provision in 2006 SB 506. Members of the Sex Offender Policy Board include the following: Commissioner Don Jordan, Chair, Juvenile Justice Authority; Secretary Roger Werholtz, Department of Corrections; Secretary Gary Daniels, Social and Rehabilitation Services; Director Larry Welch, Kansas Bureau of Investigation; Justice Tyler Lockett, Retired, Designee for Chief Justice of the Supreme Court; Scott Jackson, Executive Director, Family Life Center, Inc.; and Sandra Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence.

1-14

Conferees included Professor Jeffrey T. Walker, University of Arkansas who presented information about a 1997-1998 study he conducted that found:

- Forty eight percent of child sex offenders lived within the one buffer zone and over one-third lived within multiple buffer zones;
- Sex offenders acquire their victims from their family or close friends;
- Governments cannot control the locations for potential targets;
- There is a definite convergence of potentially motivated child sex offenders living in close proximity to concentrations of potential victims;
- There is no evidence that attempts to limit where sex offenders live has been successful;
- Government and police must work together to increase the effectiveness of sex offender registration and notification;
- Efforts must be made to increase the successful registration and tracking of sex offenders so that their living arrangements are always known;
- Residency requirements are not effective;
- Cities need to look for capable guardians to prevent child sex crimes from happening; and
- The study did uncover that sex offenders who offend against children are more likely to offend against children again and only two percent of those who offend against adults will offend against a child.

Pamela Dettman, County Attorney's Office, Des Moines County, Iowa, informed the Committee about concerns with the Iowa Sex Offender Residency Law that went into effect in July 2002. A few of the concerns were:

- The statute uses the word "committed" rather than "convicted";
- There are not guidelines as to how 2,000 feet would be measured; and

- If the offender has already established residency before a school, daycare center, or park is built or opened, does that offender have to move?

The number one priority of the Iowa County Attorneys Association is to have the statute repealed. Their research shows that there is no direct correlation between residency restrictions and reducing sex offenses against children. They believe it creates a false sense of security because 80-90 percent of sex crimes against children are committed by a relative or acquaintance.

Ms. Dettman proposed the following solutions:

- Create safety zones patterned after Illinois statutes;
- Do more complete risk assessments;
- Narrow the scope of application to offenses against children not minors;
- Preempt local ordinances; and
- Create programs that focus on dangers that lie within a child's family.

Mary Richards, Iowa Coalition Against Sexual Assault, provided the Committee with a statement sheet from the Iowa County Attorneys' Association reiterating the above testimony. Ms. Richards also provided a report entitled National Trends in Sex Offender Legislation and written testimony from Elizabeth Barnhill, Executive Director of the Iowa Coalition Against Sexual Assault.

Christopher Lobanov-Rostovsky, Program Director, Colorado Department of Public Safety reviewed a report on safety issues raised by living arrangements call "shared living arrangement" (SLA) in which two or three sex offenders live together in one residence with no supervision on the premises, although there is supervision with home visits, tracking, schedule monitoring and phone call check in. Mr. Lobanov-Rostovsky's study recommended the following:

- All living arrangements need appropriate supervision;
- Court service officers should make individualized case decisions on the offenders' living arrangements;
- Positive, informed support is a key aspect of offenders' living arrangements;
- SLA's can be a beneficial sex offender management strategy for high risk sex offenders; and
- Residency restrictions may not deter sex offender recidivism.

Dr. Jill Levenson, Lynn University, testified via conference call to indicate that legislatures need to look at the most feasible ways to protect citizens such as the following:

- Create a risk assessment tool that allows screening of offenders into relative risk categories and applies the most restrictive and intensive interventions to the most dangerous sex offenders;
- Approach and evaluate individual offender's risks and needs, reinforce their strengths, and facilitate support systems;
- Adapt global positioning monitoring (GPS) that can be a useful tracking tool for high risk or predatory offenders, even though it is only able to detect where someone is, not what they are doing;
- Educate parents, teachers, and child care workers so they are aware of the signs and symptoms of child sexual abuse, and the common types of grooming patterns used by perpetrators who gain access to victims via their positions of trust or authority; and
- Reallocate money spent on residency requirements, which takes money away from funding for victim services. Investing in treatment and social services for abused children is the best strategy for preventing potential victims in the future.

Representative Nile Dillmore indicated the City of Wichita will ask the 2007

Legislature to ban child sex offenders from property where children congregate by giving the child sex offenders a written notice to leave. If the offender returns after receiving a written notice to leave, he or she could be charged with criminal trespass against a child, sentenced up to a year and fined \$10,000.

Doug Vance, Executive Director, Kansas Recreation and Parks Association, expressed support for the City of Wichita's proposed measures.

Melissa Alley, citizen, related her story about a convicted sex offender living across the street from her five-year-old son's school. She supports residency restrictions.

CONCLUSIONS AND RECOMMENDATIONS

After extensive testimony on the issues surrounding residency requirements for sex offenders, the Committee expressed an awareness that the Sex Offender Policy Board, created by the 2006 Legislature, is charged with studying these issues and reporting back to the Legislature in 2008.

As a consequence, the Committee:

- Encourages the Legislature to wait and receive the report from the Sex Offender Policy Board before any action is taken on residency requirements;
- Suggests the 2007 Legislature consider the following:
 - Creation of safety zones patterned after the Illinois statutes;
 - Development of more complete risk assessment tools;
 - Narrowing the scope of application for offenses against children instead of minors;
 - Preemption of local ordinances from establishing residency restrictions; and

- Creation of programs that focus on the dangers that lie within a child's family.

The Committee encourages the Sex Offender Policy Board to explore the

classifications of sex offenders by risk levels, reclassification of the sex offender registry, and to research whether sex offenders would be allowed to go into safety zones if such a statute as the Washington law were enacted.

Special Committee on Judiciary

REVISED UNIFORM ANATOMICAL GIFT ACT

CONCLUSIONS AND RECOMMENDATIONS

After discussion, the Committee voted to introduce a bill substantially in conformance with the Revised Uniform Anatomical Gift Act. Concern, however, was expressed regarding needed clarity on the following:

- Section five (a)(3) regarding a terminal illness of the donor. This section would allow an anatomical gift by any form of communication addressed to at least two adults, one of whom is a disinterested witness;
- Donor revocation;
- Section nine (8) regarding someone who may make an anatomical gift of a decedent's body or body parts;
- Section ten dealing with the matter of making, amending, or revoking an anatomical gift of a decedent's body or body parts, which needs more specificity and;
- Section eighteen dealing with immunity. This section was discussed as too broad in nature.

Proposed Legislation: The Committee recommends one bill to be introduced in the House.

BACKGROUND

The Special Committee was charged to study and review the recent proposal by the National Conference of Commissioners on Uniform State Laws which in 2006 adopted the Revised Uniform Anatomical Gift Act (RUAGA). The first Act, adopted in 1968, was passed in Kansas.

COMMITTEE ACTIVITIES

The Committee held a hearing on November 16, 2006. Conferees included Dean Gail Agrawal, Kansas University School of Law; Michele Clayton, National Conference of Commissioners on Uniform State Laws; Ron Hein, National Kidney Foundation and Midwest Transplant Network; and Rob Linderer, Midwest Transplant Network.

Dean Agrawal, Kansas University School of Law, provided an overview of the

RUAGA. She noted the original Act was adopted in 1968 to provide standard methods for organ, eye, and tissue donations after death for the purposes of transplantation, therapy, research, or education. In 1987, some twenty-six states adopted a new version of the Act; however, because the other states did not adopt the changes, the Act was no longer considered uniform. The National Conference of Commissioners on Uniform State Laws developed the proposed RUAGA in an effort to resolve any inconsistencies between the states and to make the system effective.

Dean Agrawal outlined some of the key provisions of the RUAGA as follows:

- Insures that individual choice regarding organ donation will be respected by barring persons from amending or revoking the anatomical gift;
- Allows for an individual to refuse to make an anatomical gift;
- Facilitates cooperation between the

- coroners and medical examiners;
- Permits emancipated minors and minors eligible to apply for driver's licenses to make an anatomical gift. If an unemancipated minor dies before the age of 18, the parent or guardian would be permitted to revoke the gift;
- Expands those who are permitted to make an anatomical gift on behalf of others; and
- Expands methods for making an anatomical gift, *i.e.*, donor registries, state identification cards, donor cards, driver's licenses, and also allows for oral gifts.

Michele Clayton, National Conference of Commissioners of Uniform State Laws, informed members that the RUAGA encourages donor registries and provides standards for its operation, but currently half of the states do not have an organ donor registry. The Act also gives priority to the transplant of organs over research or education.

Ron Hein, National Kidney Foundation and Midwest Transplant Network, relayed the story of his kidney transplant ten years ago and the need for another one within the next few years. There are approximately 1,000 Kansans waiting for an organ to be donated. Nationwide, there are over 83,000 awaiting transplants. On average, 17 people per day and 6,205 people per year die due to a lack of available organs.

Rob Linderer, Midwest Transplant Network, stated that there is a compelling

need to update the existing state law to make it consistent with changes that have occurred with national transplant procurement and allocation policies and to achieve uniformity across the states in order to facilitate and support the frequent interactions between transplant and procurement organizations. The revision will accomplish these goals and also help advocate and promote the donation of organs.

CONCLUSION AND RECOMMENDATIONS

After discussion, the Committee voted to introduce a bill substantially in conformance with the Revised Uniform Anatomical Gift Act. Concern, however, was expressed regarding needed clarity on the following:

- Section five (a)(3) regarding a terminal illness of the donor. This section would allow an anatomical gift by any form of communication addressed to at least two adults, one of whom is a disinterested witness;
- Donor revocation;
- Section nine (8) regarding someone who may make an anatomical gift of a decedent's body or body parts;
- Section ten dealing with the matter of making, amending, or revoking an anatomical gift of a decedent's body or body parts, which needs more specificity and;
- Section eighteen dealing with immunity. This section was discussed as too broad in nature.

Special Committee on Judiciary

UNIFORM CHILD ABDUCTION PREVENTION ACT

CONCLUSIONS AND RECOMMENDATIONS

The Committee discussed various aspects of the Act and, in its deliberations, focused on the standard of proof that would be needed to determine whether a parent is a high risk for abduction of a child. The Committee concluded that a bill should be introduced, substantially in conformance with the Act. Specific issues in the Act include the following:

- Custody Order
 - Basis for court's jurisdiction;
 - The manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;
 - A detailed description of each party's custody and visitation rights and residential arrangements for the child;
 - A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and
 - Identification of the child's country of habitual residence at the time of the issuance of the order.
- If there is a threat of abduction, the order should be even more specific and include such things as:
 - An imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:
 - the travel itinerary of the child;
 - a list of physical addresses and telephone numbers at which the child can be reached at specified times; and
 - copies of all travel documents;
 - A prohibition of the respondent directly or indirectly:
 - removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;
 - removing or retaining the child in violation of a child-custody determination;
 - removing the child from school or a child-care or similar facility; or
 - approaching the child at any location other than a site designated for supervised visitation;
- A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

- With regard to the child's passport:
 - a direction that the petitioner place the child's name in the U.S. Department of State's Child Passport Issuance Alert Program;
 - a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and
 - a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;
- As a prerequisite to exercising custody or visitation, a requirement that the respondent provide:
 - to the U.S. Department of State's Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child to the court:
 - (I) proof that the respondent has provided the information in subparagraph (A); and
 - (ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;
 - to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and
 - a written waiver under the Privacy Act, 5 U.S.C. Section 552a [as amended], with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and
- Upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States;
- Limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;
- Require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorneys fees and costs if there is an abduction; and
- Require the respondent to obtain education on the potentially harmful effects to the child from abduction.

Proposed Legislation: The Committee recommends one bill to be introduced in the Senate.

BACKGROUND

The Uniform Child Abduction Prevention Act (UCAPA) was adopted this year by the National Conference of Commissioners on Uniform State Laws. The charge to the Committee was to study UCAPA as a matter that is important for legislators.

COMMITTEE ACTIVITIES

The Committee held a hearing on the UCAPA on November 15, 2006. Conferees included Michele Clayton, National Conference of Commissioners on Uniform State Laws, who stated that the Office of Juvenile Justice and Delinquency Prevention estimates that 262,100 children were abducted in 1999, with a majority (78 percent) of the abductions being perpetrated by family members. According to the conferee, most states have laws that address custody issues and criminal prosecution of child abductions, but not prevention mechanisms. The proposed uniform law would allow courts to determine whether there is a credible risk and order measures to prevent an abduction.

Professor Linda Elrod, Washburn University School of Law, explained that UCAPA would enact the following steps for courts to use when determining whether a parent is high risk:

- Prior custody visitations;
- Parent without emotional or financial ties to the area;
- Parent has divulged plans to abduct and has the resources to survive in hiding;
- Threats of abduction;
- Unemployed parent;
- Parent has liquidated assets;
- History of domestic violence; and
- Parent with close ties to another country whose laws may be prejudiced against a parent based on gender or a non-citizen.

If the court determines the parent to be “high risk” the court may impose many different restrictions on parenting time, such as restricting travel.

CONCLUSIONS AND RECOMMENDATIONS

The Committee discussed various aspects of the Act and, in its deliberations, focused on the standard of proof that would be needed to determine whether a parent is a high risk for abduction of a child. The Committee concluded that a bill should be introduced, substantially in conformance with the Act. Specific issues in the Act include the following:

- Custody Order
 - Basis for court’s jurisdiction;
 - The manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;
 - A detailed description of each party’s custody and visitation rights and residential arrangements for the child;
 - A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and
 - Identification of the child’s country of habitual residence at the time of the issuance of the order.
- If there is a threat of abduction, the order should be even more specific and include such things as:
 - An imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:
 - the travel itinerary of the child;
 - a list of physical addresses and telephone numbers at which the

- child can be reached at specified times; and
 - copies of all travel documents;
 - A prohibition of the respondent directly or indirectly:
 - removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;
 - removing or retaining the child in violation of a child-custody determination;
 - removing the child from school or a child-care or similar facility; or
 - approaching the child at any location other than a site designated for supervised visitation;
- A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;
- With regard to the child's passport:
 - a direction that the petitioner place the child's name in the U.S. Department of State's Child Passport Issuance Alert Program;
 - a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and
 - a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;
- As a prerequisite to exercising custody or visitation, a requirement that the respondent provide:
 - to the U.S. Department of State's Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child to the court:
 - (I) proof that the respondent has provided the information in subparagraph (A); and
 - (ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;
 - to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and
 - a written waiver under the Privacy Act, 5 U.S.C. Section 552a [as amended], with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and
- Upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States;
- Limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

- Require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child,

including reasonable attorneys fees and costs if there is an abduction; and

- Require the respondent to obtain education on the potentially harmful effects to the child from abduction.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

545N-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

http://www.kslegislature.org/klrd

November 15, 2006

DISPOSITION OF DISTRICT COURT DOCKET FEES

The material in this memorandum deals with how docket fees collected from district courts are distributed among various state and local entities. The background section of the memorandum relies heavily on information contained in the budget submitted by the Judicial Branch, as does Appendix 1, which was prepared by the Office of Judicial Administration. Appendix 1 lists each district court docket fee by case type, amount of fee, authorizing statute, and disposition.

Background

Kansas changed to a uniform system of district court docket fees in 1974. Prior to that time, an estimate was made of anticipated costs involved in civil cases and litigants made a deposit as "security for costs" to cover expected expenses that likely would be incurred in the case. At the end of the case, accounts were adjusted and money refunded or additional costs assessed. The system was costly to maintain and time consuming.

The docket fee system implemented in 1974 involved a uniform fee paid to the court for the cost of services. The original docket fees were \$35 for civil cases and varying fees for criminal cases, depending upon the nature of the crime. For a few years (from 1984 to 1995), local law libraries could charge differing library fees that were in addition to statutorily set docket fees, which caused docket fees to be nonuniform. In 1996, the Legislature enacted legislation that returned docket fees to a uniform level and also added docket fees for filing post-divorce motions for changes in child custody, modifications of child support orders, or changes in visitation.

In addition to statutorily-set docket fees, the Kansas Supreme Court imposed a surcharge on district court docket fees from April 1, 2002, to June 30, 2006. The first surcharge was imposed from April 1, 2002, to June 30, 2003, for the purpose of generating additional revenues to operate the Judicial Branch. The surcharge was extended three times to generate additional funding for FY 2004 and FY 2005. At the time of the surcharge's imposition, Attorney General Carla Stovall opined that "The Kansas Supreme Court has inherent authority to take action necessary to insure that it is adequately funded to carry out its judicial functions. As long as the Court has made the necessary findings of urgency and necessity, its order . . . is a proper exercise of this inherent power. (Attorney General's Opinion No. 2002-17.) The opinion was in response to a request from a legislator who asked whether the Chief Justice had the authority to impose a surcharge on court costs and whether the Chief Justice's actions usurped the authority of the Legislature to make appropriations. With the exception of the surcharge, all other docket fees are set statutorily. The 2006 Legislature appropriated funding from the State General Fund to replace the surcharge revenue, and the surcharge expired on June 30, 2006. In addition, the 2006 Legislature enacted legislation specifying that, from now on, only the Legislature can establish fees for court procedures.

The 2006 Legislature also raised docket fees for four purposes: to provide additional funding for the State General Fund associated with an approved judicial salary increase (*2006 Session Laws of Kansas*, Ch. 195, as amended by *2006 Session Laws of Kansas*, Ch. 218); to provide an increase in funding for the Kansas Law Enforcement Training Center Fund (*2006 Session Laws of Kansas*,

Senate Judiciary

1-11-07

Attachment 2

Ch. 170); to provide funding for the Kansas Judicial Council's judicial performance evaluation process (2006 Session Laws of Kansas, Ch. 195, as amended by 2006 Session Laws of Kansas, Ch. 218); and for the Child Exchange and Visitation Centers Fund (2006 Session Laws of Kansas, Ch. 195). Funding for the latter purpose is provided by an increase in the domestic post-decree motion filing fee only.

Distribution of Docket Fees

The law provides that certain state and local entities will receive a specified portion of district court docket fees and that the balance will be credited to the State Treasury. The Office of Judicial Administration estimates that \$21,949,439 in district court docket fees will be credited to the State Treasury in FY 2007. The amount in the State Treasury is allocated on a percentage basis among a number of state agency funds. In the material that follows, each fund that receives district court docket fees is described, beginning with those funds that receive money "off the top" and ending with those in the State Treasury that receive the balance. Following each fund name is the statute which authorizes the fund.

INITIAL DISTRIBUTION OF DISTRICT COURT DOCKET FEES as Provided for by KSA 20-362

County General Fund

Monthly, the Clerk of the District Court must remit revenues received from docket fees in specific amounts that are set forth statutorily, as follows:

- \$10 for each docket fee paid pursuant to KSA 60-2001 (civil actions) and KSA 60-3005 (foreign judgments);
- \$10 for each \$36.50 or \$61.50 docket fee paid pursuant to KSA 61-4001 (limited action cases), KSA 61-2704, and KSA 61-2709 (small claims); and
- \$5.00 for each \$19.50 docket fee paid pursuant to KSA 61-4001 (limited action cases) and KSA 61-2704 (small claims) during the preceding calendar month.

The money is credited to county general funds and can be used for operating expenditures of the county.

County Law Library Fund KSA 20-3126; KSA 20-3129

Current law requires attorneys to register in counties in which their principal office is located. If a majority of registered attorneys elects to have a county law library, a fee to support the library is assessed all registered attorneys in the county, except those employed by the State Board of Indigents' Defense Services. The fee is statutorily set at between \$2.00 and \$10.00 for civil and felony criminal cases, and between \$.50 and \$7.00 in all other cases.

In counties in which there is a law library, the Clerk of the District Court is directed to remit monthly to the board of trustees of the County Law Library Fund a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

Prosecuting Attorneys' Training Fund KSA 28-170a

Each county has a prosecuting attorneys' training fund from which expenditures may be made for the cost of training personnel in the offices of the county or district attorney. County and district attorneys are required to submit a report by March 15 of each year to the Attorney General and to the chairs of the House and Senate Judiciary Committees showing the amount of fees paid into the fund the preceding year, the amount and purpose of each expenditure, and the fund balance on December 31 of the preceding year.

Revenues to the funds are from a \$1.00 fee charged by the Clerk of the District Court in cases brought under KSA 28-172a, which pertains to criminal, traffic, fish and game, and juvenile tobacco cases, appeals from municipal courts, and cases brought under the Kansas Code for Care of Children and the Kansas Juvenile Justice Code, and each mental illness, drug abuse, or alcoholism treatment action.

Indigents' Defense Services Fund KSA 28-172b

The Indigents' Defense Services Fund was created in 1987 and is administered by the State Board of Indigents' Defense Services. It is used to provide counsel and related services for indigent defendants.

Revenues to the Fund are from a fee of \$.50 assessed by the Clerk of the District Court in cases brought under KSA 28-172a, which pertains to criminal, traffic, fish and game, and juvenile tobacco cases, appeals from municipal courts, and cases brought under the Kansas Code for Care of Children, the Kansas Juvenile Justice Code, and each mental illness, drug abuse, or alcoholism treatment action. Docket fee revenues to the Fund are estimated to be \$600,000 in FY 2007.

Law Enforcement Training Center Fund KSA 74-5619

The Law Enforcement Training Center Fund was created in 1988 to pay operating expenses of the Kansas Law Enforcement Training Commission, including operation of the Kansas Law Enforcement Training Center. The Center, established in 1968, is the central law enforcement training facility in the state and trains municipal, county, and state law enforcement officers. The Center is a Continuing Education unit of the University of Kansas and is located in Yoder (Reno County).

Revenues to the Fund are from a fee of \$15.00 assessed for each case brought under KSA 28-172a, which pertains to criminal, traffic, fish and game, and juvenile tobacco cases and appeals from municipal courts. Docket fee revenues are estimated to be \$3,260,990 in FY 2007.

DISTRIBUTION OF DISTRICT COURT DOCKET FEE REVENUE CREDITED TO THE STATE TREASURY

Docket fee revenues that remain following the distribution of fees described above are credited to the State Treasury, from which they are allocated based on the percentages shown below:

Distribution of District Court Docket Fees from the State Treasury – FY 2007 Est.

<u>Name of Fund</u>	<u>Administering Authority</u>	<u>Percentage of Docket Fees</u>	<u>Revenues Credited to Fund (est.)</u>
Access to Justice Fund	Chief Justice, Kansas Supreme Court	4.92%	\$ 1,079,912
Judicial Branch Nonjudicial Salary Initiative Fund	Chief Justice, Kansas Supreme Court	17.85	3,917,975
Judicial Branch Education Fund	Chief Justice, Kansas Supreme Court	2.10	460,938
Judicial Technology Fund	Chief Justice, Kansas Supreme Court	4.25	932,851
Dispute Resolution Fund	Judicial Administrator, Office of Judicial Administration	0.34	74,628
Judicial Council Fund	Judicial Council	1.11	243,639
Judicial Performance Fund	Judicial Council	3.54	777,010
Crime Victims Assistance Fund	Attorney General	0.56	122,917
Protection from Abuse Fund	Attorney General	2.68	588,245
Kansas Juvenile Delinquency Prevention Trust Fund	Commissioner of Juvenile Justice	1.24	272,173
Juvenile Detention Facilities Fund	Commissioner of Juvenile Justice	2.73	599,220
Trauma Fund	Secretary of Health and Environment	1.48	324,852
Permanent Families Account in the Family and Children Investment Fund	Judicial Administrator, Office of Judicial Administration	0.21	46,094
Child Exchange and Visitation Center Fund	Attorney General	0.67	147,061
State General Fund	--	<u>56.32</u>	<u>12,361,924</u>
TOTAL	--	<u>100.00%</u>	<u>\$ 21,949,439</u>

The material below gives a brief description of each fund from which distributions from the State Treasury are made, including the fund name and authorizing statute, purpose of the fund, and other revenue sources.

**Access to Justice Fund
KSA 2005 Supp. 20-166**

The Access to Justice Fund was created in 1996 and is administered by the Chief Justice of the Kansas Supreme Court. The purpose of the Fund is to “[make] grants for operating expenses to programs, including dispute resolution programs, which provide access to the Kansas civil justice system for persons who would otherwise be unable to gain access to civil justice.” Grant guidelines are established by the Kansas Supreme Court, which established a committee made up of representatives of the Judicial Branch, the Kansas Bar Association, and Kansas Legal Services to draft guidelines, subject to the Court’s approval.

**Judicial Branch Nonjudicial Salary Initiative Fund
KSA 2005 Supp. 20-1a14**

The Judicial Branch Nonjudicial Salary Initiative Fund, under the administration of the Chief Justice of the Kansas Supreme Court, was created in 2000 in response to a nonjudicial employee salary initiative proposed by the Judicial Branch. The Legislature approved a one-time salary upgrade and raised docket fees to pay for the upgrade. Revenues from the increase are credited to the Judicial Branch Nonjudicial Salary Initiative Fund and can only be used to pay for salaries of nonjudicial personnel.

**Judicial Branch Education Fund
KSA 2005 Supp. 20-1a11**

The Judicial Branch Education Fund was created in 1992 and is under the administration of the Chief Justice of the Kansas Supreme Court. In addition to revenues from docket fees, the Fund receives revenues from municipal court cases. Money from the Fund is used to educate and train Judicial Branch officers and employees, for administering the training, testing, and education of municipal judges pursuant to KSA 12-4114, for educating and training municipal judges and municipal court support staff, and for the planning and implementation of a family court system as provided by law. The statutes also allow money from other sources, such as federal grants, to be credited to the Fund to be used for the purposes for which money in the Judicial Branch Education Fund may be expended.

**Judicial Technology Fund
KSA 20-1a12**

The Judicial Technology Fund was established in 1992. In FY 1993, docket fees for cases filed in Kansas district courts were raised \$1.50 to provide revenues for the Fund. It is under the administration of the Chief Justice of the Kansas Supreme Court. Money in the Fund is used to implement technological improvements in the Kansas court system and to fund meetings of the Judicial Council Technology Advisory Committee. In addition to docket fee revenues, federal grants for technology have been credited to the Fund. For example, docket fee revenues have been used in recent years to match federal Byrne grants in order to implement a statewide court accounting and case management system which integrates the data collection and maintenance of court processes into one system and allows the courts to retrieve reports and data that currently are printed and mailed. The multi-year project was funded with approximately \$5.7 million in Byrne grants, with a

25 percent state match from the Judiciary Technology Fund (docket fees) and a small amount of money from Kansas Savings Incentive Program funds (State General Fund savings).

Dispute Resolution Fund KSA 5-517

The Dispute Resolution Fund was created in 1994 to fund activities under the Dispute Resolution Act (KSA 5-501 *et seq.*). It is administered by the Judicial Administrator, Office of Judicial Administration. Funding primarily is used for grants to approved dispute resolution centers and may include revenues from other sources, such as mediator registration fees and public and private grants.

Judicial Council Fund KSA 20-2208

The Judicial Council Fund was created in 2003 and funded from a \$1.00 increase in docket fees. It is administered by the Judicial Council. The purpose of the Fund is to pay operating expenses of the Judicial Council, which formerly had been funded primarily from the State General Fund and a special revenue fund which had as its source of revenue fees recouped from selling publications prepared by the Council.

Judicial Council Judicial Performance Fund

The 2006 Legislature established the Judicial Performance Fund, to be used for the judicial performance evaluation process (*2006 Session Laws of Kansas*, Ch. 195.) 2006 House Substitute for Senate Bill 337 established the Commission on Judicial Performance as an independent committee of the Judicial Council.

The goals of the Commission are: To improve the judicial performance of individual judges and justices and thereby improve the judiciary as a whole; where judges and justices are subject to retention elections, to disseminate the results from the judicial performance evaluation process to enable voters to make informed decisions about continuing judges and justices in office; and to protect judicial independence while promoting public accountability of the judiciary.

It is estimated that \$777,010 in docket fee receipts will be credited to the fund in FY 2007.

Crime Victims Assistance Fund KSA 74-7334

The Crime Victims Assistance Fund is administered by the Attorney General and was created in 1989 to make grants for on-going operating expenses for public and private programs, including court-appointed special advocate programs, which provide the following:

- Temporary emergency shelter for victims of child abuse and neglect;
- Counseling and assistance to victims of child abuse and neglect; and

- Educational services directed at reducing the incidence of child abuse and neglect and diminishing its impact on the victim.

Money from the Fund may be used by the Attorney General for administrative expenses related to victims rights programs under the Attorney General's jurisdiction, to make grants to existing programs, and to establish and maintain new programs that provide services to crime victims. The Fund also receives revenues from fines, penalties, and forfeitures and from marriage license fees. Marriage license fee revenue is dedicated to supporting child exchange and visitation centers. Other funds received by the Attorney General for victims rights programs, such as federal grants, may be credited to the Crime Victims Assistance Fund.

Protection from Abuse Fund KSA 74-7325

The Protection from Abuse Fund, administered by the Attorney General, was established in 1984 for the purpose of making grants for on-going operating expenses of domestic violence programs that provide the following:

- Temporary emergency shelter for adult victims of domestic abuse or sexual assault and their dependent children;
- Counseling and assistance to those victims and their children; or
- Educational services directed at reducing the incidence of domestic abuse or sexual assault and diminishing its impact on the victims.

Grants must be based on the numbers of persons served and must be made only to the City of Wichita or to agencies which have, as their primary function, the prevention of domestic violence or sexual assault or which provide residential services or facilities to family or household members who are victims of domestic violence or sexual assault. In order to qualify for grants, programs must meet a series of statutory requirements, including meeting the requirements of Section 501(c) of the Internal Revenue Code of 1986; having trustees who are representative of diverse racial, ethnic, and socioeconomic groups; and meeting a 50 percent match of revenues received from the Protection from Abuse Fund from other sources.

In addition to docket fee revenues, the Fund receives marriage license fees and any other money, such as federal grants, which may be spent for purposes of the Fund.

Kansas Juvenile Delinquency Prevention Trust Fund KSA 75-7021

The Kansas Juvenile Delinquency Prevention Trust Fund was created in 1996 and is administered by the Commissioner of Juvenile Justice. (It replaced the Kansas Endowment for Youth Trust Fund.) Revenues from the Fund are used to make grants to further the purpose of juvenile justice reform, including prevention, treatment, and rehabilitation programs and programs that further the partnership between state and local communities. Eligible programs are those that combine accountability and sanctions with intensive treatment and rehabilitation services.

Grants from the Fund are made based on the number of persons to be served and other requirements established by the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention. In addition to docket fees, other revenues also may be credited to the Fund.

**Juvenile Detention Facilities Fund
KSA 79-4803**

The Juvenile Detention Facilities Fund was created in 1986 to make grants for the retirement of debt of facilities for the detention of juveniles or for the construction, renovation, remodeling, or operational costs of facilities for the detention of juveniles, including grants made to counties for the operation of county facilities. The Fund also receives 5 percent of the balance of all money credited to the State Gaming Revenues Fund. The Fund is administered by the Commissioner of Juvenile Justice.

**Trauma Fund
KSA 75-5670**

The Trauma Fund was established in 1999 and is under the administration of the Secretary of Health and Environment. The Fund supports activities of the Secretary related to the Secretary's duties under KSA 75-5664 *et seq.*, which involve developing a statewide trauma system plan, supporting the six regional trauma councils, providing trauma education, and developing and maintaining a statewide trauma registry.

**Permanent Families Account in the Family and
Children Investment Fund
KSA 38-1808**

The Permanent Families Account is an account in the Family and Children Investment Fund and is administered by the Judicial Administrator, Office of Judicial Administration. It receives a modest amount of revenues from docket fees (under \$50,000 in FY 2005) and relies primarily on federal funding and revenues from birth certificate fees. Another account in the Family and Children Investment Fund, the Family and Children Trust Account, is administered by the Secretary of Social and Rehabilitation Services for programs and services related to child abuse and neglect prevention. This account does not receive any revenues from docket fees.

Expenditures from the Permanent Families Account are made for the following purposes:

- The provision of technical assistance to district courts or local groups wanting to establish a local citizen review board or a court-appointed special advocate (CASA) program (limited to no more than 12 percent of total expenditures from the Account);
- Grants to CASAs; and
- Grants to district courts to establish, operate, and evaluate local citizen review boards.

The Judicial Administrator is authorized to accept any grants, loans, gifts, or donations from public and private entities to assist in the development of supplemental funding sources for local and state programs.

Child Exchange and Visitation Center Fund

The 2006 Legislature added the Child Exchange and Visitation Center Fund of the Attorney General to the list of funds receiving a portion of docket fee receipts. *2006 Session Laws of Kansas*, Ch. 195.) The Attorney General administers grants for the Child Exchange and Visitation Program, which provides centers across the state for victims of domestic or family violence and their children to allow court-ordered child exchange or visitation in a manner that protects the safety of all family members.

It is estimated that \$147,061 in docket fee receipts will be credited to the fund in FY 2007.

DOCKET FEES EXPENDED FROM THE JUDICIAL BRANCH EMERGENCY SURCHARGE FUND

As explained earlier, there was an additional district court docket fee that is not statutory. It is the Judicial Branch Emergency Surcharge, first imposed by the Kansas Supreme Court in April 2002, which was used for ongoing operations of the Judicial Branch. The surcharge ended June 30, 2006. Annual expenditures from the Fund were in the range of \$3,500,000.

Attachment 1

Docket Fees and Distribution

2-10

CASE TYPE	Statutory Docket Fee	Statute or Supreme Court Rule	County General Fund	Law Library Fund*	Prosecuting Attorneys' Training Fund	Indigents Defense	Law Enforcement Training Center	State**
Appeals (municipal court)	\$ 64.50	28-172a	0	X	1.00	.50	15.00	Balance
Appellate Court Review	125.00	SCR 2.04	0	0	0	0	0	125.00
Civil	106.00	60-2001	10.00	X	0	0	0	Balance
Foreign Judgment (another state)	106.00	60-3005 60-2001	10.00	X	0	0	0	Balance
Foreign Judgment (another county)	5.00	28-170 60-2001	0	0	0	0	0	5.00
Tax Warrant	15.00	28-170	0	0	0	0	0	15.00
Personal Property Tax	5.00	28-170	0	0	0	0	0	5.00
Statutory Bond	5.00	28-170	0	0	0	0	0	5.00
Hospital Lien	5.00	28-170	0	0	0	0	0	5.00
Lis Pendens	5.00	28-170	0	0	0	0	0	5.00
Mechanic's Lien	5.00	28-170	0	0	0	0	0	5.00
Intent to Perform	5.00	28-170	0	0	0	0	0	5.00
Oil & Gas Mechanic's Lien	5.00	28-170	0	0	0	0	0	5.00
Divorce/Paternity	147.00	60-2001	10.00	X	0	0	0	Balance
Post Decree Motion	33.00	60-1621	0	0	0	0	0	33.00
Limited Action (\$500 or less)	28.00	61-4001	5.00	X	0	0	0	Balance

2-11

CASE TYPE	Statutory Docket Fee	Statute or Supreme Court Rule	County General Fund	Law Library Fund*	Prosecuting Attorneys' Training Fund	Indigents Defense	Law Enforcement Training Center	State**
Limited Action (\$500.01 - \$5,000)	\$ 48.00	61-4001	10.00	X	0	0	0	Balance
Limited Action (\$5,000.01 - \$25,000)	94.00	61-4001	10.00	X	0	0	0	Balance
Transfer Limited Action to Civil (original \$28.00)	119.00	61-2910 60-2001	5.00	X	0	0	0	Balance
Transfer Limited Action to Civil (original \$48.00)	99.00	61-2910 60-2001	0	X	0	0	0	Balance
Transfer Limited Action to Civil (original \$94.00)	53.00	61-2910 60-2001	0	X	0	0	0	Balance
Post-Judgment Promotion of Ch 61 to Ch 60	15.00	28-170	0	0	0	0	0	15.00
Small Claims (\$500 or less)	30.00	61-2704	5.00	X	0	0	0	Balance
Small Claims (\$500.01 - \$4,000)	50.00	61-2704	10.00	X	0	0	0	Balance
Criminal (murder/manslaughter)	172.50	28-172a	0	X	1.00	.50	15.00	Balance
Criminal (felony)	163.00	28-172a	0	X	1.00	.50	15.00	Balance
Criminal(misdemeanor)	128.00	28-172a	0	X	1.00	.50	15.00	Balance

2-12

CASE TYPE	Statutory Docket Fee	Statute or Supreme Court Rule	County General Fund	Law Library Fund*	Prosecuting Attorneys' Training Fund	Indigents Defense	Law Enforcement Training Center	State**
Children's Advocacy Center Fund	\$ 100.00	20-370	0	0	0	0	0	100.00
BIDS Admin. Fee	100.00	22-4529	0	0	0		0	0
Probation Fee – misc.	25.00	21-4610a	0	0	0	0	0	25.00
Probation Fee – felony	50.00	21-4610a	0	0	0	0	0	50.00
Expungement	100.00	22-2410 21-4619 38-1610	0	0	0	0	0	100.00
Traffic	66.00	28-172a	0	X	1.00	.50	15.00	Balance
DL Reinstatement	50.00	8-2110	0	0	0	0	0	50.00
Fish & Game	66.00	28-172a	0	X	1.00	.50	15.00	Balance
Child in Need of Care	25.00	38-1511	0	X	1.00	.50	0	Balance
Juvenile Offender	25.00	38-1613	0	X	1.00	.50	0	Balance
Juvenile Tobacco	66.00	28-172a	0	X	1.00	.50	15.00	Balance
Marriage License	50.00	23-108a	0	0	0	0	0	50.00
Juvenile Probation Fee - Misdemeanor	25.00	20-167	0	0	0	0	0	25.00
Juvenile Probation Fee - Felony	50.00	20-167	0	0	0	0	0	50.00
Adoption	41.50	59-104	0	X	0	0	0	Balance
Foreign Adoption	5.00	28-170 59-2144	0	0	0	0	0	5.00
Conservatorship &/or Guardianship	62.50	59-104	0	X	0	0	0	Balance
Probate Trust	62.50	59-104	0	X	0	0	0	Balance

2-13

CASE TYPE	Statutory Docket Fee	Statute or Supreme Court Rule	County General Fund	Law Library Fund*	Prosecuting Attorneys' Training Fund	Indigents Defense	Law Enforcement Training Center	State**
Filing Will & Affidavit	\$ 41.50	59-104	0	X	0	0	0	Balance
Probate Descent	42.50	59-104	0	X	0	0	0	Balance
Probate Estates	102.50	59-104	0	X	0	0	0	Balance
Probate Transcript (another county)	16.50	59-104	0	X	0	0	0	Balance
Probate Transcript (another state)	101.50	59-104	0	X	0	0	0	Balance
Refusal to Grant Letters	41.50	59-104	0	X	0	0	0	Balance
Termination of Joint Tenancy	41.50	59-104	0	X	0	0	0	Balance
Termination of Life Estate	41.50	59-104	0	X	0	0	0	Balance
Commitment of Sexually Violent Predator	26.50	59-29a01	0	X	1.00	.50	0	Balance
Treatment of Alcoholism, Drug Abuse or Mentally Ill	27.50	59-104	0	X	1.00	.50	0	Balance

- * An "X" in this column indicates that, in counties where there is a county law library, a library fee may be imposed in an amount determined by the trustees of the law library for the benefit of the law library in that county. The fee is statutorily set by KSA 2004 Supp. 20-3129 at between \$2.00 and \$10.00 for Chapter 60 civil cases and criminal felony cases and at between \$0.50 and \$7.00 for all other cases.
- ** Docket fees that are credited to the State Treasury either are specified by amount or are what remains after certain other amounts are credited to other state or local entities. "Balance" indicates that the State Treasury receives an amount remaining after statutory allocations are made first.

Source: Office of Judicial Administration.