

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 5, 2008 in Room 313-S of the Capitol.

All members were present except:

Ben Hodge - excused  
Annie Kuether - excused  
Jason Watkins - excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Eric Anderson, Attorney from Salina  
Randy Hearrell, Kansas Judicial Council  
District Judge Jean Shepard, 7<sup>th</sup> Judicial District

The hearing on **SB 412 - health care; medical assistance repayment; discretionary trusts**, was opened.

Eric Anderson, Attorney from Salina, appeared before the committee to explain the proposed bill. The purpose of the bill is to clear up some unintended consequences of changes made in 2004. The supplemental needs trust will allow for the planning of estates in a coherent manner. The bill also defines "public assistance" to include but not be limited to Medicaid, Medicare and Social Security Act. (Attachment #1)

Randy Hearrell, Kansas Judicial Council, expressed their support for the bill, even with the changes that have been made. (Attachment #2)

The hearing on **SB 412** was closed.

The hearing on **SB 431 - probate, small estates, increasing allowances for spouses and minor children**, was opened.

Randy Hearrell, Kansas Judicial Council, commented that the bill increases the amount of certain personal property one can transfer to successors by affidavit. The current limit is \$20,000 and the bill increases it to \$40,000. It also increases the allowances for spouses and minor children from \$35,000 to \$50,000 when a resident of the state dies. (Attachment #3)

The hearing on **SB 431** was closed.

The hearing on **SB 432 - uniform transfer on death security registration act**, was opened.

Randy Hearrell, Kansas Judicial Council, stated they received an e-mail from a trust officer regarding the way "security" is defined in the Uniform Transfer on Death Security Registration Act. The transfer on death option is not applicable to security accounts including agency and brokerage accounts. (Attachment #4)

The hearing on **SB 432** was closed.

The hearing on **SB 435 - amendment to the revised Kansas Juvenile Justice Code and the Kansas Code for Care of Children**, was opened.

District Judge Jean Shepard, 7<sup>th</sup> Judicial District, explained that the bill would address some technical amendments needed. (Attachment #5)

The hearing on **SB 435** was closed.

The committee meeting adjourned at 4:15 p.m. The next meeting was scheduled for March 6, 2008.

# CLARK, MIZE & LINVILLE

## CHARTERED

PETER L. PETERSON  
JOHN W. MIZE  
GREG A. BENGTON  
MICKEY W. MOSIER  
PAULA J. WRIGHT  
ERIC N. ANDERSON  
DUSTIN J. DENNING  
MICHAEL P. ALLEY  
PETER S. JOHNSTON  
JARED B. JOHNSON

ATTORNEYS AT LAW  
129 S. EIGHTH, P.O. BOX 380  
SALINA, KANSAS 67402-0380  
TELEPHONE: (785) 823-6325  
FAX: (785) 823-1868  
128 N. MAIN  
LINDSBORG, KANSAS 67456  
TELEPHONE: (785) 227-2010

C.L. CLARK (1908 – 2004)  
JAMES P. MIZE (1910 – 1988)

AUBREY G. LINVILLE  
L.O. BENGTON  
RETIRED

[www.cml-law.com](http://www.cml-law.com)

March 5, 2008

To: Kansas House Judiciary Committee  
From: Eric N. Anderson, Esq.  
RE: Senate Bill 412

Thank you for the opportunity to submit testimony on SB 412. I have had the privilege of testifying before the Senate Judiciary Committee on this matter twice last Spring and once during the House/Senate Conference Committee concerning SB 32, which was part of the 2007 Session, and earlier this year on SB 412. It is now my privilege to testify before all of you on SB 412.

As a brief reminder, the purpose of SB 412 is to clear up some unintended consequences of changes made to K.S.A. 39-709(e)(3) in 2004. Those unintended consequences greatly constrained the ability of parents of children with special needs to adequately plan for their children. In addition, for irrevocable supplemental needs trusts prepared before 2004 that did not specifically state an intent distributions were to be supplemental to "medicaid, medical assistance or title XIX of the social security act," those trusts were not permitted to be amended notwithstanding a clear intent by the Settlor of the Trust that the trust was to be supplemental to governmental benefits.

I'm happy to say that after all of the testimony on SB 32 and numerous additional discussions with Reid Stacey and Brian Vazquez of The Kansas Health Policy Authority ("KHPA"), we came to an agreement as to language that would solve the problems inherent in 39-709(e)(3). We presented the agreed upon language to the Probate Section of The Kansas Judicial Council in September 2007, and I understand the Judicial Council submitted its recommendations to the legislature consistent with the joint proposal from KHPA and me.

We now have SB 412 which is substantially similar to our joint proposal. I understand that KHPA is taking a neutral position on this bill, but from my perspective that is positive. In my opinion, SB 412 is a good piece of legislation and I heartily support its passage because it solves all of the criticisms that I had concerning the 2004 version of K.S.A. 39-709(e)(3). With the changes SB 412 makes to K.S.A. 39-709(e)(3):

- A supplemental needs trust must state a clear intent that it be supplemental to public assistance, but the trust does not need to specifically use the words "medicaid, medical assistance or title XIX of the social security act" when referring to public assistance;
- Supplemental needs trusts may be amended;
- Parents of minor children can nominally fund a supplemental needs trust although the parents still owe a duty of support to their minor children; and
- Full funding of a supplemental needs trust is still permitted by a person when that person owes no duty of support to the disabled beneficiary.

Overall, I am very satisfied with the language of SB 412 and would urge this Committee to vote in favor of this Bill.

Thank you very much for your consideration on this matter.

House Judiciary  
Date 3-5-08  
Attachment # 1



## KANSAS JUDICIAL COUNCIL

JUSTICE ROBERT E. DAVIS, CHAIR, LEAVENWORTH  
JUDGE JERRY G. ELLIOTT, WICHITA  
JUDGE ROBERT J. FLEMING, PARSONS  
JUDGE JEAN F. SHEPHERD, LAWRENCE  
SEN. JOHN VRATIL, LEAWOOD  
REP. MICHAEL R. O'NEAL, HUTCHINSON  
J. NICK BADGEROW, OVERLAND PARK  
GERALD L. GOODELL, TOPEKA  
JOSEPH W. JETER, HAYS  
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kscourts.org/kansas-courts/judicial-council

EXECUTIVE DIRECTOR  
RANDY M. HEARRELL  
STAFF ATTORNEYS  
NANCY J. STROUSE  
CHRISTY R. MOLZEN  
NATALIE F. GIBSON  
ADMINISTRATIVE ASSISTANTS  
JANELLE L. WILLIAMS  
MARIAN L. CLINKENBEARD  
BRANDY M. WHEELER

**TO: House Judiciary Committee**  
**FROM: Kansas Judicial Council - Randy M. Hearrell**  
**DATE: March 5, 2008**  
**SUBJECT: 2008 Senate Bill 412**

I am appearing to testify in support of 2008 Senate Bill 412. SB 412 is very similar to 2007 SB 32 as it was amended by the Senate Judiciary Committee last session. The Legislature assigned the study of SB 32 to the Judicial Council and the study was conducted by the Council's Probate Law Advisory Committee (PLAC). The subject of medical assistance for trust beneficiaries was also studied by the Special Committee on the Judiciary.

As passed by the Senate, Senate Bill No. 32 proposed amendments to K.S.A. 2006 Supp 39-709(e)(3) to clarify that resources from a trust executed on or after July 1, 2004, would be considered an available resource in determining eligibility of a trust beneficiary for medical assistance unless the trust is funded more than nominally from resources of a person who owed no duty of support and who intended the trust to be supplemental to public assistance. The amendments struck the requirement of K.S.A. 39-709(e) that "the intent that the trust be supplemental to public assistance be contemporaneous" and struck the requirement that language in the trust make specific reference to "medicaid, medical assistance or title XIX of the Social Security Act." K.S.A. 2006 Supp. 39-709 (e) was also amended to add a new subsection (5) which provided, "Any trust created before July 1, 2004, can be amended if such amendment is permitted by the Kansas Uniform Trust Code."

The PLAC considered copies of the written testimony of Eric Anderson, Reid Stacey and Molly Woods before the Special Committee on the Judiciary. In addition, Mr. Anderson and Mr. Stacey attended the September 19, 2007 meeting of the PLAC to discuss Senate Bill 32. The Committee was prepared to hear a discussion of their differences, but when they appeared they had reached a compromise on those differences and jointly proposed amendments to K.S.A. 2006 Supp. 39-709 (c)(3) very similar to those now contained in 2008 Senate Bill 412. In addition, the PLAC independently prepared proposed amendments to the same section that are very similar to SB 412. The version of the amendments drafted by the Probate Law Advisory Committee is not significantly different from SB 412 and the Judicial Council supports passage of the bill.

House Judiciary  
Date 3-5-08  
Attachment # 2



## KANSAS JUDICIAL COUNCIL

JUSTICE ROBERT E. DAVIS, CHAIR, LEAVENWORTH  
JUDGE JERRY G. ELLIOTT, WICHITA  
JUDGE ROBERT J. FLEMING, PARSONS  
JUDGE JEAN F. SHEPHERD, LAWRENCE  
SEN. JOHN VRATIL, LEAWOOD  
REP. MICHAEL R. O'NEAL, HUTCHINSON  
J. NICK BADGEROW, OVERLAND PARK  
GERALD L. GOODELL, TOPEKA  
JOSEPH W. JETER, HAYS  
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kscourts.org/kansas-courts/judicial-council

EXECUTIVE DIRECTOR  
RANDY M. HEARRELL  
STAFF ATTORNEYS  
NANCY J. STROUSE  
CHRISTY R. MOLZEN  
NATALIE F. GIBSON  
ADMINISTRATIVE ASSISTANTS  
JANELLE L. WILLIAMS  
MARIAN L. CLINKENBEARD  
BRANDY M. WHEELER

### MEMORANDUM

**TO:** House Judiciary Committee

**FROM:** Kansas Judicial Council - Randy M. Hearrell

**DATE:** March 5, 2008

**RE:** 2008 SB 431

The Judicial Council was requested by the Legislature to review the dollar limitation in K.S.A. 59-1507b relating to the transfer of certain personal property to successors by affidavit. The current dollar limit in the statute is \$20,000 and has been the limit since July 1, 2000. The previous limit was \$10,000 and had been in effect for twenty years.

The Committee proposes increasing the limit in K.S.A. 59-1507b to \$40,000. This amount is the same as the Missouri Small Estates Act and is beneficial to the citizens of Kansas because if administration is required in small estates it is expensive and time consuming, given the amount of property involved.

The increases to \$50,000 in K.S.A. 59-403 (Allowance to Spouse and Minor Children), 59-6a215 (Elective Share of Surviving Spouse - Homestead or Homestead Allowance), and 59-2287 (Refusal to Grant Letters of Administration) are proposed to keep up with inflation and keep the amounts proportional to the new amount in K.S.A. 59-1507b.

House Judiciary  
Date 3-5-08  
Attachment # 3



## KANSAS JUDICIAL COUNCIL

JUSTICE ROBERT E. DAVIS, CHAIR, LEAVENWORTH  
JUDGE JERRY G. ELLIOTT, WICHITA  
JUDGE ROBERT J. FLEMING, PARSONS  
JUDGE JEAN F. SHEPHERD, LAWRENCE  
SEN. JOHN VRATIL, LEAWOOD  
REP. MICHAEL R. O'NEAL, HUTCHINSON  
J. NICK BADGEROW, OVERLAND PARK  
GERALD L. GOODELL, TOPEKA  
JOSEPH W. JETER, HAYS  
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kscourts.org/kansas-courts/judicial-council

EXECUTIVE DIRECTOR  
RANDY M. HEARRELL  
STAFF ATTORNEYS  
NANCY J. STROUSE  
CHRISTY R. MOLZEN  
NATALIE F. GIBSON  
ADMINISTRATIVE ASSISTANTS  
JANELLE L. WILLIAMS  
MARIAN L. CLINKENBEARD  
BRANDY M. WHEELER

### MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Kansas Judicial Council - Randy M. Hearrell  
**DATE:** March 5, 2008  
**RE:** 2008 SB 432

The Judicial Council undertook a study of a problem with the Uniform Transfer on Death Security Registration Act (UTODSRA) at the request of Michael K. Sears who is Vice President and a Trust Officer with Great Plains Trust Company in Overland Park.

Mr. Sears expressed concern with the way the term "security" is defined in the UTODSRA. Mr. Sears' correspondence to the Council described the problem as follows:

"The concern I have is the way the term "security" is defined. The Kansas version refers to a couple other Kansas statutes for the definition of security. I think those definitions are fine. However, the Kansas version of the Act modified the uniform version so that the definition of "security" no longer includes a "security account" as one of the definitions of security. The term "security account" is defined in the Act to include things such as a brokerage account or an agency account with a bank or a trust company. These types of accounts are not defined as securities in the other Kansas statutes referenced by the Act. As a result, according to the actual language of the Act, the transfer on death option is not applicable to "security accounts" including agency and brokerage accounts. I don't think this is the intent of the statute."

The Judicial Council considered the problem described by Mr. Sears and as a result proposed 2008 SB 432 and supports its passage. Attached is an e-mail from Mr. Sears expressing support for the solution to the problem SB 432 proposes.

Also attached is a copy of the definitions section to the original UTODSRA which shows in the original Act "a security account" was a part of the definition of "security", and was not included when Kansas enacted the Act in 1994.

House Judiciary  
Date 3-5-08  
Attachment # 4

**Hearrell, Randy [KSJC]**

---

**From:** Mike Sears [mike@greatplainstrust.com]  
**Sent:** Thursday, January 24, 2008 11:11 AM  
**To:** Vratil, John [Senate]  
**Cc:** Hearrell, Randy [KSJC]  
**Subject:** Kansas Uniform Transfer on Death Securities Registration Act

Dear Senator Vratil,

I wanted to write you regarding a minor issue that I think needs to be fixed regarding the Uniform Transfer on Death Securities Registration Act (17-14a01 et. seq)("the Act"). I brought this to the attention of the judicial council, and they suggested that I write to you directly as well.

The concern I have is the way the term "security" is defined. The Kansas version refers to a couple other Kansas statutes for the definition of security. I think those definitions are fine. However, the Kansas version of the Act modified the uniform version so that the definition of "security" no longer includes a "security account" as one of the definitions of security. The term "security account" is defined in the Act to include things such as a brokerage account or an agency account with a bank or a trust company. These types of accounts are not defined as securities in the other Kansas statutes referenced by the Act. As a result, according to the actual language of the Act, the transfer on death option is not applicable to "security accounts" including agency and brokerage accounts. I don't think this is the intent of the statute.

While I do not think it has caused any problems to date, I think it could potentially cause a problem in the future. Every banker or trust officer that I have spoken to has indicated to me that they currently allow for a transfer on death designation for agency and brokerage accounts. It is my understanding that the TOD designation is a creature of statute, not common law, and therefore the only basis for recognizing such a designation is statutory. If a technical reading of the statute does not allow for a TOD designation on a security account, a problem could arise when the TOD designation differs from the decedent's other estate planning documents. For example, if a decedent's will says that all his assets are to be distributed to his son, and the decedent's five million dollar investment account has a TOD designation naming his daughter as the beneficiary, the son may argue that the TOD designation is invalid in an attempt to have that account pass to him under the will. This could create potential liability for the bank or financial institution that allowed the designation and for the attorney or advisor who recommended the TOD designation. In addition, it frustrates the intent of the decedent.

I think the issue can be addressed by either amending KSA 17-49a01(e) to include "security accounts" in the definition of security, or by amending KSA 17-49a03 to read "A security or security account may be registered . . . " I think this would clarify the statute and conforms to the intent of the law.

I would support such a change, and other bankers and trust officers that I have spoken to support the change as well.

If you have any questions, please feel free to call or e-mail me.

-Mike

Michael K. Sears, J.D., CTFA  
Vice President / Trust Officer  
Great Plains Trust Company  
7700 Shawnee Mission Parkway, Suite 101  
Overland Park, KS 662020  
(913) 647-1289 / FAX (913) 831-0007  
[www.greatplainstrust.com](http://www.greatplainstrust.com)

Unif.Probate Code § 6-301

Uniform Laws Annotated Currentness

Uniform Probate Code 1969 (Refs & Annos)

▣ Article VI. Nonprobate Transfers on Death (1989)--(Revised 1989 Version) (Refs & Annos)

▣ Part 3. Uniform TOD Security Registration Act (Refs & Annos)

→ § 6-301. Definitions.

In this part:

- (1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
- (2) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.
- (3) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.
- (4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account. ✓
- (5) "Security account" means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.



## KANSAS JUDICIAL COUNCIL

JUSTICE ROBERT E. DAVIS, CHAIR, LEAVENWORTH  
JUDGE JERRY G. ELLIOTT, WICHITA  
JUDGE ROBERT J. FLEMING, PARSONS  
JUDGE JEAN F. SHEPHERD, LAWRENCE  
SEN. JOHN VRATIL, LEAWOOD  
REP. MICHAEL R. O'NEAL, HUTCHINSON  
J. NICK BADGEROW, OVERLAND PARK  
GERALD L. GOODELL, TOPEKA  
JOSEPH W. JETER, HAYS  
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kscourts.org/kansas-courts/judicial-council

EXECUTIVE DIRECTOR  
RANDY M. HEARRELL  
STAFF ATTORNEYS  
NANCY J. STROUSE  
CHRISTY R. MOLZEN  
NATALIE F. GIBSON  
ADMINISTRATIVE ASSISTANTS  
JANELLE L. WILLIAMS  
MARIAN L. CLINKENBEARD  
BRANDY M. WHEELER

### MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Kansas Judicial Council  
**DATE:** March 5, 2008  
**RE:** 2008 Senate Bill No. 435

### BACKGROUND

In 2006, the Legislature passed the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code, both effective January 1, 2007. As with any significant code revision, some issues arise that require immediate attention while other issues become apparent only after some time has passed. The Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee (Committee) worked with the 2007 Legislature to amend sections of the Codes that needed immediate change. Sections changed in 2007 related to juvenile fingerprints and photographs, reading of reports pertaining to evaluation or development needs of the child, and service of process. Since then, the Committee has prepared practice forms for both the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code and in doing so, the Committee has identified several other areas that need to be amended. Some of the proposed amendments are technical in nature, some are for clarification and some are required to remain in compliance with federal acts or regulations. The Committee proposes Senate Bill 435 to correct these problems.

### COMMENT TO CHANGES

The majority of the changes recommended in 2008 Senate Bill 435 are technical or clarifying in nature. Sections 8, 15 and 20 contain technical changes while Sections 1- 3, 6, 7, 9-11, and 13 clarify current language. In addition, the Senate Committee made several changes requested by the JO/CINC Advisory Committee. The changes are in section 4 (on page 8), to section 8 (on page 14), to section 17 (on page 23) and to section 20 (on page 28). The amendments made by the House

House Judiciary  
Date 3-5-08  
Attachment # 5



Committee to these sections are technical or clarifying in nature and are not substantive. The more substantive changes recommended are in Sections 4, 5, 12, 14, 16 to 19, and 21, and are discussed below.

The amendment in Section 4 replaces K.S.A. 38-133, which will be repealed, and clarifies that where a child's parents refuse to give consent or are not available to give consent, and surgical or medical care is determined by a physician to be necessary for the welfare of such child, the providing of health care to the child should not be delayed until disposition.

The amendment in Section 5 pertains to service of process and makes it consistent with K.S.A. 60-304(c) relating to service on a disabled person. K.S.A. 77-201(27) includes those who are incapacitated or imprisoned in its definition of "under legal disability." In addition, the second sentence of subsection (d) was stricken to remove the requirement that the person in charge of an institution consult with the parent to complete service of process. The Committee is of the opinion that such a requirement is inappropriate and that communication of the client's wishes to the court is the role of the attorney.

The amendments in Sections 12 and 17 relate to amendments to the Adoption and Safe Families Act (ASFA) which changed the reference from the "opportunity" to be heard to the "right" to be heard. This amendment is required by federal enactments, is tied to funding and does not alter current law.

The amendment in Section 14 is necessary because the child is in the custody of the secretary at this time, but may be living in the home of a parent.

The amendment in Section 16 clarifies the start time for scheduling permanency hearings and brings the statute in line with ASFA.

The amendment in Section 18 addresses the obstacles the Court faces when trying to obtain relinquishments from incarcerated persons or those living out of state. The proposed language allows for a written relinquishment to be acknowledged either before a judge or by a notary. The proposed language is nearly identical to K.S.A. 59-2124(c) in the adoption code.

The amendment in Section 19 adds "extended out of home placement" as defined in K.S.A. 38-2202(h), to the factors to be considered in termination of parental rights.

The amendment in Section 21 provides a clear definition of "infectious disease" that broadens permitted testing to all infectious diseases rather than limiting it to HIV and Hepatitis B as the current language seems to do. In addition, the change makes the statute consistent with the adult counterpart in K.S.A. 65-6009.