Approved: April 4, 2008
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on March 4, 2008, in Room 123-S of the Capitol.

All members were present except:
Terry Bruce- excused
Donald Betts- excused
David Haley arrived, 10:01 A.M.
Phil Journey arrived, 9:40 A.M.
Derek Schmidt arrived, 9:47 A.M.

Committee staff present:
Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Ron Nelson, Attorney, Nelson & Booth
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Risë Haneberg, Chief Court Service Officer, 10th Judicial District
Randy Hearrell, Kansas Judicial Council

Others attending:
See attached list.

The Chairman opened the hearing on **HB 2621–Child custody and parenting time; service member provisions; military deployment, mobilization or temporary duty**.

Ron Nelson testified in opposition. The bill does not solve the problems created when parents are deployed (Attachment 1). The bill as written is a confusing mass of potentially contradicting provisions. His testimony lists several specific concerns especially amending the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Linda Elrod spoke in opposition an stressed strongly against amending UCCJEA. Professor Elrod also voiced concern that the bill was "under inclusive" because it does address non-uniformed personnel that must also be deployed for extended periods of time (Written testimony not provided).

Jeff Bottenberg spoke in support, stating as a member of the Kansas Guard, the number one concern of military facing deployment is "what will happen with my children?" He urged the committee to provide deployed military some assurance that their custodial rights will be protected (Written testimony not provided).

Written testimony in support to **HB 2621** was submitted by:
Colonel Bruce Woolpert, Kansas National Guard (Attachment 2)

Written testimony in opposition to **HB 2621** was submitted by:
Charles F. Harris, Attorney, Kaplan, McMillan & Harris (Attachment 3)

There being no further conferees, the hearing on **HB 2621** was closed.

The hearing on **HB 2700–Community corrections in Johnson County; adult offender program extended to July 1, 2009** was opened.

Helen Pedigo appeared in support, providing background on the Level of Services Inventory-Revised (LSI-R) pilot program (Attachment 4). The program has been successful, and recommendations were made for state-wide implementation. Ms. Pedigo urged enactment of the bill.

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on March 4, 2008, in Room 123-S of the Capitol.

Risë Haneberg spoke as a proponent, stating the program has been successful in predicting offenders with the highest risk rate and the subsequent placement at higher levels of supervision (Attachment 5). Ms. Haneberg stated correct training of staff is crucial to the success of the program and while the initial process is more time consuming than the previous program used, Johnson County has experienced significant decreases in felony caseloads. She encouraged continuation of the program.

Written testimony in support of **HB 2700** was submitted by:
Mark Gleeson, Office of Judicial Administration (Attachment 6)
Roger Werholtz, Kansas Department of Corrections (Attachment 7)

There being no further conferees, the hearing on **HB 2700** was closed.

The Chairman opened the hearing on **HB 2643–Resolving a conflict between two statutes concerning service of process for garnishment on insurance companies**.

Randy Hearrell testified in support, indicating **HB 2643** will resolve a potential conflict regarding the amount of response time available to an insurance company served with garnishment papers (Attachment 8).

There being no further conferees, the hearing on **HB 2643** was closed.

A copy of the Sub-Committee report on **SB 409** and related bills was distributed to the committee.

The meeting adjourned at 10:26 A.M. The next scheduled meeting is March 5, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-4-08

NAME	REPRESENTING
Linda Elrod	self & children generally
Mark Gleeson	Judicial Branch
Rise Hembery	Jo Co Court Services
Marilyn M. Harrell	Judicial Council
Helen Pedigo	KSC
Brenda Harmon	KSC
T. Maddox	KDOC
Sean Miller	Capitol Strategies
Austin Hayden	Hein Law Firm
Melissa Labra	Sen. Goodwin
Dustin Meyer	Troeger, Smith, & Assoc.
Katie Firebaugh	Kearney & Associates
Whitney Damron	KS Bar Assn.
Jeff Bottenberg	AHIP
Ron Nelson	self, KBA

LAW OFFICES
NELSON & BOOTH
SUITE 117
11900 WEST 87TH STREET PARKWAY
SHAWNEE MISSION, KANSAS 66215-2807

RONALD W. NELSON
JOSEPH W. BOOTH *

TRACIE PRESSGROVE
PARALEGAL

TELEPHONE: (913) 469-5300
TELECOPIER: (913) 469-5310
RONELS@NELSONBOOTH.COM
JOEBOOTH@NELSONBOOTH.COM
KANSAS-DIVORCE.COM

Tuesday, March 4, 2008
Kansas Senate Judiciary Committee
2008 Kansas Legislative Session

RE: HB 2621
Child Custody and Military Deployment

TESTIMONY OF RONALD W. NELSON
On HB 2621 – Issues Surrounding Child Custody Disputes with Military Servicemembers

Members of the Committee: Good morning. My name is Ronald W. Nelson. I practice domestic relations law with my offices in Shawnee Mission, Kansas. My practice emphasizes handling complex domestic relations issues in divorce, parentage and other domestic relations disputes including child custody and child support. My clientele is fairly evenly split between representation of men and women. Over the years, a significant number of my clients are associated with the United States Military; either as the servicemember or as the spouse of a servicemember. In the context of those cases, I've often had to wrestle with the difficult issues that arise when the family dynamics and existing practices of sharing a child's custody are disrupted by military service including a servicemember's overseas assignment or orders to a new duty headquarters.

I appear today to suggest significant changs to HB 2621. Although, as others have testified, problems have arisen across the country in child custody cases involving children of some military service members, this bill now before the Committee does not solve the problems addressed in the best interests of those children involved and, in fact, may very well complicate and compound those problems. The bill, as written and passed by the House, is a confusing mass of potentially contradicting provisions that may have many charged with interpreting those changes unsure what they are to do and what are the mandates and desires of this body.

As others have testified, recently, with the increasing number of mothers and fathers deployed overseas, some significant issues have arisen with child custody arrangements in military families. The problems are not unique to military families; however, because of the large number of families affected and because these deployments are often for uncertain and multiple periods, family disputes that had been limited to a small number of people now affect a much larger number. As a result, legislation is now being considered in a number of States in addition to Kansas. In addition, because of these problems, in January 2008, Congress passed an amendment to the Servicemembers Civil Relief Act (SCRA) that makes sure that the protective provisions of that act – including the power of a servicemember to stay proceedings while that servicemember is involved in active duty and is unable to get away from those duties to attend to domestic matters.

Among the legislation proposed is an Act passed by the North Carolina Legislature – some provisions of which HB 2621 contains. Unfortunately, HB 2621 expands upon that legislation and

Senate Judiciary
3-4-08
Attachment 1

includes other provisions that do not adequately consider the effect upon the children to whom it may apply and does not even adequately protect the Servicemember.

Many of the provisions proposed to deal with this issue are good and appropriate; however, many of them do not necessarily take into consideration what would truly be in the subject child's best interests. Unfortunately, some of the proposed "remedies" use a sledgehammer to deal with a fly and others fail to consider that a general rule imposing the same result on all cases has as much chance of harming the child as benefiting the servicemember parent. These cases are tricky; these cases are delicate; these cases are complex. There is no "one-size-fits-all" solution and any attempt to impose such a solution is bound to cause as many or more problems in execution as does the existing legal landscape.

Potentially serious problems with HB 2621 as it is now drafted are:

1. The bill purports to require that "Kansas courts shall retain jurisdiction over any custody or parenting time matter concerning a parent who receives deployment, mobilization or temporary duty orders from the military."

This is in direct competition with provisions of the UCCJEA and may cause the Kansas version of the UCCJEA to be non-complying and out-of-step with every other state in the country. There are a number of court decisions around the country interpreting when a parent has left a state for purposes of that state no longer having jurisdiction under the UCCJEA and it is imperative that Kansas maintain the uniform nature of our own UCCJEA.

2. Section 1(d) provides that, "If a parent who has joint legal custody receives deployment, mobilization or temporary duty orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise custody responsibilities" then certain things may happen.

However, "legal custody" is the power given to parents of "decision-making." The ability of two parents to act as "joint legal custodians" is not effected by where a parent lives or works or whether a parent is or is not oversees or on active military duty. The essence of "joint legal custody" is cooperation and information sharing between the two parents. "Joint legal custody" has nothing to do with "time sharing" or with which parent the child lives or how often. The inclusion of this provision is nonsensical. The purpose of the bill is to provide for those situations in which a parents mobilization effects parenting time or the co-parenting relationship; mobilization does not affect a parent's ability to be a parent or to express their desires for their child's best interests. Simply put: the bill seems to confuse concepts of legal custody and physical custody.

3. The bill provides that "Any custody order for the child entered because of such parent's deployment, mobilization or[,] temporary duty [or unaccompanied tour] orders during the parent's absence shall end no later than 10 days after the parent returns, but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child."

This provision does not adequately define what is an appropriate absence time for this rule to apply. There are sometimes when the parent who was the primary residential parent has been gone for

military duty a month to a year or more, but this bill treats them all the same – even though in the eyes a child (and depending on that child's age and other factors) the circumstances are vastly different. Whenever there is an "automatic" provision in child custody laws, those "automatic" rules do not consider a child's best interests, but consider only expediency and rules. In child custody matters, only flexible rules are appropriate because of the wide variety of situations that are covered and the wide variety of personalities and needs involved.

How does an automatic termination of a temporary custodial change consider the best interests of the child? What if the child has become settled in a new environment? What if the child is in the middle of the school year in another school district or another city or state? What if the original custody order did not truly consider the child's best interests, but was made as an accommodation of circumstances that existed at the time the custody arrangement was originally made that have completely changed in the interim? What if the child and the non-servicemember parent have formed a different bond than they had before the servicemembers deployment that did not exist before the child changed residence from the servicemembers home? What if upon returning from deployment the servicemember chooses to locate to a different place than the servicemember lived before deployment?

The "saving provision" that the provision "shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging *an immediate danger of irreparable harm to the child*." Is "immediate danger to the child" really the standard we want to impose? What happens to those children who are in the middle of a regular school year in another district or state with the other parent whose academic studies, extracurricular activities and other "stabilizing" events are upended by this "automatic" termination of the previous orders? Does such an event constitute "irreparable harm?" Probably not. Does such an event cause an "immediate danger?" Perhaps; but who is to decide and what is the standard? Will this bill cause fewer problems, or more?

4. The bill provides that "If a parent with parenting time rights receives deployment, mobilization or[,] temporary duty [or unaccompanied tour] orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise parenting time rights, the court may delegate the parent's parenting time rights, or a portion thereof, to a family member or members of the service member's family with a close and substantial relationship to the minor child for the duration of the parent's absence."

This provision may violate a parent's constitutional rights (Troxel vs. Granville). It also treats a third party as if they are on the same level as a parent -- which they are not (see Troxel). This provision likely injects more conflict into a family than it solves by setting up a conflict.

What happens, however, when this "assignment" is made without consultation with the other parent? What if the person to whom rights are assigned is unknown or unacceptable to the non-servicemember parent? What if the person to whom the rights are assigned has an adversarial relationship with the non-servicemember parent? What if a servicemember seeks to assign primary residency status to another family member in derogation of the rights of the non-servicemember parent?

5. The bill amends KSA 60-1625(b)(4) to provide that "if either parent is a service member, as defined in section 1, and amendments thereto, provisions for custody and parenting time upon military deployment, mobilization or temporary duty of such service member."

However, the bill puts this provision in 60-1625 as a required provision rather than as an option, allowed provision (as is inferred in other language in the bill). This kind of provision can already be included in a parenting plan if the parents' desire and it should be included in the statutory language, if at all, as an example of a detailed provision included in a parenting plan under KSA 60-1625(c).

6. The bill likely conflicts with provisions of the federal Servicemembers Civil Relief Act, rather than enhances it as it seems is the intent.

As mentioned in the first part of my testimony, in January, 2008, Congress enacted an amendment to the Servicemembers Civil Relief Act, which explicitly states that "child custody" matters are included within the category of "civil actions" in which the issuance of orders are subject to the SCRA and against which the SCRA's prohibitions apply.

7. Finally, the bill indicates in a few places that despite the language of the bill, the court must consider the child's best interests above all, which seems to minimize some of the protections given by other parts of the bill.

These problems are significant and complex. The Committee must be aware of the effect that any change in current law may have on children in child-custody disputes. Children are already too often used as pawns by the adults who love them for their own selfish, manipulative, and hurtful reasons. This legislature should not play into the hands of those who would misuse a law meant to protect the rights of children. Any changes should be made with a consideration of the effect of that change on the whole family and the ways in which it will affect the child upon whom it primarily acts.

What is my suggestion to meet the problems identified by the proponents of this Bill? How are we to balance the desires of the Servicemember, the valid concerns and interests of the non-Servicemember, and most importantly, the child who is going to gain – or suffer – from whatever this Legislature passes into law?

A bill is now winding its way through the Virginia Legislature that, in my view, is far superior to the current bill in its value to protect everyone involved in a child custody case where one or both parents are servicemembers. I suggest this Bill as a Substitute for HB 2621:

VIRGINIA MILITARY PARENTS EQUAL PROTECTION ACT.

§ 20-124.7. Definitions.

For purposes of this chapter:

"Deploying parent or guardian" means a parent of a child under the age of 18 whose parental rights have not been terminated by a court of competent jurisdiction or a guardian of a child under the age of 18 who is deployed or who has received written orders to deploy with the United States Army, Navy, Air Force, Marine Corps, or a reserve component thereof.

"Deployment" means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, or a reserve component thereof to report for combat operations or other active service for which the deploying parent or guardian is required to report unaccompanied by any family member.

§ 20-124.8. Deployment is not change of circumstances.

A. A deploying parent's or guardian's absence, relocation, or failure to comply with a custody or visitation order shall not, by itself, constitute a material change in circumstances warranting a permanent modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the parent's or guardian's deployment.

B. Any court order limiting previously ordered custodial or visitation rights of a deploying parent or guardian due to the parent's or guardian's deployment shall specify the deployment as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent or guardian to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

C. The court, on motion of the deploying parent or guardian returning from deployment seeking to amend or review the custody or visitation order entered based upon the deployment, shall set a hearing on the matter that shall take precedence on the court's docket, and shall be set within 30 days of the filing of the motion. Service on the nondeploying parent or guardian shall be at that parent's or guardian's last address provided to the court in writing. Such service, if otherwise statutorily sufficient, shall be deemed sufficient for the purposes of notice of the deploying parent's or guardian's motion to amend or review custody or visitation. For purposes of this hearing, the nondeploying parent or guardian shall bear the burden of showing that reentry of the custody or visitation order in effect before the deployment is no longer in the child's best interests.

D. This section shall not otherwise preclude a parent or guardian from petitioning for a modification of a custody or visitation order based upon a change in circumstances.

§ 20-124.9. When no order is in place; expedited hearing.

If no court order exists as to the custody, visitation, or support of a child of a deploying parent or guardian, any petition filed to establish custody, visitation, or support for a child of a deploying parent or guardian shall be so identified at the time of filing by the deploying parent or guardian to ensure that the deploying parent or guardian has access to the child, and that reasonable support and other orders are in place for the protection of the parent-child or guardian-child relationship, consistent with the other provisions of this chapter. Such petition shall be expedited on the court's docket in accordance with § 20-108.

§ 20-124.10. Contents of temporary custody or visitation order.

Any order entered pursuant to § 20-124.8 shall provide that (i) the nondeploying parent or guardian shall reasonably accommodate the leave schedule of the deploying parent or guardian, (ii) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the deploying parent or guardian and the child during the deployment period, and (iii) the deploying parent or guardian shall provide timely information regarding his leave

schedule to the nondeploying parent or guardian. Willful violation of such order shall constitute contempt of court.

Thank you.

Ronald W. Nelson
NELSON & BOOTH
Suite 117; 11900 West 87th Street Parkway
Shawnee Mission, Kansas 66215
Telephone: (913) 469-5300
Email: ronald.nelson@nelsonbooth.com
www.nelsonbooth.com

KANSAS
ADJUTANT GENERAL'S DEPARTMENT

Kathleen Sebelius, Governor
Major General Tod M. Bunting

Testimony on Child Custody and Visitation Issues

To the Senate Judiciary Committee

Kansas National Guard

Date: March 4, 2008

Mr. Chairman and members of the Committee:

I am Colonel Bruce Woolpert, Legal Advisor to Major General Tod M. Bunting, the Adjutant General, and a Judge Advocate in the Kansas Army National Guard. Thank you for allowing me to comment on the important topic of child custody and visitation issues for temporary duty, mobilized, and deployed service members, and specifically how these issues will be impacted by HB 2621.

We in the National Guard appreciate the consistent willingness of Kansans to step up and help in time of need. Indeed, it is this spirit which brings many Kansans to service in the Kansas National Guard. I also appreciate the concern shown here today that there may be a need for the legislature to pass measures aimed at preventing injustices when ex-spouses use temporary military duty as *the* material change in circumstances to obtain a permanent change in custody and visitation that they might not otherwise have been able to achieve.

The administrative and legislative branches of government in the State of Kansas have shown strong leadership in supporting the troops. As you are aware, there are three active duty military

2800 SW Topeka Boulevard, Topeka, KS 66611-1287
(785) 274-1000

installations in Kansas and thousands of other Kansas residents serve in the Reserves and National Guard. In the Kansas National Guard alone, over 5,000 citizen soldiers and airmen have met the Nation's call to duty and have been mobilized into federal service over the past five years.

We all recognize that temporary military duty, the deployment of an active-duty service member, or the mobilization of a member of the National Guard or Reserves, sometimes with little advance notice, can have a seriously disruptive effect on custody and/or visitation arrangements involving minor children of service members.

Service members should be protected, as should their minor children, from the loss of custodial arrangements and disruption of family contact due to the service member's absence pursuant to military orders for temporary duty, deployment, or mobilization. In my opinion, HB 2621 provides practical solutions to many of these problems.

A federal law called the Servicemembers Civil Relief Act is meant to protect service members by staying civil court actions and administrative proceedings during military activation. For example, they can't be evicted. Creditors can't seize their property. Civilian health benefits, if suspended during deployment, must be reinstated. And yet a service member's child can be taken from them after they are deployed. Then, once the service member returns, they must fight to regain (or attempt to regain) custody. In my job as a military attorney, I have personally witnessed a multitude of such cases.

Why have current laws, both federal and state, failed to adequately protect the interests of service members? Some family court judges say that determining what's best for a child in a custody case is simply not comparable to deciding civil property disputes

and the like; they have ruled that a child's best interests trumps the federal law protecting service members. On the other hand, we acknowledge that delaying a child custody/visitation case for 12-15 months can cause another set of problems. And so, the judge, forced to make a choice, chooses what's right for the child at that moment. Often, when the service member returns home after a deployment, he or she is thrust into an uneven playing field, resulting in such temporary changes becoming permanent.

It is easy to understand the dilemma judges are facing; they recognize the competing interests. On the one hand, they don't want to penalize a parent because they are serving our country. On the other hand, they don't want to penalize the child. When one parent is deployed, the question of who is the most effective parent can almost always be determined to be the non-deployed parent. But again, it is unfair to the service member when those temporary orders caused by the deployment become long lasting.

Hence, military lawyers themselves do not always agree that stays of the process described in the Servicemembers' Civil Relief Act represent the proper course of action. Instead, we submit there are viable alternatives like the ones in HB 2621 being considered today by this Committee that will level the playing field and prevent non-service member parents from taking unfair advantage of a deployment or mobilization.

The legislatures in several other states including Arizona, Michigan, Kentucky and North Carolina have recognized the problem and have acted. HB 2621 being considered here today is similar to the laws passed in those other states in that it provides for the following key changes:

- Allows for expedited hearings upon the request of the service member;

- Allows the court to delegate the visitation of the service member to another family member;
- Requires that any temporary custody order entered upon or during a service member's deployment end within ten days after the service member returns. The law also clearly states that the service member's absence due to deployment may not be used against him or her in a change of custody hearing;
- Provides that a deployment, mobilization or temporary duty, and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances;
- Requires that parenting plans contain provisions for custody and parenting time upon military deployment, mobilization or temporary duty if one or both of the divorcing parents are service members; and
- Provides that an agreement entered into between the parents is presumed to be in the best interests of the child.

1. Expedited hearings. One of the main reasons for problems in custody and visitation cases involving deployments and mobilizations is the potential lack of time the parties have to resolve issues prior to the service member actually leaving the state to perform the military duty. My sense is that time constraints might be a greater problem for the Guard/Reserve than for those on active duty because National Guard/Reserve service members are often given less notice they will be mobilizing than their active duty counterparts. It is not unusual (although certainly not preferred) that a member of the Guard/Reserve be "command directed" to mobilize with a report date 10-15 days later. The Kansas National Guard submits that adopting this provision in Kansas might eliminate many of the problems.

2. Delegation of Visitation Rights. Perhaps of greatest concern is the current inability on the part of a service member to delegate his or her visitation rights to another family member or members. Sadly, the child's life is about to be significantly disrupted by the 12 to 15 month absence of the service member. Even more, those members of the service member's immediate family who have also played a major role in the child's life may be prevented from visiting the child, without legal recourse. The truth is that once the service member deploys or is mobilized, the remaining parent doesn't feel compelled to allow any of these family members to have visitation with the child at all during the entire deployment. Thus, not only has the child lost his or her physical closeness with the service member, but also with that entire side of the family. Depending on the child and the family, reintegration of the service member and his or her family back into the child's life post-deployment just became needlessly more difficult. HB 2621 permits the court to "…delegate the [deployed] parent's parenting time rights, or a portion thereof, to a family member with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating parenting time is in the child's best interest."

This provision presents a fair solution to a serious problem, but I believe it should be slightly modified. I suggest the phrase "to a family member" should be modified to read "to member(s) of the service member's family". This change would eliminate any doubt that the service member's spouse (the stepparent), and even half-brothers and/or sisters, can be considered by the court. Secondly, by stating "to a family member", the original language eliminates the opportunity for the Court to award the parenting time to more than one person, which may not be this group's intent.

3. Automatic Termination of Temporary Custody Orders. This Committee is cognizant of and must take into account that the court's primary concern is the best interest of the child. As

difficult as it may be for the service member to accept, there will be times when the service member must temporarily give up custody to the other parent due to a deployment, but leaves with the expectation that everything will go back to the way it was upon his or her return from deployment. However, it is conceivable that during the service member's 12-15 month absence, the child demonstrated a significant improvement in social behavior or school performance, for example. The changes could be so significant so as to make a compelling case that the new custody arrangement should be continued as in the best interest of the child. The result of such a court making such a finding might be that custody is not returned to the service member.

HB 2621 providing that "Any temporary custody order for the child during the parent's absence shall end no later than 10 days after the parent returns, but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child…" will go a long way to eliminating this type of problem.

4. Deployment, mobilization or temporary duty will not create a change of material circumstances. The Kansas National Guard submits that the child's best interest will not be negatively affected by a law stating that a service member's absence may not be held against him or her in a change of custody hearing after the deployment.

5. Parenting plans and other agreements. The Kansas National Guard submits that these provisions go a long way to helping parents proactively address the problems created by military service. As such, we ardently support both of these provisions.

In conclusion, our service men and women are being called to leave their families, jobs and friends to fight in a very difficult war. The Kansas National Guard believes that these men and women need to know that when we deploy them, they will be treated fairly by our family law court system.

Law Offices
KAPLAN, McMILLAN and HARRIS
430 North Market
Wichita, Kansas 67202-2074

Robert W. Kaplan
Calvin McMillan
Charles F. Harris

Telephone (316) 262-5175
Facsimile (316) 262-7226

March 4, 2008

Senate Judiciary Committee

Re: House Bill 2621

Dear Ladies & Gentlemen:

I regret that I am unable to testify in person. I am an attorney who practices primarily in the area of family law. I have been practicing law since 1978 and have been the Chairman of the Family Law Sections of the Kansas Bar Association and the Wichita Bar Association. I am currently the Chairman of the Family Law Advisory Committee to the Kansas Judicial Council. Since 1990, I have been a member of the Kansas Supreme Court Child Support Guidelines Advisory Committee.

I am writing to express my strong opposition to House Bill 2621 which addresses situations involving military deployments as they impact child custody. It is my understanding this bill has been passed by the House and referred to the Senate Judiciary Committee. Since 1881, the Kansas Courts have adhered to a "best interest of the child" standard in all child custody matters. This has been applied as a discretionary standard to be interpreted by the court based upon the facts in any given situation. This has been applied in all situations and stood the test of time as the appropriate standard. By giving the courts flexibility to apply the best interest standard, we have allowed them to look at the individual facts of each case.

House Bill 2621 attempts to tie the hands of our courts in the interest of protecting service persons. I am a three year veteran of the United States Army during the Viet Nam era and I certainly would be the first one to sympathize with our service persons. On the other hand, the standard has always been the best interest of the "child" **not** the best interest of the parent. The child is not a static figure to be placed on a shelf during the military deployment of the parent. The child will continue to grow and develop. This bill has the effect of placing the child on hold for the deployment. The bill permits a court to substitute a family member of the deployed parent to allow them to exercise the deployed parent's parenting time. This is directly in contravention of the *parental preference doctrine* that has also been on the books for many years as the standard that says the parent is to be preferred over third parties in the placement of a child. As explained in *In re Cooper, 230 Kan. 57,* the parent's rights of custody and control of their children are a liberty interest protected by the 14th Amendment due process clause (Syllabus 1). I believe that the bill, as it is presently worded, creates some serious constitutional questions as it allows the nondeployed parent to be deprived of the child

Senate Judiciary
3-4-08
Attachment 3

in favor of a family member of the deployed person during the deployment. This could be a period of months or years.

I also think that the bill is defective because it singles out only military personnel for protection. It is not unusual for people in Wichita, who work at the aircraft industry, to be required to participate in extended placements to Seattle as a condition of their employment. This would appear to be no different than a deployment that sent the military parent to an extended spot in the continental United States. Yet this bill has the effect of requiring the court not to consider only military deployment and its impact on the child.

This bill, while well intentioned, ignores the best interest of the child in favor of the best interest of the parent. The argument could be made that this parent is not choosing the deployment but it should be remembered that we have an all voluntary military service and that they made the choice to enter the service whether they had the child at the time or not.

I believe that this matter should be addressed on a case-by-case basis by the judge exercising discretion to determine what is in the best interest of the minor child. I urge you not to adopt this bill because of the stated defects.

Thank you for your continued service.

Very truly yours,

KAPLAN, McMILLAN AND HARRIS

BY:
CHARLES F. HARRIS

CFH:da

3-2

KANSAS

KANSAS SENTENCING COMMISSION
Honorable Ernest L. Johnson, Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

SENATE JUDICIARY COMMITTEE
Senator John Vratil, Chairman

TESTIMONY ON HOUSE BILL 2700
Extension of LSI-R© Johnson County Pilot Program
Helen Pedigo, Executive Director
Tuesday, March 4, 2008

Mr. Chairman and Committee members, thank you for the opportunity to appear before you today in support of House Bill 2700. The bill provides for a one-year extension of the sentencing pilot program in Johnson County.

Presently, offenders on probation are assigned to either court services or community corrrections based upon conviction severity level and offender criminal history, except in Johnson County, which undertook this pilot project in 2003. The Kansas Sentencing Commission formed a work group in the Fall of 2002 to address the possibility of implementing a dynamic risk/needs assessment instrument across agencies in one targeted area in Kansas. In November 2002, members of the work group met with representatives of Johnson County Community Corrections, probation and parole.

Agreement was reached to pilot the LSI-R (Level of Services Inventory-Revised©, developed by Don Andrews, Ph.D. & James Bonta, Ph.D. and marketed through Multi-Health Systems, Inc, who hold the copyright). The LSI-R inventory is a quantitative survey of attributes of offenders and their situations relevant to level of supervision and treatment decisions. Designed for ages 16 and older, the LSI-R inventory helps predict parole outcome, success in correctional halfway houses, institutional misconduct, and recidivism. The 54 items in 10 domains are based on legal requirements and include relevant factors needed for making decisions about risk and treatment. The Johnson County agencies agreed to pursue this project together. Dr. Alex Holsinger, of the University of Missouri-Kansas City, has consulted with the Johnson County pilot project to provide technical assistance and initial data analysis.

Use of this instrument allows for more individualized case management of the offender based on the pattern of risks and needs that the offender presents. Further, use of the LSI-R on offender population through the continuum of contact with various levels of supervision and custody (i.e., court services, community corrections, incarceration, and post-incarceration supervision or parole), would allow the officer to tailor supervision and services to the specific offender and, ultimately, reduce the risk of re-offense, as well as the probability of incarceration or reincarceration, thereby improving community safety.

700 SW Jackson Street, Suite 501, Topeka, KS 66603-3714

Voice 785-296-0923 Fax 785-296-0927 http://www.kansas.gov/ksc

Local policy based on a data study by Dr. Holsinger set cut-offs for offenders with scores of 0-16 remaining with Court Services, offenders with scores of 17-32 assigned to Intensive Supervised Probation, and offenders with scores of 33 and above considered for the Residential Center, Labette, or the Therapeutic Community.

The Johnson County pilot project has been successful to date. Attached findings cover a five-year span (2003 through 2007) that includes cases from both Court Services and Community Corrections. A total of 5,415 cases (4,221 from Community Corrections; 1,194 from Court Services) are involved in the analyses. Analysis focused on upon whether a case was "successful" or "unsuccessful" and how frequently activity included revocation to KDOC. "Successful" cases were those that were listed as "closed", "extended", or "open". "Unsuccessful" cases were listed as "transferred to community corrections" (from Court Services), "fugitive", "pending revocation", "reinstated", "revoked", or "warrant issued".

Paralleling the efforts of Johnson County, the Kansas Department of Corrections began using the LSI-R for offenders beginning post-incarceration supervision, entering the Reception and Diagnostic Unit, and beginning community corrections supervision. However, there are a number of issues that must be resolved prior to statewide implementation.

In October 2007, the Sentencing Commission reconvened the committee to review available data and make recommendations regarding statewide implementation of the LSI-R. During the 2009 session, the Commission plans to bring a specific proposal to the Legislature.

We ask this committee to consider this bill and recommend it favorably. I would be happy to answer your questions.

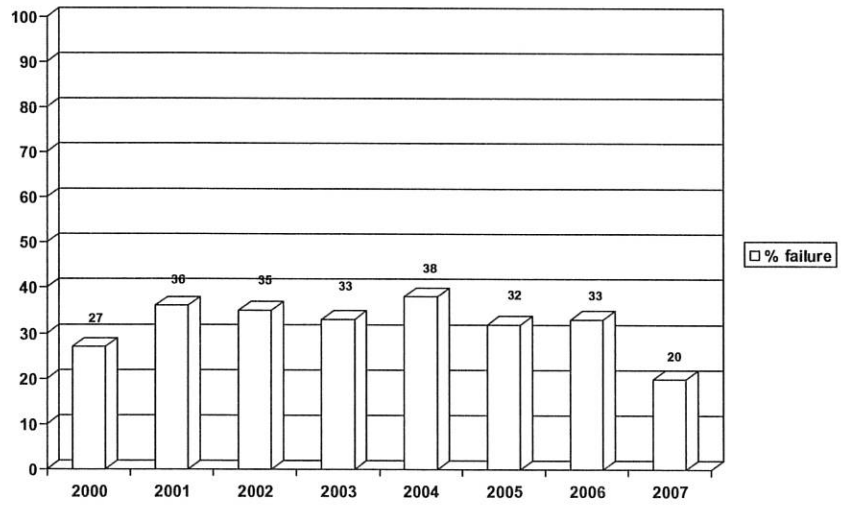
700 SW Jackson Street, Suite 501, Topeka, KS 66603-3714

Voice 785-296-0923 Fax 785-296-0927 http://www.kansas.gov/ksc

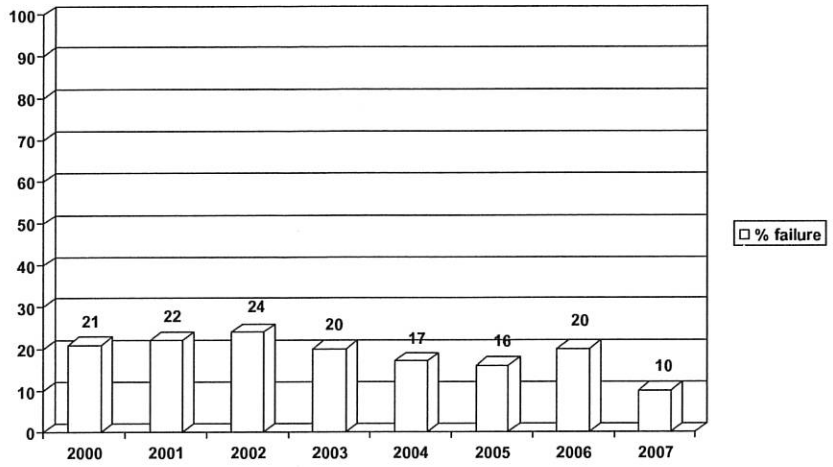
Has LSI-R had an effect on revocation, since implementation?

17

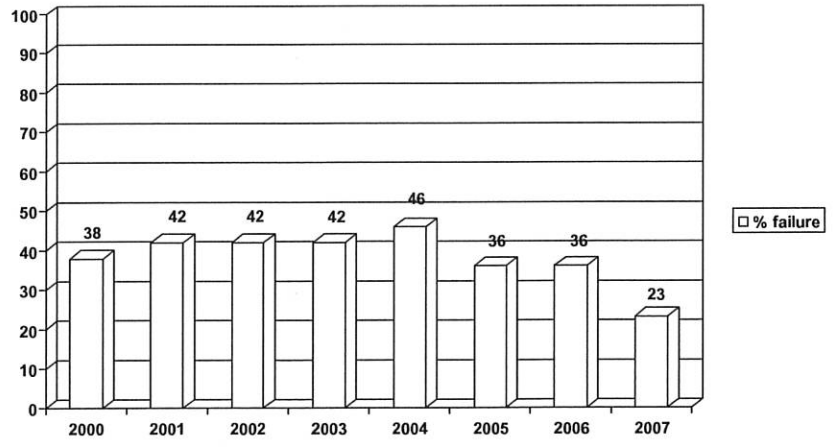
Failure Rates by Year (total sample)



Rates of Failure by year (Court Services)



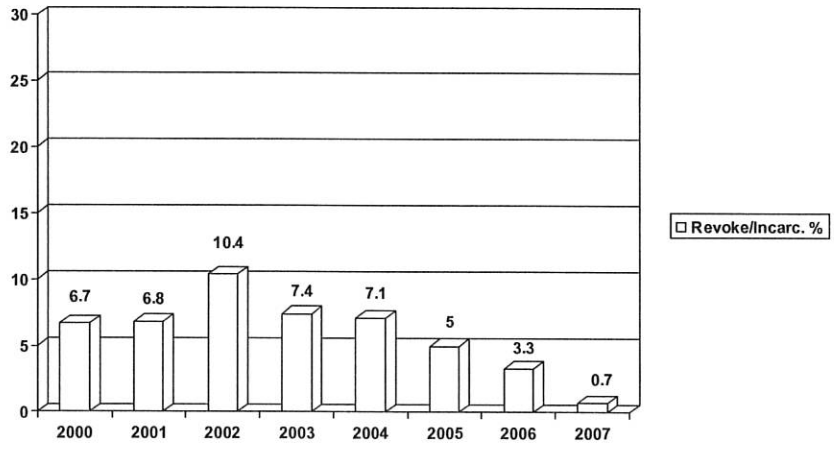
Rates of Failure by year (Community Corrections)



What impact has the implementation of the LSI-R had on "revocation with transfer to DOC" rates?

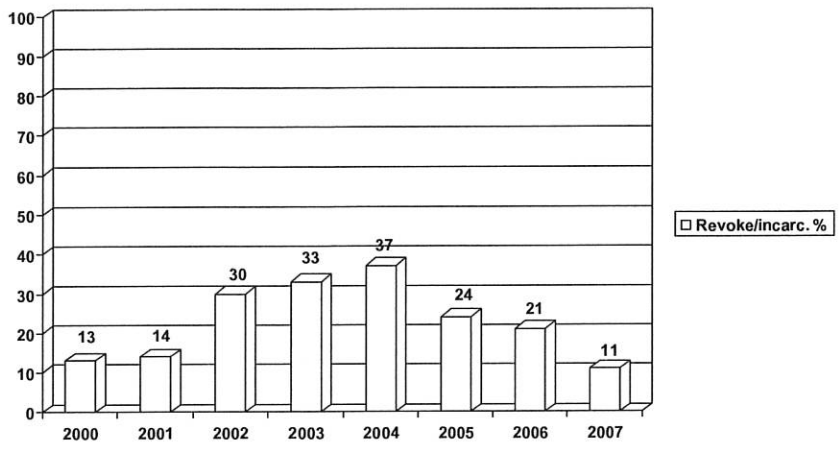
21

Revoke + Incarceration Rates* by Year: Court Services



* "Failure" criteria was defined as having been revoked, AND sent to DOC. All other categories were not counted as 'failing' cases.

Revoke + Incarceration Rates* by Year: Community Corrections



* "Failure" criteria was defined as having been revoked, AND sent to DOC. All other categories were not counted as 'failing' cases.

NOTE: Staff were not entering information at the time of case closure during 2000 and 2001. As such, the rates for those years are under-estimated.

Conclusions/Next steps

- The predictive validity of the LSI-R was demonstrated
  - The composite score is statistically linked to odds of outcome
  - Differentiates between several risk levels
  - The risk principle can be implemented
- Not as clear re: effect on case revocation
  - A possible pattern (downward revocation rates) may be emerging, particularly for Community Corrections; Not as clear for Court Services
- Appears to be an effect on revocation + transfer to DOC, post-LSI-R implementation
- Recommend continued use of LSI-R
- Additional research
  - Sub-groups
  - Harder outcome (recidivism – use LSI-R to predict arrest, incarceration violence, sex offense, etc.)

JOHNSON COUNTY COURT SERVICES
STATE OF KANSAS • TENTH JUDICIAL DISTRICT
18505 W. 119th Street • Olathe, Kansas 66061-9591 • (913) 715.7427 (913) 715.7420 fax
Risë Haneberg, Chief Court Services Officer
rise.haneberg@jocogov.org

Testimony for Senate Judiciary Committee
In support of HB 2700

I am Risë Haneberg, Chief Court Services Officer for the 10th Judicial District. Today I am representing the LSIR Pilot Project that has been in effect since 2003 in Johnson County. Court Services, Community Corrections and the judges of the 10th Judicial District have all worked together to implement the LSIR project in our county. After conferring with all the participants, I can report that we are in agreement with HB 2700 and the extension of the LSIR Pilot Project.

The Sentencing Commission has recently been briefed on the current status of the Johnson County LSIR Pilot Project and Helen Pedigo has shared some of that information with you today. The statistics do demonstrate that the use of the LSIR Risk-Needs Assessment tool has successfully predicted the offenders with the highest risk rate and has greatly assisted us in Johnson County in more effectively placing offenders with the higher risk at higher levels of supervision.

Speaking on behalf of Court Services, I would share our experience with the tool. First, the training of staff to correctly use the tool is perhaps one of the most crucial steps in the implementation process. Training is very time consuming and requires a rigorous certification process that has to be updated regularly. Staff acceptance is also a hurdle that takes time within an agency. The tool takes longer than our previous assessment process, as we designate two hour time blocks for the interview and the entry of the data following the interview. In Johnson County this interviewing process is shared with Community Corrections staff and 36-two hour time slots are set aside each month.

Benefits of using the tool have been many for Court Services. Our felony caseloads decreased from 544 in June of 2002 to 387 in December of 2007. I will note that we also had changes regarding Inter-State Compact during the same time period that also affected our numbers. Lower caseloads has greatly assisted us in the management of our offenders as caseloads prior to use of the LSIR were an average of 160 and now our caseloads average 135 offenders. Although this caseload number is still high, the majority of offenders on supervision with Court Services is misdemeanors and not affected by this project. Other factors can account for the reduction in felony caseload, but clearly the ability to place felony offenders directly on ISP with Community Corrections is one of the main factors. In addition, our judges adopted a new probation

order that has only required conditions on the form. All other conditions of probation are set by the Court Services Officer. These conditions are formulated by addressing the three top risk areas as indicated on the offender's LSIR results. Thus, probation conditions are much more tailored to fit the needs of the offender and we are not enforcing orders of probation that involve numerous conditions under a "once size fits all approach." Our revocation rates appear to have decreased. As compared to 2002, the last complete year when we did not do LSIR, 194 cases were revoked and reinstated to local programming, while 31 cases went to DOC. In 2007, 91 cases were revoked and reinstated locally while 19 went to DOC. I would additionally report that in the 10th, we are also using the LSIR on our misdemeanor caseload as it has assisted us in the over-all management of our caseload.

HB 2700 will allow for the continuation of the Pilot Project, as well as give the time that is needed to properly train staff and form policy for the effective implementation of the LSIR statewide.

State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

Senate Judiciary Committee

Testimony in Support of HB 2700
March 4, 2008

Mark Gleeson
Office of Judicial Administration

House Bill 2700 changes the date by which court services officers are to begin administering a statewide, mandatory, standardized risk assessment instrument to determine the level of risks and needs of selected adult offenders. The Kansas Sentencing Commission has selected the Level of Service Inventory – Revised (LSI-R) to be this instrument. House Bill 2700 enables the Kansas Sentencing Commission to establish policies and procedures critical to the effective use of the LSI-R. Although we will have enough court services officers trained by July 1, 2008, to meet the current requirements, moving the deadline to July 1, 2009, will allow us sufficient time to complete LSI-R training for all court services officers responsible for the supervision of adult offenders. For these reasons we support the changes proposed in HB 2700.

We are not requesting the opportunity to testify but will be available to respond to questions during any hearing on this bill.

Senate Judiciary
3-4-08
Attachment 6

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2700
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

March 4, 2008

The Department of Corrections supports HB 2700. HB 2700 extends to July 1, 2009, the pilot program for community corrections placements administered by the District Court of Johnson County. The pilot program places offenders under community corrections supervision based upon a risk assessment. The data collected from the experience of Johnson County can provide guidance to the rest of the state in determining the most effective method to assign adult felony offenders to a community supervision program. The House passed HB 2700 by a vote of 121-1.

The Department urges favorable consideration of HB 2700.

900 SW Jackson – 4th Floor, Topeka, KS 66612-1284
Voice 785-296-3310 Fax 785-296-0014 http://www.dc.state.ks.us

KANSAS JUDICIAL COUNCIL

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

MEMORANDUM

TO: **Senate Judiciary Committee**

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

DATE: **March 4, 2008**

RE: **2008 HB 2643**

BACKGROUND

A member of the Judicial Council Civil Code Advisory Committee raised the issue of a potential conflict between K.S.A. 40-218 and K.S.A. 60-736 (copies of the statutes and the letter raising the issue are attached). The conflict involves the amount of response time available to an insurance company served with garnishment papers.

Pursuant to K.S.A. 40-218, when service on an insurance company has been obtained by serving the Commissioner of Insurance, the insurance company has 40 days to answer. However, K.S.A. 60-736 requires that a garnishee answer within 10 days after service of an Order of Garnishment.

The Judicial Council proposes that K.S.A. 60-736 be amended in subsection(b) by inserting "other than that required pursuant to K.S.A. 40-218, and amendments there to" to resolve the potential conflict.

Senate Judiciary
3-4-08
Attachment 8

Kansas Legislature

40-218

Chapter 40.--INSURANCE
Article 2.--GENERAL PROVISIONS

40-218. Actions and garnishment proceedings against insurance companies; process; venue; procedure; fee; record of commissioner. Every insurance company, or fraternal benefit society, on applying for authority to transact business in this state, and as a condition precedent to obtaining such authority, shall file in the insurance department its written consent, irrevocable, that any action or garnishment proceeding may be commenced against such company or fraternal benefit society in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the president or chief officer of such corporation. Such consent shall be executed by the president and secretary of the company, authenticated by the seal of the corporation, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president and secretary to execute the same. The summons, accompanied by a fee of $25, shall be directed to the commissioner of insurance, and shall require the defendant to answer by a certain day, not less than 40 days from its date.

Service on the commissioner of insurance of any process, notice or demand against an insurance company or fraternal benefit society shall be made by delivering to and leaving with the commissioner or the commissioner's designee, the original of the process and two copies of the process and the petition, notice of demand, or the clerk of the court may send the original process and two copies of both the process and petition, notice or demand directly to the commissioner by certified mail, return receipt requested. In the event that any process, notice or demand is served on the commissioner, the commissioner shall immediately cause a copy thereof to be forwarded by certified mail, return receipt requested to the insurance company or fraternal benefit society address to its general agent if such agent resides in this state or to the secretary of the insurance company or fraternal benefit society sued at its registered or principal office in any state in which it is domesticated. The commissioner of insurance shall make return of the summons to the court from whence it issued, showing the date of its receipt, the date of forwarding such copies, and the name and address of each person to whom a copy was forwarded. Such return shall be under the hand and seal of office, and shall have the same force and effect as a due and sufficient return made on process directed to a sheriff. The commissioner of insurance shall keep a suitable record in which shall be docketed every action commenced against an insurance company, the time when commenced, the date and manner of service; also the date of the judgment, its amount and costs, and the date of payment thereof, which shall be certified from time to time by the clerk of the court.

8-2

Kansas Legislature

60-736

Chapter 60.--PROCEDURE, CIVIL
Article 7.--ATTACHMENT AND GARNISHMENT

60-736. Answer of garnishment; attachment of intangible property other than earnings; form and content. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth by the judicial council.

(b) Within 10 days after service upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order and file the completed answer with the clerk of the court. The clerk shall cause a copy of the answer to be mailed promptly to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

History: L. 2002, ch. 198, § 9; July 1.

8-3

VASOS
LAW OFFICES

4400 SHAWNEE MISSION PARKWAY, SUITE 100
FAIRWAY, KANSAS 66205-2518
(913) 362-4400
FAX (913) 362-4244
VASOSLAW.COM

ATTORNEYS:
DAVID A. HOFFMAN
DONALD W. VASOS*
*KANSAS & MISSOURI

INVESTIGATORS:
GARY A. SCHOLTZ, C.L.I
RICHARD B. HINZE

December 19, 2006

FAX TRANSMISSION
- 1-785-296-1035 -

Randy M. Hearrell
Kansas Judicial Council
301 S.W. Tenth Street, Suite 262
Topeka, KS 66612-1507

RE: Proposed Legislation

Dear Randy:

With the Legislature gearing up soon I thought I would contact you regarding an issue that has arisen over a potential conflict between 40-218 (Service on Insurance Commissioner) and the answer date when an insurance company is served with garnishment papers.

K.S.A. 40-218 allows 40 days for the insurance company to answer, when service on it has been obtained by serving the Commissioner of Insurance. However, K.S.A. 60-736 (Answer of Garnishment) requires that a garnishee serve an answer within ten (10) days after service of an Order of Garnishment.

Even if service is made pursuant to K.S.A. 60-304 by serving an officer, manager, partner or resident managing general agent of an insurance company, the answer date would be 20 days for a domestic corporation and 30 days if service was made outside the state under the Long-Arm Statute.

It seems to me that this is a matter that we should address. A fix may require a change in the statute allowing service on the Commissioner of Insurance, or the garnishment statute. Since the Judicial Council publishes the forms, perhaps it could be corrected by changing the form, but I think that is unlikely.

I do know that it presents some problems for the Clerk and the Commissioner. We just had a summons rejected because the insurance company's time for answer was fixed at ten days, instead of forty.

Very truly yours,

DONALD W. VASOS

DWV:clw

8-4