

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on March 17, 2008, in Room 123-S of the Capitol.

All members were present except:

Donald Betts - excused
Greta Goodwin arrived, 9:49 A.M.
David Haley - excused
Julia Lynn arrived, 9:47 A.M.
Derek Schmidt arrived, 10:08 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:

Jeremy Barclay, Kansas Department of Corrections
Peter Ninemire
Marcie Ralston, Kansas Department of Motor Vehicles
David Hoffman, Kansas Association for Justice
Anne Kindling, Kansas Association of Defense Counsel

Others attending:

See attached list.

The Chairman opened the hearing on **SB 591—Allowing offenders who owe fines or restitution to be issued a restricted driver's license if they are in compliance with a payment agreement.**

Senator Phil Journey testified in support, indicating the bill will provide individuals during pre-release programs and under post release supervision a means to obtain driving privileges (Attachment 1). The goal is to provide a workable environment for offenders to succeed.

Jeremy Barclay appeared in support, stating **SB 591** would provide citizens the option of making payments for unpaid traffic violations (Attachment 2). Mr. Barclay feels this law would help offenders fulfill their obligations, successfully reintegrate into society, and possibly lead to an overall increase in the funds collected.

Peter Ninemier spoke in favor, stating a major obstacle to successful drug and alcohol treatment programs is the inability of an offender to drive (Attachment 3). The proposed bill will provide the opportunity for an offender to maintain employment and will help create productive, law abiding citizens.

Marcie Ralston appeared in opposition, providing the committee with several administrative concerns regarding the bill (Attachment 4). Ms. Ralston indicated the legislation would require significant computer programming changes and require additional personnel to process, track and review suspensions.

Written testimony in support of **SB 591** was submitted by:

L. Christian Hauck (Attachment 5)

Written testimony in opposition to **SB 591** was submitted by:

Judge Karen Arnold-Berger, City of Overland Park Municipal Court (Attachment 6)

There being no further conferees, the hearing on **SB 591** was closed,

The Chairman opened the hearing on **HB 2188—Professional screening panels.**

David Hoffman testified in support, indicating the bill is the result of work done to modify both the

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:34A.M. on March 17, 2008, in Room 123-S of the Capitol.

professional and medical malpractice screening panel acts to increase efficiency and effectiveness (Attachment 7). Mr. Hoffman reviewed the proposed changes to current statutes and urged enactment of the bill.

Anne Kindling spoke in favor, clarifying that sections 2 and 6 of the bill extend the time period in which parties must designate panels to 20 days (Attachment 8). Ms. Kindling stated the screening panel mechanism will be improved through the passage of the bill.

The Chairman called for final action on **SB 590—Establishing the substance abuse policy board**. The Chairman reviewed the bill and distributed a balloon amendment from the Kansas County and District Attorneys Association (Attachment 9) and a balloon amendment from the Kansas Sentencing Commission (Attachment 10).

Senator Journey moved, Senator Lynn seconded, to adopt the amendment from the Kansas County and District Attorneys Association. Motion carried.

Senator Journey moved, Senator Lynn seconded, to adopt the amendment from the Kansas Sentencing Commission. Motion carried

Senator Journey moved, Senator Lynn seconded, to recommend **SB 590** as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:32 A.M. The next scheduled meeting is March 18, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 17, 2008

NAME	REPRESENTING
Chip Wheeler	HCSF Bd of Governors
Brenda Harmon	KSC
Marcy Balske	KDOR
Carmen Aldrich	KDOR
Peter Winevire	Substance Abuse-
Richard Samwer	KCDAA
Adrian	LITTLE GOVT RELATIONS
ERIK SARTORIUS	City of OVERLAND PARK
Celle Hattle	Ks Assn for Justice
David A. Hoffman	Ks Assn for Justice
Scott Heidner	Ks Assn of Defense Counsel
Anne Kunkling	Kansas Assn of Defense Counsel
Whitney Damm	KS Bar Assn.
SEAN MILLER	CAPITOL STRATEGIES
Ed Kinnipp	KACP & KPOA

SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

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

CORRECTIONS AND JUVENILE JUSTICE
OVERSIGHT (JOINT)

**Testimony Before the
Kansas State Senate Judiciary Committee
in Support of Senate Bill 591
on Monday, March 17th, 2008**

Mr. Chairman, members of the Committee thank you very much for the opportunity to have a hearing and testify in support of Senate Bill 591.

Senate Bill 591 requires the Division of Motor Vehicles to issue restricted licenses for the operation of a motor vehicle to individuals whose license has been suspended, revoked, or canceled for failing to pay a traffic citation or their failure to set that same citation for court if certain requirements are met. As with current law, the restrictions on the driver's license are required to be printed conspicuously on the face of the operator's license. The bill parallels current law, when an individual fails to comply with a citation, the court is required to mail notice of their failure to pay fines and court costs and penalties within 30 days. If 30 days pass after the notice to the individual and they fail to abide by their payment agreement, the Division of Motor Vehicles is notified by the court to suspend the individual's driving privileges. Upon compliance with the terms of the payment agreement, their privilege to operate a motor vehicle in the State of Kansas is reinstated. The bill also allows the driver to reinstate their payment agreement a second time should they be unable to comply with the original agreement.

In reviewing the Kansas Division of Budget report regarding Senate Bill 591, in our current fiscal year I must admit I was disturbed by the fiscal note of \$128,000 SGF funding for reprogramming the computer currently used for the driver's license system and \$85,000 for the photo fee fund. The fees for reissuance of driver's licenses should generate sufficient funds to cover much of the cost. Current funding for enhancements of the driver's license computer system occurs through registration fees for vehicles. Should the Committee desire to reduce this fiscal impact, I'm sure a significant reduction could occur if individuals are only given one chance instead of two chances to continue on their payment programs with the courts for reinstatement of at least a restricted license while the payment plan is in effect.

The genesis of the legislation that amends K.S.A. 22-3717 and K.S.A. 2007 Supp. 8-237 and 8-2110 came from the 3R Commission. One of the 3R's tasks was to determine ways in which individuals during pre-release programs and under post-release supervision programs such as participating in the Department of Correction's

Senate Judiciary

3-17-08

Attachment 1

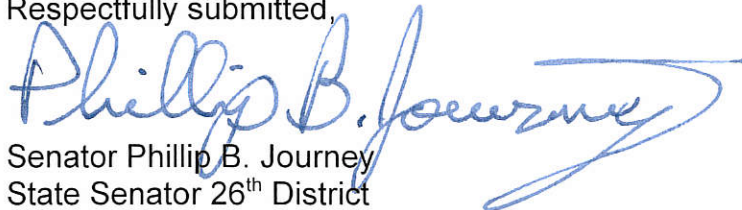
Work Release Programs could obtain driving privileges while they were under DOC supervision. The predicament many offenders find themselves in is that they do not simply get into trouble in one jurisdiction, but in many instances get into trouble in multiple jurisdictions. While they are placed into custody of the Department of Corrections for felony convictions, misdemeanor traffic cases and traffic infractions do not get resolved in DOC custody. While they are in DOC custody they are not able to inform the Department of Revenue of their new place of residence. Their licenses are suspended for their failure to comply with pending citations that they may have received immediately prior to their placement in custody. Upon release, they are unable to obtain a driver's license while they are in these pre-release programs such as work release until the pending cases are resolved and all fines, court costs, and reinstatement fees are paid in full. Without the ability to get from the work release facility to their place of employment, they are unable to obtain the funds necessary to pay the citation.

I believe that the cost of reprogramming the computer system would be offset by reduced incarceration costs for individuals who have failed to comply with their post-release requirements as they would be able to succeed during that post-release period in rebuilding their lives.

We could also offset a considerable amount of the expense by increasing reinstatement fees nominally. For example, an additional \$10 per reinstatement to help pay for these modifications in the program. Savings that can not be quantified would most certainly occur in the reduction of new crimes that would have been committed should these individuals fail to complete the rehabilitation process of these pre-release programs.

Senate Bill 591 also gives Kansans the opportunity to dispute a citation when a failure to comply has occurred. The fact pattern this is intended to address is when someone's identity has been stolen and a third person has received a citation in the name of the Kansas driver. The Kansas driver does not receive a copy of the citation as they were not the person issued the citation. Their license is suspended and so they are forced to pay the citation and have it affect their driving record even when they did not commit the driving infraction. This legislation was modified from the original 3R's version to account for that circumstance. An individual may have the opportunity to prove their innocence, and while their case is pending still be able to operate a motor vehicle to and from their place of employment. Allowing them to pay their reinstatement fee before the traffic citation is adjudicated in the court will accomplish this goal.

Respectfully submitted,



Senator Phillip B. Journey
State Senator 26th District



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 591
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 17, 2008

SB 591 would allow a court to establish a payment plan for a fine or restitution for a traffic citation, and notifies the Division of Motor Vehicles of this fact, and the Division shall issue a restricted license. If the person fails to comply with the payment plan, the Division shall be notified, and then suspend the driver's license. If the person satisfies the payment plan, the Division shall be notified by the court, at which time the restriction on the license shall be lifted. A person can do this no more than two times.

Subsection (w) allows an offender to have this same opportunity during the period of post-release supervision. This appears to allow for situations where a person was in prison when the opportunity arose to negotiate a payment plan, so the offender has this opportunity after release.

Work done by the KDOC indicates that at least half the offenders releasing from prison have some barrier to receiving a driver's license. Often it is a pending unpaid fine for a traffic violation. If an offender does not appear in court on a traffic violation, because s/he is in prison, a penalty is added, eventually a warrant is issued (creating a detainer to be answered upon release), and the case is ultimately referred for collection, which often adds 20-25% to the total figure. Thus, a fine of a few hundred dollars can turn into several hundred dollars while the person is in prison.

Meanwhile many thousands of Kansans, beyond offenders, have suspended licenses for non-payment of fines, who likely are facing similar increases in the amount when they are unable to pay the full fine.

SB 591 would provide citizens, including offenders, the option of making payments, so they can fulfill their obligations without the cost doubling. The KDOC expects this law would help offenders successfully reintegrate into society, and would also help many Kansans meet their obligations on traffic fines, hopefully leading to an overall increase in funds collected. It may

open the way to centralizing collection statewide, so even at a smaller rate for collection costs than 20-25%, a funding stream could be generated that would pay for the cost of the positions the Division of Motor Vehicle needs to administer restricted licenses.

March 17, 2008

Senator Vratil and Honorable Members of this Committee:

Thank you for this hearing on SB591 and for allowing me this opportunity to express my support for it. Prior to my current position as supervisor of substance abuse services for the Wichita and Sedgwick County Day Reporting Centers, I was as therapist and substance abuse counselor solely for the county population of offenders in our program. In that capacity, I conducted hundreds of drug and alcohol assessments, which I attempt to do from a more holistic view of the person. While formulating their treatment plans, aside from drug and alcohol issues, the main obstacle I saw with this population was a suspended driver's license due to non-payment or inability to pay a traffic citation. The fines ranged from \$150 to \$5,000, and in most cases I was told had to be paid in entirety if their license was to be reinstated.

The two things that often occurred to me was that counties and municipalities were not going to get their monies, and many of these individuals would never have a drivers license, and reach their full potential as a tax paying citizen and productive member of society. Criminal justice involved clients get buried in the system and lose hope, because in large part, they are people of very limited means. Both parole and probation officers have expressed concerns that the courts are asking some of these people to break the law in order to comply with the law, in terms of gaining employment and meeting their legal obligations with treatment, etc. I believe some judges share these concerns. If we doubt that, consider the choices a person has here and the chances one might take to put food on the table for their families.

Soon after I began encountering this issue in my counseling work, I was reviewing the recommendations of the 3R Committee and saw what amounts to this bill as one of the primary recommendations of the Reintegration sub-committee. I then recalled being present at a related hearing that included a representative from the Department of Motor Vehicles, and further recalled that this was a much larger problem than the relatively small criminally justice population I was focusing on, and that 60,000 Kansans had suspended drivers licenses, which I am under the understanding are non-DUI related. I believe that the carrot and stick approach that the 3R sub-committee suggested and Senator Journey has included in this bill is the right approach. It is my understanding that those applying for a restricted driver's license would first be required to provide proof of insurance and then meet their monthly fine payment plan in order to have this privilege, which in my view should equate with rent and food on the table.

I realize that this might all sound good, but that I have not addressed the bottom line, which is true. I have reviewed the fiscal note and realize the substantial investment by the state for the required update to the existing computer program, as well as the cost of the actual licenses. But I believe this is a tremendous opportunity to make an investment in Kansas and Kansans that will pay great dividends for years to come in terms of gaining unpaid fines and creating much more productive and law-abiding citizens. It has been my unmitigated pleasure to present in support of this legislation and again thank the members of this honorable committee for this opportunity.

Sincerely,

Peter Ninemire

Senate Judiciary

3-17-08

Attachment 3

TO: Chairman John Vratil
Members of the Senate Judiciary Committee

FROM: Marcy Ralston
Chief, Driver Control Bureau, Division of Vehicles

DATE: March 17, 2008

RE: Senate Bill 591

Thank you Mr. Chairman and Members of the Committee. My name is Marcy Ralston and I serve as the Chief of the Driver Control Bureau, Division of Vehicles, Department of Revenue.

In it's current form, Senate Bill 591 would not be an easy bill to administer. In calendar year 2007, Driver Control issued approximately 40,000 suspension notices to drivers for failing to satisfy a traffic citation. It is unknown how many drivers would be eligible for restricted driving privileges under the provisions of Senate Bill 591. In addition, many drivers are suspended for failing to satisfy multiple tickets in separate municipal and/or district courts. While one court may issue restricted driving privileges, the driver may not be eligible due to a suspension from another court, or because of another withdrawal reason. We do not impose suspension action for persons who fail to comply with court ordered restitution.

Effective July 1, 2007, Kansas courts are required to submit suspensions for failure to comply to the Division in an electronic format. This format has virtually removed the manual intervention in issuing this type of suspension notice. While we fully anticipated future legislative or administrative changes would require additional programming to the process; the level to implement SB 591 is extremely high and would require months of development, testing and implementation with the courts. Furthermore, the "see-saw" effect of suspending, then restricting, suspending again, and restricting again and possibly suspending one more time, not only impacts the processing demands, but would require a person to manually review the matter before restricted privileges could be issued. Including the court ordered restitutions, it is anticipated the volume of the workload would be greater than we could absorb with our current workforce.

The Division of Vehicles would be more than willing to work with the Kansas Department of Corrections, the district, county and municipal courts, and any other interested parties towards a solution that would benefit all of us, and be simpler to administer.

Thank you for the opportunity to speak on Senate Bill 591 and I stand for any questions.

Testimony of L. Christian Hauck
Before the Judiciary Committee of the Kansas Senate
Supporting Senate Bill 591
March 17, 2008

I am L. Christian Hauck of Hays, Kansas. I served as President and CEO of Sunflower Electric Power Corporation from 1988 until I retired from that position in 2004. Before coming to Kansas, I practiced law beginning in 1965 as Deputy City Attorney of Los Angeles, and in several corporate law positions; I have been admitted to practice law in California, Florida, New York and Colorado. I have been involved with the Kansas criminal justice system as a volunteer in prison ministry for more than 15 years, and have served Prison Fellowship's IFI program as a volunteer, instructor, counselor, and as acting interim Program Manager for a short time. I have also taught classes in the Central Kansas Reentry Project at Ellsworth Correctional Facility, and am currently mentoring a number of men in and out of Kansas prisons.

Shortly after my retirement from Sunflower, Governor Sebelius appointed me to serve on the SB45 "3Rs Committee," and I was subsequently appointed to serve as chair of the 3Rs Re-Entry Subcommittee.¹ The RESC was charged with reviewing issues, circumstances and strategies relevant to the successful re-entry into society by ex-offenders, and to report to the full committee our findings and recommendations. The overall goal of the 3Rs Committee was to gather information that could be used to shape Kansas legislative policy to the end that public safety might be enhanced, while at the same time reducing the recidivism rate for Kansas offenders who are released from prison. The full 3Rs Committee held many days of public hearings at various locations, and received testimony from numerous experts of national reputation on issues relevant to our goal. Senators Schmidt and Haley were frequent participants in the meetings of both the 3Rs and RESC.

The RESC held a number of public meetings and received testimony from many nationally recognized experts. Most of the RESC members were career professionals directly involved with ex-offender reentry issues in KDOC or related agency positions.

¹ A list of the RESC members active on January 16, 2006 is attached as Exhibit A

While there was general agreement among these professionals on a number of issues studied by the RESC, they spoke with one voice in identifying driver license suspensions as one of the top “practical” barriers to successful reentry. From their experience, and based on information furnished by the Department of Vehicles, the RESC concluded that a recommendation for a common-sense scheme to address this problem ought to be a key element in our final report, and the RESC Final Report did include specific recommendations in this area.²

Based on the RESC report to the full Committee, and after review of the idea that restricted driver licenses should be available to persons whose driving privileges are suspended because of unpaid fines and penalties, if such persons are willing to enter into judicially-approved agreements to make installment payments to retire such obligations, the Committee requested the Revisor of Statutes to draft a bill that, if it became law, would comprehensively address this problem. I have reviewed SB591, and concluded that it is substantially the same Bill as the Revisor drafted for the 3Rs Committee, and as did the RESC, unreservedly support its passage. I am currently involved with several ex-offenders whose chances for successful reentry would be substantially enhanced should they be able to gain the Kansas restricted driver license that would be available to them under this Bill.

I regret that I am unable to appear in person before the committee today, but the “Grandmother Magnet” properties of our six-day old granddaughter has drawn us to Atlanta Georgia today. At a subsequent time, I would be honored to present myself for questions by this Honorable Committee.

² A copy of the relevant pages from the RESC Final Report dated January 16, 2006 is attached.

SB 591
Written Testimony Before the Senate Judiciary Committee
Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court
March 19, 2008

My name is Karen Arnold-Burger, and I am submitting this testimony in opposition to Senate Bill 591. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

Thank you for the opportunity to address you on this topic. SB 591 requires the Division of Motor vehicles to issue a restricted license to anyone whose license has been suspended, revoked, or cancelled for failing to comply with a court ordered traffic citation if the person enters an agreement with the court to pay all fines, court costs and any penalties. If the person fails to comply, his or her license will again be suspended. The person can then come into court, make another agreement to pay, and again receive another restricted license.

Suspension of a driver's license for failure to comply with a citation is the single biggest deterrent courts have in collecting fines and otherwise getting traffic cases resolved. To dilute this process will hinder a court's enforcement efforts.

First, the standard under which the suspension is lifted under SB 591 is whether or not the defendant is "in the process of reaching an agreement to comply." This is very vague. Most courts are more than lenient when it comes to giving a defendant time to pay his or her fine or otherwise comply with a citation. They usually set up payment plans and give the defendant a court date by which time the defendant has to have either paid or appeared in court to explain why he or she hasn't and to ask for additional time to pay. It is only the most flagrant offenders, those who fail to come to court at all, that are reported to the motor vehicle division for suspension. To allow them yet another opportunity and then another one after that to disregard the court's orders severely hampers enforcement efforts.

Second, the motor vehicle division is short staffed. It currently takes months for many suspensions to be recorded on driving records. For example, when the court orders a minor's license suspended for being a minor in possession of alcohol, it has taken up to 5 months for that suspension to appear on the person's driving record. When a court orders a suspension from the bench, the suspension has often run its course before it is ever recorded on a driver's license. If the person is stopped driving during the period of suspension, nothing will happen because law enforcement has no idea the person is suspended. To add yet another layer of actions that the Division must go through in lifting suspensions, restricting, suspending, lifting suspensions, restricting and then suspending (which this bill requires) certainly will not help alleviate a problem that is already dire.

I respectfully ask that the Committee take these issues into consideration when acting on SB 591.

Senate Judiciary
3-17-08
Attachment 6

CORRECTED

Your rights. Our mission.

To: Senator John Vratil, Chairman
Members of the Senate Judiciary Committee

From: David Hoffman, Attorney at Law
On behalf of the Kansas Association for Justice

Date: March 17, 2008

Re: HB 2188 Professional malpractice screening panels—**SUPPORT**

My name is David Hoffman and I am an attorney from Fairway, Kansas. The Kansas Association for Justice is a statewide, nonprofit organization of attorneys that serve Kansans seeking justice. I appreciate the opportunity to testify on behalf of KsAJ on HB 2188. KsAJ supports HB 2188 as amended in the House, and we respectfully request that the House amendments be retained and the bill recommended by the Committee favorable for passage.

HB 2188 as amended represents a joint effort by the Kansas Association for Justice and the Kansas Association for Defense Counsel to modify both the professional and medical malpractice screening panel acts with the goal being a more efficient and effective screening panel process. KsAJ opposed HB 2188 as introduced last year because we were concerned it would have unintended consequences.

During the fall of 2007, KsAJ met with the Kansas Association of Defense Counsel (KADC) to discuss HB 2188 and whether there were mutually agreeable changes that would make the process more effective for all parties. We are pleased to report that the bill as it passed the House represents KsAJ and KADC consensus amendments.

HB 2188 makes incremental changes, but KsAJ and KADC will continue discussions to identify other areas of potential improvement in the screening panel process. However, we believe that HB 2188 as amended should advance so that progress can begin this session.

Because HB 2188 as amended is carefully crafted and negotiated, we respectfully request no additional amendments or changes to HB 2188 beyond adoption of the proposed consensus amendments.

Senate Judiciary

3-17-07

Attachment 7

HB 2188 amends the Professional Screening Panel Act, KSA 60-3502, and its corresponding section in the Medical Malpractice Screening Panel Act, KSA 60-4901, to allow a party, or defendant, to request multiple screening panels in the same case, if there is more than one professional named as a defendant. It is not unusual to have two or more professionals with different specialties, named in one case. For example, in a medical negligence case, one defendant may be an emergency medicine physician and the other a cardiologist. Depending upon the facts of the case, the standard of care may be different for each defendant. This amendment is intended to allow the court to convene multiple panels so that each defendant has the opportunity to be judged by a panel of persons in his same area of practice.

The amendments to KSA 60-3503 and 65-4902 are purely procedural in nature. As the **previous amendment was written**, when a panel is convened, even if it is convened at the request of the defendant, the plaintiff must designate his or her panel member first, and do so within 10 days. The defendant then has 10 days to designate; followed by a 10 day period for joint designation of the third member. This is a carry over from trial practice where the party who has the burden of proof generally goes first. But because the screening panel process does not incorporate the concept of burden of proof, there is really no reason for either party to go first. The amendment changes the procedure in such a way that the plaintiff and defendant both designate their panel member within the first 20 days. The parties then jointly name a third panel member within the next ten days. This amendment does not lengthen the screening panel process, it simply makes the order of panel member designation a neutral factor.

Procedural changes are also recommended to KSA 60-3505 and 65 4904. In both, the time period allowed from commencement of the screening panel to the issuance of the panel report has been increased from 90 to 180 days. Following commencement of a screening panel, and before the matter is even submitted to the panel for consideration, the parties must locate professionals willing to participate; collect and summarize the pertinent records; perform research into the applicable published standards; and then prepare their submissions to the panel. Once the submissions are made, the panel must review them; if necessary perform their own literature search; and then coordinate the schedules of four busy professionals to allow for one or more meetings. Thereafter, a report must be drafted, circulated and finalized. In reality, the process is rarely completed within just 90 days. These amendments simply create a more realistic time frame within which to complete the screening panel process.

It is also proposed that KSA 65-4904(c) be amended to correct a potential conflict between 65-4904(c) and 60-3412. KSA 65-4904(c) allows screening panel members to be subpoenaed to testify at trial regarding standard of care issues. However, in medical

malpractice actions, before such testimony can be heard, the expert must be shown to qualify under KSA 60-3412. As the committee is aware, under KSA 60-3412, before a medical expert is qualified to testify regarding the standard of care, it must be shown that the expert devoted at least 50% of his professional time to actual clinical practice, in the same profession as the defendant, for the two years preceding the alleged negligent act. The proposed amendment to KSA 65-4904(c) clarifies that the criteria of 60-3412 come into play if the panel member is called to testify at trial.

KsAJ and KADC discussed, but rejected, making compliance with KSA 60-3412 a prerequisite to panel membership. The rationale for only applying the criteria of KSA 60-3412 when a panel member is called to testify at trial stems both from the underlying purpose of the screening panel and the reality of having only a limited number of qualified persons available to serve on panels. Because the medical malpractice screening panel process is, by design, non-binding and purely advisory in nature, the need for strict evidentiary guidelines is far less than at trial. Additionally, the panel process does not incorporate either discovery procedures, or a motion and hearing process, all of which would be necessary if challenges to an experts qualifications were allowed based upon 60-3412. Additionally, a very valuable part of the pool of potential medical panel members includes individuals who, but for KSA 60-3412, qualify as experts. These include health care professionals who are recently retired or semi-retired. As an example, if KSA 60-3412 criteria was applied to panel membership, a world renowned professor from K.U. Medical Center, who may have participated in actually defining the standard of care on the topic at issue, but who now devotes the majority of his time to research and lecturing, would be excluded from participating in the screening panel process. The concern that persons not qualified under KSA 60-3412 may be chosen to serve on a panel is tempered greatly by the fact that the party who chooses to designate such an individual will know in advance that his designee will not be allowed to testify at any subsequent trial.

The remuneration for service on a panel has not changed since the acts were first passed. The proposed amendments in HB 2188 call for an increase in pay of just \$250 for both panel members and the chairperson. Even at the newly recommended amount, panel members who serve will be making a financial sacrifice.

KsAJ wishes to acknowledge and thank the KADC for their willingness to work collaboratively on making our civil justice system fair for all parties to a dispute. We respectfully request that HB 2188 as amended by the House be recommended by the Senate Judiciary Committee favorable for passage, with no additional amendments.



KANSAS ASSOCIATION OF DEFENSE COUNSEL

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Telephone: 785-232-9091 • FAX: 785-233-2206 • www.kadc.org

MEMORANDUM

TO: Senate Judiciary Committee

FROM: Anne M. Kindling
President, Kansas Association of Defense Counsel

DATE: March 17, 2008

RE: HB 2188

Chairman Vratil and Members of the Committee:

My name is Anne Kindling and I submit this written testimony on behalf of the Kansas Association of Defense Counsel in support of HB 2188. The KADC consists of more than 220 practicing attorneys who devote a substantial portion of their professional time to the defense of civil lawsuits including medical malpractice lawsuits and screening panel actions against all professionals. The KADC maintains a strong interest in the efficient administration of justice. We believe that HB 2188 as amended by the House Judiciary Committee addresses some crucial problems with the current operation of screening panels in Kansas.

The KADC and the Kansas Association for Justice (KsAJ) jointly worked on the amendments to HB 2188 which were adopted by the House Judiciary Committee. The KADC does not believe any further amendments are needed to HB 2188 at this time.

The provisions of the screening panel mechanism that will be improved through the passage of HB 2188 as amended include the following:

1. Sections 1 and 5 allow for the convening of separate screening panels when the petition or claim is filed against more than one person. This provision is consistent with Supreme Court Rule 142 which already allows separate screening panels to be convened in the discretion of the court.
2. Sections 2 and 6 extend the time period in which the parties must designate panel members. Currently, the parties must each identify a screening panel member and jointly identify a screening panel member, all within 10 days of the convening of the panel. HB 2188 would allow a more reasonable time frame: 20 days for the parties to each identify a screening panel member, and an additional 10 days to jointly identify a panel member.

Senate Judiciary

3-17-08

Attachment 8

3. Sections 3 and 7 will allow the panel 180 days to complete its work, rather than the present 90 days. This is a much more realistic time period, particularly in medical malpractice screening panels where the parties must compile and review medical records, sometimes from a number of health care providers, before completing their submissions.
4. Sections 4 and 8 will increase the payment to panel members and the panel chairperson. This is reasonable in light of the work performed by the panel members.
5. The final change is found in Section 7(c). Under the current statute, either party may subpoena any or all of the panel members to testify in a subsequent court proceeding. In medical malpractice actions, this presented a conflict with existing law found at K.S.A. 60-3412, which allows only "qualified" expert witnesses to testify, that is health care providers who devoted at least 50% of their professional time to actual clinical practice in the same profession as the defendant. Since screening panel members could potentially be retired physicians or physicians who have changed the nature of their professional practice, the amendments found in Section 7(c) will maintain consistency with K.S.A. 60-3412 so that only qualified witnesses will be permitted to testify.

On behalf of the Kansas Association of Defense Counsel, I urge you to favorably pass HB 2188 as amended by the House Judiciary Committee.

Session of 2008

SENATE BILL No. 590

By Senator Journey

2-11

9 AN ACT relating to the Kansas criminal justice coordinating council;
10 establishing the substance abuse policy board; amending K.S.A. 2007
11 Supp. 74-9501 and repealing the existing section.

12

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

14 Section 1. K.S.A. 2007 Supp. 74-9501 is hereby amended to read as
15 follows: 74-9501. (a) There is hereby established the Kansas criminal jus-
16 tice coordinating council.

17 (b) The council shall consist of the governor or designee, the chief
18 justice of the supreme court or designee, the attorney general or designee,
19 the secretary of corrections, the superintendent of the highway patrol,
20 the commissioner of juvenile justice and the director of the Kansas bureau
21 of investigation.

22 (c) The governor shall designate staff to the Kansas criminal justice
23 coordinating council. The staff shall attend all meetings of the council,
24 be responsible for keeping a record of council meetings, prepare reports
25 of the council and perform such other duties as directed by the council.

26 (d) The council shall elect a chairperson and vice-chairperson from
27 among the members of the council.

28 (e) The council shall:

29 (1) Appoint a standing local government advisory group to consult
30 and advise the council concerning local government criminal justice issues
31 and the impact of state criminal justice policy and decisions on local units
32 of government. The advisory group shall consist of a sheriff, chief of
33 police, county or district attorney, a member of a city governing body and
34 a county commissioner. Appointees to such advisory group shall serve
35 without compensation or reimbursement for travel and subsistence or any
36 other expenses;

37 (2) Define and analyze issues and processes in the criminal justice
38 system, identify alternative solutions and make recommendations for im-
39 provements;

40 (3) Perform such criminal justice studies or tasks as requested by the
41 governor, the attorney general, the legislature or the chief justice, as
42 deemed appropriate or feasible by the council;

43 (4) Oversee development and management of a criminal justice da-

Senate Judiciary

3-17-08

Attachment 9

1 tabase. All criminal justice agencies as defined in subsection (c) of K.S.A.
2 22-4701 and amendments thereto and the juvenile justice authority shall
3 provide any data or information, including juvenile offender information
4 which is requested by the council, in a form and manner established by
5 the council, in order to facilitate the development and management of
6 the criminal justice council database;

7 (5) Develop and oversee reporting of all criminal justice federal fund-
8 ing available to the state or local units of government including assuming
9 the designation and functions of administering the United States bureau
10 of justice assistance grants;

11 (6) Form such task groups as necessary and appoint individuals who
12 appropriately represent law enforcement, the judiciary, legal profession,
13 state, local, or federal government, the public, or other professions or
14 groups as determined by the council, to represent the various aspects of
15 the issue being analyzed or studied, when analyzing criminal justice issues
16 and performing criminal justice studies. Members of the legislature may
17 be appointed ex officio members to such task groups. A member of the
18 council shall serve as the chairperson of each task group appointed by
19 the council. The council may appoint other members of the council to
20 any task group formed by the council;

21 (7) Review reports submitted by each task group named by the coun-
22 cil and shall submit the report with the council's recommendations per-
23 taining thereto to the governor, the attorney general, the chief justice of
24 the supreme court, the chief clerk of the house of representatives and
25 the secretary of the senate; ~~and~~.

26 (8) (A) Establish the sex offender policy board to consult and advise
27 the council concerning issues and policies pertaining to the treatment,
28 sentencing, rehabilitation, reintegration and supervision of sex offenders.

29 (B) The sex offender policy board shall consist of the secretary of
30 corrections, the commissioner of juvenile justice, the secretary of social
31 and rehabilitation services, the director of the Kansas bureau of investi-
32 gation and the chief justice of the supreme court or the chief justice's
33 designee and two persons appointed by the criminal justice coordinating
34 council. Of the persons appointed by the criminal justice coordinating
35 council, one shall be a mental health service provider and the other shall
36 be engaged in the provision of services involving child welfare or crime
37 victims.

38 (C) Each member of the board shall receive compensation, subsis-
39 tence allowances, mileage and other expenses as provided for in K.S.A.
40 75-3223, and amendments thereto, except that the public members of
41 the board shall receive compensation in the amount provided for legis-
42 lators pursuant to K.S.A. 75-3212, and amendments thereto, for each day
43 or part thereof actually spent on board activities. No per diem compen-

1 sation shall be paid under this subsection to salaried state, county or city
2 officers or employees.

3 (D) The sex offender policy board shall elect a chairperson from its
4 membership and shall meet upon the call of its chairperson as necessary
5 to carry out its duties.

6 (E) Each appointed member of the sex offender policy board shall
7 be appointed for a term of two years and shall continue to serve during
8 that time as long as the member occupies the position which made the
9 member eligible for the appointment. Each member shall continue in
10 office until a successor is appointed and qualifies. Members shall be eli-
11 gible for reappointment, and appointment may be made to fill an unex-
12 pired term.

13 (F) The board shall submit its reports to the criminal justice coordi-
14 nating council and to the governor, the attorney general, the chief justice
15 of the supreme court, the chief clerk of the house of representatives and
16 the secretary of the senate.

17 (i) The board shall submit a report regarding public notification per-
18 taining to sex offenders, restrictions on the residence of released sex of-
19 fenders, utilization of electronic monitoring, and the management of ju-
20 venile sex offenders by the first day of the 2007 legislative session.

21 (ii) The board shall submit a report regarding treatment and super-
22 vision standards for sex offenders, suitability of lifetime release supervi-
23 sion and safety education and prevention strategies for the public by the
24 first day of the 2008 legislative session.

25 (iii) The board shall submit reports regarding any other studies, issues
26 or policy recommendations as completed.

27 (G) The sex offender policy board established pursuant to subsection
28 (e)(8) of this section shall expire on June 30, 2008.

29 (9) (A) *Establish the substance abuse policy board to consult and*
30 *advise the council concerning issues and policies pertaining to the treat-*
31 *ment, sentencing, rehabilitation and supervision of substance abuse of-*
32 *fenders. The board shall specifically analyze and study driving under the*
33 *influence and the use of drug courts by other states.*

34 (B) *The substance abuse policy board shall consist of the secretary of*
35 *corrections, the commissioner of juvenile justice, the secretary of social*
36 *and rehabilitation services, the director of the Kansas bureau of investi-*
37 *gation and the chief justice of the supreme court or the chief justice's*
38 *designee and two persons appointed by the Kansas association of addic-*
39 *tion professionals. Of the persons appointed by the Kansas association of*
40 *addiction professionals, one shall be an addiction counselor and the other*
41 *shall be a professional program administrator.*

42 (C) *Each member of the board shall receive compensation, subsis-*
43 *tence allowances, mileage and other expenses as provided for in K.S.A.*

, a prosecutor
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the Kansas
County and
District
Attorneys
Association,

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9 to carry out its duties.

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11 be appointed for a term of two years and shall continue to serve during
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15 reappointment, and appointment may be made to fill an unexpired term.

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17 nating council and to the governor, the attorney general, the chief justice
18 of the supreme court, the chief clerk of the house of representatives and
19 the secretary of the senate.

20 Sec. 2. K.S.A. 2007 Supp. 74-9501 is hereby repealed.

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

SENATE BILL No. 590

By Senator Journey

2-11

9 AN ACT relating to the Kansas criminal justice coordinating council;
10 establishing the substance abuse policy board; amending K.S.A. 2007
11 Supp. 74-9501 and repealing the existing section.
12

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

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33 police, county or district attorney, a member of a city governing body and
34 a county commissioner. Appointees to such advisory group shall serve
35 without compensation or reimbursement for travel and subsistence or any
36 other expenses.

37 (2) Define and analyze issues and processes in the criminal justice
38 system, identify alternative solutions and make recommendations for im-
39 provements;

40 (3) Perform such criminal justice studies or tasks as requested by the
41 governor, the attorney general, the legislature or the chief justice, as
42 deemed appropriate or feasible by the council;

43 (4) Oversee development and management of a criminal justice da-

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2 officers or employees.

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4 membership and shall meet upon the call of its chairperson as necessary
5 to carry out its duties.

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22 vision standards for sex offenders, suitability of lifetime release supervi-
23 sion and safety education and prevention strategies for the public by the
24 first day of the 2008 legislative session.

25 (iii) The board shall submit reports regarding any other studies, issues
26 or policy recommendations as completed.

27 (G) The sex offender policy board established pursuant to subsection
28 (e)(8) of this section shall expire on June 30, 2008.

29 (9) (A) *Establish the substance abuse policy board to consult and
30 advise the council concerning issues and policies pertaining to the treat-
31 ment, sentencing, rehabilitation and supervision of substance abuse of-
32 fenders. The board shall specifically analyze and study driving under the
33 influence and the use of drug courts by other states.*

34 (B) *The substance abuse policy board shall consist of the secretary of
35 corrections, the commissioner of juvenile justice, the secretary of social
36 and rehabilitation services, the director of the Kansas bureau of investi-
37 gation and the chief justice of the supreme court or the chief justice's
38 designee and two persons appointed by the Kansas association of addic-
39 tion professionals. Of the persons appointed by the Kansas association of
40 addiction professionals, one shall be an addiction counselor and the other
41 shall be a professional program administrator.*

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43 tence allowances, mileage and other expenses as provided for in K.S.A.*

[]
[]
, a member of the
Kansas Sentencing
Commission