Approved: March 15, 2001
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:36 a.m. on February 12, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:
Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:
Meghan Barnds, Assistant Attorney General
Judge Jean Shepherd, Kansas Judicial Council
Lara Blake Bors, Assistant Finney County Attorney
Judge Jean Shepherd, Kansas Judicial Council
Russ Jennings, Commissioner, Juvenile Justice Authority
Joyce Grover, General Counsel, Kansas Coalition Against Sexual and Domestic Violence

Others attending:
See attached list.

The Committee minutes for January 27, January 28 and January 29 were distributed for review. Senator Schodorf moved, Senator Donovan seconded, to approve the Committee minutes of January 27, January 28 and January 29. Motion carried.

Senator Schmidt moved, Senator Umbarger seconded, to reconsider **SB 369 - Open records; reconciling a conflict**. Motion carried.

Chairman Owens explained the Committee had voted to recommend **SB 369** favorably and place it on the consent calendar. Due to an error in the committee report the consent calendar designation was omitted. The bill has been referred back to the Committee to make the correction.

Senator Schmidt moved, Senator Donovan seconded, to recommend **SB 369** favorably and place it on the consent calendar. Motion carried.

The Chairman opened the hearing on **SB 456 - Creating the Kansas robo-call privacy act**.

Meghan Barnds appeared in support stating **SB 456** would restrict automated dialing devices on a content-neutral basis. The bill is based on Minnesota law which has survived constitutional review in the 8th Circuit. Enactment of **SB 456** will allow Kansas families to preserve their privacy without interruption by intrusive, automated messages. (Attachment 1)

There being no further conferees, the hearing on **SB 456** was closed.

The hearing on **SB 459 - Juvenile offenders; jury trials** and **SB 460 - Children; permanency and priority of orders** was opened.

Judge Jean Shepherd testified in support as a member of the Kansas Judicial Council's Juvenile Offender/Child in Need of Care Advisory Committee. Judge Shepherd indicated **SB 459** and **SB 460** are the results following referral of 2009 SB 88 to the Council.

Judge Shepherd reviewed the proposals in **SB 459** stating it was the wish of the Advisory Committee that Section 1 and Section 2 be deleted and referred back to the Committee for further review and urged passage of the remainder of the bill. (Attachment 2)

Minutes of the Senate Judiciary Committee at 9:36 a.m. on February 12, 2010, in Room 548-S of the Capitol.

Judge Shepherd then reviewed the language in **SB 460** and addressed concerns raised during testimony on 2009 SB 88. She indicated all concerns have been addressed and proposed amendments recommended by the Juvenile Justice Authority and the Coalition Against Domestic Violence. These changes have been agreed to by all parties. (Attachment 3)

The Chairman recessed the Committee until 1:00 p.m. in the afternoon in Room 152-S.

The meeting was called to order at 1:03 p.m. and reopened the hearing on **SB 459 - Juvenile offenders; jury trials** and **SB 460 - Children; permanency and priority of orders**.

Jeff Cowger spoke on behalf of the Juvenile Justice Authority in support of **SB 460**. Mr. Cowger indicated the JJA was in agreement of the proposed amendments. (Attachment 4)

Joyce Grover appeared on behalf of Kansas Coalition Against Sexual and Domestic Violence indicating their original opposition to the bill has been addressed and agreed with the proposed amendments. (Attachment 5)

Written testimony in opposition of **SB 459** was submitted by:
Lara Blake Bors, Kansas County & District Attorneys Association (Attachment 6)

There being no further conferees, the hearing on **SB 459** & **SB 460** was closed.

The Chairman opened the hearing on **SB 528 - Shifting the burden of proof in the property valuation appeals process**. Doug Taylor, staff revisor, reviewed the bill.

Sandy Jacquot spoke in support, stating **SB 528** will shift the burden of proof in tax appeals cases to more correctly align it with other types of civil proceedings. In many tax appeal cases the taxpayer does not introduce any evidence of value or proof the appraiser's value is incorrect. The enactment of SB 528 will return integrity to the tax appraisal process. Ms. Jacquot indicated on page 6, lines 37-39, in Section 5, and page 9, lines 1-3, in Section 6 regarding the presumption language was meant to be omitted and requested the Committee to delete the language before passage. (Attachment 7)

Andy Huckaba appeared in favor, stating the results of the tax appeals process directly impacts the City's assessed valuation. Decreased property values with out adequate findings and support reduces taxing jurisdictions revenues. This is unfair to small business owners and taxpayers who are shouldering the tax liability. County appraisers carefully analyze properties to determine the correct property value. Under the current law property values continue to erode, enactment of this bill will reinstate the presumption of correctness and validity to a county appraiser's property valuation. (Attachment 8)

Eric Sartorius testified in support, stating communities in Kansas are experiencing a significant erosion of property values due to large retail establishments utilizing the appeal process to reduce their property tax liability. This legislation would return the statutes governing commercial property tax appeals to the presumption that the appraisal value assessed was correct and urged passage of the bill. (Attachment 9)

Luke Bell spoke in opposition, stating that the shifting of burden of proof to owners had the potential to dramatically reduce the ability of individual property owners to challenge their property values. While the proposed legislation may stop abuses by large commercial property owners represented by an attorney, the overwhelming majority of residential and commercial property owners affected are relatively unsophisticated on the workings of property valuations. **SB 528** will make it nearly impossible for the typical property owner to successfully appeal a property tax valuation. (Attachment 10)

Terry Holdren appeared in opposition, stating the shifting of burden of proof to the taxpayer should not apply to agricultural land. The formula for valuation and all input data is collected and processed by the Department of Revenue. Taxpayers do not have access to this information to determine the fairness of the appraisals. Feedlots present another unique and specific process where the appeal process would be impractical and unfair. In addition, all agricultural buildings and residences are valued using the Marshall Swift Valuation program. The "print out" of input information is necessary for the taxpayer to understand the valuation and

determine its accuracy. Given all the aspects of agricultural properties and the complexity of data sets used in appraisals and Mr. Holdren recommended an exemption for agricultural properties. (Attachment 11)

Mary Jane Stankiewicz spoke as an opponent, stating that grain elevators and agricultural retail facilities fall into a unique category. The Kansas Department of Revenue released a Grain Elevator Appraisal guide that allows the cost approach to be used when appraising grain elevators. This bill does not offer all of the options currently available and creates a conflict with the Grain Elevator Appraisal guide. Ms. Stankiewicz provided several balloon amendments addressing her concerns. (Attachment 12)

Leslie Kaufmann appeared in opposition stating, **SB 528** is much broader than necessary to address the concerns regarding specific types of commercial enterprises. **SB 528** does not need to extend to agricultural and agribusiness operations. The provisions of the bill should be more narrowly tailored and recommended the balloon amendments provided by Mary Jane Stankiewicz in her testimony. (Attachment 13)

Ken Daniels appeared in opposition stating passage of **SB 528** will come at the expense of thousands of small business owners who overwhelmingly handle their appeals themselves without representation. Enactment of this bill will force thousands of small business owners to hire an attorney and an appraiser to advance their case. (Attachment 14)

Written testimony in support of **SB 528** was submitted by:
Senator John Vratil (Attachment 15)
Melissa Wangemann, Kansas Association of Counties (Attachment 16)
Paul Welcome, Johnson County Appraiser (Attachment 17)
Mike Taylor, The Unified Government of Wyandotte County (Attachment 18)

Written testimony in opposition of **SB 528** was submitted by:
Martha Neu Smith, Director, Kansas Manufactured Housing Association (Attachment 19)

There being no further conferees, the hearing on **SB 528** was closed.

The Chairman called for final action on **SB 370 - Enhanced civil penalties for consumer protection act violations when victim is a veteran, surviving spouse of a veteran or immediate family member of deployed military person**. Jason Thompson, staff revisor, reviewed the bill and distributed a balloon amendment implementing the suggested amendments following the hearing on January 26. (Attachment 20)

Senator Schmidt moved, Senator Kelly seconded, to adopted the proposed balloon amendment. Motion carried.

Senator Vratil moved, Senator Schmidt seconded, to recommend **SB 370**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 381 - Criminal law; justified threat or use of force**. Jason Thompson, staff revisor, reviewed the bill.

Senator Lynn moved, Senator Kelly seconded, to recommend **SB 381** favorably for passage.

Senator Schmidt distributed a draft substitute bill and reviewed the changes. (Attachment 21)
Senator Schmidt made a substitute motion to amend **SB 381** with the distributed substitute. Motion failed.

Back on the original bill, Senator Bruce moved, Senator Haley seconded, to make the bill retroactive. Motion carried.

Senator Schmidt distributed a proposed balloon amendment and reviewed the changes. (Attachment 22)

Senator Schmidt moved, Senator Schodorf seconded, to amend **SB 381** as reflected in the distributed balloon. Motion carried.

Minutes of the Senate Judiciary Committee at 9:36 a.m. on February 12, 2010, in Room 548-S of the Capitol.

Senator Schmidt moved, Senator Kelly seconded, to recommend **SB 381**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 386 - Preventing transmission of unredacted personal identifiers during discovery; repealing a statute concerning recorded statements of child victims**. Jason Thompson, staff revisor, reviewed the bill.

Senator Vratil distributed a balloon amendment reflecting concerns raised during the hearing on February 4. (Attachment 23)

Senator Vratil moved, Senator Schodorf seconded, to amend **SB 386** as reflected in the balloon amendment. Motion carried.

Senator Vratil moved, Senator Lynn seconded, to recommend **SB 386**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 411 - Criminal possession of a firearm**. Jason Thompson, staff revisor, reviewed the bill.

Senator Schmidt moved, Senator Vratil seconded, to recommend **SB 411** favorably for passage. Motion carried.

The Chairman called for final action on **SB 434 - Increasing criminal penalties for unlawful sexual relations**. Jason Thompson, staff revisor, reviewed the bill.

Senator Bruce moved, Senator Schodorf seconded, to amend **SB 434** on page 2, line 36, to insert "and the offender has knowledge that such person is a student enrolled at the school where the offender is employed" after "where the offender is employed"; on page 3, line 1, insert "direct" before the work "supervision"and strike "court services and "; strike the language on page 3, lines 4 through 7 and insert "the offender"; amend page 3, line 11 to the same as the language on page 3, line 1. Motion carried.

Senator Bruce moved, Senator Schodorf seconded, to recommend **SB 434**, as amended, favorably for passage. Motion carried.

The Committee returned to final action on **SB 346 - No transfer of offenders with 10 or less days remaining on sentence to department of corrections custody**.

Senator Vratil moved, Senator Schmidt seconded, that the Committee take no action at this time. Motion carried.

The next meeting is scheduled for February 15, 2010.

The meeting was adjourned at 3:04 p.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: ~~Feb~~ 12, 2010

NAME	REPRESENTING
Jeff Zehnder	WIBW Radio
Angela Wilson	KIAG
Meghan Bandy	KSAG
Dan Gibb	KSAG
Kathy Ostrowski	KFL
Jenn David	KFL
Russ Jennings	JJA
Sue McKenna	SRS
Tim Madden	KNOC
Patti Woods	SRS
Bob Harvey	AARP Kansas
Jeff Bottenberg	Polsinelli Shughart
MIKE PETERSON	28 DISTRICT
Joseph Molina	KS Bar Assn
Joe Mosimann	PMCA
Travis Love, M.D.	Little Govt Relations
John D. Pinegar,	Pinegar, Smith & Assoc. Inc.
Richard Sangviego	Kenny Assoc.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/12/10

NAME	REPRESENTING
KEN DANIEL	TIBA
Sandy Jacquot	LKM
Bob Keller	JCSO
Helen Pedigo	KSC
Tim Maddin	KDOC
Roger Werholtz	KDOC
Andy Hurkuba	Lenexa City Council
ERIK SARTORIUS	City of Overland Park
Melissa Wangemann	KAC
TERRY HOLDREN	KFB
Allie Devers	Ks. Livestock Assoc.
Mary Jane Stankiewicz	KGFA & KARA
Leslie Kaufman	Ks Coop Council
BRAD HARRELSON	KFB
Marla Carpenter	KS CPA's
Matthew Peck Grant	KMHA
Luke Bell	Ks Assoc. of REALTORS
Levi Henry	Sandstone Kansas LLC

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/12/10

NAME	REPRESENTING
Travis Love	Little Gov't Relations
Joyce L. DeBolt	KSHE
Hyle Edelman	
Kathy Wood	KCSDV
Joyce Grover	KCSDV
Gail Bright	Office of the KS Securities Commissioner
Natalie Gibson	Kansas Judicial Council

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: FEBRUARY 12, 2010

NAME	REPRESENTING
Joyce L. DeBolt	KDHE
Jeremy S Barclay	KDOC
Sean Miller	Capitol Strategies
Bob Healy	Kennedy Assoc.

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX
ATTORNEY GENERAL

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Senate Judiciary Committee
SB 456
Assistant Attorney General Meghan Barnds
February 12, 2010

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Steve Six in support of Senate Bill 456, otherwise known as the Robo-Call Privacy Act. I am the Assistant Attorney General responsible for enforcement of the Kansas No-Call Act in the office of Attorney General Six.

The United States Courts of Appeal have described robo-calls as "uniquely intrusive due to the machine's inability to register a listener's response" and the "sheer quantity" of such calls. *Van Bergen v. State of Minnesota*, 59 F.3d 1541, 1554-1555 (8th Cir., 1995) and *Bland v. Fessler*, 79 F.3d 942, 947 (9th Cir., 1996). SB 456 will establish a comprehensive restriction on robo calls in Kansas, including those made for non-commercial purposes. Attorney General Six introduced the Robo-Call Privacy Act because it will allow Kansas families to preserve their privacy and enjoy their dinner table conversations without being interrupted by intrusive, automated messages. Our office frequently receives complaints from Kansans who are annoyed about repeatedly receiving unsolicited messages from automated machines.

The intent of SB 456 is not to chill political speech, something which AG Six considers to be vital to our democracy; rather, it is to advance the "substantial interest" in protecting citizens' residential privacy. *Van Bergen* at 1555. SB 456 would restrict automated dialing devices on a content-neutral basis. The Minnesota law on which SB 456 is based has survived constitutional review in the 8th Circuit. Therefore, we expect SB 456 to pass similar scrutiny, if tested in the courts.

A number of other states have already enacted laws that restrict robo-calls, including Minnesota, Indiana and New Hampshire. SB 456 has been carefully crafted to both withstand scrutiny by the courts and provide specific exemptions for robo-calls that are based on a pre-existing relationship between the caller and recipient. On behalf of Attorney General Six, I encourage you to support Kansans' right to privacy and vote to restrict robo-calls across our state.

Senate Judiciary
2-12-10
Attachment 1

KANSAS JUDICIAL COUNCIL

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TESTIMONY OF THE JUDICIAL COUNCIL JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE ON 2010 SENATE BILL 459

In 2009, while reviewing aspects of the Revised Kansas Code for Care of Children (CINC code), the Revised Kansas Juvenile Justice Code (JO code) and 2008 HB 2820, the Juvenile Offender / Child in Need of Care Advisory Committee (JO/CINC committee) determined that certain child in need of care orders or juvenile offender orders should take priority over similar orders in other domestic cases such as divorce, paternity, protection from abuse, and guardianship or conservatorship. This has been the practice generally, but it has not been clarified by statute. The JO/CINC committee had also been asked to review provisions of 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. In addition, in June, 2008, the Kansas Supreme Court issued its opinion in *In re L.M.*, 186 P.3d 164 (Kan 2008) and held that juveniles 14 years of age or older who are charged with a felony have the right to a jury trial under the Kansas Constitution. Therefore, the JO/CINC committee submitted legislation to the 2009 Legislature to address these issues. That proposed legislation became 2009 Senate Bill 88.

Senate Judiciary
2-12-10
Attachment 2

SB 88 received a hearing on two separate dates in the Senate Judiciary Committee. In the first hearing, S.R.S. brought it to the attention of the Judiciary Committee that there were some child support enforcement issues that had apparently been overlooked during drafting of the bill. The hearing on the bill was subsequently continued to a later date so that the JO/CINC committee and S.R.S. could get together and work out the issues. By the second hearing on the bill, the child support enforcement issues had been addressed and the necessary balloon amendments had been introduced. However, the Kansas Coalition against Sexual and Domestic Violence testified in opposition to section 26 of the bill which dealt with the authority of the court to remove a child from the home in a protection from abuse case. Although the JO/CINC committee eventually agreed that section 26 could be stricken from the bill if it would allow the bill to move forward, the Senate Judiciary Committee decided that SB 88 should be set aside for interim study. Unfortunately, 2009 SB 88 was not approved for interim study so it remained tabled in the Senate Judiciary Committee.

Since the end of the 2009 legislative session, the JO/CINC committee has worked to address several additional issues that were raised by S.R.S and others. As a result of this work, the JO/CINC committee prepared several additional balloon amendments, asked the Revisor's Office to pull the juvenile trial issues from the bill and place them into a separate bill, and asked that section 26 be stricken from the bill. However, during consultation with the Revisor's Office, it was suggested that it would be less confusing to re-draft the bill and re-introduce separate CINC and JO bills in the 2010 legislative session. 2010 Senate Bill 459 is in essence the redraft of the Juvenile Offender portions of 2009 SB 88. It incorporates the original proposed amendments to the Juvenile Offender code as well as all balloon amendments proposed in 2009 and those that were going to be proposed in 2010.

COMMITTEE'S COMMENTS TO PROPOSED JO LEGISLATION

- Section 1: Amends K.S.A. 38-2344 to make technical corrections which address a juvenile's right to a jury trial as set forth in *In re L.M.*, 186 P.3d 164 (Kan 2008).

- Section 2: Amends K.S.A. 38-2357 to clarify the methods of trial in juvenile offender cases. The proposed language is a combination of language taken from three statutes in the Kansas adult criminal code. (See K.S.A. 22-3403, 22-3404 and 22-3421) Most of the language is identical to that of the adult statutes. The difference is that a juvenile must request the jury trial in writing within 30 days from the entry of the juvenile's plea.

- Section 3: Amends K.S.A. 38-2364 to provide some discretion to the court when determining, under extended juvenile jurisdiction cases, whether a juvenile's juvenile portion of the sentence should be revoked and the adult portion of the sentence should be enforced. The proposed amendments provide that the court may revoke the juvenile portion of a sentence if the court finds by a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence. The proposed amendments remove the mandatory language included in the statute and allow the court to determine whether violations are sufficient to require revocation of the juvenile sentence and imposition of the adult portion of the sentence.

- Section 4: Amends K.S.A. 38-2365 to require the commissioner to notify a juvenile's attorney of record in addition to the juvenile's parents of any changes in placement of the juvenile and to make a technical correction in line 14 on page 6.

- Section 5: Amends K.S.A. 38-2373 to correct a technical error by replacing the word "study" with the intended word "custody" in line 26 on page 7.

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TESTIMONY OF THE JUDICIAL COUNCIL JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE ON 2010 SENATE BILL 460

In 2009, while reviewing aspects of the Revised Kansas Code for Care of Children (CINC code), the Revised Kansas Juvenile Justice Code (JO code) and 2008 HB 2820, the Juvenile Offender / Child in Need of Care Advisory Committee (JO/CINC committee) determined that certain child in need of care orders or juvenile offender orders should take priority over similar orders in other domestic cases such as divorce, paternity, protection from abuse, and guardianship or conservatorship. This has been the practice generally, but it has not been clarified by statute. The JO/CINC committee had also been asked to review provisions of 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. In addition, in June, 2008, the Kansas Supreme Court issued its opinion in *In re L.M.*, 186 P.3d 164 (Kan 2008) and held that juveniles 14 years of age or older who are charged with a felony have the right to a jury trial under the Kansas Constitution. Therefore, the JO/CINC committee submitted legislation to the 2009 Legislature to address these issues. That proposed legislation became 2009 Senate Bill 88.

Senate Judiciary
2-12-10
Attachment 3

SB 88 received a hearing on two separate dates in the Senate Judiciary Committee. In the first hearing, S.R.S. brought it to the attention of the Judiciary Committee that there were some child support enforcement issues that had apparently been overlooked during drafting of the bill. The hearing on the bill was subsequently continued to a later date so that the JO/CINC committee and S.R.S. could get together and work out the issues. By the second hearing on the bill, the child support enforcement issues had been addressed and the necessary balloon amendments had been introduced. However, the Kansas Coalition against Sexual and Domestic Violence testified in opposition to section 26 of the bill which dealt with the authority of the court to remove a child from the home in a protection from abuse case. Although the JO/CINC committee eventually agreed that section 26 could be stricken from the bill if it would allow the bill to move forward, the Senate Judiciary Committee decided that SB 88 should be set aside for interim study. Unfortunately, 2009 SB 88 was not approved for interim study so it remains in the Senate Judiciary Committee at this time.

Since the end of the 2009 legislative session, the JO/CINC committee has worked to address several additional issues that were raised by S.R.S and others. As a result of this work, the JO/CINC committee prepared several additional balloon amendments, asked the Revisor's Office to pull the juvenile trial issues from the bill and place them into a separate bill, and asked that section 26 be stricken from the bill. However, during consultation with the Revisor's Office, it was suggested that it would be less confusing to re-draft the bill and re-introduce separate CINC and JO bills in the 2010 legislative session. 2010 Senate Bill 460 is in essence the redraft of the Child in Need of Care portions of 2009 SB 88 excluding section 26 and those statutes related to the Juvenile Offender code. It incorporates the original proposed amendments to the

Child in Need of Care code as well as all balloon amendments proposed in 2009 and those that were going to be proposed in 2010.

COMMITTEE'S COMMENTS TO PROPOSED CINC LEGISLATION

- New Section 1: Pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in Adoption and Relinquishment proceedings and Guardians and Conservators proceedings while the CINC or JO case is pending.

- Section 2: Amends K.S.A. 38-1116 of the Kansas parentage act to include similar priority language as that in new section 1. Subsection (d) pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in parentage proceedings while the CINC or JO case is pending. Subsection (e) allows the transfer of CINC orders back into a parentage case as appropriate at the close of the CINC case.

- Section 3: Amends K.S.A. 38-1121 to give the court in parentage actions the option of placing a child or children in nonparental residency if the court finds that there is probable cause to believe the child is a child in need of care or that neither parent is fit to have residency. The proposed language is almost identical to the nonparental custody provisions in the divorce code. The only difference is in the sentence beginning in line 37, page 4 of this report where the word "disposition" has been replaced with "custody, residency or parenting time order" and the words "shall be binding and shall supersede" have been replaced with "take precedence over any custody, residency or parenting time".

- Section 4: Amends K.S.A. 38-2201 to clarify that orders issued pursuant to the CINC code shall take precedence over any order under the parentage, adoption and relinquishment, guardians and conservators, divorce, protection from abuse, and protection from stalking act until jurisdiction under the CINC code is terminated.

- Section 5: Amends K.S.A. 2008 Supp. 38-2202 to include a definition of "civil custody case".

- Section 6: Amends K.S.A. 2008 Supp. 38-2203 to include a section clarifying that a court's order affecting a child's custody, residency, parenting time and visitation that is issued in a proceeding under the CINC code shall take precedence over such orders in a civil custody case (as defined by the amendment in Section 5), a proceeding under the protection from abuse act or a comparable case in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).

- Section 7: Amends K.S.A. 38-2208 to correct an error and thereby clarify that in any case referred to a citizen review board, the court shall conduct a hearing at least annually.

- Section 8: Amends K.S.A. 38-2212 to include the Committee's revised amendments to 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. The proposed amendments would restrict disclosure of information from confidential reports or records relating to a child in need of care to instances where the individual or their representative has given written explicit consent unless the investigation or the filing of a petition has become public knowledge. In such instance, the authorized disclosure would be restricted to confirmation of procedural details relating to the handling of the case by professionals. Other technical amendments are suggested in subsection (f) and pertain to removing reference to "department of social and rehabilitation services" and replacing it with "secretary" to maintain consistency, and reorganizing the content of the section for clarity.

- Sections 9 and 10: Amend K.S.A. 38-2242 and 38-2243 to address the federal requirement that the judicial determination of contrary to the welfare of the child be made in the first court order authorizing out of home placement. The federal law also requires a finding that reasonable efforts were made or were unnecessary due to an emergency which threatens the safety of the child shortly after loss of parental custody. The proposed amendments are intended to reflect that orders subsequent to the initial removal order need not continue to make the findings and in some instances the child is returned home to live with a parent prior to court returning custody to the parent. The reasonable efforts requirement subsequent to the initial order is addressed in K.S.A. 38-2264 which requires that, if the child continues in foster care for 12 months, the court must determine whether reasonable efforts are being made to provide a permanent family for the child.

- Section 11: Amends K.S.A. 2008 Supp. 38-2251 to clarify the time frame within which a final adjudication or dismissal of a CINC proceeding must be completed.

- Section 12: Amends K.S.A. 38-2255 to make a few technical changes for clarity and consistency, to remove subparagraph (d)(1)(B) as the Committee determined that the provision only served to cause confusion and it was not necessary, and to address the same issue as sections 9 and 10 above.

- Section 13: Amends K.S.A. 2008 Supp 38-2258 to specify that written notice of any change in placement of a child shall also be given to the petitioner, the attorney for the parents, if any, the child's court appointed special advocate and any other party or interested party in addition to the court, each parent, foster parent or custodian, and the child as currently listed in the statute. Subsections (b) and (c) are also amended to maintain consistency with the changes in subsection (a). In addition, the additional sentence is proposed to allow the court to expedite a change in

placement if there isn't any request for a hearing within the 10 days after notice is received.

- Section 14: Amends K.S.A. 2008 Supp. 38-2264 to clarify issues surrounding permanency as was intended with 2008 HB 2820 and to make the language in subsection (c) consistent with that in K.S.A. 38-2269(b)(7).

- Section 15: Amends K.S.A. 38-2272 to make a correction pertaining to acknowledgment of consents to appointment of a permanent custodian which was apparently overlooked in the clean-up legislation of 2008 SB 435. This amendment makes the process consistent with consents to adoption.

- Section 16: Amends K.S.A. 38-2273 to address a conflict with permanency hearing time frames when a CINC case is on appeal.

- Section 17: Amends K.S.A. 38-2279 to address issues surrounding the modification of child support orders prior to the closing of a CINC case.

- Section 18: Amends K.S.A. 2008 Supp. 38-2304 to indicate that a court's order affecting a child's custody, residency, parenting time and visitation issued in a proceeding under the JO code shall take precedence over such orders in a proceeding under the parentage, divorce, protection from abuse, adoption and relinquishment, guardians or conservators acts, or comparable cases in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).

- Section 19: Amends K.S.A. 38-2305 to clarify appropriate venue in cases involving a juvenile.

- Section 20: Amends K.S.A. 38-2361 to ensure that a permanency hearing is completed when a juvenile offender is released from a juvenile correctional facility.

- Section 21: Amends K.S.A. 2008 Supp. 60-1610 in subparagraph (a)(1) to make the statute consistent with UIFSA (IV-D interstate mandate). Subsection (a)(6) is amended to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a divorce proceeding. Subparagraph (3)(E) is added to allow the transfer of CINC orders back into a divorce case as appropriate at the close of the CINC case.

- Section 22: Amends K.S.A. 60-3103 to add subsection (b) to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a protection from abuse proceeding.

TESTIMONY ON SB 460

TO THE SENATE JUDICIARY COMMITTEE

BY COMMISSIONER J. RUSSELL JENNINGS

KANSAS JUVENILE JUSTICE AUTHORITY

FEBRUARY 12, 2010

J. Russell Jennings
Commissioner
785-296-0042
rjennings@jja.ks.gov

Senate Judiciary
2-12-10
Attachment 4

The Juvenile Justice Authority (JJA) has worked with the Department of Social and Rehabilitation Services (SRS) to develop two proposed amendments to SB 460. The first proposed amendment will assure that a youth adjudicated a child in need of care who becomes an adjudicated juvenile offender while under the custody of the secretary of SRS can return to the care and control of the secretary upon fulfilling the requirements of rehabilitative programming. The second proposed amendment requires the court to consider six specific factors prior to placing an adjudicated child in need of care in the custody of the commissioner of JJA for an offense while in the custody of the secretary.

The first proposed amendment found on page 12 at line 23 provides: ***"(g) If the child is adjudicated a juvenile offender and is at anytime placed in the custody of the commissioner of juvenile justice, the child in need of care proceeding shall be stayed during the pendency of the juvenile offender proceeding. Upon dismissal or satisfactory completion of the sentence in the juvenile offender proceeding, the stay shall be lifted and the child shall be subject to the jurisdiction of the court in the child in need of care proceeding, unless the permanency goal has been achieved in the juvenile offender proceeding. If the permanency goal has been achieved, the child in need of care proceeding shall be dismissed."***

The intent of the amendment is to assure there is a path back to the social welfare system for juvenile offenders who complete a rehabilitative process, become stable and are no longer in need of juvenile correctional interventions or services, but permanency is not achieved. The practice in many jurisdictions within the state is to dismiss child in need of care proceedings upon a finding as a juvenile offender with custody to the commissioner. Should a juvenile offender complete the requirements of their offender case and no longer needs the services provided through the juvenile justice system, but the family or life circumstance that led youth to state custody through the child in need of care proceeding

remains, there is no path to return the youth to the state social welfare system when the child in need of care proceeding is dismissed rather than stayed. In such cases, youth can remain in the juvenile justice system until attaining the age twenty-one or are otherwise discharged from custody by the court. We believe when the rehabilitative process is complete and stability of the offender is achieved, the most appropriate system to meet the needs of youth who were subject to abuse or neglect or were otherwise determined to be a child in need of care is the state social welfare system and not the system for juvenile justice.

The second proposed amendment is found on page 34 beginning at line 14. This proposed amendment establishes specific considerations by the court in making a determination of whether to continue SRS custody in a child in need of care proceeding when the youth is found to be a juvenile offender and a sentencing order is going to be imposed. This proposed amendment provides the sentencing court with greater discretion in dual adjudication cases, but also provides clear and sound guidelines for the exercise of that discretion. The proposed amendment requires the court to consider six factors when making a sentencing determination in a juvenile offender proceeding when the youth is currently is SRS custody. The factors the court would be required to consider are:

1.) ***The results of a validated risk assessment tool.***

2.) ***The offender's stability under the code for care of children, specifically whether the offender can remain in the same placement and school.***

3.) ***The offender's progress towards achieving permanency and independent living skills.***

4.) ***The gravity and nature of the offense and any previous offenses.***

5.) ***A report and recommendation from the secretary of social and rehabilitation services.***

6.) ***The presentence report.***

The intent of the proposed amendment is to assure the court carefully evaluates relevant factors when a youth who is in state custody as a result of a child in need of care proceeding commits an offense that results in a court finding as a juvenile offender prior to imposition of a sentence. The intent is to assure the best possible decision is made balancing public safety expectations and the unique circumstances and needs of any particular youth.

Kansas Coalition Against Sexual and Domestic Violence
SAFETY • ACCOUNTABILITY • JUSTICE

UNITED AGAINST VIOLENCE

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Senate Judiciary Committee
Senate Bill 460
February 12, 2010

Opponent

Chairman Owens and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV), a statewide organization with member programs across the state, is requesting several amendments to SB460.

As some of you may remember, KCSDV came before the committee last year on this topic (SB88) because we had great concerns that the Protection from Abuse Act (K.S.A. 60-3101 et seq.) was being amended so that PFA proceedings would or could become the first step in a child in need of care proceeding. KCSDV remains strongly opposed to this.

Victims of domestic violence, sexual assault or stalking come to the courts for protection, often as an option of last resort. When they do seek protection, it is often because they are trying to protect their children. Society gives mothers mixed messages about her duty to keep the family together; the need for the children to have a father in the home (even if this father is violent to the mother); and her duty to protect the children from contact with the abusive father. All the while, she is being told by the batterer that someone will take her kids away if she reaches out for help; that she is a terrible mother; that no one will believe her. By turning the PFA into the first step in a CINC proceeding, we believed SB88, the predecessor of SB460, in effect colluded with abusers to keep protective parents from reaching out for protection from the courts.

We are pleased to see that those provisions were removed from the current Bill. SB460 does not include PFA proceedings in the list of those that can be consolidated with child in need of care cases involving custody, residency, and parenting time. (See page 8, lines 2 through 8, where PFA proceedings are not included in definition of "civil custody case," and page 28, lines 7 through 16, where child in need of care cases can be consolidated with open civil custody cases.)

A few problems remain with SB460 that KCSDV seeks to have corrected.

First, on page 5, line 40 – 42, SB460 references the protection from stalking act (K.S.A. 60-31a01 et seq.) The PFSA has no statutory provisions that address custody, residency, or parenting time. We believe including a reference to the PFSA in SB460 causes confusion. It is

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an inaccurate reflection of what PFS orders may include. This reference to the PFSA should be struck.

Second, on page 49, lines 23 through 29, the PFA Act is amended, providing,

> "Any custody or parenting time order, or order relating to the best interest of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any order under [the PFA Act], until jurisdiction under [CINC] and [JJC] is terminated."

KCSDV sees several problems with this provision. Most important is that the primacy of the CINC or JJC custody or parenting time orders should only take precedence over the custody or parenting time orders of the PFA, not over any order. Children may be protected parties in these orders, children who are not impacted by the CINC or JJC order may be protected in the PFA order, temporary custody and parenting time may be included in the PFA order, and there are potentially many other provisions in the PFA order that should remain in place. This language could vacate all of those protective remedies if this part of SB460 is passed. KCSDV suggests using similar language to that found on page 34, line 40. This provision would then read:

> "Any custody or parenting time order, or order relating to the best interest of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order under [the PFA Act], until jurisdiction under [CINC] and [JJC] is terminated."

Making this change would keep the other critical, protective remedies in place for the remaining protected parties in the PFA or even for the child at issue if the PFA order has been issued to protect the minor from dating violence or sexual abuse.

Third, KCSDV believes because there is already a primacy statute (K.S.A. 60-3107 [c]) in the PFAA, this amendment more appropriately belongs in that subsection, not in the jurisdiction statute (K.S.A. 60-3103).

Further, because accurate information about the PFA order is critical to its enforcement, KCSDV believes this provision needs to include those protections already included in the primacy subsection when PFA orders are modified by the court in other limited cases. Those provisions include: (1) recognition of the PFA order; (2) noting that it is a separate and distinct order; (3) specifically stating how that order will be modified by the CINC/JJC order; and (4) placing a copy of both orders in both case files. KCSDV suggests the following language be used and that it be placed in K.S.A. 60-3107(c):

> "Any custody or parenting time order, or order relating to the best interest of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order involving the same child issued under [the PFA Act], until jurisdiction under [CINC] and [JJC] is terminated. Inconsistent custody or parenting orders issued in

the CINC/JJC case shall be specific in its terms, shall reference the PFA order and the parts being modified, and a copy of such order shall be filed in both actions.

KCSDV believes this change will address the needs of all protected parties in the PFA proceeding and will assure that the information in any national or local protection order databases will be accurate. See K.S.A. 60-3112 (orders shall be entered in national crime information center protection order file).

Finally, KCSDV brings the committee's attention to page 44, line 32, where K.S.A. 38-226(i)(2) is referenced. That statute has been repealed. Perhaps this is a typographical or drafting error.

Submitted by

Joyce Grover
General Counsel

Sandra Barnett,
Executive Director

Attachments: Balloon Amendments (3)

upon a presumption arising under K.S.A. 38-1114 and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

~~(f)~~ *(g)* In determining the amount to be ordered in payment and duration of such payments, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

(1) The needs of the child.

(2) The standards of living and circumstances of the parents.

(3) The relative financial means of the parents.

(4) The earning ability of the parents.

(5) The need and capacity of the child for education.

(6) The age of the child.

(7) The financial resources and the earning ability of the child.

(8) The responsibility of the parents for the support of others.

(9) The value of services contributed by both parents.

~~(g)~~ *(h)* The provisions of K.S.A. 23-4,107, and amendments thereto, shall apply to all orders of support issued under this section.

~~(h)~~ *(i)* An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.

Sec. 4. K.S.A. 2009 Supp. 38-2201 is hereby amended to read as follows: 38-2201. K.S.A. 2009 Supp. 38-2201 through 38-2283, and amendments thereto, shall be known as and may be cited as the revised Kansas code for care of children.

(a) Proceedings pursuant to this code shall be civil in nature and all proceedings, orders, judgments and decrees shall be deemed to be pursuant to the parental power of the state. *Any custody, residency or parenting time orders pursuant to this code shall take precedence over any custody, residency or parenting time order under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (determination of parentage), article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians and conservators), article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from abuse act),* ~~*and article 31a of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from stalking act)*~~*; until jurisdiction under this code is terminated.*

(b) The code shall be liberally construed to carry out the policies of

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(c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name. The court shall have jurisdiction to restore the spouse's maiden or former name at or after the time the decree of divorce becomes final. The judicial council shall develop a form which is simple, concise and direct for use with this paragraph.

(2) *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

~~Sec. 22. K.S.A. 60-3103 is hereby amended to read as follows: 60-~~ 3103. *(a)* Any district court shall have jurisdiction over all proceedings under the protection from abuse act. The right of a person to obtain relief under the protection from abuse act shall not be affected by the person's leaving the residence or household to avoid further abuse. Any petition under this act seeking orders regarding a custody determination, as defined in K.S.A. 38-1337, and amendments thereto, shall state that information required by K.S.A. 38-1356, and amendments thereto, and the basis under which child-custody jurisdiction is sought to be invoked.

(b) Any custody or parenting time order, or order relating to the best interests of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any order under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from abuse act), until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

Sec. 23. ~~K.S.A. 38-1116 and 60-3103 and K.S.A. 2009 Supp. 38-1121, 38-2201, 38-2202, 38-2203, 38-2208, 38-2212, 38-2242, 38-2243, 38-2251, 38-2255, 38-2258, 38-2264, 38-2272, 38-2273, 38-2279, 38-2304, 38-2305, 38-2361 and 60-1610 are hereby repealed.~~

Sec. 24. This act shall take effect and be in force from and after its publication in the statute book.

60-3107. Orders for relief of abuse, procedure; modifications; inconsistent orders; violation of orders, criminal violations and penalties.

. . . .

(c) Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 et seq., or K.S.A. 38-1101 et seq., and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 et seq., or K.S.A. 38-1101 et seq., and amendments thereto, shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 60-1610 et seq., and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 60-1610 et seq., or K.S.A. 38-1101 et seq., and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 60-1610 and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242 and amendments thereto.

. . . .

"Any custody or parenting time order, or order relating to the best interest of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any *such custody or parenting* order *involving the same child* issued under [the PFA Act], until jurisdiction under [CINC] and [JJC] is terminated. *Inconsistent custody or parenting orders issued in the CINC/JJC case shall be specific in its terms, shall reference the PFA order and the parts being modified, and a copy of such order shall be filed in both actions.*

(1) The juvenile offender is sentenced pursuant to K.S.A. 2009 Supp. 38-2369, and amendments thereto, and the term of the sentence including successful completion of aftercare extends beyond the juvenile offender's 21st birthday; or

(2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile prosecution and continues to successfully serve the sentence imposed pursuant to the revised Kansas juvenile justice code.

(f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile offender's continuing responsibility to pay restitution ordered.

(g) (1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the custody of the secretary of social and rehabilitation services under the Kansas code for care of children, the sentencing court ~~may order the continued placement of the juvenile offender as a child in need of care unless the offender was adjudicated for a felony or a second or subsequent misdemeanor. If the adjudication was for a felony or a second or subsequent misdemeanor, the continued placement cannot be ordered unless the court finds there are compelling circumstances which, in the best interest of the juvenile offender, require that the placement should be continued. In considering whether compelling circumstances exist, the court shall consider the reports and recommendations of the foster placement, the contract provider, the secretary of social and rehabilitation services, the presentence investigation and all other relevant factors. If the foster placement refuses to continue the juvenile in the foster placement the court shall not order continued placement as a child in need of care.~~ shall determine, based on the best interests of the offender and the safety of the community, whether the offender shall remain in the custody of the secretary of social and rehabilitation services under the code for care of children, or be placed in the custody of the commissioner. In making this determination, the court shall have access to all information in the case under the code for care of children and shall consider:
(A) The results of a validated risk assessment tool;
(B) the offender's stability under the code for care of children, specifically whether the offender may remain in the same placement and school;
(C) the offender's progress toward achieving permanency and independent living skills;
(D) the gravity and nature of the offense and any previous offenses;
(E) a report and recommendations from the secretary of social and rehabilitation services; and
(F) the presentence report.

(2) If a placement ~~with~~ in the custody of the secretary of social and rehabilitation services is continued after sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

(3) If the juvenile offender is placed in the custody of the juvenile justice authority commissioner of the, the secretary of social and rehabilitation services shall not be responsible for furnishing services ordered in the child in need of care proceeding during the time of the placement pursuant to the revised Kansas juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from accessing other services provided by the department of social and rehabilitation services or any other state agency if the juvenile offender is otherwise eligible for the services. the child in need of care proceeding shall be stayed pursuant to K.S.A. 2009 Supp. 38-2203(g) and

(h) A court's order affecting a child's custody, residency, parenting time and visitation that is issued in a proceeding pursuant to this code, shall take precedence over such orders in a proceeding under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (parentage act), a proceeding under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), a proceeding un-

court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease.

(d) When it is no longer appropriate for the court to exercise jurisdiction over a child, the court, upon its own motion or the motion of a party or interested party at a hearing or upon agreement of all parties or interested parties, shall enter an order discharging the child. Except upon request of the child pursuant to subsection (c), the court shall not enter an order discharging a child until June 1 of the school year during which the child becomes 18 years of age if the child is in an out-of-home placement, is still attending high school and has not completed the child's high school education.

(e) When a petition is filed under this code, a person who is alleged to be under 18 years of age shall be presumed to be under that age for the purposes of this code, unless the contrary is proved.

(f) A court's order affecting a child's custody, residency, parenting time and visitation that is issued in a proceeding pursuant to this code, shall take precedence over such orders in a civil custody case, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from abuse act), or a comparable case in another jurisdiction, except as provided by K.S.A. 38-1336 et seq., and amendments thereto (uniform child custody jurisdiction and enforcement act).

(g) If the child is adjudicated a juvenile offender and is at anytime placed in the custody of the commissioner of juvenile justice, the child in need of care proceeding shall be stayed during the pendency of the juvenile offender proceeding. Upon satisfactory completion of the sentence and dismissal of the juvenile offender proceeding, the stay shall be lifted and the child shall be subject to the jurisdiction of the court in the child in need of care proceeding unless the permanency goal has been achieved in the juvenile offender proceeding. If the permanency goal has been achieved, the child in need of care proceeding shall be dismissed.

Sec. 7. K.S.A. 2009 Supp. 38-2208 is hereby amended to read as follows: 38-2208. (a) The citizen review board shall have the duty, authority and power to:

(1) Review each case referred to them, and such additional cases as the board deems appropriate, of a child who is the subject of a child in need of care petition or who has been adjudicated a child in need of care, receive verbal information from all persons with pertinent knowledge of the case and have access to materials contained in the court's files on the case;

(2) determine the progress which has been made to acquire a permanent home for the child in need of care;

(3) suggest an alternative case goal if progress has been insufficient; and

(4) make recommendations to the judge regarding further actions on the case.

(b) The initial review by the citizen review board may take place any time after a petition is filed for a child in need of care.

(c) ~~The citizen review board will review each referred case~~ *In any case referred to a citizen review board, the court shall conduct a hearing* at least once each year.

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TO: Senator Tim Owens, Chair
Senate Judiciary Committee

From: Lara Blake Bors, Assistant Finney County Attorney

Re: Senate Bill 459

Date: February 12, 2010

I thank the Chair for allowing me the opportunity to supplement the record on Senate Bill 459 with this written testimony. My written testimony is presented on behalf of the Kansas County and District Attorneys Association and is offered as an opponent of this bill in its present form.

The purpose of Senate Bill 459 is to amend K.S.A. 38-2357 to conform the statute to the recent Supreme Court decision of *In re L.M.*, 286 Kan. 460, 186 P.3d 164 (2008). It appears that the intent of the statute is to answer many of the questions left unanswered by the *L.M.* decision on the procedures for a juvenile jury trial. Unfortunately, the amendments, as currently written, fail to provide adequate guidance in the procedures for these trials.

The first concern with regard to the amendments proposed to K.S.A. 38-2357 and K.S.A. 38-2344 is that they will not pass constitutional muster when reviewed by the Kansas Supreme Court. The *L.M.* Court specifically struck down K.S.A. 38-2344(d) which states, "If the Juvenile pleads not guilty, the court shall schedule a time and date for trial to the court." *Id.* at 470. The language of "trial to court" is language which the *L.M.* Court specifically took issue with in

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regard to K.S.A. 38-2344. *Id.* However, Senate Bill 459 leaves this exact language intact and does not seek to remedy that which has been found unconstitutional. Furthermore, Senate Bill 459 requires an affirmative action on the part of the juvenile to obtain a jury trial, requiring a juvenile to make demand within thirty days of entering a plea of not guilty. This too may not pass constitutional muster. Pursuant to the *L.M.* decision, a juvenile is entitled under the Sixth and Fourteenth amendments to a jury trial, as such no further action should be required of them.

Secondly, after *L.M.* was decided, the judicial districts of the State scrambled to determine how this decision would affect them. At that time, it was known that juveniles were entitled to jury trials, but the question remained as to how the judicial districts should carry out this mandate. As a result, these proceedings have been handled in an *ad hoc* manner. The only consistency with these cases appears to be the inconsistency -- some utilize the criminal procedure code in Chapter 22 of the Kansas Statutes while other districts apply common law principles. There simply is no consistency.

The Revised Juvenile Justice Code (RJJC) is a self-contained code and we are not to look beyond that code except in specifically identified circumstances. Unfortunately, the procedure for a jury trial is not one of those identified circumstances. Currently, the RJJC does not refer to the criminal procedure code nor does it contain a specified procedure regarding the handling of juvenile jury trials.

Unfortunately, the proposed amendments in this bill provide little to no guidance for the handling of these cases. The proposed amendment provides basic guidance as to when a jury request must be made, the number of jurors to be seated for a felony or misdemeanor and that the judge is to make the legal decisions while the jury determines the facts. However, the rudimentary procedures of a jury trial are still lacking from the proposed amendments. For

example, do the trial attorneys have peremptory challenges? If so, how many? Senate Bill 459 calls for the procedure in misdemeanor cases to be treated in the same manner as felony cases, but no procedure for felony cases are set forth. Because the RJJC is a self-contained code, there is nowhere else to look.

Senate Bill 459 begins a process that is desperately needed to answer questions left in the wake of *L.M.*, but does not go far enough. In my opinion, any amendment must contain a specific set of trial procedures or a reference to the criminal procedure code in order to provide sufficient clarity.

The next statute which is addressed in Senate Bill 459 is K.S.A. 38-2354 dealing with Extended Juvenile Jurisdiction Prosecution (EJJP). Currently, when a juvenile prosecuted under EJJP is found to be in violation of their juvenile sentence the adult sentence shall be imposed by the court. This language has been upheld twice by the Kansas Court of Appeals. *In re: J.H., Jr.*, 40 Kan.App.2d 643, 197 P.3d 467 (2007) and *In re: E.F.*, 41 Kan.App.2d 860, 205 P.3d 787 (2009). Other states have similarly written statutes requiring the court to impose the adult sentence including Minnesota (M.S.A. 260B.130) and Illinois (705 ILCS 405/5-810) as well as many others.

In general, a juvenile prosecuted under EJJP has utilized virtually all resources the juvenile justice system can provide. However, by either prosecutorial discretion or a decision of the court, the juvenile is given one last chance at juvenile rehabilitation. If given that leniency and that final opportunity, should that juvenile fail the adult sentence must be imposed. By not doing so, a juvenile will be in virtually the same position he or she has been throughout their time in the juvenile system with a series of chances. The decision for EJJP is not made lightly

and if a juvenile has reached that stage and fails the adult sentence must be given. If not, then EJJP has lost any benefit that could be derived from it.

I appreciate the opportunity to present this written testimony to the committee and for your time and attention to both my views and the views of my organization, the Kansas County and District Attorneys Association.

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To: Senate Judiciary Committee

From: Sandy Jacquot, Director of Law/General Counsel

Re: Support for SB 528

Date: February 9, 2010

Thank you for allowing the League of Kansas Municipalities to testify in support of SB 528, which changes the burden of proof in tax appeal cases to more correctly align it with every other type of civil proceeding. Briefly, prior to the mid 1990s, once the county appraiser had presented its evidence of value in a tax appeal situation, the burden shifted to the taxpayer who was appealing his or her property value to show why the county appraiser's value was incorrect and what the value should be. That changed, however, in the mid 1990s to require the county appraiser to substantiate his or her value by a preponderance of the evidence, rather than the other way around. Then, language was added to those statutes that reads as follows: "No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination." This sets up a situation regarding proof that is unprecedented in civil law and unfair in a system where governmental entities depend on the correctness of the county appraiser's valuation of property.

What happens in many tax appeal cases now is that the taxpayer appealing a change of value does not introduce any evidence of value or why the county appraiser's value is incorrect. Rather, the taxpayer merely tries to discredit the county appraiser's value through cross examination. At the end of the hearing, all the trier of fact is left with is whether the county appraiser has established the property's value by a preponderance of the evidence. Then, with no other evidence before the trier of fact, the value is determined based upon no evidence of value having been introduced. In many cases, the value merely reverts to the previous year's value, although in some cases a new value is set by the trier of fact.

The League of Kansas Municipalities is requesting that this Committee return integrity to the tax appraisal process by reestablishing the burden of proof in tax appeals to the one appealing the value. We would suggest two minor amendments to the language of SB 528. In lines 37 through 39 on page 6, in Section 5, the presumption language was meant to be omitted, but is still in that section. It would negate the intent of the remainder of the changes. In addition, the same omission should be made in lines 1 through 3 on page 9, in Section 6 of the bill. With those changes, LKM requests that this Committee report SB 528 favorably for passage.

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TESTIMONY IN SUPPORT OF SENATE BILL NO. 528

To: The Honorable Senator Tim Owens, Chairperson
Members of the Senate Judiciary Committee

From: Andy Huckaba, Lenexa City Councilman

Date: Monday, February 08, 2010

Re: SB 528 – Burden of Proof in Property Valuation Appeals

Ladies and Gentlemen:

The City of Lenexa supports the proposed amendments to SB 528. Although the City does not participate in the property valuation and appeals process as this is a function of the County and the Court of Tax Appeals, the process and its results directly impact the City's assessed valuation. When property valuations are decreased without adequate findings and support, it negatively impacts all taxing jurisdictions' revenues. The inherent problem with the current appraisal appeal process is that it is unfair to small business owners and taxpayers who are shouldering the tax liability that has been improperly shifted from other properties.

In most states, the county appraiser's property valuations are presumed correct, which is consistent with the principles of administrative law. Kansas also fell in this majority until the late 1990's at which time the law was amended to shift the burden of proof to the County Appraiser. There is no longer any presumption of correctness. This process is contrary to the fundamental tenant of administrative procedure that the administrative agency is presumed to have acted reasonably. The county appraiser is a professional, schooled in the principles of property valuation. The appraiser's office carefully analyzes each property in making its determination of value. The ability to make multiple appeals provides an abundance of protection for the property owner if, in fact, there has been an error in valuation. However, it puts the burden on the proper party, the individual alleging the valuation is improper, to support its position.

Property values have continuously eroded under the current law. The initial thought is that such findings must support the fact that the initial valuations were incorrect. However, we believe the Kansas Division of Property Valuation at the Department of Revenue will substantiate Johnson County's ratios are and have been within the appropriate rations before appeals.

The City of Lenexa supports this change in State law reinstating the presumption of correctness and validity to a county appraiser's property valuation.

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OVERLAND PARK
KANSAS

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Testimony Before The
Senate Judiciary Committee
Regarding Senate Bill 528
By Erik Sartorius

February 9, 2010

The City of Overland Park appreciates the opportunity to appear before the committee in support of Senate Bill 528. It is our belief that SB 528 would provide a more reasonable balance regarding the appraisal process for commercial property by returning the presumption of validity to a county appraiser's assessment of the property.

In most states, decisions by the county appraiser are assumed to be correct until proven faulty. In 1996, Kansas revised its laws to shift the burden of proof on a tax appeal from the property owner to the appraiser. That means instead of the property owner proving by the preponderance of evidence the tax valuation is incorrect, the appraiser must prove by the same standard that it is correct.

Communities in Kansas are seeing large retail establishments utilizing this change in administrative procedure by appealing valuations. This has resulted in significant erosion of property values by the Court of Tax Appeals. The City supports a change in the statute which would return a more reasonable balance to the process by returning the presumption of correctness and validity to a county appraiser's assessment of a property.

This legislation would return the statutes governing commercial property tax appeals to the presumption that the appraisal value produced by the county appraiser was correct when such valuations are challenged. The City of Overland Park asks that the committee recommend Senate Bill 528 favorably for passage.

KANSAS
Association of REALTORS®

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To: Senate Judiciary Committee

Date: February 12, 2010

Subject: **SB 528** -- Shifting the Burden of Proof in Property Valuation Appeals from the County Appraiser to the Property Owner

Chairman Owens and members of the Senate Judiciary Committee, thank you for the opportunity to appear in front of you today on behalf of the Kansas Association of REALTORS® in opposition to the provisions of **SB 528**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR has faithfully represented the interests of the nearly 9,000 real estate professionals and over 700,000 homeowners in Kansas for the last 90 years. In conjunction with other organizations involved in the housing industry, the association seeks to increase housing opportunities in this state by increasing the availability of affordable and adequate housing for Kansas families.

SB 528 would modify long-standing precedent in Kansas statutes by shifting the burden of proof in property valuation appeals from the county appraiser to the property owner. Not surprisingly, this change is uniformly supported by the various local governmental organizations that impose property taxes on agricultural, commercial and residential property owners in this state.

In general, the proponents of this legislation have argued that the current provisions of the statute are "unfair" to local governments and that the provisions of **SB 528** would return "integrity" to the property tax appeals process. However, we believe that shifting the burden of proof to property owners has the potential to drastically reduce the ability of individual property owners to challenge the value of their property for property tax purposes, which will undoubtedly increase the property tax burden on property owners in this state.

Moreover, the proponents have argued that the language in **SB 528** is entirely directed at several large commercial property owners who are "generally sophisticated and represented by an attorney." Unfortunately, we believe that these contentions are absolutely false and misleading since the plain language in **SB 528** would apply equally to residential and commercial property owners alike.

To the contrary, we believe that the overwhelming majority of residential and commercial property owners that would be affected by the proposed changes are relatively unsophisticated and do not possess the intricate, working knowledge of the legal principles and methodology behind property tax valuation. In this respect, we believe that **SB 528** would effectively make it nearly impossible for the typical property owner to successfully appeal his or her property tax valuation.

For all the foregoing reasons, we would urge the members of the Senate Judiciary Committee to strongly oppose the provisions of **SB 528** as it is currently written. Once again, thank you for the opportunity to provide comments on **SB 528** and I would be happy to respond to any questions from the committee members at the appropriate time.

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Attachment 10

Testimony of the Kansas Farm Bureau and Kansas Livestock Association

Senate Judiciary Committee

Senator Tim Owens, Chair

Re: SB 528

From: Terry Holdren, Kansas Farm Bureau

Allie Devine, Kansas Livestock Association

Thank you for the opportunity to comment on SB 528. KFB and KLA frequently work together on issues regarding taxation of agricultural operations and agricultural land. Today we are providing these comments on behalf of all KFB and KLA members.

It is our understanding that SB 528 would shift the burden of proof of an appraisal from the county appraiser to the taxpayer on appeal. We understand the desire to make this shift for certain types of real property appeals, especially those valued according to an income stream appraisal process.

However, we do not believe this approach is practical for all types of real estate appraisal appeals. In particular, we believe that the SB 528 process should not apply to appeals of use value appraisals of agricultural land under KSA 79-1476. While use value is an "income stream" appraisal methodology it is done exclusively by the state. The formula for valuation and all of the input data is collected and processed for each soil classification by the Property Valuation Division of the Department of Revenue. For the taxpayer, there is no other source of information. The taxpayer must have this information to make a determination of fairness of the appraisal. Therefore, the burden of proof needs to remain with the county/state.

There are also other unique and specific appraisal processes where the appeal process of SB 528 seems impractical. In particular there are appraisals of feedlots according to the Commercial Feedlot Appraisal Guide (available on the KDOR website). To appraise these facilities, appraisers must separate many components to evaluate the real property aspects of the operation. The feedlot guide is designed to recognize these distinctions and assist the appraiser in valuing the property. Appraisals done pursuant to the guide are the primary data source. For the taxpayer, this is THE source of information therefore it only makes sense that the data be presented by the appraiser.

Finally, all agricultural buildings and residences are valued using the Marshall Swift Valuation program. Our experience with this system has been interesting. Last year, our organizations

received calls regarding large increases in valuations of agricultural buildings like swine houses. After meeting with the Department of Revenue, we learned that several counties had recently implemented the Marshall Swift program. The adoption of the program meant that appraisers were inputting specific aspects of a particular building into the program for valuation.

While valuations are based upon comparable market sales, the input description of the property is vital to the accuracy of the valuation. Without the "print out" of input information, it is impossible for the taxpayer to understand the valuation and determine its accuracy. Once that information is provided, the taxpayer can refute the differences. However, if informal conferences do not resolve the differences, it only makes sense that the county continues to carry the burden of proving why their data selection is accurate. When a county or the state is using complex programs, it only seems fair that they carry the burden of proving the accuracy of the data used in making the appraisal-because they have all of the data set. If the burden is shifted to the taxpayer, the taxpayer is at an immediate disadvantage because the taxpayer does not have all the supporting materials (including manuals and "options" lists). While the individual parcel or building appraisal information is available, the entire manual is not readily available and from our experience was not available even after an open records request.

Given all of the unique aspects of agricultural properties and the complexity of data sets used in appraising agricultural lands, feedlots, and buildings, we respectfully request that language be added to allow the burden of proof to remain with the county appraiser in appeals of agricultural appraisals. We have included suggested amendments to provide for this change to SB 528. Thank you for your consideration.

Ag Exemption Amendment for SB 528

Sec.1 (h)(1) With regard to any matter properly submitted to the division relating to the determination of valuation of property for taxation purposes, it shall be the duty of the ~~county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination~~ *property owner to produce evidence to substantiate the property's value by a preponderance of the evidence. In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* ~~No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.~~

(2)(a)Except that in cases involving property classified as land devoted to agricultural use and classified according to KSA 79-1476, and feedlots, it shall be duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

(b)For the purpose of the foregoing provisions of this section the phrase "land devoted to agricultural use" shall mean and include land and buildings, regardless of whether they are located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production, storage or transportation of plants, animals or horticultural products, including but not limited to: forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products or the storage of agricultural machinery and equipment.

Need similar language for the following:
Sec 2 regarding presumed value
Sec 4(d)
Sec 5
Sec 6(a) & (i)

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SENATE JUDICIARY COMMITTEE

FEBRUARY 12, 2010

SB 528 – SHIFTING OF THE BURDEN OF PROOF

Good afternoon, Chairman Owens and members of the Senate Judiciary Committee. I am Mary Jane Stankiewicz, the COO and Senior Vice President for the Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association. KARA is a voluntary state association with approximately 705 members representing the fertilizer, pesticide, seed, propane and other products associated with the production of crops in Kansas. KGFA is a voluntary state association with a member-ship encompassing the entire spectrum of the grain receiving, storage, processing and ship-ping industry in the state of Kansas. KGFA's mem-bership includes approximately 900 Kansas busi-ness locations and represents 98% of the commercially licensed grain storage in the state.

KGFA and KARA express concern over the shifting of the burden of proof to the citizens especially in regards to grain elevators and agricultural re-tail facilities. While we can appreciate the proponents desire to have a more fair and equitable appraisal appeal process, we think the net has been cast a little too wide in this bill.

In October of 2005, the Kansas Department of Revenue released a Grain Elevator Appraisal guide that allows the cost approach, a sales compari-son approach or an income capitalization approach to be used when ap-praising grain elevators. It appears that under this bill, not all of these options are available and the owner can only use income and expense statements for the property for the three years next preceding the year of appeal. Therefore this bill would actually create a conflict with KDOR's Grain Elevator Appraisal guide.

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Attachment 12

In visiting with some of the proponents, it appears the reason for the bill is based on large commercial operations, such as the big box chains, that claim their property is so large or unique that no one else would want the building and therefore the building should not be valued as highly on the tax rolls. It does not appear that the problem regarding commercial real estate is with grain elevators or agricultural retail facilities.

Therefore as you consider working this bill, please find with my testimony an attached copy of the bill with various balloon amendments that would allow grain elevators and agricultural retail facilities to be treated as they are today. These balloons are necessary because just by striking the "agriculture" section will not address our concerns since we are technically included in the category of commercial buildings. However, the reality is that we are truly unique facilities and thus KDOR has developed a specific guidance document to address these properties. We would respectfully ask the committee to consider these amendments to the bill.

Thank you for your time and consideration of our comments.

Session of 2010

SENATE BILL No. 528

By Committee on Ways and Means

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AN ACT concerning property valuation; regarding appeals; burden of proof; amending K.S.A. 2009 Supp. 74-2433f, 74-2438, 79-1448, 79-1606, 79-1609 and 79-2005 and repealing the existing sections.

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

Section 1. K.S.A. 2009 Supp. 74-2433f is hereby amended to read as follows: 74-2433f. (a) There shall be a division of the state court of tax appeals known as the small claims and expedited hearings division. Hearing officers appointed by the chief hearing officer shall have authority to hear and decide cases heard in the small claims and expedited hearings division.

(b) The small claims and expedited hearings division shall have jurisdiction over hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, and hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto, with regard to single-family residential property. The filing of an appeal with the small claims and expedited hearings division shall be a prerequisite for filing an appeal with the state court of tax appeals for appeals involving single-family residential property.

(c) At the election of the taxpayer, the small claims and expedited hearings division shall have jurisdiction over: (1) Any appeal of a decision, finding, order or ruling of the director of taxation, except an appeal, finding, order or ruling relating to an assessment issued pursuant to K.S.A. 79-5201 et seq., and amendments thereto, in which the amount of tax in controversy does not exceed $15,000; (2) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, where the value of the property, other than property devoted to agricultural use, is less than $2,000,000 as reflected on the valuation notice; (3) hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto,

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other than those relating to land devoted to agricultural use, wherein the value of the property is less than $2,000,000 as reflected on the valuation notice.

(d) In accordance with the provisions of K.S.A. 74-2438, and amendments thereto, any party may elect to appeal any application or decision referenced in subsection (b) to the state court of tax appeals. Except as provided in subsection (b) regarding single-family residential property, the filing of an appeal with the small claims and expedited hearings division shall not be a prerequisite for filing an appeal with the state court of tax appeals under this section. Final decisions of the small claims and expedited hearings division may be appealed to the state court of tax appeals. An appeal of a decision of the small claims and expedited hearings division to the state court of tax appeals shall be de novo.

(e) A taxpayer shall commence a proceeding in the small claims and expedited hearings division by filing a notice of appeal in the form prescribed by the rules of the state court of tax appeals which shall state the nature of the taxpayer's claim. Notice of appeal shall be provided to the appropriate unit of government named in the notice of appeal by the taxpayer. In any valuation appeal or tax protest commenced pursuant to articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, the hearing shall be conducted in the county where the property is located or a county adjacent thereto. In any appeal from a final determination by the secretary of revenue, the hearing shall be conducted in the county in which the taxpayer resides or a county adjacent thereto.

(f) The hearing in the small claims and expedited hearings division shall be informal. The hearing officer may hear any testimony and receive any evidence the hearing officer deems necessary or desirable for a just determination of the case. A hearing officer shall have the authority to administer oaths in all matters before the hearing officer. All testimony shall be given under oath. A party may appear personally or may be represented by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer. A county or unified government may be represented by the county appraiser, designee of the county appraiser, county attorney or counselor or other representatives so designated. No transcript of the proceedings shall be kept.

(g) The hearing in the small claims and expedited hearings division shall be conducted within 60 days after the appeal is filed in the small claims and expedited hearings division unless such time period is waived by the taxpayer. A decision shall be rendered by the hearing officer within 30 days after the hearing is concluded and, in cases arising from appeals described by subsections (b) and (c)(2) and (3), shall be accompanied by

a written explanation of the reasoning upon which such decision is based. Documents provided by a taxpayer or county or district appraiser shall be returned to the taxpayer or the county or district appraiser by the hearing officer and shall not become a part of the court's permanent records. Documents provided to the hearing officer shall be confidential and may not be disclosed, except as otherwise specifically provided.

(h) With regard to any matter properly submitted to the division relating to the determination of valuation of property for taxation purposes, it shall be the duty of the ~~county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination~~ *property owner to produce evidence to substantiate the property's value by a preponderance of the evidence. In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* ~~No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.~~

Sec. 2. K.S.A. 2009 Supp. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state court of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the court within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue or the secretary's designee. An appeal may also be taken to the state court of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto, and no written agreement by the parties to further extend the time for making such final determination is in effect. Upon receipt of a timely appeal, the court shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The hearing before the court shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the ~~county or district appraiser~~ *property owner* to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination~~, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has fur-~~

(i) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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~~nished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity and correctness of such determination~~. *In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.

Sec. 3. K.S.A. 2009 Supp. 79-1448 is hereby amended to read as follows: 79-1448. Any taxpayer may complain or appeal to the county appraiser from the classification or appraisal of the taxpayer's property by giving notice to the county appraiser within 30 days subsequent to the date of mailing of the valuation notice required by K.S.A. 79-1460, and amendments thereto, for real property, and on or before May 15 for personal property. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question. At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including the affording to the taxpayer of the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation. *With regard to leased commercial and industrial property, the property owner may produce evidence to dispute such value, including income and expense statements for the property for the three years next preceding the year of appeal.* The county appraiser may extend the time in which the taxpayer may informally appeal from the classification or appraisal of the taxpayer's property for just and adequate reasons. Except as provided in K.S.A. 79-1404, and amendments thereto, no informal meeting regarding real property shall be scheduled to take place after May 15, nor shall a final determination be given by the appraiser after May 20. Any final determination shall be accompanied by a written explanation of the reasoning upon which such determination is based when such determination is not in favor of the taxpayer. Any taxpayer who is aggrieved by the final determination of the county appraiser may appeal to the hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, and such hearing officer, or panel, for just cause shown and recorded, is authorized to change the classification or valuation of specific tracts or individual items of real or personal property in the same manner provided

(b) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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for in K.S.A. 79-1606, and amendments thereto. In lieu of appealing to a hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, any taxpayer aggrieved by the final determination of the county appraiser, except with regard to land devoted to agricultural use, wherein the value of the property, is less than $2,000,000, as reflected on the valuation notice, or the property constitutes single family residential property, may appeal to the small claims and expedited hearings division of the state court of tax appeals within the time period prescribed by K.S.A. 79-1606, and amendments thereto. Any taxpayer who is aggrieved by the final determination of a hearing officer or panel may appeal to the state court of tax appeals as provided in K.S.A. 79-1609, and amendments thereto. An informal meeting with the county appraiser or the appraiser's designee shall be a condition precedent to an appeal to the county or district hearing panel.

Sec. 4. K.S.A. 2009 Supp. 79-1606 is hereby amended to read as follows: 79-1606. (a) The county or district appraiser, hearing officer or panel and arbitrator shall adopt, use and maintain the following records, the form and method of use of which shall be prescribed by the director of property valuation: (1) Appeal form, (2) hearing docket, and (3) record of cases, including the disposition thereof.

(b) The county clerk shall furnish appeal forms to any taxpayer who desires to appeal the final determination of the county or district appraiser as provided in K.S.A. 79-1448, and amendments thereto. Any such appeal shall be in writing and filed with the county clerk within 18 days of the date that the final determination of the appraiser was mailed to the taxpayer.

(c) The hearing officer or panel shall hear and determine any appeal made by any taxpayer or such taxpayer's agent or attorney. All such hearings shall be held in a suitable place in the county or district. Sufficient evening and Saturday hearings shall be provided as shall be necessary to hear all parties making requests for hearings at such times.

(d) Every appeal so filed shall be set for hearing by the hearing officer or panel, which hearing shall be held on or before July 1, and the hearing officer or panel shall have no authority to be in session thereafter, except as provided in K.S.A. 79-1404, and amendments thereto. The county clerk shall notify each appellant and the county or district appraiser of the date for hearing of the taxpayer's appeal at least 10 days in advance of such hearing. It shall be the duty of the ~~county or district appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of the classification or appraisal of residential property or real property used for commercial and industrial purposes, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has fur-~~

(b) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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~~nished to the county or district appraiser a complete income and expense statement for the property for the three years next proceeding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity or correctness of any such classification or valuation~~ *property owner to produce evidence to substantiate the property's value by a preponderance of the evidence. In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct*. Every such appeal shall be determined by order of the hearing officer or panel which shall be accompanied by a written explanation of the reasoning upon which such order is based. Such order shall be recorded in the minutes of such hearing officer or panel on or before July 5. Such recorded orders and minutes shall be open to public inspection. Notice as to disposition of the appeal shall be mailed by the county clerk to the taxpayer and the county or district appraiser within five days after the determination.

Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

Sec. 5. K.S.A. 2009 Supp. 79-1609 is hereby amended to read as follows: 79-1609. Any person aggrieved by any order of the hearing officer or panel may appeal to the state court of tax appeals by filing a written notice of appeal, on forms approved by the state court of tax appeals and provided by the county clerk for such purpose, stating the grounds thereof and a description of any comparable property or properties and the appraisal thereof upon which they rely as evidence of inequality of the appraisal of their property, if that be a ground of the appeal, with the state court of tax appeals and by filing a copy thereof with the county clerk within 30 days after the date of the order from which the appeal is taken. A county or district appraiser may appeal to the state court of tax appeals from any order of the hearing officer or panel. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the ~~county appraiser~~ *appellant* to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of ~~such determination except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal~~ *the appellant's proposed property value*. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

(e) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

Sec. 6. K.S.A. 2009 Supp. 79-2005 is hereby amended to read as follows: 79-2005. (a) Any taxpayer, before protesting the payment of such taxpayer's taxes, shall be required, either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior to December 20, no

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later than December 20, or, with respect to taxes paid in whole or in part in an amount equal to at least ½ of such taxes on or before December 20 by an escrow or tax service agent, no later than January 31 of the next year, to file a written statement with the county treasurer, on forms approved by the state court of tax appeals and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which such taxpayer relies in protesting the whole or any part of such taxes. When the grounds of such protest is an assessment of taxes made pursuant to K.S.A. 79-332a and 79-1427a, and amendments thereto, the county treasurer may not distribute the taxes paid under protest until such time as the appeal is final. When the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the county treasurer shall forward a copy of the written statement of protest to the county appraiser who shall within 15 days of the receipt thereof, schedule an informal meeting with the taxpayer or such taxpayer's agent or attorney with reference to the property in question. *It shall be the duty of the property owner to produce evidence to substantiate the property's value by a preponderance of the evidence. In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* The county appraiser shall review the appraisal of the taxpayer's property with the taxpayer or such taxpayer's agent or attorney and may change the valuation of the taxpayer's property, if in the county appraiser's opinion a change in the valuation of the taxpayer's property is required to assure that the taxpayer's property is valued according to law, and shall, within 15 business days thereof, notify the taxpayer in the event the valuation of the taxpayer's property is changed, in writing of the results of the meeting. In the event the valuation of the taxpayer's property is changed and such change requires a refund of taxes and interest thereon, the county treasurer shall process the refund in the manner provided by subsection (l).

(b) No protest appealing the valuation or assessment of property shall be filed pertaining to any year's valuation or assessment when an appeal of such valuation or assessment was commenced pursuant to K.S.A. 79-1448, and amendments thereto, nor shall the second half payment of taxes be protested when the first half payment of taxes has been protested. Notwithstanding the foregoing, this provision shall not prevent any subsequent owner from protesting taxes levied for the year in which such property was acquired, nor shall it prevent any taxpayer from protesting taxes when the valuation or assessment of such taxpayer's property has been changed pursuant to an order of the director of property valuation.

(c) A protest shall not be necessary to protect the right to a refund of taxes in the event a refund is required because the final resolution of

Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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an appeal commenced pursuant to K.S.A. 79-1448, and amendments thereto, occurs after the final date prescribed for the protest of taxes.

(d) If the grounds of such protest shall be that the valuation or assessment of the property upon which the taxes so protested are levied is illegal or void, such statement shall further state the exact amount of valuation or assessment which the taxpayer admits to be valid and the exact portion of such taxes which is being protested.

(e) If the grounds of such protest shall be that any tax levy, or any part thereof, is illegal, such statement shall further state the exact portion of such tax which is being protested.

(f) Upon the filing of a written statement of protest, the grounds of which shall be that any tax levied, or any part thereof, is illegal, the county treasurer shall mail a copy of such written statement of protest to the state court of tax appeals and the governing body of the taxing district making the levy being protested.

(g) Within 30 days after notification of the results of the informal meeting with the county appraiser pursuant to subsection (a), the protesting taxpayer may, if aggrieved by the results of the informal meeting with the county appraiser, appeal such results to the state court of tax appeals.

(h) After examination of the copy of the written statement of protest and a copy of the written notification of the results of the informal meeting with the county appraiser in cases where the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the court shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act, unless waived by the interested parties in writing. If the grounds of such protest is that the valuation or assessment of the property is illegal or void the court shall notify the county appraiser thereof.

(i) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the ~~county appraiser~~ *property owner* to initiate the production of evidence to ~~demonstrate~~ *substantiate*, by a preponderance of the evidence, the ~~validity and correctness of such determination except that no such duty shall accrue to the county or district appraiser with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the~~

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~~year of appeal~~ *property's value*. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. In all instances where the court sets a request for hearing and requires the representation of the county by its attorney or counselor at such hearing, the county shall be represented by its county attorney or counselor.

(j) When a determination is made as to the merits of the tax protest, the court shall render and serve its order thereon. The county treasurer shall notify all affected taxing districts of the amount by which tax revenues will be reduced as a result of a refund.

(k) If a protesting taxpayer fails to file a copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court within the time limit prescribed, such protest shall become null and void and of no effect whatsoever.

(l) (1) In the event the court orders that a refund be made pursuant to this section or the provisions of K.S.A. 79-1609, and amendments thereto, or a court of competent jurisdiction orders that a refund be made, and no appeal is taken from such order, or in the event a change in valuation which results in a refund pursuant to subsection (a), the county treasurer shall, as soon thereafter as reasonably practicable, refund to the taxpayer such protested taxes and, with respect to protests or appeals commenced after the effective date of this act, interest computed at the rate prescribed by K.S.A. 79-2968, and amendments thereto, minus two percentage points, per annum from the date of payment of such taxes from tax moneys collected but not distributed. Upon making such refund, the county treasurer shall charge the fund or funds having received such protested taxes, except that, with respect to that portion of any such refund attributable to interest the county treasurer shall charge the county general fund. In the event that the state court of tax appeals or a court of competent jurisdiction finds that any time delay in making its decision is unreasonable and is attributable to the taxpayer, it may order that no interest or only a portion thereof be added to such refund of taxes.

(2) No interest shall be allowed pursuant to paragraph (1) in any case where the tax paid under protest was inclusive of delinquent taxes.

(m) Whenever, by reason of the refund of taxes previously received or the reduction of taxes levied but not received as a result of decreases in assessed valuation, it will be impossible to pay for imperative functions for the current budget year, the governing body of the taxing district affected may issue no-fund warrants in the amount necessary. Such warrants shall conform to the requirements prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by such section and may be issued without the approval of the state court

Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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of tax appeals. The governing body of such taxing district shall make a tax levy at the time fixed for the certification of tax levies to the county clerk next following the issuance of such warrants sufficient to pay such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized by law.

(n) The county treasurer shall disburse to the proper funds all portions of taxes paid under protest and shall maintain a record of all portions of such taxes which are so protested and shall notify the governing body of the taxing district levying such taxes thereof and the director of accounts and reports if any tax protested was levied by the state.

(o) This statute shall not apply to the valuation and assessment of property assessed by the director of property valuation and it shall not be necessary for any owner of state assessed property, who has an appeal pending before the state court of tax appeals, to protest the payment of taxes under this statute solely for the purpose of protecting the right to a refund of taxes paid under protest should that owner be successful in that appeal.

Sec. 7. K.S.A. 2009 Supp. 74-2433f, 74-2438, 79-1448, 79-1606, 79-1609 and 79-2005 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

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The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

Senate Judiciary Committee
February 12, 2010

SB 528 – Shifting burden of proof to the tax payer in property valuation appeals.

Chairman Owens and members of the Senate Judiciary Committee, thank you for the opportunity to comment on SB 528 and share our concerns with this measure. I am Leslie Kaufman, Executive Director for the Kansas Cooperative Council.

The Kansas Cooperative Council (KCC) represents all forms of cooperative businesses across the state -- agricultural, utility, credit, financial and consumer cooperatives. Approximately half of our members are grain warehouse and/or agribusiness retail/supply cooperatives.

As you know, the bill before you shifts the burden of proof in a real property valuation/tax appeal from the county appraiser to the property owner (taxpayer). We have had the opportunity to review some of the proponents' testimony and visit with some of them regarding their issues with the current property valuation appeals process. From these discussions, it is our understanding that the proponents' real concern rests with certain specific types of commercial enterprises and that there is not a systemic valuation appeal issue across all business enterprises.

We do understand and appreciate the proponents concerns, but we believe the approach outlined in SB 528 is much broader than would be necessary to address the types of situations that have given rise to their concerns. We do not believe the changes proposed in SB 528 need to extend to agricultural and agribusiness operations. Thus, we cannot support the bill in its current form.

Many agricultural operations provide unique considerations when it comes to property valuation. The grain warehousing sector is one such example. Specific guidance on appraisal methodology has been developed just for grain elevators. It appears to us, from conservations with proponents, that this type of commercial enterprise is not where their focus is. Thus, we believe the provisions of SB 528 could be more narrowly tailored and avoid what we see as unnecessary changes in the appeal process for our members.

We are willing to work with sponsors, proponents, stakeholders and others that have concerns with this measure to find a workable solution. As such, the agribusiness community has developed some language to address our concerns with SB 528. Mary Jane Stankiewicz with the Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association outlined our jointly recommended changes in her testimony and we concur with her comments. Should you work this bill, we respectfully request you include our recommended language changes, or language that will accomplish these same goals, in SB 528. We have attached the balloon amendment Mary Jane has referenced to our testimony, as well.

Thank you for this opportunity to comment and for considering our request. If you have any questions regarding our testimony, position on this bill, or the proposed amendments, please feel free to contact me at 785-220-[illegible]

Senate Judiciary
2-12-10
Attachment 13

Session of 2010

SENATE BILL No. 528

By Committee on Ways and Means

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AN ACT concerning property valuation; regarding appeals; burden of proof; amending K.S.A. 2009 Supp. 74-2433f, 74-2438, 79-1448, 79-1606, 79-1609 and 79-2005 and repealing the existing sections.

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

Section 1. K.S.A. 2009 Supp. 74-2433f is hereby amended to read as follows: 74-2433f. (a) There shall be a division of the state court of tax appeals known as the small claims and expedited hearings division. Hearing officers appointed by the chief hearing officer shall have authority to hear and decide cases heard in the small claims and expedited hearings division.

(b) The small claims and expedited hearings division shall have jurisdiction over hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, and hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto, with regard to single-family residential property. The filing of an appeal with the small claims and expedited hearings division shall be a prerequisite for filing an appeal with the state court of tax appeals for appeals involving single-family residential property.

(c) At the election of the taxpayer, the small claims and expedited hearings division shall have jurisdiction over: (1) Any appeal of a decision, finding, order or ruling of the director of taxation, except an appeal, finding, order or ruling relating to an assessment issued pursuant to K.S.A. 79-5201 et seq., and amendments thereto, in which the amount of tax in controversy does not exceed $15,000; (2) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, where the value of the property, other than property devoted to agricultural use, is less than $2,000,000 as reflected on the valuation notice; (3) hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto,

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other than those relating to land devoted to agricultural use, wherein the value of the property is less than $2,000,000 as reflected on the valuation notice.

(d) In accordance with the provisions of K.S.A. 74-2438, and amendments thereto, any party may elect to appeal any application or decision referenced in subsection (b) to the state court of tax appeals. Except as provided in subsection (b) regarding single-family residential property, the filing of an appeal with the small claims and expedited hearings division shall not be a prerequisite for filing an appeal with the state court of tax appeals under this section. Final decisions of the small claims and expedited hearings division may be appealed to the state court of tax appeals. An appeal of a decision of the small claims and expedited hearings division to the state court of tax appeals shall be de novo.

(e) A taxpayer shall commence a proceeding in the small claims and expedited hearings division by filing a notice of appeal in the form prescribed by the rules of the state court of tax appeals which shall state the nature of the taxpayer's claim. Notice of appeal shall be provided to the appropriate unit of government named in the notice of appeal by the taxpayer. In any valuation appeal or tax protest commenced pursuant to articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, the hearing shall be conducted in the county where the property is located or a county adjacent thereto. In any appeal from a final determination by the secretary of revenue, the hearing shall be conducted in the county in which the taxpayer resides or a county adjacent thereto.

(f) The hearing in the small claims and expedited hearings division shall be informal. The hearing officer may hear any testimony and receive any evidence the hearing officer deems necessary or desirable for a just determination of the case. A hearing officer shall have the authority to administer oaths in all matters before the hearing officer. All testimony shall be given under oath. A party may appear personally or may be represented by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer. A county or unified government may be represented by the county appraiser, designee of the county appraiser, county attorney or counselor or other representatives so designated. No transcript of the proceedings shall be kept.

(g) The hearing in the small claims and expedited hearings division shall be conducted within 60 days after the appeal is filed in the small claims and expedited hearings division unless such time period is waived by the taxpayer. A decision shall be rendered by the hearing officer within 30 days after the hearing is concluded and, in cases arising from appeals described by subsections (b) and (c)(2) and (3), shall be accompanied by

a written explanation of the reasoning upon which such decision is based. Documents provided by a taxpayer or county or district appraiser shall be returned to the taxpayer or the county or district appraiser by the hearing officer and shall not become a part of the court's permanent records. Documents provided to the hearing officer shall be confidential and may not be disclosed, except as otherwise specifically provided.

(h) With regard to any matter properly submitted to the division relating to the determination of valuation of property for taxation purposes, it shall be the duty of the ~~county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination~~ *property owner to produce evidence to substantiate the property's value by a preponderance of the evidence. In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* ~~No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.~~

Sec. 2. K.S.A. 2009 Supp. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state court of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the court within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue or the secretary's designee. An appeal may also be taken to the state court of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto, and no written agreement by the parties to further extend the time for making such final determination is in effect. Upon receipt of a timely appeal, the court shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The hearing before the court shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the ~~county or district appraiser~~ *property owner* to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination~~, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has fur-~~

(i) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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~~nished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity and correctness of such determination.~~ *In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.

Sec. 3. K.S.A. 2009 Supp. 79-1448 is hereby amended to read as follows: 79-1448. Any taxpayer may complain or appeal to the county appraiser from the classification or appraisal of the taxpayer's property by giving notice to the county appraiser within 30 days subsequent to the date of mailing of the valuation notice required by K.S.A. 79-1460, and amendments thereto, for real property, and on or before May 15 for personal property. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question. At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including the affording to the taxpayer of the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation. *With regard to leased commercial and industrial property, the property owner may produce evidence to dispute such value, including income and expense statements for the property for the three years next preceding the year of appeal.* The county appraiser may extend the time in which the taxpayer may informally appeal from the classification or appraisal of the taxpayer's property for just and adequate reasons. Except as provided in K.S.A. 79-1404, and amendments thereto, no informal meeting regarding real property shall be scheduled to take place after May 15, nor shall a final determination be given by the appraiser after May 20. Any final determination shall be accompanied by a written explanation of the reasoning upon which such determination is based when such determination is not in favor of the taxpayer. Any taxpayer who is aggrieved by the final determination of the county appraiser may appeal to the hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, and such hearing officer, or panel, for just cause shown and recorded, is authorized to change the classification or valuation of specific tracts or individual items of real or personal property in the same manner provided

(b) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

for in K.S.A. 79-1606, and amendments thereto. In lieu of appealing to a hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, any taxpayer aggrieved by the final determination of the county appraiser, except with regard to land devoted to agricultural use, wherein the value of the property, is less than $2,000,000, as reflected on the valuation notice, or the property constitutes single family residential property, may appeal to the small claims and expedited hearings division of the state court of tax appeals within the time period prescribed by K.S.A. 79-1606, and amendments thereto. Any taxpayer who is aggrieved by the final determination of a hearing officer or panel may appeal to the state court of tax appeals as provided in K.S.A. 79-1609, and amendments thereto. An informal meeting with the county appraiser or the appraiser's designee shall be a condition precedent to an appeal to the county or district hearing panel.

Sec. 4. K.S.A. 2009 Supp. 79-1606 is hereby amended to read as follows: 79-1606. (a) The county or district appraiser, hearing officer or panel and arbitrator shall adopt, use and maintain the following records, the form and method of use of which shall be prescribed by the director of property valuation: (1) Appeal form, (2) hearing docket, and (3) record of cases, including the disposition thereof.

(b) The county clerk shall furnish appeal forms to any taxpayer who desires to appeal the final determination of the county or district appraiser as provided in K.S.A. 79-1448, and amendments thereto. Any such appeal shall be in writing and filed with the county clerk within 18 days of the date that the final determination of the appraiser was mailed to the taxpayer.

(c) The hearing officer or panel shall hear and determine any appeal made by any taxpayer or such taxpayer's agent or attorney. All such hearings shall be held in a suitable place in the county or district. Sufficient evening and Saturday hearings shall be provided as shall be necessary to hear all parties making requests for hearings at such times.

(d) Every appeal so filed shall be set for hearing by the hearing officer or panel, which hearing shall be held on or before July 1, and the hearing officer or panel shall have no authority to be in session thereafter, except as provided in K.S.A. 79-1404, and amendments thereto. The county clerk shall notify each appellant and the county or district appraiser of the date for hearing of the taxpayer's appeal at least 10 days in advance of such hearing. It shall be the duty of the ~~county or district appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of the classification or appraisal of residential property or real property used for commercial and industrial purposes, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has fur-~~

(b) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

~~nished to the county or district appraiser a complete income and expense statement for the property for the three years next proceeding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity or correctness of any such classification or valuation~~ *property owner to produce evidence to substantiate the property's value by a preponderance of the evidence. In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* Every such appeal shall be determined by order of the hearing officer or panel which shall be accompanied by a written explanation of the reasoning upon which such order is based. Such order shall be recorded in the minutes of such hearing officer or panel on or before July 5. Such recorded orders and minutes shall be open to public inspection. Notice as to disposition of the appeal shall be mailed by the county clerk to the taxpayer and the county or district appraiser within five days after the determination.

Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

Sec. 5. K.S.A. 2009 Supp. 79-1609 is hereby amended to read as follows: 79-1609. Any person aggrieved by any order of the hearing officer or panel may appeal to the state court of tax appeals by filing a written notice of appeal, on forms approved by the state court of tax appeals and provided by the county clerk for such purpose, stating the grounds thereof and a description of any comparable property or properties and the appraisal thereof upon which they rely as evidence of inequality of the appraisal of their property, if that be a ground of the appeal, with the state court of tax appeals and by filing a copy thereof with the county clerk within 30 days after the date of the order from which the appeal is taken. A county or district appraiser may appeal to the state court of tax appeals from any order of the hearing officer or panel. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the ~~county appraiser~~ *appellant* to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of ~~such determination except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal~~ *the appellant's proposed property value.* No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

(e) Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

Sec. 6. K.S.A. 2009 Supp. 79-2005 is hereby amended to read as follows: 79-2005. (a) Any taxpayer, before protesting the payment of such taxpayer's taxes, shall be required, either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior to December 20, no

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later than December 20, or, with respect to taxes paid in whole or in part in an amount equal to at least ½ of such taxes on or before December 20 by an escrow or tax service agent, no later than January 31 of the next year, to file a written statement with the county treasurer, on forms approved by the state court of tax appeals and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which such taxpayer relies in protesting the whole or any part of such taxes. When the grounds of such protest is an assessment of taxes made pursuant to K.S.A. 79-332a and 79-1427a, and amendments thereto, the county treasurer may not distribute the taxes paid under protest until such time as the appeal is final. When the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the county treasurer shall forward a copy of the written statement of protest to the county appraiser who shall within 15 days of the receipt thereof, schedule an informal meeting with the taxpayer or such taxpayer's agent or attorney with reference to the property in question. *It shall be the duty of the property owner to produce evidence to substantiate the property's value by a preponderance of the evidence. In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct.* The county appraiser shall review the appraisal of the taxpayer's property with the taxpayer or such taxpayer's agent or attorney and may change the valuation of the taxpayer's property, if in the county appraiser's opinion a change in the valuation of the taxpayer's property is required to assure that the taxpayer's property is valued according to law, and shall, within 15 business days thereof, notify the taxpayer in the event the valuation of the taxpayer's property is changed, in writing of the results of the meeting. In the event the valuation of the taxpayer's property is changed and such change requires a refund of taxes and interest thereon, the county treasurer shall process the refund in the manner provided by subsection (l).

(b) No protest appealing the valuation or assessment of property shall be filed pertaining to any year's valuation or assessment when an appeal of such valuation or assessment was commenced pursuant to K.S.A. 79-1448, and amendments thereto, nor shall the second half payment of taxes be protested when the first half payment of taxes has been protested. Notwithstanding the foregoing, this provision shall not prevent any subsequent owner from protesting taxes levied for the year in which such property was acquired, nor shall it prevent any taxpayer from protesting taxes when the valuation or assessment of such taxpayer's property has been changed pursuant to an order of the director of property valuation.

(c) A protest shall not be necessary to protect the right to a refund of taxes in the event a refund is required because the final resolution of

Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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an appeal commenced pursuant to K.S.A. 79-1448, and amendments thereto, occurs after the final date prescribed for the protest of taxes.

(d) If the grounds of such protest shall be that the valuation or assessment of the property upon which the taxes so protested are levied is illegal or void, such statement shall further state the exact amount of valuation or assessment which the taxpayer admits to be valid and the exact portion of such taxes which is being protested.

(e) If the grounds of such protest shall be that any tax levy, or any part thereof, is illegal, such statement shall further state the exact portion of such tax which is being protested.

(f) Upon the filing of a written statement of protest, the grounds of which shall be that any tax levied, or any part thereof, is illegal, the county treasurer shall mail a copy of such written statement of protest to the state court of tax appeals and the governing body of the taxing district making the levy being protested.

(g) Within 30 days after notification of the results of the informal meeting with the county appraiser pursuant to subsection (a), the protesting taxpayer may, if aggrieved by the results of the informal meeting with the county appraiser, appeal such results to the state court of tax appeals.

(h) After examination of the copy of the written statement of protest and a copy of the written notification of the results of the informal meeting with the county appraiser in cases where the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the court shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act, unless waived by the interested parties in writing. If the grounds of such protest is that the valuation or assessment of the property is illegal or void the court shall notify the county appraiser thereof.

(i) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the ~~county appraiser~~ *property owner* to initiate the production of evidence to ~~demonstrate~~ *substantiate*, by a preponderance of the evidence, the ~~validity and correctness of such determination except that no such duty shall accrue to the county or district appraiser with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the~~

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~~year of appeal~~ *property's value*. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. In all instances where the court sets a request for hearing and requires the representation of the county by its attorney or counselor at such hearing, the county shall be represented by its county attorney or counselor.

(j) When a determination is made as to the merits of the tax protest, the court shall render and serve its order thereon. The county treasurer shall notify all affected taxing districts of the amount by which tax revenues will be reduced as a result of a refund.

(k) If a protesting taxpayer fails to file a copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court within the time limit prescribed, such protest shall become null and void and of no effect whatsoever.

(l) (1) In the event the court orders that a refund be made pursuant to this section or the provisions of K.S.A. 79-1609, and amendments thereto, or a court of competent jurisdiction orders that a refund be made, and no appeal is taken from such order, or in the event a change in valuation which results in a refund pursuant to subsection (a), the county treasurer shall, as soon thereafter as reasonably practicable, refund to the taxpayer such protested taxes and, with respect to protests or appeals commenced after the effective date of this act, interest computed at the rate prescribed by K.S.A. 79-2968, and amendments thereto, minus two percentage points, per annum from the date of payment of such taxes from tax moneys collected but not distributed. Upon making such refund, the county treasurer shall charge the fund or funds having received such protested taxes, except that, with respect to that portion of any such refund attributable to interest the county treasurer shall charge the county general fund. In the event that the state court of tax appeals or a court of competent jurisdiction finds that any time delay in making its decision is unreasonable and is attributable to the taxpayer, it may order that no interest or only a portion thereof be added to such refund of taxes.

(2) No interest shall be allowed pursuant to paragraph (1) in any case where the tax paid under protest was inclusive of delinquent taxes.

(m) Whenever, by reason of the refund of taxes previously received or the reduction of taxes levied but not received as a result of decreases in assessed valuation, it will be impossible to pay for imperative functions for the current budget year, the governing body of the taxing district affected may issue no-fund warrants in the amount necessary. Such warrants shall conform to the requirements prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by such section and may be issued without the approval of the state court

Except that in the cases involving property classified as grain warehouses as defined in chapter 34 and article 2 of chapter 82 and any agricultural retail facility which is licensed under chapter 2, whose primary business function is to sell pesticides, fertilizers, seed or commercial feeding stuffs, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

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of tax appeals. The governing body of such taxing district shall make a tax levy at the time fixed for the certification of tax levies to the county clerk next following the issuance of such warrants sufficient to pay such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized by law.

(n) The county treasurer shall disburse to the proper funds all portions of taxes paid under protest and shall maintain a record of all portions of such taxes which are so protested and shall notify the governing body of the taxing district levying such taxes thereof and the director of accounts and reports if any tax protested was levied by the state.

(o) This statute shall not apply to the valuation and assessment of property assessed by the director of property valuation and it shall not be necessary for any owner of state assessed property, who has an appeal pending before the state court of tax appeals, to protest the payment of taxes under this statute solely for the purpose of protecting the right to a refund of taxes paid under protest should that owner be successful in that appeal.

Sec. 7. K.S.A. 2009 Supp. 74-2433f, 74-2438, 79-1448, 79-1606, 79-1609 and 79-2005 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Midway Sales & Distributing, Inc. d/b/a
MIDWAY WHOLESALE
Topeka • Salina • Lawrence • Manhattan • Elwood • Kansas City • Wichita

February 12, 2010
TESTIMONY TO SENATE JUDICIARY COMMITTEE
ON SENATE BILL 528

By Ken Daniel
Chairman, Midway Wholesale
Director of Governmental Affairs, Topeka Independent Business Assn.

Kenneth L. Daniel is an unpaid volunteer lobbyist who advocates for Kansas small businesses. He is the Governmental Affairs Director of the Topeka Independent Business Association. He is publisher of KsSmallBiz.com, a small business e-newsletter and website. He is Chairman of the Board of Midway Wholesale, a business he founded in 1970.

Mr. Chairman and members of the committee.

I would like to speak in opposition to Senate Bill 528.

The Court of Tax Appeals indicates this bill has the potential to reduce overall filings, which would reduce its operating costs. Unfortunately, that will come at the expense of thousands of small business owners who overwhelmingly handle these appeals themselves until the cases advance to the level of the Court of Tax Appeals.

We do business in eight cities. I have filed dozens of appeals over the years. Only once have we advanced to the Court of Tax Appeals. I have twice advanced to that level but settled the case with the county appraiser before we actually went to court. Often, as was the case last month, the appraiser's staff explains their appraisal to my satisfaction. Sometimes, I explain my thinking to their satisfaction and get the appraisal lowered.

This bill will force me and thousands of other small business owners to hire attorneys and appraisers where now I only use them to get advice on how to advance my own case.

The present system works very well in almost every case. This would turn the system on its head for the convenience of bureaucrats who do this work full-time and are paid very well to do it.

Please vote against Senate Bill 528.

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www.midwaywholesale.com

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2-12-10
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JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
JOHNSON COUNTY
LEGISLATIVE HOTLINE
1-800-432-3924

State of Kansas

Vice President
Kansas Senate

COMMITTEE ASSIGNMENTS
VICE CHAIR: EDUCATION
WAYS AND MEANS
MEMBER: JUDICIARY
ORGANIZATION, CALENDAR AND RULES
INTERSTATE COOPERATION
KANSAS CRIMINAL CODE RECODIFICATION COMMISSION

Testimony Presented to
Senate Judiciary Committee
By Senator John Vratil
February 9, 2010
Concerning Senate Bill 528

Good Morning! Thank you for the opportunity to appear before the Senate Judiciary Committee in support of Senate Bill (SB) 528. The language contained in SB 528 seeks to ensure that all parties in a property valuation dispute involving property valuation for tax purposes demonstrate, through a preponderance of the evidence, their respective claims.

Currently, the County Appraiser establishes the value of commercial or residential property. The value becomes the basis upon which the property owner remits property tax. If the property owner disagrees with the appraiser's valuation, the owner makes an appeal stating the value the owner assigns to the property. The basis of the owner's appeal does not require evidence. Senate Bill 528 requires the owner who seeks to appeal the appraiser's conclusion to show the basis of the owner's claim. The owner must establish through a preponderance of the evidence the value proposed to counter the appraiser's initial valuation.

Senate Bill 528 would establish a higher level of accountability within the system of property valuation.

I ask for your support on Senate Bill 528.

John Vratil

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STATE TOP
F
john

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KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE
ON SB 528
FEBRUARY 9, 2010

Chairman Owens and Members of the Committee:

Thank you for the opportunity to offer written testimony in support of SB 528.

SB 528 changes the burden of proof in tax appeal cases. The bill shifts the burden of proof to the appellant—the person requesting the appeal. This change would make tax appeal cases consistent with other civil cases where the appellant is first required to prove his case.

Previously the law was written to place the burden of proof on the property owner. The county appraiser would present his evidence showing the appraised value of the property, and the property owner would have to prove why the county appraiser's value was incorrect. The law was amended in the 1990s to require the county appraiser to prove the value by a preponderance of evidence.

The change in law means that the property owner need not submit any evidence of why he believes the county appraiser is incorrect on his appraised value. The property owner must only discredit the county appraiser at the hearing.

We believe returning the law to its previous version is fair and consistent with civil law. We ask for your support on SB 528.

Respectfully Submitted,

Melissa A. Wangemann
General Counsel/Director of Legislative Services

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WRITTEN TESTIMONY IN SUPPORT OF SB 528

Paul Welcome, County Appraiser
Kathryn D. Myers, Asst. County Counselor
Johnson County, Kansas

Johnson County, Kansas generally supports the concept of SB 528 which places the burden of proof on the taxpayer in the appeal of ad valorem real property and which presumes that the valuation by the county is valid and correct absent evidence to the contrary. Please see the last paragraph for additional amendments necessary to this bill for consistency.

Prior to 1996, the burden of proof was with the taxpayer and this bill would essentially return the appeal process back to that status. Since 1996, the taxpayer has taken the position that it is not required to do anything or provide any data in the appeal process. The result is that the appeal does not reach resolution until the matter is before the regular division of the Court of Tax Appeals (COTA) and after the county engages in extensive discovery to obtain information.

Most cases are resolved by stipulation or by a voluntary dismissal by the taxpayer once the county receives information in the discovery process. If the taxpayer had the burden to produce evidence at the beginning of the appeal process and throughout the appeal process, it is likely that more matters would be resolved sooner rather than later because the taxpayer would need to take active participation in the process rather than the passive approach the current system has created.

Also, it is the commercial property owner, who is generally sophisticated and represented by an attorney, to whom the bill is directed. The residential property owner will not be affected adversely by these amendments. Residential property follows a bifurcated process and residential property owners take a much more active role in their appeals. It is the commercial property owner who is passive and non responsive to resolving an appeal. It is not uncommon to receive the all important income and expense data from the commercial property owner after a pretrial hearing and just days prior to an evidentiary hearing at the regular division of COTA let alone any other information that may be useful to resolving a matter.

To accomplish the objectives of the bill, there needs to be additional amendments made for consistency. P. 6, line 37 beginning at the word "no" through line 39 needs to be deleted. Without removal of this last sentence, K.S.A. 79-1609 is not consistent with the other statutes being amended by this bill. The sentence should replaced with "In the absence of such evidence, the county or district appraiser's value shall be presumed to be valid and correct." P. 9, line 1beginning at the word "no" through line 3 ending at "determination" needs to be deleted for the same reason and because it conflicts with subsection a of this statute as being amended in the bill and conflicts with K.S.A. 79-1609 as it is currently written in the bill unless amended as suggested above.

Testimony

Unified Government Public Relations
701 N. 7th Street, Room 620
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director
913.573.5565 mtaylor@wycokck.org

Senate Bill 528
Burden of Proof in Property Valuation Appeals

Delivered February 9, 2010
Senate Judiciary Committee

The Unified Government of Wyandotte County/Kansas City supports Senate Bill 528 which will provide a more reasonable balance regarding the appraisal process by returning the presumption of validity to a county appraiser's assessment of the property.

In most states, decisions by the county appraiser are assumed to be correct until proven faulty. In 1996, Kansas revised its laws to shift the burden of proof on a tax appeal from the property owner to the appraiser. That means instead of the property owner proving beyond a doubt the tax valuation is incorrect, the appraiser must prove beyond a doubt that it is correct.

Large commercial establishments have systematically taken advantage of this change in administrative procedure by appealing valuations. Rather than having to bring any kind of facts or reasonable basis for their appeal, the large commercial property owners and their attorneys offer up novel and untested theories of valuation. One popular argument used by the commercial property owners and their attorneys is that their building is so large or unique, that if they weren't using the property, no one else would buy it or use it, so therefore it is next to worthless in terms of tax value.

Again, rather than having to offer any substantial proof of their argument, these large commercial property owners wait for the county appraiser to provide records disproving the argument. This shift of burden of proof has created a slanted, unfair system for appraisers and the communities in which the appealing property owners are located. This has resulted in significant erosion of property values by the Court of Tax Appeals even though the Division of Property Valuation can verify the County's ratios substantiate their valuations.

The Unified Government supports making a change in the statute which would return a more reasonable balance to the process by returning the presumption of correctness and validity to a county appraisers assessment of a property.

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KANSAS
MANUFACTURED HOUSING
ASSOCIATION

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TO: Senator Tim Owens, Chairman
And Members of the
Senate Judiciary Committee

FROM: Martha Neu Smith
Executive Director

DATE: Friday, February 12, 2010

RE: SB 528 – Changing Burden of Proof in Property Valuation Appeals from County Appraiser to Property Owner

Chairman Owens and members of the Committee, my name is Martha Neu Smith and I am the Executive Director for Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to provide written comments in opposition of SB 528 – Changing Burden of Proof in Property Valuation Appeals from County Appraiser to Property Owner.

KMHA is a statewide trade association, which represents all facets of the manufactured and modular housing industry including manufacturers, retail centers, community owners and operators, finance and insurance companies, service and supplier companies and transport companies.

SB 528 would shift the burden of proof in property valuation appeals from the county appraiser to the property owner. It is unclear if the changes in SB 528 apply to commercial and residential or just to commercial, regardless of that clarification, KMHA feels that most of our small business owners and to a greater extent manufactured and modular home owners do not possess the knowledge or expertise to challenge the value of their property for property tax purposes. With that being said, we feel that SB 528 puts small business owners and homeowners in a no win situation when appealing their property tax valuation.

KMHA would respectfully ask the Senate Judiciary Committee to not pass SB 528 out of Committee. Thank you for your consideration.

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Session of 2010

SENATE BILL No. 370

By Committee on Judiciary

1-14

AN ACT concerning the Kansas consumer protection act; relating to certain victims; enhanced civil penalties; amending K.S.A. 50-676, 50-677, 50-678, 50-679 and 50-679a and repealing the existing sections.

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

Section 1. K.S.A. 50-676 is hereby amended to read as follows: 50-676. As used in ~~this act~~ *K.S.A. 50-676 through 50-679, and amendments thereto*:

(a) "Elder person" means a person who is 60 years of age or older.

(b) "Disabled person" means a person who has physical or mental impairment, or both, which substantially limits one or more of such person's major life activities.

(c) "Immediate family member" means child, stepchild or spouse.

~~(c)~~ *(d)* "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

~~(d)~~ *(e)* "Physical or mental impairment" means the following:

(1) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss substantially affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or

(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation and emotional illness.

(f) "Protected consumer" means:

(1) An elder person;

(2) a disabled person;

(3) a veteran;

(4) the surviving spouse of a veteran; and

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parent

(e) "Member of the military" means a member of the armed forces or national guard on active duty or a member of an active reserve unit in the armed forces or national guard.

*And re-letter remaining

(5) an immediate family member of a ~~person on active military deployment~~.

member of the military

~~(c)~~ *(g)* "Substantially limits" means:

(1) Unable to perform a major life activity that the average person in the general population can perform; or

(2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity. Minor temporary ailments or injuries shall not be considered physical or mental impairments which substantially limit a person's major life activities. Minor temporary ailments include, but are not limited to, colds, influenza or sprains or minor injuries.

(h) "Veteran" means a person who has served in the armed forces of the United States of America and separated from the armed forces under honorable conditions.

Sec. 2. K.S.A. 50-677 is hereby amended to read as follows: 50-677. If any person is found to have violated any provision of the Kansas consumer protection act, and such violation is committed against ~~elder or disabled persons~~ *a protected consumer*, in addition to any civil penalty otherwise provided by law, the court may impose an additional civil penalty not to exceed $10,000 for each such violation.

Sec. 3. K.S.A. 50-678 is hereby amended to read as follows: 50-678. In determining whether to impose a civil penalty as provided in ~~this act~~ *K.S.A. 50-676 through 50-679, and amendments thereto,* and the amount of such civil penalty, the court shall consider the extent to which one or more of the following factors are present:

(a) Whether the defendant's conduct was in disregard of the rights of the ~~elder or disabled person~~ *protected consumer*;

(b) whether the defendant knew or should have known that the defendant's conduct was directed to ~~an elder or disabled person~~ *a protected consumer*;

(c) whether the ~~elder or disabled person~~ *protected consumer* was more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility or disability than other persons and actually suffered substantial physical, emotional or economic damage resulting from the defendant's conduct;

(d) whether the defendant's conduct caused ~~an elder or disabled person~~ *a protected consumer* to suffer any of the following:

(1) Mental or emotional anguish;

(2) loss of or encumbrance upon a primary residence of the ~~elder or disabled person~~ *protected consumer*;

(3) loss of or encumbrance upon the ~~elder or disabled person's~~ *protected consumer's* principal employment or principal source of income;

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2010 9rs1791

PROPOSED Substitute for SENATE BILL NO. 381

By

AN ACT concerning crimes, punishment and criminal procedure; defining "use of force" and "use of deadly force"; amending K.S.A. 21-3212, 21-3213, 21-3214, 21-3215, 21-3216 and 21-3217 and repealing the existing sections.

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

New Section 1. As used in article 32 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto:

(a) "Use of force" means any actual or constructive force, including, but not limited to, threats, displays or presentations of force directed toward another person or the actual application of force upon another person.

(b) "Use of deadly force" means any actual or constructive force described in subsection (a) which is likely to cause imminent death or great bodily harm.

Sec. 2. K.S.A. 21-3212 is hereby amended to read as follows: 21-3212. (a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling or occupied vehicle. There shall be a rebuttable presumption that such person had a reasonable belief that such force was necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling or occupied vehicle if such person reasonably believes

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deadly force is necessary to prevent imminent death or great bodily harm to such person or another. There shall be a rebuttable presumption that such person had a reasonable belief that deadly force was necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling or occupied vehicle.

Sec. 3. K.S.A. 21-3213 is hereby amended to read as follows: 21-3213. A person who is lawfully in possession of property other than a dwelling or occupied vehicle is justified in the ~~threat or~~ use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such degree of force ~~or threat thereof~~ as a reasonable man would deem necessary to prevent or terminate the interference may intentionally be used.

Sec. 4. K.S.A. 21-3214 is hereby amended to read as follows: 21-3214. The justification described in ~~sections~~ K.S.A. 21-3211, 21-3212, and 21-3213, and amendments thereto, is not available to a person who:

~~(1)~~ (a) Is attempting to commit, committing, or escaping from the commission of a forcible felony; or

~~(2)~~ (b) Initially provokes the use of force against ~~himself~~ such person or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

~~(3)~~ (c) Otherwise initially provokes the use of force against ~~himself~~ such person or another, unless:

~~(a)~~--He (1) Such person has reasonable ~~ground~~ grounds to believe that ~~he~~ such person is in imminent danger of death or great bodily harm, and ~~he~~ such person has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

~~(b)~~ (2) In good faith, ~~he~~ such person withdraws from physical contact with the assailant and indicates clearly to the assailant that ~~he~~ such person desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Sec. 5. K.S.A. 21-3215 is hereby amended to read as follows: 21-3215. ~~(1)~~ (a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and of any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in using force likely to cause death or great bodily harm only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has

probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving death or great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

~~(2)~~ (b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

Sec. 6. K.S.A. 21-3216 is hereby amended to read as follows: 21-3216. ~~(1)~~ (a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which ~~he~~ such person would be justified in using if ~~he~~ such person were summoned or directed by a law enforcement officer to make such arrest, except that ~~he~~ such person is justified in the use of force likely to cause death or great bodily harm only when ~~he~~ such person reasonably believes that such force is necessary to prevent death or great bodily harm to ~~himself~~ such person or another.

~~(2)~~ (b) A private person who is summoned or directed by a law enforcement officer to assist in making an arrest which is unlawful, is justified in the use of any force which ~~he~~ such person would be justified in using if the arrest were lawful.

Sec. 7. K.S.A. 21-3217 is hereby amended to read as follows: 21-3217. A person is not authorized to use force to resist an arrest which ~~he~~ such person knows is being made either by a law

enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful.

Sec. 8. K.S.A. 21-3212, 21-3213, 21-3214, 21-3215, 21-3216 and 21-3217 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

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SENATE BILL No. 381

By Senators D. Schmidt and Petersen

1-15

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RS - JThompson - 02/04/10

AN ACT concerning crimes, punishment and criminal procedure; relating to justified threat or use of force; amending K.S.A. 21-3211, 21-3212, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218 and 21-3219 and repealing the existing sections.

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

Section 1. K.S.A. 21-3211 is hereby amended to read as follows: 21-3211. (a) A person is justified in the *threat or* use of force against another when and to the extent it appears to such person and such person reasonably believes that such *threat or use of* force is necessary to defend such person or a third person against such other's imminent use of unlawful force.

(b) A person is justified in the *threat or* use of deadly force under circumstances described in subsection (a) if such person reasonably believes *that such threat or use of* deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is *threatening or* using force to protect such person or a third person.

Sec. 2. K.S.A. 21-3212 is hereby amended to read as follows: 21-3212. (a) A person is justified in the *threat or* use of force against another when and to the extent that it appears to such person and such person reasonably believes that such *threat or use of* force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling or occupied vehicle.

There shall be a rebuttable presumption that such person had a reasonable belief that such force was necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling or occupied vehicle.

(b) A person is justified in the *threat or* use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling or occupied vehicle if such person reasonably believes *that such threat or use of* deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

There shall be a rebuttable presumption that such person had a reasonable belief that deadly force was necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is *threatening or* using force to protect such person's dwelling or occupied vehicle.

Sec. 3. K.S.A. 21-3214 is hereby amended to read as follows: 21-3214. The justification described in sections 21-3211, 21-3212, and 21-

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3213, *and amendments thereto,* is not available to a person who:

~~(1)~~ *(a)* Is attempting to commit, committing, or escaping from the commission of a forcible felony; or

~~(2)~~ *(b)* Initially provokes the use of force against ~~himself~~ *such person* or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

~~(3)~~ *(c)* Otherwise initially provokes the use of force against ~~himself~~ *such person* or another, unless:

~~(a) He~~ *(1) Such person* has reasonable ~~ground~~ *grounds* to believe that ~~he~~ *such person* is in imminent danger of death or great bodily harm, and ~~he~~ *such person* has exhausted every reasonable means to escape such danger other than the *threat or* use of force which is likely to cause death or great bodily harm to the assailant; or

~~(b)~~ *(2)* In good faith, ~~he~~ *such person* withdraws from physical contact with the assailant and indicates clearly to the assailant that ~~he~~ *such person* desires to withdraw and terminate the *threat or* use of force, but the assailant continues or resumes the use of force.

Sec. 4. K.S.A. 21-3215 is hereby amended to read as follows: 21-3215. ~~(1)~~ *(a)* A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the *threat or* use of any force which such officer reasonably believes to be necessary to effect the arrest and ~~of~~ *the threat or use of* any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in *threatening or* using force likely to cause death or great bodily harm only when such officer reasonably believes that such *threat or use of* force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such *threat or use of* force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

death or

~~(2)~~ *(b)* A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the *threat or* use of any force which such officer would be justified in *threatening or* using if the warrant were valid, unless such officer knows that the warrant is invalid.

Sec. 5. K.S.A. 21-3216 is hereby amended to read as follows: 21-3216. ~~(1)~~ *(a)* A private person who makes, or assists another private person

SENATE BILL No. 386

By Committee on Judiciary

1-19

AN ACT concerning criminal procedure; relating to discovery and inspection; amending K.S.A. 22-3212 and repealing the existing section; also repealing K.S.A. 22-3433.

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

Section 1. K.S.A. 22-3212 is hereby amended to read as follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant: (1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution. Except as provided in subsections (a)(2) and (a)(4), this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant, except as may be provided by law. *Except as provided in subsection (e), this section does not require the prosecuting attorney to provide unredacted vehicle identification numbers or personal identifiers of persons mentioned in such books, papers or documents. As*

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used in this subsection, personal identifiers include, but are not limited to, birthdates, social security numbers, taxpayer identification numbers, drivers license numbers, account numbers of active financial accounts, home addresses and personal telephone numbers of any victims or material witnesses. If the prosecuting attorney does provide the defendant's counsel with unredacted vehicle identification numbers or personal identifiers, the court shall enter a protective order prohibiting the transmission of the unredacted numbers or identifiers to the defendant, directly or indirectly, except as authorized by further order of the court.

the prosecuting attorney shall request and

or any other person

(c) If the defendant seeks discovery and inspection under subsection (a)(2) or subsection (b), the defendant shall permit the attorney for the prosecution to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at any hearing, and which are material to the case and will not place an unreasonable burden on the defense. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

(d) The prosecuting attorney and the defendant shall cooperate in discovery and reach agreement on the time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for court intervention.

(e) Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, *enlarged* or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(f) Discovery under this section must be completed no later than 20 days after arraignment or at such reasonable later time as the court may permit.

(g) If, subsequent to compliance with an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under this section, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the

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attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) For crimes committed on or after July 1, 1993, the prosecuting attorney shall provide all prior convictions of the defendant known to the prosecuting attorney that would affect the determination of the defendant's criminal history for purposes of sentencing under a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 et seq. and amendments thereto.

(i) The prosecuting attorney and defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovering and verifying the criminal history of the defendant.

Sec. 2. K.S.A. 22-3212 and 22-3433 are hereby repealed.

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