

SESSION OF 2011

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 63**

As Agreed to May 4, 2011

Brief*

House Sub. for SB 63 would amend the duties of a court clerk by removing the requirements that the clerk keep the papers in each case in a wrapper or folder and that the clerk initial the date and time stamp on each paper.

The bill also would give the Kansas Supreme Court, rather than the chief judge of a district court, the authority to order that records and information of the district court be kept in a computer information storage and retrieval system.

The bill also would clarify that court costs may be assessed under the Asset Seizure and Forfeiture Act.

Finally, the bill would provide certain safeguards against waiver of attorney-client privilege or work-product protection. The safeguards would include:

- If a waiver is found, it would apply only to information actually disclosed, unless: the waiver was intentional, undisclosed information concerned the same subject matter, and fairness required the disclosed and undisclosed information to be considered together.
- Inadvertent disclosure in a court or agency proceeding would not operate as a waiver if the holder of the

* Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

privilege took reasonable steps to prevent disclosure and took prompt, reasonable steps to rectify the error.

- Disclosure made in a non-Kansas proceeding would not waive the privilege in a Kansas proceeding if the disclosure would not constitute a waiver under Kansas law or under the law of the jurisdiction where the waiver occurred. Whichever law provides the most protection against a waiver would apply.
- A court would be able to order that disclosure in litigation pending before the court does not constitute a waiver.
- Parties would be able to enter into agreements as to the effect of disclosures within the proceeding, although such agreements would not be binding upon non-parties unless incorporated into a court order.

The bill would provide definitions for “attorney-client privilege” and “work-product protection” and make technical amendments to KSA 60-426 and KSA 60-3003 to ensure consistency in wording.

Conference Committee Action

The conference committee agreed to remove the original contents of House Sub. for SB 63, which would have codified the exception to the warrant requirement for a search made incident to an arrest by a law enforcement officer and amended the crime of sexual exploitation of a child. The committee then inserted the contents of SB 46, regarding the duties of a court clerk, and SB 62, regarding the assessment of court costs under the Asset Seizure and Forfeiture Act.

Finally, the conference committee added language from SB 35, as introduced, regarding the attorney-client privilege and work-product doctrine.

Background

The Kansas County and District Attorneys Association (KCDAA) requested the Senate Judiciary Committee introduce SB 63. As introduced, SB 63 would have amended the crime of sexual exploitation of a child. A similar “belief” provision is contained in the current electronic solicitation law.

In the Senate Judiciary Committee, a representative of the KCDAA appeared in support of SB 63, explaining that this change would allow a suspect to be charged under the statute even when the victim is actually an undercover law enforcement officer. A criminal defense attorney testified in opposition to the bill. The Senate Committee made no changes to the bill and recommended it be passed.

In the House Committee on Corrections and Juvenile Justice, the same conferees testified as before the Senate Committee. The House Committee modified the language of SB 6, regarding search incident to arrest, and placed the modified language into a substitute bill for SB 63. The House Committee recommended House Sub. for SB 63 be passed.

The fiscal note on SB 63, as introduced, stated the bill would have no fiscal effect. There is no fiscal note available for the substitute bill.

Background of SB 46 – Court Clerk Duties

The Kansas Supreme Court requested the Senate Judiciary Committee introduce SB 46.

In the Senate Judiciary Committee, a representative of the Kansas Supreme Court appeared in support of SB 46, explaining that the changes are needed to facilitate the Kansas Judicial Branch’s ongoing implementation of electronic filing. No opponents provided testimony. The

Committee made no changes to the bill and recommended it be passed.

The fiscal note on the bill stated the long-term fiscal effect of electronic filing cannot be determined. The Judicial Branch budget requested for FY 2012 includes \$1,866,000 from the State General Fund for the electronic filing project.

Background of SB 62 – Court Costs under Asset Seizure and Forfeiture Act

The Kansas Association of District Court Clerks and Administrators (KADCCA) requested the Senate Judiciary Committee introduce SB 62.

In the Senate Judiciary Committee, a representative of KADCCA appeared in support of SB 62, explaining that under current law, court costs apparently may be assessed when forfeited assets are sold, but no provision allows court cost assessment when the object of a forfeiture proceeding is cash. No opponents provided testimony. The Committee made no changes to the bill and recommended it be passed.

The fiscal note on the bill stated the bill should result in additional docket fees and costs collected by district courts, but a precise fiscal effect cannot be determined until the courts operate under the bill's provisions.

Background of SB 35 – Attorney-client Privilege and Work-product Protection

As introduced, SB 35 provided certain safeguards against waiver of the attorney-client privilege or work-product protection. Confidential communications between attorneys and their clients are protected from disclosure under the attorney-client privilege, which is codified at K.S.A. 60-426. Similarly, materials produced or assembled by an attorney in preparation for or in the course of litigation is protected from

disclosure under the work-product doctrine, which is codified at KSA 2010 Supp. 60-226(b)(4). The attorney-client privilege or protection under the work-product doctrine may be waived if the protected party or the party's attorney reveals the protected information to a third party.

The Kansas Judicial Council requested the Senate Judiciary Committee introduce SB 35.

In the Senate Judiciary Committee, a representative of the Kansas Judicial Council appeared in support of SB 35, explaining that SB 35 is based on Federal Rule of Evidence 502, which was enacted in 2008. No opponents provided testimony. The Committee made no changes to the bill and recommended it be passed.

The House Committee on Federal and State Affairs recommended a substitute bill for SB 35 replacing the original provisions with provisions related to abortion regulation.

The fiscal note on the bill, as introduced, stated the bill is expected to produce litigation to interpret and apply the law, but that it does not appear there will be a substantial fiscal effect to the Judicial Branch. A precise fiscal effect cannot be determined until the courts have operated under its provisions.

Judiciary; Electronic Filing; Court Clerks; Court Costs; Forfeiture; Attorney-Client Privilege; Work-Product Doctrine