

Approved: March 18, 2010

Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:37 a.m. on February 17, 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

Others attending:

See attached list.

The Chairman called for final action on **SB 400 - Requiring plaintiff or plaintiff's attorney to notify defendants of payment of appraisers' award within 15 days.**

Senator Schmidt moved, Senator Lynn seconded, to table SB 400. Motion carried.

The Chairman called for final action on **SB 372 - Amending the Kansas Act for Obtaining a Guardian or a Conservator, or both.** Jason Thompson, staff revisor, reviewed the bill.

Senator Schmidt moved, Senator Schodorf seconded, to recommend SB 372 favorably for passage. Motion carried.

The Chairman called for final action on **SB 407 - Prescribing penalties for violations of liquor enforcement tax by licensees and persons required to be licensed.** Jason Thompson, staff revisor, reviewed the bill.

Senator Schmidt moved, Senator Pilcher-Cook seconded, table SB 407. Motion carried.

The Chairman called for final action on **SB 468 - Amending petition requirements for summoning a grand jury.** Jason Thompson, staff revisor, reviewed the bill. Senator Vratil had a balloon amendment distributed and reviewed the changes. (Attachment 1)

Senator Vratil moved, Senator Kelly seconded, to amend SB 468 as reflected in the balloon amendment. Motion carried. Senator Lynn and Senator Pilcher-Cook voted no and requested their votes recorded.

Senator Schodorf moved, Senator Kelly seconded, to recommend SB 468 as amended, favorably for passage.

Senator Haley moved a substitute motion to amend SB 468 on page 1, line 35 by changing "10%" to 5% of active registered voters". Senator Donovan seconded the substitute motion. Motion carried.

Senator Vratil moved, Senator Schodorf seconded, to recommend SB 468 as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 528 - Shifting the burden of proof in the property valuation appeals process.** Jason Thompson, staff revisor, reviewed the bill.

Senator Pilcher-Cook moved, Senator Lynn seconded, to table SB 528. Motion carried.

The Chairman called for final action on **SB 537 - Liens and claims against property; actions concerning validity.** Jason Thompson, staff revisor, reviewed the bill. Mr. Thompson indicated a technical correction was needed on page 10, line 12. A proposed balloon amendment recommended by Jason Maxwell during testimony on February 11 was distributed. (Attachment 2)

Senator Schmidt moved, Senator Pilcher-Cook seconded, to amend SB 519 on page 10, line 12 by striking the language "via telephone lines". Motion carried.

2/17

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:37 a.m. on February 17, 2010, in Room 548-S of the Capitol.

Senator Schmidt moved, Senator Donovan seconded, to recommend **SB 519** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 533 - Electronic citations, complaints and notices to appear**. Jason Thompson, staff revisor, reviewed the bill.

Senator Donovan moved, Senator Haley seconded, to recommend **SB 533** favorably for passage. Motion carried.

The Chairman called for final action on **SB 488 - Office of vital statistics; fingerprinting and criminal history records check required for new employees**. Senator Vratil distributed and reviewed a proposed balloon amendment. (Attachment 3)

Senator Vratil moved, Senator Kelly seconded, to adopt the balloon amendment. Motion carried.

Senator Vratil moved, Senator Kelly seconded, to recommend **SB 488** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 459 - Juvenile offenders; jury trials**. Jason Thompson, staff revisor, reviewed the bill including a request by the proponents to have Sections 1 and 2 deleted and sent back to the Judicial Council for further review.

Senator Vratil moved, Senator Haley seconded, to amend **SB 459** by striking Sections 1 and 2. Motion carried.

Senator Vratil moved, Senator Haley seconded, to recommend **SB 459** as amended favorably for passage. Motion carried.

The Chairman called for final action on **SB 460 - Children; permanency and priority of orders**. Jason Thompson, staff revisor, reviewed the bill including a requested balloon amendment by the Kansas Coalition Against Sexual and Domestic Violence previously distributed to the Committee members. (Attachment 4)

Senator Schmidt moved, Senator Kelly seconded, to amend **SB 460** as reflected in the balloon amendment provided by the Kansas Coalition Against Sexual and Domestic Violence. Motion carried.

Senator Vratil moved, Senator Kelly seconded, to recommend **SB 460** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 458 - Providing for the use of interactive video testimony in hearings or trials where there is a report concerning a forensic examination**. Jason Thompson, staff revisor, reviewed the bill including the need for a technical correction.

Senator Schmidt moved, Senator Kelly seconded, to amend **SB 458** on page 2, line 2 by inserting the number "3" following the word "paragraph". Motion carried.

Senator Schmidt moved, Senator Kelly seconded, to recommend **SB 458** as amended favorably for passage. Motion carried.

Senator Haley moved, Senator Lynn seconded, to un-table **SB 17 - Videotaping felony interrogations**. Motion failed.

Senator Schmidt moved, Senator Vratil seconded, to un-table **SB 399 - Controlled substances; aggravated endangering a child; enhanced penalties for distributing on park property and distributing to a child or pregnant person**. Motion carried.

The next meeting is scheduled for February 23, 2010. The meeting was adjourned at 10:20 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 17, 2010

NAME	REPRESENTING
Jane Thye	Ks Council on DD
Donna Calabrese	KDHE
Donna	KDHE
Sue McKenna	SRS
Patty Woods	SRS
<del>Mark</del>	Intern
Mark Gleeson	Judicial Branch
Joyce Grover	KCS DV
Sandy Jacquot	LHM
Phil Bradley	KLBN
<del>Mark</del>	KMHA
Natalie Haagy	Security Benefit
Richard Samerigo	Kenny & Assoc.
Junia Row	KCSL
Jesse Cowger	IJA
Nick Wood	DISABILITY RIGHTS CENTER
ART WILBURJ	KHP.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/17/2010

NAME	REPRESENTING
Joseph Melia	KS BAR ASSN.

**SENATE BILL No. 468**

By Committee on Ways and Means

1-27

SB468-Balloon1.pdf  
RS - JThompson - 02/16/10

Senate Judiciary  
2-17-10  
Attachment 1

9 AN ACT concerning grand juries; relating to summoning; amending  
10 K.S.A. 22-3001 and repealing the existing section.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 22-3001 is hereby amended to read as follows: 22-  
14 3001. (1) (a) A majority of the district judges in any judicial district may  
15 order a grand jury to be summoned in any county in the district when it  
16 is determined to be in the public interest.

17 (2) ~~A grand jury shall be summoned in any county within 60 days~~  
18 ~~after a petition praying therefor is presented to the district court, bearing~~  
19 ~~the signatures of a number of electors equal to 100 plus 2% of the total~~  
20 ~~number of votes cast for governor in the county in the last preceding~~  
21 ~~election.~~

22 (b) *The attorney general in any judicial district or the district or*  
23 *county attorney in such attorney's judicial district may petition such dis-*  
24 *trict court to order a grand jury to be summoned in the designated county*  
25 *in the district to investigate alleged violations of an off-grid felony, a*  
26 *severity level 1, 2, 3 or 4 felony or a drug severity level 1 or 2 felony. The*  
27 *judge or judges of the district court of the county shall then consider the*  
28 *petition and, if it is found that the petition is in proper form, shall order*  
29 *a grand jury to be summoned.*

30 (c) *A grand jury shall be summoned in any county within 60 days*  
31 *after a petition requesting a grand jury is presented to the district court,*  
32 *bearing the signatures of a number of electors equal to 100 plus 10% of*  
33 *the active registered voters in the county, and found to be in compliance*  
34 *with this subsection.*

35 (1) *Before circulating any petition to summon a grand jury, the affi-*  
36 *davit required by this subsection shall be submitted to the clerk of the*  
37 *district court where the grand jury is requested to be summoned.*

38 (2) *A committee of petitioners consisting of five registered voters may*  
39 *commence a proceeding to summon a grand jury, by filing an affidavit*  
40 *with the clerk of the district court that contains the following information:*

41 (A) *The name and address of each registered voter who is a member*  
42 *of the committee;*

43 (B) *the mailing address to which all correspondence concerning the*

the chief judge or the chief  
judge's designee in

, 4 or 5

chief judge or the chief  
judge's designee in

as set forth in this subsection,

**SENATE BILL No. 537**

By Committee on Judiciary

2-5

9 AN ACT concerning liens and claims against real or personal property;  
10 amending K.S.A. 58-4301 and repealing the existing section.  
11

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

13 New Section 1. (a) Any person aggrieved by an alleged violation of  
14 K.S.A. 58-4301, and amendments thereto, may bring a civil action for  
15 damages and injunctive relief against the person who filed or recorded  
16 the documents alleged to violate such section.

17 (b) In such an action, the burden shall be on the plaintiff to prove  
18 that the defendant knew or should have known that the documents filed  
19 or recorded were in violation of K.S.A. 58-4301, and amendments thereto.

20 (c) Such an action shall be bifurcated from an action under K.S.A.  
21 58-4301, and amendments thereto, and service shall be made in accord-  
22 ance with article 3 of chapter 60 of the Kansas Statutes Annotated, and  
23 amendments thereto.

24 (d) After trial the court shall:

25 (1) Make findings of fact and conclusions of law in a form as provided  
26 in K.S.A. 58-4301, and amendments thereto;

27 (2) order the defendant to pay damages of up to \$10,000 to the plain-  
28 tiff for each violation of K.S.A. 58-4301, and amendments thereto; and

29 (3) award the prevailing party the costs of the proceeding arising un-  
30 der this section, including reasonable attorney's fees.

31 (e) After trial the court may:

32 (1) Enjoin the defendant from filing any future liens or claims with  
33 any filing officer without approval of the court that enters the order; and

34 (2) enjoin the defendant from filing any future liens or claims that  
35 would violate K.S.A. 58-4301, and amendments thereto.

36 (f) Any order set forth in subsection (e) shall be subject to modifi-  
37 cation and termination by the court that enters the order.

38 (g) Each violation of any order set forth in subsection (e) may be  
39 considered contempt of court, punishable by a fine not to exceed \$1,000,  
40 imprisonment in the county jail for not more than 120 days, or both such  
41 fine and imprisonment.

42 Sec. 2. K.S.A. 58-4301 is hereby amended to read as follows: 58-  
43 4301. (a) (1) Any person who owns real or personal property or an interest

Proposed by Jason Maxwell,  
Haskell County Counselor

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by a preponderance of  
the evidence

(1)

(2) A contempt action under this section may be brought by any person aggrieved by a violation of any order set forth in subsection (e) regardless of whether such person was a party to the original civil action brought pursuant to this section.

## SENATE BILL No. 488

By Committee on Judiciary

1-29

9 AN ACT concerning the secretary of health and environment; relating  
10 to powers and duties; fingerprinting and criminal history records  
11 checks for certain new employees; amending K.S.A. 65-2402 and re-  
12 pealing the existing section.  
13

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

15 Section 1. K.S.A. 65-2402 is hereby amended to read as follows: 65-  
16 2402. (a) The secretary shall: (1) Establish within the division of health  
17 suitable offices properly equipped for the preservation of official records.  
18 (2) Maintain a complete cross-index on all records filed under the pro-  
19 visions of this act. (3) Install a statewide system of vital statistics. (4) Make  
20 and may amend, after notice and hearing, necessary regulations, give in-  
21 structions and prescribe forms for collection, transcribing, compiling and  
22 preserving vital statistics. (5) Enforce this act and the regulations made  
23 pursuant thereto.

24 (b) ~~The selected applicant for a position~~ in the office of vital statistics  
25 shall be given a written notice that a criminal history records check is  
26 required. The secretary shall require such ~~candidate~~ to be fingerprinted  
27 and submit to a state and national criminal history record check. The  
28 fingerprints shall be used to identify the applicant and to determine  
29 whether the applicant has a record of criminal history in this state or  
30 another jurisdiction. The secretary shall submit the fingerprints to the  
31 Kansas bureau of investigation and the federal bureau of investigation for  
32 a state and national criminal history record check. Local and state law  
33 enforcement officers and agencies shall assist the secretary in taking and  
34 processing of fingerprints of applicants. The secretary may use the infor-  
35 mation obtained from fingerprinting and the criminal history for purposes  
36 of verifying the identification of the applicant and in the official deter-  
37 mination of the eligibility of the applicant to perform tasks within the  
38 office of vital statistics. If the criminal history record information is used  
39 to disqualify an applicant, the applicant shall be informed in writing of  
40 that decision.

41 Sec. 2. K.S.A. 65-2402 is hereby repealed.

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

Sen. Vratil

SB488-Balloon-V1.pdf  
RS - JThompson - 02/17/10

Any person offered a  
position of employment

, subject to a criminal  
history records check,

applicant

# Kansas Coalition Against Sexual and Domestic Violence

SAFETY • ACCOUNTABILITY • JUSTICE



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785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

Senate Bill 460  
February 15, 2010

Chairman Owens and Members of the Committee:

Prior to last Friday's hearing on SB460, the Kansas Coalition Against Sexual and Domestic Violence met with Sue McKenna from SRS, The Honorable Judge Jean F. Shepherd, and Natalie Gibson from Kansas Judicial Council. All agreed to the attached balloons explained below.

First, on page 5, line 40 – 42, SB460 references to the protection from stalking act (K.S.A. 60-31a01 et seq.), which has no provisions that address custody, should be struck.

Second, because there is already a primacy statute (K.S.A. 60-3107 [c]) in the PFAA, the amendment on page 49, lines 14 through 33, more appropriately belongs in that subsection (K.S.A. 60-3107[c]), not K.S.A. 60-3103. Therefore, Section 22 of SB460 should be struck and replaced with the balloon showing the agreed upon language inserted into K.S.A. 60-3107(c). The bolded language differs from the original balloon submitted by KCSDV and also was agreed upon by all parties.

“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 **any preexisting** PFA order and the **custody** being modified, and a copy of such order shall be filed in **the preexisting PFA case**.”

Finally, the reference on page 44, line 32, to K.S.A. 38-226(i)(2) should be **K.S.A. 38-2264**.

Sandra Barnett  
Executive Director

Joyce Grover  
General Counsel

Cc: Honorable Jean Shepard, 7<sup>th</sup> Judicial District, Lawrence  
Natalie Gibson, Kansas Judicial Council  
Sue McKenna, legal counsel, SRS



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

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

- 10 (1) The needs of the child.
- 11 (2) The standards of living and circumstances of the parents.
- 12 (3) The relative financial means of the parents.
- 13 (4) The earning ability of the parents.
- 14 (5) The need and capacity of the child for education.
- 15 (6) The age of the child.
- 16 (7) The financial resources and the earning ability of the child.
- 17 (8) The responsibility of the parents for the support of others.
- 18 (9) The value of services contributed by both parents.

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

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

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

28 (a) Proceedings pursuant to this code shall be civil in nature and all  
29 proceedings, orders, judgments and decrees shall be deemed to be pur-  
30 suant to the parental power of the state. *Any custody, residency or par-*  
31 *enting time orders pursuant to this code shall take precedence over any*  
32 *custody, residency or parenting time order under article 11 of chapter 38*  
33 *of the Kansas Statutes Annotated, and amendments thereto (determina-*  
34 *tion of parentage), article 21 of chapter 59 of the Kansas Statutes Anno-*  
35 *tated, and amendments thereto (adoption and relinquishment act), article*  
36 *30 of chapter 59 of the Kansas Statutes Annotated, and amendments*  
37 *thereto (guardians and conservators), article 16 of chapter 60 of the Kan-*  
38 *sas Statutes Annotated, and amendments thereto (divorce), article 31 of*  
39 *chapter 60 of the Kansas Statutes Annotated, and amendments thereto*  
40 *(protection from abuse act), and article 31a of chapter 60 of the Kansas*  
41 *Statutes Annotated, and amendments thereto (protection from stalking*  
42 *act), until jurisdiction under this code is terminated.*

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

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

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

14 ~~Sec. 22. K.S.A. 60-3103 is hereby amended to read as follows: 60-~~  
15 3103. (a) Any district court shall have jurisdiction over all proceedings  
16 under the protection from abuse act. The right of a person to obtain relief  
17 under the protection from abuse act shall not be affected by the person's  
18 leaving the residence or household to avoid further abuse. Any petition  
19 under this act seeking orders regarding a custody determination, as de-  
20 fined in K.S.A. 38-1337, and amendments thereto, shall state that infor-  
21 mation required by K.S.A. 38-1356, and amendments thereto, and the  
22 basis under which child-custody jurisdiction is sought to be invoked.

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

30 Sec. 23. K.S.A. 38-1116 and 60-3103 and K.S.A. 2009 Supp. 38-1121,  
31 38-2201, 38-2202, 38-2203, 38-2208, 38-2212, 38-2242, 38-2243, 38-  
32 2251, 38-2255, 38-2258, 38-2264, 38-2272, 38-2273, 38-2279, 38-2304,  
33 ~~38-2305, 38-2361 and 60-1610 are hereby repealed.~~

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

4-4

**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 any preexisting PFA order and the custody being modified, and a copy of such order shall be filed in the preexisting PFA case.*”