

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on January 25, 1993 in room 313-S of the Statehouse.

All members were present.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Chip Wheelen, Kansas Medical Society
Nancy Lindberg, Attorney General's Office
Robert Fox, Kansas Corporation Commission
Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation

Committee minutes for January 19, 20 and 21 were distributed.

Chip Wheelen, Kansas Medical Society, appeared before the committee for a bill introduction amending 1992 HB 2795 by adding the following words at the end of line 35 "Any such determination that payment shall not be made for services covered under the state medical assistance program shall not be considered performance or exercise of a discretionary function or duty under K.S.A. 75-6104, and amendments thereto" after. (Attachment #1)

Representative Scott made a motion to have this introduced as a committee bill. Representative Graeber seconded the motion. The motion carried.

Nancy Lindberg, Attorney General's Office, requested several bills be introduced by the committee. The first, would be to amend K.S.A. 50-645, Kansas Lemon Law. The second deals with an amendment to the Consumer Protection Act. The next would repeal the statute of incest and include incest under the definition of indecent liberties. Another would establish a three member committee to review reports of non-compliance of the constitutional rights of crime victims. The sixth would create a standardized forfeiture procedure based on the model Asset Forfeiture Act. The last, would amend the Americans with Disabilities Act to clarify both substantive and procedural provisions. (Attachment #2)

Committee discussion followed.

Representative Carmody made a motion to have the first request introduced as a committee bill. Representative Adkins seconded the motion. The motion carried.

Representative Garner made a motion to have the second request introduced. Representative Everhart seconded the motion. The motion carried.

Chairman O'Neal suggested introducing the third and fifth request in the same bill. Representative Gregory made a motion to introduce these as one bill. Representative Rock seconded the motion. The motion carried.

Chairman O'Neal made the recommendation that the request to introduce the incest victims bill be ballooned and amended into HB 2100 or another bill.

Representative Macy made a motion to have the Asset Forfeiture request introduced as a committee bill. Representative Mays seconded the motion. The motion carried.

The request for a bill introduction regarding the amendment to the ADA is on hold until the Chairman can see what the bill will be proposing.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:35 p.m. on January 25, 1993.

Robert Fox, Deputy General Counsel, Kansas Corporation Commission, appeared before the committee with two bill requests. The first would repeal K.S.A. 66-176 which deals with damage awards in civil litigation. The second would amend K.S.A. 66-125 which deals with the issuance of certain securities and reporting requirements. (Attachment #3)

Committee discussion followed. Representative Carmody made a motion to have the second request introduced as a committee bill. Representative Robinett seconded the motion. The motion carried.

Chairman O'Neal stated that the first request is an administrative problem and suggested that they readdress the issue and come back to the committee and resubmit the request in a form that did not repeal existing remedies.

Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation, appeared before the committee with three bill requests. The first is an amendment to K.S.A. 65-4127a which would expand the drug-free zone to include public parks, and an amendment to 65-4127b to change the wording by adding "deliver or distribute" after the word "sell." They believe this would cover a number of situations where a "mule" was caught delivering drugs, but there was no evidence that they were involved in the actual sale. The next request is an amendment to K.S.A. 65-289, the Good Samaritan Law. The last proposal is a re-introduction of last year's 1992 HB 3052 which provided an expansion of a judge's options at sentencing to include ordering convicted defendants to repay cash rewards that led to the conviction. (Attachment #4)

Committee discussion followed. Representative Graeber made a motion to have the first request introduced. Representative Bradley seconded the motion. The motion carried.

Representative Rock made a motion to introduce the second request as a committee bill. Representative Scott seconded the motion. The motion carried.

Representative Pauls made a motion to introduce the last proposal. Representative Macy seconded the motion. The motion carried.

Representative Carmody made the suggestion that we delay action on HB 2013 until we get further information on the State plan that was sent to the Federal Government.

Representative Scott made a motion to approve the committee meeting minutes from January 19, 20 and 21. Representative Mays seconded the motion. The motion carried.

The Committee adjourned at 4:30 p.m. The next meeting is scheduled for January 26, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE January 25, 1993

NAME	ADDRESS	ORGANIZATION
Roger Fincher	304 Glenview Lawrence, KS	Elaine Wells - Represent.
KEITH R LANDIS	Topeka	CHRISTIAN SCIENCE Comm ON PUBLICATION FOR KS
Kathie Sparks	"	Dir. Budget
Quentin Van Vorst	O.P. Co	P.P. of KS
TK Shively	Topeka	KS LEGAL SERVICES
QA Johnston	Topeka	SRS/CSE
David N. Sutton	"	" "
Chip Wheelen	Topeka	Ks Medical Soc.
Cameron Brewer	Topeka	KT LA
Paul Shelton	Topeka	OJA
Kay Farley	Topeka	OJA
Nancy Lindberg	Topeka	Atty Gen.
Shelly Harper	Topeka	Atty Gen.
Kyle Smith	Topeka	KBI
Jiff Hays	Lawrence	staff
Doug Bowman	Topeka	Corporation for Change
Paul Johnson	Topeka	PACK
Dodie Lacey	Topeka	KCS
Jim CLARK	Topeka	KCDAA
Sydney Hardman	Lawrence	KS Action for Children

8 AN ACT concerning medical care for needy persons; amending
9 K.S.A. 1991 Supp. 39-708c and repealing the existing section.
10

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

12 Section 1. K.S.A. 1991 Supp. 39-708c is hereby amended to read
13 as follows: 39-708c. (a) The secretary of social and rehabilitation
14 services shall develop state plans, as provided under the federal
15 social security act, whereby the state cooperates with the federal
16 government in its program of assisting the states financially in fur-
17 nishing assistance and services to eligible individuals. The secretary
18 shall undertake to cooperate with the federal government on any
19 other federal program providing federal financial assistance and serv-
20 ices in the field of social welfare not inconsistent with this act. The
21 secretary is not required to develop a state plan for participation or
22 cooperation in all federal social security act programs or other federal
23 programs that are available. The secretary shall also have the power,
24 but is not required, to develop a state plan in regard to assistance
25 and services in which the federal government does not participate.

26 (b) The secretary shall have the power and duty to determine
27 the general policies relating to all forms of social welfare which are
28 administered or supervised by the secretary and to adopt the rules
29 and regulations therefor.

30 (c) The secretary shall hire, in accordance with the provisions of
31 the Kansas civil service act, such employees as may be needed, in
32 the judgment of the secretary, to carry out the provisions of this
33 act. The secretary shall advise the governor and the legislature on
34 all social welfare matters covered in this act.

35 (d) The secretary shall establish and maintain intake offices
36 throughout the state. The secretary may establish and create area
37 offices to coordinate and supervise the administration of the intake
38 offices located within the area. The number and location of intake
39 offices and area offices shall be within the discretion of the secretary,
40 except that the secretary shall maintain at least one intake office in
41 each county. Each intake office shall be open at least 12 hours of
42 each working week on a regularly scheduled basis. The secretary
43 shall supervise all social welfare activities of the intake offices and

1 area offices. The secretary may lease office or business space, but
2 no lease or rental contract shall be for a period to exceed 10 years.
3 A person desiring public assistance, or if the person is incapable or
4 incapacitated, a relative, friend, personal representative or conser-
5 vator of the person shall make application at the intake office. When
6 it is necessary, employees may take applications elsewhere at any
7 time. The applications shall contain a statement of the amount of
8 property, both personal and real, in which the applicant has an
9 interest and of all income which the applicant may have at the time
10 of the filing of the application and such other information as may
11 be required by the secretary. When a husband and wife are living
12 together the combined income or resources of both shall be consid-
13 ered in determining the eligibility of either or both for assistance
14 unless otherwise prohibited by law. The form of application, the
15 procedure for the determination of eligibility and the amount and
16 kind of assistance or service shall be determined by the secretary.

17 (e) The secretary shall provide special inservice training for em-
18 ployees of the secretary and may provide the training as a part of
19 the job or at accredited educational institutions.

20 (f) The secretary shall establish an adequate system of financial
21 records. The secretary shall make annual reports to the governor
22 and shall make any reports required by federal agencies.

23 (g) The secretary shall sponsor, operate or supervise community
24 work experience programs whereby recipients of assistance shall work
25 out a part or all of their assistance and conserve work skills and
26 develop new skills. The compensation credited to recipients for the
27 programs shall be based upon an hourly rate equal to or in excess
28 of the federal minimum wage hourly rate. The programs shall be
29 administered by the secretary. In the programs, the secretary shall
30 provide protection to the recipient under the workmen's compen-
31 sation act or shall provide comparable protection and may enter into
32 cooperative arrangements with other public officials and agencies or
33 with private not-for-profit corporations providing assistance to needy
34 persons in developing, subject to the approval of the secretary, the
35 programs under this section.

36 (h) The secretary may receive, have custody of, protect, admin-
37 ister, disburse, dispose of and account for federal or private com-
38 modities, equipment, supplies and any kind of property, including
39 food stamps or coupons, which are given, granted, loaned or ad-
40 vanced to the state of Kansas for social welfare works, and for any
41 other purposes provided for by federal laws or rules and regulations
42 or by private devise, grant or loan, or from corporations organized
43 to act as federal agencies, and to do all things and acts which are

1 necessary or required to perform the functions and carry out the
2 provisions of federal laws, rules and regulations under which such
3 commodities, equipment, supplies and other property may be given,
4 granted, loaned or advanced to the state of Kansas, and to act as
5 an agent of the federal government when designated as an agent,
6 and do and perform all things and acts that may be required by the
7 federal laws or rules and regulations not inconsistent with the act.

8 (i) The secretary may assist other departments, agencies and in-
9 stitutions of the state and federal government and of other states
10 under interstate agreements, when so requested, by performing serv-
11 ices in conformity with the purpose of this act.

12 (j) The secretary shall have authority to lease real and personal
13 property whenever the property is not available through the state
14 or a political subdivision of the state, for carrying on the functions
15 of the secretary.

16 (k) All contracts shall be made in the name of "secretary of social
17 and rehabilitation services," and in that name the secretary may sue
18 and be sued on such contracts. The grant of authority under this
19 subsection shall not be construed to be a waiver of any rights retained
20 by the state under the 11th amendment to the United States con-
21 stitution and shall be subject to and shall not supersede the provisions
22 of any appropriations act of this state.

23 (l) All moneys and property of any kind whatsoever received from
24 the Kansas emergency relief committee or from any other state
25 department or political subdivision of the state shall be used by the
26 secretary in the administration and promotion of social welfare in
27 the state of Kansas. The property may be given, loaned or placed
28 at the disposal of any county, city or state agency engaged in the
29 promotion of social welfare.

30 (m) The secretary shall prepare annually, at the time and in the
31 form directed by the governor, a budget covering the estimated
32 receipts and expenditures of the secretary for the ensuing year.

33 (n) The secretary shall have authority to make grants of funds,
34 commodities or other needed property to local units of government
35 under rules and regulations adopted by the secretary for the pro-
36 motion of social welfare in local units of government.

37 (o) The secretary shall have authority to sell any property in the
38 secretary's possession received from any source whatsoever for which
39 there is no need or use in the administration or the promotion of
40 social welfare in the state of Kansas.

41 (p) The secretary shall adopt a seal.

42 (q) The secretary shall initiate or cooperate with other agencies
43 in developing programs for the prevention of blindness, the resto-

1 ration of eyesight and the vocational rehabilitation of blind persons
 2 and shall establish a division of services for the blind. The secretary
 3 may initiate or cooperate with other agencies in developing programs
 4 for the prevention and rehabilitation of other handicapped persons.

5 (r) The secretary shall develop a children and youth service pro-
 6 gram and shall administer or supervise program activities including
 7 the care and protection of children who are deprived, defective,
 8 wayward, miscreant, delinquent, children in need of care, juvenile
 9 offenders or children in danger of becoming juvenile offenders. The
 10 secretary shall cooperate with the federal government through its
 11 appropriate agency or instrumentality in establishing, extending and
 12 strengthening such services and undertake other services to children
 13 authorized by law. Nothing in this act shall be construed as au-
 14 thorizing any state official, agent or representative, in carrying out
 15 any of the provisions of this act, to take charge of any child over
 16 the objection of either of the parents of such child or of the person
 17 standing *in loco parentis* to such child except pursuant to a proper
 18 court order.

19 (s) The secretary shall develop plans financed by federal funds
 20 or state funds or both for providing medical care for needy persons.
 21 The secretary, in developing the plan, may enter into an agreement
 22 with an agent or intermediary for the purpose of performing certain
 23 functions, including the making of medical payment reviews, deter-
 24 mining the amount due the medical vendors from the state in ac-
 25 cordance with standards set by the secretary, preparing and certifying
 26 to the secretary lists of medical vendors and the amounts due them
 27 and other related functions determined by the secretary. *Any time*
 28 *that the secretary, an agent of the secretary or an intermediary*
 29 *performing functions on behalf of the secretary makes a determi-*
 30 *nation that payment shall not be made for medical services otherwise*
 31 *covered by the state medical assistance program that have been*
 32 *recommended by a person licensed to practice medicine and surgery*
 33 *in this state for a person who is eligible for medical assistance*
 34 *benefits, the secretary shall become solely liable for any injury caused*
 35 *as a result of failure to render such recommended medical services.*

36 The secretary may also provide medical, remedial, preventive or
 37 rehabilitative care and services for needy persons by the payment
 38 of premiums to the federal social security system for the purchase
 39 of supplemental medical insurance benefits as provided by the federal
 40 social security act and amendments thereto.

41 (t) The secretary shall carry on research and compile statistics
 42 relative to the entire social welfare program throughout the state,
 43 including all phases of dependency, defectiveness, delinquency and

amending 1992 HB 2795

Any such determination that payment shall not be made for services covered under the state medical assistance program shall not be considered performance or exercise of a discretionary function or duty under K.S.A. 75-6104, and amendments thereto.



KANSAS MEDICAL SOCIETY

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Chip Wheelen
 Director of Public Affairs

1 related problems; develop plans in cooperation with other public
2 and private agencies for the prevention as well as treatment of con-
3 ditions giving rise to social welfare problems.

4 (u) The secretary may receive grants, gifts, bequests, money or
5 aid of any character whatsoever, for state welfare work. All moneys
6 coming into the hands of the secretary shall be deposited in the
7 state social welfare fund provided for in this act.

8 (v) The secretary may enter into agreements with other states or
9 the welfare department of other states, in regard to the manner of
10 determining the state of residence in disputed cases, the manner of
11 returning persons to the place of residence and the bearing or sharing
12 of the costs.

13 (w) The secretary shall perform any other duties and services
14 necessary to carry out the purposes of this act and promote social
15 welfare in the state of Kansas, not inconsistent with the state law.

16 (x) The secretary shall establish payment schedules for each group
17 of health care providers. Any payment schedules which are a part
18 of the state medicaid plan shall conform to state and federal law.
19 The secretary shall not be required to make any payments under
20 the state medicaid plan which do not meet requirements for state
21 and federal financial participation.

22 (1) The secretary shall consider budgetary constraints as a factor
23 in establishing payment schedules so long as the result complies with
24 state and federal law.

25 (2) The secretary shall establish payment schedules for providers
26 of hospital and adult care home services under the medicaid plan
27 that are reasonable and adequate to meet the costs which must be
28 incurred by efficiently and economically operated facilities in order
29 to provide care and services in conformity with applicable state and
30 federal laws, regulations, and quality and safety standards. The sec-
31 retary shall not be required to establish rates for any such facility
32 that are in excess of the minimum necessary to efficiently and ec-
33 onomically meet those standards regardless of any excess costs in-
34 curred by any such facility.

35 (y) The secretary shall maintain a system of centralized payment
36 for all welfare expenditures.

37 Sec. 2. K.S.A. 1991 Supp. 39-708c is hereby repealed.

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



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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January 25, 1993

TO: House Judiciary Committee

FROM: Attorney General Bob Stephan

RE: Legislative Recommendations

1. Lemon Law - Amend K.S.A. 50-645 by changing "Your Driving Costs" as the guide to cents per mile deductions for usage when the manufacturer buys back your lemon car, including rental car costs as recoverable expenses, and including leased vehicles in the coverage of the act.
2. Prize Notification Form - Amend the Consumer Protection Act to make it an unlawful practice and a violation to notify any person as a part of an advertising plan or scheme that he/she has won a prize and requiring the person to do any act, purchase any other item or submit to a sales promotion effort.
3. Compensation/Sexual Assault - Wave the \$100 economic loss in compensation claims from just rape cases to cases in all sexual assault crimes.
4. Incest Victims - Repeal the statute of incest and include incest under the definition of indecent liberties.
5. Victims' Rights Review Committee - Establish a 3-member committee appointed by the Attorney General to review reports of non-compliance of the constitutional rights of crime victims.
6. Asset Forfeiture- Create a standardized forfeiture procedure based on the model Asset Forfeiture Act.
7. Americans With Disabilities Act - Amend the ADA to clarify both substantive and procedural provisions.

HOUSE JUDICIARY
Attachment #2
01-25-93

REQUEST FOR LEGISLATION
House Judiciary Committee
January 25, 1993

Testimony of
Robert Fox, Deputy General Counsel
Kansas Corporation Commission

The Kansas Corporation Commission would ask the House Judiciary Committee to introduce the following legislation on behalf of the KCC. The legislation proposed for introduction has been approved by the Governor's office.

The proposed legislation includes: 1) Repeal K.S.A. 66-176, actual damage awards in civil litigation; and 2) Amend K.S.A. 66-125, issuance of certain securities-reporting requirements.

Repeal K.S.A. 66-176 (actual damage awards in civil litigation)

K.S.A. 66-176 places the commission in the untenable position of having its staff being called as "expert" witnesses in civil litigation on matters wherein the Commission, using its discretion, has chosen to not cite a utility for violations of rules and regulations or not to institute an investigation where potential violations exist. The statute also allows a trial court, or jury, to substitute its judgement for that of the Commission in areas which are clearly jurisdictional only to the Commission. This problem has occurred in more than one instance involving Kansas Power and Light Co. and United Cities Gas Company.

The repeal of KSA 66-176 has no fiscal impact on the Commission or any other state agency.

Amend K.S.A. 66-125 (issuance of certain securities: reporting requirements)

KSA 66-125 sets out when a public utility or common carrier must obtain a certificate from the commission for the issuance of stocks, certificates, bonds, notes or other evidences of indebtedness. As the statute presently reads, the Commission has no authority to revisit its own actions or those of utilities. Any issuance of an evidence of indebtedness that does not comply with the very strict terms of K.S.A. 66-125 is void.

The Commission believes amending the term "void" with the term "voidable" would allow the Commission to revisit past issuances that failed to satisfy other terms in the statute. The Commission has a strong interest in seeing that indebtedness transactions are reasonable, but technical compliance with the statute as it presently reads is almost impossible given present market conditions.

There is no fiscal impact on the KCC or any other state agency.

The Corporation Commission respectfully seeks introduction of the bills through the House Judiciary Committee and would appreciate your favorable consideration of this request.

~~66-176. Forfeiture for violations; attorney's fee.~~

~~Any public utility or common carrier which shall violate any of the provisions of law for the regulation of such public utilities or common carriers shall forfeit, for every offense, to the person, company or corporation aggrieved thereby, three times the actual damages sustained by the party aggrieved, together with the costs of suit, and a reasonable attorney fee, to be fixed by the court; and if an appeal be taken from the judgement or any part thereof, it shall be the duty of the appellate court to include in the judgement an additional reasonable attorney's fee for services in the appellate court or courts.~~

History: R.S. 1923, 66-176; Dec. 27.

66-125. Issuance of securities; certificate of commission required, when; proceedings; motor carriers exempted.

(a) A public utility of common carrier may issue stocks, certificates, bonds, notes or other evidences of indebtedness, payable at periods of more than 12 months after the date thereof, when necessary for the acquisition of property, for the purpose of carrying out its corporate powers, the construction, completion, extension or improvements of its facilities, or for the improvements or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for such other purposes as may be authorized by law. Prior to any such issuance, except an issuance which requires a registration statement to be filed with the securities and exchange commission, there shall be secured from the commission a certificate stating the amount, character, purposes and terms on which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. If the issuance requires a registration statement to be filed with the securities and exchange commission, the public utility or common carrier shall file with the state corporation commission a copy of the information filed with the securities and exchange commission.

(b) The proceedings for obtaining such certificate from the commission and the conditions of its being issued shall be as follows:

(1) In case the stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued for money only, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer of the company having knowledge of the facts, showing:

(A) The amount and character of the proposed stocks, certificates, bonds, notes or other evidences of indebtedness:

(B) the general purposes for which they are to be issued;

(C) the terms on which they are to be issued;

(D) the total assets and liabilities of the public utility or common carrier; and

(E) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(2) In case stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued partly or wholly for property or services or other consideration than money, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer having knowledge of the facts, showing:

(A) The amount and character of the stocks, certificates, bonds, notes or other evidences of indebtedness proposed to be issued;

(B) the general purposes for which they are to be issued;

(C) a general description and an estimated value of the property or services for which they are to be issued;

(D) the terms on which they are to be issued or exchanged;

(E) the amount of money, if any, to be received for the same in addition to such property, services or other consideration;

(F) the total assets and liabilities of the public utility or common carrier; and

(G) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(c) The commission may also require the public utility or common carrier to furnish such further statements of facts as may be reasonable and pertinent to the inquiry, and shall have full power to ascertain the truth of all statements made by such common carrier or public utility. Upon full compliance by the applicant with the provisions of this section the commission shall forthwith issue a certificate

stating the amount, character, purposes and terms upon which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which shall be issued by such public utility or common carrier contrary to the provisions of this act shall be ~~void~~ voidable by the commission, except as provided in subsection (d).

(d) The provision of this section shall not apply to motor carriers, as defined in K.S.A. 66-1,108, and amendments thereto. Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which were issued by a motor carrier prior to the effective date of this act without obtaining a certificate from the commission shall be deemed valid.

History: L. 1911, ch. 238, § 25; R.S. 1923, 66-125; L. 1983, ch. 222, § 1; L. 1988, ch. 265, § 1; April 14.



ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
REQUESTED 1993 LEGISLATIVE PROPOSALS
JANUARY 25, 1993

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear and request legislation from this committee. As you are aware, Attorney General Robert T. Stephan has already presented you with the Asset Forfeiture Task Force Report, which is undoubtedly our major piece of legislation this year. However, I have three other suggestions that I would like this committee to consider and introduce as committee bills.

1. Two relative minor amendments to our major drug statutes, K.S.A. 65-4127a and 65-4127b. The first amendment would be to expand the drug-free zone to include public parks. Currently, both of these statutes have a provision that if a person sells or possesses with intent to sell a controlled substance within 1,000 feet of the school, the classification of a first time offense is enhanced to a class B felony. The express purpose when this language was proposed was to discourage drug trafficking on or about school property where children obviously congregate. Narcotics Agents for the Kansas Bureau of Investigation (KBI) have brought to my attention that in a number of cases the drug traffickers who we are dealing with have set up meetings at public parks and children have been in the area.

Aside from the obvious intent to try to keep drug dealers from selling to our children, given the inherent violent nature of the drug trade, it would also seem advisable that we do what we can to keep that potential for violence away from the locations where children are playing.

The second proposal deals with a factual situation where an individual is caught delivering or distributing a large load of drugs for hire. They are not "selling" the drugs, and there is a question as to whether their assistance in the distribution is anything more than a reduced charge or possession. As such, I am suggesting the adding of the language "deliver or distribute" after the word "sell" as shown in the first exhibit attached to this testimony. We believe this would cover a number of situations where a "mule" is caught delivering the drugs, but we have no evidence that they were involved in the actual sale.

2. An amendment to K.S.A. 65-2891, the Good Samaritan Law, which provides limited civil liability for law enforcement officers or anyone providing first aid medical care if they have been trained by the American Red Cross, American Heart Association or the Bureau of Mines. Both the Kansas Law Enforcement Training Center and the Kansas Bureau of Investigation have been using the National Safety Council to provide our first aid training, and we would request that this statute be expanded to include reference to the National Safety Council and preferably designate some agency such as Health and Environment be in charge of approving first aid programs rather than requiring statutory amendments as first aid programs change. (see attachment #2)

3. The third proposal is not only on behalf of the Kansas Bureau of Investigation, but also on behalf of the various Crime Stoppers chapters throughout the State of Kansas. This would be a re-introduction of last year's House Bill 3052 which provided an expansion of a judge's options at sentencing to include ordering convicted defendants to repay cash rewards, that led to the conviction, paid in the course of the investigation by any Crime Stoppers chapter, private organization, governmental entity or individual.

The second portion of that bill also authorizes courts to have the option to order defendants to repay law enforcement agencies for any "buy funds" expended during the investigation of the defendant. This is not mandatory language, but would give the sentencing courts an additional option to allow more meaningful payment of one's "debts to society." (see attachment #3)

Thank you for your time and consideration.

#084

1-25-93
KYLE
AN ACT concerning the uniform controlled substances act, expanding the drug-free zone and clarifying possession with intent; amending K.S.A. 65-4127a and K.S.A. 65-4127b and repealing the existing sections.

K.S.A. 1991 Supp. 65-4127a is hereby amended to read as follows: 65-4127a. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess, have under such person's control, possess with intent to sell, ~~offer~~ deliver or distribute, for sale, sell, prescribe, administer, deliver, distribute, dispense or compound any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Any person who violates this section shall be guilty of a class C felony, except that, upon conviction for the second offense, such person shall be guilty of a class B felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a class A felony, and the punishment shall be life imprisonment. *Any person who violates this section on or after July 1, 1993, shall be guilty of a drug severity level 3 felony, except that, upon conviction for the second offense, such person shall be guilty of a drug severity level 2 felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a drug severity level 1 felony.*

(b) Upon conviction of any person pursuant to subsection (a) in which (1) the substances involved were equal to or greater than the amounts for such substances as specified in K.S.A. ~~1990~~ 1991 Supp. 65-4127e, and amendments thereto, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence.

(c) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a), such person shall be guilty of a class B felony if such person is over 18 years of age and the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any public park or school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the criminal charged or the sentence imposed. *Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a) on or after July 1, 1993, such person shall be guilty of a drug severity level 2 felony if such person is over 18 years of age and the substances involved*

were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited non-public school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 282. K.S.A. 1991 Supp. 65-4127b is hereby amended to read as follows: 65-4127b. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony upon conviction for a second or subsequent offense. *Any person who violates this subsection on or after July 1, 1993, shall be guilty of a class A nonperson misdemeanor, except that such person shall be guilty of a drug severity level 4 felony upon conviction for a second or subsequent offense.*

(b) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, cultivate, prescribe, administer, deliver, distribute, dispense or compound: deliver or distribute.

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105,

subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

Any person who violates this subsection shall be guilty of a class C felony. *Any person who violates this subsection on or after July 1, 1993, shall be guilty of a drug severity level 3 felony, except that, upon conviction for a second offense, such person shall be guilty of a drug severity level 2 felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a drug severity level 1 felony.*

(c) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age. *Any person who violates this subsection on or after July 1, 1993, shall be guilty of a class A nonperson misdemeanor, except that such person shall be guilty of a drug severity level 4 felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.*

(d) Upon conviction of any person pursuant to subsection (a), (b) or (c) in which (1) the substances involved were equal to or greater than the amounts for such substance as specified in K.S.A. 1990 1991 Supp. 65-4127e and amendments thereto, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence. *The provisions of this subsection shall not be applicable to persons who commit offenses on or after July 1, 1993.*

(e) Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (b) for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 and such person is over 18 years of age, such person shall be guilty of a class B felony.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the criminal charged or the sentence imposed. *Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (b) on or after July 1, 1993, for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 and such person is over 18 years of age, such person shall be guilty of a drug severity level 2 felony.*

(f) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

public park or

AN ACT concerning emergency care; amending K.S.A. 65-2891 and repealing the existing statute.

65-2891. (a)

Any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by negligence.

(d) Any provision herein contained notwithstanding, the ordinary standards of care and rules of negligence shall apply in those cases wherein emergency care and assistance is rendered in any physician's or dentist's office, clinic, emergency room or hospital with or without compensation.

(e) As used in this section the term "health care provider" means any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, licensed podiatrist, licensed pharmacist and registered physical therapist, and any physician's assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physicians' assistants of the American board of medical examiners, any person who holds a valid attendant's certificate under K.S.A. 1988 Supp. 65-6129 and amendments thereto, any person who holds a valid certificate for the successful completion of a course in first aid offered by the American red cross, by the American heart association or by the mining enforcement and safety administration of the bureau of mines of the department of interior and any person engaged in a postgraduate training program approved by the state board of healing arts.

by the National safety council

HOUSE BILL No. 3052

By Committee on Judiciary

2-18

AN ACT concerning authorized depositions; relating to the repayment of rewards; amending K.S.A. 1991 Supp. 21-4603 and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 21-4603 is hereby amended to read as follows: 21-4603. (1) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Topeka correctional facility or by the state security hospital. If the offender is sent to the Topeka correctional facility or the state security hospital for a presentence investigation under this section, the correctional facility or hospital may keep the offender confined for a maximum of 60 days, except that an inmate may be held for a longer period of time on order of the secretary, or until the court calls for the return of the offender. While held at the Topeka correctional facility or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the correctional facility and the state security hospital. The correctional facility or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its findings and recommendations known to the court in the presentence report.

(2) Except as provided in subsection (3), whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(a) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

(b) impose the fine applicable to the offense;

(c) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of probation;

(d) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence;

(e) assign the defendant to a community correctional services program subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(f) assign the defendant to a conservation camp for a period not to exceed 180 days;

(g) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto;

(h) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502, and amendments thereto; or

(i) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; or repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which lead to the defendant's conviction;

(j) impose any appropriate combination of (a), (b), (c), (d), (e), (f), (g), (h) or (i).

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502, and amendments thereto.

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

The court in committing a defendant to the custody of the secretary

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of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(3) Whenever any juvenile felon, as defined in K.S.A. 1990 1991 Supp. 38-16,112, and amendments thereto, has been found guilty of a class A or B felony, the court shall commit the defendant to the custody of the secretary of corrections and may impose the fine applicable to the offense.

(4) (a) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (4)(b), at any time within 120 days after a sentence is imposed, after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment to a community correctional services program by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits and shall modify such sentence if recommended by the Topeka correctional facility unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification.

(b) If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals.

(5) The court shall modify the sentence at any time before the expiration thereof when such modification is recommended by the secretary of corrections unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification. The court shall have the power to impose a less severe penalty upon the inmate, including the power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of modification shall be made in open court. Notice of the recommendation of modification of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the

county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of modification of sentence and the time and place of the hearing thereon to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's next of kin if the next of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

(6) After such defendant has been assigned to a conservation camp but prior to the end of 180 days, the chief administrator of such camp shall file a performance report and recommendations with the court. The court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the defendant to any of the authorized dispositions provided in subsection (2), except to reassign such person to a conservation camp as provided in subsection (2)(f).

(7) Dispositions which do not involve commitment to the custody of the secretary of corrections and commitments which are revoked within 120 days shall not entail the loss by the defendant of any civil rights.

(8) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(9) An application for or acceptance of probation, suspended sentence or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(10) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1990 1991 Supp. 21-4628, and amendments thereto, the provisions of this section shall not apply.

Sec. 2. K.S.A. 1991 Supp. 21-4603 is hereby repealed.

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