

Approved: 3-10-93

Date

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 February 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

Committee minutes for February 15,16,17,18 & 19 were distributed.

HB 2099 - amending the definition of community service work in tort claims act.

Chairman O'Neal briefed the committee on the bill. This bill would add to the definition of community service work in the Tort Claims Act. This was made necessary by passage of the Sentencing guidelines.

Representative Adkins made a motion to report HB 2099 favorably for passage. Representative Smith seconded the motion. The motion carried.

Representative Adkins made a motion to have the be bill placed on the consent calendar. Representative Smith seconded the motion. The motion carried.

HB 2100 - creating the crime of unlawful sexual relations; obstructing legal process.

Representative Adkins made a motion to report HB 2100 favorably for passage. Representative Macy seconded the motion.

Representative Plummer made a substitute motion to amend the bill. This would create the new crime of unlawful sexual contact with a person in custody. This proposed substitute incorporates both the original Department of Corrections bill and Georgia statute G.S.A. 16-6-51. (Attachment #1)

Chairman O'Neal asked Representative Plummer to explain why he was proposing this version instead of the bill in front of the committee.

Representative Plummer stated that the proposed version does have some of the same provisions as the Department of Corrections bill. The proposed amendment has the definition of sexual contact which is the intentional physical contact between the actor and a person who is not the spouse. This language needs to be in the bill in order to define the crime.

Chairman O'Neal stated that the intent of the Department of Corrections bill was that there are cases where there is consent between the inmate and staff. Therefore, it is not unlawful but violates the trust between security and inmates.

No second was made.

Representative Garner made a motion to send the bill to interim committee. Representative Smith seconded the motion. The motion failed 9-9.

The Chairman stated that the bill needs to divide into two sections. The first would create a severity level 10 crime. The motion carried.

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 3:30 p.m. on February 25, 1993.

The second section dealt with obstructing legal process being a severity level 9 crime. The motion carried.

HB 2131 - obscene devices excludes devices used for medical or psychological purposes.

Representative Adkins made a motion to report HB 2131 favorably for passage. Representative Macy seconded the motion.

Chairman O'Neal stated that we need to address the Supreme Court decision. He suggested that we strike subsection 3.

Representative Adkins made a substitute motion to accept the proposed amendment and strike the reference to obscene devices in the statute. Representative Macy seconded the motion.

Representative Pauls made a motion to pass the bill favorably as written. Representative Everhart seconded the motion. The motion failed.

On Representative Adkins motion, the motion carried. Representative Pauls requested to be recorded as voting no.

Representative Adkins renewed the motion to report HB 2131 favorably for passage as amended. Representative Macy seconded the motion. The motion carried.

HB 2013 - prohibiting court trustees from charging a fee in AFDC child support cases.

Representative Carmody explained the subcommittee report on HB 2013. The primary change would be prohibiting a fee to be collected in child support cases that are administered under part D Title 4 of the act. (Attachment #2)

The subcommittee recommended changes to the payment of the fee so it would no longer be taken out of the child support, and making the obligor pay the fee. Also, the subcommittee recommended that the child support guidelines advisory committee consider building an obligor-based fee into the guidelines. The last recommendation is that future legislation be considered to establish the court trustee program on a statewide basis.

Representative Macy made a motion to accept the subcommittee report. Representative Bradley seconded the motion. The motion carried.

Representative Everhart made a motion to report HB 2013 favorably for passage. Representative Smith seconded the motion.

Representative Everhart stated that if we were to pass this bill it would not cost anything out of the court trustee budget.

The motion failed 5-13.

HB 2448 - sentencing; repayment to public crime stoppers funds.

Representative Pauls made a motion to report HB 2448 favorably for passage. Representative Carmody seconded the motion.

Representative Macy questioned if the committee should amend section 1, on page 4 by striking it so that the bill will apply to only crimes on or after the effective date of the act.

Representative Garner made a substitute motion to strike section 1, on page 4. Representative Macy seconded the motion. The motion carried.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 25, 1993.

Representative Pauls renewed the motion to report HB 2448 favorably for passage as amended. Representative Carmody seconded the motion. The motion carried.

HB 2450 - controlled substances; possession with intent to deliver or distribute; include public parks.

Representative Carmody made a motion to report HB 2450 favorably for passage. Representative Robinett seconded the motion.

The Chairman requested that the two issues in the bill be divided. The first issue is the expansion of the drug free school zone to include public parks.

Representative Garner made a substitute motion to table the bill. Representative Goodwin seconded the motion. Committee discussion followed.

Representative Adkins opposed this motion but stated that he would be in support of striking the portion of the bill that relates to public parks.

Representative Garner, with permission of his second, withdrew his motion.

The motion regarding the inclusion of public parks failed.

The second issue relates to the prosecution of drug "mules". The motion carried.

Representative Carmody renewed his motion to report HB 2450 favorably for passage as amended. Representative Robinett seconded the motion. The motion carried.

HB 2315 - nonprobate transfers of financial accounts and motor vehicles.

Representative Carmody briefed the committee on the bill. The subcommittee recommended that the bill be reported favorably for passage.

Representative Carmody made a motion to adopt the subcommittee report. Representative Robinett seconded the motion. The motion carried.

Representative Carmody made a motion to report HB 2315 favorably for passage. Representative Robinett seconded the motion. The motion carried.

HB 2460 - provisions in the limited partnership agreements, not in certificates. (Attachments #3 & #4)

Representative Carmody briefed the committee on the bill. The bill contains updates to the act to conform with the Uniform Act. The subcommittee recommended that the bill be reported favorably for passage.

Representative Carmody made a motion to adopt the subcommittee report. Representative Wells seconded the motion. The motion carried.

Representative Carmody made a motion to report HB 2460 favorably for passage. Representative Robinett seconded the motion. The motion carried.

HB 2473 - exempting personal injury funds from bankruptcy.

Representative Carmody explained that personal injury claims would be exempt from liens process or bankruptcy under the bill. The subcommittee recommendation was to table the bill.

Representative Carmody made a motion to adopt the subcommittee report. Representative Wells seconded the motion. The motion carried.

Representative Carmody made a motion to table HB 2473. Representative Wells seconded the motion. The motion carried.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 25, 1993.

HB 2477 - business entities; annual reports and franchise fees. (Attachments #5 - #10)

Representative Carmody made the committee aware that this was a request by the Secretary of State. The intent of the bill is to delete the requirement the balance sheet be filed and that a new franchise fee structure be established. The subcommittee recommendations was to table the bill.

Representative Carmody made a motion to adopt the subcommittee report. Representative Wells seconded the motion. The motion carried.

Representative Carmody made a motion to table HB 2477. Representative Wells seconded the motion. The motion carried.

HB 2298 - termination of parental rights if child result of rape or indecent liberties with a child.

Representative Carmody explained that this bill was requested because a woman gave birth to a child as the result of a rape and the rapist later sought visitation rights. The proposed bill states that if the child's father is convicted of rape, the court may terminate his parental rights. However, if he is convicted of aggravated indecent liberties with a child, the courts cannot terminate his rights. (Attachments #11-#13)

A balloon amendment was passed out and explained that it would amend the bill to include "a felony in which sexual intercourse occurred". (Attachment #14)

Representative Carmody made a motion to adopt the subcommittee report. Representative Wells seconded the motion. The motion carried.

Representative Carmody made a motion to report HB 2298 favorably as amended. Representative Wells seconded the motion. The motion carried.

HB 2490 - Uniform Anatomical Gift Act.

Chairman O'Neal stated that the bill contains the 1987 revisions to the Uniform Act, but that there were questions in the subcommittee regarding the impact of the new revisions regarding powers of attorney for health care decisions. (Attachment #15) The subcommittee recommended it for interim study.

Chairman O'Neal made a motion to adopt the subcommittee report on HB 2490. Representative Bradley seconded the motion. The motion carried.

HB 2488 - act concerning Wildlife & Parks regarding enforcement powers of officers. (Attachments #16 - #19) .

Chairman O'Neal explained that this bill was filed to correct an oversight in the reorganization of Wildlife & Parks, which took away conservation officers' law enforcement powers. The recommendation of the subcommittee was to report the bill favorably.

Chairman O'Neal made a motion to adopt the subcommittee report. Representative Adkins seconded the motion.

Jill Wolters, Revisor of Statutes, told the committee of a technical amendment that needed to be taken care of. On page 2, line 11 "K.S.A. 22-2404" should be K.S.A. 22-2401.

Chairman O'Neal made a substitute motion to make the technical change. Representative Rock seconded the motion. The motion carried.

Representative Rock made a motion to report HB 2488 favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 25, 1993.

HB 2462 - county not required to give security for costs on appeal or stay or supersedeas bonds.

Chairman O'Neal explained the bill to the committee. This would correct an oversight where, under current law, cities are not required to post security for costs on appeal or stay or supersedeas bonds, and the counties are. (Attachment #20) Recommendation of the subcommittee was to report the bill favorably for passage.

Chairman O'Neal made a motion to adopt the subcommittee report on HB 2462. Representative Bradley seconded the motion. The motion carried.

Chairman O'Neal made a motion to report HB 2462 favorably for passage. Representative Goodwin seconded the motion. The motion carried.

HB 2296 - testimony of child witness.

Chairman O'Neal stated that the sponsor requested the bill be tabled. The subcommittee's recommendation is to table the bill.

Representative Plummer made a motion to adopt the subcommittee report. Representative Adkins seconded the motion. The motion carried.

HB 2458 - victim rights review committee; waive \$100 economic loss requirement for sex offense victims.

Chairman O'Neal explained that this would create the victim rights review committee requested by the Attorney General to monitor and handle complaints under the victims rights constitutional amendment. (Attachment #21) The subcommittee recommended to report the bill favorably with an amendment that would add K.S.A. 21-3602 & 21-3603 to the sections that would qualify for the waiver.

Chairman O'Neal made a motion to adopt the subcommittee report. Representative Adkins seconded the motion. The motion carried.

Representative Everhart made a substitute motion to accept the proposed amendment. Representative Adkins seconded the motion. The motion carried.

Representative Everhart made a motion to report HB 2458 favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

HB 2472 - criminal restitution enforced as a civil judgement for payment of money.

Chairman O'Neal stated that this bill would allow the victim of a crime to have a criminal restitution order enforced as a civil judgement. (Attachments #22-#24) The recommendation of the subcommittee is to report the bill favorably with an amendment that would make it clear that the mechanism utilized would have the criminal restitution order certified by the judge and the order would be filed with the district court as a civil case.

Chairman O'Neal made a motion to adopt the subcommittee report. Representative Adkins seconded the motion. The motion carried.

Chairman O'Neal made a motion to adopt the proposed amendment. Representative Adkins seconded the motion. The motion carried.

Representative Adkins made a motion to report HB 2472 favorably for passage as amended. Representative Everhart seconded the motion. The motion carried.

The Committee adjourned at 5:30 p.m. The next Committee meeting is February 26, 1993 at 12:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE FEBRUARY 25, 1993

[illegible]

SUB-COMMITTEE #1

DATE February 24, 1993

[illegible]

SUB-COMMITTEE #2
HOUSE JUDICIARY COMMITTEE

HOUSE JUDICIARY COMMITTEE

DATE February 24, 1993

[illegible]

GUEST LIST
SUB-COMMITTEE #1
HOUSE JUDICIARY COMMITTEE

DATE February 23, 1993

NAME	ADDRESS	ORGANIZATION
DAVID C. VAN PARYS	4th & WALNUT / LEAVENWORTH	LEAVENWORTH COUNTY
Mark A. Meyer	604 5th St / Baldwin	Baker University
Grant R. Kugler	Po Box 1 / Baldwin	Baker U.
Jennifer Gocham	PO Box 31 Baldwin	Baker University
Shedrese C. Golding	Baldwin City	Baker University
Erik Dichtert	Baldwin City	Baker Univ
Amy Koehn	Baldwin City	Baker Univ.
Karl Trueman	Baldwin City	" "
Rosilyn James-Martin	Topeka	SRS Youth/Adult Servs.
Larry M. Ruiz	Junction City	Cross roads of leadership
Randy J. Cassman	Junction City	Crossroads of Leadership
DARRELL MONTEI	PRATT	KDWP
OMAR STAVLO	PRATT	KDWP
Helen Helen Stephens	Topeka	KPOA
Clifford F. Hacker	Lyon County, Emporia	KPOA
RICHARD E. BURCH	P.O. Box 647 HUTCHINSON, KS.	KLETC
Carlos E. Wells	4700 Rainier, Westwood, W.	KACP
Donald Zlobsa	McPherson	Inter
Jason FLES	175-W Statehouse	Rep. Plummer
RYAN D. LOUDEN	15705 W. 92nd FAR. LEVENW	SELF-INTEREST
ED BRUSKE	Topeka	KDOT
Jim CLANIC	Topeka	KCPAN

GUEST LIST
SUB-COMMITTEE #2
HOUSE JUDICIARY COMMITTEE

DATE February 23, 1993

NAME	ADDRESS	ORGANIZATION
PATRICIA HENSAAL	TOPEKA	OJA
Bill Morrissey	"	DHR/work comp
Joe Furjanic	"	KCA
Mary Jane Stettelman	"	AG
Tamara Bannister	Lawrence	City of Lawrence
Cindy Kelly	Topeka	KASB
Karen Conneel	Junction City	Crossroads of Leadership class - 90
Marilyn Henke	Junction City	Crossroads of Leadership
Robert Johnson	Wichita	St. Francis Reg. Med Center
ALAN COBB	Wichita	Wichita Hospitals
Phyllis fast	Topeka	attorney general office
Harry Herington	Topeka	League of KS municipalities
Trendy ARON	"	Amer Inst of Architects
Steve Keckler	Overland Park	Yellow Freight System
Tom Whitaker	Topeka	KS Motor Carriers
Walt Scott	"	Assoc. of B.B.R.s
Ken Bahr	"	Ks. Hospital Assn.
Jane Knight	Topeka	ADA
Glen Yancey	Topeka	SRS Rehab Services
Martha Salcher	Topeka	KCDC
Sara McDonald	Topeka	KACIC
Cameron Brewer	"	RTA

Ruth Berne
Gai Callahan

Kansas City, KS
Topeka

KTLA
Kammco

GUEST LIST

SUB-COMMITTEE #1

HOUSE JUDICIARY COMMITTEE

DATE February 22, 1993

NAME	ADDRESS	ORGANIZATION
Kami Towers	2003 W. 27th, Apt 4 Lawrence	AG office
Julene Maska		AG office
Jackie Conright	Topeka KS	KS Sentimen
Helen Pedigo	Topeka, KS	KSC
Sheldon Choate	Overland Park	City of Overland Park
Robert J. Watson	Overland Park	City of Overland Park
Chris McKen	Topeka	League of KS Women
Don Moler	Topeka	League of KS Municipalities
Basile James-Martin	Topeka	SKS - Youth/Adult Servs.
Max Lynch	Topeka	Jud. Council
Paul Shalby	"	OJA
Don Smith	"	KS Bar Assoc
Dr. Gorsche	GREAT BEND	GOLDEN EAGLE CLUB
Eveline Seyfert	Claffin, KS	Eagles Club Gt Bend
Harold Seyfert	" "	" "
Jeanne Gorsche	Lib, KS	" "
Vernon Schuster	Gt Bend, KS	" "
Margie Schuster	Gt Bend, KS	" "
Wayne Alpers	Hudson, Kans	" "
Lula Mae Alpers	Hudson, Kansas	" "
Frank RIEHLER & CLAIRE	CLIFF, x 43	" "
GOLDEN EAGLE CLUB - GRT BEND 6. 33 MEMBERS PRESENT		

SUB-COMMITTEE #2

DATE February 22, 1993

[illegible]

BLAISE PLUMMER
REPRESENTATIVE, TWENTIETH DISTRICT
JOHNSON COUNTY
9900 LINDEN
OVERLAND PARK, KANSAS 66207



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS:
FEDERAL AND STATE AFFAIRS
JUDICIARY
JOINT COMMITTEE ON
CHILDREN AND FAMILIES

MEMORANDUM

TO: Representative Mike O' Neal, chairman Judiciary Committee

FROM: Representative Blaise Plummer

DATE: Tuesday, February 23, 1993

RE: Proposed substitute for HB 2100

Attached is a proposed substitutes to HB 2100. The proposed substitute now incorporates both the original Department of Corrections bill, and a Georgia statute 16-6-5.1. Charles Simmons, chief counsel Department of Corrections, has reviewed and contributed to this substitute and is satisfied with its content. The only debatable issue is the severity level of the crime. Perhaps this is an issue which the committee should discuss at the appropriate time.

Thank you

A handwritten signature in blue ink, appearing to read "Blaine".

Representative Blaise R. Plummer

A handwritten signature in blue ink, appearing to read "Jason Hester".
A second handwritten signature in blue ink, appearing to read "J. Hester".

BRP:jf

Attachments

Proposed Substitute
HOUSE BILL No. 2100

AN ACT concerning crimes and punishment; creating the crime of unlawful sexual contact against persons in custody.

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

New Section 1. (a) For purposes of this act:

- (1) "Actor" means a person accused of unlawful sexual contact;
- (2) "Correctional institution" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;
- (3) "Inmate" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;
- (4) "Parole officer" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;
- (5) "Postrelease supervision" means the same as prescribed in the Kansas sentencing guidelines act in section 3 of chapter 239 of the 1992 Session Laws of Kansas;
- (6) "Sexual contact" means any intentional physical contact between the actor and the person of another who is not the spouse of the actor with the intent to arouse or satisfy the sexual desires of the actor or another;

(b) A person commits unlawful sexual contact when:

- (1) the actor is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the actor is engaging in sexual contact is an inmate in the custody of the secretary of corrections; or
- (2) the actor is a parole officer and the person with whom the actor is engaging in sexual contact has been released on parole or conditional release or postrelease supervision; or
- (3) the actor has supervisory or disciplinary authority over a person is engaging in sexual contact who is detained in a correctional institution.

(4) Unlawful sexual contact is a severity level 10 felony

- (5) It shall not be a defense to the offense of unlawful sexual contact that either the actor or the person with whom they are engaging in sexual contact consented to the sexual contact.



TOPEKA

HOUSE OF
REPRESENTATIVES

TIM CARMODY
REPRESENTATIVE, SIXTEENTH DISTRICT
10710 W. 102ND STREET
OVERLAND PARK, KS 66214

ROOM 175-W
STATE CAPITOL
TOPEKA, KANSAS 66612-1504
(913) 296-7695

COMMITTEE ASSIGNMENTS
VICE-CHAIR: JUDICIARY
MEMBER: APPROPRIATIONS
LABOR & INDUSTRY
KPRS STUDY COMMISSION

March 2, 1993

Sub-Committee Report on H.B. 2013

1. Change the fee obligation from the obligee (recipient of support) to the obligore (payor). This would pose no undue clerical/data processing load on either the Trustee or SRS. This would move the state closer to compliance with federal regulations. However, this could pose a problem in the future because, if this method is adopted, all support must be current before the Trustee/SRS can move to collect the fee. If the fee is, for example, \$2.00 per month, the collecting agency cannot take action to enforce payment of the fee until all support is current. There would appear to be little practical incentive to collect a nominal fee and the sub-committee is concerned that the fees structure would erode over time. Nevertheless, other alternatives, such as charging a significant application fee, could be instituted to offset possible reductions in collections based fees.
2. Sub-committee recommends that the Child Support Advisory Committee, which is studying child support guidelines, consider the following:
 - a. Build an obligor-based fee into the guidelines, possibly in Work Sheet A.
3. The sub-committee recommends legislation be adopted to establish the Court Trustee program on a state-wide basis. Both OJA and SRS support this concept. The main impediment in extending the Trustee program into all judicial districts is that County Commissioners must front the start-up costs. It is the opinion of the sub-committee that the start-up cost issue can be addressed in one of several ways such as a state loan program to defray start-up cost. This sub-committee recommends the issue of funding be the subject of proposed legislation which would also include establishment of the trustee system state-wide. The sub-committee does not recommend SGF funding of the Trustee system.



KANSAS BAR
ASSOCIATION

***Legislative Information
for the Kansas Legislature***

**TO: Members, House Judiciary
Committee**
FROM: Ron Smith, KBA General Counsel
SUBJ: HB 2460

SUMMARY:

The recommended changes in this bill bring the Kansas Uniform Limited Partnership Act into balance with the Uniform Laws Commission's most recent view on the topic.

KBA POSITION

KBA supports this legislation.

BACKGROUND

Kansas has adopted the Revised Uniform Limited Partnership Act. This Act greatly shortens and simplifies the Certificate of Limited Partnership which must be filed with the Secretary of State to form a limited partnership.

While the certificate has been greatly simplified, numerous provisions remain in the Act to the effect that if one wants to take advantage of statutorily authorized provisions you must set the provisions down in the Certificate of Limited Partnership.

Most other states which have adopted the Revised Act have also amended these sections to provide

that you can take advantage of the provisions by putting them in the certificate. The Act as presently drafted is a trap for those who file a certificate containing only the minimum requirements of the Act and put the substantive provisions in the partnership agreement.

Some of the substantive provisions put in the partnership agreement in all likelihood will have no effect because the Revised Act requires they be put in the certificate.

HB 2460 makes the appropriate changes to those sections of the Revised Act so that the agreement itself contains procedure how to handle the questions that might arise in the partnership.

Thank you.

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

National Conference of Commissioners on Uniform State Laws
676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611-(312) 915-0195

John M. McCabe
Legislative Director

Memo to: Rep. Mike O'Neal
Chairman
House Judiciary Committee

From: John M. McCabe *J.M.M.*

Subject: H.B. 2460

Date: February 22, 1993

H.B. 2460 contains some necessary amendments to Kansas' Uniform Limited Partnership Act. Kansas' act comes from the Uniform Limited Partnership Act (1976) with 1985 Amendments. Kansas adopted the 1976 act, and then sought to pick up the 1985 amendments in about 1986. One of the significant 1985 amendments shortens the certificate of limited partnership, making it, in effect, a notice certificate. The adoption of the notice certificate requires conforming amendments in a number of other sections of the act. For some reason, the bill that carried the 1985 amendments did not carry all the necessary conforming amendments. This fact was brought to our attention in a letter by Overland Park attorney, David Becker, writing in his capacity as president-elect of the corporation section of the Kansas Bar Association in October 1992. H.B. 2460 will rectify the earlier error. Without these amendments it is not clear just exactly where certain information about a partnership must be kept, whether in the partnership agreement or the records of the limited partnership. Adopting H.B. 2460 will remove the existing confusion and ambiguity. *7/4*

Thanks for your kind attention.



Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

**Testimony of Secretary of State
Bill Graves
Before the House Judiciary Subcommittee No. 2
House Bill No. 2477
February 22, 1993**

So often in government we are in the position of doing something "to" business rather than doing something "for" business. This bill is a refreshing change because it is of benefit to businesses. Basically, H.B. 2477 deletes balance sheets from the annual reports that corporations and other business entities file in my office.

It benefits businesses by requiring them to submit less paperwork. The entire process would become faster and more efficient. Additionally, it would continue to serve consumer interests by continuing to provide information on corporate officers and directors as well as providing a general idea about the size of the business.

The public nature of these corporate records has prompted lengthy debate through the years about the propriety of making that financial information available to the public. A brief history of that debate is helpful in understanding this bill.

Many corporations argued that competitors and companies selling credit information have no right to see their balance sheets. They point out that Kansas is one of only three states that routinely make balance sheets available. Other businesses argued that the public as well as potential creditors have a right to know something about corporate assets because the government is protecting the personal assets of the investors.

In 1988 the Legislature accepted a compromise that permitted qualifying corporations to file public annual reports but with confidential balance sheets. Each year about 1,000 corporations file a special application and pay a \$20 fee to receive the confidential status.

This bill approaches the issue from a different perspective. Instead of asking what information should be open, it asks what information is needed on the annual report and how can the process be made more efficient for businesses and government.

This bill places each corporation in one of eight categories of net worth. Theoretically there would **not** be any fiscal impact on franchise tax collections. We analyzed where the 50,000 for profit corporations fall within the prescribed range and find that there would be an unintentional annual increase in general fund revenues from franchise taxes of almost \$450,000.

On the other hand, we would see a reduction in revenues of approximately \$50,000 in our agency's information and copy services fee fund because of the reduction in photocopies of balance sheets and the cessation of confidential applications. Eventually there would be a comparable reduction in fee fund expenditures now being made to provide those services.

More than half of the profit business entities now pay either the minimum or maximum franchise tax. They would not pay any more or less tax under this bill. Businesses elsewhere in the range will pay either slightly more or less tax depending on whether their Kansas net worth happens to fall in the upper or lower portion of their range. As previously mentioned, slightly more fall in the upper portion of these ranges. All businesses should experience a small benefit from the reduced time spent preparing the annual report.

Attached to this testimony is a section-by-section description of the bill which provides more detailed analysis of the specific provisions. Also attached is a summary of a proposed amendment to correct some drafting errors in the current bill. A balloon of the proposed amendment has been supplied to the Revisor.

The amendment only corrects and does not change the effect of this bill.

I support H.B. 2477. I ask that this subcommittee adopt the amendment and recommend the amended bill favorably for passage.

Thank you.

BILL GRAVES
Secretary of State



STATE OF KANSAS

House Bill No. 2477

- **§ 1** (Page 1) Section one creates the eight levels of franchise taxes. The tax would still be based on shareholders' equity attributable to Kansas (basically, net worth with reductions for out of state activities). The current minimum tax of \$20 and the maximum tax of \$2,500 are also retained. Two purposes are served by creating these categories. First, it makes computation easier and faster for corporations, thereby reducing their cost of doing business in Kansas and increasing the timeliness of public filings. Second, it means that only general information about the wealth of the business is available to the public. Under the current system the tax is \$1 for each \$1,000 of equity attributable to Kansas. Thus, the public nature of the tax payment would often reveal the net worth of the business.
- **§ 2** (Page 1) This section should be deleted. It was included in the first draft of the bill because the original intent was to further simplify the reporting process by having all annual reports due at the same time each year. A recent meeting with a committee of the Kansas Society of Certified Public Accountants revealed too many difficulties to make such a transition.
- **§ 3** (Page 3) This section deletes the balance sheet from professional corporation annual reports.
- **§ 4** (Page 4) Section four doesn't really relate to the rest of the bill, but it is a good idea. Profit and nonprofit corporations are forfeited for failure to file an annual report. Profit corporations may reinstate the articles, but there are penalties that accrue daily which become too oppressive to make the process practical after several years. Nonprofits, however, can reinstate without paying a daily penalty and, therefore, they often reinstate after a lapse of many years. Often the organization's records are not adequate to provide the names of officers or give specific financial information for more than three years. This section would continue to require the

nonprofit corporation to pay all the missing fees, but would only require three years of paperwork.

- **§ 5** (Page 7) This section deletes the balance sheet for domestic profit corporations. It makes several other changes that are generally applicable in following sections and will be described in detail here. In line six on page eight it clarifies that information in the report be current at the time of filing rather than at the fiscal year end which serves as the basis for the tax computation. This makes it clear that up-to-date information be provided. In line ten on page eight it deletes the requirement that the address supplied be the residence address. Although it is important that the persons be named and be able to be contacted, there is no need to give home addresses and several reasons not to do so. Line 19 on page eight deletes the requirement that the major shareholders reveal the number of shares held. The report will still enable the public to know who has a 5% or greater interest in the corporation, but specific information about personal wealth will not be disclosed.

- **§ 6** (Page 9) Section six deletes the balance sheet from nonprofit corporation annual reports and makes other changes described above. In lines 28 - 29 there is an erroneous strike-out. The deleted language is required for nonprofits that are reinstating.

- **§ 7** (Page 10) This section deletes the balance sheet from foreign profit corporations and makes other changes discussed above. On page 11, lines 20 - 21 and 25 - 29, it deletes some additional information from the report.

- **§ 8** (Page 12) Section eight should be deleted. The language it adds would only have been necessary if a universal filing date had been adopted.

- **§ 9** (Page 13) This section preserves the opportunity to apply for confidentiality for corporations that are reinstating and filing back annual reports.

- **§ 10** (Page 14) Section ten deletes the balance sheet and reconciliation of capital accounts for domestic limited liability companies. On page 15, lines 13 - 17, it adds the names and

addresses of members owning 5% or more of the company and the nature and kind of business and places of business in Kansas. This is similar to that required of corporations. This, and later sections of the bill, will make reporting requirements similar for corporations, limited liability companies and limited partnerships. In addition, an amendment is proposed which would require information about any agricultural property owned by the company. This amendment would correct an oversight made in the 1991 legislation that permitted qualified limited liability companies to acquire agricultural land but did not require the same reporting requirements imposed on corporations and limited partnerships.

- **§ 11** (Page 16) This section makes changes for foreign limited liability companies similar to those discussed above for domestic companies. The information required would be similar to the information required of foreign corporations. It also needs an amendment to require reporting about agricultural land ownership.
- **§ 12** (Page 17) Section twelve makes changes in the reporting requirements for domestic limited partnerships that are analogous to those described for corporations and limited liability companies.
- **§ 13** (Page 19) This section makes changes in the reporting requirements for foreign limited partnerships that are analogous to those described for foreign corporations and foreign limited liability companies.

Summary of Proposed Amendment to HB 2477:

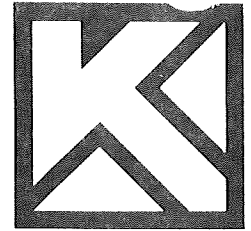
- Pages 1-3: Delete section two.
- Page 10: Restore the stricken words in lines 28 - 29.
- Pages 12-13: Delete section eight.
- Page 15: Add agricultural information.
- Page 16: Add agricultural information.

John Wine
General Counsel

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

HB 2477

February 22, 1993

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Subcommittee on Judiciary

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Subcommittee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber supports HB 2477.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The basis for the Kansas Chamber's support of HB 2477 is the elimination of what is commonly referred to as the "balance sheet" portion of corporate annual reports. For

privately held corporations, the availability of information supplied on the balance sheet has been a high concern. That's because the financial information about a corporation's assets and liabilities was left open for public inspection. This exposure of financial information was especially troublesome when you consider the fact that balance sheet information in corporate annual reports in nearly every other state was considered confidential information. The Kansas Legislature recognized this concern in 1989, by permitting privately held corporations to have their balance sheet information declared confidential, if certain requirements were met.

In HB 2477, the elimination of balance sheet information clearly closes the door on a concern privately held corporations operating in Kansas have had for years.

Thank you for this opportunity to explain KCCI's position on HB 2477. I would be happy to answer any questions.

Dun & Bradstreet Information Services

DB a company of
The Dun & Bradstreet Corporation

Information Resources

6800 College Blvd., Suite 400, Overland Park, KS 66211
913-491-3210

February 22, 1993

TO: MEMBERS OF THE KANSAS COMMITTEE ON JUDICIARY

RE: KANSAS HOUSE BILL NO. 2477

Since 1841, Dun & Bradstreet has been in the business of fostering the growth of American commerce.

That growth has been based, in large measure, on the extension of credit from one business to another. Emerging businesses, small businesses, and large businesses all rely on credit to grow and prosper. As one writer has observed, credit is nothing more or less than "man's confidence in man".

For many decades, the citizens of Kansas have required all corporations to report annually on their financial condition. This has been the quid pro quo for the twin privileges of limited liability and indefinite life. Without doubt, this has not only served to protect the citizenry from unscrupulous operators, but it has contributed to the economic growth of the state.

This Bill, positioned to simplify the filing of corporate annual reports, will enable corporations to withhold financial information from the public. In the process, it will inevitably delay and in many cases prevent the necessary flow of the information required for informed decision making by all.

But at what cost? By virtue of the current statute, 90% more Kansas corporations carry Dun & Bradstreet capital and credit ratings than corporations elsewhere in the United States. Without question, the availability of a "D&B Rating" expedites and facilitates the extension of credit to corporations operating in Kansas. This, in turn, leads to new orders, more jobs and economic expansion.

In addition, the availability of financial information at the Kansas Secretary of State's office allows all citizens access to this information. House Bill 2477 will require those seeking this information to obtain it directly from the corporation itself or to purchase it from outside sources (such as Dun & Bradstreet).

On balance, we believe that the citizens and commercial interests of Kansas are better served by the time-tested current statute than by the one that would result from eliminating the financial information filing requirement. We urge you to vote against House Bill 2477.

For further information, please contact Steve Brookner, Jay Huckabay, Michael Johnson, Steve Kuegler or Allan Davies at (913) 491-3210.

HOUSE JUDICIARY
Attachment #8
02-25-93

Testimony on HB 2477
House Judiciary Subcommittee
February 22, 1993
Prepared by Joe Lieber
Kansas Cooperative Council

Mr. Chairman and members of the committee: I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of over 200 cooperatives. Of these members over 150 of them are local farm supply cooperatives.

The Council is opposed to HB 2477 for the following reasons:

1. HB 2477 would impair cooperatives and other forms of businesses from securing information necessary to make sound credit decisions.
 - A. They will make bad decisions on little or no information, therefore losing money.
 - B. They might refuse credit to a potentially sound account who then loses money.
2. In business, time is of the essence. Having potential accounts complete credit forms, checking references, etc. all takes time. A transaction could be lost.
3. It still hasn't been shown that how revealing a corporation's assets, liabilities and net worth gives the competition unfair advantages. #9

4. Why would the Kansas Legislature want to go on record in support of legislative secrecy? Kansas has always had a tradition of open records.

The Council does not have a position on gambling, but it doesn't make sense to be considering having casino gambling on one hand and closing records on the other hand. The closing of the records would seem to be a step backwards for Kansas, and that is why we are asking you to oppose HB 2477.

**Kansas Press Association
Inc.**

5423 S.W. 7th St., Topeka, KS 66606 (913) 271-5304, Fax (913) 271-7341

Testimony on HB 2477
by Kansas Press Association
before Subcommittee of
House Judiciary Committee

My name is David Furnas, executive director of the Kansas Press Association, and I appear on behalf of the association in opposition to House Bill 2477.

This issue has continually been brought before the Legislature and in 1989 a compromise was achieved to allow smaller corporations to be exempt from the requirements of this statute. That compromise -- arrived at in good faith -- should be allowed to stand and continued attempts to water down this law should be rejected.

The Press Association has been a strong supporter of openness of the records of corporations doing business in Kansas. If for not just the media -- but for the general public -- the information contained in the annual reports provides a significant safeguard for citizens and corporations doing business in the state.

These records are not accessed on a daily basis, but when there is a question about a corporation, the information in the annual report can provide some degree of assurance that a corporation is legitimate or financially sound.

SHEILA HOCHHAUSER
REPRESENTATIVE, 66TH DISTRICT

1636 LEAVENWORTH
MANHATTAN, KANSAS 66502
(913) 539-6177 HOME
(913) 296-7687 TOPEKA OFFICE



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
GOVERNMENTAL ORGANIZATION
AND ELECTIONS
RULES AND JOURNAL

TESTIMONY ON HOUSE BILL 2298
BEFORE THE HOUSE JUDICIARY COMMITTEE
FEBRUARY 23, 1993

Mr. Chairman and Members of the Committee:

Thank you for taking the time to hear House Bill 2298. The need for HB 2298 was brought to my attention by a constituent whose daughter was raped and became pregnant. My constituent's daughter, with the support of her family, plans to raise the baby.

As you might imagine, the family does not wish to have any contact with the young man they regard as the rapist. However, the young man has indicated he may try to exercise his rights to visit the child.

The family was shocked to learn that, because the defendant was convicted of aggravated indecent liberties with a child, rather than rape, he does presently have "rights" to the baby. He was convicted of aggravated indecent liberties with a child because my constituent's daughter was under 16 when the rape occurred. Although the defendant was initially charged with rape, he was permitted to plead guilty to this lesser offense. Due to action the legislature took last year, if the young man had been convicted of rape, the judge "may terminate his parental rights."

House Bill 2298 would permit judges to terminate parental rights of someone if that person is convicted of aggravated indecent liberties with a child, pregnancy results, and a baby is born. HB 2298 is not mandatory; it is permissive for the court. It would most likely be invoked only in circumstances such as I have described, when a family would request the judge to terminate the convicted person's parental rights.

Many of my colleagues have raised the issue of child support with me. That is an issue to be addressed by the judge in determining whether to terminate the parental rights of someone convicted of aggravated indecent liberties with a child.

I urge you to complete the action taken by the legislature last year with regard to rapists by extending the discretion to judges to, under appropriate circumstances, terminate parental rights of those convicted of aggravated indecent liberties with a child.

STATE OF KANSAS

JOANN LEE FREEBORN
REPRESENTATIVE, 107TH DISTRICT
CLOUD, OTTAWA COUNTIES
AND PART OF CLAY AND DICKINSON COUNTIES
RR 3, BOX 307
CONCORDIA, KANSAS 66901-9105

STATE CAPITOL
TOPEKA, KS 66612-1504
913-296-7692
1-800-432-3924



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
PUBLIC HEALTH AND WELFARE
ENERGY AND NATURAL RESOURCES
JOINT COMMITTEE ON CHILDREN AND FAMILIES

HOUSE JUDICIARY COMMITTEE
PRESENTED BY JOANN FREEBORN

RE: HB 2298
February 23, 1993

Mr. Chairman, Members of the Committee:

It is my opinion that the need of Representative Hochhauser's constituents are representative of the needs of any juvenile rape victim.

I feel it will lend a feeling of control to the rape victim and her family. At this time of trauma and readjustment, it is important to give a feeling of control back to the victim.

I urge you to vote yes on HB 2298. Thank you.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Bill Request on Behalf of
Attorney General Robert T. Stephan
Presented by
Mary Jane Stattelmann,
Assistant Attorney General

House Judiciary Subcommittee
Re: Kansas Architectural
Accessibility Standards Act
Cleanup Amendments
February 23, 1993

Mr. Chairman and members of the House Judiciary Subcommittee, thank you for this opportunity to speak about this bill.

The Kansas Architectural Accessibility Standards Act, which was enacted last year, was generally patterned after Title II and Title III of the federal Americans with Disabilities Act. The amendments we offer are not intended to change this policy, but only to clarify terms and dates.

The major area of the amendments is the inclusion of the actual definitions and terms that the entities are under instead of merely adopting the applicable federal regulations by reference. The Attorney General believes that if someone is expected to comply with Kansas law, that person should be able

to pick up Kansas statutes and know what standards are applicable instead of having to go to a federal cite to determine whether or not they are in compliance. Therefore, although this bill is quite voluminous, it is only slightly different from the law which we have been under for the past seven months.

The changes our office proposes are as follows:

1. The date, January 26, 1992 - found in KSA 58-1301 and 31-150.

As written, the act appears to have retroactive effect. We do not believe that was the intent.

2. Parking requirements - found in KSA 58-1311 and 8-1,128.

This is necessary because current law is less stringent than parking requirements which were in effect prior to 1992. Kansas law allows governmental facilities which were built before 1979 to not be in conformance with new construction standards for parking, and owners of a private parking lot, who have not relocated or established any parking space(s) since January 26, 1992, to not designate any new parking space(s) for individuals with a disability. This amendment would make Kansas parking requirements equal to federal ADA new construction standards which we believe was the intent of the 1992 legislature.

3. Inclusion of "mental impairment" - found in KSA 58-1301a.

This is necessary because current law only protects someone with a physical impairment. This change would put Kansas law in line with the federal Americans with Disabilities Act.

4. Appeal process - found in KSA 58-1307.

This is necessary because the state's previous waiver/modification procedure allowed a governmental entity or owner of a public facility to be granted a waiver or modification based on the determination that the construction or alteration was unreasonable or impracticable. This standard is much lower than federal law which virtually precludes any waiver or modification for new construction. However, federal law does allow a governmental entity to be granted a waiver or modification if an alteration is found to be one that would 1) destroy the historic significance of the facility, 2) fundamentally alter a program or service, or 3) create an undue financial or administrative burden. Federal law also allows an owner of a public facility to be granted a waiver or modification when an alteration is determined to be 1) technically infeasible, 2) structurally impracticable, or 3) disproportionate to the alteration cost.

The Attorney General's office is seeking clarification of this act in an effort to further the goal of last year - to pattern Kansas law after the federal law.

HOUSE BILL No. 2298

By Representatives Hochhauser, Ballard, Bishop, Bruns, Carmody, Cornfield, Dawson, Empson, Freeborn, Gilbert, Glasscock, Haulmark, Hendrix, Krehbiel, Lynch, Macy, McClure, Pettey, Ruff, Rutledge, Sebelius, Swall, Wagle and Welshimer

2-5

AN ACT concerning parental rights; amending section 87 of chapter 298 of the 1992 Session Laws of Kansas and repealing the existing section.

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

Section 1. Section 87 of chapter 298 of the 1992 Session Laws of Kansas is hereby amended to read as follows: Sec. 87. If a person is convicted of [rape, pursuant to K.S.A. 21-3502, and amendments thereto, or aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, and amendments thereto] or if a juvenile is adjudicated a juvenile offender because of an act which if committed by an adult would be [rape, pursuant to K.S.A. 21-3502, and amendments thereto, or indecent liberties with a child, pursuant to K.S.A. 21-3504, and amendments thereto] and as a result of [such] rape [conviction or adjudication] a child is born, the court may terminate such person's parental rights to the child at any time after such conviction or adjudication.

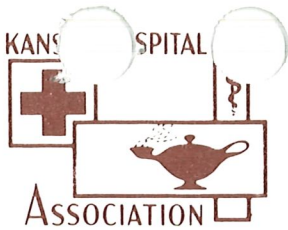
Sec. 2. Section 87 of chapter 298 of the 1992 Session Laws of Kansas is hereby repealed.

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

a felony in which sexual intercourse occurred

the sexual intercourse

or juvenile's



Memorandum

Donald A. Wilson
President

February 23, 1993

TO: House Judiciary Committee

FROM: Kansas Hospital Association

RE: **HOUSE BILL 2490**

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of HB 2490. This bill enacts a new version of the uniform anatomical gift act.

Kansas currently has its own anatomical gift act at K.S.A. 65-3209 et.seq. Because these statutes have been on the books for a number of years, we think it is appropriate to re-examine these laws. Obviously, HB 2490 raises a host of issues. We will confine our comments to those sections directly affecting hospitals.

New Section 5 contains four basic responsibilities for hospitals:

- (1) Hospitals must ask new patients whether they have executed an anatomical gift, and if not, patients must be asked whether they wish to do so;
- (2) If no anatomical gift has been made, hospitals must approach patients or families at or near the time of death about the possibility of doing so;
- (3) Hospitals must make a reasonable search of certain patients for a document of gift; and

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- (4) Hospitals must notify the donee or procurement organization in certain instances.

Many of these requirements are either expressed or implied in current law. For example, both state and federal law require hospitals to have policies for approaching the family of a deceased person about organ and tissue donation. We do, however, have some questions about new Section 5(a). This section requires hospitals to specifically ask every patient whether they are an organ or tissue donor and if not, to discuss further the patient's options. First, there is a technical question about what "admission" means. A person can be "admitted" as an inpatient or an outpatient. It is not clear to what situations this requirement is meant to apply.

We think additional questions should be raised about the nature of this policy. Everyone shares the goal of increasing the rate of organ and tissue donation. Clearly, however, these requests are of a very sensitive nature and they become even more sensitive when a person is going through the anxiety of being admitted to a hospital. We are not prepared to say that such a requirement is unequivocally bad public policy. We do think that these kinds of changes should be very thoughtfully considered.

If not acted on this session, HB 2490 will still be alive in 1994. As such, it might be an appropriate topic for an interim study. Thank you for your consideration of our comments.

TLB / pc

STATE OF KANSAS



Joan Finney
Governor

DEPARTMENT OF WILDLIFE & PARKS
OFFICE OF THE SECRETARY
900 SW Jackson St., Suite 502 / Topeka, Kansas 66612 - 1233
(913) 296-2281 / FAX (913) 296-6953

Theodore D. Ensley
Secretary

H.B. 2488

Testimony Presented To: House Judiciary Subcommittee

Presented By: Kansas Department of Wildlife and Parks

February 23, 1993

H.B. 2488 addresses law enforcement authority for conservation officers, deputy conservation officers, and other law enforcement officers temporarily assigned to the department. It amends K.S.A. 32-808.

Existing law does not allow for the enforcement of traffic infractions on Wildlife and Parks managed properties. This was a result of Chapter 8 traffic crimes being re-classified as infractions. Public safety is a primary concern of the Kansas Department of Wildlife and Parks. Total enforcement of laws on department managed lands is necessary to provide public safety.

Arrests for crimes other than Chapter 32 violations on department managed lands must be turned over to other enforcement organizations under current law. This compounds legal proceedings and creates an unnecessary burden on other law enforcement organizations.

The following are examples of case situations where conservation officers have not been able to pursue for lack of authority:

1. Conservation officers in Region 4 observed a school bus being operated in an errant manner. Officer took initiative and stopped the bus utilizing his patrol units emergency equipment. Operator of the bus showed signs of being under the influence. Officer notified the county sheriff who upon arrival arrested the suspect for driving under the influence.
--Case Dismissed--Conservation officer did not have authority to stop school bus for infraction violation
2. Conservation officers and park law enforcement officers often request record checks on vehicles and firearms through the National Crime Information Center. A conservation officer in Region 3 entered a weapons check

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in NCIC and was advised the weapon was stolen. After further investigation the officer found the individual in possession of the weapon had a felony criminal record. The officer detained the subject and notified local authorities to secure the subject and seize property. These situations can be and are dangerous for the officers welfare. By having full police power, the conservation officer would have made the arrest of the subject, seized the weapon, and transported to the county jail.

3. Conservation officers and park law enforcement officers are often called to incidents of domestic violence. Under current state statute addressing domestic violence, when a crime has been committed a law enforcement officer will make an arrest. Department law enforcement officers must notify local law enforcement agencies to perfect arrest, which may compound legal proceedings. A Region 4 conservation officer, while checking fisherman along the Little Arkansas River in Wichita, encountered a domestic disturbance involving a husband chasing his wife with a knife. Officer stopped the suspect and secured the weapon, then called local authorities as per current restrictions of authority.
4. Conservation officers and park law enforcement officers encounter many situations on public lands involving illegal drugs, possession of cocaine, marijuana, and drug paraphernalia. Officers must detain suspects until they are able to remand suspects to local authorities.

The issue of expanded authority for conservation officers as contained in H.B. 2488 will meet the needs of the Kansas Department of Wildlife and Parks and provide for enhanced public safety.

Enforcement of traffic infractions and certain other laws and regulations will require more attention by conservation officers, but would not be significant. No additional personnel, operating expenses or equipment is deemed necessary. Other enforcement agencies have assisted with traffic enforcement and other enforcement needs on Department lands and waters in response to known problems and when their limited resources allow. Under this proposed legislation, these agencies would continue to provide assistance when requested, but their involvement would be reduced.

The Department is charged with management of certain lands and waters for the public use and enjoyment. Public safety while using and enjoying those areas must be a primary concern of the Department.

CLIFF HACKER, President
Lyon County Sheriff
Emporia, Kansas 66801

LARRY MAHAN, President-Elect
Kansas Highway Patrol
Wichita, Kansas 67212

JIM DAILY, Vice-President
Barton County Sheriff
Great Bend, Kansas 67530

ALVIN THIMMESCH,
Secretary-Treasurer
Kansas Peace Officers' Association
Wichita, Kansas 67201

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Salina, Kansas 67401

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Hays, Kansas 67601
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Hutchinson, Kansas 67504

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Winfield, Kansas 67156
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Winfield, Kansas 67156
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Ks. Law Enforcement Training Center
Hutchinson, Kansas 67504

DISTRICT 8

ALLEN FLOWERS
Chief of Police
Coffeeville, Kansas 67337
LOWELL PARKER
Greenwood County Sheriff
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TINY WILNERD
Ks. Dept. of Wildlife and Parks
Howard, Kansas 67349
SERGEANT-AT-ARMS
KENNETH McGLASSON
Kansas Highway Patrol
Wabecy, Kansas 67672

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030

FAX 316-729-0655

P.O. BOX 2592 • WICHITA, KANSAS 67201



Mr. Chairman and Members of the Committee:

Re: House Bill 2488

In July of 1987 Governor Hayden's Executive Reorganization order No. 22 created the Kansas Department of Wildlife and Parks. This required the merger of the Kansas Fish and Game Commission and the Park and Resources Authority. It also required recodification of the laws for both agencies into a new set of laws for the newly created Kansas Department of Wildlife and Parks. The recodification process was finalized in the legislature in 1989.

Prior to the 1989 recodification of the Wildlife and Parks laws, both Wildlife Conservation Officers and the old Park Authority Rangers had authority to enforce all the laws of the state. The park Authority under K.S.A. 74-4508 had authority to; "Enforce all laws of the state and rules and regulations of the Authority." The old Fish and Game Commission Wildlife Conservation Officers had similar authority, except arrest for crimes other than fish and game violations had to be turned over to the Sheriff or Chief of Police in the jurisdiction where the arrest was made. (K.S.A. 74-3302). The full police authority for Park Rangers was granted to the Park Authority in the 1977 session laws under H.B. 2576. Conditional full police authority was granted to the Fish and Game Commission Wildlife Conservation Officers in the session laws of 1985 under H.B. 2104.

The recodification process overlooked an important point of law which is needed by the Kansas Department of Wildlife and Parks. Traffic crimes had been reclassified as "infractions" prior to 1989. This meant traffic enforcement on state parks and wildlife areas could no longer be conducted since the Wildlife Conservation Officers only had authority to enforce violations of criminal law, not traffic infractions. This has caused a safety problem for the public who use these areas and placed an undo burden on other law enforcement agencies. Other law enforcement agencies such as county sheriff departments and the Kansas Highway Patrol have been responsible for the traffic enforcement on the parks

HOUSE JUDICIARY
Attachment #17

In Unity There Is Strength

02-25-93

and wildlife areas because Conservation Officers no longer had legal authority for this responsibility. This should be a primary responsibility of the Kansas Department of Wildlife and Parks and not left to become a burden for other law enforcement agencies.

Powers of arrest as set forth in K.S.A. 1991 supp. 22-2404 also needs to be included in the general arrest authority for Conservation Officers. Without this authority Conservation Officers may not arrest a wanted felon without an arrest warrant. If a Conservation Officer was conducting a NCIC background check on an individual and determined the individual was an escaped felon the officer would have no authority to arrest the felon unless the officer had an arrest warrant in hand. It seems ridiculous to allow a wanted felon to escape the criminal justice system because of an oversight in the law.

The current requirement for Conservation Officers to turn arrests over to Sheriffs or Chiefs of Police is unnecessary and burdensome. Conservation Officers are fully trained and certified as law enforcement officers through the Kansas Law Enforcement Training Academy. Conservation Officers receive the same training as Sheriffs and other Police Officers in Kansas. They should have full police authority to make arrests and be allowed to turn those violations over to the county attorney as any Sheriff, Police Officer, KBI agent or Kansas Highway Patrol officer can.

The Kansas Peace Officers Association supports full law enforcement authority for Conservation Officers. The member agencies of the KPOA have provided assistance to the Conservation Officers of the Kansas Department of Wildlife and Parks. This assistance has included dispatch services, officer backup, law enforcement assistance for special Wildlife and Parks operations and arrest of fish and wildlife violators. Giving Conservation Officers full police authority will enhance the cooperation between other law enforcement agencies and the Kansas Department of Wildlife and Parks. It will provide greater safety to the public and make the criminal justice system more effective.

LARRY WELCH
Director
316-662-3378
Fax 316-662-4720



THE UNIVERSITY OF KANSAS
KANSAS LAW ENFORCEMENT TRAINING CENTER
P.O. Box 647
Hutchinson, Kansas 67504-0647

HOUSE BILL NO. 2488

Good afternoon ladies and gentlemen of the House Judiciary Committee.

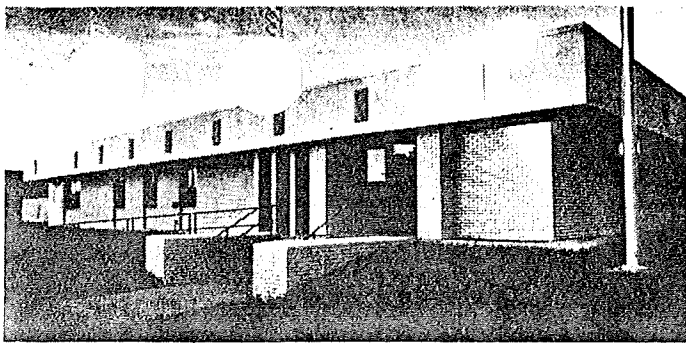
My name is Richard E. Burch and I am the assistant director of the Kansas Law Enforcement Training Center at Hutchinson, Kansas. I am here today to testify on House Bill No. 2488 in reference to full law enforcement powers being granted to Conservation Officers of the Department of Wildlife and Parks.

As many of you are aware, the Kansas Law Enforcement Training Center is, by statute, the agency which provides the training for certification as a police officer in the state of Kansas. After successful completion of the basic training, the Kansas Law Enforcement Training Commission grants a certificate to the officer.

I am here today to testify to the training which is presently received by the conservation officers. The conservation officers attend the same training which is received by every law enforcement officer in the state of Kansas. The training is the required eight week basic course of not less than 320 hours as set out in State Statute 74-5607a.

The passage of this bill will not effect the Kansas Law Enforcement Training Center in the training of conservation officers. Conservation Officers have always attended the training center and are already certified officers in the state. Granting them the authority to enforce laws of the state will not be a substantial impact upon the training center as far as more officers to train and the conservation officers are already certified to enforce the laws of the state of Kansas.

We support the bill as written as the conservation officers presently receive the same training as every county, municipal and state officer in the state of Kansas.



OFFICE OF
SHERIFF OF LYON COUNTY

425 MECHANIC STREET
PHONE 316-342-5545
EMPORIA, KANSAS 66801

SHERIFF
CLIFFORD F. HACKER

UNDERSHERIFF
RANDALL T. THOMAS

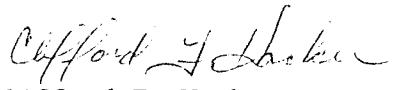
House Judiciary Committee

REF: House Bill 2488

The Kansas Peace Officers' Association requested House Bill 2488 because in a time of increasing crime and tight budgets, law enforcement needs all the assistance it can get. It does not make sense to have trained and certified law enforcement officers and not allow them to enforce the laws of the State of Kansas.

As Sheriff of Lyon County, I feel it is in the best interest of public safety to allow the Wildlife and Parks Officers to enforce all of the laws. I strongly feel we need all agencies working together to enable us to keep up with the ever increasing demands for public safety. I strongly urge the passage of House Bill 2488.

Thank you for your consideration.


Clifford F. Hacker
Lyon County Sheriff
President-K.P.O.A.

COUNTY OF LEAVENWORTH

COURTHOUSE
4th & WALNUT
LEAVENWORTH, KANSAS 66048
Area Code (913) 684-0400



FROM THE OFFICE OF:

DAVID C. VAN PARYS
COUNTY COUNSELOR

February 22, 1993

Members of the House Judiciary Committee

Re: House Bill No. 2462

Dear Representatives:

I come to you on behalf of the Board of County Commissioners of Leavenworth County, Kansas to request your support for House Bill No. 2462. This bill was introduced by The Honorable Clyde D. Graeber at the request of the County.

House Bill No. 2462 is a relatively simple bill. Its' effect would be to extend to counties the same exemption now enjoyed by cities with regards to the posting of security costs for bonds during the pendency of an appeal in a civil matter. Cities currently enjoy this privilege by virtue of K.S.A. 13-1407, a copy of which I am attaching for your review. House Bill No. 2462, subsection b of section 1 is modeled on K.S.A. 13-1407.

Your support and favorable consideration of this bill will result in direct savings to counties which are engaged in appeals subsequent to litigation. Passage of the bill would not prejudice the rights of any party with regards to the collection of any judgement against the County but would solely reduce the costs to the citizens of the counties during an appeal.

In closing I would like to express to you the thanks of the Board of County Commissioners of Leavenworth County, Kansas for your consideration of this matter.

Sincerely,

David C. VanParys
David C. VanParys
County Counselor

DCV:rw
Attachment
cc: BOCC

HOUSE JUDICIARY
Attachment #20
02-25-93
Noxious Weeds
684-0494

City-County Probation
684-0760

Council on Aging
684-0777

Emergency Medical Service
684-0788

Community Corrections
684-0775

County Infirmary
684-1010

Health Department
684-0730

Sheriff
682-5724

13-1406.

History: R.S. 1923, § 13-1406; L. 1963, ch. 456, § 2; Repealed, L. 1969, ch. 429, § 3; Jan. 1, 1970.

Source or prior law:

L. 1862, ch. 46, art. 5, § 11; G.S. 1868, ch. 18, § 108; L. 1874, ch. 46, § 65; L. 1881, ch. 37, § 102; L. 1903, ch. 122, § 178.

CASE ANNOTATIONS

1. Under former law city not required to answer as garnishee. *Switzer v. City of Wellington*, 40 K. 250, 253, 19 P. 620.
2. Cited in holding ownership by city is test of tax exemption. *City of Harper v. Fink*, 148 K. 278, 281, 80 P.2d 1080.
3. Mentioned; property used exclusively by city to convey water held tax exempt. *State, ex rel., v. Hedrick*, 178 K. 135, 138, 139, 140, 283 P.2d 437.
4. Building has only commercial use; not exempt from taxation under constitution or statutes; vacation of void judgments. *Shriver v. Board of County Commissioners*, 189 K. 548, 549, 556, 370 P.2d 124.
5. Proviso concerning exempt status of municipally-owned airports, being specific enactment, governs over general tax exemption statute (79-201); but exemption of park property, not within scope of proviso, depends upon use, not ownership of property. *Board of Park Commissioners v. Board of County Commissioners*, 206 K. 438, 440, 442, 443, 444, 445, 480 P.2d 81.
6. Cited; taxes on real property; cities of first class. *City of Newton v. Board of County Commissioners*, 209 K. 1, 3, 495 P.2d 963.

13-1407. Security for costs or stay or supersedeas bond. The city shall not be required in any proceeding in any court to give security for costs on appeal, or any stay or supersedeas bond, where the city is plaintiff or defendant.

History: L. 1903, ch. 122, § 179; March 18; R.S. 1923, § 13-1407.

Source or prior law:

L. 1881, ch. 37, § 116.

13-1408.

History: L. 1903, ch. 122, § 180; R.S. 1923, § 13-1408; Repealed, L. 1963, ch. 90, § 1; June 30.

Source or prior law:

L. 1875, ch. 70, § 6; L. 1881, ch. 37, § 106.

13-1409.

History: L. 1903, ch. 122, § 181; R.S. 1923, § 13-1409; Repealed, L. 1963, ch. 90, § 1; June 30.

Source or prior law:

L. 1862, ch. 46, art. 2, § 1, ¶ 20; L. 1864, ch. 69, § 2, ¶ 19; L. 1867, ch. 70, § 1, ¶ 19; G.S. 1868, ch. 18, § 15, ¶ 20; L. 1869, ch. 24, § 1, ¶ 23; L. 1870, ch. 47, § 1, ¶ 31; L. 1874, ch. 46, § 13, ¶ 27; L. 1879, ch. 82, § 2, ¶ 31; L. 1881, ch. 37, § 11, ¶ 40; L. 1883, ch. 34, § 1, ¶ 40; L. 1887, ch. 99, § 3, ¶ 40.

13-1410. Council meetings. Regular meetings of the council shall be held at such

times, not less than once each month, as shall be prescribed by ordinance. In all cases it shall require a majority of the councilmen elected to constitute a quorum to do business, but a smaller number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as the council may have by ordinance previously prescribed.

History: L. 1903, ch. 122, § 182; March 18; R.S. 1923, § 13-1410.

Source or prior law:

L. 1881, ch. 37, § 115.

Research and Practice Aids:

Municipal Corporations ⇨ 36.

C.J.S. Municipal Corporations §§ 391, 392.

Attorney General's Opinions:

Uniform application of open meetings act to cities. S3-6.

13-1411. President of council; powers. The council shall elect one of its body who shall be styled "president of the council," and who shall preside at all meetings of council, in the absence of the mayor; and in the absence of the president of the council, to select one of their body to occupy the place temporarily, who shall be styled "acting president of the council"; and the president and acting president, when so occupying the place of mayor, shall have the same power as the mayor, but shall not exercise the rights, duties or privileges of a councilman while so acting as mayor: *Provided*, That the acting mayor shall have no power to sign contracts, approve or disapprove ordinances, except for the current expenses of the city for the preceding month.

History: L. 1903, ch. 122, § 183; March 18; R.S. 1923, § 13-1411.

Source or prior law:

L. 1862, ch. 46, art. 2, § 1, ¶ 23; L. 1864, ch. 69, § 2, ¶ 21; L. 1867, ch. 70, § 1, ¶ 21; G.S. 1868, ch. 18, § 15, ¶ 21; L. 1869, ch. 24, § 1, ¶ 29; L. 1870, ch. 47, § 1, ¶ 32; L. 1874, ch. 46, § 13, ¶ 31; L. 1879, ch. 82, § 2, ¶ 33; L. 1881, ch. 37, § 11, ¶ 42; L. 1883, ch. 34, § 1, ¶ 42; L. 1887, ch. 99, § 3, ¶ 42.

Research and Practice Aids:

Municipal Corporations ⇨ 168.

C.J.S. Municipal Corporations § 543.

13-1412.

History: L. 1903, ch. 122, § 184; R.S. 1923, § 13-1412; Repealed, L. 1963, ch. 90, § 1; June 30.

Source or prior law:

L. 1872, ch. 99, § 4; L. 1881, ch. 37, § 114.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY OF
ROBERT T. STEPHAN
ATTORNEY GENERAL
BEFORE THE HOUSE JUDICIARY SUB-COMMITTEE #1
RE: HOUSE BILL 2458
FEBRUARY 22, 1993

House Bill 2458 New Section 1 would establish a victims' rights review committee which would fall under the jurisdiction of my office. This committee will review any report of noncompliance of the constitutional rights of a crime victim. If the committee determines that such report of noncompliance has a basis of fact and cannot be resolved, the committee shall refer the report of noncompliance to me to file suit to enforce compliance with the victims' rights constitutional amendment.

Although the constitutional amendment passed in November allows crime victims to take individual action to protect their rights, those crime victims who cannot afford to enforce their rights would now have an avenue they can use.

I realize I have the ability to take action to protect the constitutional rights of victims, however, this committee will assist me in gathering the facts and, if necessary, help resolve any problems before a suit is filed. By creating this

HOUSE JUDICIARY
Attachment #21
02-25-93

committee, the legislature will help guarantee that constitutional rights for crime victims be enforced in the years to come.

This committee will be very important in that crime victims can get the assistance they need to ensure their rights are met through the criminal justice system.

Section 2 of this bill pertains to the filing of crime victims' compensation board claims. Currently, victims who apply for compensation must have an economic loss of \$100 except in cases of rape. The change on page three (g) would allow all victims of sexual assault offenses to be eligible. I am requesting an amendment to this section to also include the crimes of incest, K.S.A. 21-3602, and aggravated incest, K.S.A. 21-3603.

Another amendment I would like for you to consider concerns the documents gathered for the purpose of processing claims for compensation. The purpose of compensation is to ease the financial burden of being a violent crime victim. However, at times, the crime victims' compensation board is being subpoenaed in cases involving litigation of other parties to produce compensation documents. For example, in a recent incident, the crime victims' compensation board was subpoenaed to produce their documents concerning a suit filed against a city. This case file contained documents such as police reports and medical records. All reports such as these are copies and not original documents. While the courts have

Page 3

not allowed the use of such documents, the time involved in asking the court to quash the subpoenas are taxing to the staff. It is the intent of this amendment to declare the crime victims' compensation board's documents used for the purposes of determining eligibility to be confidential. Attached is the proposed language to amend K.S.A. 74-7308.

1 (f) The board, upon finding that the claimant or victim has not
 2 fully cooperated with appropriate law enforcement agencies, may
 3 deny, withdraw or reduce an award of compensation.

4 (g) Except in cases of ~~rape or attempted rape sex offenses es-~~ and 21-3602 and 21-3603
 5 tablished in article 35 of chapter 21, of the Kansas Statutes An-
 6 notated, and amendments thereto, compensation may not be awarded
 7 if the economic loss is less than \$100.

8 (h) Compensation for work loss, replacement services loss, de-
 9 pendent's economic loss and dependent's replacement service loss
 10 may not exceed \$200 per week.

11 (i) Compensation payable to a victim and to all other claimants
 12 sustaining economic loss because of injury to or death of that victim
 13 may not exceed \$25,000 in the aggregate.

14 Sec. 3. K.S.A. 74-7305 is hereby repealed.

15 Sec. 4. This act shall take effect and be in force from and after
 16 its publication in the statute book.

Amend K.S.A. 74-7308.

New Section (e): All records and information given to the crime victims' compensation board to process a claim on behalf of a crime victim will be considered confidential. Such exhibits, medical records, psychological records, counseling records, work records, criminal investigation records, criminal court case records, witness statements, telephone records, and other records of any type or nature whatsoever gathered for the purpose of evaluating whether to compensate a victim shall not be obtainable by any party to any action, civil or criminal, through any discovery process except:

(1) in the event of an appeal under the Kansas administrative procedure act from a decision of the crime victims compensation board and then only to the extent narrowly and necessarily to obtain court review;

(2) upon a strict showing to the court in a separate civil or criminal action that particular information or documents are not obtainable after diligent effort from any independent source, and are known to exist otherwise only in board records, the court may inspect in camera such records to determine whether the specific requested information exists. If the court determines the specific information sought exists in the board records, the documents may then be released only by court order if the court finds as part of its order will not pose any threat to the safety of the victim or any other person whose identity may appear in board records;

(3) any board order granting or denying compensation to a crime victim.

HOUSE BILL No. 2458

By Committee on Judiciary

2-12

8 AN ACT concerning crime victims; relating to claims for compen-
 9 sation; establishing a victims rights review committee; amending
 10 K.S.A. 74-7305 and repealing the existing section.

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

12 New Section 1. (a) There is hereby established a victims rights
 13 review committee. Such committee shall consist of three members
 14 appointed by the attorney general. Appointments to the committee
 15 during the first year shall consist of a two-year term, a three-year
 16 term and a four-year term. All appointments after the expiration of
 17 these terms shall be for four years. Members of the committee shall
 18 receive compensation, subsistence allowances, mileage and expenses
 19 from the crime victims assistance fund established in K.S.A. 74-
 20 7334, and amendments thereto.

21 (b) The committee shall review any report of noncompliance of
 22 the constitutional rights of a crime victim. Any crime victim, except
 23 a defendant or person accused or convicted of a crime against the
 24 victim, may enforce compliance by notifying the victims rights review
 25 committee. If the committee determines that such report of non-
 26 compliance has a basis in fact, and cannot be resolved, the committee
 27 shall refer such report of noncompliance to the attorney general to
 28 file suit to enforce compliance with the constitutional rights of a
 29 crime victim.

30 (c) The attorney general may adopt rules and regulations:

31 (1) Establishing standards for reviewing crime victims complaints
 32 of noncompliance; and

33 (2) for the administration of this section.

34 Section 2. K.S.A. 74-7305 is hereby amended to read as follows:
 35 74-7305. (a) An application for compensation shall be made in the
 36 manner and form prescribed by the board.

37 (b) Compensation may not be awarded unless an application has
 38 been filed with the board within one year of the reporting of the
 39 incident to law enforcement officials if the victim was less than 16
 40 years of age and the injury or death is the result of any of the
 41 following crimes: (1) Indecent liberties with a child as defined in
 42 K.S.A. 21-3503 and amendments thereto; (2) aggravated indecent
 43

HB 2458

2

1 liberties with a child as defined in K.S.A. 21-3504 and amendments
 2 thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506
 3 and amendments thereto; (4) enticement of a child as defined in
 4 K.S.A. 21-3509 and amendments thereto; (5) indecent solicitation of
 5 a child as defined in K.S.A. 21-3510 and amendments thereto; (6)
 6 aggravated indecent solicitation of a child as defined in K.S.A. 21-
 7 3511 and amendments thereto; (7) sexual exploitation of a child as
 8 defined in K.S.A. 21-3516 and amendments thereto; or (8) aggravated
 9 incest as defined in K.S.A. 21-3603 and amendments thereto. For
 10 all other incidents of criminally injurious conduct, compensation may
 11 not be awarded unless the claim has been filed with the board within
 12 one year after the injury or death upon which the claim is based.
 13 Compensation may not be awarded to a claimant who was the of-
 14 fender or an accomplice of the offender and may not be awarded to
 15 another person if the award would unjustly benefit the offender or
 16 accomplice.

17 (c) Compensation otherwise payable to a claimant shall be
 18 diminished:

19 (1) To the extent, if any, that the economic loss upon which the
 20 claimant's claim is based is recouped from other persons, including
 21 collateral sources; and

22 (2) to the extent, if any, that the board deems reasonable because
 23 of the contributory misconduct of the claimant or of a victim through
 24 whom the claimant claims.

25 (d) Compensation may be awarded only if the board finds that
 26 unless the claimant is awarded compensation the claimant will suffer
 27 financial stress as the result of economic loss otherwise reparable.
 28 A claimant suffers financial stress only if the claimant cannot maintain
 29 the claimant's customary level of health, safety and education for
 30 self and dependents without undue financial hardship. In making its
 31 determination of financial stress, the board shall consider all relevant
 32 factors, including:

33 (1) The number of claimant's dependents;

34 (2) the usual living expenses of the claimant and the claimant's
 35 family;

36 (3) the special needs of the claimant and the claimant's
 37 dependents;

38 (4) the claimant's income and potential earning capacity; and

39 (5) the claimant's resources.

40 (e) Compensation may not be awarded unless the criminally in-
 41 jurious conduct resulting in injury or death was reported to a law
 42 enforcement officer within 72 hours after its occurrence or the board
 43 finds there was good cause for the failure to report within that time.

1 (f) The board, upon finding that the claimant or victim has not
2 fully cooperated with appropriate law enforcement agencies, may
3 deny, withdraw or reduce an award of compensation.

4 (g) Except in cases of rape or attempted rape sex offenses es- and 21-3602 and 21-3603
5 tablished in article 35 of chapter 21, of the Kansas Statutes An-
6 notated, and amendments thereto, compensation may not be awarded
7 if the economic loss is less than \$100.

8 (h) Compensation for work loss, replacement services loss, de-
9 pendent's economic loss and dependent's replacement service loss
10 may not exceed \$200 per week.

11 (i) Compensation payable to a victim and to all other claimants
12 sustaining economic loss because of injury to or death of that victim
13 may not exceed \$25,000 in the aggregate.

14 Sec. 3. K.S.A. 74-7305 is hereby repealed.

15 Sec. 4. This act shall take effect and be in force from and after
16 its publication in the statute book.

Amend K.S.A. 74-7308.

New Section (e): All records and information given to the crime victims' compensation board to process a claim on behalf of a crime victim will be considered confidential. Such exhibits, medical records, psychological records, counseling records, work records, criminal investigation records, criminal court case records, witness statements, telephone records, and other records of any type or nature whatsoever gathered for the purpose of evaluating whether to compensate a victim shall not be obtainable by any party to any action, civil or criminal, through any discovery process except:

(1) in the event of an appeal under the Kansas administrative procedure act from a decision of the crime victims compensation board and then only to the extent narrowly and necessarily to obtain court review;

(2) upon a strict showing to the court in a separate civil or criminal action that particular information or documents are not obtainable after diligent effort from any independent source, and are known to exist otherwise only in board records, the court may inspect in camera such records to determine whether the specific requested information exists. If the court determines the specific information sought exists in the board records, the documents may then be released only by court order if the court finds as part of its order will not pose any threat to the safety of the victim or any other person whose identity may appear in board records;

(3) any board order granting or denying compensation to a crime victim.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
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February 22, 1993

Representative Michael O'Neal
Chairperson, House Judiciary Committee
State Capitol, Room 426-S
Topeka, Kansas 66612

Dear Representative O'Neal:

This letter is in support of House Bill 2472 which would allow unpaid restitution to be considered a judgement against a defendant. In many cases a crime victim who has been awarded restitution in a criminal case will not be paid. The victim who is not paid may file civil action against the defendant to try and obtain the money. For a victim this is an added expense. This bill would allow the court ordered restitution to become a judgement for payment in civil cases pursuant to civil procedure.

It is my understanding this type of law has worked in other states and I believe to would be beneficial for Kansas to adopt this procedure.

I am asking that you support House Bill 2472 which will assist crime victims.

Sincerely,

A handwritten signature in cursive script, reading "Robert T. Stephan", is positioned above the typed name.

Robert T. Stephan
Attorney General

RTS:mr

HOUSE JUDICIARY
Attachment #23
02-25-93

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 2472

House Bill 2472 attempts to assist crime victims who have been awarded restitution by amending the restitution provisions of both the sentencing statute, K.S.A. 21-4610, and the parole statute, 22-3718, by allowing enforcement of restitution as if it were a civil judgment awarded under Chapter 60. The remedy is required because of the short period of probation (5 years, K.S.A. 21-4611) or parole (Up to 2 years, Sec. 270, L. 1992, ch. 239). It is assumed that with large numbers of highly qualified, law abiding citizens without work, criminal defendants are less likely to acquire the wherewithal to make full restitution during their supervision period.

House Bill 2472 has two benefits: 1) Instead of making crime victims hire an attorney, file suit, attempt service of process, and proceed to trial or default judgment, HB 2472 would allow them to register the restitution order and proceed in aid of execution; and 2) It would eliminate the effect of the statute of limitations in civil cases. The need for the latter remedy is made apparent by the results of Church Mutual Insurance Co. v. Rison, 16 Kan. App. 2d 315. A convicted embezzler was ordered to pay over \$26,000 restitution, but after five years on probation, paid only \$1240, less than 5% of that amount. He was discharged from probation and the insurance company filed a subrogation action on behalf of the nursing home victim. The Court of Appeals held that restitution payments made as a condition of probation do not toll the statute of limitations for civil actions. The result was that since the plaintiff had waited five years for its restitution from the criminal case, it was then precluded from recovering its loss in a civil case.