

Approved: 3-23-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 3:30 p.m. on February 25, 1993 in Room 254-E of the Capitol.

All members were present except: Senator Bond (excused)

Committee staff present: Michael Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee: none

Chairman Moran announced this meeting would be devoted to final action on bills previously heard.

Senator Parkinson explained the balloon on SB 275 developed by the Family Law subcommittee (Attachment 1). Senator Parkinson moved adoption of the subcommittee report on SB 275 thereby amending the bill. Senator Rock seconded. Motion carried. Senator Parkinson moved that SB 275, as amended, be recommended favorably for passage. Senator Rock seconded. Motion carried.

Senator Parkinson advised the Committee that SB 338 and SB 339 both address the court-appointed special advocate program which is recognized in Kansas law in children in need of care cases and these bills expand that recognition in statute to domestic law and juvenile criminal law situations. Senator Parkinson moved to recommend SB 338 favorably for passage. Senator Petty seconded. Motion carried. Senator Martin requested staff to provide information on how the CASA program is funded. Senator Parkinson moved to recommend SB 339 favorably for passage. Senator Petty seconded. Motion carried.

Senator Vancrum stated that SB 213 was introduced to impose late payment fees on child support payments. Senator Vancrum distributed a letter from SRS outlining the fiscal impact of the bill on state revenues (Attachment 2). Senator Vancrum moved to recommend SB 213 favorably for passage. Senator Parkinson seconded. Motion failed.

Senator Parkinson moved to amend SB 337 regarding itemized verdicts by retaining the language in the bill in Section 1 to the words "subsection (a)" and inserting at that point current K.S.A. 60-249a and eliminating current subsection (c) of K.S.A. 60-249a and changing the reference to "a" to reference "b" in current K.S.A. 60-249a subsection (b). Senator Emert seconded. Senator Parkinson stated this amendment would reorder the current law to start out with the statement that the trial court shall instruct the jury only in those items of damage upon which there is some evidence to base an award. Motion carried. Senator Parkinson moved to recommend that SB 337, as amended, favorably for passage. Senator Emert seconded. Motion carried.

Senator Harris distributed a report including the Civil Law subcommittee recommendations (Attachment 3). Senator Harris moved that SB 108 be recommended favorably for passage. Senator Petty seconded. Motion carried.

Senator Harris moved to amend SB 121 with technical amendments recommended by staff and to recommend SB 121, as amended, favorably for passage. Senator Vancrum seconded. Motion carried.

Senator Harris reported that no action is recommended on SB 147. Senator Harris moved to recommend an interim study on the proposals in SB 175 relating to rights and duties of innkeepers and guests of lodging establishments. Senator Vancrum seconded. Motion carried. In addition, Senator Harris advised that SB 221 concerning the Kansas tort claims act applicable to claims for damages against duly appointed coroners is not needed at this time.

Senator Emert reported that the Criminal Law subcommittee recommends no action on SB 208 and SB 229. Senator Emert moved to amend SB 362 into SB 170 and to further amend SB 170 by adding the language "which condition was known by the offender or was reasonably apparent to the offender" to subsection iv line 32 following the word "substance." Senator Ranson seconded. Motion carried. Senator Rock moved to recommend SB 170, as amended, favorably for passage. Senator Petty seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 254-E Statehouse, at 3:30 p.m. on February 25, 1993.

Senator Emert moved to amend SB 245 to allow the county attorney in addition to the Attorney General to pursue the causes of action in the bill and to further amend SB 245 to correct the spelling of "from" in line 10 page 5. Senator Feleciano seconded. Motion carried. Senator Feleciano moved to recommend SB 245, as amended, favorably for passage. Senator Emert seconded. Motion carried.

Senator Emert explained that SB 341 pertains to the release of defendants after conviction. Current law says the judge may release a defendant if he represents no danger and would not flee and this bill would change current law to say the judge "shall" release the defendant unless a finding is made that a danger exists. Following discussion, Senator Emert moved to recommend SB 341 for interim study. Senator Vancrum seconded. Motion carried.

Senator Emert stated SB 354 pertains to testimony by video at preliminary hearings when the victim of a felony is a child. Senator Emert moved to amend SB 354 to apply to children, 13 years of age or younger and to recommend SB 354, as amended, favorably for passage. Senator Ranson seconded. Motion carried.

Senator Oleen moved to report SB 364 unfavorably. Senator Feleciano seconded. Motion carried. Senator Oleen moved to report SB 244 unfavorably. Senator Vancrum seconded. Motion carried.

Senator Vancrum moved to amend SB 289 by adopting the balloon presented as (Attachment 4). Senator Ranson seconded. Motion carried. Senator Ranson moved to recommend SB 289, as amended, favorably for passage. Senator Vancrum seconded. Motion failed.

The meeting was adjourned at 5:10 p.m. The next meeting is scheduled for February 26, 1993.

SENATE BILL No. 275

By Committee on Federal and State Affairs

2-9

AN ACT concerning certain crimes and offenses; authorizing court-ordered tests for HIV infection under certain circumstances; amending K.S.A. 22-2013 and repealing the existing section.

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

New Section 1. (a) As used in this section:

(1) "Adjudicated person" means a person adjudged to be a juvenile offender or a juvenile felon

or a person not adjudicated because of insanity.

(2) "Laboratory confirmation of HIV infection" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Test for HIV infection" means a test approved by the secretary of health and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome.

(5) "Body Fluids" means blood, semen or vaginal secretions, or any body fluid visibly contaminated with blood.

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, the judge shall inform the person or the parent or legal guardian of the person of the availability of testing for HIV infection and counseling and shall cause each alleged victim of the offense, if any, to be notified that testing for HIV infection and counseling is available.

or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved,

(c) ~~Upon the adjudication of a person to be a juvenile offender or juvenile felon for any offense involving a sexual act committed while the person was a juvenile, the court: (1) May order the adjudicated person to submit to a test for HIV infection; or (2) shall order the adjudicated person to submit to a test for HIV infection if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If a test for HIV infection is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall~~

by an adjudicated person, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved,

2-25-93
Attachment 1
SJ
(2)

1 designate the health care provider or counselor to receive the in-
 2 formation. If the test results in a negative reaction, the court shall
 3 order the adjudicated person to submit to another test for HIV
 4 infection six months after the first test was administered.

5 (d) The results of any test for HIV infection ordered under this
 6 section shall be disclosed to the court which ordered the test, to
 7 the adjudicated person, or the parent or legal guardian of the ad-
 8 judicated person, and to each person designated under subsection
 9 (c) by a victim or by the parent or legal guardian of a victim. If a
 10 test for HIV infection ordered under this section results in a labo-
 11 ratory confirmation of HIV infection, the results shall be reported
 12 to the secretary of health and environment, to the secretary of social
 13 and rehabilitation services and, in the case of a juvenile felon, to
 14 the secretary of corrections, ~~and~~ The secretary of health and envi-
 15 ronment shall provide to each victim of the sexual act counseling
 16 regarding the human immunodeficiency virus, testing for HIV in-
 17 fection in accordance with K.S.A. 65-6001 *et seq.* and amendments
 18 thereto and referral for appropriate health care and services.

19 (e) The costs of any counseling and testing provided under sub-
 20 section (d) by the secretary of health and environment shall be paid
 21 from amounts appropriated to the department of health and envi-
 22 ronment for that purpose. The court shall order the adjudicated
 23 person to pay restitution to the department of health and environ-
 24 ment for the costs of any counseling provided under this section
 25 and the costs of any test ordered or otherwise performed under this
 26 section.

27 (f) When a court orders an adjudicated person to submit to a
 28 test for HIV infection under this section, the withdrawal of the blood
 29 may be performed only by: (1) A person licensed to practice medicine
 30 and surgery or a person acting under the supervision of any such
 31 licensed person; (2) a licensed professional nurse or a licensed prac-
 32 tical nurse; or (3) a qualified medical technician. No person author-
 33 ized by this subsection to withdraw blood, no person assisting in
 34 the performance of the test for HIV infection nor any medical care
 35 facility where blood is withdrawn or tested that has been ordered
 36 by the court to withdraw or test blood shall be liable in any civil
 37 or criminal action when the test is performed in a reasonable manner
 38 according to generally accepted medical practices.

39 (g) The results of tests or reports, or information therein, ob-
 40 tained under this section shall be confidential and shall not be di-
 41 vulged to any person not authorized by this section to receive the
 42 results or information. Any violation of this section is a Class C
 43 misdemeanor.

crime or

, at the option of such victim,

1-2

1 Sec. 2. K.S.A. 22-2913 is hereby amended to read as follows:
2 22-2913. (a) As used in this section:

3 (1) "Conviction" means a judgment of guilt entered upon a plea
4 of guilty or no contest.

5 (2) "Laboratory confirmation of HIV infection" means positive
6 test results from a confirmation test approved by the secretary of
7 health and environment.

8 (3) "Sexual act" means contact between the penis and the vulva,
9 the penis and the anus, the mouth and the penis, the mouth and
10 the vulva or the mouth and the anus. For purposes of this definition
11 contact involving the penis occurs upon penetration, however slight.

12 (1) "AIDS test" (1) "Test for HIV infection" means a test ap-
13 proved by the secretary of health and environment to detect anti-
14 bodies to the probable causative the etiologic agent for the disease
15 acquired immune deficiency syndrome.

16 (2) "A positive reaction" means a positive AIDS test with
17 a positive confirmatory test as specified by the secretary of
18 health and environment.

19 (b) At the time of an appearance before a magistrate the court
20 under K.S.A. 22-2901 and amendments thereto, the magistrate
21 court shall inform every person arrested and charged with a crime
22 in which it appears from the nature of the charge that the trans-
23 mission of body fluids from one person to another may have been
24 involved or a sexual act may have been involved of the availability
25 of AIDS testing for HIV infection and counseling and shall cause
26 the each alleged victim of such a the crime, if any, to be notified
27 that AIDS testing for HIV infection and counseling is available.

28 (c) Upon conviction of a person for any crime which the court
29 determines, from the facts of the case, involved or was likely to have
30 involved the transmission of body fluids from one person to another
31 or involved a sexual act, the court: (a) (1) May order the convicted
32 person to submit to an AIDS test a test for HIV infection; or (b)
33 (2) shall order the convicted person to submit to an AIDS test if
34 the a test for HIV infection if a victim of the crime, or the parent
35 or legal guardian of the victim; if the victim is a minor, requests
36 the court to make such order. If an AIDS test a test for HIV
37 infection is ordered under this subsection (c), the victim of the
38 crime; if any, who is not a minor, a victim who is an adult shall
39 designate a health care provider or counselor to receive such the
40 information on behalf of the victim. If the a victim is a minor, the
41 parent or legal guardian of the victim shall designate the health care
42 provider or counselor to receive such the information. If the test
43 results in a negative reaction, the court shall order the convicted

upon a finding of guilty or

, and also means a verdict of not guilty because
of insanity.

(5) "Body fluids" means blood, semen or vaginal
secretions, or any body fluid visibly contaminated
with blood.

1 person to submit to another AIDS test *for HIV infection* six months
2 after the first test was administered.

3 (d) The results of any AIDS test *for HIV infection* ordered under
4 this section shall be disclosed to the court which ordered the test,
5 to the convicted person and to the *each* person designated under
6 subsection (c) by the ~~victim or victims of the crime a victim~~ or
7 by the parent or legal guardian of a victim if the ~~victim is a minor.~~
8 ~~If an AIDS test. If a test for HIV infection~~ ordered under this
9 section results in a ~~positive reaction laboratory confirmation of~~
10 *HIV infection*, the results shall be reported to the secretary of health
11 and environment and to the secretary of corrections, ~~and such coun-~~
12 ~~seling as directed by The~~ secretary of health and environment shall
13 be provided to the ~~victim or victims provide to each victim of~~
14 ~~the crime or sexual act~~ *counseling regarding the human immuno-*
15 *deficiency virus, testing for HIV infection in accordance with K.S.A.*
16 *65-6001 et seq. and amendments thereto and referral for appropriate*
17 *health care and services.*

at the option of such victim,

18 (e) The costs of any counseling *and testing* provided under sub-
19 section (d) by the secretary of health and environment shall be paid
20 from amounts appropriated ~~for such purpose~~ to the department of
21 health and environment *for that purpose. The court shall order the*
22 *convicted person to pay* restitution to the state ~~for payment of~~
23 ~~department of health and environment for~~ the costs of any counseling
24 provided under this section and for ~~payment of~~ the costs of any
25 test ordered *or otherwise performed* under this section shall be
26 included by the court in any order requiring the convicted
27 person to pay restitution.

28 (f) When a court orders a convicted person to submit to an AIDS
29 test *a test for HIV infection* under this section, the withdrawal of
30 the blood may be performed only by: (1) A person licensed to practice
31 medicine and surgery or a person acting under the supervision of
32 any such licensed person; (2) a licensed professional nurse or a
33 licensed practical nurse; or (3) a qualified medical technician. No
34 person authorized by this subsection to withdraw blood, no person
35 assisting in the performance of the AIDS test *for HIV infection* nor
36 any medical care facility where blood is withdrawn or tested that
37 has been ordered by the court to withdraw or test blood shall be
38 liable in any civil or criminal action when the ~~aet test~~ is performed
39 in a reasonable manner according to generally accepted medical
40 practices.

41 (g) The results of tests or reports, or information therein, ob-
42 tained under this section shall be confidential and shall not be di-
43 vulged to any person not authorized by this section to receive the

- 1 same results or information. Any violation of this section is a Class
- 2 C misdemeanor.
- 3 Sec. 3. K.S.A. 22-2913 is hereby repealed.
- 4 Sec. 4. This act shall take effect and be in force from and after
- 5 its publication in the statute book.

5-1



JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

CONFIDENTIAL

February 23, 1993

Child Support Enforcement Program
P.O. Box 497
300 S.W. Oakley Street
Topeka, Kansas 66601
(913) 296-2629

The Honorable Dick Bond
Chairman, Family Law Subcommittee
Senate Judiciary Committee
Room 128-S
State House
Topeka, KS 66612

RE: Senate Bill 213
Late payment fees on support collections

Dear Senator Bond:

You had asked SRS to estimate the fiscal impact of SB 213 on SRS and the Court Trustees and also whether a federal waiver could be obtained from the requirement that late payment fee collections be counted as income. This letter is to provide that information.

I discussed the possibility of obtaining a federal waiver from counting late payment fee collections as income with Harvey Leroux, Program Specialist in the federal Regional Office of OCSE. His response was that a state could request a waiver, however, that a waiver would probably not be granted unless we could prove a substantial benefit to the program. In federal parlance, this nearly always means monetary benefit. Since the IV-D program would not retain the late payment fee collections, there would be no substantial benefit which could be shown according to Mr. Leroux.

My staff has prepared an estimate of the fiscal impact that late payment fee collections would make on SRS and the Court Trustees. Because of the limitations of existing data and the federal requirement that all past due support be collected before collection of late fees begins, this estimate can only be very rough.

This estimate does not include the substantial computer programming costs which would be made necessary for both KAECSES (SRS' mainframe system) and the courts'

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

51

2-25-93

Attachment 2

mainframe and microcomputer systems. The collection/distribution portion of KAECSSES is extremely complex, and ballpark "guess-timates" of the programming costs run from \$100,000 to over a million, depending upon the specifics. Programming changes needed would include adding the ability to age accounts, to calculate interest on fluctuating balances, and to distribute funds to late payment fee debts only after all arrearages were paid in full.

Several assumptions have been made in calculating the direct effects of the bill:

- o Fee is applied only to arrearages accrued after July 1993;
- o Fee accrues on a monthly basis as simple, not compound, interest;
- o Collection and distribution only begins after arrearages are paid in full;
- o Fees in public assistance cases are received by SRS as the obligee;
- o Fees SRS receives from a Trustee are reported as income by SRS, not the Trustee;
- o Trustees are permitted to retain late payment fees in the cases they administer;
- o Court Trustees administer 38% of all IV-D court orders;
- o Full payment of arrearages occurs in 1% of IV-D court orders per year, 129 public assistance (PA) cases and 173 Non-AFDC (NA) cases;
- o Average accrual rates for new arrearages are \$100 per month in PA cases, \$107 per month in NA cases;
- o Average accrual rates for late payment fees are \$468 per year in PA cases, \$500 per year in NA cases; and
- o Average collection rate for accruing late payment fees is 50%.

As a result of these assumptions, it is estimated that late payment fee collections would be \$30,186 per year in PA cases and \$43,250 per year in NA cases.

If 100% of fees collected were distributed to the obligee, the net effect on SRS and Court Trustees would be as follows:

PA cases:	\$ 30,186	Collections (total)
	(19,922)	FFP cost
	<u>\$ 10,263</u>	Net gain to SRS
		(No impact on Court Trustees, since all fees distributed to and reported by SRS.)
NA cases:	\$ 43,250	Collections (total)
	(28,545)	FFP cost
	(10,847)	Court Trustees' share of FFP cost
	(17,698)	SRS' share of FFP cost

The net effect on state and counties would be:

SRS (state dollars).....	\$ 7,435 cost/year
Trustees (county dollars).....	10,847 cost/year

If 50% of fees collected were distributed to the obligee, the net effect on SRS and Court Trustees would be as follows:

(50/50) PA cases:	\$ 30,186	Collections (total)
Trustees:	\$ 11,470	Collections (38% of total)
	(5,735)	Forwarded to SRS (not reported)
	5,735	Retained by Trustees
	(3,785)	Trustees' FFP cost
	<u>1,950</u>	Gain to Trustees
SRS:	\$ 18,715	Collections (62% of total)
	5,735	Rec'd from Trustees
	<u>24,450</u>	Retained & reported
	(16,137)	SRS' FFP cost
	<u>8,313</u>	Net gain to SRS
(50/50) NA cases:	\$ 43,250	Collections (total)
Trustees:	\$ 16,435	Collections (38% of total)
	(8,217)	Forwarded to obligees & reported
	8,217	Retained by Trustees & reported
	(10,847)	Trustees' FFP cost (66% of \$16,435)
	<u>(2,630)</u>	Cost to Trustees
SRS:	\$ 26,815	Collections (62% of total)
	(13,407)	Forwarded to obligees & reported
	<u>13,407</u>	Retained & reported
	(17,698)	SRS' FFP cost (66% of \$26,815)
	<u>(4,291)</u>	Net cost to SRS

The net effect of 50/50 split on state and counties would be:

SRS (state dollars).....	\$ 4,022 gain/year
Trustees (county dollars).....	680 cost/year

If 66% of fees collected were retained and 34% were distributed to the obligee, the net effect on SRS and Court Trustees would be as follows:

(66/34) PA cases:	\$ 30,186	Collections (total)
Trustees:	\$ 11,470	Collections (38% of total)
	(3,900)	Forwarded to SRS (not reported)
	7,570	Retained by Trustees
	(4,996)	Trustees' FFP cost
	<u>2,574</u>	Gain to Trustees

PA cases (66/34) (continued):

SRS:	\$ 18,715	Collections (62% of total)
	<u>7,570</u>	Rec'd from Trustees
	22,615	Retained & reported
	(14,925)	SRS' FFP cost
	<u>7,690</u>	Net gain to SRS
(66/34) NA cases:	\$ 43,250	Collections (total)
Trustees:	\$ 16,435	Collections (38% of total)
	(5,588)	Forwarded to obligees & reported
	10,847	Retained by Trustees & reported
	(10,847)	Trustees' FFP cost (66% of \$16,435)
	<u>0</u>	Gain/Cost to Trustees
SRS:	\$ 26,815	Collections (62% of total)
	(9,117)	Forwarded to obligees & reported
	<u>17,698</u>	Retained & reported
	(17,698)	SRS' FFP cost (66% of \$26,815)
	<u>0</u>	Gain/Cost to SRS

The net effect of 66/34 split on state and counties would be:

SRS (state dollars).....	\$ 7,690 gain/year
Trustees (county dollars).....	2,574 gain/year

There would be added program costs for collecting late payment fees not paid voluntarily. Those costs, as well as programming and administrative costs for calculating and distributing fee collections, would be eligible for federal financial participation (FFP) but would tend to suppress Kansas' cost-efficiency ratio, a criterion for enhanced incentive payments from the federal government.

Because there is no FFP in the Court Trustees' non-IV-D caseload, SB 213 is neutral with respect to those cases except for administrative costs of calculating, collecting, and distributing the late payment fees to the obligee.

I regret that putting these figures together took longer than anticipated, and I apologize for any problems this may have created. If any further information would be of assistance, I would be happy to respond.

Sincerely,

J.A. Robertson
Administrator

JAR:JLC:djz

cc: Senate Judiciary Family Law Subcommittee
Kay Farley, Office of Judicial Administration

2-4

State of Kansas

Senate

SENATOR MIKE HARRIS

9828 HARVEST CT

WICHITA, KANSAS 67212

316-721-4968



STATE CAPITOL—136-N

TOPEKA, KANSAS 66612-1504

913-296-7385

February 25, 1993

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: COMMERCE
JUDICIARY

MEMBER: GOVERNMENT ORGANIZATION
TRANSPORTATION AND UTILITIES

JUDICIARY SUBCOMMITTEE ON CIVIL LAW

SB-108 - Amendments to Kansas limited liability company act.

Recommendation: Moved out of subcommittee favorably.

SB-121 - Standards for trust investments by fiduciaries.

Recommendation: With technical amendments recommended by staff,
moved out of subcommittee favorably.

SB-147 - Abatement of conditions on property under order of K.C.,
Kansas.

Recommendation: Hold - could have statewide implications.

SB-175 - Rights and duties of innkeepers and guests of lodging
establishments.

Recommendation: Refer for interim study.

SB-221 - KS tort claims act applicable to claims for damages
against duly appointed coroners.

Recommendation: No recommendation.

SENATOR MIKE HARRIS, CHAIRMAN

A handwritten signature in dark ink, appearing to read "Mike Harris", written over a vertical line.

MH:mfh

Attachment: Re: SB-121 (1)

SJ

2-25-93

Attachment 3

SENATE BILL No. 289

By Committee on Judiciary

2-11

8 AN ACT concerning admissibility of forensic examinations and
9 certificates.

10

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

12 Section 1. (1) In any hearing or trial, a report concerning forensic
13 examinations and certificate of forensic examination executed pur-
14 suant to this section, shall be admissible in evidence if the report
15 and certificate are prepared and attested by a criminalist or other
16 employee of the Kansas bureau of investigation, Kansas highway
17 patrol or any laboratory of the federal bureau of investigation, federal
18 postal inspection service, federal bureau of alcohol, tobacco and fire-
19 arms or federal drug enforcement administration.

20 (2) Upon the request of any law enforcement agency, ~~the labo-~~
21 ~~ratory employee~~ performing the analysis shall prepare a certificate.
22 ~~This employee~~ shall sign the certificate under oath and shall include
23 in the certificate an attestation as to the result of the analysis. The
24 presentation of this certificate to a court by any party to a proceeding
25 shall be evidence that all of the requirements and provisions of this
26 section have been complied with. This certificate shall be sworn to
27 before a notary public or other person empowered by law to take
28 oaths and shall contain a statement establishing the following: The
29 type of analysis performed; the result achieved; any conclusions
30 reached based upon that result; that the subscriber is the person
31 who performed the analysis and made the conclusions; the subscri-
32 ber's training or experience to perform the analysis; ~~and the nature~~
33 ~~and condition of the equipment used.~~ When properly executed, the
34 certificate shall, subject to the provisions of subsection (3) and not-
35 withstanding any other provision of law, be admissible evidence of
36 the results of the forensic examination of the samples or evidence
37 submitted for analysis and the court shall take judicial notice of the
38 signature of the person performing the analysis and of the fact that
39 such person is that person who performed the analysis.

40 (3) Whenever a party intends to proffer in a criminal or civil
41 proceeding, a certificate executed pursuant to this section, notice of
42 an intent to proffer that certificate and the reports relating to the
43 analysis in question, including a copy of the certificate, shall be

or any law enforcement officer or other person who is certified
by the department of health and environment as a breath test
operator as provided by K.S.A. 65-1,107 et seq. and amendments
thereto

such person as provided in subsection (1)

Such person

; and the certification and foundation requirements for
admissibility of breath test results, when appropriate

2-25-93
55
Attachment 4

1 conveyed to the opposing party or parties within 20 days of arraignment,
 2 if a criminal proceeding or at least 20 days before a civil
 3 proceeding begins. An opposing party who intends to object to the
 4 admission into evidence of a certificate shall give notice of objection
 5 and the grounds for the objection within 10 days upon receiving the
 6 adversary's notice of intent to proffer the certificate. Whenever a
 7 notice of objection is filed, admissibility of the certificate shall be
 8 determined not later than two days before the beginning of the trial.
 9 A proffered certificate shall be admitted in evidence unless it appears
 10 from the notice of objection and specific grounds for that objection
 11 that the conclusions of the certificate, including the composition,
 12 quality or quantity of the substance submitted to the laboratory for
 13 analysis or the alcohol content of a blood or breath sample will be
 14 contested at trial. A failure to comply with the time limitations
 15 regarding the notice of objection required by this section shall constitute a waiver of any objections to the admission of the certificate.
 16 The time limitations set forth in this section shall not be relaxed
 17 except upon a showing of good cause.

specific

18
 19 Sec. 2. This act shall take effect and be in force from and after
 20 its publication in the statute book.

14-2