MINUTES

SENATE COMMITTEE ON JUDICIARY

November 17-18, 1993
Room 123-S -- Statehouse

Members Present

Senator Jerry Moran, Chairman
Senator Mike Harris, Vice-Chairman
Senator Dick Bond
Senator Tim Emert
Senator Paul Feleciano, Jr.
Senator Phil Martin
Senator Lana Oleen
Senator Marge Petty
Senator Pat Ranson
Senator Richard Rock
Senator Bob Vancrum

Staff Present

Mike Heim, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes Office
Darlene Thomas, Committee Secretary

Conferees

Harold Allen, Superintendent, Youth Center at Topeka
Patrick R. Nichols, State Board of Indigents' Defense Services
Lisa Moots, Kansas Sentencing Commission
Don Moler, League of Kansas Municipalities
Mike Santos, City of Overland Park
Donna Whiteman, Secretary, Kansas Department of Social and Rehabilitation Services
Barkley Clark, Attorney, Kansas City
Bill Caton, Kansas Consumer Credit Commissioner
Stewart M. Stein, Creditor Attorneys Association
Bruce Ward, Member, Wichita Collection Attorneys Association
Larry Rute, Litigation Director and Deputy Director, Kansas Legal Services, Inc.
Jerel Wright, Governmental Affairs Director, Kansas Credit Union Association
Jeffrey Sonnich, Vice-President, Kansas-Nebraska League of Savings Institutions
George Barbee, Executive Director, Kansas Association of Financial Services

Kathleen A. Taylor, Associate General Counsel, Kansas Bankers Association
Kyle Smith, Kansas Bureau of Investigation
John Wine, Secretary of State's Office
Jennifer Chaulk Wentz, Legal Counsel, Deputy Assistant Secretary of State
Jamie L. Corkhill, Attorney, Child Support Enforcement, Social and Rehabilitation Services
Jim Clark, Kansas County and District Attorneys Association
John Badger, Department of Social and Rehabilitation Services
Randy Hearrell, Research Director, Kansas Judicial Council
Roberta Sue McKenna, Attorney, Department of Social and Rehabilitation Services

November 17, 1993
Morning Session

The Senate Committee on Judiciary was called to order at 9:30 a.m. Brief introductory remarks were made by the Chairman, Senator Jerry Moran. An overview was given of the two-day meeting to include: a tour of Youth Center at Topeka (YCAT), a confirmation hearing for Patrick A. Nichols to the Board of Indigents' Defense Services, a discussion of sentencing guidelines and juvenile crime issues, and testimony concerning attorneys' fees in contractual and commercial disputes. Senator Moran announced there would be a public forum on crime at Johnson County Community College, Cultural Education Center, at Overland Park this evening, November 17 at 7:00 p.m., with a box dinner to begin at 6:00 p.m.

Harold Allen, Superintendent, YCAT, gave a brief overview of the history of YCAT (Attachment No. 1). There was discussion concerning juvenile crime and possible solutions through rehabilitation programs. Mr. Allen addressed the type of offender YCAT houses, violent as well as misdemeanants.

The Committee adjourned at 10:15 a.m., for a tour of YCAT which included: recreation areas, cottages, the high school, an overview of programs including the alcohol and drug program (Attachment No. 2), and lunch with the detainees.

Afternoon Session

The Committee reconvened at 1:30 p.m. H. Patrick R. Nichols, member of the Board of Indigents Defense, addressed the Committee regarding his background and interest in the State Board of Indigents' Defense Services and answered questions from the Committee (Attachment No. 3).

Senator Moran presented a draft of the minutes from the October 28-29, 1993 Senate Judiciary Committee meeting for review.

Juvenile Justice System and Sentencing Guidelines

Donna Whiteman, Secretary, Kansas Department of Social and Rehabilitation Services (SRS), addressed the Committee in regard to the lack of community programs for nonviolent juvenile offenders. She considers the lack of community programs a major flaw in the juvenile justice system (Attachment No. 4).

Secretary Whiteman addressed the issue of distribution of funds for additional detention facilities.

A question was asked if SRS would be interested in looking into a boot camp-type facility. Secretary Whiteman said studies on boot camps have shown them to be limited in their success and some programs have suffered from high drop-out rates because of the structure of the program.

A question was asked if the Legislature should set aside a particular facility for the violent juvenile offenders and whether Topeka would be the most logical location. Secretary Whiteman said that was the goal of SRS. If the court was limited in placing the less violent offender at YCAT, SRS would keep the more serious offenders longer, she said.

Don Moler, League of Kansas Municipalities, spoke to the Committee concerning fingerprinting and reporting requirements for persons charged with certain offenses in municipal court as a result of the new sentencing guidelines law. He also gave recommendations for changes (Attachment No. 5).

A list was prepared by staff regarding sentencing guidelines policy issues to be discussed by the Committee (Attachment No. 6). Included in the list were proposed amendments by the Kansas Sentencing Commission to the guidelines laws.

Chairman Moran asked Lisa Moots, Kansas Sentencing Commission, to respond to the League of Kansas Municipalities' proposal on fingerprinting (Attachment No. 6). Ms. Moots referred to number 2, page 2 of Attachment No. 6 which reads "Amendments to the fingerprinting requirements in misdemeanor, municipal ordinance, and county resolution violation cases which will call for fingerprinting only upon conviction rather than at earlier stages of the proceedings."

It was asked who was on the Kansas Sentencing Commission. Ms. Moots provided the Committee with a list of those members (Attachment No. 7). She was asked if there were any prosecutors on the Commission other than the Attorney General. Ms. Moots stated there was a prosecutor vacancy at this time.

Ms. Moots discussed the Kansas Sentencing Commission's recommendations and additions to the sentencing guidelines and answered questions from the Committee. She provided proposed language changes for some of the amendments (Attachment No. 8).

A motion was made by Senator Vancrum and seconded by Senator Rock to introduce a bill "providing that the old sentence for a crime now classified as off-grid will not be converted to a term of 36 months as will the sentence for other old class A felonies if parole is revoked, where the offender has received a guidelines sentence for a new crime committed while on parole, but will continue to be administered as life sentence plus a consecutive guidelines sentence," to be effective on the date of publication in the *Kansas Register*. The motion was carried.

A conceptual motion was made by Senator Emert and seconded by Senator Petty to introduce amendments or additions to the sentencing guidelines as presented by the Kansas Sentencing Commission (Attachment No. 6), pages 2-4, items 1-14 with the exception of 10 and to amend item 5 to read "up to 120 days." The motion was carried.

A motion was made by Senator Ranson and seconded by Senator Harris to remove from the Kansas Sentencing Commission package (Attachment Nos. 1 and 6) item 3, *i.e.*, the issue of municipal ordinance violations counting as part of criminal history and the related issue of fingerprinting and to provide instead for a separate bill making these things the basis for departure. At the request of the Committee, Lisa Moots submitted language to address this issue (Attachment No. 8A).

The Committee discussed the sentencing guidelines policy issues as prepared by staff (Attachment No. 6).

Michael R. Santos, Senior Assistant City Attorney for Overland Park, provided written testimony on mandatory fingerprinting and municipal offenses (Attachment No. 9).

Kyle Smith, Assistant Attorney General, assigned to the Kansas Bureau of Investigation, addressed the Committee regarding bill requests from the Attorney General's Victim Rights Task Force and Crime Victim's Compensation Board (Attachment No. 10).

A motion was made by Senator Vancrum and seconded by Senator Petty to introduce a bill to repeal subparagraph (d) of K.S.A. 74-7305 eliminating the requirement of financial stress in regard to qualifications for compensation for victims. The motion carried.

A motion was made by Senator Emert and seconded by Senator Harris to introduce a bill "which makes it illegal to possess an airplane with fraudulent or altered tail numbers or registered to a fraudulent entity." The motion carried.

A motion was made by Senator Ranson and seconded by Senator Rock to introduce a bill "which restricts the ease with which persons can purchase and transfer chemicals, which while not illegal in and of themselves, are commonly used to manufacture illegal drugs." The motion carried.

A motion was made by Senator Vancrum and seconded by Senator Oleen to introduce a bill referred to as "three strikes and you are out," basically taking a person off grid, incarcerating them for life upon conviction of their third serious violent felony offense." The motion carried.

A motion was made by Senator Petty and seconded by Senator Rock to recommend Patrick R. Nichols for confirmation to the Board of Indigents' Defense. The motion carried.

Senator Vancrum gave directions to Johnson County Community College to meet with Johnson County officials on crime problems. There will be a box dinner at 6:00 p.m., and the meeting will begin at 7:00 p.m.

The meeting adjourned at 4:30 p.m.

November 18, 1993
Morning Session

The Senate Committee on Judiciary was called to order at 9:00 a.m.

Barkley Clark, Attorney from Kansas City, provided testimony regarding repealing of Kansas laws prohibiting attorney's fee clauses in commercial and consumer credit agreements and answered questions from the Committee (Attachment No. 11).

Mr. Clark referenced a citation on page 7 of his testimony as an example for his recommendation that the 1876 statute (K.S.A. 58-2312) should be repealed and the Uniform Consumer Credit Code be modified to make it conform with other states.

Mr. Clark referenced page 12 of his testimony and stated that Kansas was the only state that has strong judicial decisions backing the "American Rule." He submitted a proposed bill as a part of his testimony.

The question was asked if Mr. Clark would support a limitation on attorney's fees not to exceed 15 percent of the amount of debt as some other states provide in consumer credit transactions. There was concern the term "reasonable attorney's fees" was too broad in interpretation. Mr. Clark stated the proposed legislation could be amended to read, not to exceed 15 percent of the amount of debt.

Bill Caton, Kansas Consumer Credit Commissioner, testified in favor of proposed changes to the Kansas Uniform Consumer Credit Code and answered questions from the Committee (Attachment No. 12).

Stewart Stein, Creditor Attorneys Association, favored the attorney's fees proposal and answered questions from the Committee (Attachment No. 13).

Bruce Ward, member, Wichita Collection Attorneys, testified in favor of the proposed legislation concerning recovery of attorney's fees and costs of collection and answered questions from the Committee (Attachment No. 14).

Larry Rute, Kansas Legal Services, Inc., opposed the attorney's fees' proposal and answered questions from the Committee (Attachment No. 15).

Jerel Wright, Governmental Affairs Director for the Kansas Credit Union Association, submitted written testimony favoring the collection of attorney's fees in consumer loan contracts (Attachment No. 16).

Jeff Sonnich, Vice-President, Kansas-Nebraska League of Savings Institutions, provided written testimony in favor of the proposed revisions of the Uniform Consumer Credit Code that would allow creditors to recover the costs of attorney's fees in civil actions (Attachment No. 17).

George Barbee, Executive Director, Kansas Association of Financial Services, provided written testimony in favor of attorney's fee recovery in consumer loans (Attachment No. 18).

Kathleen A. Taylor, Associate General Counsel, Kansas Bankers Association, provided written testimony in favor of proposed legislation allowing for attorney's fee clauses in credit agreements (Attachment No. 19).

There was general discussion by the Committee regarding juvenile justice policy issues (Attachment No. 20).

Chairman Moran said gun control legislation will be introduced in the 1994 Session, therefore, the Judiciary Committee would not need to introduce legislation concerning this policy issue.

Information was submitted by SRS, Youth and Adult Services, entitled "Working With Juvenile Offenders: Help for Troubled Kids and Their Families While Providing for Public Safety" (Attachment No. 21).

Gary Stotts, Secretary of Department of Corrections (DOC), submitted a list of the felony crimes and their severity level to the Committee (Attachment No. 22).

John Alquest, Director of Youth Services, SRS, and Secretary Stotts, answered questions from the Committee on juvenile justice policy issues.

John R. Wine, Jr., General Counsel, Secretary of State, provided requests for introduction of legislation for the 1994 Session. He requested introduction of legislation regarding annual reports for business organizations and limited liability partnerships (Attachment No. 23).

Jennifer Chaulk Wentz, Legal Counsel, Deputy Assistant Secretary of State, requested legislation be introduced regarding annual reports for domestic cooperatives and amendments to the Limited Liability Compact Act passed in 1993 which would clarify the signature requirements for articles of organization (Attachment No. 24).

A motion was made by Senator Harris and seconded by Senator Petty to introduce the bills requested by John R. Wine and Jennifer Chaulk Wentz of the Secretary of State's office (Attachment Nos. 23 and 24). The motion carried.

John Badger, General Counsel, SRS, requested introduction of legislation to: (1) allow for the voiding of transfers by spouses of medical assistance recipients, and (2) allow for the transfer of personal property using an affidavit (Attachment No. 25).

Roberta Sue McKenna, Attorney, SRS, requested introduction of legislation to: (1) amend the Kansas Code for Care of Children dealing with temporary custody, (2) limit custody of juvenile offenders at youth centers to felony type convictions, (3) provide for provisional release from custody, and (4) authorize the release of information concerning juvenile offenders (Attachment No. 25).

Jamie L. Corkhill, Attorney, Child Support Enforcement, SRS, requested introduction of legislation to: (1) amend the Income Withholding Act and the Interstate Income Withholding Act to insure compliance with federal-state plan requirements under Title IV-D of the Social Security Act, and (2) amend the child support enforcement program with paternity. The federal Omnibus Budget Reconciliation Act of 1993 requires Kansas to adopt and implement several paternity establishment reforms by July 1, 1994 (Attachment No. 26).

A motion was made by Senator Martin and seconded by Senator Ranson to introduce the bill request package from SRS (Attachment Nos. 25 and 26). The motion carried.

Randy Hearrell, Research Director, Kansas Judicial Council, stated there would be proposed changes in the Kansas Rules of Civil Procedures to make them conform with the federal rules of civil procedures.

A motion was made by Senator Petty and seconded by Senator Vancrum to introduce a bill with appropriate changes in the Kansas Rules of Civil Procedures to conform with the federal rules. The motion carried.

Mr. Hearrell stated there is ambiguity and inconsistency in the area of the restoration of civil rights for persons convicted of a felony.

A motion was made by Senator Emert and seconded by Senator Petty to introduce a bill regarding clarification on restoration of civil rights of convicted felons. The motion carried.

Mr. Hearrell said there would be a proposed change in the criminal area dealing with dangerous felony crimes in regard to the felony murder rule.

A motion was made by Senator Martin and seconded Senator Harris to introduce proposed changes. The motion carried.

Mr. Hearrell said there was ambiguity in the emergency divorce language and he proposed changes.

A motion was made by Senator Vancrum and seconded by Senator Emert to introduce proposed changes in the emergency divorce statute. The motion carried.

Mr. Hearrell said he had been made aware of problems of classification of demands in the probate area and would propose legislation to make appropriate changes.

A motion was made by Senator Emert and seconded by Senator Vancrum to introduce legislation with changes in classification of demands in the probate area. The motion carried.

Jim Clark, Executive Director, Kansas County and District Attorneys Association, requested introduction of eight items of legislation (Attachment No. 27). A motion was made by Senator Vancrum and seconded by Senator Petty to introduce the Kansas County and District Attorneys' bill request package. The motion carried.

A motion was made by Senator Feleciano and seconded by Senator Martin to introduce a bill regarding collection of attorney's fees in commercial and consumer credit transactions and to consider these amendments at a later date. The motion carried.

The following bills were discussed briefly, but the Committee decided not to take action at this time:

S.B. 122	S.B. 278	S.B. 341	S.B. 356	S.B. 400
S.B. 123	S.B. 279	S.B. 343	S.B. 358	H.B. 2098
S.B. 150	S.B. 280	S.B. 344	S.B. 363	H.B. 2099
S.B. 213	S.B. 281	S.B. 345	S.B. 366	H.B. 2168
S.B. 234	S.B. 287	S.B. 346	S.B. 367	H.B. 2315
S.B. 276	S.B. 290	S.B. 347	S.B. 369	H.B. 2332
S.B. 277	S.B. 328	S.B. 351	S.B. 370	H.B. 2527

The following bills were reported adversely:

S.B. 147	S.B. 228	S.B. 352
S.B. 172	S.B. 229	S.B. 353
S.B. 174	S.B. 231	S.B. 357
S.B. 175	S.B. 236	S.B. 360
S.B. 192	S.B. 272	S.B. 362
S.B. 208	S.B. 300	S.B. 395
S.B. 221	S.B. 340	S.B. 404

The motion was made by Senator Harris and seconded by Senator Vancrum to report S.B. 147 adversely. The motion carried.

The motion was made by Senator Ranson and seconded by Senator Harris to report S.B. 172 adversely. The motion carried.

The motion was made by Senator Martin and seconded by Senator Emert to report S.B. 174 adversely. The motion carried.

The motion was made by Senator Petty and seconded by Senator Harris to report S.B. 175 adversely. The motion carried.

The motion was made by Senator Emert and seconded by Senator Ranson to report S.B. 192 adversely. The motion carried.

The motion was made by Senator Feleciano and seconded by Senator Emert to report S.B. 208 adversely. The motion carried.

The motion was made by Senator Petty and seconded by Senator Martin to report S.B. 221 adversely. The motion carried.

The motion was made by Senator Martin and seconded by Senator Emert to report S.B. 228 adversely. The motion carried.

The motion was made by Senator Ranson and seconded by Senator Emert to report S.B. 229 adversely. The motion carried.

The motion was made by Senator Feleciano and seconded by Senator Emert to report S.B. 231 adversely. The motion carried.

The motion was made by Senator Feleciano and seconded by Senator Emert to report S.B. 236 adversely. The motion carried.

The motion was made by Senator Emert and seconded by Senator Martin to report S.B. 272 adversely. The motion carried.

The motion was made by Senator Ranson and seconded by Senator Emert to report S.B. 300 adversely. The motion carried.

The motion was made by Senator Harris and seconded by Senator Martin to report S.B. 328 adversely. The motion failed due to lack of yes votes.

The motion was made by Senator Ranson and seconded by Senator Petty to report S.B. 340 adversely. The motion carried.

The motion was made by Senator Feleciano and seconded by Senator Petty to report S.B. 352 adversely. The motion carried.

The motion was made by Senator Emert and seconded by Senator Martin to report S.B. 353 adversely. The motion carried.

The motion was made by Senator Ranson and seconded by Senator Feleciano to report S.B. 357 adversely. The motion carried.

The motion was made by Senator Petty and seconded by Senator Ranson to report S.B. 360 adversely. The motion carried.

The motion was made by Senator Emert and seconded by Senator Ranson to report S.B. 362 adversely. The motion carried.

The motion was made by Senator Petty and seconded by Senator Feleciano to report S.B. 395 adversely. The motion carried.

The motion was made by Senator Emert and seconded by Senator Vancrum to report S.B. 404 adversely. The motion carried.

There was discussion regarding additional needs of the Committee to make decisions concerning juvenile offenders. It was the consensus of the Committee to request an additional meeting day from the Legislative Coordinating Council in December to discuss youth centers, alternative programs, the boot camp issue, and governance issues regarding SRS and DOC. It was requested that the secretaries of DOC and SRS, the Director of the Kansas Sentencing Commission, as well as representatives from the Youth Center, the courts, and district attorneys be present to assist in answering questions and helping the Committee in making its decisions. The date will be set after conferring with Committee members.

A motion was made by Senator Ranson and seconded by Senator Feleciano to approve the minutes of the October 28-29, 1993 meeting subject to staff and Chairman reviewing and making changes. No vote was taken.

The meeting adjourned at 3:40 p.m.

Prepared by Mike Heim

Approved by Committee on:

1-11-94
(Date)

YOUTH CENTER AT TOPEKA

MISSION STATEMENT

The mission of the Kansas Youth Centers is to provide juvenile correctional programs with a blended mission of care, habilitation, treatment and public safety, which assures:

- Protection of the safety of youth, staff and the public
- Youth come to understand the predictable connections between behavior and consequences and that they can control what happens to them by controlling their behavior
- Realistic treatment and programming for youth and their families
- Protection of the legal and civil rights of youth
- Spiritual, moral, physical, intellectual and social needs of youth are met
- Constructive training aimed at habilitation and reestablishment of youth in society

HISTORY

- Established in 1879 as a State Reformatory. Program was designed to develop a work ethic in the residents through demanding work in agriculture and raising livestock
- 1905 - Changed name of State Reformatory to Boys Industrial School (BIS). Program is military oriented designed to provide order and discipline to campus life
- 1940 - Program attempts to establish role models for youth through introduction of cottage parents. Education is the primary goal
- 1950 - Mental health Movement influences Youth Center with introduction of clinicians providing group and individual therapy programs
- 1970 - Behavioral Modification Program in which residents are taught pro social skills through a level system. BIS becomes YCAT
- 1990 - On-campus education offer both academic and vocational program offered through Lawrence Gardner High School. Many different therapeutic programs are provided through clinical specialists and Menninger

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residents. Entire program is designed to be implemented with structure and discipline. Emphasis is on physical activity of residents

BUDGET INFORMATION

FY 93 (ACTUAL)	FY 94 (ESTIMATE)
$9,630,246	$9,565,736

PERSONNEL

FTE (FY 94): 220
School Contract: 50

STRUCTURE

- Campus facility located on 60 acres in North Topeka
- Residential Units: 12

  1 - Orientation Cottage
  7 - Open Cottages
  3 - Closed Cottages
  1 - High Security Cottage

- Bed Capacity: 219

ADMISSIONS BY TYPE OF OFFENSE: (July 1, 1992 - June 30, 1993)

OFFENSE	NUMBER	%
A - FELONY	1	1%
B - FELONY	30	10%
C - FELONY	57	18%
D - FELONY	60	19%
E - FELONY	73	23%
MISDEMEANORS	90	29%
TOTAL	311	100%
This total includes 9 returnees with new charges		
Returnees - no new charges	11	
	322	

PROGRAMS

1. Safety and Security is key on campus. Policies and Procedures are continually being refined. There is an emphasis on adequate staff coverage within the cottage. Training for staff is informative and relevant. New radios plus fence enhancements positively impacts security

procedures. Students are kept busy through educational, recreational, and the therapeutic programs offered.

2. Treatment: Overall program consists of complete initial evaluations and program plans for all students followed by 120-day assessments. Structure is provided by our Behavioral Management or Level System. Students received continual adult counselling through Youth Service Specialists and clinical personnel. All students participate in school comprising academic, vocational, and work study programs. They all receive career education classes such as parenting, bachelor living, sexual responsibility, and drugs/alcohol in perspective. Students can participate in community activities such as Speakers Bureau, Adopt-A-Highway, Men's Choir, Mentoring Groups, and other volunteer events. Students are involved in recreational, leisure skills development, and high school sports. Programs are offered in group and individual psychotherapy offered by Menninger residents; sex offender group therapy; drug and alcohol counselling, self-esteem groups, values and decisions groups, goal setting, and aggression replacement training.

Average Length of Stay (FY 93)

- Violent Offender = 18.7 months
- Nonviolent Offender = 7.3 months
- Total 8.3 months

Escapes From Campus Since Fence

February 1990 to August 1992 = 7

September 1992 to September 1993 = 0

Total Weekend Passes For FY 1993 = 561

- 13 of the 561 failed to return from pass and 10 of the youth returned to custody

Weekend Passes for FY 94 = 128

- July	=	49	-	all youth returned
- August	=	44	-	4 youth did not return
- September	=	35	-	1 youth did not return
		128		5

GOALS AND OBJECTIVES

It would be unrealistic to expect the children in our program to remain drug and alcohol free for the rest of their lives. Their young age and the progressive nature of the disease lend much ammunition to denial. Our program attempts to create conditions which will maximize the children's ability to:

1. Internalize the principles of the first of the Twelve Steps of Narcotics Anonymous.

2. Understand what RECOVERY is and how it might impact their lives.

3. Experience the beginning stages of mental and emotional recovery.

4. Understand the concepts of social and spiritual recovery.

It is hoped that the many who do choose to continue using may experience an acceleration of the progression of their disease and an early "bottom". Once this happens they will know where to get help, and how to go about getting it. Though the effects of the program for many are not immediate it does have the potential to save them years of misery.

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YCAT ALCOHOL AND DRUG PROGRAMMING

I. ASSESSMENT - Every student admitted to the youth center receives an alcohol and drug assessment and SASSI.

II. EDUCATION - Three week drug and alcohol education track presented by the Cheyenne cottage teachers, there are a total of 15 hours and all students in Cheyenne cottage participate.

III. CLOSED COTTAGE GROUPS - Closed cottage counseling groups meet once per week in each of the three closed cottages, 4 students in each cottage participate.

IV. SUBSTANCE ABUSE GROUP - Chaplain Marks conducts this four week program aimed at denial breaking, it meets once per week, 6 students participate.

V. COUNSELING - Open campus counseling group has two sessions per week, an on campus NA meeting, plus off campus meetings if they qualify and are approved. Six students participate.

VI. INTENSIVE COUNSELING - Two groups of 6 students participate in four group counseling sessions per week, an on campus NA meeting, plus off campus meetings if they qualify and are approved. Program length is 75 days but can be adjusted depending on the treatment needs of the student.

V. CONTINUING CARE - Voluntary 12 week program consisting of six students who have completed Intensive Counseling. It meets once per week and students participate in the on campus NA meeting plus off campus meeting if they qualify and are approved.

VI. 12 STEP MEETINGS ON CAMPUS - Attendance at these meetings is voluntary.

AA - Alcoholics Anonymous meetings are held in the chapel on Monday nights at 6:30pm. AA volunteers from the community facilitate this meeting.

NA - Narcotics Anonymous meetings are held in the Admin. bldg. basement. NA volunteers from the community facilitate this meeting.

VII. 12 STEP MEETINGS OFF CAMPUS - Attendance at these meetings is voluntary. There are an average of four off campus outings to attend meetings per week. Students participating must meet criteria and have approval of the pass committee each time they go off campus. There is great therapeutic value in community 12 step meetings, this is where the students will find recovery when they leave the institution.

SUBSTANCE ABUSE PROGRAM COMPREHENSIVE GROUP SCHEDULE
10/5/93

Monday
3:15 - 4:15 CLOSED COTTAGE GROUP, Kiowa
6:30 - 7:30 EDUCATION GROUP, Groups #1 & #2
7:30 - 8:30 CONTINUING CARE GROUP

Tuesday
5:30 - 6:30 CLOSED COTTAGE GROUP, Comanche
6:30 - 7:30 FISHBOWL GROUP, Groups #1 & #2
7:30 - 10:00 OFF CAMPUS AA/NA, Group #2 and Counseling Group
8:00 - 9:00 HOME GROUP, Group #1

Wednesday
3:15 - 4:15 CLOSED COTTAGE GROUP, Mohawk
6:30 - 7:30 HOME GROUP, Group #2
7:00 - 8:00 HOME GROUP, Group #1
8:00 - 9:00 PROCESS GROUP, Counseling group
8:15 - 10:00 OFF CAMPUS AA/NA, Group #1 & Continuing Care Gp

Thursday
7:00 - 8:00 ON CAMPUS NA MEETING, Groups #1 & #2, Counseling and Continuing Care Groups
8:15 - 9:15 HOME GROUP, Group #2

Friday
6:30 - 7:30 STEP STUDY GROUP, Groups #1 & #2
7:30 - 8:30 HOME GROUP, Group #2
9:30 - 12:00 OFF CAMPUS AA/NA, Group #2

Saturday
No Scheduled Programming

Sunday
6:30 - 7:30 HOME GROUP, Group #1
7:30 - 9:30 OFF CAMPUS AA/NA, Group #1

NOTES

Group #1's counselor is Don Coleman
Group #2's counselor is Oscar Truhe
Closed Cottage counselor is Tim Flagg
Continuing Care counselor is Don Coleman
Counseling Program counselor is Oscar Truhe

PERSONAL CLOTHING IS PREFERRED FOR ALL OFF CAMPUS ACTIVITIES.

ALL OFF CAMPUS ACTIVITIES AND PERSONS PARTICIPATING IN THEM MUST BE APPROVED BY THE PASS COMMITTEE.

Mrau

FILED

NOV 3 1993

BILL GRAVES
SECRETARY OF STATE

RECEIVED

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Kansas Commission on Governmental Standards & Conduct

(1)

KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

STATEMENT OF SUBSTANTIAL INTERESTS FOR INDIVIDUALS WHOSE APPOINTMENT TO STATE OFFICE IS SUBJECT TO SENATE CONFIRMATION

INSTRUCTIONS. This statement (pages 1 through 4) must be completed by each person whose appointment to a state position is subject to Senate confirmation (K.S.A. 46-247 and 46-248). Failure to complete and return this statement may result in a fine of $10 per day for each day it remains unfiled. Also, any individual who intentionally fails to file as required by law, or intentionally files a false statement, is subject to prosecution for a class B misdemeanor.

Please read the "Guide" and "Definition" section provided with this form for additional assistance in completing sections "C" through "G". If you have questions or wish assistance, please contact the Commission office at 109 West 9th, Topeka, KS or call 913-296-4219.

A. IDENTIFICATION: PLEASE TYPE OR PRINT

NICHOLS	PATRICK	R
Last Name	First Name	MI

KATHIE

Spouse's Name

3501 LINCOLNSHIRE RD

Number & Street Name, Apartment Number, Rural Route, or P.O. Box Number

TOPEKA KS 66614

City, State, Zip Code

913**271**1575	913**273**8300
Home Phone Number	Business Phone Number

B. APPOINTED POSITION SUBJECT TO SENATE CONFIRMATION:

BOARD OF INDIGENT DEFENSE

List Name of Agency, Commission or Board

BOARD MEMBER

Position

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attachment 3-1

* *The last four digits of your social security number will aid in identifying you from others with the same name on the computer list. This information is optional.*

* 5398

C. **OWNERSHIP INTERESTS:** List any corporation, partnership, proprietorship, trust, joint venture and every other business interest, including land used for income in, which either you or your spouse has owned within the preceding 12 months a legal or equitable interest exceeding $5,000 or 5%, whichever is less. If you or your spouse own more than 5% of a business, you must disclose the percentage held. Please insert additional page if necessary to complete this section.
If you have nothing to report in Section "C", check here ____.

BUSINESS NAME AND ADDRESS	TYPE OF BUSINESS	DESCRIPTION OF INTERESTS HELD	HELD BY WHOM	PERCENT OF OWNERSHIP INTERESTS
1. PATRICK NICHOLS CHTD	LAW	100%	✓ You / Spouse / Jointly	
2. OIL LEASE S13-T7-R18 Rooks County KS	OIL LEASE		✓ You / Spouse / Jointly	
3.			You / Spouse / Jointly	
4.			You / Spouse / Jointly	
5.			You / Spouse / Jointly	
6.			You / Spouse / Jointly	
7.			You / Spouse / Jointly	

D. **GIFTS OR HONORARIA:** List any person or business from whom you or your spouse either individually or collectively, have received gifts or honoraria having an aggregate value of $500 or more in the preceding 12 months.
If you have nothing to report in Section "D", check here ✓.

NAME OF PERSON OR BUSINESS FROM WHOM GIFT RECEIVED	ADDRESS	RECEIVED BY:
1. none		
2.		
3.		

E. RECEIPT OF COMPENSATION: List all places of employment in the last calendar year, and any other businesses from which you or your spouse received $2,000 or more in compensation (salary, thing of value, or economic benefit conferred on in return for services rendered, or to be rendered), which was reportable as taxable income on your federal income tax returns.

1. YOUR PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. IF SAME AS SECTION "B", CHECK HERE ☒.
If you have nothing to report in Section "E"1, check here ____.

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.	See Section C		
2.			

2. SPOUSE'S PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR.
If you have nothing to report in Section "E"2, check here ____.

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.	Patrick Nichols Chtd	5040 SW 28th Topeka	CAW
2.			

F. OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS: List any organization or business in which you or your spouse hold a position of officer, director, associate, partner or proprietor at the time of filing, irrespective of the amount of compensation received for holding such position. Please insert additional page if necessary to complete this section.
If you have nothing to report in Section "F", check here ____.

	BUSINESS NAME AND ADDRESS	POSITION HELD	HELD BY WHOM
1.	See "C" AB002		
2.			
3.			
4.			
5.			

G. **RECEIPT OF FEES AND COMMISSIONS:** List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions you or your spouse received an aggregate of $2,000 or more in the preceding calendar year. *The phrase "client or customer" relates only to businesses or combination of businesses.* In the case of a partnership, it is the partner's proportionate share of the business, and hence of the fee, which is significant, without regard to expenses of the partnership. An individual who receives a salary as opposed to portions of fees or commissions is generally not required to report under this provision. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "G", check here ____.

	NAME OF CLIENT / CUSTOMER	ADDRESS	RECEIVED BY
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			

H. **DECLARATION:**

I, PATRICK NICHOLS, declare that this statement of substantial interest (including any accompanying pages and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my substantial interests and other matters required by law. I understand that the intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.

10/30/93
Date

Signature of Person Making Statement

NUMBER OF ADDITIONAL PAGES ____.

Return your completed statement to the Secretary of State, State House, Topeka, Kansas 66612.

3-4

PATRICK R. NICHOLS
ATTORNEY AT LAW

CHARTERED

5040 SW 28TH

SUITE F

TOPEKA, KANSAS

66614-2302

(913) 273-8300

FAX (913) 273-8384

November 1, 1993

Janet M. Williams
Supervisor of Conflicts of Interest
Kansas Commission on Governmental
Standards and Conduct
109 West 9th St., Suite 504
Topeka, KS 66612

Dear Ms. Williams:

Thank you for pointing out that I had never sent in my disclosure form. I thought this had been done months ago.

Again, I apologize for my carelessness and hope that it has not inconvenienced you or anyone else.

Sincerely yours,

Patrick R. Nichols

PRN:dch
Encl: Disclosure Form

SENATE CONFIRMATION QUESTIONNAIRE
APPOINTMENTS BY GOVERNOR JOAN FINNEY

Name: Patrick R. Nichols

Home Address: 3501 Lincolnshire Rd.

City, State, Zip Code: Topeka, KS 66614

Home Phone: 913 / 271-1575

Business Address: 5040 S.W. 28th St., Suite F

City, State, Zip Code: Topeka, KS 66614

Business Phone: 913 / 273-8300

Date of Birth: 7-25-50 Place of Birth Stockton, KS

Party Affiliation Democrat KBI Check(Yes/No) Yes

Appointed as: Board of Indigent Defense Services

Effective 8/30/93 for the 3 year term

ending 7/1/96 Succeeding Melody Cathey

Salary n/a Statutory Authority 22-4519

Statutory Requirements

1. EDUCATION:
High School Stockton High School

Year Graduated 1968

Postsecondary	Degree, etc.	Dates
Fort Hays Kansas State College	BA	1974
Washburn	JD	1977

2. MEMBERSHIP IN BUSINESS, TRADE AND PROFESSIONAL ORGANIZATIONS DURING PAST 10 YEARS:

Dates	Name	Location
1977-Present	Kansas Trial Lawyers	Topeka, KS
1977-Present	American Bar/Kansas Bar Assn.	Topeka, KS

3. HAVE YOU EVER BEEN ELECTED OR APPOINTED TO ANY PUBLIC OFFICE IN KANSAS? _____ Yes No No
If so, please list dates and offices held.

Date	Office

4. HAVE YOU EVER BEEN EMPLOYED BY OR HELD A POSITION OR OFFICE WITH ANY FEDERAL, FOREIGN STATE, OR LOCAL GOVERNMENTAL ENTITY OR AGENCY? Yes
If so, please list dates and offices held:

1981	Part-time attorney, TAO, SRS

5. HAVE YOU BEEN A REGISTERED LOBBYIST OR EMPLOYED A REGISTERED LOBBYIST AT ANY TIME DURING THE PAST 5 YEARS? No
If you were a registered lobbyist, did you receive any compensation? _____
List groups you represented or for which you employed a lobbyist:

6. EXPERIENCE OR INTERESTS WHICH QUALIFY YOU FOR THE OFFICE TO WHICH YOU HAVE BEEN APPOINTED:

Attorney for 16 years, former prosecutor, spent 5 years as court appointed attorney, interests in public service, still maintain active criminal practice.

7. SUMMARY OF BUSINESS OR PROFESSIONAL EXPERIENCE:

Self-employed since 1979; Chairman, Kansas Trial Lawyers Workers' Compensation Committee

8. HAVE YOU EVER BEEN A MEMBER OF THE ARMED FORCES OF THE UNITED STATES? No
If so, please list dates of service, branch of service and date and type of discharge:

9. HAVE YOU EVER BEEN ARRESTED, CHARGED OR HELD BY FEDERAL, STATE OR OTHER LAW ENFORCEMENT AUTHORITIES FOR VIOLATION OF ANY FEDERAL LAW, STATE LAW, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCE (EXCLUDING TRAFFIC VIOLATIONS FOR WHICH A FINE OF $100 OR LESS WAS IMPOSED)? Yes

1969	Giving worthless check under $50.00, Expunged	
1970	Trespassing	Expunged

10. DISPOSITION OF ANY INTERESTS THAT MIGHT HAVE PRESENTED A POTENTIAL CONFLICT OF INTEREST FOR THIS POSITION.

None

Return to: Mary Holladay
Appointment Secretary
Office of the Governor
2nd Floor, State Capitol
Topeka, KS 66612

Signature

3-8

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

OFFICE OF THE SECRETARY
Donna Whiteman, Secretary
6th Floor
Docking State Office Building
Topeka, KS 66612-1570

For more information contact:

Tim Hoyt Public Information Officer (913) 296-3271	or	Barbara Schoof Conant Public Information Officer (913) 296-3271

Kansas juvenile judges: lack of community programs to assign non-violent offenders a major flaw in juvenile justice system

FOR IMMEDIATE RELEASE **November 17, 1993**

At times, juvenile judges in Kansas have no good choices available to them. In effect, their hands are tied because of the lack of community programs to provide needed structure for non-violent juvenile offenders.

Juvenile judges and court officials who work in population centers of Kansas where juvenile crime is increasing say it is imperative communities find alternatives to placement in detention or youth centers for non-violent juvenile offenders.

"We could use a whole range of programs to keep non-violent offenders from going to the youth centers," said Sedgwick County Presiding Juvenile Judge Jim Burgess. "There's no one magic bullet; we need a variety of things."

Judge Burgess pointed to common cases that come before him:

"You put them on probation, and they violate probation. Or they might violate their curfew or become truant. Or they are arrested for a second shoplifting. They are not a menace to society -- but they sure are a menace to themselves. I keep saying 'there's going to be consequences,' but at the same time, there are no programs to assign them to."

Third District Juvenile Judge Dan Mitchell in Shawnee County echoed Judge Burgess' concern. Both judges say the state youth centers should be reserved for violent offenders who need to be committed for long stays to have a chance at rehabilitation. But because of a lack of community programs, the youth centers often become overcrowded with a mixture of both non-violent and violent offenders, potentially to the detriment of both group's chances of making needed changes in their lives.

Judge Mitchell said the major problem involves a lack of programming for "intermediate level" juvenile offenders who may have been arrested for burglary or theft - more than once.

"So many of these kids are not necessarily violent, but are repeat offenders," he said. "I'm not downplaying the seriousness of their offenses, but some of these kids do nothing more than continue to break in and steal car stereos. There are no resources within the community offering programming and rehabilitation. Sometimes I've got no place to go with them; no resources other than the youth centers."

Donna Whiteman, Secretary of the Kansas Department of Social and Rehabilitation Services, said the building of community programs for juvenile offenders was identified as a major goal during the creation of the department's Family Agenda for Children and Youth.

(more)

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The Family Agenda seeks to end the historic overreliance in Kansas on incarceration of youth. Research done during creation of the Family Agenda showed only seven states had a higher rate of incarceration of juvenile offenders.

"We must end this trend by placing a renewed emphasis on community-based programs," Secretary Whiteman said. "Too many youth are being committed to state youth centers who could remain in their communities if programs were developed to help them make changes while at the same time protecting the community. SRS is committed to the development of family-centered and community-based interventions to address this situation."

Judge Mitchell said violent and non-violent offenders should not be mixed at youth centers.

"These (non-violent) kids may be street-wise, but you put them in there with murderers and gang members, they can get a higher education in crime," Judge Mitchell said. "It's the same thing that happens when you put a 19- or 20-year-old in the adult system, in Leavenworth (Federal Penitentiary) or Lansing (State Prison)."

Judge Burgess pointed to a similar problem when serious offenders are mixed with non-violent juvenile offenders.

"What you're doing is putting them in an environment where instead of having the opportunity to make progress and change behavior, in the youth centers there's a good chance of mixing with kids who don't care about changing," he said. "We need better programming in the community."

In Sedgwick County, the juvenile justice system deals with almost 2,000 juvenile crime cases a year, a number that is growing, said Amy Cullom, juvenile court services administrator. She echoed Judge Burgess' concern about the serious difficulty they have is finding programs or places to send what she called "the in-between kids" who have behavior problems but are not violent criminals.

Some of the cases that come before them do not involve juvenile offenders, but are Children in Need of Care (CINC) cases, Cullom said. There is a similar lack of community programs to help these youth as there is with non-violent juvenile offenders.

"What started the investigation may be truancy, but they often become equally as difficult as juvenile offender cases," Cullom said. "These kids may have been sexually, mentally or physically abused. We don't have places for kids with behavior problems (as a result of such abuse.) Right now, CINC cases are overwhelming this place."

Judge Burgess and Gene Doughtery, supervisor of court service officers in Wyandotte County, had praise for the SRS Day Reporting Program for juvenile offenders. Two day reporting programs, which provide intensive case management for up to 50 juvenile offenders, began last year, one in Wyandotte County and the other in Sedgwick County. A smaller day reporting program is located in Pittsburg.

Judge Burgess said he could use more such programs, especially for the repeat non-violent offenders who are close to being sent to the youth centers unless their behavior changes. He said since 20 slots in the day reporting program are reserved for youth on conditional release from youth centers, there often is no room for youth he would like to place in day reporting.

"Day reporting is a very good approach," Judge Burgess said. "They are good intermediate places with more structure than social workers can provide with their large caseloads. But space is limited."

(more)

In Wyandotte County, Doughtery agreed.

"The day reporting program is working very well," he said. "It gives us an option between probation and youth center placement. They take some fairly difficult kids and give them the opportunity to make a go of their lives."

Both Judge Burgess and Judge Mitchell said various other private residential placement programs in both Topeka and Wichita either always seem to be full or they turn down placements from the judges for various reasons.

Judge Burgess said he would very much like to have a boot camp-type facility available for some juvenile offenders, especially for youth 18-21 years old. He said there are few placement possibilities for this age group.

"There really aren't programs designed for kids 18-21 years of age," he said. "I've had kids laugh in my face because they knew there was no place I could send them."

Judge Mitchell said because most group homes do not accept placements of many non-violent juvenile offenders, he would like to have another secure facility where non-violent juvenile offenders can be placed. He said such a facility could offer rehabilitation to juvenile offenders without the extreme structure provided at youth centers.

Judge Mitchell said he remains a firm believer in rehabilitation of juveniles, but he fears much of the public does not think it makes a difference. But, he said, if resources are devoted to rehabilitation, it will work.

"If you take a reasonable period of time -- a ten-year span -- and measure success, the end result is you will be much better off with the rehabilitation model as opposed to the pure and simple punishment model," he said. "The problem is, convincing the general public of that.

"It's just like the old Framm Oil filter commercial - pay me now or pay me later," he added. "What's it cost to house a prisoner - $25,000, $30,000 a year? Compare that to spending much less money up front when kids are amenable to developing into a productive member of society."

Carolyn Risley Hill, commissioner of Youth and Adult services for SRS, said the department is willing to work with any community interested in setting up a day reporting program or any other program to deal with juvenile offenders or potential juvenile offenders.

"Although SRS is one of the primary forces in dealing with juvenile offenders in Kansas, its efforts require extensive support from others," Hill said. "Too often, we have not sought or received this help. Kansas communities are clearly looking for increased control of youth who they believe threaten property or personal safety, and for effective intervention to prevent repeat offenses and entry into the adult prison system.

"We recognize there will always be a need for some emergency, detention and residential treatment programs," she added. "However, we believe we can transition to a system of care which is less reliant on out-of-home placement and more reliant on services brought to youth in their own communities.

"Taking youth out of their home communities to lock them up is not the answer. The community is where they will eventually return."

(30)

KANSAS DETENTION CENTERS CURRENT STATUS
NOVEMBER, 1993

The following list of existing and developing facilities are an important part of the continuum of services for juvenile offenders in Kansas. These services play an integral role in the counties and regions that they serve and can be the "hub" for other less costly alternatives to detention.

EXISTING FACILITIES:

Reno County
-capacity of 12
-approx. costs $150/day
-contracts with 26 counties (14 counties in Southcentral region)

Johnson County
-capacity of 30 (expanding to 70 by 1995)
-approx. costs $140/day not including indirects
-serves Johnson County

Saline County
-capacity of 5 (expanding to 8-seeking funds for expansion)
-approx. costs of $90/day
-serves Saline County

Sedgwick County
-capacity of 33
-approx. costs $148/day
-serves Sedgwick County

Shawnee County
-capacity of 22
-approx. costs $130/day
-serves Shawnee County

Wyandotte County
-capacity of 48
-approx. audited cost $60/day. Actual not determined
-serves Wyandotte County

Total Licensed Capacity 150

NEW REGIONAL DETENTION FACILITIES:

Northwest (Trego County) Opened June 21, 1993
-capacity of 10 (expansion to 14)
-approx. range $120 to $150/day
-serves 26 counties

Northcentral (Geary County) Opening December, 1993
-capacity of 12 (expansion to 24)
-approx. range $120 to $150/day
-serves 15 counties

Northeast (Douglas County) Opening July, 1994
-capacity of 15 [16] (expansion to 22 [23])
-approx. range $120 to $150/day
-serves 18 counties

Southeast (Crawford County) Opening May, 1994
-capacity of 14 (expansion to 28)
-approx. range $120 to $150/day
-serves 11 counties

Southwest (Finney County) Opening June, 1994
-capacity of 21 (expansion to 42)
-approx. range $120 to $150/day
-serves 18 counties

Total Licensed Capacity 70 (Total Contracted Capital Capacity 60)

Combined Licensed Capacity 220

League of Kansas Municipalities

LEGAL DEPARTMENT · 112 S.W. 7TH TOPEKA, KS 66603 · TELEPHONE (913) 354-9565 · FAX (913) 354-4186

TO: Senate Judiciary Committee

FROM: Don Moler, Senior Legal Counsel

RE: Fingerprinting Requirements and Municipal Offenses

DATE: November 17, 1993

I would like to thank the Committee for allowing the League to appear today to testify regarding the fingerprinting requirements found at Section 15 of Chapter 291 of the 1993 Session Laws of Kansas. Specifically of concern to cities is the requirement that every police department is required to make two sets of fingerprint impressions of a person who is **arrested** for violation of a municipal ordinance which would be the equivalent of a Class A or B misdemeanor under state law. Furthermore, subsection (b) requires that the court shall ensure, upon the offender's first appearance, or in any event before final disposition of a city ordinance which prohibits an act which prohibits a Class A or B misdemeanor, that the offender has been processed and fingerprinted. The League and its member cities raise the following concerns regarding these requirements.

ISSUES

First of all, we believe it is essentially impossible, given the constrictions of the municipal court procedures act (specifically K.S.A. 12-4212 which limits the arrest authority of police officers when arresting under ordinance violation authority) to obtain fingerprints of persons charged with A or B type offenses. Thus, unless an individual is arrested and taken to the county jail or other detention facility, it is impossible to obtain fingerprints on that individual unless each police officer carries a fingerprint kit with him or her and obtains the fingerprints at the scene of the infraction or offense. There is a further concern raised by League members regarding the fingerprinting of persons simply charged with a violation but not found guilty of any wrongdoing. We are concerned that this provision is unworkable and unenforceable as written and believe that it will not be followed because of the conflicting nature of the requirement with current law and the unworkability of the section.

Our concern with the second requirement, found in subsection (b) of Section 15, is simply that most municipal courts, whether in large or small cities, do not have immediate access to a fingerprint kit or machine. Thus, they would be unable to obtain fingerprints even at the point in the process where the individual is found guilty, without ordering the individual to be taken down to the county courthouse or jail for fingerprinting. We do not believe municipal court judges now have this authority. This is also a potential mandate on local governments in that if all 300 plus municipal courts were required to fingerprint at the time of a finding of guilt, it could require the purchase of kits which we are told cost around $300. This would represent a cost for the kits in

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excess of $90,000 statewide. This would be further exacerbated by the need (and expense) of having a trained person at each municipal court to take the fingerprint impressions.

Finally we have a concern regarding the language "municipal ordinance which would be the equivalent of a Class A or B misdemeanor under state law." It is of concern to the League because a number of cities in Kansas do not simply adopt state statutes verbatim to enforce in municipal court, but rather take the state statutes and customize them to fit local situations. This is especially true in the larger cities. Given this fact, we are concerned with simply reporting convictions for what is a misdemeanor type offense, but which does not equate to the offense as defined in state statute.

RECOMMENDATIONS

At this time the League is making four specific recommendations relative to the fingerprinting requirements as currently set forth in state statute. First of all we strongly urge repeal of that language found in K.S.A. 21-2501(a)(1), as amended, requiring police officers to make fingerprint impressions of any person arrested for a violation of a municipal ordinance which would be the equivalent of Class A or B misdemeanor under state law. As mentioned in earlier testimony we believe this is unworkable and a questionable public policy.

Secondly, we are recommending that fingerprinting in municipal court be limited only to those persons convicted of a Class A or B type offense which would be classified a person misdemeanor under state statute. This will have the effect of limiting the number of people who must be fingerprinted and focus in on those offenses we believe were intended to be placed on the sentencing grid.

Our third recommendation is to give specific statutory authority in the municipal court act to municipal judges to require persons convicted of type A or B offenses in municipal court to go to a fingerprinting location, probably at the county jail or sheriff's office, for the fingerprinting required by the statute. The fourth recommendation is that the municipal judge would also be able to assess reasonable costs to defray the expenses of the law enforcement agency which took the fingerprint impressions and sent them into the state.

Thank you very much for allowing the League to present recommendations concerning the fingerprinting requirements.

DRAI
November 1. 93

MEMORANDUM

Kansas Legislative Research Department

300 S.W. 10th Avenue
Room 545-N – Statehouse
Topeka, Kansas 66612-1586
Telephone (913) 296-3181 FAX (913) 296-3824

November 17, 1993

SENTENCING GUIDELINES POLICY ISSUES

1. Should the sentencing guidelines law be clarified to insure that a judge has sufficient discretion when reviewing an inmate's eligibility for the retroactive early release?

2. Should the 90-day cap on return to prison for probation violations under sentencing guidelines be extended or repealed?

3. Should the Kansas Parole Board be given more discretion regarding the release of inmates under sentencing guidelines or regarding the length of stay for inmates who violate conditions of release?

4. Should the Committee endorse any of the attached suggestions of the Kansas Sentencing Commission (see Attachment 1).

5. Should certain sex offense crimes be placed on a higher or more severe grid level? If so, which crimes?

6. Should other crimes be placed at a higher or lower grid level then they currently appear in the grid boxes?

7. Should the Committee recommend that the Department of Corrections receive additional parole officers for post release supervision?

8. Should plea bargaining guidelines be enacted?

9. Should past stale convictions (ten to 20 years old) be excluded from prior criminal histories?

93-0007742.01/MH

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State of Kansas
KANSAS SENTENCING COMMISSION

Summary of Proposed Amendments or Additions to the Sentencing Guidelines Act

The following is a brief summary of the legislation proposed by the Kansas Sentencing Commission:

1) Amendments to certain statutes defining crimes that are subclassified into different subsections with different offense severity levels. In certain statutes it is difficult to match up the proper subsection with the proper severity level because of the way the statutes are written; examples include theft and a number of the drug crimes. These amendments are intended to simplify the procedures associated with guidelines sentencing and record-keeping and have no substantive impact.

2) Amendments to some of the rules for determining the criminal history category of the defendant, including:

a) Counting misdemeanor Assault (Class C "person" misdemeanor) in criminal history;

b) Counting prior convictions of any crime in criminal history unless the prior conviction is used to enhance the severity level of the current crime or is an element of that crime;

c) Providing that a prior conviction is any conviction that occurs prior to sentencing for the current crime, regardless of the order in which the crimes were actually committed;

d) Providing that only municipal ordinance and county resolution violations that are identical to misdemeanors defined by state law or that prohibit the same behavior prohibited by the DUI and DWS statutes will count in criminal history;

e) Providing that an anticipatory version of a crime (attempt, conspiracy, solicitation) will carry the same criminal history designation, "person" or "nonperson," as the underlying or completed crime;

f) Authorizing access by the prosecutor and defense to the juvenile files and records of the defendant for purposes of verification of criminal history.

3) Amendments to the fingerprinting requirements in misdemeanor, municipal ordinance, and county resolution conviction/violation cases which will call for fingerprinting only upon conviction rather than at earlier stages of the proceedings. (Companion change to juvenile

Jayhawk Tower 700 Jackson Street - Suite 501 Topeka, Kansas 66603-3731
(913) 296-0923

fingerprinting requirements proposed as well.)

4) Provisions requiring the sentencing court to inform a defendant of the specific guidelines severity level of the crime as a prerequisite to acceptance of a guilty or *nolo contendere* plea, and prohibiting the elevation of the severity level for sentencing purposes once the plea has been accepted.

5) Amendments to K.S.A. 22-3429, as amended by Section 195 of Chapter 291 of the 1993 Session Laws of Kansas, which clarify that the sentencing court can order the defendant committed for mental examination, evaluation, and report, for a period of 120 days ~~of~~ the maximum sentence that could be imposed upon conviction, whichever is shorter. or

6) Amendments clarifying the guidelines plea-bargain rules which require use of any prior convictions of the defendant to elevate the severity level of certain crimes on the drug grid and which otherwise prohibit the exclusion of any relevant prior convictions of the defendant from the criminal history.

7) Amendments specifically providing that the court services officer is to prepare the entire presentence investigation report, including the criminal history worksheet, and, as part of that process, to indicate the source of information and potential source of verification of those prior convictions, attaching any available documentation to the PSI when it is served on the parties.

8) Amendments providing that the sentence for a new crime committed while the defendant is serving a sentence for a felony or is on any other type of felony release status such as probation, community corrections, parole, conditional release, postrelease supervision, etc., is to be imposed consecutively, and that, even where the new crime is presumptive probation, the sentencing court may impose a prison term which does not constitute a departure.

9) Amendments providing for the conversion of an old sentence for which the offender was on conditional release to a term of 12 or 36 months, depending on the Class of felony under old law, or the maximum expiration date of the sentence, whichever is shorter, if the conditional release is revoked where the offender has received a guidelines sentence for a new crime committed on conditional release.

10) Amendments providing that the old sentence for a crime now classified as off-grid will not be converted to a term of 36 months as will the sentence for other old Class A felonies if parole is revoked where the offender has received a guidelines sentence for a new crime committed on parole, but will continued to be administered as life sentence plus a consecutive guidelines sentence.

11) Amendments requiring that any motion or notice from any party seeking imposition of a departure sentence indicate the type of departure sought and the grounds relied upon.

12) Amendments limiting the application of the "double rule" limit for consecutive sentences to multiple counts in the same case rather than all counts for which the defendant was convicted at one time, regardless of whether from different cases.

13) Amendments to the statute regarding the number of peremptory challenges available to a defendant in accordance with the severity level of the crime charged.

14) Amendments providing that, when multiple sentences are imposed, they will run concurrently if the journal entry is silent unless the law requires consecutive sentences.

KANSAS SENTENCING COMMISSION
MEMBERSHIP

ATTORNEY GENERAL
Robert T. Stephan, Chairperson

CHIEF JUSTICE OF DESIGNEE
Judge Robert Lewis, Kansas Court of Appeals

SECRETARY OF CORRECTIONS OR DESIGNEE
Gary Stotts, Secretary of Corrections

PAROLE BOARD CHAIRPERSON OR DESIGNEE
Jim Francisco, Chairperson, Kansas Parole Board

APPOINTMENTS BY THE CHIEF JUSTICE
Judge James M. Macnish, Jr., Third Judicial District
Judge Richard B. Walker, Ninth Judicial District
Gary L. Marsh, Chief Court Services Officer

APPOINTMENTS BY GOVERNOR FINNEY
County/District Attorney - Vacant
Maritza Segarra, Deputy Public Defender
John Burchill, Community Corrections
Wendell Betts, Attorney
Sister Therese Bangert, Public Representative
Ernestine Freeman, Public Representative

APPOINTMENTS BY THE SENATE PRESIDENT AND THE MINORITY LEADER, THE SPEAKER OF THE HOUSE AND MINORITY LEADER, SERVE *EX OFFICIO*, WITHOUT VOTE
Senator Marian Reynolds
Senator William Brady
Representative Denise Everhart
Representative Tim Carmody

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1993 SL, Ch. 291, Sec. 263:

Add (b)(2)(E): "The defendant's propensity toward acts of domestic or other violence is demonstrated by a history of verified convictions for violations of municipal ordinances, county resolutions, or other criminal laws which are not otherwise considered and scored in criminal history."

Sec. 263. Section 16 of chapter 239 of the 1992 Session Laws of Kansas is hereby amended to read as follows: Section 16. (a) The sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) (1) Subject to the provisions of subsection (b)(3), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection (b)(3), the following ~~noninclusive~~ *nonexclusive* list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(c) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;

(2) the presentence report; ~~and~~

(3) *written briefs and oral arguments of either the state or counsel for the defendant; and*

(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

Senate Judiciary
4/12/93
Attachment 8 & 8A

...ions is hereby amended to read as follows: Section 10. (a) Criminal ... categories contained in the sentencing guidelines grid for ... crimes and the sentencing guidelines grid for drug crimes ... in the following types of prior convictions: Person felony adult ...ctions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person class A misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, person class A misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, person class B misdemeanor adult convictions, select class B nonperson misdemeanor adult convictions, person class B misdemeanor juvenile adjudications and select class B nonperson misdemeanor juvenile adjudications.

(b) *A B nonperson select misdemeanor is a special classification established for weapons violations. Such classification shall be considered and scored in determining an offender's criminal history classification.*

(c) *Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.*

(d) The following are applicable to determining an offender's criminal history classification:

(1) Only verified convictions will be considered and scored.

(2) All prior adult felony convictions, *including expungements*, will be considered and scored ~~including expungements~~.

(3) There will be no decay factor applicable for adult convictions.

(4) Except as otherwise provided, *a* juvenile ~~adjudications~~ *adjudication*, which would have been a nonperson class D or E felony if committed before July 1, 1993, or a *nondrug* level 6, 7, 8, 9 or 10, *or drug level 4*, nonperson felony if committed on or after July 1, 1993, or a misdemeanor if committed by an adult. ~~that occurred between the ages of 13 and 18 will decay when the offender reaches age 25~~ *will decay if the current crime of conviction is committed after the offender reaches the age of 25.*

(5) *For convictions of crimes committed before July 1, 1993, a* juvenile ~~adjudications~~ *adjudication* which would constitute a ~~person~~ class A, B or C felony ~~before July 1, 1993, or a level 1, 2, 3, 4 or 5 person felony if committed on or after July 1, 1993~~, if committed by an adult, will not decay. *For convictions of crimes committed on or after July 1, 1993, a juvenile adjudication which would constitute an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if committed by an adult, will not decay.*

(6) All juvenile adjudications which would constitute a person felony will not decay or be forgiven.

(7) All class A misdemeanor convictions, class B person misdemeanors and class B select nonperson misdemeanors shall be considered and scored. Class C misdemeanors will not be considered and scored.

(8) Unless otherwise provided by law, unclassified felonies~~,~~ *and* class A and B misdemeanors ~~and unclassified misdemeanors~~, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(9) Prior convictions of a crime defined by a statute which has since been repealed shall be scored using the classification assigned at the time of such conviction.

(10) Prior convictions of a crime defined by a statute which has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes.

~~(e) (1) One prior criminal history unit will be assigned for each previous conviction event. Jurisdiction is the court in which the criminal action has been filed.~~

~~(2) (A) When multiple sentences in a prior single judicial proceeding are imposed concurrently, the defendant shall be considered to have one conviction for criminal history purposes and the crime of conviction having the highest crime severity ranking shall be counted in the offender's criminal history. All other convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.~~

~~(B) Person felony convictions will always take precedence over nonperson felony convictions, otherwise the most severe crime within the multiple counts making up a prior conviction event will be used to score the prior criminal history score for the current event.~~

~~(C) In multiple misdemeanor convictions, person misde-~~

1993 SL, Ch. 291, Sec. 259:

(a): Add to the list of relevant prior convictions "...person misdemeanor adult convictions, person misdemeanor juvenile adjudications..., convictions or adjudications for violations of Kansas municipal ordinances or county resolutions which are identical to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor, or nonperson class A misdemeanor." Eliminate "...person class A misdemeanor adult convictions, person class A juvenile adjudications, person class B misdemeanor adult convictions, person class B misdemeanor juvenile adjudications...."

Add: "A prior conviction is any conviction which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case."

(d)(7): "All person misdemeanor convictions shall be considered and scored."

(d)(8): "Unless otherwise provided by law, unclassified felonies and misdemeanors shall be considered and scored as nonperson crimes for the purpose of determining criminal history."

Add (d)(11): "Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored."

Senate Judiciary
11/17/93
8-2

Sec. 9. K.S.A. 21-3408 is hereby amended to read as follows: 21-3408. ~~An assault is an intentional threat or attempt to do bodily harm to another coupled with apparent ability and resulting in immediate apprehension of bodily harm. No bodily contact is necessary.~~ *Assault is intentionally placing another person in reasonable apprehension of immediate bodily harm.*

Assault is a class C misdemeanor.

1992 SL, Ch. 298, Section 9:

"Assault is a class C *person* misdemeanor."

section 5 of chapter 239 of the 1992 Session Laws of Kansas is hereby amended to read as follows: Section 11. In addition to the provisions of section 10 of chapter 239 of the 1992 Session Laws of Kansas and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grid for nondrug crimes and the presumptive sentencing guidelines grid for drug crimes:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, *or any combination thereof*, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A ~~violation of subsections (a)(1) through (a)(8) of K.S.A. 21-4201 and amendments thereto regarding unlawful use of weapons or~~ *conviction of* subsection (a)(1) of K.S.A. 21-4204 and amendments thereto ~~regarding unlawful~~, *criminal* possession of firearms *by a person who is both addicted to and an unlawful user of a controlled substance, subsection (a)(4) of K.S.A. 21-4204 and amendments thereto, possession of a firearm on school grounds or K.S.A. 21-4218 and amendments thereto, possession of a firearm on the grounds or in the state capitol building*, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be ~~converted to person felony units~~ *scored as a person misdemeanor for criminal history purposes.*

(c) If the current crime of conviction is for ~~aggravated vehicular homicide, as specified in subsections (a) and (c) of K.S.A. 21-3405a and amendments thereto, while committing a violation of driving under the influence of alcohol or drugs as provided in~~ *subsection (b) of K.S.A. 21-3404, involuntary manslaughter in the commission of* K.S.A. 8-1567 and amendments thereto *driving under the influence, then*, each prior adult conviction or juvenile adjudication for ~~driving under the influence of alcohol or drugs as provided in~~ K.S.A. 8-1567 and amendments thereto shall ~~be counted~~ *count* as one person felony for criminal history purposes.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a ~~residential~~ burglary *as described in subsection (a) of K.S.A. 21-3715 and amendments thereto.*

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a ~~nonresidential~~ burglary *as described in subsection (b) or (c) of K.S.A. 21-3715 and amendments thereto.*

The facts required to classify prior burglary adult convictions and juvenile adjudications must be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications will be used in classifying the offender's criminal history. ~~Out-of-state convictions or adjudication include the federal system, other state's systems, the District of Columbia courts, and foreign, tribal and military courts. The status of the conviction or adjudication from the out-of-state disposition shall be applied to the appropriate person or nonperson classification law as provided by this act.~~ *An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications.* The facts required to classify out-of-state adult convictions and juvenile adjudications must be established by the state by a preponderance of the evidence.

(f) *Except as provided in subsections (4), (5) and (6) of section 5 of chapter 239 of the 1992 Session Laws of Kansas,* juvenile adjudications will be applied in the same manner as adult convictions. *Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.*

1993 SL, Ch. 291, Sec. 260:

(a): "Every three prior adult convictions or juvenile adjudications of person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes."

(e): "...Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal, or military courts are considered out-of-state convictions or adjudications, as are convictions or adjudications for violations of municipal ordinances or county resolutions which prohibit the acts prohibited by KSA 8-1567 or KSA 8-262 and amendments thereto...."

Add (g): "A prior conviction of an attempt, a conspiracy, or a solicitation as provided in KSA 21-3301, KSA 21-3302, or KSA 21-3303, to commit a person felony [crime?] shall also be treated as a person felony [crime?]."
Issue: Do we want this rule to apply to misdemeanors? If so, are we comfortable with their inclusion in the application of the 3-for-1 rule?

Add (h): "Drug crimes are designated as nonperson crimes for criminal history scoring...."

Sec. 5. K.S.A. 12-4106, as amended by section 30 of chapter ... of the 1992 Session Laws of Kansas, is hereby amended to read as follows: 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt committed in court or for failure to obey process issued by such municipal judge, in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; and discharge accused persons.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ~~insure~~ *ensure* that information concerning dispositions of ~~all~~ *city ordinance violations comparable to convictions for* class A and B misdemeanors *under Kansas criminal statutes* is forwarded to the Kansas bureau of investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

1993 SL, Ch. 291, Sec. 5:

(e): "The municipal judge shall ensure that information concerning dispositions of city ordinance violations identical to misdemeanors defined by state law is forwarded to the Kansas bureau of investigation central repository...."

Sec. 6. K.S.A. 12-4104 is hereby amended to read as follows: 12-4104. Arraignment shall be conducted in open court by stating to the accused person the substance of the charge and calling upon ~~him or her~~ *the accused* to plead thereto. Arraignment for purposes of accepting plea of not guilty may be accomplished by telephone, mail or appearance by counsel. *The court shall ensure, upon the accused person's first appearance, or in any event, before final disposition, for a city ordinance violation comparable to a class A or B misdemeanor under a Kansas criminal statute, that the accused person has been processed and fingerprinted.*

1993 SL, Ch. 291, Sec. 6:

Last sentence (new language) unnecessary; See Sec. 7

Sec. 7. K.S.A. 12-4507 is hereby amended to read as follows: 12-4507. If the accused person is found not guilty, judgment shall be rendered immediately. If the accused person is found guilty, sentence shall be imposed and judgment rendered without unreasonable delay. *The court shall ensure, upon the accused person's first appearance, or in any event, before final disposition, of a city ordinance violation comparable to a conviction for a class A or B misdemeanor under a Kansas criminal statute, that the accused person has been processed and fingerprinted.*

1993 SL, Ch. 291, Sec. 7:

"...The court shall ensure, upon the defendant's conviction of a municipal ordinance violation identical to a misdemeanor defined by state law, that the defendant has been processed and fingerprinted..."

S[illegible]. K.S.A. 21-2501, as amended by section 32 of chapter 239 of the 1992 Session Laws of Kansas, is hereby amended to read as follows: 21-2501. (a) It is hereby made the duty of every sheriff, police department or countywide law enforcement agency in the state, immediately to cause two sets of fingerprint impressions to be made of a person who is arrested if the person:

(1) Is wanted for the commission of a felony ~~and~~,. On or after July 1, 1993, *fingerprints shall be taken if the person is wanted for the commission of a felony or* a class A or B misdemeanor; or *a violation of a county resolution or municipal ordinance which would be the equivalent of a class A or B misdemeanor under state law;*

(2) is believed to be a fugitive from justice;

~~(2)~~ *(3)* may be in the possession at the time of arrest of any goods or property reasonably believed to have been stolen by the person;

~~(3)~~ *(4)* is in possession of firearms or other concealed weapons, burglary tools, high explosives or other appliances believed to be used solely for criminal purposes;

~~(4)~~ *(5)* is wanted for any offense which involves sexual conduct prohibited by law or for violation of the uniform controlled substances act; or

~~(5)~~ *(6)* is suspected of being or known to be a habitual criminal or violator of the intoxicating liquor law.

(b) *The court shall ensure, upon the offender's first appearance, or in any event before final disposition of a felony or an A or B misdemeanor or a violation of a county resolution or city ordinance which prohibits an act which is prohibited by a class A or B misdemeanor, that the offender has been processed and fingerprinted.*

(c) Fingerprint impressions taken pursuant to this section shall be made on the forms provided by the department of justice of the United States or the Kansas bureau of investigation. The sheriff, police department or countywide law enforcement agency shall cause the impressions to be forwarded to the Kansas bureau of investigation at Topeka, Kansas, which shall forward one set of the impressions to the federal bureau of investigation, department of justice, at Washington, D.C. A comprehensive description of the person arrested and such other data and information as to the identification of such person as the department of justice and bureau of investigation require shall accompany the impressions.

~~(c)~~ *(d)* A sheriff, police department or countywide law enforcement agency may take and retain for its own use copies of fingerprint impressions of a person specified in subsection (a), together with a comprehensive description and such other data and information as necessary to properly identify such person.

~~(d)~~ *(e) Except as provided in subsection (a)(1),* this section shall not be construed to include violators of any county resolution or municipal ordinance.

1993 SL, Ch. 291, Sec. 15:

Eliminate new language only in (a)(1); leave "Is wanted for the commission of a felony;"

(b): "The court shall ensure, upon the defend conviction of a misdemeanor or a violation of a cc resolution or city ordinance identical to a misdeme defined by state law, that the defendant has been proce and fingerprinted."

Sec. 16. K.S.A. 21-2501a, as amended by section 33 of chapter 239 of the 1992 Session Laws of Kansas, is hereby amended to read as follows: 21-2501a. (a) All law enforcement agencies having responsibility for law enforcement in any political subdivision of this state, on forms approved by the attorney general, shall maintain a permanent record of:

(1) All felony offenses reported or known to have been committed within their respective jurisdictions;

(2) all misdemeanors or other offenses which involve the violation of the uniform controlled substances act; and

(3) on or after July 1, 1993, all *felonies or* class A or B misdemeanors *reported or known to have been committed within their respective jurisdictions.*

(b) All law enforcement agencies having the responsibility of maintaining a permanent record of offenses shall file with the Kansas bureau of investigation, on a form approved by the attorney general, a report on each offense for which a permanent record is required within 72 hours after such offense is reported or known to have been committed.

1993 SL, Ch. 291, Sec. 16:

(a)(3): "on or after July 1, 1993, all felonies or misdemeanors reported or known to have been committed within their respective jurisdictions."

Sec. 221. K.S.A. 1992 Supp. 38-1611 is hereby amended to read as follows: [illegible] shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of the juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody *or upon first appearance or in any event before final disposition, before the court* for an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3105 and amendments thereto *or a class A or B misdemeanor or a city ordinance violation comparable to a class A or B misdemeanor under a Kansas criminal statute*; and

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501 and amendments thereto if the juvenile has been:

(A) Prosecuted as an adult by reason of subsection (b)(3) of K.S.A. 38-1602 or ~~K.S.A.~~ 38-1636, and amendments thereto; or

(B) convicted of aggravated juvenile delinquency as defined by K.S.A. 21-3611 and amendments thereto; or

(C) taken into custody for an offense described in subsection (b)(1) or (2) of K.S.A. 38-1602 and amendments thereto.

(b) Fingerprints and photographs taken under subsection (a)(1) or (2) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsection (a)(3) may be kept in the same manner as those of persons of the age of majority.

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to a state or federal repository if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to a state or federal repository if taken under subsection (a)(2); and

(3) fingerprints or photographs taken under subsection (a)(3) shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 38-1617 and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of a juvenile taken under the provisions of subsection (a)(2) as it existed before the effective date of this act may be sent to a state or federal repository on or before December 31, 1984.

(f) Any law enforcement agency that willfully fails to make any report required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding $500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

1993 SL, Ch. 291, Sec. 221:

(a)(2): "photographs of a juvenile may be taken immediately upon taking the juvenile into custody or at any time thereafter until final disposition of the matter, and a juvenile's fingerprints shall be taken upon adjudication for an offense which, if committed by a person 18 or more years of age, would constitute a misdemeanor or a violation of a Kansas county resolution or city ordinance identical to a misdemeanor defined by state law or which prohibits the same behavior prohibited by KSA 8-1567 and KSA 8-262."

Sec. 195. K.S.A. 1992 Supp. 22-3429 is hereby amended to read as follows: 22-3429. After conviction and prior to sentence and as part of the presentence investigation authorized by K.S.A. 21-4604 and amendments thereto *or for crimes committed on or after July 1, 1993, a presentence investigation report as provided in section 14 of chapter 239 of the 1992 Session Laws of Kansas and amendments thereto*, the trial judge may order the defendant committed for mental examination, evaluation and report. If the defendant is convicted of a felony, the commitment shall be to the state security hospital or any suitable local mental health facility. If the defendant is convicted of a misdemeanor, the commitment shall be to a state hospital or any suitable local mental health facility. If adequate private facilities are available and if the defendant is willing to assume the expense thereof, commitment may be to a private hospital. A report of the examination and evaluation shall be furnished to the judge and shall be made available to the prosecuting attorney and counsel for the defendant. A defendant may not be detained for ~~more than 120 days, under a commitment made under this section~~ *or for more than the maximum period of the prison sentence that could be imposed.*

1993 SL, Ch. 291, Sec. 195 (KSA 22-3429):

Add at very end "..., whichever is shorter."

8-10

Kan[illegible] thereto amended to read as follows: Section 5. (a) The crime severity scale contained in the sentencing guidelines grid for drug offenses as provided in section 5 *of chapter 239 of the 1992 Session Laws of Kansas and amendments thereto* consists of 4 levels of crimes. Crimes listed within each level are considered to be relatively equal in severity. Level 1 crimes are the most severe crimes and level 4 crimes are the least severe crimes.

(b) The provisions of this section shall *also* be applicable to the presumptive sentences for anticipatory crimes committed on or after July 1, 1993, contained in the sentencing guidelines grid for drug crimes as provided in section 5 *of chapter 239 of the 1992 Session Laws of Kansas and amendments thereto*:

(1) ~~An attempt, conspiracy or solicitation of an unlawful act contained in subsection (a) and (c) of K.S.A. 65-4127a and amendments thereto and subsection (a)(1) through (5), (b)(1) through (5), (c) and (e) of K.S.A. 65-4127b and amendments thereto will reduce the offender's presumptive sentence by six months. The provisions of sections 292, 293 and 294 shall not apply to anticipatory offenses and the presumptive sentence contained in the sentencing guidelines grid for drug crimes as provided in section 5.~~ *The sentencing rule for a conviction of an attempt to commit a drug offense shall be as provided in K.S.A. 21-3301 and amendments thereto. The sentencing rule for a conviction of a conspiracy to commit a drug offense shall be as provided in K.S.A. 21-3302 and amendments thereto. The sentencing rule for conviction of a solicitation to commit a drug offense shall be as provided in K.S.A. 21-3303 and amendments thereto.*

(2) No plea bargaining agreement may be entered into for the purpose of permitting a person charged with a violation of any of such drug offenses contained in subsection (a) to avoid the presumptive sentences established by the presumptive sentencing guidelines grid for drug crimes as provided in section 5 *of chapter 239 of the 1992 Session Laws of Kansas and amendments thereto.*

~~(3) Level 1 crimes, with up to one prior nonperson felony, presume a sentence of nonprison. Level 3 rankings are bifurcated: possessory offenses with no prior felony history receive a presumptive sentence of nonimprisonment, and except as provided in subsection (c) of section 5, all sale offenses receive a presumptive imprisonment sentence.~~

(c) ~~The sentencing guidelines grid for drug crimes provides a higher severity level for second and third convictions for violations of subsection (b)(1) through (5) of K.S.A. 65-4127b and amendments thereto, either singularly or in conjunction with violations of subsection (a) of K.S.A. 65-4127a and amendments thereto. An offender's criminal history score on the horizontal axis does not include prior convictions of an unlawful act contained in K.S.A. 65-4127a or 65-4127b and amendments thereto.~~ *Prior convictions of the present crime, regardless of number, shall not be included in the criminal history score when they are elements or enhance the severity level of the present crime of conviction.*

1993 SL, Ch. 291, Sec. 258:

Eliminate (c) (See Sec. 259)

(b)(2): "No plea bargaining agreement may be entered into whereby the prosecutor agrees to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in KSA 65-4127a and KSA 65-4127b, and amendments thereto, or agrees to exclude any prior conviction from the defendant's criminal history."

New Sec. 13. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor may do any of the following:

(a) Move for dismissal of other charges or counts;

(b) recommend a particular sentence within the sentencing range applicable to the offense or to the offense to which the offender pled guilty;

(c) recommend a particular sentence outside of the sentencing range only when departure factors exist and shall be stated on the record;

(d) agree to file a particular charge or count;

(e) agree not to file charges or counts; or

(f) make any other promise to the defendant, except that the prosecutor shall not agree to not allege prior convictions.

1992 SL, Ch. 239, Sec. 13:

(f): "make any other promise to the defendant, except that the prosecutor shall not enter into any agreement to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in KSA 65-4127a and KSA 65-4127b, and amendments thereto, or any agreement to exclude any prior conviction from the criminal history of the defendant."

261. Section 12 of chapter 239 of the 1992 Session Laws of is hereby amended to read as follows: Section 12. The rules for calculating an offender's criminal history score as provided in sections 9, 10 and 11 *of chapter 239 of the Session Laws of Kansas and amendments thereto* are applicable to the sentencing guidelines grid for *both nondrug and* drug crimes. *Prior convictions of the present crime, regardless of number, shall not be included in the criminal history score when they are elements or enhance the severity level of the present crime of conviction. All other previous convictions shall be included in the criminal history score. Drug crimes are designated as nonperson crimes for criminal history scoring.* ~~except where prior convictions are included within a particular severity level. Crime severity levels 1, 2 and 3 in the presumptive sentencing guidelines grid for drug crimes are based upon prior drug sale convictions of unlawful acts contained in subsection (a) of K.S.A. 65-4127a or subsection (b) of K.S.A. 65-4127b and amendments thereto.~~

~~Prior convictions of unlawful acts contained in subsection (a) of K.S.A. 65-4127a or subsection (b) of K.S.A. 65-4127b and amendments thereto shall not count in the criminal history score for current conviction of such unlawful acts, except that:~~

~~(a) All prior misdemeanor drug crime convictions are included in an offender's criminal history score. However, severity level 4 felony drug possession charges are presumed to include a prior misdemeanor drug possession conviction. Such a prior conviction is included in the ranking of a severity level 4 drug offense unless the offender is charged with a felony drug offense not involving possession.~~

~~(b) All prior severity level 4 convictions are included in an offender's criminal history score.~~

~~(c) If an offender has a previous drug sale conviction and later is convicted of a separate severity level 4 possessory offense, the previous drug sale conviction shall be included in the current criminal history score in sentencing the severity level 4 possessory offense.~~

1993 SL, Ch. 291, Sec. 261:

Eliminate (See Sec. 259)

Section 14 of chapter 229 of the 1992 Session Laws of [illegible] amended to read as follows: Section [illegible]. A presentence investigation report is required on all felony cases including all unclassified felonies, on or after July 1, 1993.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult felony, class A person and nonperson misdemeanor and class B person misdemeanor convictions, class B select nonperson misdemeanor and all prior juvenile adjudications comparable to the above which comply with the decay rule. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(c) The presentence report will become part of the court record and accessible to the public and defendant, except that the victim statement, any psychological reports and drug and alcohol reports are to be confidential.

(d) The criminal history worksheet will not substitute as a presentence report.

(e) The presentence report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.

(f) The court can take judicial notice of a prior presentence report criminal history worksheet, regardless of age, to reclassify a criminal history classification in a current case.

(g) All presentence reports shall be in substantially the following format:

Page 1 of ___ Pages

KSOR CASE #_____ PRESENTENCE INVESTIGATION REPORT TRACKING #_____

FACE SHEET

JUDICIAL DISTRICT: _____ DEFENSE ATTORNEY:

_____

COUNTY: _____

CASE #_____ G.B.I. #: _____ COURT APPOINTED? ☐ YES ☐ NO

NAME: _____ PROSECUTING ATTORNEY:

AKA(S): _____

_____

D.O.B.: ___/___/___ AGE: _____ SENTENCING JUDGE:

S.S.N.: ___/___/___ F.B.I. #: _____

_____

SEX: ☐ M ☐ F RACE: ☐ W ☐ B ☐ A.I. ☐ A OFFENSES: (List in order starting with most serious offense)

ETHNICITY: HISPANIC _____ NON-HISPANIC _____ K.S.A.: ☐ F ☐ M _____

☐ Drug ☐ Nondrug

ADDRESS: _____ Departure: _____

_____

_____

CRIME SERIOUSNESS | CRIMINAL HISTORY | COMPLETE CRIMINAL HISTORY

-SENTENCING RANGE-

CITIZENSHIP: ☐ U.S. ☐ NON-U.S. PRESUMPTIVE PRISON: ___ POSTRELEASE SUPERVISION DURATION: _____

DATE OF GUILTY PLEA OR JUDGMENT: ___/___/___ PRESUMPTIVE PROBATION: ___ PROBATION DURATION: _____

SENTENCING DATE: ___/___/___ K.S.A.: ☐ F ☐ M _____

☐ Drug ☐ Nondrug

1993 SL, Ch. 291, Sec. 262:

(a): "...The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant..."

(a)(5): "A listing of all prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of Kansas county resolutions or city ordinances identical to any misdemeanor defined by state law...."

(b)(5): Add: "Such listing shall also include the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached."

Sec. 198. K.S.A. 1992 Supp. 22-3716, as amended by section 301 of chapter 236 of the 1992 Session Laws of Kansas, is hereby amended to read as follows: 22-3716. (1) Except as otherwise provided, at any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (1)(d) for defendants who committed a crime prior to July 1, 1993, and at any time during which a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (1)(d), the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. The written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(2) *(b)* Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. If the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. *When probation is revoked due to a conviction for a new felony, a consecutive sentence is mandated as described in K.S.A. 21-4608 and amendments thereto. In this case, the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction presumes a nonprison sentence. Such action does not constitute a departure.*

(3) *(c)* A defendant who is on probation, assigned to a community correctional services program, under suspension of sentence or serving a nonprison sanction and for whose return a warrant has been issued by the court shall be considered a fugitive from justice if it is found that the warrant cannot be served. If it appears that the defendant has violated the provisions of the defendant's release or assignment or a nonprison sanction, the court shall determine whether the time from the issuing of the warrant to the date of the defendant's arrest, or any part of it, shall be counted as time served on probation, assignment to a community correctional services program, suspended sentence or pursuant to a nonprison sanction.

(4) *(d)* The court shall have 30 days following the date probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction was to end to issue a warrant or the arrest or notice to appear for the defendant to answer a charge of a violation of the conditions of probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction.

1993 SL, Ch. 291, Sec. 198:

(b): Change last sentence (new language) to

"When a new felony is committed while the offender is on probation, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of KSA 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure."

Section 2[illegible] of chapter [illegible] of the 1992 Session Laws [illegible] amended to read as follows: Section 2.[illegible] [illegible] any person has been convicted of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the ~~criminal history score falls within a presumptive incarceration category or through a departure for substantial and compelling reasons~~ *sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment;* or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. *In felony cases, the court may include confinement in a county jail not to exceed 30 days, which need not be served consecutively, as a condition of probation or community corrections placement;*

(4) assign the defendant to a community correctional services program in presumptive nonprison cases *or through a departure for substantial and compelling reasons* subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

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

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

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

(8) impose any appropriate combination of (1) ~~and (2) or~~, (2), (3), (4), (5), (6), and (7).

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

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

When probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision is revoked due to a conviction for a new felony, and a new sentence is imposed as provided in K.S.A. 21-4608 and amendments thereto, the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction presumes a nonprison sentence. Such action does not constitute a departure.

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

(b) Dispositions which do not involve commitment to the custody of the secretary of corrections shall not entail the loss by the defendant of any civil rights.

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

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

(e) When it is provided by law that a person shall be sentenced

1993 SL, Ch. 291, Sec. 183:

(a)(8): "When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of KSA 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure."

Sec. 272. K.S.A. 1992 Supp. 21-4608 as amended by section 2 of chapter 238 of the 1992 Session Laws of Kansas is hereby amended to read as follows: 21-4608. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant at the same time, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole or on conditional release for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated shall serve the sentence consecutively to the term or terms under which the person was released.

(e) *(1)* Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while the person was imprisoned for an offense committed prior to July 1, 1993, and the person is not eligible for the retroactive application of the sentencing guidelines act, the new sentence shall not be aggregated with the old sentence but shall begin when the person is paroled or reaches the conditional release date on the old sentence, whichever is earlier. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence.

(f) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717 and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(1) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(2) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of ~~incarceration~~ *imprisonment* to reach parole eligibility, conditional release and maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and maximum may be computed and projected from another to determine the controlling sentence.

(3) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

service on the aggregate sentence in determining the parole eligibility, conditional release and maximum dates. [illegible] shall be given for any amount of time spent [illegible] while on probation or assignment to a community correctional residential services program.

(g) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term. *The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.*

(h) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sentence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run concurrently with any federal or other state sentence imposed.

~~(i) The provisions of this section shall not apply to crimes committed on or after July 1, 1993, unless otherwise provided by law.~~

(4) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent ~~incarcerated~~ *imprisoned* on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent ~~incarcerated~~ *imprisoned* on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983.

Nothing in this subsection (f)(4) shall affect the authority of the Kansas parole board to determine the parole eligibility of inmates pursuant to subsection (d) of K.S.A. 22-3717 and amendments thereto.

(5) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, assigned to a community correctional services program, on parole or on conditional release, the amount of time served on probation, on assignment to a community correctional services program, on parole or on conditional release shall not be credited as

1993 SL, Ch. 291, Sec. 272:

(c): add "...postrelease supervision..."

92 K.S.A. 22-3212, as amended by section 25[illegible] of chapter [illegible] 1992 Session Laws of Kansas, is hereby amended to read as follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant: (1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution. Except as provided in subsections (a)(2) and (a)(4), this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant, except as may be provided by law.

(c) If the defendant seeks discovery and inspection under subsection (a)(2) or subsection (b), the defendant shall permit the attorney for the prosecution to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial, and which are material to the case and will not place an unreasonable burden on the defense. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

(d) The prosecuting attorney and the defendant shall cooperate in discovery and reach agreement on the time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for court intervention.

(e) Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(f) Discovery under this section must be completed no later than 20 days after arraignment or at such reasonable later time as the court may permit.

(g) If, subsequent to compliance with an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under this section, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) For crimes committed on or after July 1, [illegible] the prosecuting attorney shall provide all prior convictions of the defendant known to the prosecuting attorney that would affect the determination of the defendant's criminal history for purposes of sentencing under a presumptive sentencing guidelines system as provided in *section 1 of chapter 239 of the 1992 Session Laws of Kansas* and amendments thereto.

1993 SL, Ch. 291, Sec. 192 (KSA 22-3212):

Add (i): "The prosecuting attorney and defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovering and verifying the criminal history of the defendant."

Sec. 2. K.S.A. 1992 Supp. 22-3717, as amended by section 11 of [illegible] Bill No. 170, is hereby amended to read as follows: 22-37[illegible] except as otherwise provided by this section and K.S.A. [illegible] and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) An inmate sentenced for a class A felony, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto but not including an inmate sentenced pursuant to K.S.A. 1992 Supp. 21-4628 and amendments thereto or on or after July 1, 1993, inmate sentenced for an off-grid offense, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(c) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) (1) Persons sentenced for crimes committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraph (C), persons sentenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 must serve 24 months, plus the amount of good time earned and retained pursuant to section 22 of chapter 239 of the 1992 Session Laws of Kansas, on postrelease supervision;

(B) except as provided in subparagraph (C), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 must serve 12 months, plus the amount of good time earned and retained pursuant to section 22 of chapter 239 of the 1992 Session Laws of Kansas, on postrelease supervision;

(C)(i) The sentencing judge shall impose the presumptive postrelease supervision period provided in subparagraph (d)(1)(A) or (d)(2)(B), unless the judge finds substantial and compelling reasons to impose a departure. A departure may be imposed on the postrelease supervision for a period of up to 60 months based upon a finding that the current crime of conviction was sexually violent or sexually motivated.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to section 21 of chapter 239 of the 1992 Session Laws of Kansas.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of section 14 of chapter 239 of the 1992 Session Laws of Kansas; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(C), the court shall refer to section 18 of chapter 239 of the 1992 Session Laws of Kansas.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A) or (B). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons [illegible] deemed sexually [illegible] motivated, [illegible] according to the [illegible] thereto, and

(D) in cases where sentences for crimes from more than [illegible] severity level have been imposed, the highest severity level offense will dictate the period of postrelease supervision. Supervision periods will not aggregate.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504 and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (A) through (I), or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(K) an attempt, conspiracy or criminal solicitation, as defined in ~~sections 292, 293 and 294 of chapter 239 of the 1992 Session Laws of Kansas~~ *K.S.A. 21-3301, 21-3302, 21-3303*, and amendments thereto, of a sexually violent crime as defined in this section; or

(L) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If an inmate is sentenced to prison for a crime committed after July 1, 1993, while on parole or conditional release for a crime committed prior to July 1, 1993, the old sentence shall be converted into a determinate sentence and will run consecutive to the new sentence as follows:

(1) Twelve months for class C, D or E felonies or the conditional release date whichever is shorter;

(2) 36 months for class A or B felonies or the conditional release date whichever is shorter.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

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...a hearing during ... prior to the month an inmate will be eligible for parole ... subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the victim and the victim's family; comments of the public; official comments; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, and in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Within a reasonable time after an inmate is committed to the custody of the secretary of corrections, a member of the Kansas parole board, or a designee of the board, shall hold an initial informational hearing with such inmate and other inmates.

(k) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before it and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the specific reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such pro-

...grams. If an agreement ... as been entered under ... 75-... and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in detail the specific reasons for granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony, the board shall hold another parole hearing for the inmate not later than one year after the denial. If parole is denied for an inmate sentenced for a class A or class B felony, the board shall hold another parole hearing for the inmate not later than three years after the denial and shall conduct an annual file review for such inmate. Written notice of such annual file review shall be given to the inmate. The provisions of this subsection shall not be applicable to inmates sentenced for crimes committed on or after July 1, 1993.

(l) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(m) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(n) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision; and

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so.

(o) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced before July 1, 1986, and the court did not specify the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole, the parole board shall order as a condition of parole that the parolee make restitution for the damage or loss caused by the parolee's crime in an amount and manner determined by the board unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the parole board shall not order restitution as a condition of parole or postrelease supervision unless the board finds compelling circumstances which justify such an order.

(p) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the court or district attorney of the county where the inmate was sentenced.

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(q) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(r) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(s) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

1993 SL, Ch. 291, Sec. 281:

(f): "If an inmate is sentenced to prison for a crime committed after July 1, 1993, while on parole or conditional release, probation, or assignment to community corrections, for a crime committed prior to July 1, 1993, the old sentence shall be converted into a determinate sentence and will run consecutive to the new sentence as follows:"

(f)(1): "If the inmate was on parole, probation, or assignment to community corrections, [t]welve months for class C, D or E felonies or the conditional release date whichever is shorter;"

(f)(2): "If the inmate was on parole, probation, or assignment to community corrections, 36 months for class A or B felonies or the conditional release date whichever is shorter, except that where the old sentence is a life sentence or a sentence as provided in K.S.A. 21-4628, imposed for a conviction of first degree murder as defined in K.S.A. 21-3401, or a life sentence imposed for treason as defined in KSA 21-3801, the sentence will not be converted but will continue to be administered in accordance with the provisions of law applicable prior to July 1, 1993, and which remain applicable to off-grid crimes in accordance with Section 256 (c) of Chapter 291 of the 1993 Session Laws of Kansas."

Sec. 264. Section 18 of chapter 239 of the 1992 Session Laws of Kansas is hereby amended to read as follows: Section 18. (a) (1) Whenever a person is convicted of a felony, the court upon motion of either the defendant or the state, shall hold a ~~sentencing~~ hearing to consider imposition of a departure sentence. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the ~~sentencing~~ hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the ~~sentencing~~ hearing. The court shall review the victim impact statement. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report.

(2) At the conclusion of the ~~sentencing~~ hearing or within 20 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(b) If the court decides to depart on its own volition, without a motion from the state or the defendant, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request.

(c) ~~Whether or not a sentencing hearing is requested pursuant to this section, the district court shall make findings of fact as to the reasons for departure from the sentencing guidelines in each case in which the court imposes a sentence that deviates from the presumptive sentence applicable to the case.~~ *In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.*

1993 SL, Ch. 291, Sec. 264:

(a)(1): Add after first sentence, "The motion s
state the type of departure sought and the reas
and factors relied upon."

(b): Add, "The notice shall state the type
departure intended by the court and the reasons
factors relied upon."

New Sec. 3. As used in this act:

"Aggravating factors" mean substantial and compelling reasons justifying a departure sentence outside the standard sentencing range for a crime. Aggravating factors may result in dispositional or durational departures and shall be stated on the record by the court;

(b) "commission" means the Kansas sentencing commission;

(c) "conviction event" means one or more felony convictions occurring on the same day and within a single court. These convictions may result from multiple counts within an information or from more than one information;

(d) "criminal history" means and includes adult felony, class A misdemeanor, class B person misdemeanor, or select misdemeanor convictions and comparable juvenile adjudications possessed by an offender at the time such offender is sentenced;

(e) "criminal history score" means the summation of the convictions described as criminal history that place an offender in one of the criminal history score categories listed on the horizontal axis of the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes;

(f) "decay factor" means prior convictions that are no longer considered as part of an offender's criminal history score;

(g) "departure" means a sentence which is inconsistent with the presumptive sentence for an offender;

(h) "dispositional departure" means a sentence which is inconsistent with the presumptive sentence by imposing a nonprison sanction when the presumptive sentence is prison or prison when the presumptive sentence is nonimprisonment;

(i) "dispositional line" means the solid black line on the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes which separates the grid blocks in which the presumptive sentence is a term of imprisonment and postrelease supervision from the grid blocks in which the presumptive sentence is nonimprisonment which may include local custodial sanctions;

(j) "durational departure" means a sentence which is inconsistent with the presumptive sentence as to term of imprisonment, or term of nonimprisonment;

(k) "good time" means a method of behavior control or sanctions utilized by the department of corrections. Good time can result in a decrease of up to 20% of the prison part of the sentence.

(l) "grid" means the sentencing guidelines grid for nondrug crimes as provided in section 4 or the sentencing guidelines grid for drug crimes as provided in section 5, or both;

(m) "grid block" means a box on the grid formed by the intersection of the crime severity ranking of a current crime of conviction and an offender's criminal history classification;

(n) "imprisonment" means imprisonment in a facility operated by the Kansas department of corrections;

(o) "mitigating factors" means substantial and compelling reasons justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside of the standard sentencing range for an offense. Mitigating factors may result in dispositional or durational departures and shall be stated on the record by the court;

(p) "nonimprisonment," "nonprison" or "nonprison sanction" means probation, community corrections, conservation camp, house arrest or any other community based disposition;

(q) "postrelease supervision" means the release of a prisoner to the community after having served a period of imprisonment or equivalent time served in a facility where credit for time served is awarded as set forth by the court, subject to conditions imposed by the Kansas parole board and to the secretary of correction's supervision;

(r) "presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime severity ranking of the current crime of conviction and the offender's criminal history;

(s) "prison" means a facility operated by the Kansas department of corrections; and

(t) "sentencing range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

1992 SL, Ch. 239, Sec. 3:

Eliminate (c) (See 1993 SL, Ch. 192, Sec. 266)

Sec. 266. Section 20 of chapter 209 of the 1992 Session Laws of Kansas is hereby amended to read as follows: Section 20. (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of K.S.A. 21-4608 and amendments thereto regarding multiple sentences with *shall* apply to the sentencing of offenders for crimes committed on or after July 1, 1993, pursuant to the sentencing guidelines system as provided in this act. The mandatory consecutive requirements contained in subsections (c), (d) and (e) shall not apply if such application would result in a manifest injustice.

(b) ~~Sentencing judges will~~ *The sentencing judge shall* have discretion to impose concurrent or consecutive sentences in multiple conviction cases. In cases where consecutive sentences may be imposed by the sentencing judge, the following shall apply:

(1) When the sentencing judge imposes multiple sentences consecutively, the consecutive sentences shall consist of an imprisonment term and a supervision term. The postrelease supervision term will be based on the primary crime.

(2) The sentencing judge must establish a base sentence for the primary crime. The primary crime is the crime with the highest crime severity ranking. *An off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. If sentences for off-grid and on-grid convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence.* If more than one crime of conviction is classified in the same crime category, the sentencing judge must designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge will use the crime which presumes imprisonment as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of either both probation or both imprisonment, the sentencing judge will use the crime with the longest sentence term within the grid block range as the primary crime.

(3) The base sentence is set using the total criminal history score assigned.

(4) The total sentence assigned for ~~all crimes charged~~ *a current conviction event* cannot exceed twice the base sentence. The postrelease supervision term will reflect only the primary crime. Supervision periods will not be doubled.

(5) Nonbase sentences will not have criminal history scores applied, as calculated in the criminal history I column of the grid, but base sentences will have the full criminal history score assigned.

(6) If the sentence for the primary crime is a prison term, the entire imprisonment term of the consecutive sentences will be served in prison.

(7) If the sentence for the consecutive sentences is a prison term, the postrelease supervision term is a term of postrelease supervision as established for the primary crime.

(8) If the sentence for the primary crime is a nonprison sentence, the consecutive sentences shall be served as multiple nonprison terms. In this situation, a nonprison term will be imposed for each crime conviction. All nonprison terms associated with consecutive sentences will be served concurrently.

(c) The following shall apply for a departure from the presumptive sentence based on aggravating factors within the context of consecutive sentences:

(1) The court may depart from the presumptive limits for consecutive sentences only if the judge finds substantial and compelling reasons to impose a departure sentence for any of the individual crimes being sentenced consecutively.

(2) When a departure sentence is imposed for any of the individual crimes sentenced consecutively, the imprisonment term of that departure sentence shall not exceed twice the maximum presumptive imprisonment term that may be imposed for that crime.

(3) The total imprisonment term of the consecutive sentences, including the imprisonment term for the departure crime, shall not exceed twice the maximum presumptive imprisonment term of the departure sentence following aggravation.

1993 SL, Ch. 291, Sec. 266:

(b): "The sentencing judge shall <u>otherwise</u> have discretion to impose concurrent or consecutive sentences in multiple conviction cases. <u>Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d), and (e) of K.S.A. 21-4608 and amendments thereto....</u>"

(1) When the sentencing judge imposes multiple sentences consecutively, the consecutive sentences shall consist of an imprisonment term which is the sum of the consecutive imprisonment terms, and a single supervision term. The postrelease supervision term will be based on the primary crime or on any of the crimes for which an extended period of postrelease supervision has been imposed as a departure, whichever is longer."

(b)(4): The total prison sentence imposed in a case involving multiple convictions arising from multiple counts within an information, complaint, or indictment cannot exceed twice the base sentence. The postrelease supervision term will reflect only the primary crime. Supervision periods will not be doubled.

(b)(8): "If the sentence for the primary crime is a nonprison sentence, a nonprison term will also be imposed for each of the multiple convictions in the case. All such nonprison terms will be served concurrently. Upon revocation of the nonprison sentence the consecutive imprisonment terms shall be served consecutively as provided in (b)(1)."

22-3210. Plea of guilty or nolo contendere. (a) Before or during trial a plea of guilty or *nolo contendere* may be accepted when:

(1) The defendant or counsel for the defendant enters such plea in open court; and

(2) in felony cases the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea; and

(3) in felony cases the court has addressed the defendant personally and determined that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea; and

(4) the court is satisfied that there is a factual basis for the plea.

(b) In felony cases the defendant must appear and plead personally and a verbatim record of all proceedings at the plea and entry of judgment thereon shall be made.

(c) In traffic infraction and misdemeanor cases the court may allow the defendant to appear and plead by counsel.

(d) A plea of guilty or *nolo contendere*, for good cause shown and within the discretion of the court, may be withdrawn at any time before sentence is adjudged. To correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea.

History: L. 1970, ch. 129, § 22-3210; L. 1982, ch. 146, § 1; L. 1984, ch. 39, § 39; Jan. 1, 1985.

KSA 22-3210

(2) After "...consequences of the plea" add: "..., including the specific sentencing guidelines severity level of any crime committed on or after July 1, 1993,...."

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22-3412. Jury selection; peremptory challenges; swearing of jury; alternate or additional jurors. (1) Peremptory challenges shall be allowed as follows:

(a) Each defendant charged with a class A felony shall be allowed 12 peremptory challenges.

(b) Each defendant charged with a class B felony shall be allowed eight peremptory challenges.

(c) Each defendant charged with a felony other than class A or class B felony shall be allowed six peremptory challenges.

(d) Each defendant charged with a misdemeanor or traffic infraction shall be allowed three peremptory challenges.

(e) Additional peremptory challenges shall not be allowed on account of separate counts charged in the complaint, information or indictment.

(f) The prosecution shall be allowed the same number of peremptory challenges as all the defendants.

(2) After the parties have interposed all of their challenges to jurors, or have waived further challenges, the jury shall be sworn to try the case.

(3) Immediately after the jury is empaneled and sworn, a trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Such jurors shall be selected in the same manner, have the same qualifications, and be subject to the same examination and challenges and take the same oath and have the same functions, powers and privileges as the regular jurors. Each party shall be entitled to one peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors also shall be kept in confinement with the other jurors.

Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror shall be discharged from jury service in any such action prior to the jury reaching its verdict, the court shall draw the name of an alternate juror who shall replace the juror so discharged and be subject to the same rules and regulations as though such juror had been selected as one of the original jurors.

KSA 22-3412:
peremptory challenges

DUI Issues

Substantial confusion has arisen regarding certain of the DUI and DWS laws as they relate to the Act which the Legislature may want to consider addressing.

While the Act assigns the felony version of these offenses to severity level 9 on the nondrug grid, where there is a dispositional presumption for probation at all but the two highest criminal history days and up to a year (which exceeds the duration of the presumptive prison sentences at criminal history categories E through I at severity level 9 on the grid.) Does this mean that imposing the mandatory or authorized term of imprisonment pursuant to the statutory penalty provisions for these crimes will generally involve a dispositional or durational departure, or both, under the guidelines? If so, should these situations be explicitly addressed, or listed as departure situations, or, perhaps, exempted from the provisions of the Act by special rule?

As a companion issue, if the offender is convicted of felony DUI or DWS, where does he or she serve this sentence? Since the conviction is for a felony, is the defendant to be committed to the custody of the Secretary of Corrections? Would this not pose a serious potential prison population problem? Does if make a difference if the sentencing court imposes the 90 days of imprisonment as a condition of probation rather than as a "prison" term? Does the Legislature want to consider proposing a provision which specifically provides that the term of imprisonment be served in the county jail (or other sufficiently restrictive facility or environment other than state prison)?

Sec. 257. Section 7 of chapter 239 of the 1992 Session Laws of Kansas is hereby amended to read as follows: Section 7. (a) The crime severity scale contained in the sentencing guidelines grid for nondrug crimes as provided in section 4 *of chapter 239 of the 1992 Session Laws of Kansas and amendments thereto* consists of 10 levels of crimes. Crimes listed within each level are considered to be relatively equal in severity. Level 1 crimes are the most severe crimes and level 10 crimes are the least severe crimes. If a person is convicted of two or more crimes, then the severity level shall be determined by the most severe crime of conviction.

(b) When the statutory definition of a crime includes a broad range of criminal conduct, the crime may be subclassified factually in more than one crime category to capture the full range of criminal conduct covered by the crime.

(c) The provisions of this subsection shall be applicable with regard to ranking offenses according to the crime severity scale as provided in this section:

(1) When considering an unranked offense in relation to the crime severity scale, the sentencing judge should refer to comparable offenses on the crime severity scale.

(2) *Except for off-grid felony crimes, which are classified as person felonies,* all felony crimes omitted from the crime severity scale ~~are~~ *shall be* considered nonperson felonies.

(3) All unclassified felonies shall be scored as level 10 nonperson crimes.

~~(4) When a person is convicted of any other felony crime or crime punishable by state imprisonment which is omitted from the crime severity scale, the sentence shall be in accordance with the sentence specified in the statute that defines the crime.~~

Add (c)(4): "The offense severity level of a crime for which the court has accepted a plea of guilty or *nolo contendere* pursuant to KSA 22-3210, or of a crime of which the defendant has been convicted, not be elevated or enhanced for sentencing purposes as a result of the discovery of prior convictions or any other basis for such enhancement subsequent to the acceptance of the plea or conviction. Any such prior convictions discovered after the plea has been accepted by the court shall be counted in the determination of the criminal history of the offender."

The City of Overland Park KANSAS

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November 17, 1993

Chairman Jerry Moran
and Members of the Senate Judiciary Committee

RE: Mandatory Fingerprinting and Municipal Offenses

Thank you for permitting the City of Overland Park to present testimony concerning the mandatory fingerprinting requirements found at Sections 5 and 6 and 15 of Chapter 291 of the 1993 Session Laws.

We believe that the new fingerprinting provisions place a significant logistical burden on municipal courts. This burden stems from the fact most individuals charged with city ordinance violations that are comparable to Class A and B misdemeanors are not arrested or taken into custody by municipal police departments. As you know, K.S.A. 12-4212 permits the arrest of ordinance violators in very limited cases. Because these violators are not arrested, when they appear in court for their arraignment, they have not been processed or fingerprinted. The dilemma for the municipal court judge is how to insure these individuals who have never been in custody are processed and fingerprinted. If the judge orders the person to be fingerprinted and processed prior to a trial on the merits, there is arguably an appearance of prejudging the person. In addition, there may be legal issues concerning the existing authority of municipal judges to order a person who has not yet been found guilty, to be processed and fingerprinted. These issues are primarily focused on the statutory requirement that the court ensure fingerprinting and processing, "upon the offender's first appearance", rather than after conviction. The result of the existing statutory requirement is that persons that are found not guilty or perhaps not even brought to trial are required to be fingerprinted and processed, even though they were never arrested.

We believe the simplest solution to this problem is deleting the requirement that municipal courts report ordinance violations. Perhaps a review of the need to include ordinance violations in the sentencing matrix

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should be considered.

As an alternative solution, we propose limiting the requirement for fingerprinting and processing to those individuals actually "convicted" of ordinance violations comparable to Class A and B misdemeanors. While this would not necessarily eliminate all of the logistical issues, we believe it would significantly reduce the scope of the problem.

We also believe it would be helpful if the statute was more specific in identifying which ordinance violations were considered "comparable" to the statutory Class A and B misdemeanors. Many municipalities modify the language of the ordinance from that of the similar state statute. Whether these ordinance violations are "comparable" is debatable. We agree with the League of Kansas Municipalities' position, that only crimes against persons should be reported and only those crimes that have precisely the same language as the state statute.

We also support the League's proposal that there be specific statutory authority for municipal court judges to order the fingerprinting and processing of persons convicted of the specified ordinance violations. This authority would include language affording the municipal court's the option to charge court costs to recover the expenses incurred in the mandatory fingerprinting and processing.

Our office is available to assist you as necessary in addressing these issues.

Sincerely,

Michael R. Santos
Senior Assistant City Attorney

cc: Ed Eilert, Mayor
Thomas C. Owens, Chairman Public Safety Committee
Don Pipes, City Manager
Bob Watson, City Attorney
Myron Scafe, Chief of Police
John Douglass, Assistant Chief of Police

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ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

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ROBERT T. STEPHAN
ATTORNEY GENERAL

LEGISLATIVE REQUESTS
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
NOVEMBER 18, 1993

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today on behalf of the Attorney General's Office and the Kansas Bureau of Investigation for the purpose of making bill requests.

First, on behalf of the Attorney General's Victim Rights Task Force, there are two primary concerns that they would like to see addressed. The first would be to amend the new stalking statute, K.S.A. 21-3438, in order to increase the deterrence factor by increasing the penalty from misdemeanor to a level 8 person felony. Current law makes the first offense a class B person felony, class A if in violation of a temporary restraining order, injunction or on a second or subsequent offense. Unless the person had a relatively extensive prior record or other aggravating factors justifying divergence, this increased penalty would not result in incarceration and increase overcrowding. However, a felony would provide a higher deterrence by the possibility of being imprisoned as well as taking away from the perpetrator the lawful authority to possess a firearm.

The second request deals with the Crime Victim's Compensation Board. K.S.A. 74-7305(d) prohibits compensation unless the claimant shows, and the Board finds, that the claimant would suffer financial stress as a

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result of the crime. The task force believes that the purpose of this law is to compensate victims regardless of their financial status and that the Board should have the authority to make a victim whole even if they were not 'financially stressed.' We would ask that sub-paragraph (d) be repealed.

The Attorney General and the Attorney General's Victims Rights Task Force would also like to go on record as supporting the Johnson County delegation's requests for a violent sexual predator bill and improvements to the sex offender registration law; Douglas County District Attorney Gerry Wells' proposals for prohibiting unsupervised possession of firearms by juveniles and creating legal penalties for adults who improperly store firearms so that minors gain access to them; and clarification of the protection from abuse statute, by deleting the word "access" which has resulted in conflicting interpretations of the statute.

On behalf of the Kansas Bureau of Investigation we would have three bill requests.

1. In several investigations we have discovered airplanes being stored in Kansas by apparently criminal organizations, i.e. drug smugglers. These airplanes will either have phony tail numbers or be registered to non-existent owners in order to avoid tracing. In one incident an airplane we located in Kansas ultimately belonged to a corporation back East that has had five other airplanes seized after being intercepted in drug smuggling operations.

We would request a statute, and I have examples from other states, which makes it illegal to possess an airplane with fraudulent or altered tail numbers or registered to a fraudulent entity. Such activities are in violation of FAA regulations, but obviously, the deterrent factor has been insufficient to keep the drug runners from participating in this

activity. What we would propose is that such violations be the basis for forfeiture which we believe would provide the deterrent factor necessary and take away an important tool used by large scale drug traffickers.

2. We would request passage of what is called a precursor statute which restricts the ease with which persons can purchase and transfer chemicals, which while not illegal in and of themselves, are commonly used to manufacture illegal drugs. The example I would offer to this committee is the Oklahoma statute. In 1989 Oklahoma was fourth in the nation in the number of methamphetamine labs seized, averaging one a week. After passing this statute in 1990, the Oklahoma Bureau of Narcotics reports dwindling clandestine lab activity to the point that no methamphetamine lab activity hasa been found in 1993.

3. I believe the Chairman has already received a letter from Attorney General Stephan requesting this committee consider what's briefly referred to as a 'three strikes and you are out' bill, basically taking a person off grid, incarcerating them for life upon conviction of their third serious violent felony offense (e.g. murder, manslaughter, kidnapping, rape). These people have demonstrated not only that they commit the very worst crimes, but by repeatedly committing such crimes, they have shown a complete inability or unwillingness to live in society. Studies have shown that such habitual violent offenders are responsible for the majority of all such offenses even though they make up a very small percentage of the number of offenders. I believe Attorney General Stephan's letter sets out the proposal quite well.

I would be happy to answer any questions concerning these requests. Thank you for your attention and consideration.

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A memorandum to the Judiciary Committee
of the Kansas State Senate

REFORM OF KANSAS LAWS PROHIBITING ATTORNEY'S FEE CLAUSES IN COMMERCIAL AND CONSUMER CREDIT AGREEMENTS

Barkley Clark
November 10, 1993

Senate Judiciary
11/18/93
Attachment 11-1

I.
THE NEED FOR STATUTORY REFORM

Kansas is one of the few states in the country that flatly prohibits any attorney's fee clauses in credit contracts, including promissory notes, installment contracts, open accounts, real estate mortgages, or guaranties. The source of this prohibition is an ancient (1876) statute now codified at K.S.A. 58-2312. Under the Kansas statute, it makes no difference that the debtor is clearly in default. It makes no difference that the debtor is a sophisticated corporation. The creditor is forbidden from being compensated for its costs in collecting the debt. The 1876 statute was intended to protect unsophisticated consumer debtors (see Young v. Nave, 135 Kan. 23 (1932)), but it applies across the board. There is no civil penalty for including an attorney's fee provision in a commercial contract; it is simply unenforceable.

In 1973, as part of the Uniform Consumer Credit Code (U3C), the Kansas legislature enacted K.S.A. 16a-2-507, which forbids attorney's fee clauses in consumer credit contracts. Although the U3C provision is redundant in the sense that K.S.A. 58-2312 is already on the books, violation of the U3C provision triggers creditor liability for a civil penalty and attorney's fees in favor of the consumer. U3C § 5-201(8). So we have a complete double standard in the U3C.

With enactment of the U3C, the Consumer Protection Act, and other consumer protection statutes, there seems little reason to keep the 1876 law on the books. Yet it still sits there. The legislative trend over the last 15 years has been to deregulate business and agricultural credit agreements, such as by freeing them from any limits on interest rates. See K.S.A. 16-207(f). Yet attorney's fee clauses continue to be prohibited. Although there is no empirical evidence, it seems likely that the prohibition against attorney's fees in both commercial and consumer credit contracts means an increase in the interest rate of all borrowers to cover that cost of collection. In this way, the borrowers who pay on time subsidize those who go into default. Repeal of K.S.A. 58-2312 and amendment of K.S.A. 16a-2-507 would eliminate this hidden subsidy. Debtors who default should pay.

Current Kansas law encourages forum-shopping and choice-of-law provisions in an effort to "locate" a credit transaction in a neighboring state such as Missouri. In addition, Kansas' restrictive rules on collection costs probably hurt in the economic development area, deterring national credit grantors from locating in the state.

The time has come to modernize the Kansas law on attorney's fees provisions in credit agreements, by repealing the 1876 statute and altering the U3C prohibition.

There are several different ways to reform the Kansas law in this area. (1) The most "pro-creditor" approach would be simple repeal of both K.S.A. 58-2312 and K.S.A. 16a-2-507. This would bring the law back to the American Rule, where the creditor can collect attorney's fees if they are provided for in the credit agreement. (2) The next alternative would be simple repeal of K.S.A. 58-2312 governing commercial transactions, with retention of the U3C provision governing consumer transactions. This would draw a very sharp line between commercial and consumer credit, on the ground that there is more limited "freedom of contract" in a consumer credit setting. (3) The third alternative is to repeal K.S.A. 58-2312 and modify the U3C provision so that attorney's fees are more closely regulated in consumer credit transactions without being prohibited. (4) The fourth alternative is to repeal K.S.A. 58-2312 and to replace it with a rule allowing recovery by the "prevailing party" in commercial transactions, but to leave the U3C provision as is. (5) The fifth alternative is to move to a "prevailing party" approach

for commercial transactions, and to amend the U3C so that attorney's fees are tightly regulated rather than prohibited.

The proposed legislation set forth at the end of this paper embodies alternative (3). This approach recognizes the distinction between commercial and consumer transactions, and the need to limit freedom of contract where consumer debtors are involved. The proposal retains K.S.A. § 16a-5-201(8), which awards attorney's fees to the debtor when the creditor violates the U3C. The proposed legislation does not cover areas of the law outside credit agreements. It is strictly limited to modifying the present rules under K.S.A. 58-2312 and K.S.A. 16a-2-507, both of which deal exclusively with attorney's fee provisions in credit agreements. There is no intent to change the rules governing collection of attorney's fees in tort actions or non-credit contract actions.

II.
CURRENT KANSAS LAW ON ATTORNEY'S FEES CLAUSES IS CAUSING GREAT CONFUSION IN THE COURTS

The two Kansas statutes prohibiting attorney's fees (K.S.A. 58-2312 and K.S.A. 16a-2-507) are creating substantial litigation, confusion, and tension in the relationship between federal and Kansas law.

Confusion in Interpreting the 1876 Law. K.S.A. 58-2312 flatly prohibits attorney's fee clauses in "any note, bill of exchange, bond or mortgage". The scope of this language is unclear. Would it cover a revolving charge account? A 30-day open account? An equipment lease with an option to purchase? A UCC security agreement? In Iola State Bank v. Biggs, 233 Kan. 450 (1983), the Kansas Supreme Court extended the statute to continuing guaranties of notes, even though the language needed to be stretched to reach that result. In Oak Park Investment Co. v. Lundy's, Inc., 6 Kan. App. 2d 133 (1981), the Kansas Court of Appeals said that the language does not cover a commercial real estate lease. Given these two cases, what other contracts are covered and what are excluded? Why should attorney's fees be recoverable under a commercial real estate lease but not a commercial real estate mortgage? We can expect continuing litigation on the scope of the prohibition, particularly because so many types of contracts contain attorney's fee provisions.

Confusion in Interpreting the U3C Provision. The 1876 statute is confusing enough, but the U3C prohibition has in the last several years generated even greater confusion in the courts and the lending community. In Halloran v. North Plaza State Bank, 17 Kan. App. 2d 840 (1993), the Kansas Court of Appeals dealt with a provision in a security agreement that authorized the lender to apply proceeds from the sale of collateral to attorney's fees "if permitted". The bank in that case argued that the phrase "if permitted" limited the impact of the clause, making it conditional, so that it was of no effect in a U3C state like Kansas. The court rejected the bank's argument, holding that the statutory prohibition was "unqualified" in nature. Moreover, the court concluded that the U3C penalizes inclusion of an attorney's fee provision regardless of whether the creditor actually collects it. In this case, there was no attempt by the bank to collect attorney's fees. The court concluded that the mere presence of the clause in the contract was enough to trigger civil penalties against the bank under the Kansas U3C.

The bank in Halloran argued that the Kansas U3C prohibition squarely conflicts with § 506(b) of the Bankruptcy Code, which allows an oversecured creditor to apply any surplus to attorney's fees, so long as they are provided for in the security agreement. The bank argued that this Bankruptcy Code provision preempts state law prohibitions on attorney's fees, particularly in its requirement that they can't be collected in bankruptcy unless they appear in the security agreement. To prohibit an attorney's fee clause under state law would conflict with the federal law grant of authority and frustrate the policy of the Bankruptcy Code to allow an oversecured creditor to get full recovery on its secured claim. The bank contended that the conditional attorney's fee clause was the only way to recognize the state prohibition, yet allow its use in bankruptcy. Moreover, the bank pointed to solid legislative history that federal law preempts conflicting state law on this point. See 124 Cong. Rec. 17406 (Oct. 6, 1978) ("If the security agreement between the parties provides for attorney's fees, it will be enforceable under [the Bankruptcy Code] notwithstanding contrary law...")

The case law supports the idea that the Bankruptcy Code preempts state law on attorney's fees. See, e.g., In re Hudson Shipbuilders, Inc., 794 F.2d 1051 (5th Cir. 1986). Moreover, the Kansas bankruptcy courts have concluded that attorney's fee provisions in security agreements are allowable under

§ 506(b) of the Bankruptcy Code notwithstanding the Kansas statutory prohibitions in the 1876 law and the U3C. In re American Metals Corp., 31 B.R. 229 (Bankr. D. Kan. 1983). See also Clark, The Law of Secured Transactions Under the Uniform Commercial Code, ¶ 6.01.

Because of the need to take advantage of the bankruptcy provision, creditors in Kansas have generally included in their contracts clauses allowing attorney's fees "to the extent permitted by law" or "to the extent permitted by the Bankruptcy Code", or "except as prohibited by law." Such "conditional clauses" are used frequently when a creditor has transactions in Kansas and in neighboring states that don't have such a prohibition. Many national form companies, offering their products to creditors in all states, use such conditional clauses as a matter of course. Even in Kansas, such clauses are inserted in the hope that the law will change.

Another Kansas Court of Appeals decision that conflicts with Halloran is Credit Union One of Kansas v. Stamm, Case No. 90-LA-408, an unpublished opinion decided in 1992. In that case, the court held that the attorney's fee language used by the credit union in its form credit agreement ("[Foreclosure costs] may include the cost of storing the property, preparing it for sale and attorney's fees to the extent permitted under state law or awarded under § 506(b) of the Bankruptcy Code") did not violate the Kansas U3C because of its conditional character. The Stamm case is currently under review by the Kansas Supreme Court.

So we have two completely conflicting decisions in Kansas, not to mention a conflict between a Kansas state court decision and a Kansas bankruptcy court decision. In the meantime, there are a number of other Kansas cases in the pipeline on the same issue. Some of these cases involve slight variations in the conditional language of the attorney's fee provision. As far as we can determine, Kansas is the only state in the country that is plagued by this type of litigation.

In response to Halloran, a number of Kansas creditors went so far as to send a "correction notice" to all their consumer debtors indicating that their conditional attorney's fee provision was never intended to be enforced in Kansas. With respect to future transactions, most creditors have deleted any reference to attorney's fees in their contracts, thereby completely losing the benefit of § 506(b) of the Bankruptcy Code. Creditors are uncertain whether they should delete conditional language from their commercial credit agreements, in light of Halloran. The entire matter has created mass confusion.

In order to put an end to this sorry state of affairs, Kansas law should be reformed to expressly authorize "to the extent permitted by law" attorney's fee provisions, in addition to authorizing limited attorney's fees provisions in consumer credit (and commercial) transactions.

Confusion in the Student Loan Program. The current prohibitions against attorney's fee clauses have also created confusion in collecting delinquent student loans under the Federal Student Loan Program. A federal statute (20 U.S.C. § 1091a(b)) states that, notwithstanding any state law to the contrary, a borrower who has defaulted on a student loan will be liable for reasonable collection costs, including attorney's fees. The federal regulations (34 CFR Part 682) require that collectors of these notes use "due diligence", including attempts to recover attorney's fees. However, in spite of this clear federal mandate, courts throughout Kansas routinely invoke the U3C prohibition against attorney's fees on consumer debts. So here we have another conflict between federal and state law, just as with bankruptcy under the Halloran case. We can expect additional federal loan programs that follow the student loan model, creating more conflicts between federal and state law in the future.

Confusion under the Uniform Commercial Code. Under § 9-504(1)(a) of the Uniform Commercial Code, collateral securing a debt can be sold and the proceeds applied to the costs of foreclosure, including attorney's fees "to the extent provided for in the agreement and not prohibited by law." In almost all states, a creditor foreclosing under Article 9 of the UCC can recover front-end costs including reasonable attorney's fees to compensate for the cost of foreclosure. But not in Kansas. The same conflict appears under § 9-506 of the UCC, dealing with redemption.

Confusion in Bank Credit Card Programs. Under current law, a federally insured commercial bank headquartered in another state may issue a credit card to a Kansas resident and include an attorney's fee provision that preempts the Kansas prohibitions. Greenwood Trust Co. v. Massachusetts, 971 F.2d 818 (1st Cir. 1992); 12 U.S.C. § 85. This is another example of federal law preempting conflicting state law. Although there are no reported Kansas cases so far, litigation on this preemption issue for interstate credit cards has come up in other states and is certain to plague Kansas in the future.

III.
THE PROHIBITION REGARDING CREDIT AGREEMENTS IS OUT OF LINE WITH THE TREND TOWARD RECOVERY OF ATTORNEY'S FEES IN KANSAS

The anti-attorney's fee rules in K.S.A. 58-2312 and K.S.A. 16a-2-507 stick out like a sore thumb when viewed in the context of other Kansas laws in this area and the historical trends. Two excellent law review articles discuss this topic. The first is a 1979 article in the Washburn Law Journal by Mark Furney, "Recovery of Attorney Fees in Kansas", 18 Wash. L.J. 535 (1979). The second is a 1984 article in the Journal of the Kansas Bar Association by Ron Leslie, "Recovery of Attorney Fees--An Historical Perspective", JKBA, Fall 1984, at p. 154.

Early on, Kansas adopted the American Rule, which denies the prevailing party attorney's fees unless expressly allowed by statute or contract. Stover v. Johnnycake, 9 Kan. 367 (1872). This put Kansas at odds with the English Rule, which allows attorney's fees to the prevailing party, even in the absence of any contractual provision. The American Rule still applies in Kansas to all contracts not involving credit transactions.

Yet almost from the beginning, the Kansas legislature was chipping away at the American Rule and moving toward the English Rule in some areas. The Leslie article, written in 1984, found 75 Kansas statutes allowing recovery of attorney's fees in litigation, usually at the discretion of the trial judge. Some of the statutes impose sanctions, including attorney's fees, for actions which courts consider frivolous. See, e.g., K.S.A. 60-2007. Other statutes award attorney's fees to particular classes of plaintiffs who prevail in various types of litigation. See, e.g., K.S.A. 16a-5-201, which gives attorney's fees to a consumer who shows that a creditor violated the U3C. Leslie put the 75 statutes into various substantive groups: civil procedure, consumer rights, domestic relations, motor vehicles, public utilities and common carriers, railroads, real estate, unfair commercial practices, and miscellaneous. A copy of his listing is set forth below. The common denominator of all these statutes is that the Kansas legislature made a policy decision to allow attorney's fees to be awarded in a wide variety of settings.

By contrast, the Furney article identifies only three statutes that prohibit attorney's fees: (1) The Uniform Landlord Tenant Act, K.S.A. 58-2547(a)(3), prohibits an attorney's fee provision in a residential real estate lease. (On the other hand, the Kansas Court of Appeals, in Oak Park Investment Co. v. Lundv's, Inc., 6 Kan. App.2d 133 (1981), held that an attorney's fee for the prevailing party was okay in a commercial real estate lease.) (2) The U3C, K.S.A. 16a-2-507, prohibits attorney's fee clauses in consumer credit contracts. (3) The 1876 statute, K.S.A. 58-2312, prohibits attorney's fee provisions in any note, bill of exchange, mortgage or bond. These three statutes stand in stark contrast to the general legislative treatment of attorney's fees.

What does this tell us? It says that Kansas upholds the American Rule allowing attorney's fee clauses in every type of contract except the three described above. In commercial transactions, K.S.A. 58-2312 is the only statute on the books in Kansas that rejects the American Rule and freedom of contract. In consumer transactions, the U3C prohibition is one of only two exceptions to the American Rule. In all three cases, the statute runs counter to the clear trend in Kansas toward allowing recovery of reasonable attorney's fees.

In the area of credit agreements, the Kansas legislature has refused to adopt the American Rule allowing attorney's fee clauses in private contracts. Instead, the two statutes in question completely tie the creditor's hands and reject freedom of contract. The present situation in Kansas is nicely summarized by Furney in his Washburn Law Journal article, at pp. 544-545:

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> The pattern and effect of these statutes is clear. Consumers, mortgagors, and commercial borrowers shall never pay an attorney fee in any transaction "evidenced by debt." The fee provisions also are entirely one-sided. If a creditor must sue, judgment on a valid debt will not include attorney expenses. However, a creditor violating the Uniform Consumer Credit Code shall pay an attorney fee.
>
> Is Kansas' stringent restriction on contractual freedom necessary? Further, is it wise public policy? The questions are relevant in two areas: consumer protection and general commercial law.
>
> Consumer advocates support Kansas' restriction. They contend allowing contractual debtor fee obligations would unfairly penalize debtors having legitimate defenses on the underlying transaction and unreasonably inflate the amount due upon default. Creditors argue generally higher interest rates result from passing such expenses on to innocent debtors. Mutuality rather than absolute denial of fees to creditors could resolve this conflict. By shifting emphasis from protecting debtors from all fee awards, to protecting debtors from unreasonable fee payments not reflecting services required, the interest of both debtors and creditors could be fairly compromised.
>
> There appears little rationale for limiting freedom of contract for fees in the commercial context. Presumably, bargaining power disparity and unconscionable conduct are not pervasive problems. Protection in the commercial context should focus on protecting debtors from paying exorbitant fees. Repeal of K.S.A. § 58-2312 should be considered. The statute may have outlived its usefulness. When it was passed in 1876 there was not a body of regulatory law protecting consumer interests and granting remedies for oppressive conduct [as there is now with the U3C, the Consumer Protection Act, and other consumer legislation]. Replacement legislation balancing debtors' protection from unreasonable fees and creditors' and society's interest in reduced default expenses is suggested.

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When viewed in historical context, in contrast to the American Rule governing most contracts, and against the background of other legislative activity in this area, the continued prohibition against attorney's fees in credit agreements does indeed stick out like a sore thumb. Moreover, as the Washburn Law Journal article points out, it is contrary to sound public policy.

[75 Kansas statutes permitting recovery of attorney's fees]

Statute	Date	Description
1. Civil Procedure.		
60-211	1982	Attorney willfully signs pleading without good grounds.
60-230	1963	Failure of a party to attend a deposition.
60-237	1963	Failure to allow discovery.
60-256(g)	1963	Use of affidavits in bad faith in summary judgment proceeding.
60-721	1978	Answer to a garnishment contraverted without good cause.
60-905(b)	1963	Posting of a bond to cover damages and attorney fees for a temporary injunction.
60-910(b)	1963	Motion to vacate permanent injunction not in good faith.
60-2007	1982	Court determines that an action, pleading, or component of a case was frivolous in nature.
61-1713	1969	Refusal to admit truth of facts or genuineness of documents under limited actions procedures.
61-2709	1979	To an appellee successful on an appeal from a small claims decision.
2. Consumer Rights.		
16a-5-201	1973	Consumer Credit Code violated by creditor.
16a-5-203	1973	Disclosure provisions of the Consumer Credit Code violated by the creditor.
50-634	1973	Supplier found guilty under the Consumer Protection Act, or where the consumer has brought a groundless action.
50-639	1973	Supplier disclaims implied warranties under Consumer Protection Act.
50-715	1973	Reporting agency willfully fails to comply with the provisions of the Fair Credit Reporting Act.
50-716	1973	Reporting agency negligently fails to comply with the provisions of the Fair Credit Reporting Act.
3. Domestic Relations.		
38-131	1971	Visitation rights by grandparents are denied.
38-1103	1970	Complaining witness in a paternity case prevails and has been represented by private counsel.
38-1307	1973	Moving party has selected a clearly inconvenient forum under the Uniform Child Custody Jurisdiction Act.

38-1308	1978.....	Jurisdiction under the uniform act declined by reason of conduct of the petitioner.
38-1315	1978.....	A party violates a custody decree of another state, making it necessary to enforce the decree in this state under the uniform act.
60-1610	1963.....	Fees to either party in a divorce action.
4. Insurance.		
40-256	1931.....	Insurance company refuses without just cause to pay a claim.
40-908	1927.....	Insurance company insuring against fire, tornado, lightning, or hail fails to pay insured.
40-1517	1927.....	Mutual hail insurance company fails to pay insured.
40-2004	1949.....	Unauthorized or foreign insurer fails to pay claim.
5. Labor Relations		
44-119	1897.....	Employer blacklisting.
44-831	1975.....	Right to work provisions violated.
6. Motor Vehicles.		
40-3111(b)	1974.....	Insurance company fails to make timely payments on P.I.P. benefits.
60-2006	1969.....	Automobile negligence case involving damages of less than $750.00
7. Public Utilities and Common Carriers.		
17-1917	1974.....	Failure of a public utility to move lines when requested.
66-176	1923.....	Utility or common carrier violating regulatory laws.
8. Railroads.		
66-165	1901.....	Unauthorized charges.
66-203	1905.....	Failure to supply railroad cars.
66-233	1885.....	Damages caused by fire.
66-259	1893.....	Failure to give bill of lading.
66-266	1898.....	Causing death to cattle in transit.
66-269	1905.....	Failure to allow owners or agents to accompany shipments of livestock.
66-295	1874.....	Death of livestock.
66-305	1911.....	Failure to pay damages upon demand.
66-310	1885.....	Refusal to build fence.
66-318	1909.....	Shipment delays.
66-522	1907.....	Confiscation or diversion of coal.
9. Real Estate.		
26-509	1972.....	Jury award exceeds appraisers' award in condemnation.

29-303	1868.....	Party failing to rebuild partition fence.
29-305	1868.....	Failure to erect or maintain assigned part of partition fence.
29-310	1868.....	Failure to divide land where a partition fence should be built.
29-404	1868.....	Failure to repair a partition fence.
55-202	1909.....	Failure to release an oil and gas lease within 60 days of forfeiture.
58-2257	1941.....	Failing to return real estate document in possession to rightful possessor.
58-2309a	1971.....	Failure to release mortgage when required.
58-3410	1973.....	Under Marketable Record Title Act against one slandering title to real estate.
60-1003(c)	1963.....	Against owners of land in a partition action.

10. Unfair Commercial Practices.

17-1268	1967.....	Selling securities in violation of law.
16-720(b)	1972.....	Pawn brokers refusing to redeliver stolen property on presentation of proper evidence of ownership.
34-229	1931.....	Surety on a warehouseman's bond fails to pay on demand.
41-701(4)	1974.....	Suppliers of alcoholic liquor, beer, or cereal malt beverage who fix the resale price.
50-108	1897.....	Against those involved in unlawful trusts, agreements, or other combinations in restraint of trade.
50-130	1899.....	Injunction violated relating to illegal futures dealings.
50-137	1887.....	Grain dealers and buyers who unlawfully agree to pool prices.
50-505	1957.....	Unfair practices involving dairy products.
50-801	1973.....	Violations of any section of Chapter 50 of Kansas Statutes Annotated.
58-3316(a)	1967.....	Selling subdivided lands in violation of the Uniform Land Sale Practices Act.
83-741	1961.....	Violation of dairy regulatory laws.
83-121a	1963.....	Using inaccurate or false weighing devices.
83-140	1905.....	Grain dealer underweighing grain.
84-7-601	1965.....	Bailee losing a warehouse receipt or bill of lading.

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11. Miscellaneous.

16-207(d)	1975.....	Lenders exceeding the maximum interest rate.
22-2518	1974.....	Unlawful interception of wire and oral communications.
40-3114	1977.....	Against employers, doctors, and hospitals, for failure to furnish required information to insurers.
42-389	1891.....	Requiring that illegal consideration be paid as a condition to a right to obtain water.
44-512a	1943.....	Against an employer failing to pay compensation to an injured workman when due under the worker's compensation law.

Note: Any Kansas contract other than a credit agreement may provide for attorney's fees, under the American Rule first embraced by the Kansas supreme court in 1872.

IV.
THE PROHIBITION REGARDING ATTORNEY'S FEES IN CREDIT AGREEMENTS IS OUT OF LINE WITH THE REST OF THE COUNTRY

Commercial Credit Transactions. Under the "American Rule" followed by most states, reasonable attorney's fees may be collected if allowed by (l) statute or (2) contract. With respect to commercial credit transactions such as business and ag loans, all states allow attorney's fee provisions in credit agreements except (l) Kansas (by statute), (2) Michigan (by old case law refusing to accept the American Rule), (3) Nebraska (by old case law), (4) North Dakota (by statute), (5) Ohio (by old case law), (6) South Dakota (by statute, though attorney's fees may be collected in real estate mortgage foreclosures), and (7) West Virginia (by old case law). See the attached "Rollcall of the States." So Kansas is one of only seven states that flatly prohibit attorney's fee provisions in commercial credit contracts such as promissory notes, security agreements and mortgages. Moreover, Michigan, Nebraska, Ohio and West Virginia have old judicial decisions that reject the American Rule, leaving Kansas as one of only three states in the country that has a statutory prohibition. In Oak Park Investment Co. v. Lundy's, Inc., 6 Kan. App.2d 133 (1981), the Kansas Court of Appeals made the point that attorney's fee provisions are not generally against public policy in Kansas; in the absence of a prohibitory statute, they will be upheld. The Oak Park case upheld an attorney's fee provision in a commercial real estate lease. In short, Kansas is in a tiny minority of states that prohibit attorney's fee clauses in commercial agreements by statute. The legislature imposed the prohibition when it enacted K.S.A. 58-2312 over 117 years ago. It is time for the legislature to lift it and return to the American Rule.

Consumer Credit Transactions. Research indicates that a large number of states regulate attorney's fee provisions in consumer credit contracts, even though they allow freedom of contract in commercial credit. But only in Iowa and Wisconsin does the consumer credit legislation flatly prohibit attorney's fees (in both of those states, attorney's fees provisions are permitted for business and agricultural credit transactions). See the attached "Rollcall of the States."

The consumer credit regulation around the country generally takes two forms: (1) in a number of states, attorney's fees may not be collected by a salaried employee of the creditor, and (2) in some states, the statutes impose a dollar or percentage threshold on transactions where attorney's fees can be collected. For example, Indiana prohibits attorney's fee provisions where the consumer loan has an original principal balance of $2700 or less. As another example, under the U3C as enacted in Colorado, attorney's fees are limited to a maximum of 15% of the unpaid balance of the debt. Regulation such as this seems reasonable.

Set forth below is a state-by-state summary of attorney's fee regulation, with emphasis on consumer credit transactions. The picture that emerges is that Kansas is out of the national mainstream.

Rollcall of the States

The following is a list of state lending laws permitting collection of attorneys' fees in consumer transactions:

Alabama	- Mini-Code, Sec. 5-19-10 - permitted for closed-end loans where amount financed is over $300 and open-end loans where unpaid balance exceeds $300, not to exceed 15% of the unpaid debt after default.
Alaska	- No prohibition against attorneys' fee provisions.
Arizona	- Consumer Loan Act, Sec. 6-656 - reasonable attorneys' fees assessed and fixed by the court are permitted.
	- Mortgage Bankers Law, Sec. 6-941 - reasonable attorneys' fees after default are permitted, by implication.
	- Consumer Lender Law, Sec. 6-674(A)(3) - reasonable attorneys' fees assessed and fixed by the court are permitted.
Arkansas	- Permitted, not to exceed 10% of principal plus accrued interest. Sec. 4-56-101.
California	- Consumer Finance Lenders Law, Secs. 24451, 24502, 24454(a) - permitted on loans of $5,000 or more. No limit.
Colorado	- Uniform Consumer Credit Code, Sec. 5-2-413 - maximum 15% of unpaid balance permitted if attorney is not salaried employee.
Connecticut	- Secondary Mortgage Loan Act, Reg. Sec. 36-239-15(i) - reasonable fees permitted.
	- Small Loan Law, Sec. 36-233b(c) - permitted on revolving loans only if the attorney is not a salaried employee, up to 15% of the amount of any judgment entered against the customer.
Delaware	- Licensed Lenders Law, Title 5, Secs. 2223, 2236 - reasonable fees permitted, provided the attorney is not a salaried employee of licensee.
D.C.	- Money Lenders; Licenses, Sec. 26.708 - permitted, but not to exceed 10% of the amount due in foreclosure.
Florida	- Usury Act, Sec 687.06 - permitted if reasonable; fee not exceeding 10% of principal is presumed reasonable.
	- Consumer Act, Sec. 516.031(3)(a)(5) - permitted, fees as determined by the court.

Georgia	- Industrial Loan Act, Sec. 7-3-15 - permitted for collection of contracts in default.
	- Interest and Usury Act, Sec. 7-4-2(a)(1)(A) - permitted.
Hawaii	- 25% limit. Sec. 607-17.
Idaho	- No prohibitions.
Illinois	- Usury Act, Ch. 17, Sec. 6406(a) - permitted.
	- Consumer Installment Loan Act, Sec. 5419(3) - permitted.
	- Financial Institutions Development Act, Sec. 7004 - permitted as a general charge if contained within the written agreement.
Indiana	- Uniform Consumer Credit Code, Sec. 24-45-3-514 - permitted, except for loans with a principal balance of $2,700 or less.
Iowa	- U3C Sec. 537.2507 - attorneys' fee provisions generally enforceable except for salaried employee of creditor. Flat prohibition in consumer credit transactions.
Kentucky	- Consumer Loans Act, Sec. 280.530(10) - reasonable attorneys' fees are permitted in connection with the collection of the loan.
	- Banking Act - Revolving Credit Plans, Sec. 287.750(3) - reasonable attorneys' fees are permitted, provided the attorney is not a salaried employee.
Louisiana	- Sec. 9:3534 - permitted, but not in excess of 25% of the unpaid debt after default.
Maine	- Consumer Credit Code, 9-A, Sec. 2-507 - reasonable fees permitted for consumer credit transactions, except for supervised loans, not to exceed 15% of the unpaid debt after default.
Marvland	- Credit Grantor Closed-end Provisions, Sec. 12-1011(a) - reasonable fees permitted.
	- Credit Grantor Open-end Provisions, Sec. 12-911(a) - reasonable fees permitted.
	- Consumer Loan Law, Sec. 12-307.1 - permitted with court costs, the total of which not to exceed 15% of the amount due. On loans of $2,000 or less, the court must set the amount of attorneys' fees.
Massachusetts	- No prohibitions.

Michigan	- All attorneys' fee provisions invalid. Curtis v. Mueller, 150 NW 847 (Mich. 1915).
Minnesota	- Industrial Loan and Thrift Company Act, Sec. 56.131.1(f)(6) - permitted for foreclosure.
	- No prohibitions.
Mississippi	- Loans, Sec. 75-67-121 - reasonable fees permitted for attorney investigating title.
	- No prohibitions.
Missouri	- Second Mortgage Loan Act, Sec. 408.233.5 - permitted if not handled by a salaried employee and not exceeding 15% of the unpaid amount due.
	- Consumer Finance Act, Sec. 408.120(6) - permitted if not handled by a salaried employee and not exceeding 15% of the amount due and payable.
	- No other prohibitions.
Montana	- Consumer Loan Business, Sec. 32-5-407 - reasonable fees permitted.
Nebraska	- No statute on point, but case law prohibits all attorneys' fee provisions. Dow v. Updike, 7 NW 857 (Neb. 1881).
Nevada	- Installment Loan and Finance Act, Sec. 675.365 - permitted for closed-end loans if the contract so provides.
New Hampshire	- Attorneys' Fees in Consumer Cases permitted, Chap. 361-C:1.
New Jersey	- Consumer Loan Act, A.B. 1194 - reasonable attorneys' fees are permitted as defined under the New Jersey Rules of Professional Conduct.
	- Secondary Mortgage Loan Act, Sec. 17:11A-46(g), 17:11A-53(c) - permitted, as provided in the note or loan agreement. The attorney must not be a salaried or commissioned employee of the licensee. Fees shall not exceed 15% of the first $500, 10% of the next $500, and 5% of the excess due.
New Mexico	- Bank Installment Loan Act, Sec. 58-7-6 - reasonable attorneys' fees are permitted in proceedings for collection.
	- Usury Law, Sec. 56-8-9 - reasonable attorneys' fees are permitted.

New York	- Banking Department Regulations, Part 80.8(f), (h) - reasonable attorneys' fees are permitted as follows: (1) actual fees charged to the lender by an outside attorney in connection with the closing are permitted, and (2) not in excess of 15% of the unpaid debt in the event of default if a mortgage is referred to an attorney who is not an employee for collection.
N. Carolina	- General Interest Law, Sec. 24-8 - permitted.
N. Dakota	- Attorneys' fee provisions void. Sec. 28-26-04.
Ohio	- No statutory prohibition, but case law prohibits attorneys' fee provisions. Miller v. Kyle, 97 NE 372 (Ohio 1911).
Oklahoma	- Uniform Consumer Credit Code, Secs. 3-514, 2-413 - permitted for credit sales if principal balance is more than $3,000. Fees may not exceed 15% of the unpaid debt and referral must be to an attorney not a salaried employee. No 15% or $3,000 limit for loans.
Oregon	- Consumer Finance Act, Sec. 725.340(4) - permitted if attorney is not licensee's salaried employee. - No other prohibitions.
Pennsylvania	- Consumer Discount Company Act, Sec. 6213(P) - permitted. - Secondary Mortgage Loan Act, Sec. 6609(a)(4) - permitted for attorneys licensed to practice in the Commonwealth. - No other prohibitions.
Rhode Island	- Small Loan Business, Sec. 19-25-28 - reasonable fees permitted, provided attorney is not a salaried employee of licensee. - Interest and Usury, Sec. 6-26-2(c) - permitted. - Secondary Mortgage Loans, Reg. 87-3(c) - permitted for foreclosures; maximum is $750 unless the court awards a greater amount. - No other prohibitions.
S. Carolina	- Consumer Protection Code, Secs. 37-3-514, 37-2-404 - permitted, however, loan agreements may not provide for attorneys' fees on loans with finance charges exceeding 18% where principal is $2,300 or less. Attorneys' fees may not exceed 15% of the unpaid balance and referral to an attorney may not be to a salaried employee.

S. Dakota	- All attorneys' fee provisions void (Sec. 15-17-10) except mortgage foreclosures.
Tennessee	- Industrial Loan and Thrift Companies Act, Sec. 45-5-403(6) - reasonable and actual fees permitted.
	- No prohibitions.
Texas	- Credit Code, Sec. 3:15(8), 4:01(7) - permitted, fees assessed by court.
Utah	- Consumer Credit Code, Sec. 70C-2-105 - reasonable fees permitted following default, provided the attorney is not a salaried employee of lender.
	- No other prohibitions.
Vermont	- No prohibitions.
Virginia	- Open-end Loan Law, Sec. 6.1-330.72 - permitted by general real estate sections for real estate loans.
	- No other prohibitions.
Washington	- Attorneys' fees generally permitted. If clause is included, fees will be awarded to prevailing party. Sec. 4.84.330.
West Virginia	- All attorneys' fee provisions void, by case law and statute. First National Bank of Pineville v. Sanders, 88 SE 187 (W. Va. 1916).
Wisconsin	- Consumer Act, Sec. 422.411 - permitted only with refinanced first or purchase money real estate loans with 12% or less interest rate and then fees may not exceed 5% of judgment or $100.

V.
THE SHAPE OF A PROPOSED BILL

The proposed bill set forth below would bring Kansas back into the mainstream and eliminate the confusion that now exists in the state regarding recovery of attorney's fees. It would change the law in Kansas in several important respects.

1. First, Section 3 would cleanly repeal K.S.A. 58-2312. This would allow recovery of reasonable collection costs (including attorney's fees) in commercial credit agreements if the agreement so provides. This generally codifies the American Rule for business and agricultural credit and brings Kansas into line with the other states. Collection costs could be recovered short of a lawsuit; they would not need to be court-awarded. For example, a creditor could take reasonable collection costs from foreclosure proceeds as authorized by UCC § 9-504(1)(a).

2. Second, under Section 1, consumer credit transactions would be handled differently. Based on the idea that many states regulate attorney's fee provisions in consumer credit transactions rather than outlaw them entirely, the proposed bill would follow that mainstream model. A consumer credit loan agreement or installment sales contract could provide for reasonable collection costs, including attorney's fees, but such a clause would be effective only if the unpaid balance of the debt at the time of default was over $1,000. This would prohibit collection of attorney's fees for small balances. The $1,000 figure was chosen to dovetail with the Kansas Small Claims Act, which allows recovery in small claims court (without lawyer involvement) if the amount at issue is $1,000 or less. K.S.A. 61-2701. No allowable fees could be collected by a salaried employee of the original creditor or its assignee; this is also a typical limit found throughout the country. The proposed bill speaks of "reasonable costs of collection (including but not limited to court costs, attorney's fees and collection agency fees)." This language is deliberately broad; it is modeled after the 1991 amendment to K.S.A. 60-2610 allowing fees on collection of short checks; it would authorize recovery of fees by collection agencies which purchase defaulted consumer credit contracts on a percentage basis with the creditor. Nothing in the proposal is intended to affect the private arrangement reached between a collection agency (or collection attorney) and the creditor.

The uniform version of the Consumer Credit Code limits fees to 15% of the unpaid debt after default. The proposal rejects this percentage approach in favor of the $1,000 unpaid balance test, which seems fairer and easier to apply. In effect, Kansas would shift from "Alternative A" of the U3C (no attorney's fees) to "Alternative B" (limits on attorney's fees). Most of the other U3C states, such as Colorado, Oklahoma, Indiana and Wyoming, have enacted variations of "Alternative B", so that Kansas would be more in the mainstream of consumer protection legislation.

The proposal would create a kind of "prevailing party" approach for consumer credit transactions in Kansas: The creditor could collect reasonable fees if the unpaid balance at the time of default exceeded $1,000, while the consumer could collect his or her fees as part of a civil penalty if the creditor violated one of the provisions of the U3C. K.S.A. 16a-5-201(8).

The second-to-last sentence of Section 1 of the proposed bill continues the rule that a provision in violation of the limits imposed is unenforceable by the creditor, but it goes on to state that it is not a violation of the U3C to use conditional language such as authorizing "costs of collection including a reasonable attorney's fee to the extent permitted by law". The purpose of this sentence is to overrule Kansas cases like Halloran. Although the proposed statute would generally be prospective only, the last

sentence is intended to give the anti-Halloran provision some retroactive effect by stating that it is declaratory of existing law. This approach was successfully used in 1978 in response to decisions misconstruing Section 9-402(1) of the UCC. See K.S.A. 84-9-402a.

3. Third, under Section 2 of the proposed bill, the statutory "notice of right to cure" set forth at K.S.A. 16a-5-110 would be expanded by adding a sentence warning the consumer of possible liability for collection costs. This additional disclosure has been inserted into the proposal on the suggestion of the Kansas Consumer Credit Commissioner.

Set forth below is a draft of the proposed bill:

****

SENATE BILL NO. _____

By Committee on Judiciary

AN ACT concerning costs of collection including attorney's fees; authorizing recovery thereof, with limits in consumer credit transactions including disclosure requirements; amending K.S.A. 16a-2-507 and K.S.A. 16a-5-110 and repealing the existing sections; and repealing K.S.A. 58-2312.

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

Section 1. K.S.A. 1993 Supp. 16a-2-507 is hereby amended to read as follows:

16a-2-507. Costs of collection. With respect to a consumer credit transaction, the agreement may provide for the payment by the debtor of reasonable costs of collection (including but not limited to court costs, attorney's fees and collection agency fees), provided that (a) the costs of collection may not include attorney's fees or collection agency fees if the unpaid principal balance of the consumer credit transaction at the time of default is $1,000 or less, and (b) such costs were not incurred by a salaried employee of the creditor or its assignee. A provision in violation of this section is unenforceable, provided that it is not a violation of this section to state in an agreement evidencing a consumer credit transaction that costs of collection (including attorney's fees and collection agency fees) may be recovered "to the extent permitted by law" or similar language. The preceding sentence is declaratory of the meaning of this section as originally adopted.

Section 2. K.S.A. 1993 Supp. 16a-5-110 is hereby amended to read as follows:

16a-5-110. Notice of consumer's right to cure. (1) After a consumer has been in default for ten (10) days for failure to make a required payment in a consumer credit transaction payable in installments, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when he delivers the notice to the consumer or delivers or mails the notice to the address of the consumer's residence (subsection (6) of section 16a-1-201).

(2) The notice shall be in writing and shall conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made, a brief description of the credit transaction, the consumer's right to cure the default, the amount of payment and date by which payment must be made

to cure the default, and the consumer's possible liability for attorney's fees and collection agency fees. A notice in substantially the following form complies with this section:

_____

(Name, address, and telephone number of creditor)

_____

(Account number, if any)

_____

(Brief description of credit transaction)

_____ IS THE LAST DAY FOR PAYMENT

(Date)

_____ IS THE AMOUNT NOW DUE

(Amount)

You are late in making your payment(s). If you pay the **AMOUNT NOW DUE** (above) by the **LAST DAY FOR PAYMENT** (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law. If the unpaid balance of your debt is more than $1,000, the costs of collection you may be obligated to pay could include reasonable attorney's fees and collection agency fees.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

Section 3. K.S.A. 1993 Supp. 16a-2-507, K.S.A. 16a-5-110 and K.S.A. 58-2312 are hereby repealed.

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

****

KANSAS

Office of CONSUMER CREDIT COMMISSIONER

Joan Finney
Governor

Wm. F. Caton
Commissioner

SENATE JUDICIARY COMMITTEE

NOVEMBER 18, 1993

TESTIMONY OF BILL CATON

Thank you for the opportunity to testify this morning. I am Bill Caton, Consumer Credit Commissioner. I believe the proposed changes to the Kansas Uniform Consumer Credit Code have merit and should be considered by your committee.

I have had the opportunity to interact with the consumer credit industry regarding the recovery of reasonable attorney fees in certain collection activities. They have allowed me to recommend changes which I feel are necessary to notify and protect the consumer. These recommendations are reflected in the proposed legislation and I am comfortable that consumers affected by this legislation will have adequate notice and protection.

I would like to point out that the number of consumers adversely affected by this proposed change is minute compared to the number I believe will be positively affected. Presently, lenders are not willing to make loans to deserving but marginal consumers whose finances indicate their loan carries additional risk of having to collect the debt through litigation. There are many, many honest, hard working people in this category today who will sacrifice to pay their bills before allowing them to deteriorate to the point an attorney is collecting for the creditor. And, they are often denied credit because of the very few who are not concerned about repaying their debts.

I believe these proposed changes will induce creditors to implement positive lending policies and practices that will benefit the vast majority of consumers in Kansas.

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JAYHAWK TOWER, 700 S.W. JACKSON, SUITE 1001 / TOPEKA, KANSAS 66603 / (913) 296-3151

LAW OFFICES OF
Buck, Bohm & Stein, P.A.

Stewart M. Stein's Testimony to Kansas Senate Judiciary Committee

Our law firm concentrates on creditor's rights litigation. We represent student loan guarantee organizations, credit card issuers, automobile finance companies, banks, mortgage companies, and commercial credit grantors throughout the entire State of Kansas. Our client base consists of companies that are located both inside and outside of the State of Kansas. Credit grantors are generally sophisticated in their lending procedures and are cognizant of the fact that in the commercial arena Kansas is the only state that does not allow parties to contract for the payment of attorney's fees. In the consumer context, they are aware that when they grant credit to individuals in Kansas, not only are they prohibited from contracting for the payment of attorney's fees, but if they use a form document that is acceptable in the other 49 states they could be penalized by our courts and their debtors could be granted appropriate fees and sanctions.

I indicated that we are active in the collection of student loan accounts. The United States Congress was cognizant of the anomaly in our law when it enacted legislation dealing with the collection of student loan accounts and provided for the assessment of reasonable collection costs, even when they were not permitted under state law. Specifically, Title 20 Section 1992(b) reads:

> Notwithstanding any provision of state law to the contrary (1) a borrower who has defaulted on a loan made under this subchapter shall be required to pay, in addition to other charges specified in this subchapter,

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reasonable collection costs.....should it be necessary for federal law to pre-empt state law on this subject.

Kansas has an opportunity to be a regional center for national credit granting institutions. Johnson County is now the home of J. C. Penney's Regional Credit Offices and Monogram Credit Services, which is the consumer credit arm of General Electric Corporation. This company issues private label credit cards for many retail organizations throughout the country. Recently, Citicorp became interested in moving their regional processing and collection center, which will employ over 1,000 individuals, to Johnson County. They, instead, decided to build their new facility in Kansas City, Missouri. Is it possible that their decision to locate elsewhere was due, in part, to the uniqueness of our law that requires them to use a different contract form when dealing with Kansans than with customers located elsewhere in the United States?

The proposed legislation that I speak in favor of will allow the parties to fairly contract with one another for the payment of attorney's fees. The ultimate grant of those fees will be made by a judge. Under this system, no one will be forced to pay unreasonable charges. I cannot conceive of an instance where two parties to a credit dispute will not be able to amicably resolve their differences because of the potential imposition of an attorney's fee. In reality, the potential for the assessment of the attorney fee will result in more amicable resolutions of credit disputes which will relieve our courts of the necessity of dealing with these matters.

TESTIMONY IN SUPPORT OF
PROPOSED BILL CONCERNING COSTS OF COLLECTION

My name is Bruce Ward and I am a member of the Collection Attorneys Association of Wichita, Kansas. Also in attendance today is Don Astle, a member of the association.

The Collection Attorneys Association is a group of twenty-five attorneys who practice law in Wichita primarily in the area of debt collection law. Our clients include large and small businesses, providers of professional services, including lawyers, doctors and hospitals, and financial institutions which are doing business in the State of Kansas. We assist these clients in collecting money owed to them.

Our association supports the introduction and passage of the proposed bill. As we understand the proposed bill, it will allow our clients to enter into agreements with their customers which provide that upon failure by the customer to pay what is owed, the customer will pay the costs of collection in addition to the cost of the goods or services sold and provided.

This is a positive step for the businesses, providers of professional services, and financial institutions of this state. Most of them to collect the accounts that are owed to them, contract with collection agencies and attorneys for collection services. These agencies and attorneys retain as compensation for their services a percentage of the amounts collected. The balance is returned to the client. As can be seen, the client is never able to recover one hundred percent of any account because of the portion retained by the agency or attorney.

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If the proposed bill becomes law, the client would then have a chance to recover a higher percentage of each delinquent account. Less cost would have to be written off and passed on to all customers in general in the form of higher prices. Instead, the delinquent customer would pay a greater share of the collection costs now borne by those who pay their bills on time.

The State and Federal government have by special legislation the right to recover their collection costs from delinquent taxpayers and borrowers. The proposed bill would in effect extend this same right to private enterprises.

The businesses, providers of professional services, and financial institutions of this state are the primary users of the civil division of our court system throughout the state. Our clients pay a substantial amount each year in court costs and filing fees. For instance, in Sedgwick County for 1992 the Civil Department of our District Court collected $875,000 in court costs and filing fees.

The money recovered by our clients through collection activity is returned to them to help them continue to offer jobs to the people of this state, to pay taxes to this state, and generally to keep their doors open.

Our association believes that this bill will benefit all businesses, providers of professional services, and financial institutions in the State of Kansas. We would urge the introduction and passage of this bill. Thank you.

TESTIMONY OF LARRY R. RUTE
KANSAS LEGAL SERVICES, INC.
(913) 233-2068

SENATE JUDICIARY COMMITTEE

SENATOR JERRY MORAN, CHAIRPERSON
THURSDAY, NOVEMBER 18, 1993

I would like to thank the Chairperson and members of the Judiciary Committee for the opportunity to appear before you today to discuss SB 244 and SB 364. I am the Litigation Director and Deputy Director for Kansas Legal Services (KLS). As you are probably aware, KLS is a private, non-profit corporation dedicated to providing free or low-cost legal services to low and moderate income Kansans throughout the state. A significant portion of our clientele receive representation and advice to resolve consumer credit related issues. On behalf of the low-income clients whom we represent, I wish to testify in opposition to SB 244 and SB 364.

Both SB 244 and SB 364 would direct the court to award to the prevailing party in a civil action based on a contract reasonable attorney's fees. SB 244 would apply in any contract action. SB 364 would apply only if the specific contract in issue provided for the award of attorney's fees. This bill would repeal K.S.A. 16a-2-507, which prohibits such agreements in contracts subject to the provisions of the Kansas Uniform Consumer Credit Code.

These bills would create a major exception to the American Rule that litigants generally pay their own attorney's fees unless otherwise provided for by statute or contract. Such an exemption should not be made unless it is supported by a clear public policy. It is not at all clear to me why litigants whose disputes involve contractual issues should be treated differently from litigants whose disputes involve other areas of the law, and I would urge the Committee to proceed cautiously in this area.

I believe these bills would be harmful to the interests of low-income consumers. Although I do not object in principle to allocating the true costs of collecting debt to those who occasion such costs, I do not believe these bills are drawn to serve that purpose in a fair manner. I believe that the effect of these bills would be to inhibit or deter debtors from defending in court against payment of disputed debts. Although both bills provide for the award of attorney's fees to the "prevailing party", they do not define that term. A debtor who has defenses and/or counterclaims which may substantially reduce, but not totally offset, a creditor's claim, will be hesitant to go to trial to assert them if the result, even if he or she is successful, is the imposition of an attorney's fee award. These provisions will be a powerful tool in the hands of creditors to coerce settlements favorable to them.

Moreover, attorney's fees in these cases often do not reflect the actual costs of collection. Many of these cases are resolved by a default judgment

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without trial, involving little more than the sending of a form collection letter and the filing of a form pleading, yet attorney's fees are routinely in excess of actual attorney costs. This results in a penalty to the debtor for defaulting on the contract. We are seeing this now in cases pursuant to K.S.A. 60-2611 to collect upon insufficient funds checks. For example, we recently represented an 83 year old man against whom a default judgment for $424.42 was taken based on an insufficient funds check for $4.28. $270 of this amount was for attorney's fees, although it appears that very little attorney time went into the case.

The FTC has found that default on a consumer credit contract is usually caused by something beyond the debtor's immediate control. The leading cause is unemployment or other loss of income, 48 Fed. Reg. 7747 (March 1, 1984). Making a defaulting debtor liable for attorney's fees in addition to the underlying debt is not likely to reduce the incidence of default. However, it will make it even more difficult for the debtor to get on his/her feet again financially. In many cases, the fee award will be uncollectible. I believe the greatest benefit of these provisions to creditors will probably not be the awards themselves, but the threat of an award to achieve a favorable settlement by inducing a debtor to forego asserting potential defenses and counterclaims.

Although SB 364 is slightly preferable to SB 244 in that it only applies to litigation involving contracts with attorney's fees clauses, I do not expect this provision to make much difference, since consumer credit contracts are generally form adhesion contracts, and no arms length bargaining takes place with respect to issues such as attorney's fees.

Finally, if the Committee does decide to recommend one of these bills, I would suggest that it be amended to require that reasonable attorney's fees be measured by the value of the actual legal services performed by an attorney for the party entitled to the award. I believe the Committee should also consider lowering the maximum interest rate which may be charged on consumer credit contracts, if it believes that fee awards would actually enable creditors to recoup the costs of collection from those who cause them, as there would be no need to include them in the interest rate as a cost of credit.

Thank you for you consideration.

TESTIMONY concerning the collection of attorneys fees in consumer loan contracts

Presented to the
SENATE JUDICIARY COMMITTEE

NOVEMBER 18, 1993

by the
KANSAS CREDIT UNION ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Jerel Wright, Governmental Affairs Director for the Kansas Credit Union Association representing 175 state-chartered and federally-chartered credit unions in Kansas. Kansas credit unions with total assets of 1.9 billion dollars in assets provide financial services to over 550,000 credit union members.

Kansas Credit Unions support the passage of the proposed amendments to K.S.A. 16a-2-507 and the repeal of K.S.A. 58-2312.

I testify today in support of amending K.S.A. 16a-2-507 to allow a party to recover attorneys fees in collection actions. Kansas credit unions believe that the state of Kansas should recognize the need to make an individual debtor responsible for reasonable attorneys fees incurred as a result of the debtors failure to repay a debt.

While some justify the current prohibition on collection of attorneys fees in collection of consumer loan contracts as a reasonable cost of doing business, credit unions challenge this law as an expense which is taking money directly out of the pockets of credit union members who repay their obligations as agreed. The money spent on attorneys fees is money which would otherwise be paid to credit union members as dividends or through additional financial services.

Credit unions see this cost as an unreasonable burden to place on honest, conscientious credit union members who must now pay the tab for those who are unwilling to fulfill their promises. Credit unions strongly object to the burden of attorneys fees just as strongly as they object to the lenient treatment Kansas debtors receive in bankruptcy proceedings.

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Adoption of the proposed amendment to allow for recovery of attorneys fees in consumer credit transactions with an unpaid balance of more than $1,000.00 sends a clear message to debtors that they will be directly responsible for their failure to repay their debts.

For these reasons, we urge you to adopt the proposed amendments.

Thank you Mr. Chairman, for the opportunity to share our comments. I stand for questions at your direction.

Kansas-Nebraska League of Savings Institutions

Jeffrey D. Sonnich, Vice-President

Suite 512
700 Kansas Avenue
Topeka, Kansas 66603
(913) 232-8215

November 18, 1993

TO: Senate Judiciary Committee
FROM: Jeffrey Sonnich
RE: Recovery of creditor attorney's fees

The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to express our support for revisions in the Uniform Consumer Credit Code that would allow creditors to recover the costs of attorney's fees in civil actions brought against debtors who are subject to loans under default.

Savings institutions are full service lenders, but the primarily focus is on 1-4 family mortgage lending. In 1992 Kansas' twenty-nine savings institutions provided in excess of $3.54 billion in credit for homeownership in Kansas.

While the savings industry has been and will continue to be successful at meeting the home lending needs of Kansans, certain statutory and regulatory impediments exist that increase costs to lenders and reduce availability of credit.

Among these impediments are, increased regulatory intervention, lengthy redemption periods, and the inability for mortgage lenders to recover attorney's fees that result from judicial foreclosures. In 1992 Kansas' savings institutions totaled foreclosures of $29.6 million and as of June 1993 that number has already reached $10.2 million. As a result the industry incurred in excess of $806 thousand in legal fees. These increased costs are passed on to borrowers via increased interest rates.

A statutory repeal of K.S.A. 58-2312 and amendments to the Uniform Consumer Credit Code to allow recovery of reasonable attorney's fees would begin the process of removing these lending barriers.

The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to express our views and respectfully requests the Senate Judiciary Committee consider favorable passage of the proposed legislation in the upcoming session.

Jeff Sonnich
Vice President

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The Kansas Association of Financial Services

George Barbee, Executive Director
Jayhawk Tower, 700 SW Jackson, Suite 702
Topeka, KS 66603-3740
913/233-0555 Fax: 913/357-6629

STATEMENT TO THE SENATE JUDICIARY COMMITTEE

Mr. Chairman and members of the committee, the consumer finance company members of the Kansas Association of Financial Services (KAFS) are appreciative to you for giving serious consideration to the attorney fee issue relative to consumer loans. These companies have approximately 100 consumer finance service offices in the state of Kansas, offering valuable financial services in the area of consumers loans such as automobiles, appliances, small business line of credit loans and second mortgage loans to name a few.

KAFS is part of the coalition being represented by Mr. Barkley Clark. We are in total support of the solution proposed by Mr. Clark to correct the problem in Kansas that prohibits attorney fee clauses in consumer credit agreements. You have accurately been told that Kansas is one of a very few states that prohibit attorney fee clauses because of an 1876 statute and a redundant U3C clause that even imposes creditor liability if such a clause is included in a loan agreement.

There are presently 75 Kansas statutes that allow collection of attorney fees on many other subjects. It is time to add one more and follow the lead of the majority of other states that already allow the collection of attorney fees in credit agreements. It is time to introduce a solution by repealing K.S.A. 58-2312 and modifing the U3C as suggested by Mr. Clark. There is no decision or intent to change any rules regarding collection of attorney fees in tort actions or non-credit contract actions.

You are now aware of the confusion created by the Kansas statutes, federal law and court interpretations and the two court cases; Halloran and the Hudson Shipbuilders, Inc. We urge you to put this confusion to rest by acting favorably on our suggested legislation.

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The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

November 18, 1993

TO: Senate Committee on Judiciary

FROM: Kathleen A. Taylor, Associate General Counsel
Kansas Bankers Association

RE: **Proposed Legislation Allowing for Attorney's Fee Clauses in Credit Agreements**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee on the matter of amending Kansas law as it relates to attorney's fee clauses in commercial and consumer credit agreements. This proposal is drafted to address the confusion and inconsistency that exists in our state laws in two areas:

1. Commercial credit agreements. It repeals the current prohibition on contracting for attorney fees in any note, bill of exchange, bond or mortgage (KSA 58-2312). In effect, this will allow parties to a business or agricultural transaction to provide for the recovery of the reasonable costs of collection by mutual agreement.

2. Consumer credit agreements. The Uniform Consumer Credit Code would be amended to prohibit the collection of reasonable collection costs for those consumer transactions with an unpaid balance on the debt at the time of default of $1,000 or under. For those unpaid balances over $1,000, the consumer credit loan or installment sales agreement could provide for reasonable collection costs. The provision in the Code allowing the consumer to collect attorney fees as part of a civil penalty if the creditor violates a provision of the Code is not changed.

The proposal also contains language that addresses confusion created by conflicting case law as described below.

Many states allow promissory notes to contain a particular clause providing for the recovery of attorney fees by the bank. In fact, the Uniform Commercial Code does provide that the first item to be paid out of the proceeds from a sale of collateral is "reasonable attorneys' fees and legal expenses incurred by the secured party" unless such action is prohibited by other state law. Accordingly it would be legal to contract for attorney fees in connection with the collection of a loan that is secured by personal property.

However, this 20th century law is pre-empted in Kansas by a 19th century law first adopted in 1876 (K.S.A. 58-2312), which prohibits a bank from contracting for the payment of attorney fees in any note, bill of exchange, bond or mortgage. In addition, there is a provision in the Uniform Consumer Credit Code which prohibits an agreement involving a consumer credit transaction from providing for the payment by the consumer of attorney fees. (However, the UCCC does allow a debtor to recover attorney fees from a **creditor** found to be in violation of the provisions of the Code.)

Senate Judiciary 11/18/93

over, please

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484

attachment 19-1

Regarding the prohibition against contracting for attorney fees under the UCCC, there is potential conflict under the Federal Bankruptcy Code. Section 506(b) of the Bankruptcy Code allows a creditor to collect attorney's fees, if that creditor is oversecured and if attorney's fees are provided for in the security agreement. So that, should a creditor which has lent money to a borrower for consumer purposes ever find itself in an oversecured position in Bankruptcy, that creditor must have a provision in the security agreement allowing for attorney fees in order to be so entitled to their collection.

In order to preserve this right in Bankruptcy, many creditors used clauses in their security agreements that authorized the creditor to apply the proceeds from the sale of collateral to their attorney's fees "if permitted by law". There is a pair of decisions in the Kansas Court of Appeals that have addressed the issue of whether such a clause is in violation of the UCCC prohibition against contracting for attorney's fees. Two panels of the Court have split on this issue and it is now being heard by the Kansas Supreme Court. The last two sentences of Section 1 of the proposed legislation resolve this issue in a way that preserves the rights of the creditor in Federal Bankruptcy Court.

The law as it exists in Kansas is grossly unfair to the creditor and is just one more factor which all creditors must consider when determining the costs of credit to borrowers. The Bank Management Committee of the Kansas Bankers Association commissions an annual study of bank facts and figures. One of the areas studied in the past five years is of the legal fees paid by banks for outside counsel. From 1988 through 1992, the total annual amount for legal fees paid by all Kansas banks has ranged from $6.7 million to $12 million.

We truly believe that it is time for the Legislature to review this antiquated law, and we believe this proposed legislation is the most fair way of addressing the issue.

MEMORANDUM

DRA

Kansas Legislative Research Department

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November 17, 1993

JUVENILE JUSTICE POLICY ISSUES

1. Should the committee recommend legislation to make it illegal for a juvenile to be in possession of a handgun? A gun replica?

2. Should adults furnishing handguns to juveniles be charged with a crime?

3. Should a state law be enacted to make it a crime to permit access of a loaded gun to a juvenile?

4. Should battery against a youth center officer or employee be made a more serious crime?

5. Should Kansas enact an intermediate adult sanctions system like Colorado to deal with juveniles sentenced as adults for convictions of violent crimes?

6. Should the ability to try juveniles as adults be expanded to include more crimes for 14 and 15 year olds or for juveniles of any age? In other words, should Kansas make it easier to try more juveniles as adults?

7. Should all intention killing crimes be excluded from the juvenile code?

8. Should the minimum juvenile age be raised to 12?

9. Should the Secretary of Corrections be required to segregate juveniles tried and convicted as adults from other inmates until the juvenile reaches a certain age?

10. Should a recommendation be made to provide an intermediate juvenile facility for juveniles adjudicated for less serious crimes be established so youth centers may be reserved for only felony type offenders?

11. Should the ability of judges to sentence certain juveniles to youth centers be restricted to only those adjudicated of committing certain more serious crimes?

12. Should disposition in a boot camp be allowed for certain juvenile offenders?

13. Should youth centers be placed under DOC?

14. Should the Youth Center at Beloit include both male and female offenders?

15. Should a jail term of up to 30 days be allowed as a condition of probation or probation violation for offenders 18 at the time of disposition?

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16. Should jail of up to one year be permitted for juveniles 18 or more at the time of disposition?

17. Should the law be clarified to insure the juvenile code covers violations of city ordinances or county resolutions and that these offenses may be prosecuted in district court?

18. Should a warrant be issued for juveniles who fail to appear at court?

19. Should a warrant be issued for juveniles who escape from court ordered placement?

20. Should the requirement of the closest living relative attending a disposition hearing be repealed?

21. Should court services officers be allowed to take juveniles into custody pending a hearing when the juvenile appears to represent a danger to self or others?

22. Should the juvenile code be amended to require notice to parents within 12 hours of taking a child into custody or detention?

23. Should all juvenile official file records be open to the public? Currently, official file records are open for those juveniles 16 or over.

24. Should K.S.A. 38-1633 be amended to clarify that a juvenile has a right to decline to testify in proceedings?

25. Should parents be made responsible for restitution for juvenile crimes?

26. Should parents be required to participate in drug or alcohol treatment, other counseling?

27. Should the juvenile code provide for the appointment of special advocates for juveniles?

28. Should all community corrections programs be required to have a juvenile component?

29. Should juveniles adjudicated of certain crimes other than alcohol and drug violations now covered have their ability to get a driver's license restricted or revoked?

30. Should truancy laws be amended to include five or more unexcused absences?

31. Should the compulsory education law be extended to age 18?

32. Should all juvenile cases be converted into a child in need of care case when the juvenile is determined to be mentally incompetent?

33. Should a cabinet level agency be established to handle juvenile matters?

34. Should added judges be created or assigned from current positions to deal with juvenile crime?

35. Should 18-year-olds and older be placed in separate facilities?

36. Should adjudication as a juvenile offender for a felony offense be made a predicate crime for a list of other crimes?

CLUSTER 3: WORKING WITH JUVENILE OFFENDERS: HELP FOR TROUBLED KIDS AND THEIR FAMILIES WHILE PROVIDING FOR PUBLIC SAFETY

A. INTRODUCTION

Kansas communities are clearly looking for increased control of youth who they believe threaten property or personal safety. This expectation includes a belief that intervention may also prevent youthful offenders from repeating their behavior and from entering the adult prison system. It is this belief that is the basis of a juvenile system different from the adult corrections system.

Kansas historically has emphasized institutional and residential treatment in responding to juvenile offenders. Last year 39% of juvenile offenders in the custody of the department spent some time in one of the four state youth centers. As a result, Kansas has one of the highest incarceration rates of juveniles in the country, ranking higher than 42 other states. Yet continuing public frustration with juvenile offenders produced several bills in the last legislative session which would have resulted in even larger numbers of incarcerated youth. There is ample evidence, however, which suggests the current approach is not working for many youths: one year after their release from the Youth Center at Atchison, 50% of youths are back in one of the youth centers or adult facilities. A fundamentally different approach is needed.

Alternative responses in other states have centered around the development of family-based

interventions at the community level. Some of these programs have been able to successfully maintain large numbers of previously incarcerated youth in their community without compromising public safety. The specific form of the services varies. The basic themes, however, are fairly consistent:

- Objective **classification systems** to determine program placement
- **Intensive supervision** with strict rules and accountability
- **Flexible funding mechanisms** which enable staff to be more responsive to the needs of individual youth and families
- Linkages and **coordination** of all community resources
- Transition and **long term structure** for youth returning to the community from residential programs
- Longer stays with **more intensive services** at the state youth centers and private residential facilities for those youth who need such care

Kansas has not followed the trend toward emphasizing objective classification and community and family-based structure and services. Long waiting periods and complex admitting procedures have characterized access to private residential treatment programs, further creating dependence on the youth centers as a relatively easy way to get quick placement of a juvenile offender. Existing youth center and area office resources have been overutilized to the point that conditional release revocations have risen to substantially higher levels.

The strategies and actions that follow promise a more effective way for SRS and other systems to think about and address the dual needs of juvenile offenders and their families

while still achieving public safety.

B. BASIC STRATEGY

The Department is proposing a major shift in addressing the needs of juvenile offenders in the custody of SRS and their families and communities. At the heart of this strategy are several beliefs:

- Many incarcerated juvenile offenders could be served in their communities without compromising public safety – if an adequate level of supervised structure was provided
- Flexibility in case planning and in funding mechanisms are necessary to enable SRS and provider agencies to be more responsive
- Communities have many untapped resources that could be helpful in maintaining youths in their families and in the communities
- Youths who must be incarcerated or otherwise removed from their community will make a stronger transition back to family and community when on-going support and structure are provided

To achieve these ends the Department is proposing that a variety of new programs serving up to 600 youths be developed in four key communities across the state, including the creation of day reporting centers for the purpose of keeping juvenile offenders out of residential care when possible, and as a means for returning them to their communities more quickly when removal is necessary. Implementation is proposed over a three year period and substantial planning, research and new resources will be needed.

Taken together, these strategies will produce a new service delivery system with an emphasis on family and community-based programming. At the same time institution safety, security and programming will be improved. Most importantly, only the most

serious offenders will be incarcerated or placed in residential care and they will receive the services they need to allow a successful transition back to their community.

These initiatives will bring Kansas more in line with the intent of the Kansas Juvenile Offender Code of providing "such care, custody, guidance, control and discipline, preferably in the juvenile's own home, as will best serve the juvenile's rehabilitation and the protection of the society."

In order to achieve these outcomes the Department proposes a series of initiatives that will require broad support if they are to be achieved. The Department believes that much of the detailed planning needed can be completed prior to the start of the next fiscal year.

C. PROPOSED INITIATIVES

1. Create a Day Reporting System Enabling 600 Offenders to Be Supervised in Their Communities and Remain at Home With Their Families

About 200 youth adjudicated for misdemeanors were placed in state youth centers in FY 1991 and 450 were placed in foster care. These youths could be more effectively served in the community through day reporting centers. Day reporting centers provide 16-18 hour a day intensive supervision of juvenile offenders to monitor and manage their offending behavior while maintaining them in their home and community. This approach encourages the normal development of school and work performance, the development of positive relationships, good use of leisure time and responsible decision making for an offense-free lifestyle. This program emphasizes community linkages, frequent personal contacts, the use of existing program space and very intensive supervision in the community. Program costs are based on the level IV rate. Emphasis is shifted to family service and supervision

and guidance of young people rather than providing a place to sleep. These services could be provided through a combination of Department staff and purchase of services from private agencies.

The 300 program slots to serve 600 youth would be distributed between the areas that currently make the greatest use of youth center and residential resources.

a. **Administrative Action**

- Develop data based classification system and incorporate into the Kansas Administrative Regulations
- Develop program procedures, training, information system and program quality assurance protocol
- Design a pilot program to test viability of the program and to make modifications
- Develop flexible funding mechanisms
- Develop service contracts with individual youths and providers of services

b. **Statutory Action**

- Amend the dispositional section of Kansas Statutes (KSA 38-1663) to limit judicial commitments to A, B, C felony type offenses

c. **Budget Action**

FY	FTE	State General Funds	Federal Funds	Total
1993	None	$1,491,938		$1,491,938
1994	None	2,983,876		2,983,876
1995	None	1,491,938		1,491,938

- Develop community-based programs, including day reporting centers and tracker programs on a pilot basis during FY 1993 (75 slots) with expansion in FY 1994 (150 slots) and FY 1995 (75 slots). After initial start-up, it is anticipated that two youth will be served in each slot each year

d. **Expected Outcomes**

- Maintain hundreds of previously incarcerated youths in their communities and with their families without compromising public safety
- Promote the normal development and functioning of youth in the program
- Provide transition and long-term structure for youth returning to their family and community from residential care
- Strengthen families
- Increase intensive services for those who appropriately remain at youth centers
- Increase safety for youth and staff at the youth centers
- Downsize the youth centers by 106 beds with reduction of annual admission from 610 to 357 after community services are in place

2. Create Seventy New Specialized Residential Transition Beds

Many youths who are at the youth centers can be returned safely to the community but a brief period of transition between the centers and home is often necessary. Seventy specialized residential transition beds in Kansas City, Salina, Great Bend and Garden City are proposed to address this need.

a. **Administrative Action**

- Develop an agenda for improved transition

- Identify current beds in the system that could be converted to this specialized purpose
- Recruit providers and develop contracts
- Reconfigure youth center staff patterns to allow for supervision of youth during transition

b. Statutory Action

- Explore methods of allowing for juvenile offender youth to be returned to youth centers without violating their due process rights

c. Budget Action

FY	FTE	State General Funds	Federal Funds	Total
1993	None	$1,578,990		$1,578,990
1994	None			
1995	None			

- Expand the transitional beds available to serve youth leaving the youth centers

d. Expected Outcomes

- Increase successful return of youth to their families and communities
- Decrease recidivism

3. Add a Family Treatment Component at Each Youth Center

Once incarcerated, juvenile offenders have little contact with their families even though most will return home. Many of these families experience problems that must be addressed

if the youth are to return successfully. In response each youth center will develop a family treatment component which will enable youth center staff to work closely with the youth and his family. Programs will provide an average of 2 days of treatment each month for 250 families, some at the youth center and some in the family's home and community.

a. Administrative Action

- Develop procedures and flexible funding mechanisms
- Recruit and hire staff
- Train staff in family systems and program procedures and implement program

b. Statutory Action

- None

c. Budget Action

FY	FTE	State General Funds	Federal Funds	Total
1993	10 Social Wk. IIs -YCAT* 7 Social Wk. IIs -YCAA 4 Social Wk. IIs -YCAB 2 Social Wk. IIs -YCAL	$1,551,315		$1,551,315
1994	None			
1995	None			

- Develop and implement family treatment program in each youth center to serve 250 families per year statewide

* Youth Center At Topeka *Youth Center At Atchison
* Youth Center At Beloit *Youth Center At Larned

d. Expected Outcomes

- Increase the number of youths able to live successfully in their communities
- Reduce recidivism rate
- Increase quality and effectiveness of youth center services

4. Enhance Staff Coverage, Security and Emergency Response Capability at the Youth Centers

A secure environment at each youth center is essential to the safety of residents, staff and the community. Presently there is insufficient staff to provide additional security and double coverage for resident quarters. Current radio systems are obsolete, often unworkable and limited in quantity, greatly diminishing their effectiveness during emergencies. Enhanced security staffing at the Youth Center at Atchison and at the Youth Center at Topeka together with replacement of the radio communication system at all three free standing youth centers will better protect residents, staff and the community.

a. Administrative Action

- None

b. Statutory Action

- None

c. Budget Action

FY	FTE	State General Funds	Federal Funds	Total
1993	11 YSS* Is -YCAB 24 YSS Is -YCAA 10 YSS Is -YCAT	$1,217,380		$1,217,380
1994	None			

1995 None

* Youth Service Specialist I's

- Replace and upgrade radio systems at YCAA, YCAB, and YCAT. Provide low band system from YCAT to YCAL
- Ensure adequate security and double coverage at YCAA, YCAB, YCAT. YCAL already has double coverage

d. Expected Outcomes

- Reduce injuries to staff
- Increase safety for community and residents
- Reduce the number of runaways
- Increase program flexibility

5. Provide Training and Assistance to Address the Needs of Special Youth Center Populations

Three special populations at the youth centers deserve particular attention. These are youth who have been victims of sexual and physical abuse, those who exhibit explosive or predatory behavior and those affiliated with gangs. Without special attention their special needs will not be met and they will return to the community with the same problems. Special training, technical assistance and consultation for youth centers and community programs to meet the treatment and management needs of these youth will be developed.

a. Administrative Action

- Design program
- Identify resources
- Develop training plans and disseminate across the system

- Support national participation, leadership and technology transfer
- Provide coverage for staff training

b. Statutory Action

- Change confidentiality statutes to allow sharing of information between agencies and jurisdictions

c. Budget Action

FY	FTE	State General Funds	Federal Funds	Total
1993	None	$27,000	$63,000	$90,000
1994	None			
1995	None			

- These funds provide for training, travel, technical assistance and consultation
- For youth centers, area offices, and contract providers

d. Expected Outcomes

- Increase program effectiveness
- Reduce recidivism

6. Downsize the Capacity of the Four Youth Centers

Too many Kansas juvenile offenders are being incarcerated. The Department believes that serious and repeat offenders often require a youth center. But many of the young people placed in the youth centers have not committed serious offenses and are neither dangerous to the community or to themselves.

A recent study by the Center for the Study of Social Policy found that Kansas was 8th in the nation for incarcerating juveniles. The Department proposes to downsize its youth center capacity from 463 beds to 357 beds as the community-based services are developed.

a. Administrative Action

- Institute a classification system based on offense, chronicity and age at first adjudication which would be used to decide program placement
- Implement day reporting system
- Plan and initiate downsizing

b. Statutory Action

- Limit judicial commitments to Class A, B or C felony type offenses

c. Budget Action

- At the time of downsizing a budget decision will need to be made to redistribute staff for safety and security or to decrease authorized head count

d. Expected Outcomes

- Shift program from an institution to a community focus
- Increase safety for students, staff and community

FELONY CRIMES
SORTED ALPHABETICALLY BY STATUTE DESCRIPTION

Statute	Description	F/M	Class	P/N	Leve
21-3604	Abandonment of child; involves child <16 yoa	F	E	P	8
21-3609	Abuse of a child; involves child <18 yoa; intentional torture, cruelly beating, etc.	F	C	P	5
21-3756	Adding dockage or foreign material to grain	F	E	N	9
59-2121(a)	Adoption; Knowingly/Intentionally Receiving/Accepting Excessive Fees	F	E	N	U
New Section	Aggravated abandonment of a child; involves child <16 yoa resulting in great bodily harm	F	E	P	5
21-3719	Aggravated arson; no substantial risk of bodily harm	F	B	P	6
21-3719	Aggravated arson; substantial risk of bodily harm	F	B	P	3
21-3410	Aggravated assault	F	D	P	7
21-3411	Aggravated assault on law enforcement officer	F	C	P	6
21-3414(a)(1)(A)	Aggravated battery - intentional, great bodily harm	F	C	P	4
21-3414(a)(1)(B)	Aggravated battery - intentional, bodily harm	F	C	P	7
21-3414(a)(1)(C)	Aggravated battery - intentional, physical contact	F	C	P	7
21-3414(a)(2)(A)	Aggravated battery - reckless, great bodily harm	F	C	P	5
21-3414(a)(2)(B)	Aggravated battery - reckless, bodily harm	F	C	P	8
21-3415	Aggravated battery on LEO - intentional, great bodily harm (see 21-3414a1A)	F	B	P	3
21-3415	Aggravated battery on LEO - intentional, bodily harm or physical contact (see 21-3414a1B/C)	F	B	P	6
21-3716	Aggravated burglary	F	C	P	5
21-3506(a)(1)	Aggravated criminal sodomy; sodomy with a child <14 yoa	F	-	P	2
21-3506(a)(2)	Aggravated criminal sodomy; causing a child <14 yoa to engage in sodomy with a person or animal	F	-	P	2
21-3506(a)(3)	Aggravated criminal sodomy; sodomy with person who does not consent; overcome by force, etc.	F	-	P	2
21-3810(a)	Aggravated escape from custody; escaping while held in lawful custody upon a felony, etc.	F	E	N	8
21-3810(b)	Aggravated escape from custody; escape is facilitated by the use of violence or threat of violence	F	E	P	6
21-3814	Aggravated failure to appear	F	E	N	10
21-3825	Aggravated false impersonation	F	E	N	9
21-3603(a)(1)	Aggravated incest; Marriage to person <18 yoa, who is a known relative	F	-	P	7
21-3603(a)(2)(A)	Aggravated incest; Otherwise lawful sexual intercourse or sodomy with relative ≥16 yoa, but <18 yoa	F	-	P	5
21-3603(a)(2)(B)	Aggravated incest; Lewd fondling and touching described in 21-3503 with relative ≥16 yoa, but <18 yoa	F	-	P	7
21-3504(a)(1)	Aggravated indecent liberties w/child; ≥14 yoa, but <16 yoa; sexual intercourse	F	-	P	3
21-3511(a)	Aggravated indecent solicitation of a child; <14 yoa to commit or submit to unlawful sexual act	F	D	P	6
21-3511(b)	Aggravated indecent solicitation of a child; <14 yoa, inviting, etc. to enter secluded place	F	D	P	6
21-3829	Aggravated interference with conduct of public business	F	D	P	6
21-3422a(b)	Aggravated interference with parental custody	F	D	P	7
21-3833	Aggravated intimidation of a witness or victim	F	E	P	6
21-3611(a)	Aggravated juvenile delinquency; adjudicated child ≥16 yoa running away, escaping from SRS facility	F	E	N	9
21-3421	Aggravated kidnapping	F	A	P	1
21-3427	Aggravated robbery	F	B	P	3
21-3518	Aggravated sexual battery; intentional touching, without consent, who is ≥16 yoa; force, fear, etc.	F	D	P	5
21-3726	Aggravated tampering with a traffic signal	F	E	N	7
21-3405a	Aggravated vehicular homicide - REPEALED	F	-	P	-
21-4202	Aggravated weapons violation; violation of 21-4201(a)(1) through (a)(5) or (a)(9)	F	E	N	9
21-4202	Aggravated weapons violation; violation of 21-4201(a)(6), (a)(7), or (a)(8)	F	D	N	8
21-3812(a)	Aiding a felon	F	E	N	8
21-3812(b)	Aiding a person charged as a felon	F	E	N	[illegible]
21-3811	Aiding an escape	F	E	N	[illegible]
21-3433	Aircraft piracy - REPEALED	F	-	P	-
21-3713	Altering a legislative document	F	E	N	[illegible]
47-0421	Animals; Unlawful Branding or Defacing of Brands	F	U	N	1
21-3718	Arson; damage resulting in loss of ≥ $50,000	F	C	N	[illegible]
21-3718	Arson; damage resulting in loss of ≥ $25,000, < $50,000	F	C	N	6
21-3718	Arson; damage resulting in loss of < $25,000	F	C	N	7
21-3406	Assisting suicide	F	E	P	[illegible]
21-3401	Attempted murder in the first degree (21-3301)	F	-	P	1
21-3417	Attempted poisoning - REPEALED	F	-	P	-
21-3815	Attempting to influence a judicial officer	F	E	N	[illegible]
9-2012	Banking; Embezzlement; Intent to defraud	F	C	N	[illegible]
9-2010	Banking; Insolvent Bank Receiving Deposits	F	U	N	1
9-2002	Banking; Making False Reports of Statements	F	D	N	[illegible]

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Felony Crimes
Sorted Alphabetically by Statute Description

Cite	Description	F/M	Class	P/N	Level
3004	Banking; Swear Falsely; Perjury in a felony trial	F	D	N	7
3004	Banking; Swear Falsely; Perjury other than in a felony trial	F	E	N	9
3413(a)(2)	Battery against a correctional officer	F	E	P	7
3601	Bigamy	F	E	N	10
3428	Blackmail	F	E	N	7
3901	Bribery	F	D	N	7
3715(a)	Burglary; building used as a dwelling	F	D	P	7
3715(b)	Burglary; building not used as a dwelling	F	D	N	7
3715(c)	Burglary; motor vehicle, aircraft, or other means of conveyance	F	E	N	9
4405	Commercial bribery	F	E	N	8
4304	Commercial gambling	F	E	N	8
3807(b)	Compounding a felony crime	F	D	N	7
3755(c)	Computer crime; loss of ≥ $25,000	F	E	N	9
3755(c)	Computer crime; loss of ≥ $500, but < $25,000	F	-	P	2
3401	Conspiracy to murder in the first degree (21-3302)	F	C	N	U
0633	Contract; Investment Certificates; Unlawful receipt of commission	F	C	N	U
0634	Contract; Investment Certificates; Unlawful receipt/possession of company property	F	C	N	U
0635	Contract; Investment Certificates; Unlawful acts pertaining to books/records	F	C	N	U
0640	Contract; Investment Certificates; Unlawful Acts or Omissions	F	E	P	8
3612(a)(4)	Contributing to a child's misconduct; sheltering or concealing a runaway child	F	D	P	7
3612(a)(5)	Contributing to a child's misconduct; causing, encouraging child <18 yoa to commit a felony	F	E	N	9
3817	Corrupt conduct of a juror	F	D	N	7
3519	Counties; Water Districts; fraudulent claims of $25,000 or more	F	D	N	9
3519	Counties; Water Districts; fraudulent claims of at least $500, but less than $25,000	F	-	P	-
3407	Criminal abortion - REPEALED	F	D	N	7
3720	Criminal damage to property; damage of property ≥ $25,000	F	E	N	9
3720	Criminal damage to property; damage of property ≥ $500 but < $25,000	F	E	N	9
4111(b)(2)	Criminal desecration; same; loss of ≥ $500, but < $25,000	F	D	N	7
4111(b)(2)	Criminal desecration; same; loss of ≥ $25,000	F	E	N	9
4111(b)(3)	Criminal desecration; same; loss of ≥ $500, but < $25,000	F	D	N	7
4111(b)(3)	Criminal desecration; same; loss of ≥ $25,000	F	E	N	9
4111(b)(4)	Criminal desecration; same; loss of ≥ $500, but < $25,000	F	D	N	7
4111(b)(4)	Criminal desecration; same; loss of ≥ $25,000	F	-	P	-
3606	Criminal desertion - REPEALED	F	E	N	8
4219(a)	Criminal discharge of a firearm at unoccupied dwelling	F	D	P	7
4219(b)	Criminal discharge of a firearm at occupied dwelling or vehicle	F	C	P	5
4219(c)	Criminal discharge of a firearm at occupied dwelling or vehicle resulting in bodily harm	F	D	N	9
4209a	Criminal possession of explosives	F	D	N	8
4204(a)(2)	Criminal possession of firearm; poss. of firearm w/barrel <12" by person convicted of felony w/in 5 yrs	F	D	N	8
4204(a)(3)	Criminal possession of firearm; poss. of firearm by person convicted of felony w/in 10 yrs	F	-	P	3
3505(a)(2)	Criminal sodomy; sodomy with a child ≥14 yoa, but <16 yoa	F	-	P	3
3505(a)(3)	Criminal sodomy; causing child ≥14 yoa, but <16 yoa to engage in sodomy with a person or animal	F	E	P	9
3419	Criminal threat	F	E	N	9
3729	Criminal use of a financial card; money, services, etc. w/in 7 day period ≥ $500, but < $25,000	F	D	N	7
3729	Criminal use of a financial card; money, services, etc. w/in 7 day period ≥ $25,000	F	E	P	8
3731	Criminal use of explosives	F	E	N	9
4201(a)(6)	Criminal use of weapons; possessing any device, etc., used to silence the report of any firearm	F	E	N	9
4201(a)(7)	Criminal use of weapons; possessing, etc., shotgun w/barrel less than 18"; automatic weapons	F	E	N	9
4201(a)(8)	Criminal use of weapons; possessing, etc., cartridge w/plastic coated bullet that has core of <60% lead	F	E	N	10
3830	Dealing in false identification documents	F	E	N	8
4306	Dealing in gambling devices	F	E	N	9
3749(b)(2)	Dealing in pirated recordings; ≥7 audio-visual recordings or ≥100 sound recordings w/in 180 days	F	D	N	4D
4127b(a)	Depressants, stimulants, hallucinogenics, anabolic steroids; Possession; second and subsequent	F	C	N	3D
4127b(b)	Depressants, stimulants, hallucinogenics, anabolic steroids; Sale, offer for sale	F	D	N	4D
4127b(c)	Depressants, substances in K.S.A. 65-4113; Sale, possession with intent to sell, deliver, etc. to child <18 yoa	F	B	N	2D
4127b(d)	Depressants, stimulants, hallucinogenics, anabolic steroids; Sale, etc. w/in 1,000' of school property	F	E	N	9
3712	Destroying a written instrument				

Felony Crimes
Sorted Alphabetically by Statute Description

Statute	Description	F/M	Class	P/N	Level
8-1567(f)	Driving Under Influence of Alcohol or Drugs - third or subsequent conviction	F	-	N	9
8-0287	Driving while a habitual violator	F	E	N	9
8-0262(a)	Driving while suspended-third or subsequent conviction	F	E	N	9
65-4141	Drugs; Arranging sale/purchase using communication facility	F	D	N	8
65-4127g	Drugs; Depressants, stimulants or hallucinogenic drugs - REPEALED	F	-	N	-
65-4127f	Drugs; Opiates, opium, narcotic drugs or amphetamine/methamphetamine - REPEALED	F	-	N	-
65-4155(d)	Drugs; Representation noncontrolled substance is controlled; causing delivery to child <18 yoa, etc.	F	E	N	9
65-4153(c)	Drugs; Sim controlled substances/paraphernalia; Deliver, or cause to be delivered, to child <18 yoa	F	E	N	9
65-4159	Drugs; Unlawfully manufacturing a controlled substance; third and subsequent offense	F	B	N	1D
65-4159	Drugs; Unlawfully manufacturing a controlled substance; second offense	F	B	N	2D
65-4159	Drugs; Unlawfully manufacturing a controlled substance; first offense	F	B	N	3D
25-2418	Elections; Bribe acceptance by an election official	F	D	N	7
25-2417	Elections; Bribery of an election official	F	D	N	7
25-2428	Elections; Destruction of election supplies	F	E	N	9
25-2429	Elections; Destruction of election papers	F	E	N	9
25-2409	Elections; Election bribery	F	D	N	7
25-2412	Elections; Election forgery	F	E	N	8
25-2420	Elections; Election fraud by an election officer	F	E	N	10
25-2411	Elections; Election perjury	F	E	N	9
25-2421	Elections; Election suppression	F	E	N	10
25-2423	Elections; Election tampering	F	E	N	8
25-2431	Elections; False impersonation of a voter	F	E	N	9
25-2414	Elections; Possessing false or forged election supplies	F	E	N	9
25-2426	Elections; Printing and circulating imitation ballots	F	E	N	10
25-2422	Elections; Unauthorized voting disclosure	F	E	N	10
25-2425	Elections; Voting machine fraud	F	E	N	10
25-4414	Electronic/electromechanical voting system fraud	F	E	N	10
21-3509	Enticement of a child - REPEALED	F	-	P	-
21-3754	False warehouse records or reports - REPEALED	F	-	N	-
8-1568(b)	Fleeing or eluding a law enforcement officer - third or subsequent conviction	F	E	P	9
21-3710	Forgery	F	E	N	8
21-3735	Fraudulent release of a security agreement - REPEALED	F	-	N	-
21-3610b	Furnishing alcoholic beverages to a minor for illicit purposes; child <18 yoa	F	E	P	9
21-3707	Giving a worthless check: loss of < $500, if in previous five yrs. offender convicted two or more times	F	E	N	9
21-3707	Giving a worthless check; loss of ≥ $500 but < $25,000	F	E	N	9
21-3707	Giving a worthless check; loss of ≥ $25,000	F	D	N	7
21-3753	Grain embezzlement - REPEALED	F	-	N	-
34-0295	Grain Storage; Negotiation of receipt for encumbered grain with intent to defraud	F	E	N	10
34-0293	Grain Storage; Unlawful issuance of receipt for warehouseman's grain	F	E	N	10
21-3708	Habitually giving a worthless check - REPEALED	F	-	N	-
21-3514	Habitually promoting prostitution - REPEALED	F	-	P	-
65-3441(b)	Hazardous Wastes; Violation of unlawful acts included in paragraph 11, subsection (a)	F	E	N	10
65-3441(c)	Hazardous Wastes; Knowingly violates unlawful acts included in paragraphs 1-11, subsection (a)	F	C	N	6
65-2861	Healing Arts; False swearing	F	E	N	9
65-2859	Healing Arts; Filing false documents	F	E	N	8
21-3734	Impairing a security interest; value of ≥ $25,000	F	D	N	7
21-3734	Impairing a security interest; value of ≥ $500, but < $25,000	F	E	N	9
21-3602	Incest	F	E	P	10
21-4105	Incitement to riot	F	D	P	8
21-3503(a)(1)	Indecent liberties w/child; child ≥14 yoa, but <16 yoa; lewd fondling or touching	F	-	P	5
21-3503(a)(2)	Indecent liberties w/child; child ≥14 yoa, but <16 yoa; soliciting to engage in lewd fondling, etc.	F	-	P	5
21-3504(a)(2)	Indecent liberties w/child; ≥14 yoa, but <16 yoa; lewd fondling or touching	F	-	P	4
21-3504(a)(3)	Indecent liberties w/child; <14 yoa; lewd fondling or touching	F	-	P	3
21-3510(a)(1)	Indecent solicitation of a child; ≥14 yoa & <16 yoa to commit or submit to unlawful sexual act	F	-	P	7
21-3510(a)(2)	Indecent solicitation of a child; ≥14 yoa & <16 yoa, inviting, etc. to enter secluded place	F	-	P	7
21-4308	Installing communications facilities for gamblers	F	E	N	8
40-0247	Insurance agent/broker failure to pay premium to company; loss of ≥$25,000	F	D	N	7

Felony Crimes
Sorted Alphabetically by Statute Description

Statute	Description	F/M	Class	P/N	Level
40-0247	Insurance agent/broker failure to pay premium to company; loss of <$500, previous conv. w/in 5 yr	F	E	N	9
40-0247	Insurance agent/broker failure to pay premium to company; loss of ≥$500, but <$25,000	F	E	N	9
21-3422(c)	Interference with parental custody in all other cases	F	E	P	10
21-3404	Involuntary manslaughter	F	D	P	5
21-3420	Kidnapping	F	B	P	3
44-0619	Labor Act, Violations	F	U	N	10
41-0405	Liquor; Warehouses; False Reports & Unlawful Removals	F	U	N	10
74-8717	Lottery; Forgery of lottery ticket	F	D	N	8
74-8719	Lottery; Unlawful purchase of lottery ticket; second or subsequent offense	F	D	N	9
74-8718	Lottery; Unlawful sale of lottery ticket; second or subsequent offense	F	D	N	9
21-3711	Making a false writing	F	D	N	8
21-3910	Misuse of public funds	F	D	N	8
21-3401	Murder in the first degree	F	A	P	Offgrid
21-3402(a)	Murder in the second degree (intentional)	F	B	P	1
21-3402(b)	Murder in the second degree (reckless)	F	B	P	2
21-3750(b)(2)	Nondisclosure of source of recordings; ≥7 audio-visual or ≥100 sound recordings w/in 180 days	F	E	N	9
21-3605	Nonsupport of a child or spouse	F	E	N	10
21-3808(b)	Obstructing legal process or official duty in the case of a felony, or resulting from parole, etc.	F	E	N	9
21-4214	Obtaining a prescription only drug by fraudulent means; second or subsequent offense	F	D	N	9
21-4215	Obtaining a prescription only drug by fraudulent means for resale	F	C	N	6
21-3757	Odometers; unlawful acts	F	E	N	9
55-0157	Oil & Gas; Cementing in of surface casing	F	E	N	10
55-0904	Oil & Gas; Disposal of salt water	F	E	N	10
55-0156	Oil & Gas; Protection of water prior to abandoning well	F	E	N	10
65-4127a(a)	Opiates, Opium or Narcotic Drugs; Possession; first offense	F	C	N	4D
65-4127a(b)	Opiates, Opium or Narcotic Drugs; Sale, etc.; first offense	F	C	N	3D
65-4127a(c)	Opiates, Opium or Narcotic Drugs; Sale, etc.; third and subsequent offense	F	A	N	1D
65-4127a(c)	Opiates, Opium or Narcotic Drugs; Sale, etc.; second offense	F	B	N	2D
65-4127a(d)	Opiates, Opium or Narcotic Drugs; Poss. w/intent to sell, sale, etc. w/in 1,000' of school property	F	B	N	2D
25-4612	Optical scanning equipment fraud	F	E	N	10
74-8810(j)	Parimutuel Racing; Prohibited Acts (i)(1) through (i)(15)	F	E	N	8
21-3805(b)	Perjury; false statement is made upon the trial of a felony charge	F	D	N	7
21-3805(b)	Perjury; false statement made in a cause, matter or proceeding other than the trial of a felony charge	F	E	N	9
21-3905	Permitting a false claim; ≥ $25,000	F	D	N	7
21-3905	Permitting a false claim; ≥ $500 but < $25,000	F	E	N	9
21-3748	Piracy of recordings	F	E	N	9
21-3717	Possession of burglary tools - REPEALED	F	-	N	-
21-3714	Possession of forgery devices - REPEALED	F	-	N	-
21-3803	Practicing criminal syndicalism - REPEALED	F	-	N	-
21-3904	Presenting a false claim; ≥ $500 but < $25,000	F	E	N	9
21-3904	Presenting a false claim; ≥ $25,000	F	D	N	7
21-4301a	Promoting obscenity to minors; second or subsequent offense	F	D	P	8
21-4301	Promoting obscenity; second or subsequent offense	F	E	P	9
21-3519	Promoting sexual performance by a minor - REPEALED	F	-	P	-
58-3304	Property; Sale of Unregistered Sub-Divided Land	F	U	N	10
58-3315	Property; Uniform Land Sales Practices Act	F	U	N	10
21-3513(b)	Prostitution; Promoting prostitution when prostitute is <16 yoa	F	D	P	6
21-3513(b)	Prostitution; Promoting prostitution when prostitute is ≥16 yoa, second or subsequent conviction	F	E	P	7
21-4401	Racketeering	F	D	N	7
21-3502(a)(1)	Rape; sexual intercourse with a person who does not consent; overcome by force, fear, etc.	F	B	P	2
21-3502(a)(2)	Rape; sexual intercourse with a child <14 yoa	F	-	P	2
21-3426	Robbery	F	C	P	5
17-5811	Savings & Loans; Accepting Payment When Capital Impaired	F	U	N	10
17-5412	Savings & Loans; Declaration of Dividends	F	U	N	10
17-5812	Savings & Loans; Fraudulent Acts	F	U	N	10
17-1264	Securities; Filing false or misleading statements (Penalties provided in 17-1267	F	E	N	7
17-1254	Securities; Unlawful acts (Penalties provided in 17-1267)	F	E	N	7

Statute	Description	F/M	Class	[illegible]	Level
17-1253	Securities; Unlawful offers, sale, purchase (Penalties provided in 17-1267)	F	D	N	6
17-1255	Securities; Unlawful sale of unregistered securities (Penalties provided in 17-1267)	F	E	N	7
21-3802	Sedition	F	D	N	7
21-3516(a)(1)	Sexual exploitation of a child; employing, etc. child <16 yoa to engage in sexually explicit conduct	F	D	P	5
21-3516(a)(2)	Sexual exploitation of a child; possessing visual medium of child <16 yoa engaging in such conduct	F	D	P	5
21-3516(a)(3)	Sexual exploitation of a child; guardian permitting child <16 yoa to engage in such conduct	F	D	P	5
21-3516(a)(4)	Sexual exploitation of a child; promoting performance of child <16 yoa to engage in such conduct	F	D	P	5
21-3401	Solicitation to murder in the first degree (21-3303)	F	-	P	3
21-4406	Sports bribery	F	E	N	9
75-4228	State Departments; Liability of Treasurer & Director of A&R	F	U	N	10
21-4408	Tampering with a sports contest	F	E	N	9
79-3834b	Taxation; Cereal Malt Beverages; Penalties	F	U	N	10
79-5204	Taxation; Drugs; Evidence of Tax Payment	F	U	N	10
79-3228e	Taxation; Income Tax, Penalties & Interest	F	U	N	10
21-3704	Theft of services; loss of ≥ $500 but < $25,000	F	E	N	9
21-3704	Theft of services; loss of ≥ $25,000	F	D	N	7
21-3745	Theft of telecommunications services - REPEALED	F	-	N	-
21-3701	Theft; loss of < $500, if in previous five yrs. offender has been convicted two or more times	F	E	N	9
21-3701	Theft; loss of ≥ $25,000	F	D	N	7
21-3701	Theft; loss of ≥ $500, but < $25,000	F	E	N	9
21-3742(c)	Throwing objects from bridge or overpass; resulting in injury to a pedestrian	F	E	P	7
21-3742(d)	Throwing objects from bridge or overpass; resulting in injury to a passenger of vehicle	F	D	P	6
50-0122	Trade; Bucket Shops	F	U	N	10
50-0123	Trade; Transactions Declared to be Gambling & Criminal	F	U	N	10
50-0124	Trade; Transmitting Messages for Pretended Purchases or Sale	F	U	N	10
50-0125	Trade; Unlawful Acts	F	U	N	10
21-3826	Traffic in contraband in a correctional institution	F	E	N	6
21-3801	Treason	F	A	P	Offgrid
21-3801	Treason; Attempted (21-3301)	F	A	P	1
21-3801	Treason; Conspiracy (21-3302)	F	A	P	2
21-3801	Treason; Solicitation (21-3303)	F	A	P	3
21-4315(b)	Unlawful conduct of dog fighting	F	E	N	10
21-3838	Unlawful disclosure of authorized interception of wire	F	E	N	10
66-0137	Utilities; Falsifying or Destroying Accounts/Records	F	U	N	10
8-0116(a)	Vehicle identification numbers; sale of vehicle w/ ID destroyed, removed, etc.	F	E	N	10
8-0116(c)	Vehicle identification numbers; destroying, altering, removing, etc. vehicle ID	F	E	N	10
21-3403	Voluntary manslaughter	F	C	P	3
21-3736	Warehouse receipt fraud	F	E	N	10
50-1013	Willful violation of loan broker article	F	E	N	7

Bill Graves
Secretary of State

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

STATE OF KANSAS

Request for Introduction of Legislation
Senate Judiciary Committee
November 18, 1993

Annual Reports for Business Organizations

Since 1989, qualifying domestic and foreign corporations have been able to request that the balance sheet information on the corporate annual report be kept confidential. We request legislation that would give other forms of business organization the same privilege.

Qualifying general corporations are given the opportunity to keep their financial information confidential for ten years by paying a $20 fee and completing an application. The annual report requirements for professional corporations, limited partnerships and limited liability companies are otherwise similar to those of corporations. We request that they be treated alike in this respect also.

On the other hand, current law requires domestic corporations to report the name and address of investors owning five percent or more of the stock. There is no similar disclosure required of domestic limited partnerships or limited liability companies. Again, the law should treat these entities consistently and we request that limited partnerships and limited liability companies also be required to disclose investors owning at least five percent of the capital.

Limited Liability Partnerships

The Secretary of State requests that this committee introduce a bill that would recognize limited liability partnerships. Delaware and five other states have amended their Uniform Partnership Act to permit partnerships to obtain the same limited liability that professional corporations and limited liability companies have but retain their partnership status.

This form of business organization would be available to any partnership, but has been extensively used by professional service firms (particularly certified public accountants and attorneys). Annual registration filings and fees are similar to those required of other businesses. Although the same limited liability is available today for professionals who organize as professional corporations or limited liability companies, many service firms prefer the partnership form.

John R. Wine, Jr.
General Counsel

Senate Judiciary
11/18/93
Attachment 23-1

Bill Graves
Secretary of State

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

STATE OF KANSAS

Request for Bill Introduction
Senate Judiciary Committee
November 18, 1993

Mr. Chairman and Members of the Committee: The Secretary of State's Office requests introduction of a bill addressing technical amendments to the annual report and franchise tax statute in the Cooperative Marketing Act, and the Limited Liability Company Act.

Annual reports for domestic cooperatives. Briefly, the law currently requires annual reports of domestic cooperatives organized under the Cooperative Marketing Act to be filed on the 15th day of the sixth month after the close of the taxable year. This due date is impractical, as cooperatives do not file their federal returns or make distributions to their patrons until eight and one-half months after the close of their taxable year. We request an amendment to make the annual reports due at the time that the annual Kansas income tax return is due, which is nine and one-half months after the close of the taxable year. This amendment will have no fiscal impact.

Limited Liability Companies. During the 1993 legislative session a bill was passed which clarified the signature requirements for articles of organization. We request two additional amendments to clarify the signature requirements for amendments to articles of organization. The new signature requirements will reflect signature requirements under the limited partnership act. These amendments have no fiscal impact.

Thank you.

Jennifer Chaulk Wentz, Legal Counsel
Deputy Assistant Secretary of State

Senate Judiciary
11/18/93
Attachment 24-1

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna Whiteman, Secretary

Before the Senate Judiciary Committee
November 18, 1993

Legislative Proposals for 1994

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SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

****

Mr. Chairman and members of the Committee, on behalf of Secretary Whiteman, I thank you for the opportunity to appear here today to request introduction of six bills. These proposals have been submitted to the Revisor of Statutes office and bills are currently being drafted. The following is a brief summary of the proposals:

1. AMEND THE KANSAS CODE FOR CARE OF CHILDREN

It is proposed the Kansas Code for Care of Children be amended to make it more difficult for children to come into the custody of the Secretary without the prior knowledge of the department or opportunity for services to avoid out-of-home placement by:

(1) Limiting the reasons a child may be placed in the temporary custody of the department to danger of serious abuse or neglect or sexual abuse as defined by statute.
(2) Providing for notice of a temporary custody hearing to SRS and opportunity to recommend alternatives.
(3) Establishing a time limit for children in temporary custody without an adjudication.
(4) Limiting informal supervision so custody may not be awarded.

These changes are considered beneficial to implementation of the Family Agenda for Children and Youth and will result in a more meaningful implementation in Kansas of Public Law 96-272

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requiring reasonable efforts to eliminate or avoid unnecessary out of home placement of children.

It is proposed to amend the so-called "religious exception" provisions of K.S.A. 38-1513 to enable the State to remain eligible for Federal Child Abuse and Neglect grants.

Other proposed changes include expanding service options available to the court; providing penalties for disregarding "stay away" orders of the court; and technical changes to clarify statutory intent.

2. LIMIT CUSTODY OF JUVENILE OFFENDERS TO FELONY TYPE CONVICTIONS

It is proposed K.S.A. 38-1663 be amended to limit juvenile offenders placed in the custody of the secretary or committed to a state youth center to those adjudicated as having committed an act which, if done by a person 18 years of age or over, would constitute a felony as defined by the Kansas criminal code.

Courts would be required to establish a pre-disposition team of community agencies to recommend to the court community alternatives to state intervention and services.

It is proposed K.S.A. 38-1672 be repealed.

3. PROVIDE FOR PROVISIONAL RELEASE FROM CUSTODY

It is proposed K.S.A. 38-1563 be amended to establish a mechanism for the provisional release of a child from the custody of the secretary whose family has successfully completed the requirements of a reintegration plan, or who is no longer at risk of imminent harm, as determined by the secretary.

4. AUTHORIZE THE RELEASE OF INFORMATION CONCERNING JUVENILE OFFENDERS

It is proposed a new section be added to the Kansas Juvenile Offenders Code which specifically authorizes the Secretary to release information about a juvenile offender for the purpose of protecting the juvenile offender and the general public. Authorization is specifically given to release of an offender's name, likeness and other information which will assist in the protection and apprehension of an offender who has escaped custody.

5. ALLOW FOR THE VOIDING OF TRANSFERS BY SPOUSES OF MEDICAL ASSISTANCE RECIPIENTS

It is proposed K.S.A. 39-709(g)(2) relating to voidable transfers by recipients of medical assistance be amended by adding a clause to allow the voiding of transfers by spouses of recipients of medical assistance. A tactic currently being used in estate planning is to have the surviving spouse transfer his or her interest in property to children so there are no assets left in the estate at death. This proposal would help avoid this tactic by providing a method for retaining property in the spouse's estate.

6. ALLOW FOR THE TRANSFER OF PERSONAL PROPERTY USING AN AFFIDAVIT

It is proposed K.S.A. 59-1507b be amended by adding a new section authorizing the transfer of personal property in small estates of less than $10,000 when a claim for medical assistance and a prescribed affidavit is presented by the Secretary of Social and Rehabilitation Services or designee to the holder of the personal property.

Again, SRS requests bills containing these proposals be introduced by this Committee.

Thank you.

John Badger
General Counsel
Kansas Department of Social
and Rehabilitation Services
(913) 296-3967

Department of Social and Rehabilitation Services
Donna L. Whiteman, Secretary

Before the Senate Judiciary Committee
November 18, 1993

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The SRS Mission Statement

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

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Mr. Chairman and Members of the Committee, thank you for this opportunity to request, on behalf of Secretary Whiteman, a bill relating to the Child Support Enforcement Program (CSE). CSE is requesting a measure to amend the income withholding act and the interstate income withholding act to insure compliance with federal state plan requirements under Title IV-D of the social security act.

Background

The detailed income withholding requirements of federal law are aimed at assuring regular child support payments through payroll deductions from the obligor's income. Among other things, federal IV-D regulations require that:

- o Termination of income withholding be restricted in Title IV-D cases,
- o Interstate income withholding be available in non IV-D cases (cases not administered by SRS), and
- o Monitoring activities in non IV-D cases be either delegated to an appropriate entity or, if monitored by the IV-D agency (SRS), cost-allocated between IV-D and non-IV-D activities.

To meet the first requirement, we recommend that K.S.A. 23-4,111 be modified to allow termination of income withholding only:

- o When there is no longer a current support order and all arrearages have been paid or
- o When the paying parent requests termination, withholding has not been previously terminated and then restarted, and all interested parties have signed a written agreement for an alternative arrangement for payment of support.

The first limitation is already Kansas law. Although federal law does not require the second limitation in non IV-D cases, we believe that uniformity would be very beneficial, particularly for Court Trustees handling both IV-D and non IV-D cases.

Second, we recommend meeting the interstate withholding requirement by amending the interstate income withholding act (K.S.A. 23-4,125 et seq.) in several places to clarify that the act applies to non IV-D as well as IV-D cases. Our proposal draws language from the Uniform Enforcement of Foreign Judgments Act (K.S.A. 60-3001 et seq.). We would also like to add language clarifying that there is no attorney-client relationship between a IV-D attorney and a party

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under the interstate income withholding act; this parallels last year's changes to URESA (Uniform Reciprocal Enforcement of Support Act).

Finally, to meet the third requirement we suggest that K.S.A. 23-4,118 be amended to delegate the required monitoring duties in non IV-D cases as follows:

- o Clerks of court to be responsible for maintaining payment records; and
- o The parties themselves (obligor and obligee) to be responsible for tracking and monitoring payments.

The clerks of court already maintain payment records; no additional duties for the clerks are contemplated.

General Fiscal Impact

Federal sanctions for failure to meet IV-D program requirements range from approximately $600,000 per year (1% of AFDC funding) to $18,000,000 (all Title IV-D funding plus 5% of AFDC funding), with an ultimate penalty of $85 million per year (all Title IV-D funding and all AFDC federal funding).

Thank you for your continued interest in the Child Support Enforcement Program and for this opportunity to request legislation to meet federal requirements.

Respectfully submitted,

Jamie L. Corkhill
Policy Counsel
Child Support Enforcement
296-3237

Department of Social and Rehabilitation Services
Donna L. Whiteman, Secretary

Before the Senate Judiciary Committee
November 18, 1993

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The SRS Mission Statement

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

==========

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear today on behalf of Secretary Whiteman to request a bill relating to the Child Support Enforcement Program (CSE). The federal Omnibus Budget Reconciliation Act of 1993 (OBRA) requires Kansas to adopt and implement several paternity establishment reforms by July 1, 1994. CSE is requesting introduction of a comprehensive paternity reform measure.

Background

In many respects Kansas law meets the requirements in OBRA, however there are several items needed to insure compliance. In brief, OBRA requires the states to:

- o Meet new performance standards for establishing paternity within one year of birth;
- o Establish a simple civil process for voluntarily acknowledging paternity with specific safeguards and disclosures:
- o Establish a hospital-based program for voluntary acknowledgements near the time of birth;
- o Use expedited processes for all paternity establishments;
- o Give full faith and credit to paternity acknowledgements of other states;
- o Permit establishment of a support order based on an acknowledgement of paternity without requiring any further proceedings to establish paternity; and
- o Create presumptions based on genetic test results which indicate a threshold probability of paternity and limit the time for challenging test results.

The Joint Committee on Children and Families has reviewed OBRA's requirements during the interim session and may itself recommend or sponsor a "bare bones" bill, such as that offered by the Office of Judicial Administration. Although SRS strongly supports the work of the Joint Committee in this area, we are requesting a more comprehensive paternity reform bill.

SRS requests legislation that will address:

- o The specifics of OBRA;
- o Issues related to OBRA's requirements, such as voluntary acknowledgements by minor parents;
- o Concerns raised by federal auditors and by IV-D attorneys; and
- o Alternative dispute resolution in IV-D paternity cases for a limited time after birth.

Senate Judiciary Committee
SRS - Child Support Enforcement
Paternity Establishment

With respect to voluntary acknowledgements and the required hospital outreach program, the statutory changes SRS proposes are very similar to the draft being considered by the Joint Committee. CSE has been working with the both DHE and the Kansas Hospital Association to develop practical and effective means of implementing these new requirements.

For the remaining OBRA mandates, SRS proposes measures similar to the Joint Committee's draft. We see a need, however, to address issues which are likely to generate litigation if left unresolved. One example is the question of minor parents signing voluntary acknowledgements. Another is what to do with acknowledgements executed before OBRA's requirements were in place. There are other areas, such as full faith and credit for voluntary acknowledgements from other states, where clear expression of legislative intent would be very beneficial in minimizing litigation.

We are also seeking legislation to resolve issues raised by federal auditors and our own field attorneys. In several of the paternity cases they reviewed, the auditors felt that CSE should have filed a paternity action as soon as one alleged father was located, even though there were multiple presumed fathers under the Kansas Parentage Act. Current Kansas law strongly favors joining all persons in one action, which helped us convince the auditors that our actions had been appropriate. Unfortunatedly, we do not expect this issue to go away. Furthermore, OBRA reinforces the auditors' interpretation by making a voluntary acknowledgement grounds for seeking a support order without further paternity proceedings.

Another chronic problem, aggrevated by federal requirements, is the need to avoid creation of attorney-client relationships between IV-D attorneys and individuals receiving IV-D services. We are requesting that the parentage act and K.S.A. 39-755 be amended to clarify that there is no attorney-client relationship between the IV-D attorney and any individual in a IV-D case.

Finally, SRS proposes creation of a non-judicial procedure for establishing a support order in a IV-D case for a limited period after birth of the child. As we envision the concept, the parent would have the option to request a judicial determination at any point, insuring them access to the judicial system if they so desire. The advantages would include having an expedited process meeting part of OBRA's mandate and having a mechanism specifically designed to meet OBRA's new, stiff performance requirements for establishing paternity within one year of birth.

General Fiscal Impact

We anticipate that OBRA's requirements will demand funding for additional genetic testing (eligible for 90% federal funding) and for other aspects of a hospital-based program, such as contract costs, printing costs, and training costs (all eligible for 66% federal funding). Overall, our high-side projection is a net cost of $469,000, of which $126,130 is the state share. These costs are nearly all attributable to OBRA's mandates.

Senate Judiciary Committee
SRS - Child Support Enforcement
Paternity Establishment

For reference, federal sanctions for failure to meet IV-D program requirements range from approximately $600,000 per year (1% of AFDC funding) to $18,000,000 (all Title IV-D funding plus 5% of AFDC funding), with an ultimate penalty of $85 million per year (all Title IV-D funding and all AFDC federal funding).

Thank you for your consideration of this proposal.

Respectfully submitted,

Jamie L. Corkhill
Policy Counsel
Child Support Enforcement
296-3237

Section 1. K.S.A. 1993 Supp. 23-4,107 is hereby amended to read as follows:

23-4,107. Income withholding order; when effective; effect of order; title IV-D cases; service of order; notice of intent to apply for issuance of an order; order not issued, when; agreements or alternative arrangements; ex parte interlocutory orders. (a) Any new or modified order for support entered on or after January 1, 1986, shall include a provision for the withholding of income to enforce the order for support. Except as otherwise provided in subsection (b) or (c), withholding shall take effect only if there is: (1) An arrearage in an amount equal to or greater than the amount of support payable for one month; and (2) compliance with requirements of subsections (d) and (h).

(b) Except as otherwise provided in this subsection or in subsection (j), (k) or (m), all new or modified orders for support entered on or after October 1, 1990, in title IV-D cases and all new or modified orders for support entered on or after July 1, 1993, in all other cases shall provide for immediate issuance of an income withholding order. Prior to July 1, 1993, whenever an order of support is entered or modified in a case other than a title IV-D case, the court shall have discretion to order immediate issuance of an income withholding order. The income withholding order shall be issued without further notice to the obligor specifying an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(c) If the provisions of subsection (b) do not apply, the obligee or public office may file a motion in a title IV-D case requesting that an income withholding order be issued regardless of the amount of the arrearage. If no arrearage existed as of the date the notice pursuant to

subsection (h) was served upon the obligor, the ...n shall only be granted if the court finds ... good cause exists for issuing the income withholding order or if the obligor consents to issuance of an income withholding order. If the motion is granted, an income withholding order shall be issued without further notice to the obligor specifying an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order may be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

(d) (1) Not less than seven days after the obligee or public office has served a notice of intent to apply for an income withholding order pursuant to subsection (h), the obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (1) The date that the notice was served on the obligor and the manner of service; (2) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (3) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; and (4) except in title IV-D cases, that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

(2) Upon the filing of an affidavit pursuant to subsection (d)(1), the income withholding order shall be issued without further notice to

obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(e) An income withholding order shall be directed to any payor of the obligor and shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage, subject to the limitations set forth in K.S.A. 23-4,109 and amendments thereto. The order shall include notice of and direction to comply with the provisions of K.S.A. 23-4,108 and 23-4,109, and amendments thereto.

(f) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor in any manner permitted for service of summons and petition by the statutes contained in article 3 of chapter 60 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court. At any time following issuance of an income withholding order, the obligee, obligor or public office may request service of a copy of the income withholding order on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k), (l) (m), at any time following entry of an order support the obligee or public office may serve upon the obligor a written notice of intent to apply for issuance of an income withholding order. The notice shall be served on the obligor by first-class mail or in the manner for service of a summons pursuant to the statutes contained in article 3 of chapter 60 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto at least seven days before the date the affidavit is filed. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld; (3) that the provision for withholding applies to any current or subsequent payor; (4) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (5) the period within which the obligor must file a motion to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (6) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(1) Before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (B) a written agreement among all interested parties provides for an alternative arrangement.

In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

(A) The agreement was not in writing;

(B) the agreement was not approved by all interested parties;

(C) the terms of the agreement or alternative arrangement are not being met;

(D) the agreement or alternative arrangement is not in the best interests of the child; or

(E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 23-4,110 and amendments thereto apply to any motion pursuant to subsection (j)(3) or (j)(4).

(k) (1) An *ex parte* interlocutory order for support may be enforced pursuant to subsection (b) or (c) only if the obligor has consented to the income withholding in writing.

(2) An *ex parte* interlocutory order for support may be enforced pursuant to subsection (d) only if 10 or more days have elapsed since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(l) If the provisions of subsection (b) do not apply and the case is not a title IV-D case, a notice of intent to apply for issuance of an income withholding order may be served on the obligor only if there is an arrearage, as of the date the notice is prepared, in an amount equal to or greater than the amount of support payable for one month.

(m) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

History: L. 1985, ch. 115, § 3; L. 1986, ch. 137, § 11; L. 1987, ch. 121, § 10; L. 1990, ch. 117, § 2; L. 1992, ch. 254, § 1; July 1.

26-12

Section 2. K.S.A. 1993 Supp. 23-4,111 is hereby amended to read as follows:

23-4,111. Modification or termination of withholding order; when; notice. (a) At any time, an obligor may petition the court to: (1) Modify or terminate the income withholding order because of a modification or termination of the underlying order for support; or (2) modify the amount of income withheld to reflect payment in full of the arrearage by income withholding or otherwise.

(b) On request of the obligee or public office, the court shall issue an order which modifies the amount of income withheld, subject to the limitations of subsection (f) of K.S.A. 23-4,108 and amendments thereto.

(c) The obligor may file a motion to terminate the income order ~~because payments pursuant to the income withholding order have been made for at least 12 months and all arrearages have been paid. Upon receipt of a motion under~~ this subsection, the court may terminate the income withholding order unless it finds good cause for denying the motion because of the obligor's payment history or otherwise. If an income withholding order is terminated for any reason and the obligor subsequently becomes delinquent in the payment of the order for support, the obligee or public office may obtain another income withholding order by complying with all requirements for notice and service pursuant to this act.

(d) If support payments are undeliverable to the obligee, any such payments shall be held in trust by the court until the payments can be delivered.

(e) The clerk of court shall cause to be served on the payor a copy of any order entered pursuant to this section that affects the duties of the payor.

History: L. 1985, ch. 115, § 7; L. 1986, ch. 137, § 14; L. 1992, ch. 254, § 5; July 1.

if: (1) the withholding order has not previously been terminated under this subsection and subsequently initiated, and (2) there is a written agreement among all interested parties which provides for an alternative arrangement. Under

26-13

Section 3. K.S.A. 23-4,118 is hereby amended to read as follows:

23-4,118. Income withholding agency designated; contracts for performance of functions. (a) The department of social and rehabilitation services is designated as the state income withholding agency in title IV-D cases and in ~~all instances where the total amount of multiple income withholding orders for any one obligor exceeds the limits provided for under section 303(b) of the consumer credit protection act (15 U.S.C. §1673(b)), regardless of the IV-D status of the cases involved.~~ delete For the purpose of keeping adequate records to document, track and monitor support payments in title IV-D cases and for the purpose of initiating the income withholding process in such cases, the department may contract for the performance of all or a portion of the withholding agency function with existing title IV-D contractors or any newly created entity capable of providing such services.

(b) In all other cases, the clerk of the district court is designated as the income withholding agency for the purpose of keeping adequate records to allow the obligor and obligee to track and monitor support payments.

History: L. 1985, ch. 115, § 14; L. 1986, ch. 137, § 15; July 1.

96-14

Section 4. K.S.A. 23-4,128 is hereby amended to read as follows:

23-4,128. Agency duties; initiation of -of-state withholding; notice to obligee if ligor contests. On behalf of any obligee or other person for whom the agency is already providing services pursuant to the provisions of title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, the agency shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding. The agency shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The agency also shall transmit immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order. If the agency receives notice that the obligor is contesting income withholding in another jurisdiction, it shall immediately notify the obligee of the date, time and place of the hearings and of the obligee's right to attend.

History: L. 1985, ch. 115, § 18; July 1.

(a)

(b) An obligee not receiving services from the agency pursuant to title IV, part D, of the federal social security act (42 U.S.C. §651 et seq.), as amended, may request the appropriate agency or official in another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding. The obligee or the obligee's attorney, if any, shall compile and transmit all documentation required by the other jurisdiction for this purpose. The obligee or the obligee's attorney, if any, shall transmit immediately to the other jurisdiction a certified copy of any subsequent modifications of the support order.

26-15

Section 5. K.S.A. 23-4,129 is hereby amended to read as
ows:

23-4,129. Agency duties; out-of-state support order; documentation required; filing constitutes entry of support order. (a) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (b) from an agency of another jurisdiction ~~established~~ pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, the agency shall file the documents with the clerk of the court in which withholding is being sought. Upon receipt of the documents the clerk of court, without payment of a filing fee or other costs, shall file them in a registry of foreign support orders. Such filing shall constitute entry of the support order under K.S.A. 1985 Supp. 23-4,125 through 23-4,137.

operating

Nothing in this subsection shall be construed to create an attorney-client relationship between an attorney representing the department of social and rehabilitation services and any party other than the department of social and rehabilitation services.

(b) The following documentation is required for the entry of a support order of another jurisdiction:

(1) A certified copy of the support order with all modifications;

(2) a certified statement of child support owed and paid, including dates of payment and to whom paid;

(3) a certified copy of an income withholding notice or order, if any, still in effect;

(4) a copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

(5) a sworn statement of the obligee or agency of the arrearages and the assignment of support rights, if any; and

(6) a statement of:

(A) The name, address and social security number of the obligor, if known;

(B) the name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought; and

(C) the name and address of the agency or son to whom support payments collected income withholding shall be transmitted.

(c) If the documentation received under subsection (a) does not conform to the requirements of subsection (b), the agency shall remedy any defect which it can without the assistance of the requesting agency. If the agency is unable to make such corrections, the requesting agency shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The agency and court shall accept the documentation required by subsections (a) and (b) even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

~~(d) A support order entered under subsection (a) shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in K.S.A. 1985 Supp. 23-4,105 through 23-4,118 and 23-4,130 through 23-4,137. Entry of the order shall not confer jurisdiction on the courts of this state for any purpose other than income withholding.~~

History: L. 1985, ch. 115, § 19; July 1.

(d) An obligee not receiving services from any agency operating pursuant to title IV, part D, of the federal social security act (42 U.S.C.§ 651 et seq.), as amended, may file the documents specified in subsection (b) with the clerk of court in which withholding is being sought. The documents shall be filed by an attorney licensed to practice law in the State of Kansas.

(e)

or (d)

16-17

Section 6. K.S.A. 1993 Supp. 23-4,130 is hereby amended to read as follows:

23-4,130. Notice of intent to apply for issuance of an order; affidavit; contest of withholding; hearing; notice. (a) Except as provided in subsection (b), no later than 10 days after the date a support order is entered pursuant to K.S.A. 23-4,129 and amendments thereto, the agency ~~shall~~ serve upon the obligor or obligee a notice as provided for in subsection (h) of K.S.A. 23-4,107 and amendments thereto. The notice shall also advise the obligor that income withholding was requested on the basis of a support order of another jurisdiction. ~~As~~ When appropriate, the agency ~~shall then~~ or obligee file the affidavit provided for in subsection (d) of K.S.A. 23-4,107 and amendments thereto. If, in accordance with K.S.A. 23-4,110 and amendments thereto, the obligor contests the issuance of an income withholding order, the court must hold a hearing and render a decision within 45 days of the date of service of the notice on the obligor.

(b) If the documentation received pursuant to ~~K.S.A. 23-4,129 and amendments thereto~~ subsection (a) of indicates that an income withholding order based upon the ~~registered~~ delete support order has been issued by another jurisdiction and has not been terminated, the agency shall file an affidavit ~~stating~~ as provided in this subsection. An obligee entering a support order pursuant to subsection (a) of K.S.A. 23-4,129 may file an affidavit as provided in this subsection if an income withholding order based upon the support order has been issued by another jurisdiction and has not been terminated. The affidavit shall state: (1) That an income withholding order based upon the ~~registered~~ delete support order has been issued by another jurisdiction and has not been terminated, (2) that immediate issuance of an income withholding order is required by this act, and (3) a specified amount to be withheld by the payor to satisfy the order for support and to defray any arrearage. The amount specified in the affidavit shall be as near as possible to the amount specified in the most recent income withholding order issued by the other jurisdiction. A copy of the affidavit

all be served by first-class mail upon the igor. Upon the filing of the affidavit, the income withholding order shall be issued immediately, without further notice to the obligor, except that the court may direct the agency to serve a notice pursuant to subsection (a) upon the obligor if the court finds that the terms of the income withholding order issued by the other jurisdiction are too vague to be compatible with the amount specified in the affidavit or that the court issuing the income withholding order lacked jurisdiction.

(c) If the obligor seeks a hearing to contest the proposed income withholding, the agency shall immediately notify the requesting agency of the date, time and place of the hearing.

History: L. 1985, ch. 115, § 20; L. 1986, ch. 137, § 17; L. 1990, ch. 117, § 6; L. 1992, ch. 254, § 9; July 1.

or obligee

in a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C.§ 651 et seq.), as amended

2/6-19

Section 7. K.S.A. 23-4,135 is hereby amended to read as follows:

23-4,135. Modification of support and withholding orders; income from other state, notice. (a) ~~The~~ agency, upon receiving a certified copy of any amendment or modification to a support order entered pursuant to K.S.A. ~~1985 Supp.~~ 23-4,129, shall initiate, as though it ~~was~~ a support order of this state, necessary procedures to amend or modify the income withholding order of this state which was based upon the entered support order. The court shall amend or modify the income withholding order to conform to the modified support order.

(b) ~~If~~ the agency determines that the obligor has obtained employment in another state or has a new or additional source of income in another state, it shall notify the agency which requested the income withholding of the changes within five working days of receiving that information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The agency shall include with the notice a certified copy of the income withholding order in effect in this state.

History: L. 1985, ch. 115, § 25; July 1.

In a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 et seq.), as amended, the

delete

were

In a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 et seq.), as amended, if

(c) In all other cases the obligee or the obligee's attorney, if any, shall initiate necessary procedures to amend or modify the income withholding order of this state which was based upon the entered support order. The court shall amend or modify the income withholding order to conform to the modified support order.

26-20

Section 3. K.S.A. Supp. 23-4,136 is hereby amended to read as follows:

23-4,136. Voluntary withholding. Any person who is the obligor under a support order of another jurisdiction may obtain voluntary income withholding by filing with the court a request for an income withholding order and a certified copy of the support order of the other jurisdiction. The court shall issue an income withholding order, as provided in subsection (i) of K.S.A. 23-4,107 and amendments thereto, which shall be honored by any payor regardless of whether there is an arrearage. In such a case, payments shall be made from the payor to the agency ~~for distribution~~ or clerk of court to the obligee.

History: L. 1985, ch. 115, § 26; L. 1992, ch. 254, § 10; July 1.

Kansas County & District Attorneys Association

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SUMMARY OF PROPOSED LEGISLATION

Presented to the 1993 Senate Judiciary Committee
November 18, 1993

1. Amend sentencing grid by doubling the months in the A and B boxes. (This follows the intent of the "three strikes and out" concept, but keeps the sentence within the guidelines concept.)

2. Require the amount of restitution owed at the end of the period of probation, parole or suspended sentence to be entered as a civil judgment. (1993 House Bill 2472)

3. Allow jail or boot camp as a dispositional alternative for juvenile offenders who are 18 at the time of disposition. (This would include amending 38-6163 to allow jail as a condition of probation, and amending 38-1666a to allow jail as a sanction for violation of probation.)

4. Require parents or guardians to bear responsibility for restitution in juvenile offender cases. (1993 Senate Bill 280)

5. Amend juvenile offender definition (38-1602) to include juveniles who violate city ordinances and county resolutions. (Similar to policy issue of including municipal court misdemeanors in criminal history).

6. Amend Sentencing Guideline Act to specifically require Court Service Officer to prepare the entire presentence investigation, including criminal history worksheet.

7. Amend the arson statute to person crime, with damage of $50,000 or where the building is a residence a level 4, and non-residence below $50,000 a level 6 (arson always poses danger for firefighters and public).

8. Amend drive-by shooting statute (21-4219) to raise penalty for shooting into unoccupied dwelling to a person crime. (Similar to burglary)

Senate Judiciary
11/18/93
Attachment 27-1