

Approved: May 23, 1994  
Date

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 11:30 p.m. on February 25, 1994 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes

Cindy Wulfschuhle, Committee Secretary

Others attending: See attached list

**HB 2660** - Parole & probation officers shall notify employers if employee committed a person felony.

Chairman O'Neal explained that this bill would require that probation/parole officers notify employers that they have hired an individual that has been convicted of a sexually violent crime. The concern with the bill was in New Section 1 which states that any employer who in good faith hires a person who has committed a sexually violent crime shall not be liable for any civil damages for acts committed by the person other than damages occasioned by gross negligence or by willful or wanton acts by the employer in hiring such persons. The intent was to protect the employer in cases where there would be a termination of the employee. It becomes problematic to put in these immunity sections because of other possible interpretations. The sponsor of the bill stated that he did not object to striking New Section 1 of the bill.

Representative Adkins made a motion to report **HB 2660** favorably for passage. Representative Plummer seconded the motion.

Representative Garner stated that he understood that this procedure was already implemented and this is being done without legislative requirement. Chairman O'Neal commented that Secretary Stotts stated that DOC tries to do notification, but apparently there are some questions if this has been done in every case. Representative Garner questioned if the State would be exposed to liability if they failed to give notification. Representative Carmody replied that DOC has current policies that could expose them now, but this bill would tighten it up and make it more specific.

Representative Garner made a substitute motion to add language to the bill that "a failure to comply does not give rise to a separate cause of action". Representative Wells seconded the motion. The motion carried.

Representative Macy made a motion to strike New Section 1. Representative Mays seconded the motion. Representative Plummer stated that he felt this section was necessary because it shows that the employee would not be held liable. The motion carried.

Jill Wolters, Revisor of Statutes, stated that Kyle Smith, KBI, suggested that everywhere the word "probation officer" appears, there should be added: "court service officer & community corrections personal" and lines 21 & 24 should read "who has been convicted of committing a sexually violent crime".

Representative Macy made a motion that these technical amendments be added to the bill. Representative Carmody seconded the motion. The motion carried.

Representative Mayans made a motion to have DOC notify the employer within 15 days of employment and that the defendant has 48 hours to notify DOC or court service officer & community corrections officers of employment or a change in employment. Representative Plummer seconded the motion. The motion carried.

Representative Garner questioned if the word "employment" was defined anywhere in the statute. Jill Wolters replied that she didn't think the statutes defined employment. Representative Garner suggested leaving the definitional terms to rule & regulations by the appropriate agencies. If we define every term in the bill we would be spending the day on this. The Chairman suggested limiting it to rule & regulations by DOC.

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MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on February 25, 1994.

Representative Garner made a motion to have the definition of "employment" that would trigger the requirement of the notification, be as defined by rules & regulations by DOC. Representative Ruff seconded the motion. The motion carried.

Representative Pauls questioned who the employer would be mandated to notify. Would it be all employees where the person is working or just in the area where he is working.

Representative Pauls made a motion to have the employer notify all employees within 5 days of receiving notice. Representative Everhart seconded the motion. Chairman O'Neal questioned if the employer was Boeing then the notification would be only to the department that the employee would be working in. Otherwise, notification to the whole plant would be overkill. With permission of the second Representative Pauls added into her motion that employers with 50 employees would be required to notify those within the department that the employee would be working in. The Chairman questioned how the notification would take place. With permission of the second Representative Pauls added into her motion that the form of notification would be worked out by rules & regulations of DOC, and court service officers would refer to DOC rules & regulations. Representative Wagnon questioned if she would have to notify all her employees, even if they do not come in contact with the offender. The Chairman stated that if the definition was broad then they would be required to notify everyone. Representative Mays suggested narrowing it to say that the employer notify only those who would come in contact with the offender. The motion failed.

Representative Mays questioned if juveniles were included in this bill. Chairman O'Neal replied that not unless they are certified as an adult and convicted under K.S.A. 22-4902.

Representative Mays made a motion to include any juvenile offenders who have committed an act, that if charged as an adult would be a violation of K.S.A. 22-4902 (sexually violent crimes). Representative Wells seconded the motion. Chairman O'Neal questioned if a juvenile probation officer would be making the report, and if so would they need to be added to the list. Also, juvenile offenders can fall under SRS custody and not report to a court service officer. With permission of the second Representative Mays included those juvenile offenders who fall under SRS custody. The motion carried.

Representative Wells made a motion that information to be included in the notification be restricted to the following: name, birth, case number, date of offense, conviction date, crimes, sentence, officer's name, phone number and address. Representative Garner seconded the motion. The motion carried.

Representative Everhart commented that she had received a letter from the school board that suggested that schools would not be included in the notification and they would like to be. Chairman O'Neal asked if the person was working for the school as a bus driver, who would the employer be? Representative Wagnon commented that this brings her back to the definition of employer. The trend is to move towards contract services. The Chairman stated that we should not lose sight of what we have currently, which is nothing and at least we are moving towards notification.

Representative Macy made a motion to report **HB 2660** favorably for passage as amended. Representative Wells seconded the motion. The motion carried.

**HB 2661** - Amendments to the habitual sexual offender registration act.

Representative Mayans made a motion to repeal K.S.A. 22-4906. Representative Wells seconded the motion. With permission of the second Representative Mays made a motion to have 1st time offenders register for 10 years and lifetime registration for habitual offenders. The motion carried.

Representative Macy made a motion to add the language, on page 4, line 14, "at the appropriate sherriff's office". Representative Carmody seconded the motion. The motion carried.

Representative Carmody made a motion to report **HB 2661** favorably for passage as amended. Representative Macy seconded the motion. Representative Garner commented that he was still concerned about miss identification of those who are innocent. The motion carried.

**HB 2761** - Identity of victims of sex offense not public record.

Representative Wells made a motion to report **HB 2761** favorably for passage. Representative Carmody seconded the motion.

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Representative Heinemann stated that if the intent of the bill was to keep the name secret then the bill should say so. The bill states that "they are not required to disclose". In Subsection (f) the language should read that "they are not to disclose the victims name without consent from the victim".

Representative Garner stated that this bill was a response to a problem that does not exist. There was testimony from the press association that no newspaper in their organization publishes victims names. This would be a precautionary proposal.

Representative Wells made a motion to report **HB 2761** favorably for passage Representative Carmody seconded the motion. The motion carried.

**HB 2779** - The court cannot issue a contempt citation against a person who reports that a gag order has been issued.

Representative Carmody made a motion to report **HB 2779** favorably for passage. Representative Heinemann seconded the motion.

Representative Everhart had some concern as to the level of the problem. Chairman O'Neal stated that a reporter was found in civil contempt. In civil contempt there is no sentence, one is just placed in jail until they purge themselves. The fact that it happened once should be evidence enough that it can happen again. This bill is not say that the courts can't issue a gag order, but that they can't issue a gag order that the courts have issued a gag order.

Representative Garner stated that if a judge had that much concern about publicity, the judge can order a change of venue.

The motion carried.

**HB 2583** - Establishment of parentage and child support.

Representative Heinemann explained that this bill was in a sub-committee and they recommended **Substitute HB 2583** (see attachment 1). With permission of the sub-committee he requested that the language on page 3, subsection 7 be deleted from the balloon.

Representative Heinemann made a motion to adopt the sub-committee report. Representative Macy seconded the motion. The motion carried.

Representative Heinemann made a motion to report **Substitute HB 2583** favorably for passage. Representative Wagnon seconded the motion. The motion carried.

Chairman O'Neal stated that he had a request that there is no law regarding how one deals with paternity of a sperm donor. The recommendation was that it be addressed using language from the Uniform Parentage Act that would say "the donor of semen provided to a license physician for use in artificial insemination of a married women, other than the donor's wife, is treated in law as if he was not the birth father of the child thereby conceived, unless otherwise agreed to in writing by both parties."

Representative Heinemann made a motion to reconsider **Substitute HB 2583**. Representative Garner seconded the motion. The motion carried.

Representative Heinemann made a motion to include the Uniform Parentage Act language in the bill. Representative Garner seconded the motion. The motion carried.

Representative Heinemann made a motion to report **Substitute HB 2583** favorably for passage as amended. Representative Everhart seconded the motion. The motion carried.

**HB 2832** - Inmates filing civil actions, parole board denials.

Jill Wolters, Revisor of Statutes, explained the balloon draft, (see attachment 2). The first amendment on page one would cover those in the county jail. The State of Kansas is not always named as the defendant. Sometimes others are named. The second amendment would cover the warden, sheriff or employee of department of corrections or county employees. The third amendment would allow the Secretary of Corrections or county resolution to establish rules & regulations. Page 8 section (c) gives instructions on the procedure the courts shall follow.



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Chairman O'Neal stated that K.S.A. 60-1503 (a) is not amended, so it reads that upon filing a petition a writ shall be issued forthwith by the clerk of the court and shall bear the seal of the court. We heard testimony that currently this was not being done and it probably won't be done in the future. He questioned if anything would be lost by striking Substitutesection (a) from 60-1503.

Representative Adkins requested that on the second amendment, in the balloon, the following language be added "or any public official and political Substitutedivision".

Representative Wells made a motion to adopt the Substitute-committee balloon. Representative Adkins seconded the motion. The motion carried.

Chairman O'Neal made a motion to repeal K.S.A. 60-1503. Representative Heinemann seconded the motion. Representative Pauls questioned if this would apply to both civil and criminal cases. Chairman O'Neal stated that this was talking about the civil side. Representative Pauls stated that this bill deals with problems with inmates filings and this would change it so that every time an attorney represents someone in a civil case, the judge would make the determination before a writ was issued. Chairman O'Neal stated that the bill talks in terms of inmates filing civil actions, so any changes that are made should be limited to inmate lawsuits. Maybe the motion should be changed to state "not withstanding the provisions of K.S.A. 60-1503 in the case of inmate lawsuits this is the procedure that will be followed." Jill Wolters stated that Substitutesection (c) could be applied to all writs, not just the ones filed by inmates. Representative Pauls commented that this would be a major change in the way habeas corpus are issued in the State. Traditionally they are issued immediately and after this change there would be a show cause hearing, which she felt was not the intent of this bill. Chairman O'Neal commented that testimony was given that the courts are not currently following K.S.A. 60-1503, and this would be an opportunity to codify what the courts are doing with regards to writs of any nature. He questioned why all writs wouldn't be handled under K.S.A. 60-1501 by the procedure set forth in Substitutesection (c). Representative Pauls stated that this would be changing longstanding legal tradition, even though most judges hold show cause hearings. Chairman O'Neal stated that by repealing K.S.A. 60-1503(a) it would allow the clerks to get out of the business of issuing writs and have judges look at the petition and decide whether a writ should be issued. Jill Wolters suggested replacing (a) with Substitutesection (c).

Chairman O'Neal made a Substitutesubstitute motion to repeal K.S.A. 60-1503(a) and replace 1503(a) with the language that appeared in Substitutesection (c). Representative Carmody seconded the motion. The motion carried.

The Chairman stated that one of the questions the Committee had was if there was any way the judge could assess court costs against inmates trust accounts. Representative Garner stated that the federal court allows that after a number of filings have been found frivolous the court can refuse any further filings by that individual, unless there is prior approval by the court. He questioned if there was a similar provision for the State of Kansas. Chairman O'Neal replied that he didn't believe there was one.

Representative Garner made a motion to incorporate the federal language with regards to frivolous filings of lawsuits by inmates. Jill Wolters commented K.S.A. 60-1507(c) states that "the sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." Representative Garner withdrew his motion.

Representative Carmody made a motion to report **HB 2832** favorably for passage as amended. Representative Scott seconded the motion. The motion carried.

**HB 2604** - Treatment of diversion agreements for disciplinary actions under uniform controlled Substitutestance act.

Representative Mays made a motion to strike the amended language on page 2 & 3 and on page 1, line 27 & on page 2, line 27, reference "diversion agreement or conviction". Representative Robinett seconded the motion.

Representative Garner made a Substitutesubstitute motion to table **HB 2604**. Representative Macy seconded the motion. The motion failed.

On Representative Mays' motion, the motion carried.

Representative Mays made a motion to report **HB 2604** favorably for passage as amended. Representative Mayans seconded the motion. Representative Carmody stated that this was something that they can do now

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and doesn't see a real need for a diversion agreement. Representative Garner stated that this was an agency trying to justify its continued legislative program. There is no real need for this bill. The motion failed.

Representative Mays made a motion to report **HB 2604** adversely. Representative Carmody seconded the motion.

Representative Garner made a Substitutestitute motion to table **HB 2604**. Representative Macy seconded the motion. The motion carried.

**HB 2788** - Person commits three felonies, person in prison for life.

Chairman O'Neal explained that the Committee could probably spend several days trying to decide beyond severity level 2 what other crimes would be included into the bill. The debate and the fine tuning is a long ways from being finished. The last part would probably be put together in a conference committee. The Department of Correction and Kansas Sentencing Commission are working on proposals that would be workable. He suggested that the Committee not micro-manage the bill knowing that it is probably not going to be the final product.

Representative Wells made a motion to create a Substitutesection (d) which would state that a person who has been convicted of two sexually violent crime as defined by K.S.A. 22-3717 would have life imprisonment and exclude those in severity levels 1 & 2. Representative Mayans seconded the motion. Representative Macy explained that she is against the proposed amendment. She felt that it would be sweeping in a lot of people that we do not intend to. She stated that she agrees with the Chairman that this bill could be worked until midnight and still not have every amendment in it. She would like to see the bill passed out of Committee and add the amendments on the floor. The motion carried.

Representative Bradley made a motion to make it clear that the proposed bill is talking about separate occurrences, arising out of different occurrences and use the same language as was used in the Sentencing Guidelines to determine the prior criminal history. Representative Wells seconded the motion.

Lisa Moots, Kansas Sentencing Commission, stated that she was not sure if this language would accomplish what the committee wanted it to. With the Sentencing Guidelines, every prior conviction is a separate conviction, regardless of whether or not it was the same case. Ms. Moots commented that the anti-spree language was taken out in the 1993 Session and was replaced with a "conviction event" where everything a person gets convicted of in the same court on the same day, regardless of whether they were part of the same case is counted as one conviction. The 1992 version, which is what the Committee wants, was found in Chapter 239 of the Session laws.

The motion carried.

Representative Pauls made a motion to include severity level 3 crimes. Representative Heinemann seconded the motion.

Representative Mays stated that there is an uneasy feeling when one starts to include other levels because someone might fall into a life sentence when they shouldn't. This would be a nondiscretionary sentence on part of the prosecutors.

Representative Heinemann commented that public policy is this the idea of "Three Strike You're Out" sounds great. The public in general won't know what is or isn't included into the bill. All they will see is what is reported in the news. Public policy is that we want to keep certain people off the streets because they are dangerous to us. We've lost sight of what sentencing guidelines were intended to do. During the last Legislative Session, the amount of time a person serves actually doubled from what they would have served. The Committee needs to be very careful in what crimes they add into the bill because it would be extremely hard to take those crimes out.

Representative Garner made a Substitutestitute motion to report **HB 2788** favorably as amended. Representative Everhart seconded the motion.

Representative Pauls commented that she believes that those crimes in severity level 3 should be included into the bill and opposes the Substitutestitute motion. Chairman O'Neal stated that he opposed the motion because the Committee still needed to address some issues.

The motion failed. On the original motion, the motion carried.

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Representative Carmody made a motion on page 1, line 40 to change the word "commission" to "conviction". Representative Wells seconded the motion. The motion carried.

Chairman O'Neal made a motion to make it clear that in line 41 be any combination of crimes would qualify. Representative Carmody seconded the motion. The motion carried.

Representative Mays made a motion that this be discretionary on the part of prosecutors. Representative Heinemann seconded the motion. Representative Mays stated that the prosecutor would have the right to ask for it. Representative Carmody stated that he is against this motion. This is a "Three Strikes You're Out" bill, not a "Three Strike" and you might get a walk. Representative Mayans agreed with Representative Carmody, this is no "maybe you're out". The motion failed.

Representative Adkins stated that the difficulty will always be when the third strike is the minor of the offenses that person has been charged with. However, this is the cost that the criminals pay for committing three crimes, and they should realize this.

Representative Carmody made a motion to report **HB 2788** favorably as amended. Representative Bradley seconded the motion. Representative Heinemann stated that this is very easy to do because the legislature doesn't know what the long term effects will be. This may be subjecting future legislatures to build more prisons. This would be very expensive to the State of Kansas. The motion carried.

The Committee meeting adjourned at 3:30 p.m. The next meeting is scheduled for March 3, 1994.

## GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE 2/25/94

[illegible]

# HOUSE BILL No. 2583

By Joint Committee on Children and Families

1-10

8 AN ACT concerning parents and children; relating to establishment  
9 of parentage and child support; amending K.S.A. ~~38-1114, 38-~~  
10 ~~1118, 38-1119, 38-1120 and 65-2409a~~ and repealing the existing  
11 sections; also repealing K.S.A. 65-2409.  
12

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

14 ~~New Section 1. (a) Full faith and credit shall be given to de-~~  
15 ~~terminations of paternity made by any other state, the District of~~  
16 ~~Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or~~  
17 ~~Guam, whether the determination is established by judicial or ad-~~  
18 ~~ministrative process or by voluntary acknowledgment.~~

19 ~~(b) A voluntary acknowledgment of paternity made in accordance~~  
20 ~~with K.S.A. 38-1130 or section 7, and amendments thereto, shall~~  
21 ~~be sufficient basis for a court to issue a support order for the child~~  
22 ~~without further paternity proceedings. The child support order shall~~  
23 ~~be subject to due process safeguards, including notice to the father~~  
24 ~~and a fair hearing if requested by the father.~~

38-1110, 38-1114, 38-1115, 38-1117, 38-1118, 38-1119, 38-11-  
38-1125, 38-1128, 39-755. and 65-2409a

**Preprinted inserts  
are from**

Session of 1894

SENATE BILL No. 583

14 New Section 1. As used sections 1 through 5, except where the  
15 context otherwise requires:

16 (a) "Birthing hospital" means a hospital or facility as defined by  
17 rules and regulations of the secretary of social and rehabilitation  
18 services.

19 (b) "IV-D program" means a program for providing services pur-  
20 suant to part D of title IV of the federal social security act (42 U.S.C.  
21 Sec. 651 *et seq.*) and acts amendatory thereof or supplemental  
22 thereto.

23 (c) "Unwed mother" means a mother who was not married at  
24 the time of conception, at the time of birth or at any time between  
25 conception and birth.

New Section 2. (a) There shall be in this state a hospital based program for voluntary acknowledgement of paternity pursuant to K.S.A. 65-2409a and amendments thereto for newborn children of unwed mothers. Birthing hospitals shall participate in the program. Other hospitals and persons may participate in the program by agreement with the secretary of social and rehabilitation services.

(b) The secretary of social and rehabilitation services shall provide information and instructions to birthing hospitals for the hospital based program for voluntary acknowledgement of paternity. The secretary of social and rehabilitation services may adopt rules and regulations establishing procedures for birthing hospitals under the program.



20 New Sec. 4. (a) The state registrar of vital statistics shall develop  
 21 acknowledgment of paternity forms for use under K.S.A. 38-1130/  
 22 ~~65-2409 and 65-2409a and amendments thereto. In addition to ap-~~ ~~delete~~  
 23 ~~propriate identifying information, the acknowledgment of paternity~~  
 24 forms shall include or have attached:  
 25 (1) The father's statement that the father is the father of the child  
 26 and that the father consents to being named the father on the child's  
 27 birth certificate;  
 28 (2) the mother's consent to the father's acknowledgment of pa-  
 29 ternity and to entry of the father's name as the father on the child's  
 30 birth certificate;  
 31 (3) designated spaces for each parent's address and social security  
 32 number;  
 33 (4) instructions for returning the form so that it may be filed  
 34 with the state registrar of vital statistics; and  
 35 (5) a written description pursuant to ~~section 5~~ of the rights and  
 36 responsibilities of acknowledging paternity.

3.

in conjunction with the secretary  
 of social and rehabilitation  
 services, shall review and, as  
 needed, revise

The

subsection (b)

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2 ~~New Sec. 5. (a) A written description of the rights and respon-~~ (b)  
 3 sibilities of acknowledging paternity shall state the following:  
 4 (1) An acknowledgment of paternity creates a permanent father  
 5 and child relationship which can only be ended by court order;  
 6 (2) both the father and the mother are responsible for the care  
 7 and support of the child. If necessary, this duty may be enforced  
 8 through legal action such as a child support order, an order to pay  
 9 birth or other medical expenses of the child or an order to repay  
 10 government assistance payments for the child's care. A parent's will-  
 11 ful failure to support the parent's child is a crime;  
 12 (3) both the father and the mother have rights of custody and  
 13 visitation with the child unless a court order changes their rights.  
 14 If necessary, custody and visitation rights may be spelled out in a  
 15 court order and enforced;  
 16 (4) both the father and the mother have the right to consent to  
 17 medical treatment for the child unless a court order changes those  
 18 rights;  
 19 (5) the child may inherit from the father and the father's family  
 20 or from the mother and the mother's family. The child may receive  
 21 public benefits, including, but not limited to, social security or pri-  
 22 vate benefits, including, but not limited to, insurance or workers  
 23 compensation because of the father-child or mother-child relation-  
 24 ship;

25 (6) the father or the mother may be entitled to claim the child  
26 as a dependent for tax or other purposes. The father or the mother  
27 may inherit from the child or the child's descendants; and  
28 ~~(7) each parent has the right to sign or not sign an acknowledg-~~  
29 ~~ment of paternity. Each parent has the right to talk with an attorney~~  
30 ~~before signing an acknowledgment of paternity. Each parent has the~~  
31 ~~right to be represented by an attorney in any legal action involving~~  
32 ~~paternity or their rights or duties as a parent. Usually each person~~  
33 ~~is responsible for hiring the person's own attorney.~~  
34 ~~(b) Any duty to disclose rights or responsibilities related to sign-~~  
35 ~~ing an acknowledgment of paternity shall have been met by fur-~~  
36 ~~nishing the written disclosures of subsection (a).~~  
37 ~~(c) An acknowledgment of paternity completed without the writ-~~  
38 ~~ten disclosures of subsection (a) is not invalid solely for that reason~~  
39 ~~and may create a presumption of paternity pursuant to K.S.A. 38-~~  
40 ~~1114 and amendments thereto. Nothing in sections 1 through 5 shall~~  
41 ~~decrease the validity, force or effect of an acknowledgment of pa-~~  
42 ~~ternity executed in this state prior to the effective date of this act.~~

(7) both the father and the mother  
must consent, or have notice and a  
chance to ask for a hearing, before  
the child may be adopted by someone  
else; and

(8)

(c)

(b)

(d)

(b)

3

(e) Upon request, the state registrar of vital statistics shall provide  
a certified copy of the acknowledgment of paternity to an office  
providing IV-D program services.

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7 Sec. 19. K.S.A. 38-1110 is hereby amended to read as follows:  
8 38-1110. (a) K.S.A. 38-1110 through 38-1129 38-1131 and acts amen-  
9 datory thereto and supplemental thereof shall be known and may  
10 be cited as the Kansas parentage act.  
11 (b) Proceedings concerning parentage of a child shall be governed  
12 by this act except to the extent otherwise provided by the Indian  
13 child welfare act of 1978 (25 U.S.C. §§ 1901 et seq.).

4.

5.

25 Sec. 7. K.S.A. 38-1114 is hereby amended to read as follows:  
26 38-1114. (a) A man is presumed to be the father of a child if:  
27 (1) ~~He~~ and the child's mother are, or have been, married to each  
28 other and the child is born during the marriage or within 300 days  
29 after the marriage is terminated by death or by the filing of a journal  
30 entry of a decree of annulment or divorce.  
31 (2) Before the child's birth, ~~he~~ and the child's mother have at-  
32 tempted to marry each other by a marriage solemnized in apparent  
33 compliance with law, although the attempted marriage is void or  
34 voidable and:  
35 (A) If the attempted marriage is voidable, the child is born during  
36 the attempted marriage or within 300 days after its termination by  
37 death or by the filing of a journal entry of a decree of annulment  
38 or divorce; or  
39 (B) if the attempted marriage is void, the child is born within  
40 300 days after the termination of cohabitation.  
41 (3) After the child's birth, ~~he~~ and the child's mother have mar-  
42 ried, or attempted to marry, each other by a marriage solemnized  
43 in apparent compliance with law, although the attempted marriage

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1 is void or voidable and:  
2 (A) ~~He~~ has acknowledged ~~his~~ paternity of the child in writing;  
3 (B) with ~~his~~ consent, ~~he~~ is named as the child's father on the  
4 child's birth certificate; or  
5 (C) ~~he~~ is obligated to support the child under a written voluntary  
6 promise or by a court order.  
7 (4) ~~He~~ notoriously or in writing recognizes ~~his~~ paternity of the  
8 child, including but not limited to a voluntary acknowledgment made  
9 in accordance with K.S.A. 38-1130 or ~~section 7~~, and amendments  
10 thereto.  
11 (5) Genetic test results indicate a probability of 97% or greater  
12 that he is the father of the child.  
13 (b) A presumption under this section may be rebutted in an  
14 appropriate action only by clear and convincing evidence. If two or  
15 more presumptions arise which conflict with each other, the pre-  
16 sumption which on the facts is founded on the weightier consider-  
17 ations of policy and logic controls. The presumption is rebutted by  
18 a court decree establishing paternity of the child by another man.

The man

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K.S.A. 65-2409a

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1 (6) The man has a duty to support the child under an order of  
2 support regardless of whether the man has ever been married to  
3 the child's mother.

4 (b) A presumption under this section may be rebutted in an  
5 appropriate action only by clear and convincing evidence. If two  
6 or more presumptions arise which conflict with each other, the  
7 presumption which on the facts is founded on the weightier  
8 considerations of policy and logic controls. The presumption  
9 is rebutted, by a court decree establishing paternity of the child  
10 by another man or as provided in subsection (c). If a presumption  
11 is rebutted, the party alleging the existence of a father and child  
12 relationship shall have the burden of going forward with the evi-  
13 dence.

14 (c) If two or more presumptions under this section arise which  
15 conflict with each other, the presumption which on the facts is  
16 founded on the weightier considerations of policy and logic, including  
17 the best interests of the child, shall control.

18 (d) Full faith and credit shall be given to a determination of  
19 paternity made by any other state or jurisdiction, whether the de-  
20 termination is established by judicial or administrative process or  
21 by voluntary acknowledgment. As used in this section, "full faith  
22 and credit" means that the determination of paternity shall have the  
23 same conclusive effect and obligatory force in this state as it has in  
24 the state or jurisdiction where made.

25 (e) If a presumption arises under this section, the presumption  
26 shall be sufficient basis for entry of an order requiring the man to  
27 support the child without further paternity proceedings.

28 ~~(f) If a presumption arises under this section, nonpaternity must~~  
29 ~~be raised as an affirmative defense.~~

30 Sec. ~~45~~ K.S.A. 38-1115 is hereby amended to read as follows:

31 38-1115. (a) A child whose paternity has not been determined,  
32 or any person on behalf of such a child, may bring an action:

33 (1) At any time to determine the existence of a father and child  
34 relationship presumed under K.S.A. 38-1114 and amendments  
35 thereto; or

36 (2) at any time until three years after the child reaches the age  
37 of majority to determine the existence of a father and child rela-  
38 tionship which is not presumed under K.S.A. 38-1114 and amend-  
39 ments thereto.

40 (b) When authorized under K.S.A. 39-755 or 39-756, and amend-  
41 ments thereto, the secretary of social and rehabilitation services may  
42 bring an action at any time during a child's minority to determine  
43 the existence of the father and child relationship.

b.

delete



1 (c) This section does not extend the time within which a right  
2 of inheritance or a right to a succession may be asserted beyond the  
3 time provided by law relating to the probate of estates or deter-  
4 mination of heirship.

5 (d) Any agreement between an alleged or presumed father and  
6 the mother or child does not bar an action under this section.

7 (e) *Except as otherwise provided in this subsection, if an ack-*  
8 *nowledgment of paternity has been completed pursuant to section 2*  
9 *and amendments thereto, the man named as the father, the mother*  
10 *or the child may bring an action to revoke the acknowledgment of*  
11 *paternity at any time until one year after the child's date of birth.*  
12 *If the person bringing the action was a minor at the time the ack-*  
13 *nowledgment of paternity was completed, the action to revoke the*  
14 *acknowledgment of paternity may be brought at any time until one*  
15 *year after that person attains age 18, unless the court finds that the*  
16 *child is more than one year of age and that revocation of the ac-*  
17 *knowledgment of paternity is not in the child's best interest.*

18 *If a court of this state has assumed jurisdiction over the matter*  
19 *of the child's paternity or the duty of a man to support the child,*  
20 *that court shall have exclusive jurisdiction to determine whether an*  
21 *acknowledgment of paternity may be revoked under this subsection.*

22 *If an acknowledgment of paternity has been revoked under this*  
23 *subsection, it shall not give rise to a presumption of paternity pur-*  
24 *suant to K.S.A. 38-1114 and amendments thereto. Nothing in this*  
25 *subsection shall prevent a court from admitting a revoked acknow-*  
26 *ledgment of paternity into evidence for any other purpose.*

27 *If there has been an assignment of the child's support rights*  
28 *pursuant to K.S.A. 39-709 and amendments thereto, the secretary*  
29 *of social and rehabilitation services shall be a necessary party to*  
30 *any action under this subsection.*

31 ~~Sec. 16.~~ K.S.A. 38-1117 is hereby amended to read as follows:  
32 38-1117. ~~The child shall be made a party to an action brought~~  
33 ~~under this act. The~~ (a) *Except as otherwise provided in subsection*  
34 *(b), the child, the mother, each man presumed to be the father*  
35 *under K.S.A. 38-1114 and amendments thereto and each man alleged*  
36 *to be the father shall be made parties or, if not subject to the*  
37 *jurisdiction of the court, shall be given notice of the action in a*  
38 *manner prescribed by the court and shall be afforded the opportunity*  
39 *to be heard. If a man alleged or presumed to be the father is a*  
40 *minor, the court shall cause notice of the pendency of the pro-*  
41 *ceedings and copies of the pleadings on file to be served upon the*  
42 *parents or guardian of the minor and shall appoint a guardian ad*  
43 *litem who shall be an attorney to represent the minor in the pro-*

K.S.A. 65-2409a

7.

(Section 7, cont.)

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11

- 1 ceedings. If the parents or guardian of the minor cannot be found,  
2 notice shall be served in the manner directed by the court.  
3 (b) In an action to establish an order for support of the child,  
4 failure to join any person as a party shall not deprive the court of  
5 jurisdiction to determine whether a party to the action has a duty  
6 to support the child and, if so, to enter an order for support.

7

7-7

19 Sec. 9. K.S.A. 38-1118 is hereby amended to read as follows:  
20 38-1118. Whenever the paternity of a child is in issue in any action  
21 or judicial proceeding in which the child, mother and alleged father  
22 are parties, the court, upon its own motion or upon motion of any  
23 party to the action or proceeding, shall order the mother, child and  
24 alleged father to submit to blood genetic tests. If a paternity action  
25 is filed by the secretary of social and rehabilitation services under  
26 K.S.A. 39-755 or 39-756, and amendments thereto, the court shall  
27 order blood genetic tests on the motion of the secretary of social  
28 and rehabilitation services or any party to the action. If any party  
29 refuses to submit to the tests, the court may resolve the question  
30 of paternity against the party or enforce its order if the rights of  
31 others and the interests of justice so require. The tests shall be made  
32 by experts qualified as genetic examiners of blood types who shall  
33 be appointed by the court. The verified written report of the court  
34 appointed experts shall be considered to be stipulated to by all parties  
35 unless written notice of intent to challenge the validity of the report  
36 is given to all parties not more than 20 days after receipt of a copy  
37 of the report but in no event less than 10 days before any hearing  
38 at which the genetic test results may be introduced into evidence.  
39 If such notice is given, the experts shall be called by the court as  
40 witnesses to testify as to their findings and shall be subject to cross-  
41 examination by the parties. Any party or person at whose suggestion  
42 the tests have been ordered may demand that other experts, qualified  
43 as genetic examiners of blood types, perform independent tests

8.

(a)

an

if paternity of the child is in issue.

(b) Parties to an action may agree to conduct genetic tests prior to or during the pendency of an action for support of a child. The verified written report of the experts shall be admitted into evidence as provided in subsection (c) unless the court finds that paternity of the child is not in issue.

(c)

delete

delete

1 under order of the court, the results of which may be offered in  
2 evidence. The number and qualification of the other experts shall  
3 be determined by the court. *If no challenge is made, the genetic*  
4 *test results shall be admissible as evidence of paternity without the*  
5 *need for foundation testimony or other proof of authenticity or*  
6 *accuracy.*

7 Sec. ~~4~~. K.S.A. 38-1119 is hereby amended to read as follows:  
8 38-1119. (a) Evidence relating to paternity may include any of the  
9 following:

10 (1) Evidence of sexual intercourse between the mother and al-  
11 leged father at any possible time of conception.

12 (2) An expert's opinion concerning the statistical probability of  
13 the alleged father's paternity based upon the duration of the mother's  
14 pregnancy.

15 (3) ~~Blood Genetic~~ test results of the statistical probability of the  
16 alleged father's paternity.

17 (4) Medical or anthropological evidence relating to the alleged  
18 father's paternity of the child based on tests performed by experts.  
19 The court may, and upon request of a party shall, require the child,  
20 the mother and the alleged father to submit to appropriate tests.

21 (5) Testimony, records and notes of a physician concerning the  
22 medical circumstances of the pregnancy and the condition and char-  
23 acteristics of the child upon birth. Such testimony, records and notes  
24 are not privileged.

25 (6) Any other evidence relevant to the issue of paternity of the  
26 child, *including but not limited to voluntary acknowledgment of*  
27 *paternity made in accordance with K.S.A. 38-1130 or ~~section 7~~, and*  
28 *amendments thereto.*

29 (b) Testimony relating to sexual access to the mother by a man  
30 at a time other than the probable time of the conception of the child  
31 is inadmissible in evidence.

32 (c) For any child whose weight at birth is equal to or greater  
33 than five pounds 12 ounces, or 2,608.2 grams, it shall be presumed  
34 that the child was conceived between 300 and 230 days prior to the  
35 date of the child's birth. A presumption under this section may be  
36 rebutted by clear and convincing evidence.

37 Sec. 5. K.S.A. 38-1120 is hereby amended to read as follows:  
38 38-1120. (a) An action under this act is a civil action governed by  
39 the rules of civil procedure.

40 (b) Trial of all issues in actions under this act shall be to the  
41 court.

42 (c) *If any defendant to an action commenced pursuant to this*  
43 *act fails to file an answer or to appear, personally or by counsel,*

9.

K.S.A. 65-2409a

delete



~~1 at the time specified in the summons or fails to appear at the time  
2 at which trial has been scheduled, the cause may proceed, upon  
3 proof of service as provided by law, without further notice, and  
4 judgment may be rendered against such defendant.~~

Sec. 10. K.S.A. 38-1121 is hereby amended to read as follows:  
38-1121. (a) The judgment or order of the court determining the

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12

1 existence or nonexistence of the parent and child relationship is  
2 determinative for all purposes, *but if any person necessary to de-*  
3 *termine the existence of a father and child relationship for all pur-*  
4 *poses has not been joined as a party, a determination of the paternity*  
5 *of the child shall have only the force and effect of a finding of fact*  
6 *necessary to determine a duty of support.*

7 (b) If the judgment or order of the court is at variance with the  
8 child's birth certificate, the court shall order that a new birth cer-  
9 tificate be issued, *but only if any man named as the father on the*  
10 *birth certificate is a party to the action.*

11 (c) Upon adjudging that a party is the parent of a minor child,  
12 the court shall make provision for support and education of the child  
13 including the necessary medical expenses incident to the birth of  
14 the child. The court may order the support and education expenses  
15 to be paid by either or both parents for the minor child. When the  
16 child reaches 18 years of age, the support shall terminate unless: (1)  
17 The parent or parents agree, by written agreement approved by the  
18 court, to pay support beyond that time; (2) the child reaches 18  
19 years of age before completing the child's high school education in  
20 which case the support shall not automatically terminate, unless  
21 otherwise ordered by the court, until June 30 of the school year  
22 during which the child became 18 years of age if the child is still  
23 attending high school; or (3) the child is still a bona fide high school  
24 student after June 30 of the school year during which the child  
25 became 18 years of age, in which case the court, on motion, may  
26 order support to continue through the school year during which the  
27 child becomes 19 years of age so long as the child is a bona fide  
28 high school student and the parents jointly participated or knowingly  
29 acquiesced in the decision which delayed the child's completion of  
30 high school. The court, in extending support pursuant to subsection  
31 (c)(3), may impose such conditions as are appropriate and shall set  
32 the child support utilizing the guideline table category for 16-year  
33 through 18-year old children. Provision for payment of support and  
34 educational expenses of a child after reaching 18 years of age if still  
35 attending high school shall apply to any child subject to the juris-  
36 diction of the court, including those whose support was ordered  
37 prior to July 1, 1992. If an agreement approved by the court prior  
38 to July 1, 1988, provides for termination of support before the date  
39 provided by subsection (c)(2), the court may review and modify such  
40 agreement, and any order based on such agreement, to extend the  
41 date for termination of support to the date provided by subsection  
42 (c)(2). If an agreement approved by the court prior to July 1, 1992,  
43 provides for termination of support before the date provided by

10.

1-10

1 subsection (c)(3), the court may review and modify such agreement,  
2 and any order based on such agreement, to extend the date for  
3 termination of support to the date provided by subsection (c)(3). For  
4 purposes of this section, "bona fide high school student" means a  
5 student who is enrolled in full accordance with the policy of the  
6 accredited high school in which the student is pursuing a high school  
7 diploma or a graduate equivalency diploma (GED). The judgment  
8 shall specify the terms of payment and shall require payment to be  
9 made through the clerk of the district court or the court trustee  
10 except for good cause shown. The judgment may require the party  
11 to provide a bond with sureties to secure payment. The court may  
12 at any time during the minority of the child modify or change the  
13 order of support as required by the best interest of the child. The  
14 court may make a modification of support retroactive to a date at  
15 least one month after the date that the motion to modify was filed  
16 with the court. Any increase in support ordered effective prior to  
17 the date the court's judgment is filed shall not become a lien on  
18 real property pursuant to K.S.A. 60-2202, and amendments thereto.  
19 The

20 (d) If both parents are parties to the action, the court shall enter  
21 such orders regarding custody and visitation as the court considers  
22 to be in the best interest of the child.

23 ~~{d}~~ (e) In entering an original order for support of a child under  
24 this section, the court may ~~include a requirement that award~~ an  
25 ~~additional amount be paid judgment~~ to reimburse the expenses of  
26 support and education of the child from the date of birth to the date  
27 the order is entered ~~and the necessary medical expenses incident~~  
28 ~~to the birth of the child. If the determination of paternity is based~~  
29 ~~upon a presumption arising under K.S.A. 38-1114 and amendments~~  
30 ~~thereto, the court shall award an additional judgment to reimburse~~  
31 ~~the expenses of support and education of the child from at least the~~  
32 ~~date the presumption first arose to the date the order is entered,~~  
33 ~~except that no additional judgment need be awarded for amounts~~  
34 ~~accrued under a previous order for the child's support.~~

35 ~~{e}~~ (f) In determining the amount to be paid by a parent for  
36 support of the child and the period during which the duty of support  
37 is owed, a court enforcing the obligation of support shall consider  
38 all relevant facts including, but not limited to, the following:

- 39 (1) The needs of the child.  
40 (2) The standards of living and circumstances of the parents.  
41 (3) The relative financial means of the parents.  
42 (4) The earning ability of the parents.  
43 (5) The need and capacity of the child for education.

— all or part

- 1 (6) The age of the child.  
 2 (7) The financial resources and the earning ability of the child.  
 3 (8) The responsibility of the parents for the support of others.  
 4 (9) The value of services contributed by the custodial parent.  
 5 ~~(f)~~ (g) The provisions of K.S.A. 23-4,107, and amendments  
 6 thereto, shall apply to all orders of support issued under this section.  
 7 ~~(g)~~ (h) An order granting visitation rights pursuant to this section  
 8 may be enforced in accordance with K.S.A. 23-701, and amendments  
 9 thereto.

10 Sec. ~~19~~ K.S.A. 38-1125 is hereby amended to read as follows:  
 11 38-1125. (a) If the petitioner is not represented by counsel, the  
 12 petitioner in an action to determine paternity shall be represented  
 13 by *may apply for services from*: (1) The court trustee of the judicial  
 14 district in which the action is brought, if the office of court trustee  
 15 has been established in the county; or (2) the department of social  
 16 and rehabilitation services or its contractor, if the action is brought  
 17 pursuant to part D of title IV of the federal social security act (42  
 18 USC § 651 *et seq.*), as amended; ~~or~~ (3). *At the request of a petitioner*  
 19 *in an action to determine paternity*, the county or district attorney  
 20 of the county in which the action is brought; *if shall proceed on the*  
 21 *petitioner's behalf if the petitioner is not represented by counsel*,  
 22 the action is not brought pursuant to part D of title IV of the federal  
 23 social security act (42 USC § 651 *et seq.*), as amended, and there  
 24 is no court trustee in the county.

25 (b) The court shall appoint a guardian *ad litem* to represent the  
 26 minor child if the court finds that the interests of the child and the  
 27 interests of the petitioner differ. In any other case, the court may  
 28 appoint such a guardian *ad litem*.

29 (c) The court shall appoint counsel for any other party to the  
 30 action who is financially unable to obtain counsel.

31 (d) If a party is financially unable to pay the costs of a transcript,  
 32 the court shall furnish on request a transcript for purposes of appeal.

33 Sec. ~~20~~ K.S.A. 38-1128 is hereby amended to read as follows:  
 34 38-1128. (a) Upon receipt of a certified order from a court of this  
 35 state or an authenticated order of a court of another state, the state  
 36 registrar of vital statistics shall prepare a new birth registration con-  
 37 sistent with the findings of the court.

38 (b) The fact that the father and child relationship was declared  
 39 after the child's birth shall not be ascertainable from the new birth  
 40 registration, but the actual place and date of birth shall be shown.

41 (c) The findings upon which the new birth registration was made  
 42 and the original birth certificate shall be kept in a sealed and con-  
 43 fidential file and be subject to inspection only in exceptional cases

—upon order of the court for good cause shown ~~except~~ <sup>or</sup> as otherwise  
 provided in section 3.

1     Sec. 22. K.S.A. 39-755 is hereby amended to read as follows:  
2     39-755. (a) In cases where the secretary of social and rehabilitation  
3     services is deemed to have an assignment of support rights in ac-  
4     cordance with the provisions of K.S.A. 39-709 and amendments  
5     thereto, the secretary is authorized to bring a civil action in the  
6     name of the state of Kansas or of the obligee whose support rights  
7     are assigned to enforce such support rights, establish an order for  
8     medical support and, when appropriate or necessary, to establish  
9     the parentage of a child. ~~Civil actions by the secretary to deter-~~  
10    ~~mine the parentage of a child may be brought at any time if~~  
11    ~~parentage is presumed under K.S.A. 38-1114 and amendments~~  
12    ~~thereto or at any time until three years after the child reaches~~  
13    ~~the age of majority if parentage is not presumed under K.S.A.~~  
14    ~~38-1114 and amendments thereto. The secretary may also enforce~~  
15    any assigned support order or file a motion to modify any such order.

16    (b) The secretary of social and rehabilitation services and the  
17    attorney representing the secretary or an attorney with whom  
18    the secretary has entered into a contract or agreement for such  
19    services under this act shall be deemed to represent *hold* the  
20    interests of all persons, officials and agencies having an interest in  
21    the assignment. The court shall determine, in accordance with ap-  
22    plicable provisions of law, the parties necessary to the proceeding  
23    and whether independent counsel should be appointed to represent  
24    any party to the assignment or any other person having an interest  
25    in the support right. *In any action or proceeding brought by the*  
26    *secretary of social and rehabilitation services to establish paternity*  
27    *or to establish, modify or enforce a support obligation, the social*  
28    *and rehabilitation services' attorney or the attorneys with whom the*  
29    *agency contracts to provide legal services shall represent the state*  
30    *department of social and rehabilitation services. Nothing in this*  
31    *section shall be construed to modify any statutory mandate, authority*  
32    *or confidentiality required by any governmental agency. Any rep-*  
33    *resentation by such attorney shall not be construed to create an*  
34    *attorney-client relationship between the attorney and any party other*  
35    *than the state department of social and rehabilitation services.*

36    (c) Any support order made by the court in such a proceeding  
37    shall direct that payments be made to the secretary of social and  
38    rehabilitation services so long as there is in effect an assignment of  
39    support rights to the secretary and, upon notification by the secretary  
40    to the court that the assignment is terminated, that payments be  
41    made to the person or family.

42    (d) The provisions of this section shall also apply to cases brought  
43    by the secretary on behalf of persons who have applied for services—pursuant to K.S.A. 39-756 and amendments thereto.



14.

5 Sec. ~~65-2409a~~ K.S.A. 65-2409a is hereby amended to read as follows:  
6 65-2409a. (a) A certificate of birth for each live birth which occurs  
7 in this state shall be filed with the state registrar within five days  
8 after such birth and shall be registered by such registrar if such  
9 certificate has been completed and filed in accordance with this  
10 section. If a birth occurs on a moving conveyance, a birth certificate  
11 shall indicate as the place of birth the location where the child was  
12 first removed from the conveyance.

13 (b) When a birth occurs in an institution, the person in charge  
14 of the institution or the person's designated representative shall ob-  
15 tain the personal data, prepare the certificate, secure the signatures  
16 required by the certificate and file such certificate with the state  
17 registrar. The physician in attendance shall certify to the facts of  
18 birth and provide the medical information required by the certificate  
19 within five days after the birth. When a birth occurs outside an  
20 institution, the certificate shall be prepared and filed by one of the  
21 following in the indicated order of priority: (1) The physician in  
22 attendance at or immediately after the birth, or in the absence of  
23 such a person; (2) any other person in attendance at or immediately  
24 after the birth, or in the absence of such a person; or (3) the father,  
25 the mother or, in the absence of the father and the inability of the  
26 mother, the person in charge of the premises where the birth oc-  
27 curred.

28 (c) If the mother was married at the time of either conception  
29 or birth, or at any time between conception and birth, the name of  
30 the husband shall be entered on the certificate as the father of the  
31 child unless paternity has been determined otherwise by a court of  
32 competent jurisdiction, in which case the name of the father as  
33 determined by the court shall be entered. If the mother was not  
34 married either at the time of conception or of birth, or at any time  
35 between conception and birth, the name of the father shall not be  
36 entered on the certificate of birth without the written consent of  
37 the mother and of the person to be named as the father *on a form*  
38 *provided by the department of health and environment pursuant to*  
39 *section 4* unless a determination of paternity has been made by a  
40 court of competent jurisdiction, in which case the name of the father  
41 as determined by the court shall be entered.

42 (d) One of the parents of any child shall sign the certificate of  
43 live birth to attest to the accuracy of the personal data entered

state registrar

3

7-15

1 thereon, in time to permit its filing within the five days prescribed  
2 above.

3 (e) Except as otherwise provided by this subsection, a fee of \$4  
4 shall be paid for each certificate of live birth filed with the state  
5 registrar. Such fee shall be paid by the parent or parents of the  
6 child. If a birth occurs in an institution, the person in charge of the  
7 institution or the person's designated representative shall be re-  
8 sponsible for collecting the fee and shall remit such fee to the sec-  
9 retary of health and environment not later than the 15th day following  
10 the end of the calendar quarter during which the birth occurred. If  
11 a birth occurs other than in an institution, the person completing  
12 the birth certificate shall be responsible for collecting the fee and  
13 shall remit such fee to the secretary of health and environment not  
14 later than the 15th day of the month following the birth.

15 The fee provided for by this subsection shall not be required to  
16 be paid if the parent or parents of the child are at the time of the  
17 birth receiving assistance, as defined by K.S.A. 39-702 and amend-  
18 ments thereto, from the secretary of social and rehabilitation services.

19 (f) Except as provided in this subsection, when a certificate of  
20 birth is filed pursuant to this act, each parent shall furnish the social  
21 security number or numbers issued to the parent. Social security  
22 numbers furnished pursuant to this subsection shall not be recorded  
23 on the birth certificate. A parent shall not be required to furnish  
24 such person's social security number pursuant to this subsection if  
25 no social security number has been issued to the parent; the social  
26 security number is unknown; or the secretary determines that good  
27 cause, as defined in federal regulations promulgated pursuant to title  
28 IV-D of the federal social security act, exists for not requiring the  
29 social security number. Nothing in this subsection shall delay the  
30 filing or issuance of the birth certificate.

31 New Sec. 7. (a) The secretary of health and environment shall  
32 prepare a form for voluntary acknowledgment of a child's paternity.  
33 The form shall be a declaration conforming to the provisions of K.S.A.  
34 1993 Supp. 53-601 and amendments thereto and shall require the  
35 signature of both the mother and the father of the child. The form  
36 shall include: (1) The mother's statement consenting to the acknow-  
37 ledgment of paternity; (2) the father's statement acknowledging that  
38 he is the biological father of the child; (3) the statement of both  
39 parents that they have received and understand the information  
40 required to be provided pursuant to subsection (b); and (4) the  
41 statement of both parents that they understand they cannot be re-  
42 quired to sign the form and they are doing so voluntarily.

43 (b) The secretary of social and rehabilitation services, in con-

delete

1 junction with the secretary of health and environment, shall prepare  
2 information to be provided to persons before they sign an acknow-  
3 ledgment of paternity. The information shall be in a format and  
4 language that can be easily understood and shall consist of an ex-  
5 planation that: (1) Both parents have a duty to support the child and  
6 the acknowledgment may result in an order requiring child support  
7 to be paid; (2) both parents have visitation and custody rights to the  
8 child and the acknowledgment may result in an order granting those  
9 rights; (3) both parents are required to consent, or to have notice  
10 and a hearing, before the child may be adopted and the acknow-  
11 ledgment may result in imposition of those requirements; and (4)  
12 the persons signing the form are presumed to be the parents of the  
13 child unless a court later determines that another person is a parent.  
14 (c) The secretary of health and environment shall distribute, with-  
15 out charge, the form and information provided for by this section  
16 to institutions and others required to file certificates of birth with  
17 the state registrar of vital statistics.  
18 (d) The minority of a person signing an acknowledgment of pa-  
19 ternity in accordance with this section shall not invalidate the ack-  
20 nowledge~~ment or make the acknowledgment voidable.~~

21 Sec. 8. K.S.A. ~~38-1114, 38-1118, 38-1119, 38-1120,~~ 65-2409 and  
22 65-2409a are hereby repealed.

23 Sec. 9. This act shall take effect and be in force from and after  
24 its publication in the statute book.

*delete*

38-1110, 38-1114, 38-1115, 38-1117, 38-1118, 38-1119,  
38-1121, 38-1125, 38-1128, 39-755,

1-16

## HOUSE BILL No. 2832

By Representatives Wilk and Phill Kline, Bradley, Cox, Crabb, Farmer, Flower, Freeborn, Glasscock, Graeber, Hayzlett, Jen- nison, Mayans, Mays, Mead, Myers, O'Connor, Packer, Robinett, Roe, Samuelson, Scott, Shore, M. Smith, Snowbarger, Vickrey and Wagle

2-3

12 AN ACT concerning inmates in the custody of the secretary of cor-  
13 rections; relating to denial of parole; concerning the filing of civil  
14 actions by inmates; amending K.S.A. 60-1501, 60-1504 and 60-  
15 2007 and K.S.A. 1993 Supp. 22-3717, 60-1505, 60-2001 and 75-  
16 5268 and repealing the existing sections.

17  
18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. Any inmate in the custody of the secretary of  
20 corrections, prior to filing any civil action naming the state of Kansas  
21 as the defendant pursuant to the rules of civil procedure, shall have  
22 exhausted such inmate's administrative remedies, concerning such  
23 civil action. Upon filing a petition in a civil action, such inmate shall  
24 file with such petition proof that the administrative remedies have  
25 been exhausted.

26 Sec. 2. K.S.A. 1993 Supp. 22-3717 is hereby amended to read  
27 as follows: 22-3717. (a) Except as otherwise provided by this section  
28 and K.S.A. 1993 Supp. 21-4628 and amendments thereto, an inmate,  
29 including an inmate sentenced pursuant to K.S.A. 21-4618 and  
30 amendments thereto, shall be eligible for parole after serving the  
31 entire minimum sentence imposed by the court, less good time  
32 credits.

33 (b) An inmate sentenced for a class A felony, including an inmate  
34 sentenced pursuant to K.S.A. 21-4618 and amendments thereto but  
35 not including an inmate sentenced pursuant to K.S.A. 1993 Supp.  
36 21-4628 and amendments thereto or on or after July 1, 1993, inmate  
37 sentenced for an off-grid offense, shall be eligible for parole after  
38 serving 15 years of confinement, without deduction of any good time  
39 credits.

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

or in a county jail

, the secretary of corrections, the warden, the sheriff, or an employee of the department of corrections or the county, while such employee is engaged in the performance of such employee's duty, (DOC request)

, established by rules and regulations promulgated by the secretary of correc- tions or by county resolutions, (Carmody request)

House Judiciary  
Attachment 2  
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(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 K.S.A. 1993 Supp. 21-4722, *and amendments thereto*, 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 K.S.A. 1993 Supp. 21-4722, *and amendments thereto*, 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 K.S.A. 1993 Supp. 21-4721, *and amendments thereto*.

(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 K.S.A. 1993 Supp. 21-4714, *and amendments thereto*; 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 com-

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1 pleted by the offender. The department of corrections or the parole  
2 board shall ensure that court ordered sex offender treatment be  
3 carried out.

4 (v) In carrying out the provisions of subparagraph (d)(1)(C), the  
5 court shall refer to K.S.A. 1993 Supp. 21-4718, *and amendments*  
6 *thereto*.

7 (vi) Upon petition, the parole board may provide for early dis-  
8 charge from the postrelease supervision period upon completion of  
9 court ordered programs and completion of the presumptive postre-  
10 lease supervision period, as determined by the crime of conviction,  
11 pursuant to subparagraph (d)(1)(A) or (B). Early discharge from pos-  
12 trelease supervision is at the discretion of the parole board.

13 (vii) Persons convicted of crimes deemed sexually violent or sex-  
14 ually motivated, shall be registered according to the habitual sex  
15 offender registration act, K.S.A. 1993 Supp. 22-4901 through 22-  
16 4910 and amendments thereto; and

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

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

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

23 (B) indecent liberties with a child, K.S.A. 21-3503, and amend-  
24 ments thereto;

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

27 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-  
28 3505 and amendments thereto;

29 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amend-  
30 ments thereto;

31 (F) indecent solicitation of a child, K.S.A. 21-3510, and amend-  
32 ments thereto;

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

35 (H) sexual exploitation of a child, K.S.A. 21-3516, and amend-  
36 ments thereto;

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

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

1 this section;

2 (K) an attempt, conspiracy or criminal solicitation, as defined in  
3 K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a  
4 sexually violent crime as defined in this section; or

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

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

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

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

24 (2) 36 months for class A or B felonies or the conditional release  
25 date whichever is shorter.

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

43 (h) The Kansas parole board shall hold a parole hearing during

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1 the month prior to the month an inmate will be eligible for parole  
2 under subsections (a), (b) and (c). At least the month preceding the  
3 parole hearing, the county or district attorney of the county where  
4 the inmate was convicted shall give written notice of the time and  
5 place of the public comment sessions for the inmate to any victim  
6 of the inmate's crime who is alive and whose address is known to  
7 the county or district attorney or, if the victim is deceased, to the  
8 victim's family if the family's address is known to the county or  
9 district attorney. Except as otherwise provided, failure to notify pur-  
10 suant to this section shall not be a reason to postpone a parole  
11 hearing. In the case of any inmate convicted of a class A felony the  
12 secretary of corrections shall give written notice of the time and  
13 place of the public comment session for such inmate at least one  
14 month preceding the public comment session to any victim of such  
15 inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and  
16 amendments thereto. If notification is not given to such victim or  
17 such victim's family in the case of any inmate convicted of a class  
18 A felony, the board shall postpone a decision on parole of the inmate  
19 to a time at least 30 days after notification is given as provided in  
20 this section. Nothing in this section shall create a cause of action  
21 against the state or an employee of the state acting within the scope  
22 of the employee's employment as a result of the failure to notify  
23 pursuant to this section. If granted parole, the inmate may be re-  
24 leased on parole on the date specified by the board, but not earlier  
25 than the date the inmate is eligible for parole under subsections (a),  
26 (b) and (c). At each parole hearing and, if parole is not granted, at  
27 such intervals thereafter as it determines appropriate, the Kansas  
28 parole board shall consider: (1) Whether the inmate has satisfactorily  
29 completed the programs required by any agreement entered under  
30 K.S.A. 75-5210a and amendments thereto, or any revision of such  
31 agreement; and (2) all pertinent information regarding such inmate,  
32 including, but not limited to, the circumstances of the offense of  
33 the inmate; the presentence report; the previous social history and  
34 criminal record of the inmate; the conduct, employment, and attitude  
35 of the inmate in prison; the reports of such physical and mental  
36 examinations as have been made; comments of the victim and the  
37 victim's family; comments of the public; official comments; and ca-  
38 pacity of state correctional institutions.

39 (i) In those cases involving inmates sentenced for a crime com-  
40 mitted after July 1, 1993, the parole board will review the inmates  
41 proposed release plan. The board may schedule a hearing if they  
42 desire. The board may impose any condition they deem necessary  
43 to insure public safety, aid in the reintegration of the inmate into

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1 the community, or items not completed under the agreement entered  
2 into under K.S.A. 75-5210a and amendments thereto. The board  
3 may not advance or delay an inmate's release date. Every inmate  
4 while on postrelease supervision shall remain in the legal custody  
5 of the secretary of corrections and is subject to the orders of the  
6 secretary.

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

11 (k) Before ordering the parole of any inmate, the Kansas parole  
12 board shall have the inmate appear before it and shall interview the  
13 inmate unless impractical because of the inmate's physical or mental  
14 condition or absence from the institution. Every inmate while on  
15 parole shall remain in the legal custody of the secretary of corrections  
16 and is subject to the orders of the secretary. Whenever the Kansas  
17 parole board formally considers placing an inmate on parole and no  
18 agreement has been entered into with the inmate under K.S.A. 75-  
19 5210a and amendments thereto, the board shall notify the inmate  
20 in writing of the ~~specific~~ reasons for not granting parole. If an  
21 agreement has been entered under K.S.A. 75-5210a and amendments  
22 thereto and the inmate has not satisfactorily completed the programs  
23 specified in the agreement, or any revision of such agreement, the  
24 board shall notify the inmate in writing of the specific programs the  
25 inmate must satisfactorily complete before parole will be granted. If  
26 parole is not granted only because of a failure to satisfactorily com-  
27 plete such programs, the board shall grant parole upon the secretary's  
28 certification that the inmate has successfully completed such pro-  
29 grams. If an agreement has been entered under K.S.A. 75-5210a  
30 and amendments thereto and the secretary of corrections has re-  
31 ported to the board in writing that the inmate has satisfactorily  
32 completed the programs required by such agreement, or any revision  
33 thereof, the board shall not require further program participation.  
34 However, if the board determines that other pertinent information  
35 regarding the inmate warrants the inmate's not being released on  
36 parole, the board shall state in ~~detail~~ *the specific writing the* rea-  
37 sons for not granting the parole. If parole is denied for an inmate  
38 sentenced for a crime other than a class A or class B felony, the  
39 board shall hold another parole hearing for the inmate not later than  
40 one year after the denial. If parole is denied for an inmate sentenced  
41 for a class A or class B felony, the board shall hold another parole  
42 hearing for the inmate not later than three years after the denial  
43 and shall conduct an annual file review for such inmate. Written

1 notice of such annual file review shall be given to the inmate. The  
2 provisions of this subsection shall not be applicable to inmates sen-  
3 tenced for crimes committed on or after July 1, 1993.

4 (l) Parolees and persons on postrelease supervision shall be as-  
5 signed, upon release, to the appropriate level of supervision pursuant  
6 to the criteria established by the secretary of corrections.

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

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

18 (1) Unless it finds compelling circumstances which would render  
19 a plan of payment unworkable, shall order as a condition of parole  
20 or postrelease supervision that the parolee or the person on postre-  
21 lease supervision pay any transportation expenses resulting from re-  
22 turning the parolee or the person on postrelease supervision to this  
23 state to answer criminal charges or a warrant for a violation of a  
24 condition of probation, assignment to a community correctional serv-  
25 ices program, parole, conditional release or postrelease supervision;  
26 and

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

32 (o) If the court which sentenced an inmate specified at the time  
33 of sentencing the amount and the recipient of any restitution ordered  
34 as a condition of parole or postrelease supervision, the Kansas parole  
35 board shall order as a condition of parole or postrelease supervision  
36 that the inmate pay restitution in the amount and manner provided  
37 in the journal entry unless the board finds compelling circumstances  
38 which would render a plan of restitution unworkable. If the parolee  
39 was sentenced before July 1, 1986, and the court did not specify at  
40 the time of sentencing the amount and the recipient of any restitution  
41 ordered as a condition of parole, the parole board shall order as a  
42 condition of parole that the parolee make restitution for the damage  
43 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 county or district attorney of the county where the inmate was sentenced.

(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.

Sec. 3. K.S.A. 60-1501 is hereby amended to read as follows: 60-1501. (a) Subject to the provisions of K.S.A. 60-1507, and amendments thereto, any person in this state who is detained, confined, or restrained of liberty on any pretense whatsoever, and any parent, guardian, or next friend for the protection of infants or allegedly incapacitated or incompetent persons, physically present in this state may prosecute a writ of habeas corpus in the supreme court, court of appeals or the district court of the county in which such restraint is taking place. No docket fee shall be required.

(b) ~~Except as provided in K.S.A. 60-1507, and amendments thereto, an inmate in the custody of the secretary of corrections shall file a writ pursuant to subsection (a) within two years of the date of the decision of the hearing or action such inmate is challenging~~

Sec. 4. K.S.A. 60-1504 is hereby amended to read as follows:

#### petition for (A.G. request)

30 days from the date the action was final.  
(DOC request)

(c) The petition shall be presented promptly to a judge in the district court in accordance with the procedure of the court for the assignment of court business. The petition shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the petition and any exhibits attached thereto that the plaintiff is not entitled to relief in the district court, the petition shall be dissolved at the cost of the plaintiff. If the judge finds that the plaintiff may be entitled to relief, the judge shall issue the writ and order the person to whom the writ is directed to file an answer within the period of time fixed by the court or to take such other action as the judge deems appropriate. (A.G. request)

1 60-1504. (a) *Time.* The person to whom the writ is directed shall  
2 file an answer thereto within ~~twenty-four (24)~~ 72 hours after the  
3 writ is served or at such other time as shall be specified in the writ.

(c) 4 (b), *Contents.* The answer must be verified by the person making  
5 it and shall contain: (1) a statement of the authority or reasons for  
6 the restraint, (2) a copy of the written authority for the restraint, if  
7 any, (3) if the custody of the party has been transferred, a statement  
8 as to whom, the time, place, and reason for the transfer, and (4) if  
9 it is claimed that the party cannot be produced for any reason, a  
10 statement as to the reasons why the party cannot be produced.

11 Sec. 5. K.S.A. 1993 Supp. 60-1505 is hereby amended to read  
12 as follows: 60-1505. (a) *Summary proceedings.* The judge shall pro-  
13 ceed in a summary way to hear and determine the cause and may  
14 do so regardless of whether the person restrained is present. *If the*  
15 *plaintiff is an inmate in the custody of the secretary of corrections*  
16 *and the motion and the files and records of the case conclusively*  
17 *show that the inmate is entitled to no relief, the writ shall be dis-*  
18 *solved at the cost of the inmate.*

19 (b) *Infectious diseases.* When any person is restrained because  
20 of an alleged infectious or communicable disease, the judge shall  
21 appoint a board of not less than two competent physicians to make  
22 an examination of such person and report their findings to the judge.

23 (c) *Temporary orders.* The judge may make an order for the  
24 temporary custody of the party and any other temporary orders  
25 during the pendency of the proceeding that justice may require.

26 (d) *Judgment.* If the court determines that the restraint is not  
27 wrongful, the writ shall be dissolved at the cost of the plaintiff. If  
28 the restraint is found to be wrongful, the judgment shall be either  
29 that the person shall be released, or that custody shall be transferred  
30 to some other person rightfully entitled thereto, and the court may  
31 make such other orders as justice and equity or the welfare of a  
32 minor physically present in the state may require. In cases in which  
33 the person restrained is a minor, or other incompetent or incapac-  
34 itated, at the time of rendering judgment at the request of any  
35 person adversely affected thereby, the judge shall stay the enforce-  
36 ment of the judgment for a period of not to exceed 48 hours to  
37 permit the filing of an appeal, and the judge may provide for the  
38 temporary custody of the person during such stay in such manner  
39 as the judge sees fit. Enforcement of the judgment after the taking  
40 of any appeal may be stayed on such terms and conditions, including  
41 such provisions for custody during pendency of the appeal, as the  
42 judge shall prescribe. If the state, in open court, announces its  
43 intention to appeal from an order discharging a prisoner, the judge

Except as provided in subsection (b), (A.G. request) b-6

(b) Time; exceptions. If the petition for writ challenges a denial of parole or a prison disciplinary action, the person to whom the writ is directed shall file an answer thereto within 30 days after the writ is served or at such other time as specified in the writ. (A.G. request)

(d) Truth of contents. The contents of the answer, if not controverted by the plaintiff, shall be accepted as true except as to the extent that the judge finds from the evidence that the contents are not true. (A.G. request)



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1 shall stay the enforcement of the judgment for a period not more  
2 than 24 hours to permit the filing of an appeal.

3 (e) (1) *The Record*. In habeas corpus proceedings involving ex-  
4 tradition to another state, when written notice of appeal from a  
5 judgment or an order is filed, the transcript shall be prepared within  
6 20 days after the notice of appeal is filed and sent to the appellate  
7 court for review. The appellate court may shorten or extend the  
8 time for filing the record if there is a reasonable explanation for the  
9 need for such action. When the record is received by the appellate  
10 court, the court shall set the time for filing of briefs, if briefs are  
11 desired, and shall set the appeal for submission.

12 (2) *Hearing*. Such cases, taken to the court of appeals by appeal,  
13 shall be heard at the earliest practicable time. The appellant need  
14 not be personally present, and such appeal shall be heard and de-  
15 termined upon the law and the facts arising upon record. No inci-  
16 dental question which may have arisen on the hearing of the ap-  
17 plication before the court shall be reviewed.

18 (3) *Orders on Appeal*. In such cases, the appellate court shall  
19 render such judgment and make such orders as the law and the  
20 nature of the case may require, and may make such orders relative  
21 to the costs in the case as may seem right, allowing costs and fixing  
22 the amount, or allowing no cost at all.

23 Sec. 6. K.S.A. 1993 Supp. 60-2001 is hereby amended to read  
24 as follows: 60-2001. (a) *Docket fee*. Except as otherwise provided by  
25 law, no case shall be filed or docketed in the district court, whether  
26 original or appealed, without payment of a docket fee in the amount  
27 of \$61.50 to the clerk of the district court.

28 (b) *Poverty affidavit in lieu of docket fee*. (1) *Effect*. In any case  
29 where a plaintiff by reason of poverty is unable to pay a docket fee,  
30 and an affidavit so stating is filed, no fee will be required. *If the*  
31 *plaintiff is an inmate in the custody of the secretary of corrections,*  
32 *such inmate may be required to pay a reduced docket fee. The*  
33 *supreme court shall establish by court rule a sliding scale for the*  
34 *docket fee based on the inmate's ability to pay. If such inmate has*  
35 *money in the inmate's account, the secretary of corrections is hereby*  
36 *authorized to disburse such money to pay the docket fee.*

37 (2) *Form of affidavit*. The affidavit provided for in this subsection  
38 shall be in the following form and attached to the petition:

39 State of Kansas, \_\_\_\_\_ County.

40 In the district court of the county: I do solemnly swear that the claim set forth in  
41 the petition herein is just, and I do further swear that, by reason of my poverty, I  
42 am unable to pay a docket fee.

43 (c) *Disposition of docket fee*. The docket fee shall be the only

1 costs assessed in each case for services of the clerk of the district  
2 court and the sheriff. The docket fee shall be disbursed in accordance  
3 with K.S.A. 20-362 and amendments thereto.

4 (d) *Additional court costs.* Other fees and expenses to be assessed  
5 as additional court costs shall be approved by the court, unless  
6 specifically fixed by statute. Other fees shall include, but not be  
7 limited to, witness fees, appraisers' fees, fees for service of process  
8 outside the state, fees for depositions, alternative dispute resolution  
9 fees, transcripts and publication, attorneys' fees, court costs from  
10 other courts and any other fees and expenses required by statute.  
11 All additional court costs shall be taxed and billed against the parties  
12 as directed by the court. No sheriff in this state shall charge any  
13 district court in this state a fee or mileage for serving any paper or  
14 process.

15 Sec. 7. K.S.A. 60-2007 is hereby amended to read as follows:  
16 60-2007. (a) Except as otherwise provided in this subsection, the  
17 provisions of this section shall apply to any civil action brought in  
18 a court of this state, including any action pending on the effective  
19 date of this act. This section shall not be applied retroactively to  
20 specific conduct occurring prior to the effective date of this act. The  
21 provisions of this section shall not apply to proceedings brought  
22 under K.S.A. 60-1507, *and amendments thereto.*

23 (b) At the time of assessment of the costs of any action to which  
24 this section applies, if the court finds that a party, in a pleading,  
25 motion or response thereto, has asserted a claim or defense, including  
26 setoffs and counterclaims, or has denied the truth of a factual state-  
27 ment in a pleading or during discovery, without a reasonable basis  
28 in fact and not in good faith, the court shall assess against the party  
29 as additional costs of the action, and allow to the other parties,  
30 reasonable attorney fees and expenses incurred by the other parties  
31 as a result of such claim, defense or denial. An attorney may be  
32 held individually or jointly and severally liable with a party for such  
33 additional costs where the court finds that the attorney knowingly  
34 and not in good faith asserted such a claim, defense or denial or,  
35 having gained knowledge of its falsity, failed to inform the court  
36 promptly that such claim, defense or denial was without reasonable  
37 basis in fact. *If the court finds that an inmate in the custody of the*  
38 *secretary of corrections is liable and has been assessed costs and*  
39 *further has money in such inmate's account, the secretary of the*  
40 *department of corrections is hereby authorized to disburse such*  
41 *money to pay the assessed costs.*

42 (c) The additional costs provided for in this section may be as-  
43 sessed only upon motion filed by the aggrieved party prior to taxation

1 of costs by the clerk of the court under subsection (c) of K.S.A. 60-  
2 2002, *and amendments thereto*. The party against whom the addi-  
3 tional costs are to be assessed shall be given notice of the motion  
4 and afforded an opportunity to be heard. If the additional costs are  
5 assessed, the court shall make findings with respect thereto, in-  
6 cluding the specific facts and reasons on which the findings are based.

7 (d) The purpose of this section is not to prevent a party from  
8 litigating bona fide claims or defenses, but to protect litigants from  
9 harassment and expense in clear cases of abuse.

10 (e) The state of Kansas, or any agency thereof, and all political  
11 subdivisions of the state shall be subject to the provisions of this  
12 section in the same manner as any other party.

13 Sec. 8. K.S.A. 1993 Supp. 75-5268 is hereby amended to read  
14 as follows: 75-5268. Any inmate who is allowed to participate in such  
15 paid employment or in such job training or paid employment for  
16 which a subsistence allowance is paid in connection with such job  
17 training shall pay over to the secretary or the designated represen-  
18 tative of the secretary all moneys received from such paid employ-  
19 ment or job training except that, pursuant to rules and regulations  
20 adopted by the secretary of corrections, the inmate shall retain a  
21 stipulated reasonable amount of the money as the secretary or the  
22 designated representative of the secretary deems necessary for ex-  
23 penses connected with the employment or job training. The balance  
24 of the moneys paid to the secretary or the designated representative  
25 of the secretary shall be disbursed for the following purposes:

26 (a) A designated minimum amount of that money paid to the  
27 secretary shall be returned to the state general fund or to the political  
28 subdivision, federal government or community-based center for such  
29 inmate's food and lodging or, if the inmate is participating in a private  
30 industry program other than work release, the minimum amount  
31 collected shall be deposited to the correctional industries fund;

32 (b) transportation to and from the place of employment at the  
33 rate allowed in K.S.A. 75-3203 and amendments thereto;

34 (c) if any of the dependents of the inmate are receiving public  
35 assistance, a reasonable percentage of the inmate's net pay after  
36 deduction of the above expenses shall be forwarded to the court  
37 which ordered support for the dependent or, if there is no order,  
38 to the secretary of social and rehabilitation services;

39 (d) if subsection (c) is not applicable, then a reasonable per-  
40 centage of the inmate's net pay after deduction of the above expenses  
41 shall be disbursed for the payment, either in full or ratable, of the  
42 inmate's obligations acknowledged by the inmate in writing, or which  
43 have been reduced to judgment;

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1 (e) payment of a reasonable amount into a savings account for  
2 disbursement to the inmate upon release from custody;

3 (f) payment of a reasonable amount to the clerk of the district  
4 court in which the crime occurred pursuant to an order of restitution.  
5 Such payment shall be required only if the inmate is incarcerated  
6 for a crime or crimes for which restitution is, or could be, ordered  
7 pursuant to the property crime restitution and compensation act.  
8 Such payment shall be in addition to any amount withheld and  
9 ordered paid as restitution to the state crime victims compensation  
10 board; ~~and~~

11 (g) *payment of costs assessed to the inmate pursuant to the code*  
12 *of civil procedure; and*

13 ~~(g)~~ (h) the balance, if any, shall be credited to the inmate's  
14 account and shall be made available to the inmate in such manner  
15 and for such purposes as are authorized by the secretary.

16 Sec. 9. K.S.A. 60-1501, 60-1504 and 60-2007 and K.S.A. 1993  
17 Supp. 22-3717, 60-1505, 60-2001 and 75-5268 are hereby repealed.

18 Sec. 10. This act shall take effect and be in force from and after  
19 its publication in the statute book.

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