

Approved: 2/8/94 \_\_\_\_\_  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on January 31, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

William Sneed, State Farm Insurance

Others attending: See attached list

A motion was made by Senator Emert, seconded by Senator Harris to introduce a bill to increase the docket fee on case filings by \$5 for additional funds for the Law Enforcement Training Center. The motion carried.

Senator Moran summarized for the Committee the agenda for the week.

SB 512--restitution by parents and guardians.

Bill Sneed, State Farm Insurance testified opposing SB 512. He expressed concern that restitution would be charged against a home owners policy. He expressed concern that restitution under current laws, could not be excluded from the home owners policy. He said if the purpose was to punish people who committed a crime, those people should pay. If restitution was payable through the homeowners policy, everyone would pay through higher premiums.

SB 500--Creating the crime of criminal possession of a firearm by a juvenile.

The Committee discussed amendments to SB 500.

A motion was made by Senator Bond, seconded by Senator Feleciano to include a provision in SB 500 allowing for criminal forfeiture of the firearm upon conviction. If the firearm was reported stolen it would be returned to the rightful owner. The motion carried.

A motion was made by Senator Parkinson, seconded by Senator Petty to strike the provision in SB 500 to require persons committing this crime to be tried in the adult system. The motion carried.

A motion was made by Senator Emert and seconded by Senator Ranson to amend the language in SB 500 to provide that the judge shall revoke the drivers license and eliminate the ability to obtain a drivers license until the age 18.

Senator Emert and Senator Ranson withdrew their motion.

Senator Ranson moved to amend the language in SB 500 to require the revocation of drivers license with court authority to restore driving privileges at a later time. There was no second to the motion.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m.  
on January 31, 1994.

A motion was made by Senator Rock and seconded by Senator Harris to amend the language in SB 500 to read the court shall revoke or restrict the drivers license. The motion carried.

A motion was made by Senator Oleen and seconded by Senator Parkinson to define the restriction as defined elsewhere in the driving code. The motion carried.

A motion was made by Senator Emert and seconded by Senator Vancrum to delete the exception for handguns for hunting and trapping in SB 500. The motion failed.

A motion was made by Senator Vancrum and seconded by Senator Martin to add language to New Section 1(c)(5) of SB 500 for handguns to be secured, unloaded and outside the access of a juvenile. The motion carried.

A motion was made by Senator Feleciano and seconded by Senator Emert to amend SB 500 to be published in the Kansas Register. The motion carried.

A motion was made by Senator Vancrum and seconded by Senator Feleciano to report SB 500 favorably as amended. The motion carried.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 1, 1994.

## GUEST LIST

**COMMITTEE:** Senate Judiciary Committee

DATE: 1/31/94

[illegible]



# GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/1/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Kari Callahan	Topeka	Kammico
Helen Stephens	✓	KPOA
ALAN COBB	Wichita	Wichita Hospitals
Gene Johnson	Topeka	Ks A SAP Asia
Bill Green	Topeka	State Farm
Nancy Lindberg	Topeka	Atty Gen.
Paul Shelby	Topeka	OJA
Dan Fitch	Topeka	KWIC
Jan Johnson	"	KDOC
JOHN BORK	LAWRENCE	ATTY GEN
JERRY ANGLER	<del>TOPEKA</del>	KMS
SYDNEY HARDMAN	Lawrence	KAC
Carolyn Kistley	Topeka	SRS
Kyle Smith	Topeka	KBI
Bruce Baker	Dr. Park	Co. Clerk
Anna Smith	Topeka	Ks. Assoc of Counties
Gen. Reynolds	"	
Julie Wright		Wichita Eagle
Jane Allman	Olathe	Reg. of Roads Assoc.
John Peters	Tyler	RAP 1st
Gary Stotts	Topeka	KDOC
GERRY RAY	Overland PK	City of Overland PK JO CO Commissioner
JAMES CLARK	Topeka	KC DAA

Mc Cathey

Topeka

BIDS

Article 38.—COLLATERAL SOURCE  
BENEFITS

**60-3301. Definitions.** As used in this act:

(a) "Claimant" means any person seeking damages in an action for personal injury or death, and includes the heirs at law, executor or administrator of a decedent's estate.

(b) "Collateral source benefits" means benefits which were or are reasonably expected to be received by a claimant, or by someone for the benefit of a claimant, for expenses incurred or reasonably certain to be incurred as a result of the occurrence upon which the personal injury action is based, except life or disability insurance benefits or benefits gratuitously bestowed on the claimant. Such term shall not include: (1) Services or benefits for which a valid lien or subrogation interest exists; however, nothing in this act shall be construed to create or modify lien or subrogation interests not otherwise allowed by law; and

(2) amounts included as part of a criminal sentencing order or pursuant to state programs of victims assistance incurred by virtue of the defendant also committing a criminal act.

(c) "Cost of the collateral source benefit" means the amount paid or to be paid in the future to secure a collateral source benefit by the claimant or by anyone on behalf of the claimant. If the amount of any benefit paid or to be paid encompasses amounts paid over a period of time, thus making the benefit greater than it would be without such amounts paid, then evidence of such amounts paid shall be admissible in determining the "cost of the collateral source benefit."

(d) "Net collateral source benefits" means the sum of collateral source benefits after subtracting the cost of the collateral source benefit.

History: L. 1988, ch. 222, § 1; July 1.

Research and Practice Aids:

Damages  $\Rightarrow$  59 et seq.

C.J.S. Damages § 96.

Law Review and Bar Journal References:

"A Critical Analysis of the 1988 Kansas Collateral Source Statute," Timothy Short, J.K.T.L.A. Vol. XVI, No. 2, 7 (1992).

CASE ANNOTATIONS

1. Provisions of act inapplicable to causes of action accruing prior to July 1, 1988. Gregory v. Carey, 246 K. 504, 508, 791 P.2d 1329 (1990).

2. Provisions of act held to be unconstitutional and void. Thompson v. KFB Ins. Co., 252 K. 1010, 1011, 1013, 1015, 1020, 850 P.2d 773 (1993).

**60-3302. Collateral source benefits;** when admissible. In any action for personal injury or death, in which the claimant demands judgment for damages in excess of \$150,000, evidence of collateral source benefits received or evidence of collateral source benefits which are reasonably expected to be received in the future shall be admissible.

History: L. 1988, ch. 222, § 2; July 1.

Research and Practice Aids:

Damages  $\Rightarrow$  182.

C.J.S. Damages § 160.

Law Review and Bar Journal References:

"A Critical Analysis of the 1988 Kansas Collateral Source Statute," Timothy Short, J.K.T.L.A. Vol. XVI, No. 2, 3 (1992).



KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383

Jerry Slaughter

Executive Director

(delete)

*Senate Judiciary*  
*2-1-94*  
*attachment 1-1*

missible. When evidence of collateral source benefits is admitted into evidence pursuant to A. 1993 Supp. 60-3802, evidence of the collateral source benefit shall be admissible.

History: L. 1988, ch. 222, § 3; July 1.

Research and Practice Aids:

Damages ⇨ 182.

C.J.S. Damages § 160.

**60-3804.** Same; determining damages.

In determining damages in an action for personal injury or death, the trier of fact shall determine the net collateral source benefits received and the net collateral source benefits reasonably expected to be received in the future. If the action for personal injury or death is tried to a jury, the jury will be instructed to make such determination by itemization of the verdict.

History: L. 1988, ch. 222, § 4; July 1.

Research and Practice Aids:

Damages ⇨ 226.

C.J.S. Damages § 194.

**60-3805.** Same; reduction of the judgment. (a) The amount of the judgment shall be reduced by the court by the amount of net collateral source benefits received, or reasonably expected to be received in the future but only to the extent that such benefits exceed the aggregate amount by which:

(1) Such judgment was reduced pursuant to subsection (a) of K.S.A. 60-258a and amendments thereto;

(2) the claimant's ability to recover such judgment was limited by the application of subsections (c) and (d) of K.S.A. 60-258a and amendments thereto, other than by virtue of claimant's settlement with or decision not to assert a legally enforceable claim against a named or an unnamed party;

(3) the amount to which the claimant's ability to recover such judgment was limited by the insolvency or bankruptcy of a person; and

(4) the award of damages has been reduced because of a statutory limit upon the recovery of damages.

(b) If there is no amount falling within subsections (a)(1) through (a)(4) then the court shall reduce the judgment by the full amount of the net collateral source benefits.

History: L. 1988, ch. 222, § 5; July 1.

Law Review and Bar Journal References:

"A Critical Analysis of the 1988 Kansas Collateral Source Statute," Timothy Short, J.K.T.L.A. Vol. XVI, No. 2, 8 (1992).

**60-3806.** Severability. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: L. 1988, ch. 222, § 6; July 1.

**60-3807.** Application of 60-3801 through 60-3806. The provisions of this act shall apply to causes of action ~~accruing on or after July 1, 1988.~~

pending in any court on or after April 16, 1993.

History: L. 1988, ch. 222, § 7; July 1.

1-2

#2  
LAW OFFICES OF  
ALAN E. COBB

Alan E. Cobb  
532 North Broadway  
Wichita, Kansas 67214-3585  
Telephone (316) 267-9992  
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Request for Bill Introduction

RE: Hospital Lien Law

February 1, 1994

Chairman Moran, members of the committee, I am Alan Cobb, appearing on behalf of the four Wichita hospitals, requesting introduction of a Senate version of HB 2474 which eliminates the \$5,000 cap on liens for hospital services. Attached is a copy of HB 2474. This cap has presented recurring problems for the hospitals in Wichita and throughout the state. There have been many instances which a patient has received payment from a civil suit or insurance settlement, but the hospital that provided the patient's care was not paid, or was paid only \$5,000, the lien cap.

Passage of this bill would ensure the adequate compensation of hospitals for medical care received by a patient. This bill would increase the lien on insurance proceeds or proceeds resulting from a successful law suit brought by the patient.

Thank you for considering this bill request.

*Senate Judiciary*  
*2-1-94*  
*attachment 2-1*

## HOUSE BILL No. 2474

By Committee on Judiciary

2-16

8 AN ACT concerning hospitals; relating to liens upon personal injury  
9 damage recovered by patients; amending K.S.A. 65-406 and re-  
10 pealing the existing section.  
11

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

13 Section 1. K.S.A. 65-406 is hereby amended to read as follows:  
14 65-406. Every hospital in the state of Kansas, which ~~shall furnish~~  
15 *furnishes* emergency, medical or other service to any patient injured  
16 by reason of an accident not covered by the ~~workmen's workers~~  
17 compensation act, shall, if such injured party shall assert or ~~main-~~  
18 *tain asserts or maintains* a claim against another for damages on  
19 account of such injuries, *shall* have a lien ~~not to exceed five thou-~~  
20 *sand dollars (\$5,000)* upon that part going or belonging to such  
21 patient of any recovery or sum had or collected or to be collected  
22 by such patient, or by *his such patient's* heirs, personal represen-  
23 tatives or next of kin in the case of *his such patient's* death, whether  
24 by judgment or by settlement or compromise to the amount of the  
25 reasonable and necessary charges of such hospital for the treatment,  
26 care and maintenance of such patient in such hospital ~~up to the~~  
27 *date of payment of such damages; Provided, however, That this.*  
28 *Such* lien shall not in any way prejudice or interfere with any lien  
29 or contract which may be made by such patient or *his such patient's*  
30 heirs or personal representatives with any attorney or attorneys for  
31 handling the claim on behalf of such patient, *his such patient's* heirs  
32 or personal representatives; *Provided further, That the. Such* lien  
33 *herein set forth* shall not be applied or considered valid against  
34 anyone coming under the ~~workmen's workers~~ compensation act in  
35 this state.

36 Sec. 2. K.S.A. 65-406 is hereby repealed.

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

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PROPOSED AMENDMENT

**59-3009.** Application for appointment of guardian or conservator; contents; transcript of adjudication of incapacity in another state. Any person may file in the district court of the county of the residence or presence of the proposed ward a verified petition for the appointment of a guardian. Any person may file in the district court of the county of the residence of the proposed conservatee a verified petition for the appointment of a conservator. If the proposed conservatee resides without the state, such petition may be filed in any county in which any of the property of the proposed conservatee is situated.

(a) If the proposed ward or proposed conservatee is alleged to be a disabled person the petition shall state:

(1) The petitioner's belief that the proposed ward or proposed conservatee is a disabled person;

(2) the name, age, residence and present address of the proposed ward or proposed conservatee, if known to the petitioner;

(3) the name and address of the nearest relatives of the proposed ward or proposed conservatee, if known to the petitioner and if not known, that the petitioner has made diligent inquiry to learn the name of such relatives;

(4) the general character and probable value of the real and personal property, including the amount and sources of income, of the proposed ward or proposed conservatee, if known to the petitioner;

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*John C Peterson*

any, having custody and control of the proposed ward or proposed conservatee, if known to the petitioner;

(6) the names and addresses of witnesses whom the truth of the petition may be proved;

(7) the reasons for the need of the appointment of a guardian or conservator, or both;

(8) a request that the court make a determination that the proposed ward or proposed conservatee is a disabled person, make one or more of the orders provided for in K.S.A. 59-3010 and 59-3011 and acts amendatory thereof, and appoint a guardian or conservator, or both; and

(9) the name, address, and relationship to the proposed ward or proposed conservatee, if any, of the person whom the court is requested to appoint as a guardian or as a conservator.

If a proposed conservator is under contract with the agency designated as the developmental disabilities protection and advocacy agency pursuant to public law 94-103, as amended, the application for appointment of guardian or conservator shall so state. Any such petition may be accompanied, or the court may require that such petition be accompanied by a statement in writing of a physician/stating that the physician has examined the proposed ward or proposed conservatee and the results of the examination on the issue of whether the proposed ward or proposed conservatee is a disabled person or the court may allow such petition to be accompanied by a verified statement by the petitioner that the proposed ward or proposed conservatee has refused to submit to an examination by a physician \_\_\_\_\_ or psychologist \_\_\_\_\_ or psychologist \_\_\_\_\_

\_\_\_\_\_ or psychologist

b) If the proposed ward or proposed conservatee is alleged to be a minor the petition shall state:

(1) The proposed ward or proposed conservatee is a minor;

(2) the name, age, residence and present address of the proposed ward or proposed conservatee, if known to the petitioner;

(3) the name and address of the natural guardian, guardian, conservator and custodian, if any, of the proposed ward or proposed conservatee, if known to the petitioner, and if not known that the petitioner has made diligent inquiry to learn their names;

the general character and probable value of the real and personal property, including the amount and sources of income, of

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(7) a request that the court appoint an ancillary conservator as provided in subsection (c) of K.S.A. 59-3010 and amendments thereto.

History: L. 1965, ch. 347, § 9; L. 1967, ch. 320, § 1; L. 1976, ch. 242, § 90; L. 1983, ch. 191, § 6; L. 1986, ch. 213, § 2; July 1.

Cross References to Related Sections:

Docket fee, see 59-104.

**59-3010. Mandatory preliminary orders; hearing on petition, time limits.** Upon the filing of the petition provided for in K.S.A. 59-3009 and amendments thereto:

(a) When the proposed ward or proposed conservatee is alleged to be a disabled person, the district court shall issue the following:

(1) An order fixing the time and place of the hearing on the petition. The time designated in the order shall in no event be earlier than seven days or later than 14 days after the date of the filing of the petition.

(2) An order that the proposed ward or proposed conservatee appear at the time and place of the hearing unless the court enters an order that the presence of the proposed ward or proposed conservatee is injurious to the welfare of the proposed ward or proposed conservatee. The court shall enter in the record of the proceedings the facts upon which the court has found

that the presence of the proposed ward or proposed conservatee at the hearing would be injurious to such person's welfare. Notwithstanding the foregoing provisions of this subsection, if the proposed ward or proposed conservatee requests in writing to the court or to such person's attorney that such person be present at the hearing then such person's presence cannot be waived.

(3) An order appointing an attorney to represent the proposed ward or proposed conservatee at all stages of the proceedings. The court shall give preference, in the appointment of the attorney, to any attorney who has represented the proposed ward or proposed conservatee in other matters if the court has knowledge of the prior relationship. The proposed ward or proposed conservatee shall have the right to choose and to engage an attorney and, in such an event, the attorney appointed herein shall be relieved of all duties by the court.

(4) An order that the proposed ward or proposed conservatee shall appear at a time and place that is in the best interest of the proposed ward or proposed conservatee to consult with the court appointed attorney, which time shall be prior to the execution of the order for mental evaluation, if one is to be issued, unless an order of protective custody provided for in K.S.A. 59-2912, and acts amendatory thereof, has been issued and detention of the proposed ward or proposed conservatee thereunder is in a place outside the jurisdiction of the court.

(5) A notice in the manner provided for in K.S.A. 59-3012 and acts amendatory thereof.

(6) An order for mental evaluation. Such order may be served on the proposed ward or proposed conservatee at the same time or after notice is given. It shall be served in the manner provided for in K.S.A. 59-3012 and acts amendatory thereof. It shall order the proposed ward or proposed conservatee to submit for a mental evaluation and to undergo such evaluation at a general hospital or a psychiatric hospital, an institution within the department of social and rehabilitation services, mental health clinic, private psychiatrist or physician designated or psychologist by the court in the order. An institution within the department of social and rehabilitation services shall receive and evaluate any proposed ward or proposed conser-

(4) A notice in the manner provided for in K.S.A. 59-3012 and amendments thereto.

(5) An order for psychological testing. Such order may be served on the proposed ward or proposed conservatee at the same time or after notice is given. It shall be served in the manner provided for in K.S.A. 59-3012 and amendments thereto. It shall order the proposed ward or proposed conservatee to submit for psychological tests and to undergo such tests at a mental health clinic, psychological clinic or with a psychologist or physician designated by the court in the order. The examiner shall submit to the court a report of the evaluation at the time designated by the court.

History: L. 1965, ch. 347, § 11; L. 1973, ch. 186, § 30; L. 1976, ch. 242, § 92; L. 1983, ch. 191, § 8; July 1.

#### CASE ANNOTATIONS

1. Statutory notice and procedural requirements considered in action for selection of guardian and conservator of minor. *In re Stremel*, 233 K. 136, 140, 141, 660 P.2d 952 (1983).

**59-3012.** Notice; contents. (a) The notice provided by K.S.A. 59-3010 and 59-3011, and amendments to these sections, shall be given to the proposed ward or proposed conservatee named in the petition, the attorney of the proposed ward or proposed conservatee, if any, and to such other persons as the court shall direct. If the proposed ward or proposed conservatee has a spouse, natural guardian, custodian, guardian, or conservator notice shall also be given them.

(1) The notice shall state:

(A) That a petition has been filed, alleging that the proposed ward or proposed conservatee is either a disabled person or a minor and requesting that the court appoint a guardian or a conservator, or both;

(B) the time and place of the hearing and whether the proposed ward or proposed conservatee shall be present thereat;

(C) the name of the attorney, if any, appointed to represent the proposed ward or proposed conservatee and the time and place where the proposed ward or proposed conservatee shall consult with such attorney;

(D) that the proposed ward, or proposed conservatee, if alleged to be a disabled person, has a right to demand a hearing before a judge.

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- lowing to serve the notice: \_\_\_\_\_ or psychologist
- (A) The physician ~~currently administering to the proposed ward, or proposed conservatee~~ provided the physician ~~consents~~; \_\_\_\_\_ or psychologist
- (B) the head of the local mental health clinic or designee of such head;
- (C) the local health officer or designee of the local health officer;
- (D) the commissioner of adult services or the commissioner's designee;
- (E) any law enforcement officer;
- (F) the attorney of the proposed conservatee.

(b) The notice shall be served personally on the proposed ward or proposed conservatee and the attorney of the proposed ward or proposed conservatee, if any, not less than five days prior to the date of the hearing and immediate return thereof shall be made. If the proposed ward or proposed conservatee may not be personally served within the state, the court may direct notice be given to the proposed ward or proposed conservatee in such manner and for such a period of time as the court shall deem reasonable. Notice required to be given to any other person shall be given in such manner and for such a period of time as the court shall deem reasonable. If the proposed ward or proposed conservatee is a patient in any psychiatric hospital notice by mail shall be given to the head of the hospital.

**History:** L. 1965, ch. 347, § 12; L. 1972, ch. 219, § 1; L. 1973, ch. 186, § 31; L. 1980, ch. 182, § 17; L. 1982, ch. 357, § 20; L. 1983, ch. 191, § 9; July 1.

#### CASE ANNOTATIONS

1. Notice requirements considered in action for selection of guardian and conservator of minor. *In re Stremel*, 233 K. 136, 139, 140, 141, 660 P.2d 952 (1983).

**59-3013. Hearing; procedure; ancillary conservator, when.** The hearing shall be held at the time and place specified in the court's order, unless an advancement or a continuance has been granted, and may be consolidated with the hearing provided for in K.S.A. 59-2917 and amendments thereto. The hearing shall be held to the court only, unless the court shall determine that it shall be held before a jury or unless the proposed ward or proposed conservatee shall, at least 48 hours prior to the time of the hearing, request in writing a hearing before a jury.

The jury, if one is ordered or requested, shall consist of six persons and shall be

37  
governed in the manner provided in K.S.A. 59-2917 and amendments thereto.

The petitioner and the proposed ward or proposed conservatee shall be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. All persons not necessary for the conduct of the proceedings may be excluded. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the proposed ward or proposed conservatee.

The court shall receive all relevant and material evidence which may be offered, including the testimony or written findings and recommendations of the hospital, clinic, physician or psychologist who has examined or evaluated the proposed ward or proposed conservatee and the testimony and written findings and recommendations of the investigators appointed pursuant to subsection (a)(1) of K.S.A. 59-3011 and amendments thereto. Such evidence shall not be privileged for the purpose of this hearing.

If the proposed conservatee has been duly adjudged an incapacitated person, a disabled person, an insane person or an incompetent person by any court of competent jurisdiction in any other state and a domiciliary conservator or guardian for the estate of such person has been appointed, and such facts have been established in accordance with subsection (c) of K.S.A. 59-3009 and amendments thereto, the court shall appoint a suitable ancillary conservator.

If, upon the completion of the hearing, the court or jury finds by clear and convincing evidence that the proposed ward or proposed conservatee is a disabled person in need of a guardian or conservator, or both, or if the court or jury finds that the proposed ward or proposed conservatee is a minor in need of a guardian or conservator, or both, the court shall make a finding as to what extent the disabled person is able to, and should be permitted to, make decisions which affect that person and the court shall specifically set forth such findings of fact in the court's order and pursuant to K.S.A. 59-

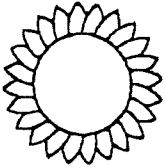
14 and amendments thereto shall appoint one or more suitable individuals or corporations as guardian or conservator, or both, of such disabled person.

If, upon the completion of the hearing, the court or jury finds that clear and convincing evidence that the proposed ward or proposed conservatee is a disabled person or a minor has not been shown, the court shall enter the finding in the record and the court by an appropriate order shall terminate the proceedings.

History: L. 1965, ch. 347, § 13; L. 1967, ch. 320, § 3; L. 1983, ch. 191, § 10; July 1.

#### CASE ANNOTATIONS

1. Hearing and procedural requirements considered in action to select guardian and conservator of minor. *In re Steniel*, 233 K. 136, 139, 141, 660 P.2d 952 (1983).

**Johnson County, Kansas • Office of the County Clerk****Beverly L. Baker, County Clerk****MEMORANDUM**

TO: Ann Smith, KAC  
FROM: Beverly L. Baker, County Clerk *BLB*  
SUBJECT: K.S.A. 21-3914  
DATE: January 13, 1994

Could we add something like this?

(c) This section shall not apply to nor impose any criminal liability or penalty upon any public official, public agency or records custodian for granting access to or provides copies of public records or information containing names and addresses, in good faith compliance with the Kansas Open Records Act, to a person who has made a written request for access to such information and has executed a written certification pursuant to K.S.A. 45-220 (c) (2).

BLB:br

*Surat Jindani*  
*2/1/94*  
*attachment 4-1*

## CODE; VIOLATIONS OF PERSONAL RIGHTS

21-4001

or other person having control of public money by virtue of his official position.

(2) As used herein, "public money," means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.

(3) Misuse of public funds is a class D felony.

History: L. 1969, ch. 180, § 21-3910; July 1, 1970.

Source or prior law:  
19-529, 75-616.

Judicial Council, 1968: This section augments sections 21-3701 and 21-3705. It covers those situations of official misuse of public funds where the intent to deprive the owner permanently of his property may not be present.

**21-3911. Unlawful use of state postage.**

(a) It shall be unlawful for any person to use for such person's personal use, or to allow any unauthorized person to use, any form of postage paid for with state funds.

(b) Violation of this section shall constitute an unclassified misdemeanor. Upon conviction, any person violating this section may be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).

History: L. 1980, ch. 97, § 1; July 1.

**21-3912. Same; imprinting of warning on mail.** Each state agency, department, board, commission or state educational institution shall imprint by postage meter stamp on all state mail that is stamped by a postage meter that (a) such mail carried by such postage is official state of Kansas mail and (b) that there is a penalty for the unlawful use of state postage for private purposes.

History: L. 1980, ch. 97, § 2; July 1.

**21-3913.**

History: L. 1983, ch. 171, § 11; Repealed, L. 1984, ch. 187, § 17; Feb. 9.

**21-3914. Unlawful use of names derived from public records.** (a) No person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records except:

(1) Lists of names and addresses from public records of the division of vehicles obtained under K.S.A. 74-2012, and amendments thereto;

(2) lists of names and addresses of persons

licensed, registered or issued certificates or permits to practice a profession or vocation may be sold or given to, and received by, an organization of persons who practice that profession or vocation for membership, informational or other purposes related to the practice of the profession or vocation;

(3) lists of names and addresses of persons applying for examination for licenses, registrations, certificates or permits to practice a profession or vocation shall be sold or given to, and received by, organizations providing professional or vocational educational materials or courses to such persons for the sole purpose of providing such persons with information relating to the availability of such materials or courses; and

(4) to the extent otherwise authorized by law.

(b) Violation of this section is a class C misdemeanor.

History: L. 1984, ch. 187, § 11; L. 1984, ch. 282, § 5; April 26.

**Cross References to Related Sections:**

Public records, see 45-215 et seq.

**Law Review and Bar Journal References:**

"Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act," Ted P. Frederickson, 33 K.L.R. 205 (1985).

**Attorney General's Opinions:**

Open records act; lists of names derived from public record. 84-45.

Records open to public; lists of names and addresses; prohibition against commercial use. 84-106.

Crimes affecting public trust; unlawful use of names and addresses derived from public records. 84-130.

Automobiles and other vehicles; maximum speed limits; certain violations not matters of public records; state highway commission; disclosure of records. 85-7.

Crimes affecting public trusts; unlawful use of names derived from public records. 85-34.

Crimes affecting public trusts; unlawful use of names derived from public records. 86-1.

Unlawful use of names derived from public records. 86-39.

Unlawful use of names derived from public records. 87-73.

Prohibited and illegal uses of names and addresses derived from public records. 87-137.

Laws, journals and public information; records open to public; registration of attorneys. 87-168.

**Article 40.—CRIMES INVOLVING VIOLATIONS OF PERSONAL RIGHTS**

**21-4001. Eavesdropping.** (1) Eavesdropping is knowingly and without lawful authority:

(a) Entering into a private place with intent

Date: January 20, 1994

To: John, Bev, Anne, Paul

From: Jim Reardon

Reference: John Campbell/Nancy Lindberg  
Attorney Gen. Stephan's staff

Subject: Juvenile Detention expenditures from state gaming revenues

K.S.A. 79-4803 (92 Supp) subpart (a) authorizes an amount equal to 10% of of all moneys credited to the state gaming revenues fund to be credited as follows:

1. a portion **which shall be specified by appropriations act**, shall be credited to the juvenile detention facilities fund
2. the remainder is credited to the correctional institutions building fund created pursuant to K.S.A. 76-6b09; **to be appropriated by the legislature** for the use and benefit of **state** correctional institutions;

K.S.A. 79-4803 subpart (b) creates the juvenile detention facilities fund. It specifies that all expenditures from the fund shall be for:

1. construction
2. renovation
3. remodeling
4. operational costs
5. **retirement of debt**

....of facilities for the detention of juveniles. (Emphasis added).

**Note:** there is also a juvenile detention facilities **capital improvements** fund created and cross-referenced at K.S.A. 38-556 (92 Supp). This statute pertains to Dependent and Neglected Children. All expenditures from this fund shall be for:

1. **planning**
2. construction
3. renovation
4. remodeling

....of juvenile detention facilities. There does not appear to be a funding source for this fund.

*Senate Judiciary*  
*2-1-94*  
*attachment 5-1*