Approved: 3/7/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 15, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Oleen (excused)
Senator Ranson (excused)

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:

Senator U. L. "Rip" Gooch
Senator Anthony Hensley
Detective Sergeant Randy Listrom, Topeka Police Department
James Clark, Kansas County and District Attorneys Association

Others attending: See attached list

The following Senate bills were referred to the Civil Law Sub-Committee:
SB 605--immunity from liability for architects and engineers in certain circumstances
SB 576--liability of a facility who provides space for health and environment for public health care activities
SB 740--hospital lien on personal injury awards
SB 755--civil procedure and civil actions; limitation of actions
SB 743--allowing county or district attorney to collect administrative handling cost from maker or drawer of bad checks

The following Senate bills were referred to Criminal Law Sub-Committee:
SB 628--change in penalties relating to arson
SB 670--crimes and punishment related to arson and aggravated arson
SB 671--certain crimes relating to explosives
SB 742--jurisdiction of certain law enforcement officers to execute a valid search warrant

Chairman Moran announced to the Committee there would be additional Senate Judiciary meetings this week and next to work the number of bills before the Committee.

SB 686--landlord tenant-eviction
SB 710--common nuisances-void leases

Mike Heim, Legislative Research staff briefed the Committee on SB 686 and SB 710 deal with evicting tenants that are involved in illegal activity. He said SB 686 amends the landlord tenant act to add a new sub-section(e) to provide if a tenant is convicted of three violations of criminal statutes or criminal ordinances the landlord can apply to district court for an order of immediate eviction of the tenant after a hearing and SB 710 amends the common nuisance statute in Chapter 22 (Attachment No. 1).

Senator Gooch testified in favor of SB 686 stating he was concerned the landlord tenant act did not allow for eviction of a tenant involved in illegal activity. He referred the Committee to SB 710 dealing with common nuisances which would also deal with evicting tenants that are involved in illegal activity.

Senator Hensley testified in favor of SB 710. He said SB 710 was a policy issue clarifying 22-3904 (Attachment No. 1) and empowering landlords to avoid leases and evict tenantswho are engaged in unlawful activities. He said lines 27 through 31 of SB 710 addresses the policy issue. Senator Hensley referred to line 22 stating perhaps it should read "..was committing an unlawful act ~~may~~ *shall* be given notice of a hearing..."

Detective Sergeant Randy Listrom, Topeka Police Department testified in favor of SB 710 and answered questions from the Committee.

Jim Clark, Kansas County and District Attorneys Association testified as an opponent to SB 710 and provided written testimony (Attachment No. 2). He suggested adding specific language making it clear that landlords have the power to intervene once a criminal nuisance action has been filed, and then require the court to expedite the restoration of the property to the landlord upon a showing that a nuisance exists on the property.

Senator Harris said SB 580 and SB 581 were unanimously reported favorably by the Civil Law Sub-Committee.

A motion was made by Senator Harris, seconded by Senator Vancrum to adopt the sub-committee report on SB 580 and 581 and report the bills favorably and place on the consent calendar. The motion carried.

Chairman Moran assigned SB 709, SB 710, and SB 686 to Family Law Sub-Committee with Senator Bond, Chairman.

SB 464--enforcement of support; income withholding

A motion was made by Senator Petty, seconded by Senator Emert to amend SB 464 as recommended by Social and Rehabilitation Services (Attachment No. 3) and report favorably as amended. The motion carried.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 16, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary **DATE:** 2/15/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Randall Listrom	204 SW 5th Topeka, Ks	Topeka Police Dept.
Toni Wheeler	Topeka	Sen. Karr's Ofc
Catherine McVay	1835 Todd Manhattan	Sen. Reynolds office
Carrie McGinley	Topeka	Housing + Credit Counseling
[illegible]	Topeka	Sen.

MUST SERVE

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every two days served
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(c) Maximum good time credits for sentences two years or greater shall be computed as follows: One-half of the sentence.

(d) Good time credits shall be awarded on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(e) The provisions of this section shall not apply to crimes committed by inmates on or after July 1, 1993. Good time calculations for such crimes shall be as provided in K.S.A. 1993 Supp. 21-4722 and amendments thereto.

History: L. 1988, ch. 115, § 2; L. 1989, ch. 92, § 28; L. 1992, ch. 239, § 272; L. 1993, ch. 291, § 199; July 1.

Law Review and Bar Journal References:
"Parole in Kansas," Carla J. Stovall, 60 J.K.B.A. No. 7, 27 (1991).

CASE ANNOTATIONS

1. Providing good time credits for life sentences is question for legislature; courts not required to change life sentences. State v. Carmichael, 247 K. 619, 623, 801 P.2d 1315 (1990).

2. Prospective application of 21-4603(3) relative to qualified mandatory modification of sentences examined. State v. Sutherland, 248 K. 96, 106, 804 P.2d 970 (1991).

22-3726. Supervised furlough; crimes committed prior to July 1, 1993. The secretary of corrections may place, on a six-month supervised furlough, any inmate who is classified at a custody level not higher than minimum and who will be eligible for parole under K.S.A. 22-3717 and amendments thereto by the end of the six-month period. If, at the end of the six-month period, the secretary determines that the inmate has successfully completed the furlough, the secretary shall certify that fact to the Kansas parole board, which shall promptly order the inmate's release on parole, without hearing, under the level of supervision specified by the secretary and subject to such conditions as imposed by the board. The provisions of this section shall not apply to crimes committed by inmates on or after July 1, 1993.

History: L. 1988, ch. 115, § 3; L. 1992, ch. 239, § 273; July 1, 1993.

Law Review and Bar Journal References:
"Parole in Kansas," Carla J. Stovall, 60 J.K.B.A. No. 7, 27 (1991).

22-3727. Secretary of corrections; prior to release, information to victims. Prior to the release of any inmate on parole, conditional release, expiration of sentence or postrelease supervision, if an inmate is released into the community under a program under the supervision of the secretary of corrections, or after the escape of an inmate or death of an inmate while in the secretary of corrections' custody, the secretary of corrections shall give written notice of such release, escape or death to any victim of the inmate's crime who is alive and whose address is known to the secretary or, if the victim is deceased, to the victim's family if the family's address is known to the secretary. Such notice shall be required to be given to the victim or the victim's family only if the inmate was convicted of any crime in article 33, 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated. Failure to notify the victim or the victim's family as provided in this section shall not be a reason for postponement of parole, conditional release or other forms of release.

History: L. 1993, ch. 166, § 7; July 1.

Article 38.—COSTS IN CRIMINAL CASES

22-3801.

Attorney General's Opinions:
Sentencing; authorized dispositions; sentencing; probation; costs; home rule powers. 92-90.

CASE ANNOTATIONS

4. Extradition costs as mandatory court costs taxable to defendant (22-2724) determined. State v. Garrett, 14 K.A.2d 8, 9, 780 P.2d 168 (1989).

5. The well-settled rule of law is that upon conviction a defendant shall be ordered to pay court costs. State v. DeHerrera, 251 K. 143, 155, 834 P.2d 918 (1992).

22-3803.

CASE ANNOTATIONS

2. Phrase "at the conclusion of the criminal case" as not yet determined, noted. State v. Garrett, 14 K.A.2d 8, 10, 780 P.2d 168 (1989).

Article 39.—ABATEMENT OF COMMON NUISANCES

22-3901. Scope. The following unlawful activities and the use of real and personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

(a) Commercial gambling;
(b) dealing in gambling devices;
(c) possession of gambling devices;
(d) promoting obscenity;
(e) promoting prostitution;
(f) habitually promoting prostitution;
(g) violations of any law regulating controlled substances;
(h) habitual violations of any law regulating the sale or exchange of alcoholic liquor or cereal malt beverages, by any person not licensed

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pursuant to chapter 41 of the Kansas Statutes Annotated; or

(i) habitual violations of any law regulating the sale or exchange of cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated.

Any real property used as a place where any such activities are carried on or permitted to be carried on and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises in connection with such unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.

History: L. 1970, ch. 129, § 22-3901; L. 1990, ch. 114, § 1; July 1.

22-3902. Procedure. (1) Unless otherwise provided by law, proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be governed by the provisions of the Kansas code of civil procedure relating to the abatement of common nuisances.

(2) Proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be instituted only in the name of the state of Kansas upon the relation of the attorney general or the city, county or district attorney in the name of the appropriate city, county or district[*] to enjoin a nuisance within the city, county or district.

(3) The petition shall describe any real estate alleged to be used or to have been used as a place where such common nuisance is or was maintained or permitted and shall identify the owner or person in charge of such real estate. It shall describe any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used in such unlawful activity. It shall pray for the particular relief sought with respect to such property.

(4) The petition for injunction may include or be accompanied by an application for an order for the seizure of the effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property described in the petition. If the court finds that there is probable cause to believe that the personal property described is or has been used for any of the unlawful purposes set forth in K.S.A. 22-3901 and amendments thereto, the court may order the sheriff or other law enforcement officer to seize such personalty and to hold it in custody pending further order of the court. An order for seizure shall particularly describe the personal property to be seized.

(5) An order for seizure of materials alleged to be obscene shall not be issued until after a hearing at which evidence in support of the application for such order has been heard. At least three days notice of such hearing shall be given to the owner or person in possession of such material. Pending such hearing, the court may make an order prohibiting the owner or person in possession from removing such material from the jurisdiction of the court.

(6) No bond or other security shall be required for any restraining order, order for seizure or injunction issued under K.S.A. 22-3901 through 22-3904, and amendments thereto, in an action brought by the attorney general or city, county or district attorney.

(7) The provisions of K.S.A. 22-3901 through 22-3904, and amendments thereto shall not limit nor otherwise affect proceedings under K.S.A. 60-908 and amendments thereto but shall be supplemental and in addition to and not in lieu of, the remedy provided by that statute.

(8) The attorney general or the city, county or district attorney shall give notice of proceedings under K.S.A. 22-3901 through 22-3904 and amendments thereto by sending a copy of the petition to enjoin a nuisance by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if (a) the property is of a type for which title, registration or deed is required by law; (b) the owner of the property is known in fact at the time of seizure; or (c) the property is subject to a security interest perfected in accordance with the uniform commercial code. The attorney general or the city, county or district attorney shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, the attorney general or city, county or district attorney is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

History: L. 1970, ch. 129, § 22-3902; L. 1990, ch. 114, § 2; July 1.

* Action by county or district attorney is in the name of the state, not the county or district.

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22-3904. Judgment. (1) Upon final judgment that any real property is being or has been used as a place where any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto are carried on or permitted to be carried on, the court may order that any house, building, room or other structure located on such real estate be closed and padlocked for a period of not more than two years, subject to modification in the manner provided by K.S.A. 60-910 and amendments thereto, if the court finds that the owner of the property knew or should have known under the circumstances of the maintenance of a common nuisance on the property and did not make a bona fide attempt to abate such nuisance under the circumstances. The court may require, as part of the judgment, that the owner, lessee, tenant or occupant enter into a bond to the state of Kansas, in such amount and with security as the court may require, conditioned that such owner, lessee, tenant or occupant will not within a period of two years use or permit the use of such real estate in violation of law. If any condition of such bond is violated, the whole amount may be recovered as a penalty. In addition, the court may assess a civil penalty not to exceed $25,000 against any or all defendants, based upon the severity of the nuisance and its duration. Such penalty shall be paid into the county treasury, if recovered by a county or district attorney, and into the city treasury, if recovered by a city attorney.

(2) Upon final judgment that any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property are designed for and have been used in carrying on any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto, the court may order that such effects, equipment, paraphernalia, fixtures, appliances, musical instruments and other personal property be publicly destroyed by the sheriff or other law enforcement officer or that such personal property be sold in the manner provided for sales in execution of judgment.

(3) The proceeds of any sale of personal property pursuant to subsection (2) shall be applied as follows:

(a) First, to the fees and costs of the removal and sale.

(b) Second, to the costs of closing the structure and keeping it closed.

(c) Third, to payment of the costs of the action.

(d) Fourth, to payment of any civil penalty imposed pursuant to this section or any fine imposed for contempt in the proceedings.

(e) Fifth, to the owner of the personal property.

(4) Subject to the provisions of subsection (3), upon final judgment for the state the court shall adjudge that any defendant who was maintaining the common nuisance pay all costs, including a reasonable fee, fixed by the court, to be paid to the prosecuting attorney. Such costs shall be a lien upon any real property against which an order of abatement is obtained, if the court finds that the owner of such property knew or should have known under the circumstances of the maintenance of the common nuisance on the property and did not make a bona fide attempt to abate such nuisance under the circumstances.

(5) For purposes of this section, evidence of a bona fide attempt to abate such nuisance by the owner of the property shall include, but not be limited to, the filing of a written report, by such owner or at such owner's direction, to the local law enforcement agency that the property is suspected by the owner of the property of being used in maintaining and carrying on any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto.

History: L. 1970, ch. 129, § 22-3904; L. 1990, ch. 114, § 3; July 1.

Article 40.—EXECUTION OF DEATH SENTENCES

22-4001. Death penalty, how executed. The mode of inflicting the punishment of death, in all cases in this state, shall be by hanging by the neck until such convicted person is dead.

The warden of the Lansing correctional facility, and in case of the warden's death, sickness, absence or inability to act, then the deputy warden, shall be the executioner. The warden may specially designate and appoint, in writing, a suitable and competent person to act for the warden, and under the direction of the warden, as executioner in any particular case. Nothing contained in the provisions of this section shall apply to a crime committed at any time before the day when this section shall take effect.

Such crime shall be punished according to the provisions of law existing when it is committed, in the same manner as if this section had not been passed; and the provisions of law

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(3) The petition shall describe any real estate alleged to be used or to have been used as a place where such common nuisance is or was maintained or permitted and shall identify the owner or person in charge of such real estate. It shall describe any effects, equipment, paraphernalia or other personal property designed for and used in such unlawful activity. It shall pray for the particular relief sought with respect to such property.

(4) The petition for injunction may include or be accompanied by an application for an order for the seizure of the effects, equipment, paraphernalia or other personal property described in the petition. If the court finds that there is probable cause to believe that the personalty described are or have been used for any of the unlawful purposes set forth in section 22-3901, it may order the sheriff or other law enforcement officer to seize such personalty and to hold it in his custody pending further order of the court. An order for seizure shall particularly describe the personalty to be seized.

(5) An order for seizure of materials alleged to be obscene shall not issue until after a hearing at which evidence in support of the application for such order has been heard. At least three days notice of such hearing shall be given to the owner or person in possession of such material. Pending such hearing, the court may make an order prohibiting the owner or person in possession from removing such material from the jurisdiction of the court.

(6) No bond or other security shall be required for any restraining order, order for seizure or injunction issued under this article in an action brought by the attorney general, county attorney or city attorney.

(7) The provisions of this article shall not limit nor otherwise affect proceedings under section 60-908 of the Kansas code of civil procedure, but shall be supplemental and in addition to, and not in lieu of, the remedy provided by that section.

History: L. 1970, ch. 129, § 22-3902; July 1.

Source or prior law:

21-918, 21-919, 21-921, 21-925, 21-926, 21-929, 21-941, 21-1102c.

Revisor's Note:

For Judicial Council commentary, see 22-3904.

Law Review and Bar Journal References:

Civil remedies in "The Obscenity Law's Application in Kansas: Issues and Procedures," Stan N. Wilkins, 12 W.L.J. 185, 196, 198, 202 (1973).

"Constitutional Law: Obscenity Regulation in Kansas—A New Standard," Robert Maxwell, 16 W.L.J. 204, 209 (1976).

Attorney General's Opinions:

County attorneys; prosecution in another venue; additional compensation. 88-50.

Eminent domain; procedure act; compensation. 88-73.

CASE ANNOTATIONS

1. Cited in mandamus action by attorney general questioning district court judge's order restraining him from conducting investigation into gambling activities; mandamus held proper remedy. State v. Rohleder, 208 K. 193, 194, 195, 490 P.2d 374.

2. Contempt for violation of injunction is part of original injunction suit; costs and prosecutor's fee mandated. State, ex rel., v. Bissing, 210 K. 389, 397, 502 P.2d 630.

3. Procedure hereunder held to pass constitutional muster in case involving obscenity. State v. Motion Picture Entitled "The Bet", 219 K. 64, 73, 547 P.2d 760.

4. State may not apply statute without notice to or hearing for those having property interest. State v. Durst, 235 K. 62, 66, 67, 678 P.2d 1126 (1984).

22-3903. Proceedings in rem. The real or personal property against which the order of abatement is sought may be named as a party defendant in a proceeding under this article. In such case, summons shall be served on the owner or person in possession of such property. Any person claiming an interest in the property shall, upon application be permitted to intervene as a party defendant.

History: L. 1970, ch. 129, § 22-3903; July 1.

Source or prior law:

21-919, 21-1102e.

Revisor's Note:

For Judicial Council commentary, see 22-3904.

Law Review and Bar Journal References:

Civil remedies in "The Obscenity Law's Application in Kansas: Issues and Procedures," Stan N. Wilkins, 12 W.L.J. 185, 197 (1973).

CASE ANNOTATIONS

1. Contempt for violation of injunction is part of original injunction suit; costs and prosecutor's fee mandated. State, ex rel., v. Bissing, 210 K. 389, 397, 502 P.2d 630.

22-3904. Judgment. (1) Upon final judgment that any real property is being or has been used as a place where any of the unlawful activities set forth in section 22-3901 are carried on or permitted to be carried on, the court may order that any house, building, room or other structure located on such real estate be closed and padlocked for a period of not less than three months nor more than two years, subject to modification in the manner provided by section 60-910 of the Kansas code of civil procedure. The court may, as part of the judg-

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Kansas County & District Attorneys Association

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(913) 357-6351 • FAX (913) 357-6352
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Opposition to

SENATE BILL NO. 710

The Kansas County and District Attorneys Association opposes adoption of SB 710 (identical to HB 2673), which is an apparent attempt at allowing landlords to become involved in the prosecution of a criminal nuisance action. While the concerns of landlords regarding criminal activity by their tenants is laudable, there are other methods of dealing with those concerns than outlined in the bill. The bill, as written, apparently gives the landlord the power to compel prosecutors to file a criminal nuisance action, mandates the courts to hold a hearing within 30 days, for the sole purpose of revoking any lease agreement that may exist. There are better, and more efficient uses of the prosecution's time and resources than protecting the private interests of landlords. More importantly, there are better ways for landlords to protect their own interest, such as including language in the lease agreement that voids the lease upon arrests for the violations listed in the bill.

Besides the requirement of prosecutors to become private enforcers in landlord-tenant disputes, the bill is capable of subversion by unscrupulous landlords. For example, if a landlord employs tenants to run a drug operation, upon the arrest of one of them, he may require the prosecution to initiate an action. Presumably the rules of civil discovery apply, and the prospect of disclosure of an ongoing drug investigation becomes a real possibility.

Perhaps the purpose of the bill can be better effected by adding specific language making it clear that landlords have the power to intervene once a criminal nuisance actions has been filed, and then require the court to expedite the restoration of the property to the landlord upon a showing that a nuisance exists on the property.

For the Committee's information, attached is a summary of the Kansas Criminal Nuisance procedure, and a description of how criminal nuisance actions have been used by the Ohio Attorney General's Office to close down drug houses.

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ndell J. Barker
anklin County Attorney

June 6, 1991

CRIMINAL NUISANCE ACTIONS

I. Proceedings to abate criminal nuisances are governed by the provisions of K.S.A. (1990 Supp.) 22-3901, et seq., which is supplemental to the provisions relating to public nuisances contained in K.S.A. 60-908.

A. The following activities, and the use of real or personal property in carrying on or maintaining such activities, fall within the scope of the criminal nuisance statutes (K.S.A. [1990 Supp.] 22-3901):

1. Commercial gambling. See K.S.A. 21-4302, 21-4304 and 21-4305.
2. Dealing in gambling devices. See K.S.A. 21-4302(4) and K.S.A. (1989 Supp.) 21-4306.
3. Possession of gambling devices. See K.S.A. 21-4302(4).
4. Promoting obscenity. See K.S.A. 21-4301.
5. Promoting prostitution. See K.S.A. 21-3513.
6. Violations of any law regulating narcotic or dangerous drugs.
7. Habitual violations of law regulating sale of alcohol or cereal malt beverages while not properly licensed. K.S.A. (1990 Supp.) 22-3901.
8. Habitual unlicensed sale of tobacco products. K.S.A. (1990 Supp.) 22-3901.

B. Parties to a criminal nuisance action.

1. Plaintiffs are the State of Kansas upon the relation of the attorney general or the county attorney to enjoin a nuisance within his county, or a municipal corporation upon the relation of the city attorney.

2. Defendants

a. In personam jurisdiction may be obtained as to the persons who are carrying on the illegal activities or the persons who are permitting or suffering the premises or property to be used for illegal purposes.

b. In rem jurisdiction may be obtained by naming the real or personal property against which an order is sought as a party defendant and serving summons on the owner or person in possession of the property K.S.A. 22-3903.

3. If in rem relief is sought (and it almost always is), anyone claiming an interest in the property may, upon application, be permitted to intervene as a party defendant. K.S.A. 22-3903.

C. Procedural requirements for filing.

1. The petition should be verified on information and belief by attorney general, county attorney or city attorney. K.S.A. 60-908. (Please note that the statutes do not permit filing by an assistant.)

2. The petition shall, K.S.A. (1990 Supp.) 22-3902(3):

a. Describe any real estate where the nuisance was maintained or permitted.

b. Identify the owner and/or the person in charge of such real estate.

c. Describe the personal property designed for and used in the unlawful activity.

d. Contain a prayer for the relief sought, including a particular prayer specifying the in rem relief requested. (Don't

forget to ask for costs and attorney fees to be taxed and that they be declared a lien against the property.)

3. With the possible exception of cases involving property which is contraband per se, all persons who possess, own or have a beneficial interest in the property should be served with summons. K.S.A. 22-3903.

"The requirement of notice to, and an opportunity to be heard by, the owner of or others interested in property prior to its forfeiture is clearly implied in cases from other jurisdictions. See United States v. Thirteen (13) Gambling Devices, 559 F.2d 201 (2d Cir. 1977); United States v. 18 Gambling Devices, 347 F. Supp. 653 (S.D. Miss. 1972); State v. One Red M.G. Convertible, 6 Conn. Cir. Ct. 282, 271 A.2d 130 (1970). Disposition of property alleged to be contraband because of its use in a gambling operation is subject to the right of the owner or others claiming an interest therein to dispute the question of whether the item is contraband, and have a judicial determination of the issues. State v. Rodriguez, 138 N.J. Super. 575, 351 A.2d 784 (1976), aff'd 73 N.J. 463, 375 A.2d (1977). A statute for the mandatory forfeiture of machines not contraband per se, which provides no opportunity for hearing and makes no provision for notice to the owner of the devices or for substituted service in an in rem action, does not conform to the requirements of due process; only where procedures are followed to assure no infringement of an owner's due process rights, and to secure judicial determination of his rights with respect to game machines, may a forfeiture statute be constitutionally applied. Smith v. One Super Wild Cat, 10 Or. App. 587, 500 P.2d 498 (1972). See also Annot., 14 A.L.R. 3d 366.

Upon review of the prior cases where we have approved forfeiture of private property through sale or destruction, one fact is clear: the State must first proceed in some manner against the owners or against the property itself. Without exception, all prior forfeiture cases of this type have been in rem proceedings against the property, with concomitant rights of notice and an opportunity to be heard, or actions in which the party asserting an interest in the property is a party to the action. See Van Oster v. Kansas, 272 U.S. 465, 71 L.Ed. 354, 47 S.Ct. 133 (1926), affirming State v. Brown, 119 Kan. 874, 241 Pac. 112 (1925), (plaintiff owned automobile used without her knowledge by another to illegally transport liquor; plaintiff intervened in forfeiture proceedings after receiving notice); State v. Six Slot Machines, 166 Kan. 361, 201 P.2d 1039 (1949), (in rem proceeding against slot machine; owner answered after receiving notice of confiscation); State v. Twenty-Nine Slot Machines, 184 Kan. 429, 337 P.2d 689 (1959), (in rem proceeding with notices personally served on owner); State, ex rel. v. Bissing, 210 Kan. 389, (action in abatement under K.S.A. 22-3901, in personam as to defendant owner/operator

and in rem as to the property); and State v. Thirty-six Pinball Machines, 222 Kan. 416, (action in abatement where, though not apparent owners received notice, they were nevertheless present and participating in the proceedings). The State has cited us to no cases or authority which would authorize the ex parte destruction of private property without some compliance with the due process requirements of notice and an opportunity to be heard." State v. Durst, 235 Kan. 62, 678 P.2d 1126 (1984).

4. K.S.A. (1990 Supp.) 22-3902(8) requires "diligent" search for owners and lienholders. If the petitioner has actual knowledge of the owner or lienholder, or the property interest is legally required to be registered or recorded, then a copy of the petition must be sent by certified mail to the owner or lienholder.

D. Temporary relief available in a criminal nuisance action.

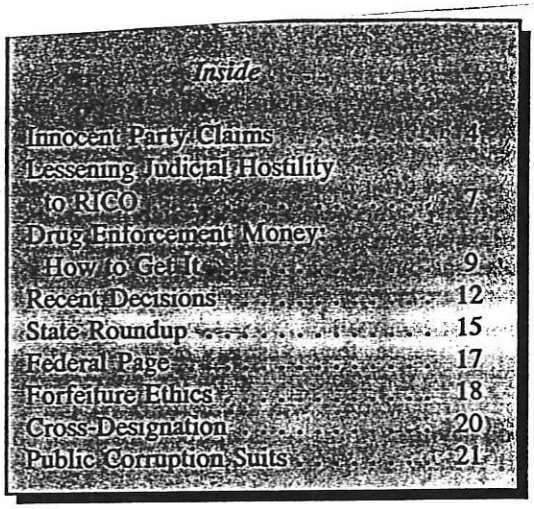
1. An ex parte restraining order may be issued against the persons carrying on the nuisance and/or anyone permitting their property to be used for unlawful purposes. K.S.A. 60-903. No bond is required. K.S.A. (1990 Supp.) 22-3902(6).

2. After notice and hearing, a temporary injunction may be granted which enjoins the illegal activities. K.S.A. 60-905. No bond is required. K.S.A. (1990 Supp.) 3902(6). For required contents, scope and service requirements with respect to restraining orders and temporary injunctions, see K.S.A. 60-906.

3. Disobedience of any restraining order, temporary injunction or permanent injunction is punishable as an indirect contempt. K.S.A. 60-909.

4. Upon a showing of probable cause to believe that personal property has been used for any of the purposes set out in K.S.A. (1990 Supp.) 22-3901, the Court may enter an ex parte order directing law enforcement officers to seize the property and retain custody pending

further order. The application and order must particularly describe the property. K.S.A. (1990 Supp.) 22-3902(4). Three days notice and hearing are required with respect to obscene materials. K.S.A. (1990 Supp.) 22-3902(5).



OPERATION CRACKDOWN: TEACHING AN OLD LAW NEW TRICKS

By **Ohio Attorney General Lee Fisher**
and
Tom Merriman, Managing Attorney
Ohio Attorney General's Cleveland Office

Although the image of tommy gun-toting gangsters, dressed in fedoras and long trench coats, must have weighed heavily on the minds of law enforcement officials during the Prohibition era, it pales in comparison to the vicious reality of modern urban America. In fact, law enforcement officials in the 1920s and 1930s probably could never have imagined a world of crack houses, beepers, and youth gangs armed with AK-47s running multi-million dollar drug operations. Nor would they have believed that a municipal police force could make over 4500 drug arrests in a single year and still be faced with a flourishing illegal drug trade. Nevertheless, the statutory tools relied upon to fight gangsters during Prohibition do provide modern law enforcement officials with effective, albeit dusty, weapons in the War on Drugs.[1] One such vestige of Prohibition is the regimen of state nuisance abatement laws which sprang up during this period.

In 1917, the Ohio General Assembly adopted a nuisance abatement law which specifically empowered the state Attorney General to obtain permanent injunctions shutting down nuisance property for a period of one year. Throughout the twentieth century, local law enforcement authorities from across the nation have used such laws to padlock bordellos, gambling houses, and illegal liquor establishments. Some have also attempted to employ nuisance abatement laws to shut down "dirty" book stores and pornographic movie houses. Although these latter flirtations with the First Amendment have often been the source of substantial attention and controversy, state nuisance abatement procedures have remained a relatively untapped resource in America's crime fighting arsenal.

On July 15, 1991, however, Ohio's 74-year-old nuisance abatement law was awakened from its deep dusty sleep and unleashed as a potent weapon in the War on Drugs. It was on that date that our office launched OPERATION CRACKDOWN and became the first Attorney General's office in the nation, to our knowledge, to use a state nuisance abatement law to shut down a drug house.

After assistant attorneys general from our Cleveland office had obtained an *ex parte* Temporary Restraining Order, Cleveland Police SWAT and Narcotics officers converged upon a targeted crack house on the city's east side. The house had been the site of multiple undercover drug buys, raids, and arrests. Despite these repeated law enforcement interventions, however, affidavits from narcotics officers filed in support of the Motion for a Temporary Restraining Order indicated that the structure was continuing to function as a crack house. Within minutes after the house was secured by SWAT officers, the neighborhood erupted with the noise of whirring buzz saws and pounding hammers. It was quickly apparent to the crowd of nearly 150 people which had gathered outside that this was no ordinary drug raid.

THE PROCEDURAL TOOLS OF NUISANCE ABATEMENT

The Ohio nuisance abatement law, not unlike many others throughout the country, empowers the state Attorney General to obtain an *ex parte* temporary restraining order authorizing local law enforcement officers to forcibly enter, board, padlock, and immediately shut down an alleged drug house if it can be demonstrated to the satisfaction of the court that the premises have been the site of a felony drug violation. *State ex rel. Freeman v. Pierce* (1991), 573 N.E. 2d 747, Jurisdiction Denied, 1991, 60 Ohio St. 3d 713. Although a T.R.O. can last up to 14 days, the Ohio nuisance abatement law requires that a preliminary injunction hearing occur within 10 days after the initial closure. At the preliminary injunction phase, the State must introduce evidence to support its allegation that the property constitutes a nuisance.

Although our office has generally relied upon previous searches, surveillance, and testimony from police officers regarding undercover drug buys, more recently we have

(continued on the next page)

permitted neighbors to testify about drug transactions they have observed. Defendants (whether they are owners, occupants, tenants, or simply maintainers of the nuisance) are then afforded an opportunity to cross-examine the State's witnesses and to introduce their own evidence. At the trial phase, the Attorney General may then seek both the imposition of a permanent injunction, which closes the property for one year from the date of trial, and the award of court costs, court may further order the sale of all personal property found on the premises with the proceeds accruing to the State. Ohio Revised Code §§ 3767.04 and 3767.08.

At any time prior to the issuance of a permanent injunction, a property owner may present evidence to rebut the statutory presumption that they had knowledge of or, with reasonable diligence, could have discovered the existence of felony drug activity. However, even if a property owner satisfies this burden, the court cannot simply release the owner from liability, extinguish the closure order, and instruct the local police department to remove the boards from an alleged drug house. The Ohio nuisance abatement law effectively imposes a strict liability standard on individuals who own property that has been the site of felony drug violations during the period of their ownership. If a property owner proves that they had no knowledge of the illegal activity and could not have discovered it despite reasonable diligence, they must pay the court costs and post a bond equal to the value of the property which guarantees that felony drug activity will not resume on the premises. Only upon payment of the costs and posting of the bond may the court release the property to the owner and order the removal of the boards and padlocks.

The Value Of Nuisance Abatement In The War On Drugs

For too long in cities throughout this country, the saga of the neighborhood drug house could be retold with interchangeable dates, times, and locations without altering the outcome of the story. In the typical case, neighbors and police officers alike dutifully play their role in the criminal justice process only to learn that their efforts to close down the neighborhood drug den have been completely futile. At the outset, the neighbors begin noticing a high volume of traffic in and out of a house with visitors never remaining for more than two or three minutes at a time. They report their suspicions to the local police department who add the location to a long list of suspected drug houses requiring investigation.

As the illegal drug activity intensifies and becomes more flagrant, the neighbors pump up the volume on their complaints. Some even band together as surveillance teams chronicling drug transactions, copying license plate numbers, and regularly updating the police on the latest developments. The police respond with their own surveillance and undercover drug buys which culminate in the execution of a search warrant and subsequent arrests for drug trafficking. But this is usually not the end of the story of the typical neighborhood drug house.

More often than not, suspected drug dealers post bail and are back in the same house on the same street dealing the same drugs to the same customers within 24 hours. Upon waiving their speedy trial right, suspected drug dealers guarantee that their criminal case is quickly buried in the court's busy docket. Even if the suspect is convicted and sentenced to prison, there is usually an able-bodied cohort all too willing to operate the drug house while the now-convicted drug dealer awaits parole from an over-crowded penal institution. Although the saga of the neighborhood drug house never ends, the moral of the story as taught to neighbors and police officers alike comes across loud and clear: No matter what steps you take, the neighborhood drug house will continue to operate without missing a beat.

While this depiction of the never-ending saga of the neighborhood drug house may seem unduly fatalistic, for millions of inner city Americans, it is the reality of the so-called War on Drugs. State nuisance abatement laws, however, have the ability to provide citizens with immediate, visible, and permanent relief from the chronic neighborhood drug house. Although the specific statutory abatement procedures vary from state to state, the availability of *ex parte* closure orders under these statutory schemes enables local law enforcement officials to immediately shut down illegal drug houses operating in their community.

Those who argue that the issuance of a closure order will simply force the drug dealer to move to another part of town miss the basic purpose behind this strategy. In addition to increasing the cost of engaging in illegal drug trade, the abatement of drug nuisances through the use of injunctive relief empowers citizens working with local law enforcement to take back their streets, house by house and block by block. By creating a realistic opportunity to actually shut down a neighborhood drug house, citizens are motivated to work with the police and become the eyes and ears of law enforcement.

This is not Pollyannaish wishful thinking. Rather, it is the actual experience of our office after shutting down 10 drug houses in Cleveland, Ohio, over a 3-month period. As a result of the tremendous media attention these closures have generated, the Cleveland Police Narcotics Unit has reported a substantial increase in the number of citizen complaints about drug houses. Through these citizen contacts, the Cleveland Police have been able to uncover numerous drug operations which had previously gone undetected. In addition, our office has been flooded with calls from both citizen groups and local law enforcement officials from around the state who want to utilize the program in their community.

We have also begun to receive videotapes from private citizens shot on their family camcorders of illegal drug transactions occurring outside suspected drug houses on their block. More and more, our office is trying these cases in packed courtrooms with angry, yet jubilant, neighbors who want to testify and make sure the Court understands how this particular drug house has terrorized the neighborhood. At a most basic level, OPERATION CRACKDOWN and the nuisance abatement law have given people a reason to believe that they can actually assert some genuine control over a small piece of an otherwise overwhelming drug epidemic. Without that sense of hope, citizens give up and police lose their most vital resource in the community.

Developing A Nuisance Abatement Drug House Strategy In Your State

After researching your state's nuisance abatement law, the first step in developing a nuisance abatement drug house strategy is to identify a local community in which to pilot the plan. The key factors in this decision in order of importance are:

1. The existence of a solid working relationship with a

city administration that is committed to making the eradication of neighborhood drug houses one of its highest priorities;

2. The existence of a substantial drug house problem which has been the source of considerable grassroots activism; and

3. The city's status as the center of a major media market. The media will play a vital role in the dissemination of information about the program and generation of renewed excitement about government's ability to actually impact this problem.

Upon making contact with the targeted city administration, work should begin immediately on the drafting of a top flight brief in support of a motion for *ex parte* temporary restraining order. Unless you are able to develop a sense of confidence that under the law of your state you will be able to obtain *ex parte* temporary restraining orders shutting down drug houses, it will be far more difficult to sell this program to local law enforcement officials.

The key element in this entire process is cooperation from the local narcotics unit. The police hold the key to all of the evidence and information that you will need to file your case. It is critical that this premise be accepted from the outset and control over the pace and direction of the program be turned over to a narcotics unit contact with supervisory authority with whom you have begun to develop a sound day-to-day working relationship.

Before targeting the first drug house, several fundamental issues must be addressed:

1. Coordinating agencies must reach agreement as to whether they are willing to shut down drug houses which are known to contain senior citizens and/or small children. In Ohio, we have made the strategic decision to shut down any drug house which satisfies our substantive criteria regardless of whether senior citizens and/or small children may reside there. It is our belief that it would be a grave error to send a message to drug dealers that they can avoid closure by surrounding themselves with vulnerable individuals. Having made that decision, it is critical that a mechanism be established from the outset to provide temporary housing to innocent people displaced by the closure orders.

2. City officials must decide whether they want to focus the time and energy of their fire, health, and building inspectors on these targeted dwellings. In Ohio, our office has written the *ex parte* temporary restraining orders so as to enable the relevant city inspectors to enter the property upon execution of the order. By using condemnation procedures in tandem with the nuisance abatement action where appropriate, we have been able to increase substantially our leverage in negotiations with property owners following the initial closure.

3. Criteria must be established for targeting drug houses. Although the Ohio nuisance abatement law only requires proof of a single felony drug violation, we have focused our efforts on properties where there have been multiple previous law enforcement interventions which have netted illegal narcotics. We have adopted this heightened standard for two reasons: First, since we are attempting to develop new case law on this subject, we wanted to gradually cultivate the courts' comfort level with this program. And secondly, if a simple search executed pursuant to a warrant can effectively shut down a drug operation, there is no need to expend resources on a nuisance action.

Once agreement is reached on these fundamental issues, target a filing date and work backwards. Although the civil rules vary between states, we have found it necessary to file the following documents in order to properly initiate and effectively prosecute a nuisance abatement action against the maintainers of an alleged drug house:

1. Verified Petition;
2. Application for Preliminary Injunction;
3. Motion for *Ex Parte* Temporary Restraining Order;
4. Affidavit in Support of Verified Petition from the officer-in-charge of the Narcotics Unit;
5. Attorney's Certification that notice of the T.R.O. hearing should not be required;
6. Brief in Support of Motion for *Ex Parte* Restraining Order; and
7. Temporary Restraining Order for signature by the judge.

Before filing a nuisance abatement action and seeking an *ex parte* closure order, it is absolutely essential that the police conduct surveillance of the targeted property and make a successful undercover drug buy during the final week. These steps are necessary to ensure that the target is currently functioning as a drug house and that the occupants have not moved from the location. Failure to take these final precautions is certain to result in some fairly unpleasant and embarrassing litigation. More importantly, it will completely destroy the court's confidence and, therefore, undermine your ability to obtain an *ex parte* order.

CONCLUSION

At this writing, our office has shut down 15 drug houses in four Ohio cities. By the end of this calendar year, we expect to have shut down close to 30 drug houses in a 6-month period. So far, no judge has refused to issue our office an *ex parte* T.R.O. closing a drug house and we have not lost a case. Although the American Civil Liberties Union has expressed displeasure with the use of *ex parte* temporary restraining orders to shut down drug houses, the Executive Director of the ACLU's Ohio Chapter has acknowledged that they have no basis for constitutional challenge. Through the combination of the nuisance actions and city condemnation proceedings, our office has been able to facilitate a wide range of outcomes: one drug dealer consented to the demolition of his home and another consented to a 1-year permanent injunction and agreed to sell the property to a party approved by our office in exchange for a waiver of costs and attorney

(continued on page 11)

BUD HOLLIS INTERVIEW

(continued from page 9)

I would suggest contacting the state agency that administers the current block grant program and develops the strategies for the next program, and have a discussion about any of the purpose areas that is of interest to the office and the staff. The idea is that if money has not been put into those purpose areas in the past, perhaps a proposal could be developed to provide funding for particular LPAs.

REPORT: *Would you explain how and by whom the statewide "strategy" is developed?*

HOLLIS: If an Attorney General wants to fund a program or project with Block Grant awards, it is absolutely critical for him or her to be actively involved in the strategy decision-making process. There still may be enough time to influence the strategy for FY 1992. Remember, the Act sets a 60-day deadline for submitting FY 1992 strategies, and that deadline is right around the corner—December 27, 1991. The FY 1992 strategies apply if they want to continue or increase a project's funding, or start a new, innovative program. A statewide strategy determines which LPAs receive Block Grant awards, as well as how much money each LPA will receive. To determine, or establish a statewide strategy, BJA strongly encourages each state to establish a *Drug and Violent Crime Policy Board* to serve as the forum for this strategy decision-making process. Board members are usually appointed by the governor, and include state and local officials and operational level representatives from all components of the criminal justice system. These Board members are responsible for developing a state's strategy, they decide which LPAs receive Block Grant awards, as well as how much money each LPA will receive. As for preparation of the strategy, Section 503 (a) (1) of the Act requires that "the strategy shall be prepared after consultation with state and local officials with emphasis on those whose duty it is to enforce drug and criminal laws and direct the administration of justice." A statewide strategy should reflect a state's operational efforts to improve its criminal justice system, with an emphasis on drug trafficking, violent crime and serious offenders.

In other words, state planning agencies should not draft the strategy and then submit the document for review as that deprives the operational level agencies from making substantive contributions. The state planning agencies should provide operational level agencies with every opportunity to actively participate at each stage throughout the entire process, especially the initial stage.

We have covered the framework of the federal funding available and some of the procedure involved to obtain these funds. I would suggest that the state agency responsible for monitoring and administering Formula Block Grant awards would benefit greatly by ongoing interaction with the office of Attorney General. Moreover, the Block Grant program itself would benefit substantially from more use and involvement by the Attorneys General.

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OPERATION CRACKDOWN

(continued from page 3)

fees. Meanwhile, one absentee landlord consented to the imposition of an $18,000 lien on a property as a guarantee that felony drug violations would not recur on the premises and another has agreed to simply gift a closed drug house to a community development corporation for the purposes of rehabilitation.

Probably the most interesting impact of OPERATION CRACKDOWN, however, has been the effect it has had on the attorneys in our office. We have no personnel budget for this program. We have asked our staff attorneys to volunteer to take on this project in addition to their normal duties and caseloads. The response has been overwhelming and it has created a sense of excitement throughout the office. Overseeing the execution of the temporary restraining orders, our attorneys have traded in their wool suits for bullet-proof vests. This experience has radically altered their self-images as government attorneys and uncorked an energy and zeal which has infected all areas of their legal practice.

By looking to the past, we have uncovered a tool which has offered a great many people hope for the future. Although OPERATION CRACKDOWN is not a silver bullet which can single-handedly solve Ohio's drug problem, it has produced concrete results which have reinvigorated the energy of all people who are working to eradicate the drug problem in Ohio.

[1] While Prohibition's failed outcome may render it a curious experience from which to derive effective strategies for the War on Drugs, it is important to clarify the fundamental cause of Prohibition's collapse. Prohibition failed not because law enforcement officials were inept in the interdiction of illegal suppliers. It failed because Prohibition lacked the popular support of the majority of the American public.

DRUG OFFENDERS

For the second year in a row in 1989, drug arrests by state and local agencies topped the one million mark, according to the Bureau of Justice Statistics (BJS). Arrests for simple possession (843,488), up 11 percent over 1988, were again more than twice the number of arrests for manufacture and sale combined (404,275), even though manufacture and sale arrests rose 40 percent over the previous year. (For arrest figures from 1980-88, see the December/January 1991 issue of this REPORT, at page 2.)

Drug offenders now occupy approximately half the federal prison space. According to BJS, on January 1, 1990, 48 percent of the federal prison space was taken by drug offenders, up from 22 percent in 1980.

The U.S. Sentencing Commission, created by Congress in 1984 to draft sentencing guidelines for judges, has issued a 200-page report finding that a majority of prosecutors oppose mandatory minimum sentences because they result in more trials and are too harsh. The study, entitled "Mandatory Minimum Penalties in the Federal Criminal Justice System," concludes that mandatory sentences are not applied uniformly, sometimes result in unjust sentences based on arbitrary standards, and are opposed by judges.

#3

Department of Social and Rehabilitation Services
Donna L. Whiteman, Secretary

Before the Senate Judiciary Committee
January 19, 1994

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The SRS Mission Statement

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

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Mr. Chairman and Members of the Committee, thank you for this opportunity to testify in support of Senate Bill 464, a bill relating to the Child Support Enforcement Program (CSE). SRS requested this measure amending the income withholding and interstate income withholding acts to insure compliance with state plan requirements under Title IV-D.

Background

The detailed income withholding requirements of federal law are aimed at assuring regular child support payments through payroll deductions. Although the Kansas income withholding laws meet nearly all federal requirements, there are some changes needed to insure we are in compliance. The needed changes are:

1. **Limit "good cause" grounds for denying an immediate income withholding order in a IV-D case.** The language added on page 4 (line 3) is taken from the federal regulation (45 CFR 303.100(b)(2)).

2. **Limit termination of income withholding before the support obligation ends.** The language added on page 5 (line 34) is taken from the federal regulation, 45 CFR 303.100(a)(7)(ii). It allows the court to terminate income withholding if it is the first termination and a written agreement for an alternative arrangement has been made.

   Kansas law presently requires all past due support to be paid in full before the court may allow termination of a withholding order. Also, the withholding order must have been in place at least 12 months, regardless of the circumstances of the case. We believe the proposed change offers greater equity and flexibility, particularly in non IV-D cases, while insuring compliance with federal requirements.

3. **Delegate administrative activities in non IV-D cases (cases not administered by CSE).** Federal regulators have recently clarified the administrative requirements for non IV-D income withholding cases (45 CFR 303.100(g)). States may either delegate the administrative duties in non IV-D cases to an appropriate entity or, if the IV-D agency administers all withholding, allocate costs between IV-D and non IV-D cases.

   In Kansas virtually all withholding payments in non IV-D cases are sent to a clerk of court or court trustee, credited to the account, and disbursed. . .

Senate Judiciary
2/5/94
attachment 3-1

The current structure meets federal standards for non IV-D cases, and the amendment on page 6 (line 26) states that this is the option Kansas has chosen. No new duties for the clerks of court or the district court trustees are contemplated. Unless a court trustee assumed the burden, the parties themselves or their attorneys would monitor payments and initiate legal actions.

4. **Make interstate income withholding available in non IV-D cases (cases not administered by CSE).** The federal requirement is found at 45 CFR 303.100(h). During the 1980's, states were permitted to limit interstate income withholding to IV-D cases. Although our interstate withholding act does not directly prohibit its use in non IV-D cases, it would be difficult to apply in a private case because of the current wording.

   In the proposed amendments, the obligee (custodial parent) is generally designated as the person to take actions in non IV-D cases. The key changes are on page 7 (line 3), page 8 (line 17), page 9 (line 6), and page 10 (line 10).

   The Office of Judicial Administration has suggested clarification of the language on page 8 (line 21), requiring documents to be filed by an attorney licensed to practice law in Kansas, to insure that individuals may file documents without an attorney. The attached balloon would make this change.

   The bill also adds language clarifying that the interstate income withholding act creates no attorney-client relationship between a IV-D attorney and an individual party to the case (Page 7, line 24). This parallels 1993's changes to URESA (Uniform Reciprocal Enforcement of Support Act), and is meant to prevent attorney disqualifications due to conflicts.

Fiscal Impact

This measure is not expected to affect the revenues or operating costs of the Child Support Enforcement Program, the district court trustees or court clerks.

As noted earlier, the bill is intended to insure compliance with federal requirements. For reference, federal sanctions for failure to meet IV-D program requirements range from $600,000 per year (1% of AFDC funding) to $18,000,000 (all Title IV-D funding plus 5% of AFDC funding), with an ultimate penalty of $85 million per year (all Title IV-D funding and all AFDC federal funding).

Thank you for this opportunity to testify is support of Senate Bill 464.

Donna L. Whiteman
296-3271

(B) the name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought; and

(C) the name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(c) If the documentation received under subsection (a) does not conform to the requirements of subsection (b), the agency shall remedy any defect which it can without the assistance of the requesting agency. If the agency is unable to make such corrections, the requesting agency shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The agency and court shall accept the documentation required by subsections (a) and (b) even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(d) An obligee not receiving services from any agency operating pursuant to title IV, part D, of the federal social security act (42 U.S.C. & 651 et seq.), as amended, may file the documents specified in subsection (b) with the clerk of the court in which withholding is being sought. ~~The documents~~ shall be filed by an attorney licensed to practice law in the state of Kansas.

If the documents are filed by an attorney, they or authorized in accordance with Supreme Court Rule 116.

~~(d)~~ *(e)* A support order entered under subsection (a) *or (d)* shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in K.S.A. ~~1985 Supp.~~ 23-4,105 through 23-4,118 and 23-4,130 through 23-4,137 *and amendments thereto*. Entry of the order shall not confer jurisdiction on the courts of this state for any purpose other than income withholding.

Sec. 6. K.S.A. 1993 Supp. 23-4,130 is hereby amended to read as follows: 23-4,130. (a) Except as provided in subsection (b), no later than 10 days after the date a support order is entered pursuant to K.S.A. 23-4,129 and amendments thereto, the agency *or obligee* shall serve upon the obligor a notice as provided for in subsection (h) of K.S.A. 23-4,107 and amendments thereto. The notice shall also advise the obligor that income withholding was requested on the basis of a support order of another jurisdiction. ~~As~~ *When* appropriate, the agency ~~shall then~~ *or obligee shall* file the affidavit provided for in subsection (d) of K.S.A. 23-4,107 and amendments thereto. If, in accordance with K.S.A. 23-4,110 and amendments thereto, the obligor contests the issuance of an income withholding order, the court must hold a hearing and render a decision within 45 days of the date of service of the notice on the obligor.