Approved: 4701017, 1994

Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson August Bogina at 11:00 a.m. on March 9, 1994 in Room 123-S of the Capitol.

All members were present except: Senator Rock, who was excused

Committee staff present: Leah Robinson, Legislative Research Department

Scott Rothe, Legislative Research Department

Norm Furse, Revisor of Statutes Judy Bromich, Administrative Assistant Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Secretary Seltsam, Department of Administration
Representative Rochelle Chronister
Robert Fairchild, Alternative Dispute Resolution Committee
Judge G. Joseph Pierron, Jr.
Roxanne Emmert Davis, Kansas Childrens' Service League
Theresa Shively, for Larry Rute of Kansas Legal Services
Sandy Barnett, Crisis Center, Inc., Manhattan, KS and the Kansas Coalition
Nancy Hughes, Heartland Mediators' Association
Jolene Grabill, Corporation for Change
Elwaine Pomeroy, KS Collectors Assn., Inc. and Kansas Collection Attorneys

Others attending: See attached list

SB 536 -- STATE OFFICERS AND EMPLOYEES; QUALITY AWARD PROGRAM; LONGEVITY BENEFITS; FAMILY MEDICAL LEAVE

Secretary Seltsam reviewed two actions which had transpired since the Committee introduced <u>SB 536</u> (<u>Attachment 1</u>). She explained that the balloon (<u>Attachment 2</u>) provides clarification that the state uses longevity payments as bonus payments rather than additional compensation. In answer to the Chairman, she stated that the court action would apply retroactively, though there has not yet been a judgment.

Senator Kerr moved Senator Morris seconded that SB 536 be amended by deleting section 2 and by adopting the amendments contained in the balloon (Attachment 2). The motion carried on a voice vote.

Chairman Bogina requested tat the Committee consider amending <u>SB 536</u> by making longevity pay subject to appropriations. <u>Senator Kerr moved</u>, <u>Senator Morris seconded</u>, that <u>SB 536</u> be further amended by inserting the words "Within the limits of appropriations therefor and subject to the provisions of appropriation acts relating thereto" before the word "each" on page 3, line 3 of the bill, and by inserting the words "Subject to the provisions of appropriation acts relating thereto" before the word "the" on line 23 [Sec. 3(c)], page 3. The motion carried on a voice vote.

Senator Kerr moved, Senator Vancrum seconded, that SB 536 as amended be recommended favorable for passage. The motion carried on a roll call vote.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on March 9, 1994.

HB 2574 -- DISPUTE RESOLUTION ACT

Scott Rothe, KLRD, reviewed the supplemental note for members. In response to questions, he stated that <u>HB 2574</u> simply sets up an act to allow for the establishment of mediation centers but would not limit existing mediators. He noted that the proposal would provide a standardized level of performance.

Representative Chronister appeared before the Committee to testify in support of <u>HB 2574</u> and reviewed <u>Attachment 3</u>. She indicated that an ongoing concern of hers that might be addressed through mediation has been the negotiations process that occurs between school boards and teachers. Senator Salisbury noted that constituents had expressed concerns about the bias of the courts and inquired whether Representative Chronister had considered establishing the centers outside the court system. Rep. Chronister answered that the administrator of the Nebraska program said it was advantageous to establish the program within the court system and that the courts could promote it.

In answer to Senator Lawrence's concern that the proposal would create a bureaucracy, Rep. Chronister stated that the control is within the appropriations process. She noted that the Nebraska system operates with .5 or 1. FTE position in each of its 6 districts.

Representative Chronister told members that <u>HB 2574</u> might not provide the total answer to reducing the requests for additional judges, but she believes it will help.

Robert Fairchild, testified in support of <u>HB 2574</u> and distributed copies of <u>Attachment 4</u>. He told members that he is an attorney in Lawrence, a claims mediator, a teacher of alternative dispute resolutions at the University of Kansas Law School, and he is involved in a training program with the KBA to train mediators in child custody suits. He stated that the KBA supports <u>HB 2574</u> but would favor raising the number of lawyers and judges on the 11 member council to 5 because it is important to have their commitment to this program.

Judge G. Joseph Pierron, Jr. appeared before the Committee in support of HB 2574 and recommended adoption of the amendments contained in Attachment 5. He stated that he was the Chairman of the Supreme Court Commission on Alternative Dispute Resolution, he sat on the Kansas Court of Appeals, and, before that, he was District Judge of Johnson County when the domestic relations mediation program was implemented. He said that the program was successful in the eyes of the judges because the number of domestic cases, especially those involving child custody, decreased by 95%. He stated that there were different situations in Nebraska when the program was implemented than those that exist in Kansas and said that the proposed amendments address those differences. In answer to a question, he stated that the amendments were suggested to the House Appropriations Committee but were not submitted in written form.

Senator Vancrum expressed concern about the potential abuse of ADR in complex commercial cases. Judge Pierron indicated that he interpreted line 34 on page 5 of the bill to mean that attorneys could request mediation. He stated that if it were interpreted to mean that mediation was mandatory, he would have concerns as well.

Roxanne Emmert Davis, Kansas Childrens' Service League, appeared before the Committee in support of <u>HB 2574</u> and reviewed <u>Attachment 6</u>. She stated that her program is staffed by volunteers and there is usually a waiting list of persons wanting to receive training and provide services. She said that referrals usually come from schools rather than judges and the success of the service is measured by how family members interact after they've gone through the process.

Theresa Shively testified for Larry Rute on behalf of Kansas Legal Services in support of <u>HB 2574</u> (<u>Attachment 7</u>). She told members that ADR is a vital part of the Family Court bill.

Sandy Barnett spoke on behalf of the Kansas Coalition Against Sexual and Domestic Violence to voice her concern that ADR may be a major problem in cases of domestic violence (Attachment 8). She expressed concern that the language in the bill does not guarantee that a seat on the Council will be held for a domestic violence representative as intended by the House subcommittee. She requested that the Committee amend the bill to either forbid the use of mediation in cases of domestic violence or insure that one member of the Council is a domestic violence representative. There was some discussion regarding the difficulty in determining voluntary compliance with orders to mediate in these cases. Ms. Barnett stated that each family would have to be screened very well in order to determine whether they're good candidates for mediation.

Nancy Hughes, immediate past President of the Heartland Mediators' Association, appeared before the Committee and reviewed concerns held by her association. She noted that lines 3-4 on pages 8 might provide a loophole in regards to confidentiality that could occur if judges do not understand the confidential nature of mediation. She inquired whether line 4, page 8 could be amended to read "Supreme Court" rather than "a court." Ms. Hughes noted that she had been involved in the mediation clinic operated by the University of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on March 9, 1994.

Kansas Psychological Clinic and expressed concern on their behalf that centers could be deemed unapproved because they charge a minimal fee (Sec. 8, page 5). She had concerns that the "unapproved" status would, in the future, reflect poorly on the centers.

Elwaine Pomeroy appeared on behalf of the Kansas Collectors Association Inc., and on behalf of the Kansas Collection Attorneys and testified that his only concern with the bill was the funding mechanism and requested that the Committee remove the docket fee increases from the bill. He distributed copies of Attachment 9 to Committee members. In answer to questions, it was stated that an appropriation of approximately \$75,000 would be required to fund the proposal for the first year and \$150,000 for the second year.

The Chairman adjourned the meeting at 12:35 P.M.

The next meeting is scheduled for March 10, 1994.

GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS DATE: March 9 1994 NAME (PLEASE PRINT) COMPANY/ORGANIZATION LAuvence 1200 HARRISON COPELLA Heartland Mediators Heartland Mediators KCSDV 2053 KB, Ave TO Della, KS

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION State Capitol Room 263-E Topeka 66612-1572 (913) 296-3011

SUSAN SELTSAM, Secretary

JOAN FINNEY, Governor

MEMORANDUM

TO:

Senator August Bogina, Chairman

Senate Ways and Means Committee

FROM:

Secretary of Administration

DATE:

February 28, 1994

RE:

Senate Bill No. 536

You currently have Senate Bill No. 536 pending in your committee. Two actions have transpired since your committee introduced this bill at our request.

Employee Quality Award Program. Section 2 of SB 536 provides for an employee quality award program. The Senate Governmental Organization Committee has considered SB 672, which has provisions for productivity bonus awards. Your committee may wish to consider deleting Section 2 from SB 536 on the basis that the subject matter is adequately addressed in SB 672.

Longevity Payments. Current law on longevity payments is covered by K.S.A. 75-5541. Section 3 of SB 536 provides that persons on temporary or emergency appointments do not get longevity payments. It also provides that the method the state utilizes to compute "Length of Service" for vacation and sick leave accrual can also be used for computing longevity payments.

A new issue regarding longevity payments arose last week when we received a ruling from Judge Saffels. His ruling held that the state was not properly factoring in longevity payments when paying overtime pay to employees that receive longevity payments. The court acknowledged that the state precisely followed the federal Department of Labor standards for bonus payments but held that longevity payments were not bonus payments but rather

SWAM March 9, 1994 Attachment 1

Senator August Bogina February 28, 1994 Page 2

additional compensation. The judge relied on the provisions in our current longevity statute which states that it "shall be liberally construed to maximize benefits."

The Division of Personnel Services has estimated that the fiscal note on this new way of treating longevity payments is about \$67,000 annually (excluding employees of Regents). The state has a policy choice as to whether to treat longevity payments as a bonus. Because the State has historically treated longevity payments as bonus payments and state agencies have budgeted accordingly, our department recommends clarifying amendments to the longevity statute.

Attached are balloon amendments to SB 536 that address both of the above topics. It is hoped that your committee will take action on SB 536. If you have any questions or comments on these matters, please let me know.

Attachment 0004564.01

SENATE BILL No. 536

By Committee on Ways and Means

1-19

AN ACT concerning state officers and employees; concerning certain benefits and awards therefore; amending K.S.A. 75-3207, 75-37,100 and 75-5541 and K.S.A. 1993 Supp. 75-6508 and repealing the existing sections.

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

Section 1. K.S.A. 75-3207 is hereby amended to read as follows: 75-3207. (a) For official travel inside or outside of the state, the subsistence allowance shall be paid at the applicable rate for such travel fixed under K.S.A. 75-3207a, and amendments thereto, while the employee is away from such employee's official station or domicile.

- (b) In all cases of official travel inside or outside of the state which is subject to the provisions of this section, where the official traveler leaves the traveler's official station or domicile and returns on the same day without incurring lodging expense, no subsistence allowance will be paid. Except upon written permission granted by the secretary of administration, no subsistence allowance shall be allowed for expenses incurred within 30 miles of an employee's official station.
- (c) No allowances shall be paid to any person for subsistence expense incurred while staying in any place where such person is continuously stationed, except upon written permission granted by the secretary of administration upon written application and subject to rules and regulations adopted by the secretary of administration under K.S.A. 75-3207a, and amendments thereto.
- (d) The limitations provided herein shall not apply to eases where the subsistence expenses are advanced by the state by reason of contract of recompensation either expressed, or implied in law or in fact, with any person, group of persons, agency, association, corporation, partnership, or organization of any nature whatsoever, other than the state of Kansas or any municipalities or subdivision thereof.
- (e) The phrase "subsistence allowance" as used in this act shall be construed and held to include all charges for meals and lodging, all fees and tips to waiters, hotel porters, bellhops, doormen, maids, television, radios, special air conditioning and dining-room stewards.

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- (f) Subject to prior approval by the secretary of administration, reduced allowances for subsistence may be paid where considered appropriate by the head of any state agency by reason of the nature of travel, type of business being conducted and frequency of travel. Notice of any such reduced allowances shall be given to the director of accounts and reports.
- (g) The secretary of administration shall adopt rules and regulations as provided in K.S.A. 75-3706, and amendments thereto, covering the manner of payment of allowances for subsistence, non-subsistence and transportation expenses as defined in this act.
- (h) Nothing in this section shall apply to the officers and employees specified in K.S.A. 75-3216, and amendments thereto.

Sec. 2. K.S.A. 75-37,106 is hereby amended to read as follows: 75-37,106. (a) There is established an employee quality-award program for employees of state government to recognize contributions to the improvement of productivity, service to the public and agency operations within state government. Under this program, awards of east, benefits and other approved awards may be made to individual employees and to groups of employees whose proposals are endorsed by the head of an agency as advancing objectives of the agency. Subject-to-the approval of the secretary of administration; the director of personnel services shall promulgate guidelines to agencies for developing quality award programs and make recommendations to the secretary for the adoption of each quality award program proposed by an agency.

- (b) There is established an employee suggestion award program for employees and retired employees of state government. Under this program cash or honorary awards may be made to state employees and retired state employees whose adopted suggestions will result in substantial savings or improvement in state operations. Except as provided in K.S.A. 1986 Supp. 75-37,109, and amendments thereto, if a each award is made to a state employee, an additional each award shall be awarded to the immediate supervisor of the state employee who made the suggestion, which additional cash award shall be in an amount equal to 10% of the amount of the each award to the state employee.
- (b) (c) There is hereby established an employee-service award program. Under this program the board-shall formulate, establish and maintain plans to provide a uniform system through which state employees may receive appropriate recognition for their service dedication to Kansas state government in a scheduled, timely manner.

Sec. 51 K.S.A. 75-5541 is hereby amended to read as follows: 75-5541. (a) Each state officer or employee, who is within the

(covered by SB 672)

elassified service under the Kansas eivil service act in a state agency in the executive branch of state government or who is a Each classified employee, excluding any such employee who is on emergency or temporary appointment, and each nonjudicial employee in the unclassified service under the Kansas civil service act in a state agency in the judicial branch of state government, shall receive additional compensation as provided by this section, which shall be referred to as longevity pay, under the terms and conditions and subject to the limitations prescribed by this section.

(b) After June 30, 1989, any such officer or employee who has been employed by any agency, board or department within any branch of state government, whether or not the entire period of service is continuous with the same agency, board or department, shall be eligible to receive longevity pay upon completion of 120 months of satisfactory servicer Part-time employment shall be converted to a full-time equivalent, pursuant to rules and regulations or policies adopted for the administration of this section, for the purposes of determining length of service and service anniversary dates under this section state service. Length of service and service anniversary dates shall be determined pursuant to rules and regulations or policies adopted by the secretary of administration.

(c) The amount of each longevity pay payment shall be computed by multiplying \$40 by the number of full years of satisfactory state service, not to exceed 25 years, rendered by such officer or employee as of the service anniversary date within such fiscal year.

(d) Longevity pay payments shall be made by a separate payment on the date the payment of compensation is made for the payroll period in which an eligible officer's or employee's service anniversary date occurs. For the purposes of this section, an officer's or employee's service anniversary date shall be the date on which such officer or employee began employment under the Kansas eivil service act with the state of Kansas, proportionately adjusted in accordance with the rules and regulations or policies adopted pursuant to this section for any periods during which such officer or employee was engaged in part-time employment under the Kansas eivil service act.

(e) Longevity pay shall be compensation, within the meaning of K:S.A. 74-4901 et seq., and amendments thereto, for all purposes under the Kansas public employees retirement system and shall be ubject to applicable deductions for employee contributions notwithstanding the fact that payments are made annually. Longevity pay shall be in addition to any other compensation payable by law.

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or increase therein, to which an officer or employee may become entitled or for which such employee may become eligible.

- (f) The provisions of this section shall be liberally construed to maximize benefits to those officers of purpose of longerity pay is to maximize benefits to permanent employees who have provided experience and faithful tong-term service to the state of Kansas in order to encourage officers and employees to remain in the service of the state. The provisions of this section shall apply to fiscal years commencing after June 30, 1989.
- (g) In accordance with the provisions of K.S.A. 75-3706, and amendments thereto, the secretary of administration shall adopt rules and regulations to implement the provisions of this section with respect to officers and employees in the executive branch of state government. The supreme court may adopt policies to implement the provisions of this section with respect to officers and employees who are nonjudicial personnel of state agencies in the judicial branch of state government.
- See. 4. K.S.A. 1993 Supp. 75-6508 is hereby amended to read as follows: 75-6508. (a) (1) Each state agency which has on its payroll persons participating in the state health care benefits program shall pay from any moneys available to the agency for such purpose an amount specified by the Kansas state employees health care commission, including any amounts prescribed under a cafeteria plan established under K.S.A. 75-6512 and amendments thereto. All such payments shall continue on the behalf of employees otherwise eligible for participation in the state health care benefits program who are temporarily unable to work because of an injury or illness and who have exhausted their sick and annual leave hours. Such payments will continue for three months following the exhaustion of sick and annual leave in accordance with continuation provisions of the family and medical leave act of 1993, P.L. 103-03, 107 stat. 6. The commission may charge each state agency a uniform amount per person as the cost to the agency for the state's contribution for persons participating in the state health care benefits program. Such amounts may include the costs of administering the program.
- (2) In the event that the Kansas state employees health care commission designates by rules and regulations a group of persons.

 The payroll of a county, township, city, special district or other governmental entity, public school district, licensed boarding smale for children operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and

the regular earnings

recognize

The amendatory language of this section shall be construed to confirm that longevity pay is intended, and has been intended since its enactment, to be a bonus as defined in 29 C.F.R. § 778.208.

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rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 et seq. and amendments thereto, nonprofit community facility for the mentally retarded, as provided in K.S.A. 19-4001 et seq. and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto, as qualified to participate in the state health care benefits program, each local governmental entity, public school distriet, licensed boarding home for children operated by a not-forprofit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 et seq. and amendments thereto, nonprofit community facility for the mentally retarded, as provided in K.S.A. 19-4001 et seq. and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto, which has on its payroll persons participating in the state health care benefits program shall pay from any moneys available to the local governmental entity, public school district, licensed boarding home for children operated by a not-forprofit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 et seq. and amendments thereto, nonprofit community facility for the mentally retarded, as provided in K.S.A. 19-4001 et seq. and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto, for such purpose an amount specified by the commission. The commission may charge each local governmental entity, public school district, licensed boarding home for children operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 et seq. and amendments thereto, nonprofit community facility for the mentally retarded, as provided in K.S.A. 19-4001 et seq. and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto, a uniform amount per person as the cost to the local governmental entity, public school district, licensed boarding home for children operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as

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provided in K.S.A. 19-4001 ct seq. and amendments thereto, nonprofit community facility for the mentally retarded, as provided in K.S.A. 19-4001 et seq. and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto, for the contribution of the local governmental entity, public school district, licensed boarding home for children operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of such care from the department of social and rehabilitation services, nonprofit community mental health center, as provided in K.S.A. 19-4001 ct seq. and amendments thereto, nonprofit community facility for the mentally retarded, as provided in K.S.A. 19-4001 et seq. and amendments thereto, or nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto, for persons participating in the state health care benefits program. Such amounts may include the costs of administering the program.

(b) Payments from public funds for coverage under the state health care benefits program for persons participating in that program shall not be deemed a payment or supplement of wages of such person notwithstanding any other provision of law or rules and regulations relating to wages of any such person.

Sec. 5: K.S.A. 75-3207, 75-37,10 and 75-5541 and K.S.A. 1993 Supp. 75-6508 are hereby repealed.

Sec. 6! This act shall take effect and be in force from and after its publication in the statute book.

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Testimony by Rep. Rochelle Chronister before the Senate Ways and Means Committee Wednesday, March 9, 1994 HB 2574

Chairman Bogina and Senate Ways and Means Members,

HB 2574 is the culmination of a long time interest of mine in two areas. First, a better way to resolve disputes than going to court. Second, an attempt to delay the need for additional district court judges being added to the courts.

The bill brief has an excellent description of the bill's contents. HB 2574 is based on the Nebraska Dispute Resolution Act and establishes a mainly voluntary system.

H.B. 2574 creates the Dispute Resolution Act and establishes the Office of Dispute Resolution in the Office of Judicial Administration. The bill provides for the appointment by the Judicial Administrator of an unclassified Director to administer the Act and to provide administrative and clerical assistance to the Advisory Council on Dispute Resolution, which is created by the bill. The Council is to consist of ll voting members appointed by the Chief Justice of the Kansas Supreme Court. The Council shall not include more than one district judge, more than one magistrate judge, or more than one other person who is licensed to practice law in Kansas. The bill sets out a wide variety of organizations and individuals from whom the Chief Justice may solicit nominations.

Responsibilities of the Council include advising the Director on the administration of the Act, and providing assistance on the award of grants to, as well as the supervision of, approved dispute resolution centers. The Director is responsible for encouraging the formation of centers, approving centers which meet requirements prescribed by the Act, evaluating the work performed by the centers, preparing an annual report and an annual budget and dispensing appropriated funds, developing guidelines for a sliding scale of fees to be charged by the centers, developing curricula and initiating training sessions for mediators and staff of approved centers and of the courts, establishing volunteer training, promoting public awareness of the dispute resolution process and applying for public and private funds for carrying out the purposes of the Act.

The act applies only to approved dispute resolution centers. Approved centers include any center which has applied for and received approval by the Director and which makes dispute resolution procedures available, but shall not include programs operated within the Judicial Branch. An approved center may use both public and private sources of funds in addition to funds appropriated by the Legislature. Approved centers may require each party to pay a fee to help defray costs based on ability to pay, but no person shall be denied mediation services

SWAM March 9, 1994 Attachment 3

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because of an inability to pay a fee. Cases which may be accepted by the centers include civil claims, domestic relations, juvenile offenses, disputes between victims and offenders if the victim has voluntarily agreed to participate, discrimination disputes, employer and employee relations, disputes referred by county and district attorneys as well as by other parties named in the Act.

The Act authorizes the Supreme Court to adopt rules establishing standards for training and qualifications for mediators of approved centers as well as ethics requirements for the mediators. The Act provides that all verbal or written information transmitted between any party shall be confidential, with certain exceptions provided. Similarly, no mediator, staff member, or member of a governing board of an approved center shall be held liable for civil damages made in the process of dispute resolution, with certain exceptions provided. The bill details the mediation process and sets forth the responsibilities of mediators in the approved centers.

The Act creates the Dispute Resolution Fund to be administered by the Judicial Administrator. Expenditures for the Fund are limited to operating expenses of the Office and the Advisory Council, and for activities or grants authorized by the Act. Receipts to the Fund in FY 1995 are to be made from revenue generated by a \$0.50 increase in the docket fee on certain civil, limited action, and small claims actions. An amendment adopted by the House Committee of the Whole increases the revenue source from FY 1996 from \$0.50 to \$1.00 for a total of about \$180,000.

As Chairman of the House Committee on Appropriations I traveled with a staff member of the Legislative Research Department to Lincoln, Nebraska, in mid-1993 to visit with administrators of the Nebraska Office of Dispute Resolution. The Kansas House Committee on Appropriations held hearings in the Fall of 1993 to gauge interest in establishing a similar office in Kansas. Following a great deal of positive testimony offered by persons interested in promoting standardized alternative methods of dispute resolution, HB 2574 was drafted and introduced for consideration during the 1994 Legislative Session. Hearings were once again held on January 11th and 12th to solicit suggestions on changes that might be made to the bill. A Subcommittee was appointed by the Chairman to consider suggested amendments, mostly relating to training requirements and the method of making appointments to the Council. The Subcommittee reported to the Committee with Three of the five members of the Subcommittee were suggested amendments. attorneys including the vice-chairman of the House Judiciary Committee. Committee adopted the amendments and reported the bill favorably as amended.

It has seemed to me for a long time that a non-adversarial form of dispute resolution needs to be promoted. One that would

Page -3- Testimony on HB 2574 March 9, 1994

- a) help reduce the number of civil cases filed and/or taken to court;
- b) promote <u>direct communication</u> between the disputants (a neutral third party);
- c) cost less to those involved in a dispute;
- come to win-win solutions, instead of win-lose or lose-lose solutions;
- e) <u>not</u> create a new bureaucracy.

In other words attempt to bring people together instead of driving them further apart.

Nearly every year a bill comes to the Appropriations Committee with a request for a new judge to ease the work load in a certain county or judicial district. This year it was a request for 4 new district court judges and their staff at a cost of \$600,000. In response to those requests, I began a quest to see what we could do to reduce court time spent on civil cases and also how to save citizens' money if they are involved in a dispute. As I examined the various forms of dispute resolution outside of the court system, mediation appeared to be a system that was now being successfully used in 17 other states. The Office of Judicial Administration and several members of the Kansas Supreme Court have spoken to me in favor of the concept.

I found the process that HB 2574 is based on in the Nebraska Dispute Resolution Act. Nebraska's system has been in place for three years, has 1.5 FTE state employees and runs a system that is volunteer based across the entire state which has been divided into regions.

Nebraska uses mediation in divorce cases and has found that where 80% of decrees are contested within 2 years, if mediation is used the percent drops to 60% because the two sides have reached the agreement together. That reduces hundreds of court rulings a year.

Nebraska is offering mediation in civil rights cases, and their Commission on Civil Rights is clearing a 5-year backlog of 3,000 cases with nearly all cases agreeing to mediation. Small claims courts are reducing cases by 50%.

The bill does not propose to establish a new bureaucracy - it proposes to educate people about mediation and help train mediators, so they are available in every part of Kansas. In Nebraska mediators receive training and in turn pay pack their training by providing free or very low cost mediation services. There are already a number of mediation services in Kansas, but they are not well known or evenly spread across the state.

Page -4- Testimony on HB 2574 March 9, 1994

A great deal of testimony favorable to this bill was received by the House Appropriations Committee. One of the comments that I have been asked was why this did not go through the Judiciary Committee, and there are two answers to that question:

1) It does not modify the civil procedures code; it is designed to avoid it.

2) It is designed to reduce the time that courts spend on civil cases, thereby saving the courts time for more complicated civil and criminal procedures and reducing or delaying the cost to the state of additional new district court judges.

In closing here are a few of the facts that I have learned about mediation:

A shoplifting program based on mediation in Newton, Kansas, has almost no repeat offenders who are teenagers or pre-teens after mediation.

National reports find mediation reduces the cost of dispute resolution through court action between 25 - 75 %.

Anyone with approved mediation training can be a mediator. It is not reserved to the legal profession - many social workers, psychologists, ministers, housewives and regular citizens are drawn to take the training and use the skills they have learned. In Nebraska, a volunteer gives back 30 hours free mediation for 30 hours of training.

Some schools in Nebraska and Kansas have given mediation training to elementary school children to help settle playground disputes, reduce fights and lessen racial tensions.

I have attached two pieces of information that I felt were especially helpful in what can be accomplished by mediation and the information on what cost reductions have been in other states.

Not every civil dispute can be settled by mediation; not every mediation is successful; but when it is, a peaceful solution is reached which the disputants "own" - not a solution that is imposed on them from outside. That is why it is a win-win solution.

I ask for your favorable consideration of HB 2574, and will be pleased to answer questions.

31 Districts



Domestic Court Services

GARY KRETCHMER

DIRECTOR, DOMESTIC SERVICES

FAX (913) 782-3297

January 11, 1994

STATE OF KANSAS

TENTH JUDICIAL DISTRICT

Johnson County

905 W. Spruce Olathe, KS 66061 (913) 782-7252

Appropriations Committee Kansas Legislature

Re: House Bill #2574

Dear Committee Members:

I am the Director of Domestic Court Services for the Tenth Judicial District in Olathe, Kansas. My staff provides mediation for families struggling with making decisions about their children following divorce. This office is in full support of legislative initiatives that will provide the citizens of Kansas every resource possible to help in problem-solving and conflict resolution.

Our mediation program in Johnson County has proven to be a success. It has benefited the court and many families caught up in conflict. We must realize that people in dispute over normal family issues cannot depend on the court for effective resolution. In 1993, the court staff completed work with 381 families in mediation. Our results indicate:

12th 145 families (38%) reached a written agreement.

129 families (34%) reached their own verbal agreement. 30 families (08%) reached an agreement before mediation was

initiated.
68 families (18%) reached no agreement.

09 families (02%) were not recommended for joint mediation.

These numbers show that eight out of ten families coming to the mediation process last year, resolved their conflict without depending on a courtroom decision. I am very proud of my staff's efforts. This experience needs to be available to all citizen's across Kansas.

Since 1985, the staff has worked with 2,445 families in mediation. Our statistics show that 76% found resolution. House Bill #2574 can open up more opportunity for the settlement of conflict. If you have questions about the Johnson County experience, please call.

Sincerely,

Gary B. Kretchmer

pirector of Domestic Court Services

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Training.

Numerous groups offer basic mediation training, including the Family Mediation Association in Washington, D.C.; the Academy of Family Mediators in New York; Center for Dispute Resolution in Denver; and the Center for Development of Mediation and Law in San Francisco. Additionally, several individuals offer mediation training.

Standard training consists of forty hours of lecture, simulation, and practice mediation. Additional advanced training is available for those who have had the basic course and experience. In some jurisdictions, persons with certain degrees or experience may be qualified as mediators.

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Mediation, instead of litigation, of child custody can save the state money. One California study found that mediation administered through the conciliation courts in Ealifornia cost one-fourth as much as a trial would for resolving custody disputes. In addition, before 1977 when San Francisco adopted mandatory mediation of child custody and visitation disputes, there were five hearings a day on contested custody. By 1980, there were five a year, which resulted in substantial savings to the judicial system as well as the litigants.

The Denver Custody Mediation project found substantial savings in court costs. Contested custody cases were found to cost over \$1,000 for bench time and \$528 for custody investigation. Mediation of those cases led to court costs of less than \$300 per case. In Los Angeles, one estimate found a savings of \$1,175,044 in court costs in 1978 by the conciliation court.

Mediation has the potential to be quicker and cheaper for the parties than using the judicial system. The cost for the initial mediation may be comparable to that of an initial legal consultation. Mediation services may equal in cost an attorney's fee for a divorce if the parties negotiate an agreement. If, however, the mediation reduces or eliminates the need for courtroom battles, then there is a substantial cost savings. Additional savings result from less postdivorce litigation.

In private mediation, the mediator sets his or her hourly rate. The hourly rate will be determined by the background of the mediator—psychiatrist or lawyer or sociologist. Fees range from \$35-\$150 an hour with the average being \$60-\$85 per hour. The parties pay the fee directly to the mediator.

In some states, there is no fee charged for mediation services that are connected with court services. In public mediation models through the court, the costs of mediation are assessed as costs in the case or free. Therefore, costs are considerably lower than private mediation. In some states a sliding scale is used even for court-provided mediation.

The Standards of Practice for Family Mediators do not allow contingency or outcome related fees."

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Revised 1990

JERRY BENEVENTI, KANSAS COMMITTEE FOR COMMUNITY FROM:

at request to Rep. Chronister Meeting 1-11-94

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3-6

MEDIATION



1200 SW Harrison St. P.O. Box 1037 Topeka, Kansas 66601-1037 Telephone (913) 234-5696 FAX (913) 234-3813

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TESTIMONY ON HB 2574

Testimony on behalf of the Bar Association Re: HB 2574, the Alternative Dispute Resolution Act

The Kansas Bar Association supports HB 2574. In the past, the KBA has supported the concept of increasing filing fees to encourage alternative methods of resolving disputes. We have previously sponsored legislation to increase filing fees to support local court sponsored projects. HB 2574 provides the necessary funding to expand the use of alternative dispute resolution programs and offer necessary protection for the consumers of these programs.

Benefits of ADR are proven

The KBA has an Alternative Dispute Resolution Committee which has been in existence for almost ten years. The members of our committee have worked to encourage or sponsor alternative methods of resolving disputes. Programs are in 26 of the 31 judicial districts, in several minor dispute mediation systems like the Wichita Neighborhood Justice Center, and varied additional projects like school based playground mediation systems. We believe the history of Kansas based programs shows sufficient experience of the effectiveness of alternative dispute methods.

The Bar is committed

As lawyers, we are committed to a role to facilitate the settlement of disputes in any way which provides the best results for our clients and this includes mediation, arbitration and other Some alternative forms, like mediation, can alternative forms. encourage disputants to find that each can "win" if a qualified neutral person enables them to help each other in recognizing strengths and weaknesses of an argument and in making their own To encourage the use of mediation, the Kansas Bar Association established a 40 hour mediation training program to encourage lawyers and non lawyers to become mediators in the area of In addition, the Kansas Bar Foundachild custody and visitation. tion has granted thousands of dollars to non profit organizations like the Neighborhood Justice Center and the Counseling and Mediaswam march 9, 1994 tion Center to experiment with the use of mediation.

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Tie to court system is essential to quality

The use of alternative methods of resolving disputes has the potential for certain types of disputes to be quicker, less expensive, more private and less stressful. This is better for our clients. However it also has the potential for some people not getting adequate justice. As we go about encouraging these alternatives we must be cautious of the fact that the protection of consumers needs system training and supervision standards to insure the quality of the system. There can be unequal bargaining between disputants who might have a history of one side dominating another. There is wide agreement that mediation should not be used in domestic violence cases for example. For us that has meant encouraging that these alternatives be tied to the court system so that ultimately anyone can have their day in court without greatly increasing their justice.

Evaluation can be attained

This legislation can provide the funds to provide seed money to to initiate or expand alternative dispute resolution programs. In addition, it provides the missing component of oversight and evaluation of the system to insure that consumers are protected and that there is consistency in the quality of these program across the state.

We see this oversight as coming from the Office of Judicial Administration where the new staff will be placed. This component is very important for the future encouragement of alternative methods of resolving disputes. The more satisfied consumers are in using these alternatives, the more demand there will be for them.

In conclusion, we believe that:

- * There is a compelling need in a complex society for dispute resolution whereby people can participate in creating comprehensive, lasting and realistic resolutions to conflicts;
- * Mediation, and other alternatives, can increase access of the public to resolving their disputes and thereby increase public regard and usage of government in general and the legal system in particular; and
- * Court sponsored ADR programs and nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes which cannot be resolved by means other than litigation.

Respectfully submitted, Kansas Bar Association March 9, 1994

Bob Fairchild

Re: Change in testimony

Ken Stewart would like to amend the testimony to emphasize one point:

Since a large portion of the burden and responsibility of this proposed ADR system will fall on the courts, the KBA encourages consideration of opening the membership on the ADR Commission to more judges and lawyers. Both groups have been proponents of this concept and most ADR programs are currently court related. At the very least the maximum number should be raised to five. The more law related participants there are, the more ownership and participation this system will encourage among the courts and lawyers.

Art

March 9, 1994
Testimony of G. Joseph Pierron, Chair, Supreme Court Committee on Alternative Dispute Resolution
Senate Committee on Ways and Means
HB 2574
Suggested amendments

Amend Sec. 2. (b) p. 1, to read:

(b) "center" means any entity or program which makes dispute resolution procedures available, other than a dispute resolution program operated by the judicial branch. An entity or program which merely coordinates or cooperates with the judicial branch shall not be considered to be operated by the judicial branch.

Rationale. The more successful ADR programs, especially those which deal with domestic relations, small civil and victim-offender programs, often work closely with the courts, although they are not controlled by them. We would hope this amendment would make sure that such programs would be able to receive any assistance available under the act.

Amend Sec. 3, last sentence, p. 2, to read:

The person appointed shall devote full time to the duties of the office of director and shall not engage in the private practice of any profession during the period such person serves as director.

Rationale. Under the present wording, the only person who would be required to devote full time would be a lawyer.

Amend Sec. 5. (a) (2), p. 3, to read:

(2) assist the director in providing technical assistance to centers and other entities, including courts, requesting the study and development of dispute resolution programs.

Amend Sec. 6 (a) p. 4, to add (11), which would read:

(11) provide technical assistance to centers and other entities, including courts, requesting the study and development of

SWAM March 9, 1994 OHachmont 5

dispute resolution programs.

Rationale. Amending these two sections would:

- 1. specifically direct the director to provide under Sec. 6 the kinds of services referred to in Sec. 5 (a) (2); and
- 2. clarify that the director can provide technical assistance and advice to court programs, although court programs cannot receive financial aid and are not subject to non-judicial supervision.

Amend Sec. 19 (a) (5), p. 10, to read:

(5) to the dispute resolution fund, during the period from July 1, 1994 through June 30, 1995, a sum equal to .65% of the remittances of docket fees, and after June 30, 1995, a sum equal to 1.30% of the remittances of docket fees.

Rationale. This would clarify that the second 50 cent increase in the docket fee, in Sec. 20, p.10, which is to take effect June 30,1995, is for dispute resolution purposes.

As Amended by House Committee

Session of 1994

HOUSE BILL No. 2574

By Committee on Appropriations

12-22

AN ACT concerning dispute resolution; establishing the office of dispute resolution; providing for the establishment and administration of dispute resolution centers; prescribing certain requirements and providing for certain grants; prescribing confidentiality and immunity under certain circumstances; creating the dispute resolution fund; amending K.S.A. 1993 Supp. 20-362, 20-367, 60-2001, 61-2501 and 61-2704 and repealing the existing sections.

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

Section 1. (a) Sections 1 through 16, and amendments thereto, shall be known and may be cited as the dispute resolution act.

(b) The dispute resolution act shall apply only to approved centers, including the governing board members and the mediators and other personnel of approved centers, whether or not such persons are compensated, and to the parties to disputes accepted for dispute resolution at approved centers.

Sec. 2. As used in the dispute resolution act:

- (a) "Approved center" means a center that has applied for and received approval from the director under section 7, and amendments thereto;
- (b) "center" means a not-for-profit organization under section 501(e)(3) of the federal internal revenue code of 1986 or a court-established any entity or program which makes dispute resolution procedures available, other than a dispute resolution program operated within the judicial branch;
 - (c) "council" means the advisory council on dispute resolution;
- (d) "director" means the director of the office of dispute resolution;
- (e) "dispute resolution process" means a process by which the parties involved in a dispute voluntarily agree or are referred by a court to enter into informal discussion and negotiation with the assistance of a mediator;
 - (f) "mediation" means the intervention into a dispute by a third

by

An entity or program which merely coordinates or cooperates with the judicial branch shall not be considered to be operated by the judicial branch.

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party who has no decision making authority and is impartial to the issues being discussed; and

(g) "mediator" means a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict.

Sec. 3. The office of dispute resolution is hereby established in the office of the judicial administrator. The director of the office shall be in the unclassified service under the Kansas civil service act and shall be appointed by the chief justice of the supreme court judicial administrator. The director may be but is not required to be an attorney and shall be selected for appointment on the basis of the individual's training and experience in mediation. The director shall administer the dispute resolution act and shall provide administrative and clerical assistance to the council. If the person appointed as director is an attorney, such person shall devote full time to the duties of the office of director and shall not engage in the private practice of law during the period such person serves as director.

Sec. 4. (a) The advisory council on dispute resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation and shall be selected to be representative of the geographical and cultural diversity of the state and to reflect balanced gender representation. The council shall consist of 11 voting members appointed by the chief justice of the supreme court. The voting members shall include a representative from the Kansas district judges association, the Kansas district magistrate judges association and the Kansas bar association not more than one district judge, not more than one district magistrate judge, and not more than one other person who is licensed to practice law in Kansas. The council shall be appointed by the chief justice of the supreme court in accordance with this section. The chief justice shall solicit nominations from the Kansas district judges association, Kansas district magistrate judges association, Kansas bar association, Kansas committee for community mediation, Kansas children's service league, heartland mediators association, Kansas legal services, inc., Kansas judges, mediation organizations, legal and mental health professional organizations, social and legal services agencies, domestic violence advocacy groups, state and local government agencies, business organizations, consumer organizations, court service officers, social workers, mental health professionals, educators and other interested groups or individuals. The chief justice is not restricted to the solicited lists of nominees in making such appointments. Two nonvoting, ex-officio members of the council shall be appointed by the any profession

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council from among representatives of the approved centers.

- (b) The initial members of the council shall be appointed for terms of one, two or three years so that the terms of not more than four voting members shall expire during the same calendar year. All successor appointments shall be made for terms of three years. Any vacancy on the council shall be filled in the same manner in which the original appointment was made and for the duration of the term vacated. Appointments to the council shall be made within 90 days after July 1, 1994.
- (c) The council annually shall elect a chairperson, a vice-chairperson and such other officers as deemed necessary by the council.
 - Sec. 5. (a) The council shall:
- (1) Advise the director on the administration of the dispute resolution act and on policy development therefor;
- (2) assist the director in providing technical assistance to centers and other entities requesting the study and development of dispute resolution programs;
- (3) consult with appropriate and necessary state agencies and offices to promote a cooperative and comprehensive implementation of this act;
- (4) advise the director with respect to the awarding of grants to approved centers or any other financial assistance program which is administered under this act;
- (5) advise the director with respect to applications submitted by centers and other entities for approval under section 7, and amendments thereto, as approved centers;
- (6) assist the director with the review, supervision and evaluation of dispute resolution programs of approved centers; and
- (7) make recommendations to the director pertaining to legislation affecting dispute resolution.
- (b) The council shall meet at least four times per year and at other times deemed necessary to perform its functions. Members of the council attending meetings of the council or attending a subcommittee meeting thereof authorized by the council shall receive amounts provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto.
- (c) The council may appoint subcommittees of the council to carry out its work. Subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council assigned to the subcommittee.
- Sec. 6. (a) Consistent with provisions of the dispute resolution act and the rules of the supreme court adopted pursuant to section 16 and amendments thereto the dispute resolution act, and in

including courts,

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consultation with the council, the director shall:

- (1) Make information on the formation of centers available throughout the state and encourage the formation of centers;
- (2) approve centers which meet requirements and guidelines for approval which are prescribed by this act or by rules of the supreme court adopted pursuant to section 16 and amendments thereto the dispute resolution act;
- (3) develop and administer a uniform system of reporting and collecting statistical data from approved centers;
- (4) develop and administer a uniform system of evaluating approved centers for compliance with the requirements of the dispute resolution act and the rules of the supreme court adopted pursuant to section 16 and amendments thereto the dispute resolution act;
- (5) prepare an annual budget for the implementation and administration of the dispute resolution act and disburse funds to approved centers;
- (6) develop guidelines for a sliding scale of fees that may be charged by approved centers;
- (7) develop and approve curricula and initiate training sessions for mediators and staff of approved centers and of courts, including continuing education programs;
- (8) establish and approve volunteer training and continuing education programs;
- (9) promote public awareness of the dispute resolution process;
- (10) apply for and receive funds from public and private sources for carrying out the purposes and objectives of the dispute resolution
- (b) The director shall report annually to the supreme court, the governor and the legislature on the implementation of the dispute resolution act. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, any recommendations to address problems and a comparison of the cost of mediation and litigation.
- Sec. 7. (a) A center or an entity proposing to establish a center may apply to the director for approval to participate in the dispute resolution process under the dispute resolution act by submitting an application which includes:
 - (1) A plan for the operation of the center;
 - (2) the center's objectives;
 - (3) the areas of population to be served;
 - (4) the administrative organization of the center;
- (5) recordkeeping procedures;

; and

(11) provide technical assistance to centers and other entities, including courts, requesting the study and development of dispute resolution programs.

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- (6) the procedures for client intake and for scheduling, conducting and terminating dispute resolution sessions:
 - (7) qualifications for mediators for the center;
 - (8) an annual budget for the center; and
 - (9) proof of not for profit status under section 501 (e)(3) of the federal internal revenue code of 1986 or proof of establishment by a court; and
 - (10) such additional criteria for approval or for grants which are prescribed by the director in accordance with the dispute resolution act or by rules of the supreme court pursuant to section 16 and amendments thereto adopted pursuant to the dispute resolution act.
 - (b) The director shall approve or disapprove each application submitted for approval under this section by the end of the second meeting of the advisory council occurring after the date the application was submitted.
- (c) Each approved center shall submit an annual report to the director. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the dispute resolution act.
- (d) Any entities providing mediation programs and existing on July 1, 1994, shall not be included as approved centers under the dispute resolution act unless such entities apply and are approved under this section.
- Sec. 8. An approved center may use sources of funds, both public and private, in addition to funds appropriated by the legislature. An approved center may require each party to pay a fee to help defray costs based upon ability to pay. A person shall not be denied mediation services solely because of an inability to pay the applicable fee.
- Sec. 9. (a) The following types of cases may be accepted for dispute resolution at an approved center:
- (1) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes involving allegations of shoplifting, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, disputes involving matters under the small claims procedure act, and disputes within communities;
- (2) disputes concerning child custody and visitation rights and other areas of domestic relations;
 - (3) juvenile offenses and disputes involving juveniles;
- (4) disputes between victims and offenders, in which the victims voluntarily agree to participate in mediation;

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- (5) disputes involving allegations of unlawful discrimination under state or federal laws;
- disputes referred by county attorneys or district attorneys; and
- (7) disputes involving employer and employee relations under K.S.A. 72-5413 through 72-5432, and amendments thereto, or K.S.A. 75-4321 through 75-4337, and amendments thereto-; and
- (8) disputes referred by a court, an attorney, a law enforcement officer, a social service agency, a school or any other interested person or agency, including the request of the parties involved.
- (b) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school or any other interested person or agency or may accept eases upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached and, if the court requests a copy of the agreement, the center shall provide such сору.
- (c) Before the dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.
- Sec. 10. (a) Mediators of approved centers shall have completed at least 30 hours of training approved by the director in After reviewing the recommendations of the advisory council on dispute resolution, the supreme court shall adopt rules which establish standards for training and qualifications for mediators of approved centers and which prescribe procedures for approval by the director of training for mediators in accordance with such standards. Training for mediators shall include the study of conflict resolution techniques, neutrality, agreement writing and ethics. For disputes involving marital dissolution, mediators of approved eenters shall have an additional 30 hours in family mediation training approved by the director. An initial apprenticeship with an experienced mediator of at least three sessions shall be required for all mediators without prior mediation experience All mediators of approved centers shall satisfy the standards for training and qualifications established by rules of the supreme court.
- (b) Mediators of approved centers shall comply with the ethics requirements and standards and the annual continuing education requirements which are prescribed by the director in accordance

with the dispute resolution act or by rules of the supreme court adopted pursuant to section 16 and amendments thereto the dispute resolution act.

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- (c) An approved center may provide dispute resolution by utilizing mediators who are compensated by the approved center, by utilizing the services of volunteer mediators, or by utilizing both compensated and volunteer mediators.
- Sec. 11. (a) Each mediator of an approved center shall assist the parties in reaching a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator shall be impartial, neutral and unbiased and shall make no decisions for the parties. The mediator shall act in accordance with the ethics requirements and standards prescribed by rules adopted by the supreme court pursuant to section 16 and amendments thereto the dispute resolution act.
- (b) The mediator shall officially terminate the process if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding.
- (c) The mediator has no authority to make or impose any adjudicatory sanction or penalty upon the parties.
- (d) The mediator shall be aware of and recommend outside resources to the parties whenever appropriate. The mediator shall advise participants to obtain legal review of agreements as necessary.
- Sec. 12. (a) All verbal or written information relating to the subject matter of an agreement and transmitted between any party to a dispute and a mediator or the staff of an approved center shall be confidential communications. Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation or statement made in mediation, which is not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver.
- (b) The confidentiality requirements of this section shall not apply to:
- (1) Information that is reasonably necessary to establish a defense for the mediator or center in the case of an action against the mediator or the center that is filed by a party to the mediation;
- (2) any information that the mediator is required to report under K.S.A. 38-1522, and amendments thereto;
- any information that is reasonably necessary to stop the d mission of an ongoing crime or fraud or to prevent the commiss. of a crime or fraud in the future for which there was an expressed

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intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of a court.

Sec. 13. No mediator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acts, or fails to act, in a manner constituting gross negligence with malicious purpose or in a manner exhibiting willful disregard of the rights, safety or property of any party to the process of dispute resolution.

Sec. 14. If the parties involved in the dispute reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, such agreement shall be enforceable as an order of the court.

Sec. 15. During the period of the dispute resolution process, any applicable statute of limitations shall be tolled as to the parties. The tolling shall commence on the date that the parties jointly agree in writing to participate in mediation under the dispute resolution act and shall end on the date mediation is officially terminated by the mediator. This period shall be no longer than 60 days without consent of all the parties.

Sec. 16. The supreme court, upon recommendation by the director in consultation with the council, shall adopt rules for the administration of the dispute resolution act and to prescribe ethics requirements and standards for mediators of approved centers.

New Sec. 17. There is hereby created the dispute resolution fund in the state treasury which shall be administered by the judicial administrator. All expenditures from the dispute resolution fund shall be for the operating expenses of the office of dispute resolution in the office of the judicial administrator, the advisory council on dispute resolution, or other activities or grants authorized or provided for under the dispute resolution act. All expenditures from the dispute resolution fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the judicial administrator or by the judicial administrator's designee.

Sec. 18. K.S.A. 1993 Supp. 20-362 is hereby amended to read as follows: 20-362. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

- (a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:
- (1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A. 60-2001 and 60-3005, and amendments thereto, during the preceding calendar month;
- (2) a sum equal to \$10 for each \$36.50 \$37 or \$61.50 \$62 docket fee paid [during the period from July 1, 1994, through June 30, 1995, and for each \$37.50 or \$62.50 docket fee paid after June 30, 1995,] pursuant to K.S.A. 61-2501, 61-2704 or 61-2709, and amendments thereto; and
- (3) a sum equal to \$5 for each \$16.50 \$17 docket fee paid [during the period from July 1, 1994, through June 30, 1995, and for each \$17.50 docket fee paid after June 30, 1995,] pursuant to K.S.A. 61-2501 or 61-2704, and amendments thereto, during the preceding calendar month.
- (b) To the board of trustees of the county law library fund, for deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.
- (c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to \$1 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month for cases filed in the county.
- (d) To the state treasurer, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to \$.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.
- (e) To the state treasurer, for deposit in the state treasury and credit to the law enforcement training center fund, a sum equal to \$5 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month.
- (f) To the state treasurer, for deposit in the state treasury and distribution according to K.S.A. 1993 Supp. 20-367, and amendments thereto, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a), (b), (c), (d) and (e).

Sec. 19. K.S.A. 1993 Supp. 20-367 is hereby amended to rank as follows: 20-367. (a) Of the remittance of the balance of dees received monthly by the state treasurer from clerks ot district court pursuant to subsection (f) of K.S.A. 20-362, and

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amendments thereto, the state treasurer shall deposit and credit:

- (1) To the juvenile detention facilities fund, a sum equal to 5.12% of the remittances of docket fees;
- (2) to the judicial branch education fund, the state treasurer shall deposit and eredit a sum equal to 3.93% of the remittances of docket fees;
- (3) to the emergency medical services operating fund, the state treasurer shall deposit and eredit a sum equal to 2.95% of the remittances of docket fees; and
- (4) to the judiciary technology fund, the state treasurer shall deposit and eredit a sum equal to 5.66% of the remittances of docket fees; and
- (5) to the dispute resolution fund, a sum equal to .65% of the remittances of docket fees,
- (b) The balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.
- Sec. 20. K.S.A. 1993 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) Docket fee. Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee [to the clerk of the district court] in the amount of \$61.50 \$62 to the clerk—of—the—district—court [for each case filed or docketed during the period from July 1, 1994, through June 30, 1995, and in the amount of \$62.50 for each case filed or docketed after June 30, 1995].
- (b) Poverty affidavit in lieu of docket fee. (1) Effect. In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required.
- (2) Form of affidavit. The affidavit provided for in this subsection shall be in the following form and attached to the petition:

 State of Kansas, ______ County.

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

- (c) Disposition of docket fee. The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.
- (d) Additional court costs. Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraisers' fees, fees for service of process outside the state, fees for depositions, alternative dispute

, during the period from July 1, 1994, through June 30, 1995,

, and after June 30, 1995, a sum equal to 1.30% of the remittances of docket fees.

resolution fees, transcripts and publication, attorneys' fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

Sec. 21. K.S.A. 1993 Supp. 61-2501 is hereby amended to read as follows: 61-2501. (a) Docket fee. No case shall be filed or docketed pursuant to this chapter without the payment of a docket fee in the amount of \$16.50 [(1)] \$17 [for each such case filed or docketed during the period from July 1, 1994, through June 30, 1995, and \$17.50 for each such case filed or docketed after June 30, 1995], if the amount in controversy or claimed does not exceed \$500, or \$36.50 [(2)] \$37 [for each such case filed or docketed during the period from July 1, 1994, through June 30, 1995, and \$37.50 for each such case filed or docketed after June 30, 1995], if the amount in controversy or claimed exceeds \$500 but does not exceed \$5,000, or \$61.50 [(3)] \$62 [for each such case filed or docketed during the period from July 1, 1994, through June 30, 1995, and \$62.50 for each such case filed or docketed after June 30, 1995], if the amount in controversy or claimed exceeds \$5,000. If judgment is rendered for the plaintiff, the court also may enter judgment for the plaintiff for the amount of the docket fee paid by the plaintiff.

(b) Poverty affidavit; additional court costs. The provisions of subsections (b), (c) and (d) of K.S.A. 60-2001[,] and amendments thereto shall be applicable to actions pursuant to this chapter.

Sec. 22. K.S.A. 1993 Supp. 61-2704 is hereby amended to read as follows: 61-2704. (a) An action seeking the recovery of a small claim shall be considered to have been commenced at the time a person files a written statement of the person's small claim with the clerk of the court if, within 90 days after the small claim is filed, service of process is obtained or the first publication is made for service by publication. Otherwise, the action is deemed commenced at the time of service of process or first publication. An entry of appearance shall have the same effect as service.

(b) Upon the filing of a plaintiff's small claim, the clerk of the court shall require from the plaintiff a docket fee of \$16.50 [(1)] \$17 [for each filing of a small claim during the period from July 1, 1994, through June 30, 1995, and \$17.50 for each filing of a small claim after June 30, 1995], if the claim does not exceed \$500, or \$36.50 [(2)] \$37 [for each filing of a small claim during the period from July 1, 1994, through June 30, 1995, and \$37.50 for each filing of a small claim after June 30, 1995], if the claim exceeds

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\$500, unless for good cause shown the judge waives the fee. The docket fee shall be the only costs required in an action seeking recovery of a small claim. No person may file more than 10 small claims under this act in the same court during any calendar year.

Sec. 23. K.S.A. 1993 Supp. 20-362, 20-367, 60-2001, 61-2501 and 61-2704 are hereby repealed.

Sec. 17 24. This act shall take effect and be in force from and after its publication in the statute book.



TESTIMONY BEFORE THE SENATE WAYS AND MEANS

Submitted by: Kansas Children's Service League March 9, 1994

KANSAS CHILDREN'S SERVICE LEAGUE is a statewide agency whose mission is "To promote the well-being of all Kansas children by strengthening the quality of family life through the provision of prevention, early intervention, treatment, advocacy and placement of services." As you can see, this mission exemplifies a genuine commitment to children and families and is reflected in our 100 years of service.

mediation services: curriculum/training program, Building Conflict Solving Skills.

Thank you for the opportunity to address your Committee regarding the proposed legislation regarding alternative dispute resolution.

Kansas Children's Service League supports the proposed House Bill 2574 that establishes an office of dispute resolution and provides for dispute resolution centers in Kansas.

We applaud this effort to formally establish a foundation for the development of alternative means of dispute resolution. Our experience over the past seven years in providing mediation services for parents and adolescents has underscored the value of a service that provides a means for families to resolve differences before they escalate to the point of family dissolution or involvement of the Courts. We believe that individuals can take responsibility for designing solutions tailored to their needs and, further, that they will be more likely to adhere to solutions they have devised themselves.

The proposed legislation outlined in HB 2574 should provide the means for making alternative forms of dispute resolution more readily available on a statewide basis.

Presented by: Roxanne Emmert-Davis, Case Work Supervisor

Kansas Children's Service League currently sponsors two programs that deal with the Parent-Adolescent Mediation Program and a

CENTRAL OFFICES

1365 N. CUSTER P.O. BOX 517 **WICHITA, KS 67201** 316-942-4261 316-943-9995 (FAX)

5500 S.W. 7TH STREET TOPEKA, KS 66606 913-272-8447 913-272-8572 (FAX)

OTHER LOCATIONS

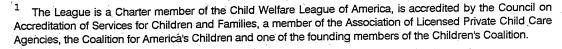
EMPORIA GARDEN CITY GOODLAND **JUNCTION CITY** KANSAS CITY LEOTI MANHATTAN SCOTT CITY ULYSSES

100 YEARS OF SERVICE









Parent-Adolescent Mediation

he Konsos Children's Service League Parent-Adolescent Mediation Program is a crisis intervention service especially designed for parents and adolescents who are experiencing serious conflicts. Trained mediators help parents and teens find

new ways to settle differences and begin to communicate effectively.

The responsibility to find solutions is shared by parent and teen. Each has a say in setting new ground rules.

Through mediation, more serious problems of family violence, delinquency or placement outside the home can be avoided.

Mediation Is:

Voluntary — The decision to participate is the family's decision. Families may request help on their own or be referred by the school, courts, or another agency.

Neutral — Decisions and solutions are made by family members. Mediators do not take sides.

Short-term — Mediation can help families resolve their most pressing conflicts within one to three sessions.

Problem-Solving — Mediation services can result in a mutual agreement to follow a problem-solving plan.

Mediation is not therapy and does not replace traditional counseling services.

Who Are The Mediators?

ediators are community volunteers who are trained in conflict intervention and mediation strategies. Mediators, from a variety of backgrounds, volunteer their time and their skills. Mediators receive 30 hours of training before being teamed with an experienced mediator. Training and supervision of mediators is provided by Kansas Children's Service League staff who are

mediation specialists.

Sessions are available at convenient times, including late afternoon and evening appointments.

For more information:

CALL

232-0543

2053 Kansas Ave. Topeka, KS 66612



is an early intervention service for families in conflict.

The project is based on a model for family mediation developed by the Center for Dispute Settlement, Washington, D.C.

KANSAS CHILDREN'S SERVICE LEAGUE is a private agency with a variety of services to strengthen and protect families at risk. Families receiving parent-adolescent mediation services may also participate in other professional services offered by the League.

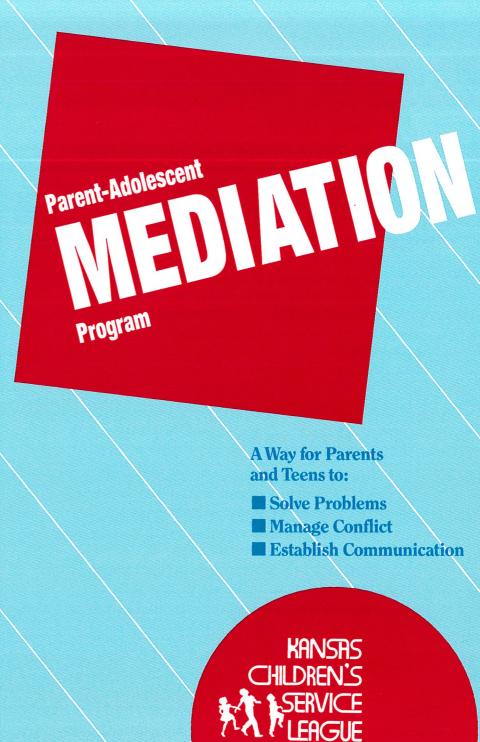
Services in the Topeka community:

- Youth and Family Crisis Services
- Emergency Youth Shelter
- Emergency Children's Shelter
- Family Foster Care
- Respite Care
- Pregnancy Counseling Services
- Juvenile Assessment and Intake

KANSAS CHILDREN'S SERVICE LEAGUE

> 232-0543 2053 Kansas Ave. Topeka, KS 66612





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

SENATE COMMITTEE ON WAYS AND MEANS AUGUST "GUS" BOGINA, CHAIRMAN

Wednesday, March 9, 1994 Room 123 South - State House

I would like to thank the Chairman and members of the Committee for the opportunity to appear before you today to speak in support of House Bill 2574 as amended.

I am here on behalf of Larry R. Rute, the Deputy Director of Kansas Legal Services (KLS). As you are probably aware, KLS is a private, non-profit corporation dedicated to providing free or low-cost legal services to low and moderate income Kansans. Last year our attorneys and support staff, located in twelve offices throughout the state, provided legal advice and representation to approximately 24,000 Kansans.

I am very pleased that the Ways and Means Committee has chosen to give serious consideration to strengthening alternative dispute resolution systems in Kansas through HB 2574. I believe that this bill, will serve as an economical and effective vehicle to resolve conflicts between individuals, as well as a way to reduce the inflow of cases into our already overburdened court system.

DISPUTE RESOLUTION SERVICES - OLATHE

The Committee may not be aware of the fact that a prototype of a local dispute resolution center as envisioned by HB 2574 is currently in operation under the name Dispute Resolution Services, in Olathe, Kansas. Dispute Resolution Services (DRS) was established in 1985 through the joint efforts of the Kansas Bar Association and Kansas Legal Services, Inc., to explore alternatives to the court system for the resolution of disputes. Dispute Resolution Services is based in Kansas Legal Services of Olathe and serves all residents of Johnson county regardless of age or income. Priority is given, however, to disputes involving parties who have a limited income.

Dispute Resolution Services began accepting referrals in January of 1986 after extensive groundwork had been laid for the project and training of volunteers was completed. Project staff trained approximately twenty (20) volunteers from the community to mediate minor disputes. Approximately sixty percent (60%) of the volunteers were attorneys with the other volunteers ranging from mental health professionals to business persons and other interested individuals. The original focus of the project was on the resolution disputes between neighbors, landlord-tenant disputes, consumer complaints, and family disputes.

Today, DRS staff and volunteers continue to be heavily involved with neighborhood dispute mediation under a grant through the Johnson county small claims court. Parties to small claim disputes are provided a brochure at the Clerk's office advising them that if they are thinking about filing a lawsuit, have filed a lawsuit, or are defending a lawsuit, mediation may be an alternative worth considering. Under the program, mediation can be provided prior to filing a lawsuit, after filing but before the court date, and at the date of

SWAM March 9, 1994 Attachment 7 the court appearance. If the legal issue is not resolved in mediation, parties are given additional time to present their case before the judge at the court docket.

In addition to small claims court mediation, DRS also provides family mediation services in divorce and post divorce matters. Problem resolutions commonly center around issues concerning custody and visitation. Family mediation cases are co-mediated, generally involving male and female attorneys and non-attorney mediators.

I have set out below Olathe's dispute resolution statistics for 1992 and 1993, as follows:

STATISTICS FOR DISPUTE RESOLUTION SERVICES OF KANSAS LEGAL SERVICES:

| SMALL CLAIMS CASES MEDIATED CASES RESOLVED PERCENTAGE OF CASES RESOLVED PERCENTAGE OF COMPLIANCE WITH AGREEMENT | 1992 306 176 58% 83% | 1993 275 166 60% 85% |
|---|----------------------------------|----------------------------------|
| FAMILY MEDIATION CASES MEDIATED CASES RESOLVED PERCENTAGE OF CASES RESOLVED TELEPHONE CONTACTS | 17 13 76% 117 | 17 13 76% 205 |

Dispute Resolution Services (DRS) is currently developing a proposal for victim/offender mediation in the juvenile court. This form of mediation will bring victims and the perpetrator before a mediator to establish an agreed restitution in the victim's behalf. A 1986 study found recidivism rates in four programs studied to be lower, two of them significantly so, by those using restitution instead of detention, counseling or probation.

DRS uses a sliding scale system to help supplement scarce program funds although no one is refused service because of inability to pay. I have set out below DRS's domestic fee scale based on individual annual gross income, as follows:

| \$10 per/hr. |
|--------------|
| \$18 per/hr. |
| \$26 per/hr. |
| \$36 per/hr. |
| \$46 per/hr. |
| \$56 per/hr. |
| \$66 per/hr. |
| \$76 per/hr. |
| |

FARMERS' ASSISTANCE, COUNSELING AND TRAINING SERVICE (FACTS) MEDIATION PROGRAM

Another good example of a working mediation program in Kansas is the FACTS Mediation Program. FACTS is a cooperative effort of the Kansas Board of Agriculture and Kansas State University. Farmer/Creditor Mediation is a major component of the services FACTS offers to the agricultural community of Kansas.

As you know, Kansas Legal Services has been contracting with the Board of Agriculture since 1985 to provide legal assistance to farmers and ranchers in Kansas. Our FACTS attorneys are not mediators but will assist our clients by preparing them for the mediation process.

As a response to the farm crisis nationwide, the U.S. Congress enacted the Agricultural Credit Act of 1987, which contained provisions for the creation of certified state agricultural mediation programs through the Farmers Home Administration of the U.S. Department of Agriculture. The 1988 Kansas Legislature authorized FACTS to provide mediation services and apply for USDA certification. FACTS, through the Kansas Board of Agriculture, was first certified in 1988 and has remained so to the present time.

This same statute also made Kansas a mandatory notification/voluntary participation state for agricultural mediation. Creditors are required to notify borrowers of the availability of mediation when accelerating a note or prior to foreclosure proceedings. Participation in the mediation process then is a voluntary decision. Kansas' approach is similar to several other states in this manner. Only Iowa and Minnesota have laws making participation in mediation mandatory.

Currently, eighteen (18) states have similar certified programs through the Farmers Home Administration of USDA. Generally, those states are from the midwest and southern portions of the nation and encompass approximately eighty percent (80%) of FmHA's annual delinquency cases. While the majority of mediation cases involve FmHA as a lender, other cases actively include lenders from Farm Credit Services, commercial banks and unsecured creditors.

The Kansas program has serviced many borrowers since 1988. Many producers contact the program in the early or pre-mediation stages of their financial difficulties. Frequently, these cases are resolved through telephone interaction facilitated between the parities. When this groundwork does not help find a solution, then a face to face mediation is scheduled. The agreement rate for face to face mediation has generally been seventy five percent (75%) or greater.

As stated earlier, voluntary mediation with trained debtor/creditor and family mediators is available to all FACTS clients upon request. Mediation is usually requested in situations where few alternatives to litigation exist, where communications between individuals and lender(s) has broken down or in situations where communications regarding financial affairs within an extended family farm operation have broken down to the point the farm's survival is threatened.

A sixty eight percent (68%) increase in face to face mediations from federal Fiscal Year 1992 to federal Fiscal Year 1993 reflects increased activity from Farmer Home Administration, Farm Credit Services, and private financial institutions.

The current program utilizes mediators from throughout the state and from various professional backgrounds. Annual training is provided both in mediation techniques and agricultural management. For the first time, this year's training program included official guests from Farmers Home Administration, Farm Credit Services, Kansas Legal Services, and commercial credit institutions. Cooperative networking is necessary to build rapport and credibility and to establish trust among mediators, farm advocate attorneys, creditors, and program staff.

FAMILY COURT STUDY

Larry Rute serves as the Chairperson for the Corporation for Change's Family Court Advisory Committee. Early in July, the Corporation for Change issued a report prepared by the Family Court Advisory Committee suggesting that the Kansas Legislature and Judicial branch might "dramatically improve the quality and appropriateness of court services to Kansas children and families" by pursuing a family court system. The report entitled, "A Family Department for the District Courts of Kansas," found that many Kansas families are directly and indirectly impacted by our judicial system. Excluding minor cases, in excess of fifty six percent (56%) of all civil cases filed in Kansas District Courts for the year ending June 30, 1992, were domestic relations and juvenile matters.

The Joint Committee on Children and Families filed HB 2582, The Families In Court Partnership Act and the House Judiciary Committee is currently considering this bill.

The reason that I am discussing the Families In Court Partnership Act with you today is that those states that have been successful in establishing family courts have utilized alternative dispute resolution techniques as an important if not vital element in developing a successful family court system.

There are several principles that are commonly discussed as encompassing a comprehensive family court. These principles include the following:

- 1. The family court requires carefully selected, trained, and experienced judges and staff;
- 2. Maximize the use of non-adversarial methods of family dispute resolution;
- Maintain an aggressive case processing and management system;
- Provide maximum access to all members of society;
- Maximize the use of community services and trained volunteers;
- 6. One judge, one staff, one family; and
- 7. Broad based jurisdiction.

Other states have maximized the efficiency of a family court system by the creative use of alternative dispute resolution techniques. By using alternative dispute resolution, the Court becomes a facilitator to help people use their own resources to settle the matter prior to entering into a potentially destructive and expensive adversarial hearing.

ARBITRATION PROGRAMS OUTSIDE THE STATE OF KANSAS

By the use of the term alternative dispute resolution, I do not intend to limit the discussion merely to mediation techniques. The use of other forms of settlement techniques, such as arbitration, has proven to be an affective method to reduce the costs of going to court and to expedite disposition of cases.

In the 1980's the Judicial Council of California and the Pittsburgh, Pennsylvania Office of Court Administration reviewed comparative case processing costs for cases arbitrated versus those processed through the traditional trial advocacy system. The

results demonstrated a significant cost savings when utilizing arbitration techniques, particularly when courts schedule cases for arbitration at the time of filing.

MEDIATION PROGRAMS OUTSIDE THE STATE OF KANSAS

Mediation is becoming increasingly popular in the United States. Community mediation, dealing with disputes between neighbor, friends, relatives, former spouses, landlords and tenants, etc., has grown rapidly, with the development of more than 250 mediation centers that conduct over 230,000 mediations each year. Family and divorce mediation are also becoming prominent, as is small claims and civil court mediation.

In California all contested child custody and visitation disputes must be referred to mediation. Courts in at least two California counties have been making significant use of mediation in non-family cases including small claims cases.

In 1989 the California Department of Consumer Affairs surveyed forty ADR programs then receiving funds pursuant to the 1986 Dispute Resolution Programs Act (DRPA). That report included several highlights:

- * 38,842 people chose to resolve their disputes through a program funded under the DRPA during the survey period (fiscal year 1988-89).
- * 7,194 dispute resolution proceedings were held pursuant to the DRPA with an average success rate of sixty-three percent. The average waiting time to enter a dispute resolution proceeding was twelve days while the average session lasted two and one half hours.
- * \$1,757,244 in filing fees was used to fund dispute resolution programs.
- * The average cost per disputant was \$46 and the average cost per session was \$244.33.
- * 30,362 hours of mediator volunteer work and 8,802 hours of non-mediator volunteer work were donated to the programs.
- * Of a total of forty programs, twenty-two programs provided free services. The remaining eighteen programs charged according to a sliding scale based on the disputants' income.

The American Bar Association has also cited reports finding mediation to be cost effective. One study found the adversarial divorce process costs fifty eight percent (58%) more than mediation even when including the mediation clients' costs for consulting with attorneys.

CONCLUSION

For years, child advocacy, family law practitioners, and domestic and juvenile judges have searched for a way to improve the quality and appropriateness of court services to Kansas children and families. The use of mediation centers provide an important vehicle by which court dockets can be reduced and we can begin building a less adversarial and more client-centered approach to problem resolution. I urge the committee to give favorable consideration to the model provided by the Kansas Dispute Resolution Act.



KANSAS COALITION AGAINST SEXUAL & DOMESTIC VIOLENCE

P. O. BOX 1341

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PITTSBURG, KS 66762

316-232-2757

Testimony to: WAYS AND MEANS COMMITTEE

Presented by: Sandra C. Barnett, President

Kansas Coalition Against Sexual and Domestic

Violence (KCSDV)

Regarding: HOUSE BILL 2574

AN ACT, concerning Alternative Dispute Resolution

Good Morning,

I appreciate the opportunity to speak with you this morning as a proponent of HB 2574, although I have a recommendation to amend this bill which will increase its sensitivity to family violence.

I am here representing the Kansas Coalition Against Sexual and Domestic Violence (KCSDV). The Coalition represents 28 domestic violence programs from across Kansas. Each of the 103 Kansas Counties is served by one of the member programs.

Those programs responded to more than 35,000 crisis calls, sheltered 2,920 women and 3,208 children. In addition, the programs provided 12,039 women and 6,311 children services other than shelter. Weapons were reported in 1,015 cases of domestic violence and over 4,000 women and children received some type of physical injury ranging from bites, bruises and broken bones to vaginal and anal tearing and even death. Domestic Violence is occurring in Kansas, in our home towns, and even in our own neighborhoods.

Many of these families reach out to courts pleading for help, indeed well over 4,500 (some counties did not report filings) persons applied to Kansas Courts for relief in the form of Protection From Abuse orders. Others may apply for divorce actions, custody or support orders and amendments to past orders. It is this specific group of people who KCSDV is concerned about and how HB 2574 relates to them.

While mediation has often proven successful in maintaining the delicately balanced relationships of most participants it is dangerous for victims of domestic violence. A mediation process assumes that participants are equally empowered to invest in a give and take volley until agreement is reached. Victims of family violence are NEVER equally empowered with their abusers and the inequity of the abusive relationship is carried into the mediation process.

SWAM March 9, 1994 Attachment 8

Wichita Hutchison 1977

1972

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McPherson 1978 KOSAC

Topeka

1979 : KADVP Mannattan Pittsburg Overland Park

1980 Sclina Kansas City El Dorodo

1981 Dodge City Great Send Garden City Liberal

1983 Hays Winfield Scott City

1984 Ioia Leavenworth

> 1985 Hillsboro

1989 Atchison

Testimony of KCSDV, p. 2 Re: HB 2574

Mediation is dangerous for victims of family violence in several ways;

1) The process is usually begun when the violence has escalated to such a degree that the victim breaks through the shroud of secrecy and pleads for relief from the court, often through a Protection From Abuse Order. It is also this same period of time when the victim is in the most danger from the abuser. At the point of leaving an abusive relationship the risk of serious physical harm or death is increased four-fold. Mediation forces the victim into close proximity with the abuser during the process which makes all parties vulnerable to violence, and then further leaves her (or him in 5% of cases) open to being abused or followed to her home after the meeting(s).

2) Prolonged emotional abuse, bullying, and control are universally common dynamics of abusive relationships which leave the victims with a diminished capacity to deal with or confront the abuser. Victims often feel compelled into compliance and submission rather than risk prompting the abuser's anger.

Since these cases involve the disposition of child custody, visitation and sustaining incomes the risks of mediation to all parties, particularly children is too high. The National Center on Women's and Family Law, Inc. (NCOWFL) has, since the early 1980's, researched the impact of mediation on families where domestic violence exists (a bibliography is attached). NCOWFL et. al. emphatically advise that mediation NEVER be used in cases where domestic violence is the presenting problem or is disclosed during the mediation process (NCOWFL, Mediation - A Guide..., 1990).

Other states, in setting up family court systems and dispute resolution (mediation) centers they have recognized the special needs of family violence victims and forbidden the use of mediation in such cases. A list of states and legislative citations is attached.

KCSDV concurs with these findings and asks this Committee to amend HB 2574 to reflect the same kind of sensitivity to issues of domestic violence and its victims;

To make a strong statement against the use of mediation in cases where domestic violence has occurred. Family violence victims are rarely voluntary clients for mediation.

Thank you for your time and attention.

Respectfully Submitted

Sandra C. Barnett

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STATE LAWS EXEMPTING BATTERED WOMEN FROM MEDIATION

GENERAL RULE

EXCEPTION

| | GENERAL RULE | | EXCEPTION | | |
|--|--|------------------------|--|---|----------------------------|
| State | Legal Category | Mandatory Mediation | Voluntary or Discretionary Mediation | Mandatory Exception | Discretionary Exception |
| COLORADO Col. Revised Statutes 13-22- 311(1) | Courts & court procedure | | Any court may refer any case for mediation | Court shall not refer if party claims to be victim of physical abuse by other party and states unwillingness to enter mediation. | |
| ILLINOIS III. Statutes Chapter 40 P.607.1(2)(c) and (4) | Enforcement of visitation | | Court may order counseling or mediation | Court cannot order mediation where there is evidence of domestic violence. | |
| MARYLAND Annotated Code of Maryland | Custody and visitation | | Court may enter an order requiring the parties to mediate. | May not order unless both parties are represented by counsel, and the court consults with counsel for both parties. Court also may not order mediation if counsel represents to the court that a genuine issue of physical or sexual abuse of a party or child exists. | |
| MINNESOTA Chapter 574 § 518.619 subd. 1 and 2 1990 Regular Session | Custody & visitation | | Custody or visitation matters may be set for mediation. | Court shall not refer or require mediation or any other process where parties would confer without counsel if there is probable cause that a party or child of the party has been physically or sexually abused (by the other party). | |
| 51 Mn. Statutes Ann. Special Rules of Practice, 2nd. Judicial Dist. Rule 17, Rule 9.01 | District Court - Family Court Rules, custody | | Court may order mediation upon motion by a party, at a hearing for temporary relief, or via note of Issue stating custody is an Issue. | Court shall not require mediation if probable cause that domestic or child abuse has occurred. | |
| NEW HAMPSHIRE Revised Statutes Ann. 458:15a | Annulment, divorce and separation | | Court to suspend proceedings if both parties state that voluntary marital mediation will be attempted. | If either party asserts, or it it appears to the court or mediator that "abuse" as defined by RSA 169-C (child abuse) or RSA 173-B (domestic violence) has occurred, the court shall not allow and shall suspend mediation, unless the victim of domestic violence requests mediator is aware of the alleged abuse. | |

| State | Legal Category | Mandatory Mediation | Voluntary or Discretionary | Mandatory Exception | Discretionary Exception |
|---|--|---|--|---|--|
| | | | Mediation | 1 | vection |
| NEW YORK Uniform Rules of Family Court \$205.30 \$205.41 Family Court Act \$823(a)(b) | "Probation services" appears in many areas of family court proceedings, including support. | service is | Rules of court may authorize probation serviceto attempt through | not prevent any person who wishes to file a petition under this article from having access to the court FCA §823(b) (family offense proceedings) if assistance of probation service is not requested or is declined, the person seeking to file for support is entitled to have access to the court§205.30(3) Uniform Rules of Family Court (support) | |
| NORTH CAROLINA General Statutes 50-13.1 | Custody & visitation | If it appears that a contested issue of custody or visitation exists, the matter shall be set for mediation | , | | Court may waive mediation on party's or court's motion alleging child abuse or neglect or spouse abuse. |
| NORTH DAKOTA Century Code 14- 09.1-02 | Custody, visitation and child support | | Court may order mediation if custody or visitation is contested. | Court may not order mediation if issue involves or may involve physical or sexual abuse of any party or the child of any party. | |
| OREGON Revised Statutes 107.179 | Joint custody | The court shall direct the parties to participate in mediation where one party requests joint custody and the other party objects to the request for joint custody. | | | A party can move the court to waive mediation on grounds that participation will subject the party to severe emotional distress. After a hearing on the motion, the court may waive mediation. |

| | State | Legal Category | Mandatory | Voluntary or | Mandatory Exception | Discretionary |
|---------------|--|--|---|--|---|--|
| | | | Mediation | Discretionary Mediation | | Exception |
| | WASHINGTON R.C.W. 26.09.015 26.09.184 26.09.187(1) 26.09.191 26.12.200 | Dissolution of marriage also issues involving a "disruption of the household." | e, 26.09.184 permanent parenting plans shall include a non-court action dispute resolution process to resolve future parenting plan disputes. | 26.09.015 any proceedings unde "Dissolution of Marriage" chapter may be set for mediation | plans shall not require mediation if a parent has emotionally, physically or sexually abused a child, abandoned or refused to perform parenting functions, or has a history of domestic violence, or has committed assault/sexual assault causing bodily harm | courts to consider various factors in designating an appropriate dispute resolution process for the establishment of parenting plans, including: (a) |
| 1 1 1 1 1 1 1 | WASHINGTON WISCONSIN Statutes Annotated: Actions Affecting the Family 1767.11(5), (8), 10) Family Court Counseling Services | Custody & visitation | In any actions affecting the family, where it appears legal custody or physical placement is contested, the court shall refer the parties to mediation. Parties must atend one session (8a). If both parties wish to have joint legal custody and one | When a person who is awarded periods of physical placement, or has visitation rights, or has physical custody, or is the child of a person awarded physical placement, notifies the court of any problems, the court may refer the matter to the director of court counseling. (5c). | | Cont. (c) differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process. Court has discretion to not require initial session of mediation if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. The court shall consider |
| | | · | party requests mediation, the court shall refer. (5b) | | | evidence of child abuse and/or domestic abuse. (8b) Mediator may also terminate if evidence of domestic or child abuse. (10e) |

REMARKS CONCERNING HOUSE BILL 2574 AS AMENDED BY HOUSE COMMITTEE OF THE WHOLE SENATE WAYS AND MEANS COMMITTEE MARCH 9, 1994

I am Elwaine F. Pomeroy, appearing on behalf of the Kansas Collectors Association, Inc., and on behalf of the Kansas Collection Attorneys. Kansas Collectors Association, Inc., is a statewide association of collection agencies. Kansas Collection Attorneys is a group of attorneys, primarily from Wichita and Topeka, whose law practices include considerable collection work.

Thank you for the opportunity to appear before you concerning HB 2574. The Kansas Collectors Association, Inc. and the Kansas Collection Attorneys object to increasing docket fees for the purpose of creating the dispute resolution fund. Traditionally, the funding for the Kansas court system was from the general fund. We believe Kansas should return to that method of funding courts, and not use docket fees to fund other programs. Several years ago, docket fees were increased and the proceeds were used to fund programs for children. The 1992 docket fee increase was related to filling of pleadings by fax. There are several bills this year which would increase various docket fees for various purposes. We feel the philosophy of funding these programs by docket fees is flawed. Once a docket fee is increased for a specific purpose, it is never reduced, even though the stated purpose of the increase has been fulfilled.

Docket fees are the gate of access to the court system. If the cost of access to the court system becomes too high, the merchants, the business establishments, and health care providers will be unable to pursue efforts to collect funds that are rightfully owed to them.

Examination of page 10 of the bill, lines 2 through 16, shows presently the state treasurer deposits a portion of the docket fees to the juvenile detention facilities fund; to the judicial branch education fund; to the emergency medical services

SWAM March 9, 1994 AHachment 9 operating fund; to the judiciary technology fund; and the balance to the state general fund.

Not only do we disagree with the philosophy of using docket fees for such a varied range of purposes, we also want to point out that the mechanics of this bill as it appears before you will increase the amounts being deposited to the juvenile detention facilities fund, to the judicial branch education fund, to the emergency medical services operating fund, to the judiciary technology fund, as well as to the state general fund.

The bill as it was amended by the House Committee provided for a 50¢ docket fee increase; the House Committee of the Whole amendment increased the docket fees by an additional 50¢ beginning July 1, 1995. Thus, by July 1, 1995, each docket fee will increase by \$1.00. Those docket fees are in differing amounts, depending upon whether they are Chapter 60 proceedings, or Chapter 61 proceedings, and with regard to Chapter 61 proceedings, depending upon the amount in controversy. Chapter 60 proceedings and Chapter 61 proceedings where the amount is more than \$5,000.00 will increase from \$61.50 to \$62.50. Of those amounts, \$10.00 is credited to the county general fund, (see page 9, lines 6 through 10), so that the maximum amount to be paid to the state treasury, page 9, lines 35 through 39, would be \$52.50. However, on page 10, lines 13 and 14, only 65/100 of 1% would go to the dispute resolution fund. Thus, of the \$1.00 increase, only 34.125¢ would go to the fund for which the docket fees are purportedly being increased.

The docket fee for Chapter 61 proceedings where the amount in controversy is less than \$500.00 would increase from \$16.50 to \$17.50; \$5.00 would be retained by the county, leaving a maximum of \$12.50 to go to the state. Again, only 65/100 of 1% would go to the dispute resolution fund, or 8.125¢. Under the stated purpose of creating a dispute resolution fund, the docket fee is being increased by \$1.00, but only a little over 8 pennies of that dollar will go for the stated purpose.

By not changing the percentages on lines 3, 5, 8, and 11 on page 10, the result of the \$1.00 increase in docket fees would be to increase the juvenile detention facilities fund by 5.12¢; would increase the judicial branch education fund by 3.93¢; would increase the emergency medical services operating fund by 2.95¢; and would increase the judiciary technology fund by 5.66¢.

What we have here is a bill which increases the docket fees for Chapter 61 proceedings where the amounts in controversy is less than \$500.00 by \$1.00, for the stated purpose of creating a dispute resolution fund, but only a little over 8 pennies of that dollar goes for that purpose.

We strongly urge you to remove the docket fee increase portion of this bill.

Elwaine F. Pomeroy