

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 15, 2011, in Room 346-S of the Capitol.

All members were present except:
Representative Bruchman
Representative Ryckman

Committee staff present:
Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:
Nancy Strouse, Executive Director, Kansas Judicial Council
Kyle Smith, Assistant Attorney General

Others attending:
See attached list.

A memo from Helen Pedigo, Special Counsel to Chief Justice, was provided to the committee members and staff, in response to questions that arose in the committee meeting on Wednesday, March 9, regarding **SB 46** E-filing. (Attachment 1)

The Hearing on **SB 9 - Amendments to the code of civil procedure** was opened.

Matt Sterling, Assistant Staff Revisor provided an overview of the bill for the committee. (Attachment 2)

Nancy Strouse, Executive Director, Kansas Judicial Council, appeared as a proponent and explained to the committee that legislature passed 2010 **HB 2656**, which was the result of more than two years of work by the Judicial Council Civil Code Advisory Committee. She stated this bill is a follow-up to that bill, containing technical amendments and a few revisions that were missed in the first bill. She also advised the Judicial Council requests that K.S.A. 60-304(e)(3) be amended to insert the word "and" as the omission of that word was a printer's error and was simply overlooked and only recently discovered. (Attachment 3)

Representative Pauls also denoted on Page 15, Line 29, the word subpoena was incorrectly spelled as subpeona and should be corrected.

There were no opponents.

The hearing on **SB 9** was closed.

The Hearing on **SB 74 - Conduct and offenses giving rise to forfeiture; adding electronic solicitation and sexual exploitation of a child** was opened.

Tamera Lawrence, Assistant Staff Revisor, provided an overview of the bill for the committee. (Attachment 4)

Kyle Smith, Assistant Attorney General, addressed the committee in support of the bill and explained the four main reasons to utilize forfeiture as an effective law enforcement tool. He stated that while most child molesters and pornographers are not financially motivated, the computers, cameras, and other electronic equipment that may be used should not be returned to the offenders. (Attachment 5)

The following proponents provided written only testimony:
Derek Schmidt, Attorney General (Attachment 6)
Patrick Vogelsberg, Kansas County and District Attorneys Association (Attachment 7)

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 15, 2011 in Room 346-S.

There were no opponents.

The next meeting is scheduled for March 16, 2011.

The meeting was adjourned at 4:05 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 3-15-11

NAME	REPRESENTING
Nancy Strouse	Judicial Council
John A. Donley	KS Const. Assn
Melissa Ward	Hein law Firm
Matt Coe	GBA
Patrick Voseberg	KCPAA
Linda Callicott	Visitors
Nicholas Birdsoy	Intern
TOM ROZAR	RGWS
Tom Slavater	Capital Strategies
Leslie Kaufman	Ks Co-op Council
Doug Smith	Pmezer, Smith & Associates
Megan Pinegar	KSAG
Kyle Smith	KSAG

Helen Pedigo

From: Helen Pedigo
Sent: Monday, March 14, 2011 5:20 PM
To: 'lance.kinzer@house.ks.gov'; 'joe.patton@house.ks.gov'; 'janice.pauls@house.ks.gov'; 'j.stephen.alford@house.ks.gov'; 'benny.boman@house.ks.gov'; 'bob.brookens@house.ks.gov'; 'rob.bruchman@house.ks.gov'; 'dan.collins@house.ks.gov'; 'patpatkat@aol.com'; 'mitch.holmes@house.ks.gov'; 'leslie.osterman@house.ks.gov'; 'john.rubin@house.ks.gov'; 'greg.smith@house.ks.gov'; 'gene.suellentrop@house.ks.gov'; 'annie.kuether@house.ks.gov'; 'jim.kelly@house.ks.gov'; 'jim.ward@house.ks.gov'; 'annie.tietze@house.ks.gov'; 'ponka-we.victors@house.ks.gov'; 'melanie.meier@house.ks.gov'; 'ronald.ryckman@house.ks.gov'
Subject: SB 46 E-filing Responses

Chairman Kinzer and Committee Members:

I send this in response to questions that arose in the House Judiciary Committee hearing Wednesday, March 9.

1. How will date/time be recorded in the electronic filing system?

The date and time will be recorded when the documents to be filed are sent to the clerk review interface. At this point in the planning, it is not anticipated that each document will actually have a date and time stamp on it. The system will record the date and time and a confirmation e-mail, or receipt will be sent to the filer with this information. All parties to the action will have access to this information on-line.

2. The SGF request on the fiscal note for E-filing is \$1.9 million in FY 2012. How much has been spent so far on this project?

Full Court, the existing court case management information system, will be integrated with the proposed electronic filing system. So far, no State General Fund monies have been expended on the e-filing project, other than the time attributable to court system employees who have been involved in the planning process. The Judicial Branch has spent approximately \$20,000, on early planning for e-filing. The source of that money has been a federal Justice Assistance Grant (JAG) - Byrne Grant. This grant was approved by the Kansas Criminal Justice Coordinating Council, which has supported the development of e-filing in the courts because of the potential efficiencies for law enforcement agencies and the role e-filing will play in achieving a long term goal of centralized criminal justice information shared between law enforcement, executive branch officers and agencies (prosecutors, Department of Corrections, KBI, etc.) and the courts. The Judicial Branch has also received a \$200,000 grant that would be used to supplement the proposed State General Fund FY 2012 appropriation to pay installation costs. We continue to look for grant funding for this project.

3. What system security is planned?

The e-filing servers will be behind two firewalls and we will have off-site redundancy on all critical systems. There will be a secure website for users of the system, who must register as an e-file user. Each will be assigned a username and an initial password, which will be changed by the user and will require changing periodically. E-signatures will be accepted for documents. Parties associated with the case will have access to the case. Electronic payment for filing fees will be accepted. The security for this system would be similar to that of an on-line banking system. There would also be limited public access.

4. Is amendment needed to allow for pilot projects, while still keeping paper system in place for other areas?

House Judiciary
Date 3-15-11
Attachment # 1

Sec. 2, lines 9-12 states: the records "may, upon order of the supreme court, be maintained in such computer information storage and retrieval system." We believe that language is sufficient. The plan is that the Supreme Court will order the use of an electronic record on a county by county or district by district basis when installation and testing in the county or district is complete. Although we hope to move to electronic filing of the vast majority of filings with the pilot projects and some other courts, from a geographic standpoint, most of the state will continue to receive paper for at least 18-24 months.

I hope this is helpful and that the committee will favorably consider passage of this bill. Thanks.

Helen Pedigo

Special Counsel to Chief Justice Lawton R. Nuss

Kansas Judicial Center

301 W. 10th

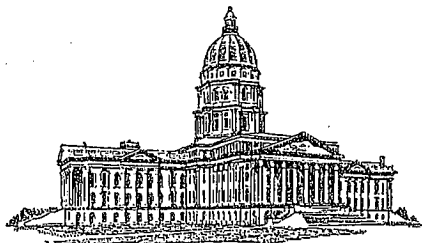
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MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 15, 2011
Subject: Senate Bill 9

SB 9 amends the code of civil procedure. Section 1 of the bill extends the deadline for a motion to transfer a case from the Court of Appeals to the Supreme Court from 20 days to 30 days.

Section 2 concerns venue and changes the time for the adjudicating court to transmit the official and social files to the sentencing court from 5 business days to 7 calendar days.

Section 4 concerns motions and notice of hearings and the requirement of notice for ex parte hearings.

Section 6 adds the requirement that the signer of any pleading or written motion include the signer's fax number in addition to their address, e-mail address and phone number.

Section 9 concerning definitions used in subpoenas for foreign jurisdictions would require a party to pay a docket fee for issuance of a subpoena.

Section 17 changes notification requirements for the parties to designate a health care provider to 21 days instead of 20 days and changes the time to respond from 10 days to 14 days.

The remaining sections change the titles of subsections.

House Judiciary
Date 3-15-11
Attachment # 2



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MEMORANDUM

TO: House Judiciary Committee
FROM: Kansas Judicial Council
DATE: March 15, 2011
RE: Judicial Council Testimony on 2011 SB 9 Relating to Amendments to the Code of Civil Procedure

Last year the Legislature passed 2010 HB 2656, which was the result of more than two years of work by the Judicial Council Civil Code Advisory Committee. The Kansas Code of Civil Procedure is based on the Federal Rules of Civil Procedure, and HB 2656 conformed Kansas civil procedure statutes with a number of recent federal amendments, including a comprehensive restyling of the federal rules. SB 9 is a follow-up bill to HB 2656, containing technical amendments and a few revisions that were missed in the first bill.

Set forth below are the Civil Code Advisory Committee's comments to the amendments in each section of the bill. The Judicial Council also requests an amendment to the bill. The amendment is described on page 4 of this testimony, and the balloon is attached.

Section 1

The 20-day time period in K.S.A. 20-317 for filing a motion to transfer an appeal to the Supreme Court was enacted when the docketing period was 10 days. Now that the docketing period has been expanded to 20 days, the time to file a motion to transfer must be expanded as well

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Section 2

When the Committee proposed the changes that were contained in 2010 HB 2656, it intended to change the time period in K.S.A. 38-2305(b) from "5 working days" to "seven days." That change did not get made, and this amendment takes care of the omission.

Section 3

The amendments in 2010 HB 2656 included adding subsection captions or modifying existing captions. The new subsection captions for K.S.A. 60-203 were inadvertently omitted in HB 2656 and are now added.

Section 4

This amendment to K.S.A. 60-206(d) is to strictly conform the statute to the corresponding federal rule and to clarify that the three-day mail rule applies to service by fax and electronic means.

Section 5

This amendment is to correct a typographical error in the caption of K.S.A. 60-209(b).

Section 6

"Fax number" has been added to K.S.A. 60-211(a) because fax service is authorized under K.S.A. 60-205.

Section 7

This amendment is to correct a typographical error in the caption of K.S.A. 60-214(a). As used here, "third party" should not be hyphenated.

Section 8

This amendment to K.S.A. 60-226(f) is to strictly conform the caption to the federal rule.

Section 9

This section contains a bill amendment that was requested by the Judicial Council when the bill was worked in the Senate. Subsection (c) of K.S.A. 60-228a is amended to restore a docket fee for issuing foreign subpoenas that was inadvertently deleted through the revisions enacted in HB 2656. An incorrect reference to K.S.A. 60-245a is also deleted from subsection (e).

Section 10

This amendment is to correct a typographical error in the caption of K.S.A. 60-235(c).

Section 11

This amendment to K.S.A. 60-249(b)(3) is to strictly conform the caption to the federal rule.

Section 12

This amendment to K.S.A. 60-260(a) is to strictly conform the caption to the federal rule.

Section 13

K.S.A. 60-270 is amended to add subsection headings consistent with the other statutes in the code of civil procedure.

Section 14

This amendment is to correct a typographical error in the caption of K.S.A. 60-310(b).

Section 15

K.S.A. 60-270(m) has been amended to reflect that K.S.A. 60-245a now allows a records custodian to submit either an affidavit or a declaration.

Section 16

This amendment to K.S.A. 60-2003 removes a reference to a subsection in K.S.A. 60-308, dealing with service by return receipt delivery, that has been deleted.

Section 17

The time periods in K.S.A. 60-3503, which is part of an act establishing a procedure for professional malpractice screening panels, were changed in HB 2656 from 10 to 14 and 20 to 21 days. K.S.A. 65-4902 is the corresponding statute in the act providing for medical malpractice screening panels, and these time periods should be changed accordingly.

Amendment Requested

The Judicial Council requests that K.S.A. 60-304 be inserted into SB 9 as section 14, renumbering the remaining sections as necessary. The Judicial Council further requests that K.S.A. 60-304(e)(3) be amended to insert the word "and" as shown below:

(3) serving any agent authorized by appointment or by law to receive service of process, and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

The omission of this word would have been described as a printer's error had it been caught last year as HB 2656 went through the legislative process. The error was simply overlooked at the time and was only recently discovered.

SENATE BILL No. 9

By Committee on Judiciary

1-13

60-304,

1 AN ACT concerning the code of civil procedure; amending K.S.A. 20-
2 3017 and 60-2003 and K.S.A. 2010 Supp. 38-2305, 60-203, 60-206,
3 60-209, 60-211, 60-214, 60-226, ~~60-228a~~, 60-235, 60-249, 60-260,
4 60-270, 60-310, 60-460 and 65-4902 and repealing the existing
5 sections; also repealing K.S.A. 2010 Supp. 38-2305a.
6

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

8 Section 1. K.S.A. 20-3017 is hereby amended to read as follows:
9 20-3017. Within ~~twenty (20)~~ 30 days after the date the notice of appeal
10 has been served on the appellee in any case appealed to the court of
11 appeals, any party to such case may file a motion with the clerk of the
12 court of appeals, requesting that such case be transferred to the supreme
13 court for review and final determination by such court. Such motion
14 shall be made in the manner and form prescribed by rules of the
15 supreme court, and it shall allege the existence of one ~~(1)~~ or more of the
16 conditions described in subsection (a) of K.S.A. 20-3016, *and*
17 *amendments thereto*. The clerk of the court of appeals promptly shall
18 submit any motion made pursuant to this section to the supreme court.
19 The supreme court shall consider such motion and may accept the case
20 for review and final determination or may decline jurisdiction and order
21 that the case be determined by the court of appeals. A party's failure to
22 file a motion in accordance with this section shall be deemed a waiver
23 of any objection by such party to the jurisdiction of the court of
24 appeals.

25 Sec. 2. K.S.A. 2010 Supp. 38-2305 is hereby amended to read as
26 follows: 38-2305. (a) Venue for proceedings in any case involving a
27 juvenile shall be in any county where any act of the alleged offense was
28 committed.

29 (b) Except as provided in subsection (c), venue for sentencing
30 proceedings shall be in the county of the juvenile offender's residence
31 or, if the juvenile offender is not a resident of this state, in the county
32 where the adjudication occurred. When the sentencing hearing is to be
33 held in a county other than where the adjudication occurred, upon

1 applying it prospectively is no longer equitable; or
 2 (6) any other reason that justifies relief.
 3 (c) *Timing and effect of the motion.* (1) *Timing.* A motion under
 4 subsection (b) must be made within a reasonable time, and for reasons
 5 under paragraphs (b)(1), (2) and (3) no more than one year after the
 6 entry of the judgment or order, or the date of the proceeding.
 7 (2) *Effect on finality.* The motion does not affect the judgment's
 8 finality or suspend its operation.
 9 (d) *Other powers to grant relief.* This section does not limit a
 10 court's power to:
 11 (1) Entertain an independent action to relieve a party from a
 12 judgment, order or proceeding;
 13 (2) grant relief under K.S.A. 60-309, and amendments thereto, to a
 14 defendant who was not personally notified of the action; or
 15 (3) set aside a judgment for fraud on the court.
 16 (e) *Bills and writs abolished.* The following bills are abolished:
 17 Bills of review; bills in the nature of bills of review; and writs of coram
 18 nobis, coram vobis and audita querela.
 19 ~~Sec. 12.~~ 13. K.S.A. 2010 Supp. 60-270 is hereby amended to read
 20 as follows: 60-270. (a) *Retention of original discovery documents.* A
 21 party or attorney possessing original deposition transcripts, original
 22 responses to interrogatories, original requests for admissions, original
 23 requests for production or other original matters produced during
 24 discovery must retain those documents until the case is closed.
 25 (b) *Destruction or disposition of original discovery documents.*
 26 Except as provided in subsection (c), when the case has been closed the
 27 party or attorney possessing the original documents specified in
 28 subsection (a) may destroy or dispose of them.
 29 (c) *Original discovery documents subject to order, rule, statute or*
 30 *agreement.* Original discovery documents subject to or covered by a
 31 protective order, court rule, statute or written agreement of the parties
 32 must be retained, returned, destroyed or disposed of in accordance with
 33 the terms of the order, rule, statute or agreement.
 34 (d) *Definition of "closed."* As used in this section, "closed" means
 35 when an order terminating the action or proceeding has been filed and
 36 all appeals have been terminated, the time for appeal has expired or
 37 when the judgment is either satisfied or barred under K.S.A. 60-2403,
 38 ~~and amendments thereto.~~

39 ~~Sec. 13.~~ 14. K.S.A. 2010 Supp. 60-310 is hereby amended to read

15

Sec. 14 - Insertion
(K.S.A. 60-304)
shown on following
pages.

Sec. 14. K.S.A. 2010 Supp. 60-304 is hereby amended to read as follows: 60-304. Service of process, on whom made. As used in this section, "serving" means making service by any of the methods described in K.S.A. 60-303, and amendments thereto, unless a specific method of making service is prescribed in this section. Except for service by publication under K.S.A. 60-307, and amendments thereto, service of process under this article must be made as follows:

(a) *Individual.* On an individual other than a minor or a disabled person, by serving the individual or by serving an agent authorized by appointment or by law to receive service of process. If the agent is one designated by statute to receive service, such further notice as the statute requires must be given. Service by return receipt delivery must be addressed to an individual at the individual's dwelling or usual place of abode and to an authorized agent at the agent's usual or designated address. If the sheriff, party or party's attorney files a return of service stating that the return receipt delivery to the individual at the individual's dwelling or usual place of abode was refused or unclaimed and that a business address is known for the individual, the sheriff, party or party's attorney may complete service by return receipt delivery, addressed to the individual at the individual's business address.

(b) *Minor.* On a minor, by serving:

(1) The minor; and

(2) either:

(A) The minor's guardian or conservator, if the minor has one within this state;

(B) the minor's father, mother or other person having the minor's care or control or with whom the minor resides;

or

(C) if service cannot be made as specified in paragraphs (A) or (B), as provided by order of the court.

Service by return receipt delivery must be addressed to an individual at the individual's dwelling or usual place of abode and to a corporate guardian or conservator at the guardian's or conservator's usual place of business.

(c) *Disabled person.* On a disabled person, as defined in K.S.A. 77-201, and amendments thereto, by:

(1) Serving:

(A) The person's guardian, conservator or a competent adult member of the person's family with whom the person resides;

(B) if the person resides in an institution, the director or chief executive officer of the institution; or

(C) if service cannot be made as specified in paragraphs (A) or (B), as provided by order of the court; and

(2) unless the court otherwise orders, serving the disabled person.

Service by return receipt delivery must be addressed to the director or chief executive officer of an institution at the institution, to any other individual at the individual's dwelling or usual place of abode, and to a corporate guardian or conservator at the guardian's or conservator's usual place of business.

(d) *Governmental bodies.* On:

(1) A county, by serving one of the county commissioners, the county clerk or the county treasurer;

(2) a township, by serving the clerk or a trustee;

(3) a city, by serving the clerk or the mayor;

(4) any other public corporation, body politic, district or authority, by serving the clerk or secretary or, if the clerk or secretary is not found, any officer, director or manager thereof; and

(5) the state or any governmental agency of the state, when subject to suit, by serving the attorney general or an assistant attorney general.

Service by return receipt delivery must be addressed to the appropriate official at the official's governmental office. Income withholding orders for support and orders of garnishment of earnings of state officers and employees must be served on the state or governmental agency of the state in the manner provided by K.S.A. 60-723, and amendments thereto.

(e) *Corporations, domestic or foreign limited liability companies, domestic or foreign limited partnerships, domestic or foreign limited liability partnerships and partnerships.* On a domestic or foreign corporation, domestic or foreign limited liability company, domestic or foreign limited partnership, domestic or foreign limited liability partnership or a partnership or other unincorporated association that is subject to suit in a common name, by:

(1) Serving an officer, manager, partner or a resident, managing or general agent;

(2) leaving a copy of the summons and petition or other document at any of its business offices with the person having charge thereof; or

(3) serving any agent authorized by appointment or by law to receive service of process, and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Service by return receipt delivery on an officer, partner or agent must be addressed to the person at the person's usual place of business.

(f) *Resident agent for a corporation, limited liability company, limited partnership or limited liability partnership.* A domestic corporation, domestic limited liability company or domestic limited partnership, and, if it is authorized to

transact business or transacts business without authority in this state, a foreign corporation, foreign limited liability company or foreign limited partnership irrevocably authorizes the secretary of state as its agent to accept on its behalf service of process, or any notice or demand required or permitted by law to be served on it, when: (1) It fails to appoint or maintain in this state a resident agent on whom service may be had; or (2) its resident agent cannot with reasonable diligence be found at the registered office in this state. Service on the secretary of state of any process, notice or demand must be made by delivering to the secretary of state, by personal service or by return receipt delivery, the original and two copies of the process and two copies of the petition, notice or demand. When any process, notice or demand is served on the secretary of state, the secretary must promptly forward a copy of it by return receipt delivery, addressed to the corporation, limited liability company or limited partnership at its principal office as it appears in the records of the secretary of state, or at the registered or principal office of the corporation, limited liability company or limited partnership in the state of its incorporation or formation. The secretary of state must keep a record of all processes, notices and demands served on the secretary under this subsection, and must record the time of the service and the action taken by the secretary. A fee of \$40 must be paid to the secretary of state by the party requesting the service of process, to cover the cost of serving process, except the secretary of state may waive the fee for state agencies. The fee must not be included in or paid from any deposit as security for costs or the docket fee required by K.S.A. 60-2001 or 61-4001, and amendments thereto.

(g) *Insurance companies or associations.* Service of summons or other process on any insurance company or association, organized under the laws of this state, may also be made by serving the commissioner of insurance in the same manner as provided for service on foreign insurance companies or associations.

(h) *Service on an employee.* If a party or a party's agent or attorney files an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, that to the best of the affiant's or declarant's knowledge and belief the person to be served is employed in this state, and is a nonresident or that the place of residence of the person is unknown, the affiant or declarant may request that the sheriff or other duly authorized person direct an officer, partner, managing or general agent or the individual having charge of the place at which the person to be served is employed, to make the person available to permit the sheriff or other duly authorized person to serve the summons or other process. 60-304.

1 as follows: 60-310. (a) *Generally*. In an action against two or more
2 defendants, when one or more, but not all have been served, the
3 plaintiff may proceed as follows:

4 (1) If the action is against defendants jointly indebted on a
5 contract, the plaintiff may proceed against the defendants served, unless
6 the court orders otherwise; and if the plaintiff recovers judgment, it
7 may be entered against all the defendants jointly indebted and may be
8 enforced only against the joint property of all defendants, and the
9 separate property of the defendants served;

10 (2) if the action is against defendants severally liable, the plaintiff
11 may, without prejudice to the plaintiff's rights against those not served,
12 proceed against the defendants served in the same manner as if they
13 were the only defendants.

14 (b) ~~Actions~~ *Action against defendant not served*. Nothing in this
15 section makes a judgment against one or more defendants jointly or
16 severally liable a bar to another action against those not served.

16

17 ~~Sec. 14. 15.~~ K.S.A. 2010 Supp. 60-460 is hereby amended to read
18 as follows: 60-460. Evidence of a statement which is made other than
19 by a witness while testifying at the hearing, offered to prove the truth of
20 the matter stated, is hearsay evidence and inadmissible except:

21 (a) *Previous statements of persons present*. A statement previously
22 made by a person who is present at the hearing and available for cross-
23 examination with respect to the statement and its subject matter,
24 provided the statement would be admissible if made by declarant while
25 testifying as a witness.

26 (b) *Affidavits*. Affidavits, to the extent admissible by the statutes of
27 this state.

28 (c) *Depositions and prior testimony*. Subject to the same
29 limitations and objections as though the declarant were testifying in
30 person, (1) testimony in the form of a deposition taken in compliance
31 with the law of this state for use as testimony in the trial of the action in
32 which offered or (2) if the judge finds that the declarant is unavailable
33 as a witness at the hearing, testimony given as a witness in another
34 action or in a preliminary hearing or former trial in the same action, or
35 in a deposition taken in compliance with law for use as testimony in the
36 trial of another action, when (A) the testimony is offered against a party
37 who offered it in the party's own behalf on the former occasion or
38 against the successor in interest of such party or (B) the issue is such
39 that the adverse party on the former occasion had the right and

1 stated therein, if the judge takes judicial notice, or a witness expert in
 2 the subject testifies, that the treatise, periodical or pamphlet is a reliable
 3 authority in the subject.

4 (dd) *Actions involving children.* In a criminal proceeding or a
 5 proceeding pursuant to the revised Kansas juvenile justice code or in a
 6 proceeding to determine if a child is a child in need of care under the
 7 revised Kansas code for care of children, a statement made by a child,
 8 to prove the crime or that a child is a juvenile offender or a child in
 9 need of care, if:

10 (1) The child is alleged to be a victim of the crime or offense or a
 11 child in need of care; and

12 (2) the trial judge finds, after a hearing on the matter, that the child
 13 is disqualified or unavailable as a witness, the statement is apparently
 14 reliable and the child was not induced to make the statement falsely by
 15 use of threats or promises.

16 If a statement is admitted pursuant to this subsection in a trial to a
 17 jury, the trial judge shall instruct the jury that it is for the jury to
 18 determine the weight and credit to be given the statement and that, in
 19 making the determination, it shall consider the age and maturity of the
 20 child, the nature of the statement, the circumstances under which the
 21 statement was made, any possible threats or promises that might have
 22 been made to the child to obtain the statement and any other relevant
 23 factor.

24 (ee) *Certified motor vehicle certificate of title history.* Subject to
 25 K.S.A. 60-461, and amendments thereto, a certified motor vehicle
 26 certificate of title history prepared by the division of vehicles of the
 27 Kansas department of revenue.

17 28 ~~Sec. 15-16.~~ K.S.A. 60-2003 is hereby amended to read as follows:
 29 60-2003. Items which may be included in the taxation of costs are:

30 (1) The docket fee as provided for by K.S.A. 60-2001, and
 31 amendments thereto.

32 (2) The mileage, fees, and other allowable expenses of the sheriff,
 33 other officer or private process server incurred in the service of process
 34 or in effecting any of the provisional remedies authorized by this
 35 chapter.

36 (3) Publisher's charges in effecting any publication of notices
 37 authorized by law.

38 (4) Statutory fees and mileage of witnesses attending court or the
 39 taking of depositions used as evidence.

1 (5) Reporter's or stenographic charges for the taking of depositions
2 used as evidence.

3 (6) The postage fees incurred pursuant to K.S.A. 60-303 or
4 subsection (c) of K.S.A. 60-308, and amendments thereto.

5 (7) Alternative dispute resolution fees shall include fees, expenses
6 and other costs arising from mediation, conciliation, arbitration,
7 settlement conferences or other alternative dispute resolution means,
8 whether or not such means were successful in resolving the matter or
9 matters in dispute, which the court shall have ordered or to which the
10 parties have agreed.

11 (8) Such other charges as are by statute authorized to be taxed
12 as costs.

13 18 Sec. ~~16~~ ~~17~~ K.S.A. 2010 Supp. 65-4902 is hereby amended to
14 read as follows: 65-4902. The district judge or, if the district court has
15 more than one division, the chief judge of such court shall notify the
16 parties to the action that a screening panel has been convened. The
17 plaintiff or claimant and the defendant or respondent shall each
18 designate a health care provider licensed in the same profession as the
19 defendant or respondent within ~~20~~ 21 days of such party's receipt of
20 notice of the convening of the screening panel. The parties shall jointly
21 designate a health care provider licensed in the same profession as the
22 defendant or respondent within ~~10~~ 14 days after the individual
23 designations have been made. If the parties are unable to jointly select a
24 health care provider within such ~~10~~ 14 days, the judge of the district
25 court or, if the district court has more than one division, the chief judge
26 of such court shall select such health care provider.

19 19 Sec. ~~17~~ ~~18~~ K.S.A. 20-3017 and 60-2003 and K.S.A. 2010 Supp.
28 38-2305, 38-2305a, 60-203, 60-206, 60-209, 60-211, 60-214, 60-226,
29 ~~60-228a~~, 60-235, 60-249, 60-260, 60-270, 60-310, 60-460 and 65-4902
30 are hereby repealed.

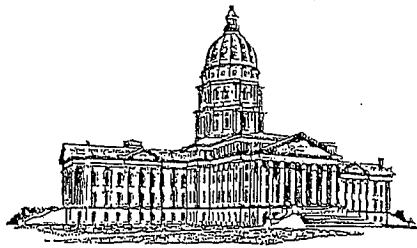
20 20 Sec. ~~18~~ ~~19~~ This act shall take effect and be in force from and
32 after its publication in the statute book.

60-304,

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OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

To: House Committee on Judiciary
From: Tamera Lawrence, Assistant Revisor of Statutes
Date: March 15, 2011
Subject: SB 74, Conduct and offenses giving rise to forfeiture

SB 74 provides that rape, criminal sodomy, indecent liberties with a child and aggravated indecent liberties with a child, unlawful voluntary sexual relations, indecent solicitation of a child and aggravated indecent solicitation of a child, electronic solicitation, and sexual exploitation of a child will be added to the list of conduct and offenses giving rise to forfeiture under the Kansas standard asset seizure and forfeiture act, K.S.A. 60-4104, et seq.

House Judiciary
Date 3-15-11
Attachment # 4



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

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House Judiciary Committee
Testimony of Kyle Smith, Assistant Attorney General
Office of Attorney General Derek Schmidt

In Support of SB 74
March 15, 2011

Chairman Kinzer and Members of the Committee,

I appear today in support of passage of SB 74. The Kansas Asset Seizure and Forfeiture Act (KASFA) was adopted in 1994, based on the work of Attorney General Robert T. Stephan's "Task Force on Asset Forfeiture". I was the chair of that task force and worked with the legislature in 1993 and 1994 on passage of the act. We identified four main reasons to utilize forfeiture as an effective law enforcement tool:

Asset forfeiture is an effective tool as it has multiple remedial benefits: (1) it removes the offending property be it guns or cash, so that it can't be used to commit future crimes; (2) it serves as a deterrent not only to the criminal who loses his ill-gotten gains, but to the youth who also see that drug dealing is not an easy way to riches; (3) it destroys the ability of an illegal enterprise to compete against or corrupt legitimate commerce; and (4) it turns illegal profits and equipment into badly needed resources for law enforcement agencies.

Attorney General Robert Stephan's Task Force on Asset Forfeiture, 1993 final report

While most child molesters and pornographers are not financially motivated, the first purpose, removing the tools of this nefarious trade, is still an important reason to adopt SB 73. The computers, cameras and other electronic equipment should not be returned to the offenders. And occasionally more substantial assets are involved: One case in Jefferson County involved a van from out of state that was equipped and utilized as a 'rolling studio' by a defendant that was arrested for soliciting children for production of sexual movies and photographs. And of course, there are commercial profiteers on the internet trading in these materials and if ever caught in Kansas such operations should be stripped of their profits.

But criminals who prey upon our children and the horrific crimes they commit should be fought with every weapon at our disposal, including asset forfeiture.

I would be happy to answer any questions.

House Judiciary
Date 3-15-11
Attachment # 5



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Testimony in Support of Senate Bill 74
Presented to the House Judiciary Committee
by Attorney General Derek Schmidt
March 15, 2011

Mr. Chairman, members of the committee, thank you for conducting this hearing today on Senate Bill 74.

Senate Bill 74 is one of the four bills I have proposed this year to strengthen our state's efforts against the sexual exploitation of children. This bill would add convictions for certain child sex crimes to the Kansas forfeiture statute.

As you know, the forfeiture statute provides an additional civil tool that the state can use to seize property used by lawbreakers in the commission of their crimes. In this case, the idea would be to allow the state to bring forfeiture actions against the property of those who exploit children through trafficking in child pornography.

In some cases, the principal effect of this approach would be to deny the pornographer the tools of the trade. In some cases, particularly for larger criminal operations that engage in these crimes on a large scale, sufficient assets may be involved to provide additional revenue to law enforcement agencies, pursuant to the forfeiture act. The Senate added other forfeiture provisions to this bill. Our office has no objection to those provisions.

This proposal is straightforward. Thank you for your consideration.

House Judiciary
Date 3-15-11
Attachment # 6



Kansas County & District Attorneys Association

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www.kcdaa.org

March 14, 2011

**Testimony Regarding SB 74
Submitted by Patrick Vogelsberg
On Behalf of the Kansas County and District Attorneys Association**

Mr. Chair and members of the House Judiciary committee:

The Kansas County and District Attorneys Association (KCDAA) is in support of SB 74, which was brought by the Attorney General's Office. Adding electronic solicitation and sexual exploitation of a child to the offenses that give rise to forfeiture are appropriate additions to the statute.

The KCDAA supported the amendment in the Senate Judiciary committee that added the following crimes:

1. Rape, K.S.A. 21-3502;
2. Indecent liberties with a child, K.S.A. 21-3503;
3. Aggravated indecent liberties with a child, K.S.A. 21-3504;
4. Criminal sodomy as defined in K.S.A. 21-3505(a)(2) and (a)(3);
5. Aggravated criminal sodomy, K.S.A. 21-3506;
6. Indecent solicitation of a child, K.S.A. 21-3510;
7. Aggravated indecent liberties with a child, K.S.A. 21-3511;
8. Unlawful voluntary sexual relations, K.S.A. 21-3522.

These crimes may also be facilitated through the use of vehicles, computers, video cameras, and other electronic equipment or devices and should properly be forfeited because of their use in committing the crimes. The KCDAA supports the amended bill that is before you and ask that the committee pass this bill favorably.

Respectfully submitted,

Patrick Vogelsberg
KCDAA

House Judiciary
Date 3-15-11
Attachment # 7