

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 17, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Marvin Kleeb- excused  
Representative Kevin Yoder- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Jill Wolters, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Lauren Douglass, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Kathy Porter, Kansas Judicial Administration  
Senator Tom Holland  
Joanne Long, Bourbon County Clerk  
Sheriff Ken McGovern, Douglas County

Others attending:

See attached list.

The Chairman advised the following items were distributed to each committee member today:

- 1) Written testimony submitted by Marc Goodman, Lyon County Attorney in opposition of **HB 2432**.  
(Attachment 1)
- 2) Memorandum from Jill Wolters, Office of Revisor of Statutes, in response to additional information previously requested by Chairman Kinzer regarding the Kansas Tort Claims Act as discussed at the hearing of **SB 310**. The memorandum provided information explaining the State of Kansas liability for damages caused by an employee's acts or omissions and defines which employees are currently covered under this Act. (Attachment 2)
- 3) Memorandum from Matt Sterling, Office of Revisor of Statutes, with regards to **SB 455** and the Equal Protection Law, in response to a previous question asked by the committee concerning the bills impact on the Equal Protection Clause of the Constitution, and if applying a different set of rules of evidence to individuals in sexually violent predator hearings would violate the Constitution. (Attachment 3)

The hearing on **SB 519 - Allowing for the use of electronic communication and electronic filing in certain instances** was opened.

Jill Wolters, Office of Revisor of Statutes, presented an overview of the bill for the committee. She stated the bill amends several statutes that would: (Attachment 4)

- Allow payment of traffic tickets and fines for violation codes and resolutions by any method accepted by the court, and not just by mail or in person by personal check.
- Allow the Supreme Court, by rule, to have an electronic signature of the clerk that would have the same legal effect as a manual signature.
- Amend two search warrant statutes to clarify that information received by electronic communication can be used, updating the term telefacsimile.
- In juvenile offender cases, allow the adjudicating court and the sentencing court to send documents, including a complete copy of the official and social files in the case, by electronic means.
- In probate proceedings, if proper venue is determined to be in another county, require the

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 17, 2010, in Room 346-S of the Capitol.

district court to transmit the entire file to the proper county. The other county no longer has to retain a copy of the file.

- Take effect upon publication in the statute book, July 1, 2010.

Lana Walsh, Office of Judicial Administration, addressed the committee as a proponent and stated this bill would help to make some of the changes needed to accomplish electronic, or e-filing, of court cases and documents in Kansas. She explained a Supreme Court electronic Filing Committee has been appointed to study electronic filing issues. In addition to judges, court administrators, clerks, attorneys specializing in collection matters, and other members of the legal community and the chairs of both the House and Senate Judiciary Committees. The committee is to make recommendations to the Supreme Court regarding policy decisions that would be necessitated should a statewide filing system be implemented in Kansas. She also stated additional amendments to Chapter 60 (the Code of Civil Procedure) would be needed to carry out electronic filing as provided in **HB 2656**, which has passed the House and has been recommended favorably for passage as amended by the Senate Judiciary Committee. (Attachment 5)

There were no opponents.

The hearing on SB 519 was closed.

The hearing on **SB 471 - Changing crime of harassment by telephone to harassment by telecommunications** was opened.

Jill Wolters, Office of Revisor of Statutes, presented an overview of the bill for the committee, that amends K.S.A. 21-4113, the crime of harassment by telephone to update the statute to reflect current telecommunication devices and renames the crime "harassment by telecommunications". (Attachment 6)

Senator Tom Holland, addressed the committee in support of the bill that would expand the current definition of harassment by phone as defined under the statute to include current day telecommunications such as cell phones or any other electronic device that makes use of telecommunication lines or services. He spoke on behalf of Adam Doran, a police officer with the Bonner Springs Police Department, who could not be at the meeting but sent written testimony. He explained Mr. Doran requested this bill as the current statute does not include the two most predominant modern methods of communication, the cell phone and text messages, and as a police officer he is experiencing more and more reporting of threats, unwanted sexual advances, harassment, etc. and these activities are not currently prohibited under the phone harassment statute. (Attachment 7)

Adam Doran, a concerned Bonner Springs police officer, submitted written testimony in support of the bill. (Attachment 8)

There were no opponents.

The hearing on SB 471 was closed.

The hearing on **SB 494 - Providing for the exercise of the functions of sheriff by the undersheriff of a county** was opened.

Matt Sterling, Office of the Revisor of Statutes, provided an overview for the committee that amends K.S.A. 19-804a, concerning the functions of sheriffs. The bill would clarify that in a situation where there is no sheriff or undersheriff, the county clerk will assume the duties and powers of the office of sheriff until a sheriff is elected or qualified. The bill would also clarify that when a sheriff is in jail in the sheriff's county, the county clerk would be the keeper of the jail. (Attachment 9)

Joanne Long, Bourbon County Clerk/Election Official, Ft. Scott, Kansas appeared before the committee in support of the bill. She also stated she is the Treasurer of the Kansas County Clerks' and Election Officials' Association and speaking on their behalf, they also support this legislation. She presented the committee with a situation they experienced and the confusion as to who was responsible to fill the vacancy made by the

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 17, 2010, in Room 346-S of the Capitol.

resignation of the Sheriff. (Attachment 10)

Ken McGovern, Sheriff of Douglas County, appeared before the committee in support of this bill that would name the undersheriff as the first successor to an empty sheriff's position, with the county clerk succeeding only in the absence of both the sheriff and the undersheriff. He stated the office of sheriff is complex and the undersheriff is the most likely qualified to take on the responsibility in the absence of a sheriff. (Attachment 11)

Linda Buttron, Jefferson County Clerk, was present for the hearing when the bill was originally scheduled, however, due to the length of the hearing for prior bills on the agenda, this bill was postponed until 3/17/10. Due to other commitments, she was not available to return, therefore her testimony is now presented as written testimony in support of the bill. (Attachment 12)

There were no opponents.

The hearing on SB 494 was closed.

**SB 368 - Amending penalties for driving under the influence of alcohol or drugs**

Representative Ward made the motion to report SB 368 favorably for passage.

Representative Goyle seconded the motion.

Representative Ward made the substitute motion to remove the "Pilcher-Cook Senate amendment" and restore the bill back to its original form.

Representative Goyle seconded the motion.

Representative Pauls made the motion to amend the bill with a balloon (Attachment 13), as follows:

On Page 1, in line 39, by striking all after "days"; by striking all in line 40; in line 41, by striking all before the semicolon and inserting "and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device";

On page 2, after line 32, by inserting the following:

"(3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated."; Note: This paragraph of the balloon is actually covered by the amendment already made by Representative Ward above by removing the Pilcher-Cook Senate Amendment.

On page 4, by striking all in lines 3 through 32;

And by renumbering the remaining sections accordingly;

On page 14, in line 11, by striking "and 8-1015";

In the title, in line 11, by striking "8-1015";

Representative Ward seconded the motion. Motion carries.

Representative Crow made the motion to amend the bill to "use the same language as Representative Pauls amendment, but reduce all suspension periods to 30 days and then increase the restriction period on top of the suspension period without changing the total time frame.

Representative Wolf seconded the motion." Motion fails.

Representative Ward moved the motion to report SB 368 favorably for passage as amended. Motion carried.

**SB 460 - Children; permanency and priority of orders.**

Representative Pauls made the motion to report SB 460 to be amended on page 44, in line 33, by striking "K.S.A. 38-226" and inserting "K.S.A. 38-2264" and be passed as amended.

Representative Crow seconded the motion. Motion carried.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 17, 2010, in Room 346-S of the Capitol.

**SB 533 - Electronic citations, complaints and notices to appear.**

Representative Goyle made the motion to report SB 533 favorably for passage.  
Representative Whitham seconded the motion. Motion carried.

**SB 363 - Allowing debtors to exempt earned income tax credits during bankruptcy proceedings.**

Representative Pauls made the motion to report SB 363 favorably for passage.  
Representative Brookens seconded the motion.

Representative Brookens made a substitute motion to amend the bill on page 1, in line 13, after "Section 1." "(a)"; after line 17, by inserting "nothing in this section shall be construed to limit the right of offset, attachment or process with respect to the earned income tax credit for the payment of child support or spousal maintenance"  
Representative King seconded the motion. Motion carried.

Representative Whitham made the motion to report SB 363 favorably for passage as amended.  
Representative Brookens seconded the motion. Motion carried.

**SB 372 - Amending the Kansas Act for Obtaining a Guardian or a Conservator, or both.**

Representative Crow made the motion to report SB 372 favorably for passage.  
Representative Grange seconded the motion. Motion carried.

The next meeting is scheduled for March 17, 2010.

The meeting was adjourned at 5:05 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 03-16-10

NAME	REPRESENTING
Kosin Gommer	Sen. Derek Schmidt
DAVID BURGER	JCSO
Ken McGovern	DGSB
Bob Koller	JCSO
Joanne Long	Bourbon County Clerk
Lane WBSL	Judicial Branch
Shari Smiley	Ks. Sec. of State
Ed Klumpp	KACP/KSA/KPOA
Don Hill	Rep 60 Dist
Ken Beane	<del>KAIA</del> : KEIA
Tom Hohel	Str 3rd District
Joe Molina	KS BAR REGU,
Jenni Roe	KCSL
Doug Smith	KCA-KCAA
Callee Hill Denton	KS ASSN for Justice

# ATTORNEY LYON COUNTY

MARC GOODMAN

*County Attorney*

Vernon E. Buck  
1st Assistant Lyon County Attorney

Amy L. Aranda  
Sr. Assistant County Attorney

LYON COUNTY COURTHOUSE  
430 Commercial Street • Emporia, KS 66801  
(620) 341-3263 • Fax (620) 341-3442

Nicholas J. Helman  
Meghan K. Frisch  
Robert J. Novak  
Assistant County Attorney

March 15, 2010

Rep. Lance Kinzer  
Chair,  
House Judiciary Committee  
Room 165-W  
Kansas Capitol Building  
Topeka, Kansas

RE: House Bill 2432

Dear Rep. Kinzer:

I am the First Assistant Lyon County Attorney who prosecuted Brandon Flint for aggravated assault in Lyon County District Court Case No. 08 CR 184. The jury in that case convicted Mr. Flint of aggravated assault that took place after a confrontation with the victim, both inside Natasha's Bar in downtown Emporia, Kansas and in the middle of Commercial Street outside that bar. In that case, the trial judge declined to instruct the jury on defense of another under K.S.A. 21-3211, despite Mr. Flint's claim that he was protecting his fiancée, Nicole Washburn, when he pulled a .40 caliber pistol from his car and pointed it at the victim as the victim and his friend were engaged in a struggle with Ms. Washburn in the street outside the bar. This trial took place more than a year before the Kansas Supreme Court decision in State v. Hendrix, 289 Kan. 859, 218 P.3d 40 (2009), in which the majority of the Supreme Court held that the Kansas statutes on defense of self and defense of another are inapplicable when only the threat of force is used, as opposed to the actual application of force. In the Flint case, the trial court relied on existing precedents from the Kansas appellate courts and denied the defense application for a defense of another instruction on the grounds that the use of a firearm was excessive when the victim was not armed with any

weapons at all. The Kansas Court of Appeals affirmed Mr. Flint's conviction on January 29, 2010 after issuing an order for counsel to show cause why State v. Hendrix did not foreclose the issue of whether defense of another was available to one who used only the threat of force. Mr. Flint has since filed a petition for review to the Kansas Court of Appeals, a copy of which I received on March 4, 2010.

I heard a few weeks ago on National Public Radio news that the legislature was entertaining legislation that would effectively overrule State v. Hendrix, but was unaware that bills for that purpose had been passed by both houses until I received Mr. Flint's petition for review. Although I'm not sure that I entirely agree with the Supreme Court's rationale in Hendrix, I am greatly disturbed by the retroactive provisions in House Bill 2432 and Senate Bill 381. It's one thing for the legislature to correct unintended consequences of a particular piece of legislation or to overturn judicial decisions that don't accurately reflect legislative intent, and to provide that the new law applies prospectively, or even retroactively to cases that have not been filed as of the effective date of the legislation. It is something else to apply the new law to a case that has already been decided by a jury and an appellate court, with review by a higher court pending. To do so interferes with the litigation process in a case already decided at the trial level (and, in this instance, by the Kansas Court of Appeals), and would seem to implicate the separation of powers doctrine.

I was also troubled to read a one page statement that Mr. Flint apparently read to both the House and Senate Judiciary Committees when he testified in favor of the legislative amendments to the self-defense statutes. Not only is his version of the trial testimony at odds with that of the victim, it contradicts his own testimony. At trial, the defense presented both the testimony of Mr. Flint and Ms. Washburn. Neither witness testified that Mr. Flint yelled for the victim and his friend to break contact with Ms. Washburn, only that he pointed the pistol at them while Ms. Washburn made her way to the car. There was also no testimony that the victim "tackled" Ms. Washburn; in fact, the evidence as I recall it was that the victim and his friend were going to their car across the street when Ms. Washburn followed them and continued the previous confrontation. Ms. Washburn wasn't sure if she was pushed to the concrete or whether she fell, and she acknowledged that the victim's friend was trying to break up the altercation and did not attack her. There was absolutely nothing in the evidence by the defense to contradict the victim's testimony that he was not armed and had no weapons, either on his person or in his car; the defendant and his fiancée merely testified that they thought he might be in the process of retrieving weapon of some sort, but never saw one.

I am not in a position to determine how much weight Mr. Flint's testimony carried with your committee, but this case illustrates the problems that can arise when

legislative changes are enacted with a particular case in mind, especially one that has already resulted in a jury verdict and is on appeal. Concerns about the Hendrix decision aside, it is my firm belief that any legislative amendments should not affect cases that have already been decided or are pending.

I apologize for not getting this information to you sooner, but was unaware that this legislation had progressed so quickly. If I can answer any questions or provide any further details about this matter, please feel free to contact me at the Lyon County Attorney's Office by phone (620-341-3263), fax (620-341-3442), or e-mail ([rbuck@lyoncounty.org](mailto:rbuck@lyoncounty.org)).

Thank you for your consideration.

Sincerely,



Vernon E. (Rick) Buck,  
First Assistant Lyon County Attorney



**Office of Revisor of Statutes**  
**300 S.W. 10th Avenue**  
**Suite 010-E, Statehouse**  
**Topeka, Kansas 66612-1592**  
**Telephone (785) 296-2321 FAX (785) 296-6668**

MEMORANDUM

To: Representative Kinzer, Chairman, and Members of the House Judiciary  
Committee

From: Jill Wolters, Senior Assistant Revisor

Date: March 15, 2010

Subject: Kansas Tort Claims Act, enacted in 1979

Under the Kansas Tort Claims Act, a government entity can be held liable for damages caused by an employee's acts or omissions. K.S.A. 75-6103 states that each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment. K.S.A. 75-6102 defines "government entity" and "employee."

Certain actions by employees do not subject the governmental entity to liability, such as legislative functions, judicial functions, discretionary functions, the collection of taxes. (K.S.A. 75-6104)

The maximum claim for liability is \$500,000 for any number of claims arising out of a single occurrence or accident, unless the state has purchased an insurance policy in excess of the maximum. (K.S.A. 75-6105 and 75-6111) The governmental entity is required to provide the defense for such employee. (K.S.A. 75-6108)

The Act traditionally covers employees of a governmental entity. Through the years, the Legislature has added other persons who are not employees of a governmental entity, but perform a function for the governmental entity. An example would be a person who is an employee or volunteer of a nonprofit program which contracts with the juvenile justice authority (JJA). (This amendment was adopted in 1997.) The program would be required to contract with JJA or with another nonprofit program that has contracted with JJA to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volu

House Judiciary

Date 3-17-10

Attachment # 2

otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through liability insurance of the nonprofit program. Further, the amendment amended K.S.A. 75-6104 to clarify that the governmental entity is not liable for damages resulting from any claim from providing a juvenile justice program to juvenile offenders, if such juvenile justice program has contracted with JJA or with another nonprofit program that has contracted with the JJA.

Regarding claims arising from the rendering of or failure to render professional services by a health care provider, the following persons and entities are covered under the tort claims act:

- (1) A charitable health care provider;
- (2) a hospital owned by a municipality and the employees thereof;
- (3) a local health department and the employees thereof;
- (4) an indigent health care clinic and the employees thereof; or
- (5) a district coroner or deputy district coroner appointed pursuant to K.S.A.

22a-226.

K.S.A. 75-6117 creates the tort claims fund in the state treasury, administered by the attorney general. Moneys in the fund may be expended only for settlements and final judgments arising out of claims and the costs of defending the claims.

K.S.A. 60-19a02 states for a personal injury action, the total amount recoverable by each party from all defendants for all claims for noneconomic loss shall not exceed \$250,000. Noneconomic loss includes claims for pain and suffering and mental anguish. Economic damages include cost of medical care, lost wages and loss of earning capacity.



MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



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

MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: March 16, 2010  
Subject: Senate Bill 455 and the Equal Protection Clause

Senate Bill 455 would amend the rules of evidence that are applied in hearings held pursuant to K.S.A. 59-29a01, commitment proceedings of sexually violent predators. During the hearing, questions were raised by the committee concerning the bill's impact on the Equal Protection Clause of the Constitution and whether applying a different set of rules of evidence to individuals in sexually violent predator hearings would violate the Constitution.

If Senate Bill 455 becomes law and was challenged on equal protection grounds, the court would presume the statute to be constitutional and the party challenging the constitutionality of the statute would have to demonstrate otherwise. "Only in cases involving 'suspect classifications' or 'fundamental interests' is the presumption of constitutionality displaced and the burden placed on the party asserting constitutionality to demonstrate a compelling state interest which justifies the classification." *Farley v. Engelken*, 241 Kan. 663, 669-70, 740 P.2d 1058 (1987).

In analyzing an equal protection claim, the United States and Kansas Supreme Courts employ three levels of scrutiny: strict scrutiny, intermediate scrutiny and the rational basis test. *Chiles v. State*, 254 Kan. 888, 891-92, 869 P.2d 707 (1994). The level of scrutiny the court will apply depends on the nature of the legislative classification and the rights affected by that classification. *Romer v. Evans*, 517 U.S. 620, 632, 116 S.Ct. 1620 (1996).

Strict scrutiny applies in cases involving suspect classifications and fundamental rights guaranteed by the Constitution. *Farley at 669*. Strict scrutiny has been applied to the fundamental rights of voting, privacy, marriage and travel, *Hill v. Stone*, 421 U.S. 289, 95 S.Ct. 1637 (1975) and to the suspect classifications of alienage, race and ancestry. *Graham v. Richardson*, 403 U.S. 365, 91 S.Ct. 1848 (1971). Intermediate level scrutiny has been applied in cases of discrimination based on gender and illegitimacy. *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199 (1983); *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251 (1971). Heightened scrutiny applies to "quasi-suspect" classifications, and it requires the statutory classification to substantially further

a legitimate legislative purpose. *Farley* at 669. The lowest standard of review is rational basis. “For a statute to pass constitutional muster under the rational basis standard, it therefore must meet a two-part test: (1) It must implicate legitimate goals, and (2) the means chosen by the legislature must bear a rational relationship to those goals.” *Mudd v. Neosho Memorial Regional Med. Center*, 275 Kan. 187, 198, 62 P.3d 236 (2003). Generally, a law will be subject to the rational basis test unless the legislative classification targets a suspect class or burdens a fundamental right. *Romer* at 631.

Under state and federal case law, the classification of sexually violent predators has not been recognized as a suspect or quasi-suspect class and a court would likely apply the rational basis standard in any challenge. The other factor, whether the statute infringes on a fundamental right guaranteed by the Constitution, would also likely require no heightened standard and would be evaluated under the rational basis test. Although the court analyzed the entire Sexually Violent Predator Act under the strict scrutiny analysis because a person’s right not to be involuntarily civilly committed involved a fundamental right, *In Re Care and Treatment of Hay*, 263 Kan. 822, 833, 953 P.2d 666 (1998), it is unlikely that the court would find that a rule of evidence involves a fundamental right and the court would likely apply the rational basis test in analyzing an equal protection challenge.

Under the rational basis test, a “law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous.” *Romer* at 632; *McGowan v. Maryland*, 366 U.S. 420, 81 S.Ct. 1101 (1961); *KPERS v. Reimer & Koger Assocs., Inc.*, 261 Kan. 17, 41-42, 927 P.2d 466 (1996). Accordingly, a statutory discrimination will not be set aside if any facts may reasonably justify it. *Mudd* at 198.

In K.S.A 59-29a01, the legislature stated its intent in enacting the Sexually Violent Predator Act, stating that there is an “extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who are likely to engage in repeat acts of sexual violence if not treated” and the “existing civil commitment procedures are inadequate to address the special needs of sexually violent predators and the risks they present to society”. Therefore, unless the court found that there were no facts to reasonably justify a different rule of evidence used in civil commitment hearings for sexually violent predators, the statute would likely survive an equal protection challenge.

There is an analogous case in the jurisprudence of the 10<sup>th</sup> Circuit concerning the application of a different rule of evidence for certain individuals. In *U.S. v. Castillo*, 140 F.3d 874 (1998), Federal Rule of Evidence 414, which allows the prosecution to use evidence of a defendant's prior acts for the purpose of demonstrating to the jury that the defendant had a disposition of character, or propensity, to commit child molestation, was challenged on equal protection grounds. The court analyzed the statute for a facial challenge on due process and equal protection grounds and the tests for determining the constitutionality of a statute under due process and equal protection grounds weigh almost identical factors. *Clements v. United States Fidelity & Guaranty Co.*, 243 Kan. 124, 127, 753 P.2d 1274 (1988).

The court in *Castillo* found that the admission of character evidence allowed by Rule 414 did not burden the defendant's fundamental due process rights and that the defendant did not belong to a suspect class. The court found that while the rule does treat those accused of child molestation differently than other criminal defendants, such a classification is not subject to a heightened standard of review. *Castillo* at 883; *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-41, 105 S.Ct. 3249, 3253-56 (1985). If a law "neither burdens a fundamental right nor targets a suspect class, [the court] will uphold the legislative classification so long as it bears a rational relation to some legitimate end." *Romer* at 631. Therefore, if there is a "plausible reason for Congress' action, [the court's] inquiry is at an end." *United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 179, 101 S.Ct. 453, 461 (1980). The court stated that it did not need to find that the legislature ever articulated this reason, nor that it actually underlay the legislative decision, see *Flemming v. Nestor*, 363 U.S. 603, 612, 80 S.Ct. 1367, 1373 (1960). The court found plausible reasons for the enactment of Rule 414 and that "Congress' objective of enhancing effective prosecution of sexual assaults is a legitimate interest." The court further found that the government has a particular need for corroborating evidence in cases of sexual abuse of a child because of the highly secretive nature of these sex crimes and because often the only available proof is the child's testimony. *Castillo* at 883.

In *Castillo*, because there was no burden on a fundamental right nor targeting of a suspect class and that there was a legitimate government interest, the court found that there was no equal protection violation caused by the application of a different rule of evidence to those accused of child molestation than that applied to other criminals.

Even though SB 455 would apply a different rule of evidence to individuals at a hearing under the Sexually Violent Predator Act than to those at other civil commitment hearings, it is unlikely that a court would find that it burdens a fundamental right or targets a suspect class. Therefore, the court would likely apply the rational basis test and as long as it could find plausible reasons for the enactment of a different rule of evidence for hearings under the Sexually Violent Predator Act, the rule would survive an equal protection challenge.

Office of the Revisor of Statutes  
300 S.W. 10th Avenue  
Suite 24-E, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary  
From: Jill Ann Wolters, Senior Assistant Revisor  
Date: 15 March, 2010  
Subject: Senate Bill No. 519

Senate Bill No. 519 amends several statutes to do the following:

1. For traffic infractions (K.S.A. 8-2118) and county code or resolution violations (K.S.A. 19-4716), the bill would allow the court to accept payments by any method, not just by mail or in person and by personal check. In regard to county code or resolution violations, the bill would also allow the clerk to accept a voluntary appearance, plea of guilt or no contest and payment of the fine by any means ordered by the court. (Conforming amendment in section 6.)
2. Currently, K.S.A 22-2502 established procedures for court records and proceedings to be attested to and authenticated by the clerk. This amendment would allow the Supreme Court, by rule, to have an electronic signature of the clerk have the same legal effect as a manual signature.
3. Amends two search warrant statutes to clarify that information received by electronic communication can be used, updating the term telefacsimile.
4. In juvenile offender cases, the adjudicating court and the sentencing court may send documents, including a complete copy of the official and social files in the case by electronic means.
5. In probate proceedings, if proper venue is determined to be in another county, the district court shall transmit the entire file to the proper county. The other county no longer has to retain a copy of the file.

The act would take effect upon publication in the statute book, July 1, 2010.

House Judiciary

Date 3-17-10

Attachment # 4



State of Kansas  
**Office of Judicial Administration**

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

House Judiciary Committee

Tuesday, March 16, 2010

Testimony in Support of SB 519

Kathy Porter

Lana Walsh

2010 SB 519 would help to make some of the changes needed to accomplish electronic filing, or e-filing, of court cases and documents in Kansas. The Supreme Court Electronic Filing Committee has been appointed to study electronic filing issues. The Committee is being chaired by Justice Marla J. Luckert, with Justice Dan Biles serving as vice chair. In addition to judges, court administrators, clerks, attorneys specializing in collection matters, and other members of the legal community, the committee includes the chairs of both the House and Senate Judiciary Committees.

The committee is to make recommendations to the Supreme Court regarding policy decisions that would be necessitated should a statewide electronic filing system be implemented in Kansas. The committee has been divided into three subcommittees to address policy and procedure, finance, and technology.

SB 519 would amend current law to provide that payments may be made "in any manner accepted by the court," rather than by check (Section 1); that the appearance, waiver, plea, and payment may be made by "any means accepted by the court" (Section 2); that an electronic signature of the clerk may be authorized and has the same legal effect as a manual signature (Section 3); to replace the term "telefacsimile" communications with the term "electronic" communications (Sections 4, 5, and 7); and to delete current references to "whether by mail or in person" (Section 6).

Additional amendments to Chapter 60 (the Code of Civil Procedure) that would be needed to carry out electronic filing are made in 2010 HB 2656, which has passed the House and has been recommended favorably for passage as amended by the Senate Judiciary Committee.

Thank you for your consideration of SB 519.

House Judiciary

Date 3-17-10

Attachment # 5

Office of the Revisor of Statutes  
300 S.W. 10th Avenue  
Suite 24-E, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary  
From: Jill Ann Wolters, Senior Assistant Revisor  
Date: 15 March, 2010  
Subject: Senate Bill No. 471

Senate Bill No. 471 amends K.S.A. 21-4113, the crime of harassment by telephone to update the statute to reflect current telecommunication devices and renames the crime "harassment by telecommunications."

A telecommunication device includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of telephone lines or services.

It would be a violation of the section to:

- (1) Make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious, filthy or indecent;
- (2) make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;
- (3) make or cause a telecommunications device to repeatedly ring or activate, with intent to harass any person at the receiving end;
- (4) play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or
- (5) knowingly permit any telecommunications device under one's control to be used for any of the purposes mentioned herein.

The penalty remains a class A nonperson misdemeanor.

The act would take effect upon publication in the statute book, July 1, 2010.

House Judiciary  
Date 3-17-10  
Attachment # 6



State of Kansas  
Senate Chamber

TOM HOLLAND  
STATE SENATOR, 3RD DISTRICT  
DOUGLAS, JEFFERSON AND LEAVENWORTH COUNTIES

HOME ADDRESS:  
961 E. 1600 ROAD  
BALDWIN CITY, KS 66006  
(785) 865-2786



ROOM 181-E, STATE CAPITOL  
TOPEKA, KANSAS 66612  
(785) 296-7372  
1-800-432-3924  
tom.holland@senate.ks.gov

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: ASSESSMENT AND TAXATION  
COMMERCE  
MEMBER: FINANCIAL INSTITUTIONS AND INSURANCE  
INTERSTATE COOPERATION  
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT  
JOINT COMMITTEE ON INFORMATION TECHNOLOGY

March 16, 2010

Chairman Kinzer and Committee Members:

Good morning! My name is Tom Holland, and I am the State Senator for the 3<sup>rd</sup> District serving portions of Douglas and Leavenworth counties and all of Jefferson County. I am here today to ask for your support of Senate Bill 471, an act concerning harassment by telecommunications.

This bill would expand the current definition of harassment by telephone as defined under K.S.A. 21-4113 to include telecommunications devices such as cell phones and any other electronic device which makes use of telephone lines or services. This bill request was brought to me by a constituent, Adam Doran, a police officer with the Bonner Springs Police Department. Officer Doran could not be here today, but he has sent in written testimony regarding the need for expansion of the existing statute.

I very much appreciate the committee's consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Holland', written over a large, decorative flourish.

Tom Holland  
State Senator - 3<sup>rd</sup> District

House Judiciary  
Date 3-17-10  
Attachment # 7

March 16, 2010

162 S. Whilshire Dr.  
Tonganoxie, KS 66086  
[doran50014@yahoo.com](mailto:doran50014@yahoo.com)

Kansas Senate  
State Capitol  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Members of the House of Representatives,

First, let me say thank you for the work you do on a daily basis to represent your district constituents and the rest of the State of Kansas. I understand you stay very busy, so I will make this brief.

I am a Tonganoxie resident and a Bonner Springs police officer. I have been in Kansas law enforcement for more than seven years. Serving the citizens of this State by upholding the laws and protecting their rights granted under the Constitution is a responsibility that I enjoy and take very seriously. I have the great privilege of saying that my life's work is my passion. To that end, I seek out every opportunity to advance my knowledge and experience in the field. My areas of specialization are training, grant proposal development, and policy development/revision. I am a certified Police Training Officer, with instructor certifications in several areas, and considerable experience writing grant proposals and developing policies. In addition to these experiential qualifications, I am pursuing a Master's Degree in Public Administration at the University of Kansas. My goal is to be a leader in my profession, as a positive influential force that contributes to making law enforcement in Kansas the best it can be.

I'm writing you today because one of our Kansas criminal statutes needs revision. The current language of KSA 21-4113, regarding telephone harassment, only identifies two methods of telecommunication: telephone calls and facsimiles. The statute fails to mention cellular telephones or text messages, arguably the two most predominant modern methods of communication. It also fails to acknowledge telecommunications can be made through wireless

House Judiciary  
Date 3-17-10  
Attachment # 8

networks and other services aside from just telephone lines. Broadening the language of the statute to include today's telecommunication devices and methods, and specifically addressing harassing text messages to reflect modern times would be beneficial.

On the job, I am taking more and more reports of harassing text messages, particularly with the younger generation who relies heavily on texting as a primary mode of communication. With the popularity of texting still on the rise, I only see this problem continuing.

I have taken reports where the victim was receiving text messages threatening to kill them or "beat their face in," messages certainly sent with the intent to harass the person on the receiving end. I have also taken reports when the messages were more along the lines of sexual harassment, when someone was making unwanted sexual advances towards the victim. Another example would be the ex-girlfriend or boyfriend who was told to stop calling the victim, so instead they resorted to repetitive text messages, in an effort to get the victim to respond simply by the sheer volume of messages sent. If done by text messaging or any other wireless telecommunication method, rather than by conventional voice telephone conversations or fax, these activities are not prohibited by the phone harassment statute (KSA 21-4113).

Currently, my jurisdiction charges harassing text messages under the 21-4113 statute, because nothing else fits. However, appeals by intelligent defense attorneys will render these cases dismissed. The language of the current telephone harassment statute only addresses actual phone calls and fax messages made by telephone lines. I am attempting to be forward-thinking on this, since the language of the statute does not reflect modern telecommunications trends; and I believe it's only a matter of time before defense attorneys get smart and start challenging this, much as they have with other loopholes in the law.

Senate Bill 471 has been proposed as a solution to this issue. You will notice in subsection (a) on page 1, lines 15 and 16, the terms "telephone" and "telephone communication" have been changed to "telecommunications." In section (a)(1) on page 1, line 19, the term "text" has been added. Several other revisions bring the language of the statute up-to-date including the definition of a "telecommunications device" on page 2, lines 1-4.

I urge you to support this bill as a beneficial step towards modernization that will be of great assistance to prosecutors and the rest of the Kansas law enforcement community as we do our job. This bill is essential to ensuring the successful charging and conviction of those who violate the law. Thank you for your time and consideration.

Respectfully,



Adam Doran  
Tonganoxie, KS

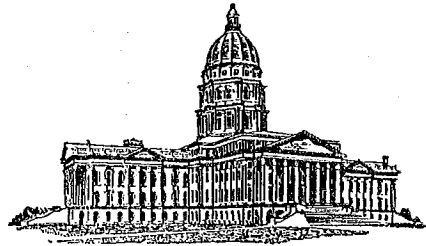
Enclosures: Senate Bill 471



**MARY ANN TORRENCE, ATTORNEY**  
REVISOR OF STATUTES

**JAMES A. WILSON III, ATTORNEY**  
FIRST ASSISTANT REVISOR

**GORDON L. SELF, ATTORNEY**  
FIRST ASSISTANT REVISOR



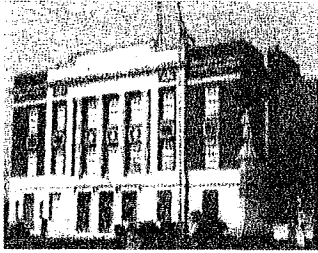
**OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE**

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

**MEMORANDUM**

To: Chairman Kinzer and members of the House Committee on Judiciary  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: 3/16/10  
Subject: Senate Bill No. 494

SB 494 would amend K.S.A. 19-804a, concerning the functions of sheriffs. The bill would clarify that in a situation where there is no sheriff or undersheriff, the county clerk will assume the duties and powers of the office of sheriff until a sheriff is elected or qualified. The bill also would clarify that when a sheriff is in jail in the sheriff's county, the county clerk would be the keeper of the jail.



**BOURBON COUNTY CLERK**  
**JOANNE LONG**  
Courthouse  
210 S. National  
Fort Scott, Kansas 66701-1304  
(620) 223-3800

March 16, 2010

To: House Judiciary Committee

Re: Testimony on Senate Bill 494

From: Joanne Long, Bourbon County Clerk/Election Official  
and Kansas County Clerks' and Election Officials' Association Treasurer

Honorable Chair and Members of the Committee:

Thank you for the opportunity to present testimony in support of Senate Bill 494. The Kansas County Clerks' and Election Officials' Association supports this legislation.

In November 2008, my current Sheriff, a Democrat, was elected County Commissioner. He wanted to retire from KPERS prior to taking office, so he resigned as Sheriff December 1, 2008, in order to be off of payroll for the minimum 30 days required by KPERS. The current Undersheriff, a Republican, was elected Sheriff in the same election but would not take office until January 12, 2009. He spent December 8th through December 19th at mandatory New Sheriff School in Hutchinson. There had not been a party convention yet to fill the vacancy made by the resignation of the Sheriff.

In that time, there were personnel issues which needed immediate attention and vouchers and commissary checks which needed signed, and as County Clerk, I assumed those duties as I understood the law to read.

As the law currently reads, K.S.A. 19-804 and K.S.A 19-804a contradict each other, stating that in the absence of the sheriff the undersheriff and county clerk, respectively, is sheriff. I believe that adding the words "or undersheriff" to K.S.A. 19-804a will clear up any future questions as to the succession of the office of sheriff.

I and the KCC&EOA urge the committee to report Senate Bill 494 favorably for passage. Thank you for your consideration.

Sincerely,

Joanne Long  
Bourbon County Clerk/Election Official  
& KCC&EOA Treasurer

House Judiciary

Date 3-17-10

Attachment # 10

# OFFICE OF



# THE SHERIFF

Steve Hornberger, Undersheriff  
111 E 11<sup>th</sup> St – Operations  
Lawrence, KS 66044  
(785) 841-0007, fax (785) 841-5168

Ken Massey, Undersheriff  
3601 E 25<sup>th</sup> St – Corrections  
Lawrence, KS 66046  
(785) 830-1000, fax (785) 830-1085

**KENNETH M. MCGOVERN**  
Sheriff

---

March 16, 2010

To: Chairperson Kinzer, Vice-Chairperson Whitham , and distinguished members of the Senate Judiciary Committee.

Chairperson Owens and Committee Members,

I am Ken McGovern, Sheriff of Douglas County, and First Vice President of the Kansas Sheriff's Association. I take this opportunity to express my support, as both Sheriff of Douglas County and Executive Board member of the Kansas Sheriff's Association, for Senate Bill Number 494.

The Kansas County Clerks and Election Officials Association contacted the Kansas Sheriff's Association regarding concerns they had with Kansas Statute 19-804a, *Exercise of functions of sheriff by county clerk*. Upon review of the statute, the Sheriff's Association stands in agreement with the County Clerk's Association that SB 494 adequately addresses and corrects the concerns we have with the statute.

The concerns arise from what appears to be a conflict with the wording in KS 19-804 and KS 19-804a. KS 19-804 provides that whenever there is a vacancy in the office of sheriff, the undersheriff shall execute the office of sheriff. KS 19-804a provides that whenever there shall be no sheriff, it shall be the duty of the county clerk to exercise the powers and duties of sheriff. SB 494 names the undersheriff as the first successor to an empty sheriff's office, with the county clerk succeeding only in the absence of both sheriff and undersheriff. SB 494 is better policy language and hopefully removes any confusion about who fills a vacant sheriff's office.

Not only is there the issue of succession, there is the issue of the complexity of the office of sheriff. There is much more to the office than law enforcement, which is complex enough in this age. The sheriff is charged with keeping the county jail, and must also attend upon the courts, serving and executing their process, writs, precepts, and orders. Depending on the population of the county, this can be a challenging responsibility. An undersheriff is most likely best qualified to take on this responsibility in the absence of a sheriff. County clerks have their own significant set of responsibilities and duties, which are quite different from those of the sheriff. To add the responsibilities of the sheriff's office, when not absolutely necessary, could be overwhelming.

For these reasons I and the Kansas Sheriff's Association support passage of SB 494, and urge this committee to do the same.

Sincerely,

Kenneth M. McGovern

House Judiciary

Date 3-17-10

Attachment # 11

# Jefferson County, Kansas

Linda M. Buttron, COUNTY CLERK

P.O. Box 321 • Oskaloosa, Kansas 66066

Phone: 785-863-2272 • Fax: 785-863-3135 • email: lbuttron@jfcountyks.com

## COUNTY OFFICES

Commissioners  
863-2272

Clerk  
863-2272

Attorney  
863-2251

Sheriff  
863-2765

Register of Deeds  
863-2243

Treasurer  
863-2691

Clerk of the  
District Court  
863-2461

Road & Bridge  
863-2211

Appraiser  
863-2080

Auxiliary Services  
863-2581

Emergency  
Services  
863-2278

Extension  
863-2212

Planning & Zoning  
863-2241

Health  
Department  
863-2447

GIS/IT  
863-2173

911 Dispatch  
863-2247

March 11, 2010

Honorable Representative Kinzer  
Chairman-House Judiciary Committee  
And Committee Members

RE: Senate Bill #494

-Written Testimony Only

Honorable Chairman Kinzer & Committee Members,

I am Linda M. Buttron, Jefferson County Clerk and current president of the Kansas County Clerk's and Election Officials Association. I am testifying on behalf of the association in support of favorable passage of this bill.

This bill contains language that will clarify the wording of K.S.A. 19-804a. There has been some confusion in counties as to who is to act as Sheriff when there is no sheriff in the County. If you only read K.S.A. 19-804 it would appear that the undersheriff assumes the responsibility whenever a vacancy occurs. If you read only K.S.A. 19-804a it would appear the County Clerk is to assume the duties. Changing the law to the proposed wording will remove any doubt about who is to serve in the case of vacancy of the Sheriff and make the meaning of both statutes clearer.

Thank you for your time,



Linda M. Buttron

Jefferson County Clerk and Election Officer

President-Kansas County Clerk's and Election Officials Association

House Judiciary

Date 3-17-10

Attachment # 12



[As Amended by Senate Committee of the Whole]

Session of 2010

SENATE BILL No. 368

By Committee on Judiciary

1-14

10 AN ACT concerning *[driving; relating to]* driving under the influence  
11 of alcohol or drugs; amending K.S.A. 2009 Supp. ~~[8-1014, 8-1015~~  
12 ~~and]~~ 8-1567 and repealing the existing section ~~[sections]~~; also re-  
13 pealing K.S.A. 8-1567, as amended by section 6 of chapter 107 of the  
14 2009 Session Laws of Kansas.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 *[Section 1. K.S.A. 2009 Supp. 8-1014 is hereby amended to*  
18 *read as follows: 8-1014. (a) Except as provided by subsection (e)*  
19 *and K.S.A. 8-2,142, and amendments thereto, if a person refuses a*  
20 *test, the division, pursuant to K.S.A. 8-1002, and amendments*  
21 *thereto, shall:*

22 *[(1) On the person's first occurrence, suspend the person's driv-*  
23 *ing privileges for one year and at the end of the suspension, restrict*  
24 *the person's driving privileges for one year to driving only a motor*  
25 *vehicle equipped with an ignition interlock device;*

26 *[(2) on the person's second occurrence, suspend the person's*  
27 *driving privileges for two years;*

28 *[(3) on the person's third occurrence, suspend the person's driv-*  
29 *ing privileges for three years;*

30 *[(4) on the person's fourth occurrence, suspend the person's*  
31 *driving privileges for 10 years; and*

32 *[(5) on the person's fifth or subsequent occurrence, revoke the*  
33 *person's driving privileges permanently.*

34 *[(b) (1) Except as provided by subsections (c) and (e) and*  
35 *K.S.A. 8-2,142, and amendments thereto, if a person fails a test or*  
36 *has an alcohol or drug-related conviction in this state, the division*  
37 *shall:*

38 *[(A) On the person's first occurrence, suspend the person's driv-*  
39 *ing privileges for 30 days, then restrict the person's driving privi-*  
40 *leges as provided by K.S.A. 8-1015, and amendments thereto, for an*  
41 *additional 330 days;* <

42 *[(B) on the person's second, third or fourth occurrence, suspend*  
43 *the person's driving privileges for one year and at the end of the*

and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

House Judiciary  
Date 3-17-10  
Attachment # 13

1 suspension, restrict the person's driving privileges for one year to  
 2 driving only a motor vehicle equipped with an ignition interlock  
 3 device; and

4 [(C) on the person's fifth or subsequent occurrence, the person's  
 5 driving privileges shall be permanently revoked.

6 [(2) Except as provided by subsection (e) and K.S.A. 8-2,142,  
 7 and amendments thereto, if a person fails a test or has an alcohol  
 8 or drug-related conviction in this state and the person's blood or  
 9 breath alcohol concentration is .15 or greater, the division shall:

10 [(A) On the person's first occurrence, suspend the person's driv-  
 11 ing privileges for one year and at the end of the suspension, restrict  
 12 the person's driving privileges for one year to driving only a motor  
 13 vehicle equipped with an ignition interlock device;

14 [(B) on the person's second occurrence, suspend the person's  
 15 driving privileges for one year and at the end of the suspension,  
 16 restrict the person's driving privileges for two years to driving only  
 17 a motor vehicle equipped with an ignition interlock device;

18 [(C) on the person's third occurrence, suspend the person's driv-  
 19 ing privileges for one year and at the end of the suspension restrict  
 20 the person's driving privileges for three years to driving only a mo-  
 21 tor vehicle equipped with an ignition interlock device;

22 [(D) on the person's fourth occurrence, suspend the person's  
 23 driving privileges for one year and at the end of the suspension,  
 24 restrict the person's driving privileges for four years to driving only  
 25 a motor vehicle equipped with an ignition interlock device; and

26 [(E) on the person's fifth or subsequent occurrence, the person's  
 27 driving privileges shall be permanently revoked.

28 [(3) Whenever a person's driving privileges have been restricted to  
 29 driving only a motor vehicle equipped with an ignition interlock device,  
 30 proof of the installation of such device, for the entire restriction period,  
 31 shall be provided to the division before the person's driving privileges are  
 32 fully reinstated. ←

33 [(c) Except as provided by subsection (e) and K.S.A. 8-2,142,  
 34 and amendments thereto, if a person who is less than 21 years of  
 35 age fails a test or has an alcohol or drug-related conviction in this  
 36 state, the division shall:

37 [(1) On the person's first occurrence, suspend the person's driv-  
 38 ing privileges for one year. If the person's blood or breath alcohol  
 39 concentration is .15 or greater, the division shall at the end of the  
 40 suspension, restrict the person's driving privileges for one year to  
 41 driving only a motor vehicle equipped with an ignition interlock  
 42 device;

43 [(2) on the person's second and subsequent occurrences, pen-

(3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated.

1 *alties shall be imposed pursuant to subsection (b).*

2 *[(d) Whenever the division is notified by an alcohol and drug*  
3 *safety action program that a person has failed to complete any al-*  
4 *cohol and drug safety action education or treatment program or-*  
5 *dered by a court for a conviction of a violation of K.S.A. 8-1567,*  
6 *and amendments thereto, the division shall suspend the person's*  
7 *driving privileges until the division receives notice of the person's*  
8 *completion of such program.*

9 *[(e) Except as provided in K.S.A. 8-2,142, and amendments*  
10 *thereto, if a person's driving privileges are subject to suspension*  
11 *pursuant to this section for a test refusal, test failure or alcohol or*  
12 *drug-related conviction arising from the same arrest, the period of*  
13 *such suspension shall not exceed the longest applicable period au-*  
14 *thorized by subsection (a), (b) or (c), and such suspension periods*  
15 *shall not be added together or otherwise imposed consecutively. In*  
16 *addition, in determining the period of such suspension as authorized*  
17 *by subsection (a), (b) or (c), such person shall receive credit for any*  
18 *period of time for which such person's driving privileges were sus-*  
19 *pending while awaiting any hearing or final order authorized by this*  
20 *act.*

21 *[If a person's driving privileges are subject to restriction pursu-*  
22 *ant to this section for a test failure or alcohol or drug-related con-*  
23 *viction arising from the same arrest, the restriction periods shall*  
24 *not be added together or otherwise imposed consecutively. In ad-*  
25 *dition, in determining the period of restriction, the person shall re-*  
26 *ceive credit for any period of suspension imposed for a test refusal*  
27 *arising from the same arrest.*

28 *[(f) If the division has taken action under subsection (a) for a*  
29 *test refusal or under subsection (b) or (c) for a test failure and such*  
30 *action is stayed pursuant to K.S.A. 8-259, and amendments thereto,*  
31 *or if temporary driving privileges are issued pursuant to K.S.A. 8-*  
32 *1020, and amendments thereto, the stay or temporary driving priv-*  
33 *ileges shall not prevent the division from taking the action required*  
34 *by subsection (b) or (c) for an alcohol or drug-related conviction.*

35 *[(g) Upon restricting a person's driving privileges pursuant to*  
36 *this section, the division shall issue a copy of the order imposing*  
37 *the restrictions which is required to be carried by the person at any*  
38 *time the person is operating a motor vehicle on the highways of this*  
39 *state.*

40 *[(h) Any person whose license is restricted to operating only a*  
41 *motor vehicle with an ignition interlock device installed may op-*  
42 *erate an employer's vehicle without an ignition interlock device in-*  
43 *stalled during normal business activities, provided that the person*

13-4

1 does not partly or entirely own or control the employer's vehicle or  
2 business.

3 ~~[Sec. 2. K.S.A. 2009 Supp. 8-1015 is hereby amended to read  
4 as follows: 8-1015. (a) When subsection (b)(1) of K.S.A. 8-1014, and  
5 amendments thereto, requires or authorizes the division to place  
6 restrictions on a person's driving privileges, the division shall re-  
7 strict the person's driving privileges to driving only under the cir-  
8 cumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A.  
9 8-202 and amendments thereto.~~

10 ~~[(b) In lieu of the restrictions set out in subsection (a), the di-  
11 vision, upon request of the person whose driving privileges are to  
12 be restricted, may restrict the person's driving privileges to driving  
13 only a motor vehicle equipped with an ignition interlock device,  
14 approved by the division and obtained, installed and maintained at  
15 the person's expense. Prior to issuing such restricted license, the division  
16 shall receive proof of the installation of such device.~~

17 ~~[(c) When a person has completed the one-year suspension pur-  
18 suant to subsection (b)(2) of K.S.A. 8-1014, and amendments  
19 thereto, the division shall restrict the person's driving privileges for  
20 one year to driving only a motor vehicle equipped with an ignition  
21 interlock device, approved by the division and maintained at the  
22 person's expense. Proof of the installation of such device, for the full  
23 year of the restricted period, shall be provided to the division before the  
24 person's driving privileges are fully reinstated.~~

25 ~~[(d) Upon expiration of the period of time for which restrictions  
26 are imposed pursuant to this section, the licensee may apply to the  
27 division for the return of any license previously surrendered by the  
28 licensee. If the license has expired, the person may apply to the  
29 division for a new license, which shall be issued by the division upon  
30 payment of the proper fee and satisfaction of the other conditions  
31 established by law, unless the person's driving privileges have been  
32 suspended or revoked prior to expiration.]~~

Renumber remaining sections accordingly

33 Section 1. [Sec. 3] On and after July 1, 2011, K.S.A. 2009 Supp. 8-  
34 1567 is hereby amended to read as follows: 8-1567. (a) No person shall  
35 operate or attempt to operate any vehicle within this state while:

36 (1) The alcohol concentration in the person's blood or breath as  
37 shown by any competent evidence, including other competent evidence,  
38 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-  
39 ments thereto, is .08 or more;

40 (2) the alcohol concentration in the person's blood or breath, as meas-  
41 ured within two hours of the time of operating or attempting to operate  
42 a vehicle, is .08 or more;

43 (3) under the influence of alcohol to a degree that renders the person

13-5

1 intoxication programs fund and 50% to the department of corrections  
2 alcohol and drug abuse treatment fund, which is hereby created in the  
3 state treasury.

4 (x) Upon every conviction of a violation of this section, the court shall  
5 order such person to submit to a pre-sentence alcohol and drug abuse  
6 evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-  
7 sentence evaluation shall be made available, and shall be considered by  
8 the sentencing court.

9 Sec. ~~2~~ [4.] K.S.A. 8-1567, as amended by section 6 of chapter 107  
10 of the 2009 Session Laws of Kansas, is [and K.S.A. 2009 Supp. 8-1014  
11 and 8-1015 are] hereby repealed.

12 Sec. ~~3~~ [5.] On and after July 1, 2011, K.S.A. 2009 Supp. 8-1567 is  
13 hereby repealed.

14 Sec. 4 [6.] This act shall take effect and be in force from and after  
15 its publication in the Kansas register.