

House Bill No. 2174 - Homestead exemption relating to house trailers. Following review of the amendments previously made by the committee, and further committee discussion, Senator Gaines moved to report the bill favorably as amended; Senator Parrish seconded the motion, and the motion carried.

House Bill No. 2365 - Public defenders; appointment and term; assistants, budget and expenses. Following committee discussion, Senator Simpson moved to report the bill favorably; Senator Hess seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved
by the committee on 4-25-79.

3-23-79

GUESTS

SENATE JUDICIARY COMMITTEE

| NAME | ADDRESS | ORGANIZATION |
|-----------------|----------------------------|-----------------------------|
| Vienna Thompson | 319 N. 12th, Fredonia, Ks | |
| W.H. Woodman | 200 E. 7 th St. | SNSO |
| Edward C. Smith | 200 E 7 th | Shannon Sheriffs O. |
| Richard Walker | 535 Ks Ave - Topeka | Ks. Adult Auth. |
| J. Ford | " " | " " |
| Kent R. Lyle | 1206 SW Tenth | Sons of American Revolution |



Kansas Adult Authority

Fourth Floor
535 Kansas Avenue
Topeka, Kansas 66603
913 296-3469

March 23, 1979

Testimony for Presentation to the Senate Judiciary Committee

RE: House Bill 2607

The Kansas Adult Authority supports House Bill 2607.

The primary objective of this bill is to clarify and insure that inmates sentenced to imprisonment for certain crimes, such as multiple terms or under the mandatory firearm act, are not required to serve more time prior to becoming eligible for a parole hearing than is required for the highest class of crime.

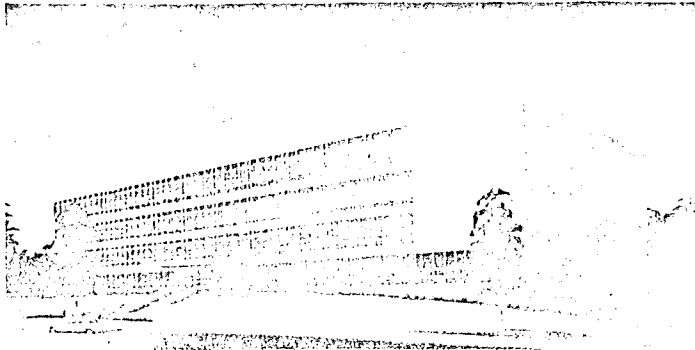
We also recommend that K.S.A. 1978 Supp. 21-4504 be included under section 2 and in line 0053. This would be consistent with the bill insuring that defendants sentenced under the habitual criminal act would also not be required to serve more time than a class A offense prior to becoming eligible for a parole hearing.

Under subsection (G)(3), on page 4, it will permit the Authority to conduct an initial hearing review of a case on an inmate who is sentenced by a Kansas court concurrently with another state's or federal term and is confined out of state. In these cases, the Authority reviews the record and coordinates its activities with the out of state officials. In the last calendar year the Authority granted parole on 23 cases while under an in absentia status. The amendment will prevent any unnecessary out of state trips by the members of the Authority.

After line 0084 on page 3 we recommend the deletion of the word hearing. Consistent with other sections of the law pertaining to parole eligibility, and the Authority regulations, an inmate with a fixed minimum term is scheduled for parole hearing approximately one month prior to the earliest authorized parole eligible release date. Under existing law, an inmate who is sentenced to a minimum term under the mandatory firearm act, must serve to the full minimum term prior to permitting a parole appearance before the Adult Authority.

SHAWNEE COUNTY

SHERIFF'S DEPT.



F. T. "JIM" CHAFFEE
Sheriff
(Home Phone) 235-8456
295-4047

MAJOR ED SMITH
Undersheriff
(Home Phone) 235-9963
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March 19, 1979

JUSTIFICATION FOR SUBSTITUTE HOUSE BILL 2249

The need for this bill came to our attention almost four (4) years ago when we received the attached memorandum from our Legal Advisor. From his opinion, it became apparent to us that K.S.A. 21-3512 suffered from a gross ambiguity. For years, officers of the law had arrested prostitutes for agreeing to commit oral copulation for hire. Yet under a strict interpretation of the present prostitution statute, this is not illegal!

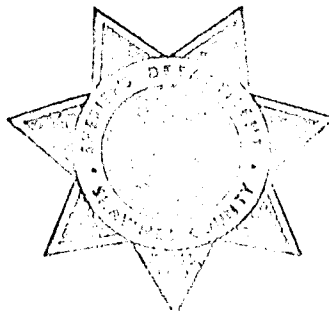
We asked Mr. Zima to prepare this bill in order to clearly state what we feel was the Legislature's intent to begin with, that being the regulation of sex for hire by the criminal justice system.

The House has passed this bill and we urge the Senate to do the same. It is time to eliminate the hypocrisy in our present law by prohibiting the prostitute's number one service. This bill should do just that.

Edward C. Smith
Edward C. Smith, Undersheriff
Shawnee County, Kansas

F. T. Jim Chaffee
F. T. "Jim" Chaffee, Sheriff
Shawnee County, Kansas

SHAWNEE COUNTY



SHERIFF'S OFFICE

F. T. "JIM" CHAFFEE
Sheriff

MAJOR GENE ANDREWS
Undersheriff

200 East Seventh

Topeka, Kansas 66603

Phone 233-1321

DATE: December 4, 1975
TO: Sheriff Chaffee
FROM: Joseph W. Zima
COPY TO: Undersheriff Andrews and Lt. Good
RE: Massage Parlours

With the advent of Shawnee County's third massage parlour it is my understanding that you have received complaints from some citizens of Shawnee County and specifically, from the manager of one of the massage parlours. I assume that the citizen complaints are based upon what the public's general understanding is of what goes on at a massage parlour. However, I understand that the manager of the Town and Country Massage Parlour has advised you of his operation and compared it to the operation of the A-1 Massage Parlour in an effort to determine whether or not A-1's activities are unlawful.

As I understand it, the Country Club Massage offers various massages for various prices all of which culminate in the masturbation of the patron to ejaculation by the masseuse. The Country Club Massage Parlour advises that their masseuses are nude only from the waist up and do not perform fellatio upon the patron. The Country Club Massage Parlour manager's complaint is basically that the A-1 Massage Parlour is offering a "better product" in that their masseuses are totally nude and, besides masturbation, will perform fellatio as part of the price of the massage.

The question you have posed is whether or not "topless" masseuses are legal; you have also asked whether or not "topless" and "bottomless" masseuses are legal; and finally, you have asked whether or not oral sex, for hire, is legal. In order to discuss this question fully I should here point out the four statutes with which we are concerned.

K.S.A. 21-3501 provides three definitions for purposes of clarification of terms used throughout the sex offense crimes enumerated in the Kansas Criminal Code. It states:

"The following definitions apply in this article unless a different meaning is plainly required:

- (1) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ;
- (2) "Unlawful sexual act" means any rape, indecent liberties with a child, sodomy, aggravated sodomy, or lewd and lascivious behavior, as defined in this article.
- (3) "Woman" means any female human being."

Prostitution is defined by K.S.A. 21-3512 as follows:

"Prostitution is performing an act of sexual intercourse for hire, or offering or agreeing to perform an act of sexual intercourse or any unlawful sexual act for hire.

Prostitution is a class B misdemeanor."

Lewd and lascivious behavior is defined in K.S.A. 21-3508 as follows:

"(1) Lewd and lascivious behavior is:

(a) The commission of an act of sexual intercourse or sodomy with any person or animal with knowledge or reasonable anticipation that the participants are being viewed by others; or

(b) The exposure of a sex organ in the presence of a person who is not the spouse of the offender or who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(2) Lewd and lascivious behavior is a class B misdemeanor."

Finally, the crime of sodomy is defined by K.S.A. 21-3505 as follows:

"Sodomy is oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal. Any penetration, however slight, is sufficient to complete the crime of sodomy.

Sodomy is a class B misdemeanor."

It has been proposed that the exposure of the breasts of a masseuse during the massage might constitute a violation of K.S.A. 21-3508(b), Lewd and Lascivious Behavior. However, you will notice that the definition requires the exposure of a sex organ to constitute a violation. Breasts are not, in my opinion, considered legally to be sex organs, and therefore, this statute would not apply in that situation.

Where the masseuses were totally nude, their sex organs would be "exposed" and in both the above and this situation, the sex organs of the patrons would be "exposed" also. However, to constitute violation of this statute the exposure of either the patron's or the masseuse's sex organs, or both, would have to be without the consent of one or the other. In all cases I am sure that neither party is married to one another but the problem is that both the masseuse and the patron have consented to the act, which provides them with a defense to a charge of lewd and lascivious behavior (K.S.A. 21-3508).

In those cases where oral copulation is performed between one or the other or both the masseuse and patron the crime of sodomy, in my opinion, would not apply for the same reason. As long as the parties are consenting adult members of the opposite sex, they have a defense to the crime (K.S.A. 21-3505).

Since the basis for consent in all of these instances is the fact that the patron has paid for the masseuse's services, the question then becomes whether or not any of these acts constitute the crime of prostitution (K.S.A. 21-3512). In order to obtain a conviction for the crime of prostitution, one must prove the performance of an act of sexual intercourse, which is defined by K.S.A. 21-3501 as any penetration of the female sex organ by the male sex organ, for hire. A conviction may also be obtained where it is proven that a person has offered or agreed to perform an act of sexual intercourse, as defined above or any unlawful sexual act for hire. Included in the definition of unlawful sexual act is the crime of sodomy. It would appear that a masseuse would have to agree to perform an unlawful sexual act (e.g. sodomy or lewd and lascivious behavior) for money in order to be convicted of prostitution. However, it appears to me that as long as oral copulation is performed between consenting adult members of the opposite sex (the masseuse and patron), you have no crime of sodomy and, therefore, would have no crime of prostitution.

The choice of words "unlawful sexual acts" in K.S.A. 21-3512 seems to be unfortunate because it requires the performance of conduct which would amount to a crime itself, for hire, in order to constitute the crime of prostitution. If the crime of sodomy has been committed then the appropriate charge would be sodomy, not prostitution. Most of the sex offenses in the Criminal Code anticipate a non-consenting victim. Thus, the consenting adult exception is part of both Sodomy and Lewd and Lascivious Behavior. It seems ridiculous to think that someone would hire another person to perform a crime of violence upon them for money, which appears to be the requirement for conviction of prostitution in any instance other than ordinary sexual intercourse, as defined by the statute, for hire. I think perhaps the legislature intended to mean that the crime of prostitution has been committed if a person agrees to do those acts set out in the Sodomy and Lewd and Lascivious Behavior statutes (e.g. masturbation, oral copulation and anal copulation generally) without regard to whether or not the conduct was sufficient to amount to a violation of that specific crime. K.S.A. 21-3512 should specifically call out those sexual acts other than sexual intercourse which would constitute the crime of prostitution if they were agreed to be performed for hire.

The entire discussion above presumes that these various massage parlour businesses are not allowing their masseuses to perform straightforward, "ordinary" sexual intercourse with the patrons as defined in K.S.A. 21-3501(1). If we were to uncover sufficient proof that the masseuses are doing this or agreeing to do this, then you would have a case of prostitution.

It would be interesting to note here also that, if either the masseuse, the patron or both are married persons, the crime of adultery (K.S.A. 21-3507) would not be committed during the course of the above described activities unless they performed the act of sexual intercourse as defined in K.S.A. 21-3501(1).

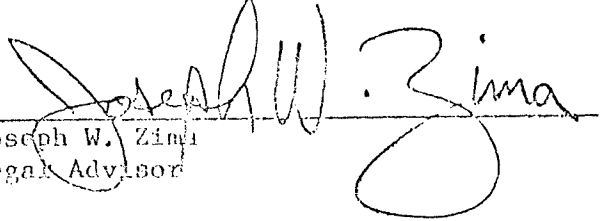
It appears to me that the sex offense section of the Criminal Code is in need of some amendment to cover the type of conduct which has come to be associated with massage parlours. I feel that this could be accomplished by amending K.S.A. 21-3501 by including a fourth definition of a "lawful sexual act" which could generally be defined as masturbation, coitus inter manus, axillism, oral copulation or anal copulation between man and wife or between consenting adult members of the opposite

sex. K.S.A. 21-3512 should then be amended by striking the term "unlawful sexual act" and inserting the following:

"Prostitution is performing an act of sexual intercourse for hire, or offering or agreeing to perform an act of sexual intercourse or any otherwise lawful sexual act for hire."

I would strongly suggest that before this department commences any investigations into the activities of the two, and soon to be three, local massage parlours that we confer with the District Attorney to obtain his viewpoint on just what acts, as we have discussed, would constitute a crime. If he is in basic agreement with what I have set out herein we may try to obtain an opinion from the Attorney General as to his thoughts on this matter. However, I have spoken briefly with several of his assistants and it would appear that, upon first impression and without detailed legal research, they are in basic agreement with what I have said in this memorandum.

If you have any other questions about this matter, please let me know.


Joseph W. Zima
Legal Advisor

vjm

What is a Massage Parlor -----

History of Massage Parlors in Sedgwick County.

History of Massage Parlors in Sedgwick County.

Started giving massages \$15.00, included masturbation. Progressively did more, topless, bottomless, oral, anal, able to have oral intercourse with a girl. Two girls do anything to each other. Prices ran upwards to \$100.00. Competition got keen so clubs did more to get customers. Eventually, prostitution entered the clubs. In a one year period, 1975 over 20 arrests and 18 convictions were made for prostitution. Because of a shortage of manpower, not more time devoted (basically one man).

We documented cases where owners were sponsoring sexual intercourse. They checked you out and if okay, got sex. Got involved with juvenile girls working in clubs; one went to prison, and one is now a missing person. Have reason to believe that she was murdered. She told us of how prostitution dates were arranged by managers.

Blackmail pictures showing men in compromising positions, inference that money would eliminate pictures.

Arson had over 6 fires in some clubs in county.

One club converted to 'rapp' parlor - man murdered.

Police time, effort, taking calls of 'rip offs', girls taking money from wallets, drunks, assaults, robbery, rapes. Had one case of a girl beaten, was critical. Had mass rape case. Police must investigate crimes reported, must spend time investigating club otherwise, they go wide open. Takes away from effective law enforcement.

DRUGS - over 5 arrests made in clubs for drug violations, known Heroin users, dealt out of club.

Persons smoking, pill popping.

Liquor violations, serving liquor without a license in clubs.

Competition forced the clubs to do more and more.

Profitable business - \$60,000 for one year, IRS figures run higher. Profits encourage organized crime. KCK showed organized crime involved in Massage Parlor. Historically, organized crime gets into sex for sale business.

Rapp parlors - Escort services give massage, and have sex. Organized Crime Strike Force shows ownership is by organized crime. There was a murder in K.C., Missouri last week.

One experience - Liz came to K.C. from A , ran Parlor used as front for prostitution; girls hooked on Heroin by the *Maidan, and lived in slavery.*