Approved 4-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative John M. Solbach
Chairperson at

3:30 ~~a~~m./p.m. on February 20, 1991 in room 313-S of the Capitol.

All members were present except:

Representative Douville who was excused.

Committee staff present:
Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Representative Donna Whiteman
Chuck Simmons, Department of Corrections
Owen Sully, Sheriff, Wyandotte County
Mark A. Matese, Douglas County Community Corrections (written testimony only)
Matt Hessee, Attorney for the St. Joseph Medical Center, Wichita, Ks.
William E. Kennedy, III, Riley County Attorney

The Chairman called the meeting to order and asked for bill requests.

Representative Donna Whiteman presented a request for introduction of legislation on behalf of the Legislative Coordinating Council, for Senator Bud Burke and the Speaker of the House. Representative Whiteman said that the request is the same proposal contained in SB 764 in the 1990 Legislative Session; that the proposal is in regard to interference of legislative process and would enhance or tighten security around the Capitol. (See Attachment 0-A.)

Representative Smith made a motion to introduce the proposed legislation. Representative Lawrence seconded the motion. The motion carried.

Chuck Simmons, Department of Corrections, presented two requests for bills as follow:

(1) A bill amending K.S.A. 21-3810, regarding aggravated escape from custody and amending K.S.A. 21-3811 aided escape from a Class E to a Class D felony; also amending K.S.A. 21-3826, changing traffic in contraband in a penal institution from a Class E to a Class D felony. (See Attachment 0-B.1.)

(2) A bill amending K.S.A. 75-5217, relating to arrest of parole violators. (See Attachment 0-B.2.)

Representative Smith made a motion to introduce the proposed legislation. Representative Macy seconded the motion. The motion carried.

Matt Hessee, Attorney for the St. Joseph Medical Center at Wichita, Kansas, requested legislation amending K.S.A. 65-406, regarding hospital liens. (See Attachment 0-C.)

Representative Lawrence made a motion to introduce the proposed legislation. Representative Smith seconded the motion. The motion carried.

The Chairman called for hearing on HB 2176, battery against probation or parole officer or jailer.

Chuck Simmons, representing the Department of Corrections, appeared in support of HB 2176. (See Attachment # 1).

A committee member asked if there are statistics available to indicate that raising the Class A misdemeanor to a Class E felony will have a deterrent effect. Mr. Simmons said no statistics are available because of the small number of incidents regarding parole officers.

A committee member asked why should the offense now be a Class E felony since it has been a misdemeanor throughout the state's history. Mr. Simmons said the safety and support for the people involved are concerns. The committee member asked Mr. Simmons to provide data proving (1) There is a problem and (2) HB 2176 will solve it. Mr. Simmons said he would provide the committee information on the number of parole officers who have been victimized.

A committee member asked if DOC would be opposed to including YCAT and other similar facilities. Mr. Simmons said that would present no problem.

A committee member asked why there is a need for the E felony in this case when it is an "A" for a uniformed officer and how would aggravated battery be addressed. Mr. Simmons said the close proximity on a day to day basis of the parole officers etc. warrants this; that a law-enforcement officer on the street doesn't encounter the same people every day; however DOC would have no problem with elevating the level for the law-enforcement officer, too; that a concern is that prosecutors often times do not prosecute misdemeanors when they will prosecute felonies which adds to the deterring effect.

A committee member asked if DOC would keep a prisoner convicted of the misdemeanor or if he would serve a term for that in a county jail. Mr. Simmons said the term would be served in the county jail; however, conviction of a felony would add on as an aggregate sentence and the time would be spent in the corrections system. Mr. Simmons said that for aggregated battery, a B felony, no increase has been proposed.

A committee member asked if the Sentencing Commission recommendations go through and there is determinate sentencing, will there be as many parolees. Mr. Simmons said he believes everyone will be placed on a period of parole supervision after they are released for a period of from 12 to 24 months.

A committee member asked if there is cognizance among inmates about ratings of misdemeanors and felonies to have a deterring effect.

The Chairman advised Mr. Simmons that all bills, creating a new crime or increasing penalties where felonies are involved, are being sent to the Sentencing Commission with request for recommendation as to where it would fit on the grid and for a fiscal note. This bill will be sent there before action is taken; that the DOC might want to supply statistics and information to Ben Coates to expedite the process.

Owen Sully, Sheriff, Wyandotte County, appeared in support of HB 2176. (See Attachment # 2).

The Chairman said he will send Mr. Sully's proposed amendment to Mr. Coates and invited Mr. Sully to provide any information and statistics he might have available to Mr. Coates, also.

The Chairman noted a written request from Mark Matese, Douglas Community Corrections, that Community Corrections Services Officers be included into HB 2176 will be made a part of the committee minutes. (Attachment # 3).

There being no further conferees, the hearing was closed on HB 2176.

The Chairman called for hearing on HB 2184, evidence of previous sexual conduct in prosecutions for sex offenses.

Representative Hochhauser, Co-sponsor of HB 2184 appeared in support of the bill. Representative Hochhauser said Mr. Bill Kennedy, Riley County Attorney had requested the bill and said the bill would give more protection to the victim of an alleged sexual crime.

A committee member asked if any other area e.g., the open records law should be included. Representative Hochhauser said HB 2184 appears to cover, but this might need to be checked.

Mr. William E. Kennedy, III, Riley County Attorney appeared in support of HB 2184. (See Attachment # 4).

A committee member noted the bill will not prevent a defendant from speaking with the press. Mr. Kennedy said this is true but the defendant's attorney will be prohibited.

A committee member asked if HB 2184 will prevent motions, etc. from being open to the public, and none of the material would be allowed to be disclosed unless the judge felt it was relevant and allowed it to be admitted in open court. Mr. Kennedy affirmed and said he believes the bill would prevent a defense attorney from making certain comments.

The Chairman called for action on HB 2184.

Representative Hochhauser made a motion that HB 2184 be passed. Representative Heinemann seconded the motion.

Representative Carmody made a substitute motion that HB 2184 be amended and offered suggestions of new language on Page 2, Lines 5 and 6. Representative Rock seconded the motion.

A committee member noted concern with the semantics involved in Representative Carmody's proposed change.

Representative Carmody amended his substitute motion to make it a conceptual motion with the consent of his second, to prohibit the defendant, the defendant's counsel and prosecutor from disclosing any matters relating to the motion, affidavits and any supporting or responding documents of the motion. The motion carried.

Representative Hochhauser made a motion that HB 2184 be passed as amended. Representative Heinemann seconded the motion. The motion carried.

The Chairman called the committee's attention to HB 2117, conditions of probation or suspended sentence, and pointed out that three bills covering the same issue exist.

Representative Hochhauser said that she has consulted with all parties involved and they have agreed that it will be acceptable for the House Judiciary Committee to work one of the bills into passable form and then introduce it as a Committee bill with the direction that it go directly to the Floor.

A committee member suggested working HB 2117 and then address how the bill will be handled.

Representative Heinemann made a motion to limit the time limitation for confinement set out in SB 183 to 120 days. Representative Garner seconded the motion.

Committee discussion followed.

Representative Heinemann amended his motion to state 60 days with the consent of his second.

Representative Rock made a substitute motion to limit the time for confinement set out in HB 2117 to 90 days.

The substitute motion died for lack of a second.

The Chairman called for a vote on the original amended motion.

The motion carried.

A committee member asked how a person on probation can be put in jail.

A committee member suggested restricting the confinement provision to one time only, as related to probation.

A committee member suggested waiting on further amendments to SB 183 until it is received by the House Judiciary Committee; then at that time, have the bill presented to the committee with a balloon for a final vote.

It was the concensus of the committee to wait for further action on HB 2117. Action on HB 2117 was suspended.

The Chairman announced that the committee will meet on Thursday, February 21, 1991, at the usual place and time.

The meeting adjourned at 5:00 P.M.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 2/20/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Owen Sully	710 N 7 KCK	Wyandotte County Sheriff
MICHAEL FREEMAN	710 N. 7th K.C.K.	WY. COUNTY SHERIFF
James Elrod	1324 N. 34th Kcks.	Wy County Sheriff
Sharon Huske	2304 W. 26 Dr Topeka Ks	Washburn University
Brenda Lewis	3435 N.W. Country La. Topeka	Washburn Univ.
JIM CLARK	827 S. TOPEKA TOPEKA	KCDAA
JEFF DEGRAFFENREID	TOPEKA	KPOA
Matthew C Hesse	200 W. Douglas # 900	Wichita Hospitals - KNA
Mary Ellen Conlee	Wichita	Wichita Hospitals

_____ BILL NO. ___

By

AN ACT concerning the Kansas criminal code; defining and classifying the crimes of interference with the legislative process and possession of a loaded firearm within the state capitol building.

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

Section 1. (1) Interference with the legislative process is knowingly and without authorization of law:

(a) Preventing by force or fraud the state legislature, either house thereof, any committee of the legislature or any members of the legislature, from meeting or organizing;

(b) entering or remaining within or upon any part of the chamber of either house of the legislature unless authorized, pursuant to rules adopted or permission granted by either such house, to enter or remain within or upon a part of the chamber of either such house;

(c) refusing to leave any part of the chamber, galleries or offices of the state legislature or either house thereof, or building in which such chamber, galleries or any such office is located, or within or upon any office or residence of any member of such legislature, or within or upon any room or building in which a legislative hearing or meeting is being conducted upon a lawful order of a law enforcement officer or security officer to disperse, leave or move to an area designated by such officer; or

(d) picketing inside any building in which the chamber, galleries or offices of the state legislature or either house thereof is located, or in which the office or residence of any member of such legislature is located or in which a legislative hearing or meeting is being conducted.

(2) Interference with the legislative process is a class A

Donna Whiteman
HJUD
Attachment # 0-A
2-20-91

misdemeanor.

(3) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 2. (1) Possession of a loaded firearm within the state capitol building is possession of a loaded firearm by a person other than a law enforcement officer as defined under K.S.A. 1990 Supp. 74-5602 and amendments thereto, a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state, any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer or a member of the military of this state or the United States engaged in the performance of duties who brings a loaded firearm into, or possesses a loaded firearm within, the state capitol building, any state legislative office, any office of the governor or office of other state government elected official or any hearing room in which any committee of the state legislature or either house thereof is conducting a hearing.

(2) Possession of a loaded firearm within the state capitol building is a class A misdemeanor.

(3) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. ____

By

AN ACT concerning crimes and punishment; relating to definition and classification of certain crimes; amending K.S.A. 21-3810, 21-3811 and 21-3826 and repealing the existing sections.

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

Section 1. K.S.A. 21-3810 is hereby amended to read as follows: 21-3810. Aggravated escape from custody is:

(a) Escaping while held in lawful custody upon a charge or conviction of felony; or

(b) Escaping while held in custody on a charge or conviction of any crime when such escape is effected or facilitated by the use of violence or the threat of violence against any person.

Aggravated escape from custody is a class ~~E~~ D felony.

Sec. 2. K.S.A. 21-3811 is hereby amended to read as follows: 21-3811. Aiding escape is:

(a) Assisting another who is in lawful custody on a charge or conviction of crime to escape from such custody; or

(b) Supplying to another who is in lawful custody on a charge or conviction of crime, any object or thing adapted or designed for use in making an escape, with intent that it shall be so used; or

(c) Introducing into an institution in which a person is confined on a charge or conviction of crime any object or thing adapted or designed for use in making any escape, with intent that it shall be so used.

Aiding escape is a class ~~E~~ D felony.

Sec. 3. K.S.A. 21-3826 is hereby amended to read as follows: 21-3826. Traffic in contraband in a penal institution is introducing or attempting to introduce into or upon the grounds

Chuck Simmons
HJUD
Attachment # 0-B.1
2-20-91

of any institution under the supervision and control of the ~~director of penal institutions~~ secretary of corrections or any jail, or taking, sending, possessing, attempting to take or attempting to send ~~therefrom or any unauthorized possession while in aforesaid institution or distributing within any aforesaid institution,~~ from such institution, or distributing within, any item whatsoever, including any narcotic, synthetic narcotic, drug, stimulant, sleeping pill, barbiturate, nasal inhaler, alcoholic liquor, intoxicating beverage, firearm, ammunition, gun powder, weapon, hypodermic needle, hypodermic syringe, currency, coin, communication, or writing without the consent or authorization of the secretary of corrections, warden, superintendent or jailer.

Traffic in contraband in a penal institution is a class ~~E~~ D felony.

Sec. 4. K.S.A. 21-3810, 21-3811 and 21-3826 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. ____

By xx

AN ACT concerning corrections; relating to arrest of parole violators; amending K.S.A. 75-5217 and repealing the existing section.

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

Section 1. K.S.A. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole or conditional release, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (e). Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written arrest and detain order setting forth that the released inmate has, in the judgment of the parole officer, violated the conditions of the inmate's release. The written arrest and detain order delivered with the released inmate by the arresting officer to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

(b) Upon such arrest and detention, the parole officer shall

Chuck Simmons
HJUD
Attachment # 0-B.2
2-20-91

notify the secretary of corrections, or the secretary's designee, within five days and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided, and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary shall cause the released inmate to be brought before the Kansas parole board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt. Relevant written statements made under oath shall be admitted and considered by the Kansas parole board, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the Kansas parole board, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit.

(c) In the event the released inmate reaches conditional release date as provided by K.S.A. 22-3718 and amendments thereto after a finding of probable cause, pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release, but prior to a hearing before the Kansas parole board, the secretary of corrections shall be authorized to detain the inmate until the hearing by the Kansas parole board. The secretary shall then enforce the order issued by the Kansas parole board.

(d) ~~In the event a released inmate cannot be located in order to be served with a warrant issued by the secretary of corrections for violation of any of the conditions of release, the time from the issuance of the warrant for violation of the conditions to the date of the released inmate's arrest shall not be counted as time served under the sentence. In the event the released inmate is arrested in another state for reasons other than the parole violation warrant issued by the secretary of corrections, the released inmate's sentence shall not be credited~~

0-B-2-2

~~with the period of time from the date of the issuance of the warrant to the date the released inmate is first available to be returned to the state of Kansas.~~ If the secretary of corrections issues a warrant for the arrest of a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas, either pursuant to the warrant issued by the secretary of corrections or for any other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest.

If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date of the released inmate's arrest. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the

issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision.

The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such released inmate be employed including but not limited to notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of the released inmate.

(e) Law enforcement officers shall execute warrants issued by the secretary of corrections pursuant to subsection (a) or (d), and shall deliver the inmate named therein to the jail used by the county where the inmate is arrested unless some other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

Sec. 2. K.S.A. 75-5217 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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

New Section 1. Whenever any person shall employ a physician or hospital to perform professional service or services of any nature, in the treatment of or in connection with an injury, and such injured person shall claim compensation or damages from the party causing the injury, such physician or hospital shall have a lien upon any sum awarded the injured person in judgment or obtained by settlement or compromise on the amount due for the reasonable value of services necessarily performed. In order to prosecute such lien, it shall be necessary for such physician or hospital to serve a written notice upon the patient and upon the person, insurance company, or corporation from whom damages are claimed that such physician or hospital claims a lien for such services and stating therein the amount due and the nature of such services, except that whenever an action is pending in court for the recovery of such damages, it shall be sufficient to file the notice of such lien in the pending action.

New Sec. 2. Any person, firm or corporation, including an insurance carrier, making any payment to such patient or to such patient's attorneys, heirs or legal representatives as compensation for the injury sustained, after the mailing of such notice without paying to such physician or hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment, compromise or settlement agreement, for a period of two years from the date of payment to such patient or such patient's heirs, attorneys or legal representatives, shall remain liable to such physician or hospital for the amount which such physician or hospital was entitled to receive. Any physician or hospital, such association, corporation or other institution maintaining such hospital, within such period, may enforce its lien by a suit at law against such person, firm or corporation making any such payment.

HJUD
Bill Request by Matt Hessee
2/20/91
Attachment O-C

New Sec. 3. As used in this act, "physician" means a person licensed to practice medicine and surgery in this state.

New Sec. 4. This act shall apply only to services rendered after July 1, 1991.

Sec. 5. K.S.A. 65-406 is hereby amended to read as follows: 65-406. Every hospital in the state of Kansas, which shall furnish emergency, medical or other service to any patient injured by reason of an accident not covered by the workmen's compensation act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien not to exceed ~~five thousand dollars ($5,000)~~ *$5,000* upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by ~~his~~ *such patient's* heirs, personal representatives or next of kin in the case of ~~his~~ *such patient's* death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient in such hospital up to the date of payment of such damages. ~~*Provided, however,* That~~. This lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or ~~his~~ *such patient's* heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, ~~his~~ *such patient's* heirs or personal representatives. ~~*Provided further,* That~~. The lien herein set forth shall not be applied or considered valid against anyone coming under the ~~workmen's~~ *workers'* compensation act in this state. *The lien provided for in this section shall only apply to services rendered before July 1, 1991.*

Sec. 6. K.S.A. 65-406 is hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

HJUD
2-20-91
attachment 0-02

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

To: House Judiciary Committee

From: Steven J. Davies, Ph.D.
Secretary of Corrections

Re: House Bill No. 2176

Date: February 20, 1991

The Department of Corrections supports HB 2176.

Last session the Department testified in support of legislation which made it a class E felony to commit battery against a correctional officer or employee engaged in the performance of their duties. The legislation was intended to create a safer working environment for these individuals by deterring acts of violence against them.

The proposal in HB 2176 would extend the class E felony offense to include a battery against a parole officer, court services officer, and jailer of a city, county or regional jail. These individuals work with offenders who can be difficult to manage and may resort to acts of violence. Reasonable action to create a safer working environment for these employees should be taken by the state. Making it a felony offense to commit battery against these employees may deter some offenders from taking that action. If so, then the intent of the legislation will have been achieved.

Parole officers are employees of the Department of Corrections. They perform a valuable and necessary duty in supervising parolees. In doing so they may have to confront the parolee with the possibility that the parolee has violated the conditions of his or her release and must be returned to incarceration. Such a task can create an environment as dangerous as any situation in a correctional institution. These employees should receive the same level of protection as those who work in the institution.

HJUD
2-20-91
Attachment #1

WYANDOTTE COUNTY SHERIFF'S OFFICE
KANSAS CITY, KANSAS

February 20,1991

State Representatives
Topeka, Kansas

Ladies and Gentlemen,

I would like to bring to your attention what I believe is an omission on the part of the legislature as to the definition of a "**law enforcement officer**" as stated in K.S.A.21-3110 (10), as it applies to K.S.A. 21-3409 (assault on a law enforcement officer), K.S.A. 21-3411 (aggravated assault on a law enforcement officer), K.S.A. 21-3413 (battery on a law enforcement officer), and K.S.A. 21-3415 (aggravated battery on a law enforcement officer).

On September 28,1990, two sworn deputies of the Wyandotte County Sheriff's Office were attacked with broom stick handles by inmates of the Wyandotte County Jail. The subsequent investigation of these crimes revealed that the suspects were gang members and had planned on attacking any deputy who next entered this particular area as retaliation for the disciplinary removal of a fellow gang member.

The two inmates were found guilty of misdemeanors in the attack on the deputies. Upon their return to the detention facility these inmates boasted that they were found guilty of "only a misdemeanor" and declared the verdict a success for themselves and their fellow gang members. It is likely that they will remain in the county jail for several months awaiting trial and sentencing on their original charges before they are transferred to the Secretary of Corrections.

If we are going to expect our public employees to work in detention areas and, on a daily basis, go face to face with those who have harmed them, then I believe we must show these people that we support them.

I support, and ask you to support, any provision of **House Bill 2176** which amends the aforementioned statutes to include detention personnel, of whatever jurisdiction, in the definition of "law enforcement officer," and to make it a felony to commit battery on such detention personnel.

We would ask that **K.S.A. 21-3110 (10)** be amended to include the following sentence:

> **For purposes of this statute, "law enforcement officer" shall also include any person employed as or operating as an employee and/or officer, sworn or otherwise in any city, county, or regional correctional facility.**

HJUD
2-20-91
Attachment #2

128. Court's affirmative duty to instruct on lesser included offenses when supported by evidence examined. State v. Colbert, 244 K. 422, 427, 769 P.2d 1168 (1989).

129. Definition of lesser included crime noted; child abuse (21-3609) and aggravated battery (21-3414) as separate crimes determined. State v. Young, 14 K.A.2d 21, 26, 29, 784 P.2d 366 (1989).

130. Circumstances finding aggravated battery (21-3414) and first degree murder (21-3401) as multiplicitous examined. State v. Smith, 245 K. 381, 390, 781 P.2d 666 (1989).

131. Evidence sufficient to instruct on lesser included count of attempted (21-3301) rape (21-3501, 21-3502) examined. State v. Hammon, 245 K. 450, 453, 781 P.2d 1063 (1989).

132. Instruction on lesser included offense of involuntary manslaughter (21-3404) not required where defendant willingly entered into mutual combat. State v. Meyers, 245 K. 471, 474, 781 P.2d 700 (1989).

133. Involuntary manslaughter as not lesser included crime of aiding and abetting second degree murder noted; two-pronged test hereunder examined. State v. Burgess, 245 K. 481, 485, 781 P.2d 694 (1989).

134. Aggravated sexual battery (21-3518) not included crime of aggravated criminal sodomy (21-3506) or indecent liberties with child (21-3503). State v. Damewood, 245 K. 676, 686, 783 P.2d 1249 (1989).

135. Conviction of both underlying felony and felony murder as not double jeopardy examined. State v. Gonzales, 245 K. 691, 706, 783 P.2d 1239 (1989).

136. Aggravated sexual battery (21-3518) not lesser included crime of rape (21-3502); holdings to the contrary disapproved. State v. Gibson, 246 K. 298, 787 P.2d 1176 (1990).

137. Meaning of 38-1652 regarding hearings for juvenile offenders examined. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 494, _____ P.2d _____ (1990).

21-3108.

Law Review and Bar Journal References:

"Solorio v. United States: The Supreme Court Reverses Direction on Jurisdiction Over Military Offenders in Civilian Communities," Major James Pottorff, Jr., 57 J.K.B.A. No. 8, 29, 32 (1988).

"Pretrial Proceedings," K.L.R., Criminal Procedure Edition, 9, 14, 19 (1988).

CASE ANNOTATIONS

43. Cited; inherent power of court to declare mistrial when justice requires and manifest necessity exists examined. State v. Burnett, 13 K.A.2d 60, 64, 762 P.2d 192 (1988).

44. Prosecution for theft (21-3701) barred in Kansas where defendant previously convicted elsewhere of receiving same stolen property. State v. Henwood, 243 K. 326, 332, 756 P.2d 1087 (1988).

45. Second trial barred where no manifest necessity for mistrial exists. In re Habeas Corpus Petition of Mason, 245 K. 111, 114, 115, 775 P.2d 179 (1989).

46. Manifest necessity in declaring mistrial second trial as not constituting double jeopardy examined. In re Habeas Corpus Petition of Hoang, 245 K. 560, 567, 781 P.2d 731 (1989).

47. Bar of further prosecution where defendant charged with wrong crime examined. State v. Moppin, 245 K. 639, 645, 783 P.2d 878 (1989).

48. Reversal of felony murder conviction where child abuse underlying felony does not bar retrial on second-degree murder charge. In re Habeas Corpus Petition of Lucas, 246 K. 486, 489, _____ P.2d _____ (1990).

21-3110. Definitions. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(1) "Act" includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(3) "Conduct" means an act or a series of acts, and the accompanying mental state.

(4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

(6) To "deprive permanently" means to:

(a) Take from the owner the possession, use or benefit of his or her property, without an intent to restore the same; or

(b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(7) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

(8) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

(9) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

(10) "Law enforcement officer" means any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes or any officer of the Kansas department of corrections or for the purposes of K.S.A. 21-3409,

HJUD
2-20-91
attachment
#2-2

21-3411 and 21-3415 and subsection (a)(2) of K.S.A. 21-3413 and amendments thereto, any employee of the Kansas department of corrections.

(11) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(12) "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(13) "Owner" means a person who has any interest in property.

(14) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(15) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

(16) "Property" means anything of value, tangible or intangible, real or personal.

(17) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

(18) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(19) "Public officer" includes the following, whether elected or appointed:

(a) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.

(b) A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.

(c) A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.

(d) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(e) A law enforcement officer.

(f) Any other person exercising the functions of a public officer under color of right.

(20) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

(21) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

(22) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(23) "Stolen property" means property over which control has been obtained by theft.

(24) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

(25) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

History: L. 1969, ch. 180, § 21-3110; L. 1976, ch. 145, § 106; L. 1990, ch. 97, § 1; July 1.

CASE ANNOTATIONS

44. Cited; doctrine of merger examined; convictions of felony murder (21-3401) and child abuse (21-3609) reversed. State v. Lucas, 243 K. 462, 466, 759 P.2d 90 (1988).

45. Cited; venue for theft (21-3701) and conspiracy (21-3302) where requisite acts for commission occurred in separate counties examined. State v. Dickens, 243 K. 574, 577, 757 P.2d 321 (1988).

46. Proof required to establish aggravated kidnapping by deception (21-3421) examined. State v. Damewood, 245 K. 676, 687, 783 P.2d 1249 (1989).

Article 32.—PRINCIPLES OF CRIMINAL LIABILITY

21-3201.

CASE ANNOTATIONS

40. Misrepresentations regarding application for welfare benefits as "willfully false" examined. State v. Jones, 13 K.A. 2d 520, 528, 775 P.2d 183 (1989).

41. Practical distinction between arson (21-3718) and criminal damage to property (21-3720) examined. Zapata v. State, 14 K.A.2d 94, 98, 782 P.2d 1251 (1989).

21-3205. Liability for crimes of another. (1) A person is criminally responsible for a

HJUD
2-20-91
attachment
#2-3

(3) be required, as a condition of any grant of probation, suspension or reduction of sentence, parole or other release, to enter into and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs; and

(4) have driving privileges suspended, or suspended and restricted, as provided by K.S.A. 1989 Supp. 8-1014, and amendments thereto.

(c) As used in this section, "bodily injury" means great bodily harm, disfigurement or dismemberment.

(d) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1988, ch. 47, § 1; L. 1990, ch. 97, § 2; July 1.

21-3407.

Attorney General's Opinions:

Criminal abortion; statute unconstitutional. 89-32.

Effect of *Webster v. Reproductive Health Services*. 89-98.

21-3408.

CASE ANNOTATIONS

21. Failure to allege essential elements of offense in information as voiding conviction thereof noted. Zapata v. State, 14 K.A.2d 94, 96, 782 P.2d 1251 (1989).

21-3410.

CASE ANNOTATIONS

52. Essential elements of offense that must be alleged in information to sustain conviction determined. Zapata v. State, 14 K.A.2d 94, 782 P.2d 1251 (1989).

53. Use of statements made during polygraph exam to impeach, comments on postarrest silence, evaluation of competency, jury instructions examined. State v. Green, 245 K. 398, 399, 781 P.2d 678 (1989).

21-3411.

CASE ANNOTATIONS

24. Failure to allege essential elements of offense in information as voiding conviction thereof noted. Zapata v. State, 14 K.A.2d 94, 97, 782 P.2d 1251 (1989).

21-3412.

CASE ANNOTATIONS

28. Cited; doctrine of merger examined; convictions of felony murder (21-3401) and child abuse (21-3609) reversed. State v. Lucas, 243 K. 462, 470, 759 P.2d 90 (1988).

29. Court's affirmative duty to instruct on lesser included offenses when supported by evidence examined. State v. Colbert, 244 K. 422, 427, 769 P.2d 1168 (1989).

30. When instruction that battery is lesser included offense of aggravated battery (21-3414) unnecessary examined. State v. Young, 14 K.A.2d 21, 27, 784 P.2d 366 (1989).

21-3413. Battery against a law enforcement officer. Battery against a law enforcement officer is a battery, as defined in K.S.A. 21-3412 and amendments thereto:

(a) (1) Committed against a uniformed or properly identified state, county or city law enforcement officer other than a correctional officer or employee as provided in subsection (a)(2), while such officer is engaged in the performance of such officer's duty; or

(2) committed against a correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(b) Battery against a law enforcement officer as provided in subsection (a)(1) is a class A misdemeanor. Battery against a law enforcement officer as provided in subsection (a)(2) is a class E felony.

(c) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections.

(2) "Correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

History: L. 1969, ch. 180, § 21-3413; L. 1990, ch. 97, § 3; July 1.

21-3414.

CASE ANNOTATIONS

91. Cited; doctrine of merger examined; convictions of felony murder (21-3401) and child abuse (21-3609) reversed. State v. Lucas, 243 K. 462, 471, 759 P.2d 90 (1988).

92. Conviction affirmed; amendment of complaint, information or indictment before verdict or finding, admission of incriminating statements examined. State v. Rasch, 243 K. 495, 758 P.2d 214 (1988).

93. Aggravated battery resulting in death cannot serve as collateral felony for felony-murder (21-3401) purposes. State v. Prouse, 244 K. 292, 297, 767 P.2d 1308 (1989).

94. Defendant's attempted impeachment of testimony of prosecution witness; imposition of more severe sentence following second trial; instruction on multiple counts examined. State v. Macomber, 244 K. 396, 769 P.2d 621 (1989).

95. Identification upon return to crime scene, definitions of "dangerous weapon" and "deadly weapon," instruction on simple battery examined. State v. Colbert, 244 K. 422, 769 P.2d 1168 (1989).

96. Rules for admission in evidence of declarations against interest (60-460(j)) restated and applied. State v. Jackson, 244 K. 621, 772 P.2d 747 (1989).

97. Alibi (22-3218) and insanity (22-3219) as only circumstances requiring notice of intended defense examined; voluntary intoxication (21-3208) distinguished. In re Habeas Corpus Petition of Mason, 245 K. 111, 112, 775 P.2d 179 (1989).

98. Failure to instruct on battery (21-3412) examined; child abuse (21-3609) as separate rather than lesser in-

HSUD
2-20-91
attachment
#2-4

Douglas County
COMMUNITY CORRECTIONS
1100 Massachusetts Street, 3rd Floor
Lawrence, Kansas 66044-3095 • 913/842-8414

HB 2176

February 20, 1991

PLEASE DELIVER TO:
Representative John M. Solbach, III
Statehouse
Kansas Legislature FAX 12961153

Dear John:

I would respectfully request that Community Corrections Services Officers (CCSO) be included into HB 2176. This bill relates to "battery against certain parole officers, court services officers, and jailers ...". The CCSO appears to have been an oversight in the initial bill draft.

Your attention in this matter is greatly appreciated.

Be Well,

Mark A. Matese

Mark A. Matese,

MAM:pfc
cc: File

HJUD
2-20-91
Attachment #3

Office of the Riley County Attorney

WILLIAM E. KENNEDY III
Riley County Attorney

Carnegie Building
105 Courthouse Plaza
Manhattan, Kansas 66502
(913) 537-6390

GABRIELLE M. THOMPSON
BARRY R. WILKERSON
BREN ABBOTT
Assistant Riley County Attorneys

GENIECE A. WRIGHT
Legal Specialist

Testimony of William E. Kennedy III
Presented to House Judiciary Committee
February 20, 1991

Reference: Amendment to
K.S.A. 21-3525

The defense in a rape trial is often that the victim's conduct and the victim's past was such that the victim could not possibly be a victim of rape. This defense ignores the reality that the essence of the rape statute is the violation itself; the victim is then raped again in court.

The Rape Shield statute, K.S.A 21-3525, is designed to protect the privacy of a complaining victim of various types of sexual attack. The Act protects both adults and children. The basic design of the statute requires a defendant who would pierce the rape shield to file affidavits and motions supporting the affidavits in order to allow a judge to determine admissibility of defendant's evidence in a public trial. Hearings on the matter are held on the record, but are confidential. The weakness in the current statute is that the motions and affidavits, which may well be more flagrant and lurid in their descriptive terms than any testimony, are not required to be confidential.

The attached article appeared in The Manhattan Mercury the day before a rape trial was to begin. As can be seen, the writer of the article used defense motions to develop information for the newspaper article. The motion was overruled as the evidence did not live up to the proffer. However the damage to the victim's reputation was done.

The defendant can also be injured by a newspaper trial. A defendant who attempts to pierce the rape shield and fails may be dishonest in the eye of the jury if the jury knows that he has tried to pierce the shield and failed.

News speculation can be abated by passage of this bill.

Potential harm of pre-trial publicity to victims and defendants can be abated by passage of this bill.

Passage of this bill follows the original legislative intent of this bill.

HJUD
2-20-91
Attachment # 4

Marital rape trial set for local court

Patti Paxson
Staff Writer

The trial of a Colby man charged with marital rape—one of the first cases of its type in the state's history—will begin Wednesday in Riley County District Court.

Donald Lee Cranston, 31, of Colby, is charged with raping his wife on or about July 1 in Manhattan, according to court documents.

Rape, a class B felony in Kansas, carries a minimum sentence of not less than five years imprisonment, nor more than 15 years imprisonment. The crime carries a maximum sentence of no less than 20 years, but not more than life.

According to Riley County Attorney William Kennedy, a charge of marital rape has only recently been recognized in American courtrooms as a

See No. 4, back page

Marital rape trial

4 Continued from Page A1

legitimate charge. Kansas adopted a marital rape law in 1983.

Court documents state the only element anticipated to be an issue at the trial is whether Cranston's wife gave him consent to engage in sexual intercourse with her on or about July 1.

The couple was married December 1984, and separated in April of this year, according to court documents. As of September, their divorce was pending in Thomas County district court. Custody of the couple's son is a primary issue in the divorce, according to court documents.

Cranston's attorney intends to submit evidence regarding the complaining witness' sexual history, according to court documents. Kansas courts normally do not allow a person's sexual history to be submitted as evidence in a rape trial.

Additionally, the defense intends to submit evidence showing that the complaining witness has filed sexual harassment charges against former employees in the past.

The state intends to submit evidence regarding the complaining witness's testimony that she "is suffering from what is commonly known as battered women syndrome," according to court documents.

Jury selection begins at 9 a.m. in the Riley County Courthouse, with Judge Harlan W. Graham presiding.

HJUD
2-20-91
attachment #4-2