Approved 3/31/92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

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

3:30 ~~x.m.~~/p.m. on March 23, 1992 in room 313-S of the Capitol.

All members were present except:

Representative Douville, Gregory and Rand Rock who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:
State Representative Joan Hamilton
Wendell Betts, Kansas Sentencing Commission
Gordon Risk, ACLU
Kyle Smith, Kansas Bureau of Investigation
Paul Shelby, Judicial Administration
Byron Cook, Kansans for Gay & Lesbian Equity
Dr. Don Miller, Central Congregational Church, Topeka
Jack Lacy, Kansas Wildlife & Parks Department
Chuck Simmons, Department of Corrections
Jim Clark, Kansas Association of County & District Attorneys

The Chairman called the meeting to order.

Hearings were continued on HB 479, enacting Kansas sentencing guidelines act. State Representative Joan Hamilton testified in opposition to SB 479. She presented her restructuring suggestions for sentencing guidelines. (Attachment #1) She would like the bill to be a truth in sentencing bill, giving the inmates motive to change behavior and giving the judge leeway to have the sentences fit the crime. She answered committee members questions.

Wendell Betts, Kansas Sentencing Commission member, testified in favor of SB 479. He said initially he was opposed to the bill, however he now favors the concept of sentencing guidelines. He felt this bill would be a help in the perception that black people get stronger sentences. He felt judges would still have some discretion in sentencing if SB 479 were passed. He said he hoped racial disparity in sentencing would be less if this bill were passed.

Hearings on SB 479 will be continued on March 25, 1992, to allow for the testimony of Gary Stotts and Ben Coates.

Representative Macy presented the subcommittee report on HB 2547, mobile home parks residential landlord and tenant act. (Attachment #2)

Representative Macy moved to adopt the balloon amendments to HB 2547. (Attachment #3) Representative Snowbarger seconded the motion. Motion carried.

Rep. Snowbarger moved to amend HB 2547 by changing the effective date to 1/1/93. Rep. Macy seconded the motion. Motion carried.

Rep. Snowbarger moved to conceptually amend HB 2547 on page 5 replacing "6 months" with "12 months". Rep. Macy seconded the motion. Motion carried.

Rep. Macy moved to make HB 2547 a substitute bill, place above amendments in Sub. HB 2547, then recommend Substitute HB 2547 as amended favorably for passage.

Rep. Parkinson made a substitute motion to amend HB 2547 to state that the presumption lease term is month-to-month unless it is specifically in writing and to require either side to give a 60-day notice. Rep. Vancrum seconded the motion. Motion carried.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 23, 1992.

Representative Macy moved to report HB 2547 as amended as a substitute bill, favorably for passage. Rep.Snowbarger seconded the motion. Motion carried.

Hearing on SB 358, amendments to Kansas criminal code, was opened.

Gordon Rich, ACLU, testified in favor of SB 358. He asked for several amendments. (Attachment #4)

Kyle Smith, Kansas Bureau of Investigation, testified in favor of SB 358, and made several recommended amendments. (Attachment #5)

Paul Shelby, Judicial Administration, suggested a change in one of Smith's proposed amendments, and concurred with Smith's remarks.

Byron Cook, Kansans for Gay & Lesbian Equity, testified he would like to see the sodomy laws repealed in SB 358. (Attachment #6)

Dr. Don Miller, Central Congregational Church, Topeka, testified for repeal of KSA 21-3505 in SB 358. (Attachment #7)

Jack Lacy, Secretary of Kansas Wildlife & Parks Department, testified in opposition to SB 358 as it is currently written. There were several amendments he suggested. (Attachment #8) If his suggested amendments are made, he said he would favor the bill. He answered committee members questions.

Chuck Simmons, Department of Corrections, testified on SB 358. He proposed several amendments. (Attachment #9) He answered committee members questions.

Hearing on SB 358 was closed.

Hearings on the following bills was opened:

SB 556, creating the crime of unlawful sexual relations

SB 649, possession or transportation of incendiary or explosive device to include pipe bombs

SB 650, escape from custody includes persons committed to state security hospital

SB 742, penalty enhancements for subsequent drug offenses to include offense from other jurisdictions

Churck Simmons, Department of Corrections, testified in favor of SB 556. (Attachment #10) He made several suggested amendments. He said there are approximately 10-15 employees terminated each year for engaging in sexual activities with inmates.

Jim Clark, Kansas Association of County & District Attorneys, testified in favor of SB 649, SB 650, and SB 742. (Attachments #11, #12 and #13)

Chuck Simmons concurred with Jim Clark in support of SB 742.

Hearings on SB 649, SB 650 and SB 742 were closed.

Meeting adjourned at 5:45 P.M.

SENATE BILL 479

SENTENCING GUIDELINES: RESTRUCTURING SUGGESTIONS

by Joan M. Hamilton, 51st Representative

Members of the Judiciary Committee:

I urge you to read my testimony as to some of the concerns I have. These concerns are shared by a great number of key people in the system (over 150 calls received), as well as citizens, inmates' groups, Parole Board members, correctional personnel, and other legislators.

I also want to thank you for this opportunity to suggest to you some ideas for changing the present system, but not reinventing the wheel and throwing away the old system. I have NO argument that the present system is NOT working as well as it should. However, it's not because we have gotten "too tough" on crime and because our prisons are overcrowded. It's because we have NEVER taken the time to make the front end learn about the back end and to "cooperate with everything in-between". When one branch of the system has a goal and another has a complete opposite, there will be problems and conflicts. Though we focused on getting the offender punished and put in prison-----when the offender got into the system, we then focused on his behavior IN prison, rather than what he had done in society and how he would do in society--the offender learned to "trick the system"----then the focus went BACK to suitability in society and the offender didn't know what was expected and **neither did the citizens or the offenders' families.**

WE MUST ALL THRIVE FOR THE SAME GOAL (WITH PERHAPS A DIFFERENT FOCUS).

G O A L? ----------PUBLIC SAFETY & OFFENDER CHANGE OF BEHAVIOR

TRUTH IN SENTENCING

The positive aspect of the Sentencing Guidelines is the "Truth in Sentencing". However, the negative to that truth is that the discretion is taken away from the judges and all sentences are determinate. Though the statistics show disparity with indeterminate sentences, you will have the same problem with determinate sentences. All crimes, though the same on paper, should not be treated the same nor are they the same.

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With the addition to S.B. 749 of the 20% time credit discretion back with the Department of Corrections, **we are simply returning back to the OLD system with a modified version.**

****

Suggestion #1:

What would I propose? Both a truth in sentences and move for discretion, giving the inmate motive to change behavior and the judge leeway to have the sentence fit the crime.

Repeal K.S.A. 22-3725 -- Good time charts and replace with this chart:

Class felony	Minimum time	Maximum time	Programmatic time
A	15 years (Life)	(Life) P.E. 15 years	3 years
B	3-8 (5-15) P.E. 2.5-7.5	10-Life (20-Life) CR. - 10 years	2 years
C	2-4 (3-5) P.E.1.5-2.5	5-10 (10-20) C.R. 5-10	2 years
D	1-2 (2-3) P.E. 1-1.5	3-5 (5-10) C.R. 2.5-5	1 year
E	.5-1 (1) P.E. 8 months	1-3 (2-5) C.R. 1-2.5)	1 year

(This chart would change the sentences as set forth in K.S.A. 21-4501.)

EXAMPLE: Presently Aggravated Robbery is a Class B felony with an indeterminate sentence of 5-15 minimum, 20-Life maximum. If the inmate gets the minimum of 5-20 years, he is parole **eligibility** in 2 1/2 years (1/2 of minimum) and MUST be released by 10 years (conditional release date which is 1/2 of the maximum time. This is sometimes very confusing to the public, much less the judicial system which is constantly aware of the legislature changing parole eligibility time. **SO LET'S GET SOME EASIER UNDERSTANDING AND TRUTH IN SENTENCING!**

Example: Aggravated Robbery
Class B felony

Explanation using NEW chart:

1) Judge determines MINIMUM sentence from various ranges, i.e. 3-8 years
----still utilizes Victim Impact Statement, PSI, court services, testimony of witnesses, etc.

****Chooses 3 years**

2) Then Judge determines MAXIMUM sentence from various ranges, i.e. 10-Life
-----still utilizes and enforces present statutes of minimum sentence requirement, mitigating circumstances, etc.

****Chooses 10 years**

3) Depending on Felony --- Judge specifies "programmatic DOC time"--

CLASS A --- 3 years
CLASS B,C-- 2 years
CLASS D,E-- 1 year

****Judge specifies that defendant/inmate is sentenced to a MINIMUM of **3 years and the presumption will be for parole. HOWEVER,** the Department of Corrections will be able to keep the inmate for up **2 years** (with our example of a CLASS B felony) if the inmate fails to:

a) complete program agreement (already in statutes)
b) receives DRs -- due process afforded
c) inadequate parole plan

DUE PROCESS will be afforded to inmate before MINIMUM sentence is disturbed.

4) MAXIMUM time is still needed for parole violators and also for management of inmates, community safety and supervisor on parole.

a) Discharge procedures remain the same.
b) Parole supervisor and requirements remain the same.
c) Parole revocations ---- It is **now a determination made by the Department of Corrections.** Though the final revocation hearing is conducted by the Kansas Parole Board, the initial decision to revoke, the reasons why, and the Morrissey hearing is done by the **DOC.**

Proposed change: Allow the PV process to fall on the DOC with the option to have hearing officers and review process.

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Positive change ---- The accountability and philosophy would weigh on one entity and therefore not put one agency against the other. The high cost of a separate agency of the Parole Board could be put into the efforts of the DOC. If the DOC was not only responsible to make inmates eligible for parole, but also suitable and responsible for their return if not suitable for the community --- I believe the system, the public, the inmate and the victim would be better served.

5) K.S.A. 21-4620 Sec. (3)(b) should read SHALL instead of may under the provisions of the judge's right to include matters during sentencing --- i.e. programs and psychological state of defendant.

***all others sections should continue to read MAY.

Requirement: Judge should state program requirements to offender so offender, family, victim and public KNOW what will be expected in change of behavior before offender's release.

(Though DOC might say that the Judge's should not have the power to dictate the programs they should have available to the inmates, a lot of time and money is lost by taxpayers and the system with repeated and unnecessary reevaluations. A PSI [pre-sentence investigation] is required before each sentence is imposed- very rarely are these waived. Often evaluations and psychological reports are done during the PSI. Some judges will even send the inmate to the RDU for an evaluation. This is ALL REPEATED if the offender is sent to prison, since all male offenders are sent through RDU and female offenders are sent to Lansing to determine Program Agreements.)

Consolidate these efforts ---- it makes more sense and would save monies and time for everyone. Who better to know about the facts and evidence of the offenses besides the actual parties; behavior change needed would be more available to the Judge during sentencing than to have to reeducate DOC officials; history of offender is available and impact of crime is all known. The victim's impact statement is **required during this stage**, so they have had an important part of it.

Our present statutes allow the inclusion of program requirements, but also allow for DOC to change the program agreement under limited circumstances PLUS the inmate canNOT be denied release for failure to complete agreement if NOT the fault of inmate. These statutes would NOT need to be rewritten.

Example: He imposes the sentence of 3 years with a maximum of 10 years.

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Inmate is informed that he will <u>have to serve the minimum sentence of 3 years before he is parole eligible. IF HE FINISHES HIS PROGRAM AGREEMENT AND DOES NOT PICK UP ANY FURTHER TIME IN PRISON, THE PRESUMPTION IS THAT HE WILL BE PAROLE SUITABLE AND HE WILL BE RELEASED.</u> This is a major change for Kansas, because all of our case law puts the entire burden on the inmate to become parole suitable....parole is considered a privilege and must be earned.

This method would still put some requirements on the inmate to do programs and work, and to behave while in the system, however, if programs are done and no further bad behavior is exhibited, the presumption is for his release. There would be no further judgment from a Board and he would not stand in suspense. It would also allow the flow of numbers that the Sentencing Commission feel is so important for DOC, plus the management tool and incentive needed for DOC.

FOR THE VICTIM AND PUBLIC --- On the front end, it would assure them of input and the knowledge to know that strong sentences are still discretionary with the judge so their input is important and could make a difference. They would also know at the time of sentencing when the offender would be released back into society. The laws requiring DOC to notify victims of violent crime about offender coming into their community would still be necessary and important. However the requirements of notification of public hearings would not. It would reduce a lot of work yet still have the important input needed.

FOR THE INMATE AND FAMILY:

You are still delivering a message that the behavior of the offender is not acceptable, but he and his family know when his release will be IF he performs his obligations of the Program Agreement and does not act up. This allows for planning, but also forces some programming and motive to change. With the span of time allowed, the offender can still serve additional time IF he is not motivated to do as expected.

This is where many will say that they like the idea of punishment and throwing **rehabilitation** away because there isn't any in prison. There is!!!!! I've seen it firsthand, even with repeat offenders. We can't expect to have 90, 80, 70, or even 60 or 50% success. We are dealing with

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complicated lives that have been influenced for years. Changing behavior in even 3-5 years is sometimes improbable, but it's not impossible.

National statistics show that for every offender, the average number of victims he will affect is 26. Even if Kansas only rehabilitated 1% (and I think we do better than that!), we could save 1,560 of our citizens from the horror of crime.

1% of 6,000 population = 60 X 26 = 1,560.

IF WE GIVE IT UP-----WE DON'T HAVE ANY HOPE FOR HELPING WITH PUBLIC SAFETY AND PREVENTION OF CRIME.

Also we throw away the key in worrying about recidivism--- surely we don't expect the offenders to change just because they have gotten out of prison. Yes, they will get more time assuming they are caught. But 90% of crime goes unsolved, and though the recidivism rate is high presently in Kansas, we couldn't expect it to do anything but increase.

Suggestion #2: Presently there is presumptive probation for Class E felonies(21-4606a) and presumptive community corrections if probation isn't considered (21-4606b). We should re-look at those statutes and restrict the discretion of the judges more on this level of felony. IT IS NOT BEING USED AS EXPECTED.

****We could also enlarge these statutes to involve property Class D felonies AND/OR require mandatory appeal of sentences that do NOT include probation or community corrections.

The **fallacy with the Sentencing Commission's statistics** showing the impact of numbers that precluding D and E felonies would have on the system, is that it doesn't give the long-range effect. **Unless we, as legislators, change the requirements of restitution and steady employment in the probation requirements and parole suitability requirements--- all we are doing is DELAYING the numbers of offenders that will still go to prison on PVs (probation and parole violations).** The KBI and Wyandotte County Police department have both looked into these statistics and can relate to you their findings. It's not the racial disparity that is affecting the sentences as much as the **socio-economic situation. We need to be plugging in more monies to work release centers, job opportunities and job training. If you disregard the racial element and look ONLY AT THE EMPLOYMENT RATE OF THOSE SENTENCED-----YOU WILL FIND THAT THERE IS <u>VERY LITTLE DISPARITY.</u>** These guidelines will NOT change this disparity.....they will only delay the effect.

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We must make the necessary changes in the appropriate statutes, and also see the need for adding additional monies to community corrections and job opportunities.

Suggestion #3: We haven't given the mandatory requirement of community corrections in all counties enough time to see if they are effective. While on the parole board, you could determine which counties utilized their communities well for rehabilitation and change, and you knew immediately those that "abused" the corrective system. With the **mandatory** requirement, we need to allow each county to establish their corrections (with our state help), and give it a chance. These Sentencing Guidelines **force the communities to do so with the presumptive probation for nonviolent offenses. Why re-invent the wheel....the mechanism is already there, let's enforce it and help them.**

Suggestion #4:

WE MUST GET OUR ATTENTION OFF THE ADULT SYSTEM AND BEGAN TO WORK WHERE IT WILL MAKE A DIFFERENCE ------ THE JUVENILE SYSTEM. WE HAVE TOO LONG IGNORED THE FACT THAT THE REASON CRIME AND PRISON BEDS ARE INCREASING IS BECAUSE WE HAVE GIVEN UP ON THE YOUTH.

Behavior is sometimes molded into an individual by the age of 8 OR YOUNGER. We are trying to change it at 18 years and older and it has been set for almost 10 years. We can't give up....we must try to help the young and first-time offender during their youth.

ACTUAL TRUE STORY:

In my third year on the parole board (1986), I saw an inmate who was only 16 years old. Chad was there as a certified adult because of three burglaries as a juvenile. He had been a D & N (dependent and neglected child) in juvenile court at the age of 3. We had taken him out of his abused home and put him into the "system". We failed....he needed much more. At the hearing he knew me. I knew him. He still wanted to change but the attitude was very bad. However, we required him to get a trade, be put into a work release program before release and also to have mental health counseling to deal with his "years within the system" and also to see he would have to depend on himself if he was to make it. It worked.....at least he's not back into the system YET.

My questions and puzzlement: Why didn't we give this to him earlier? He should have been schooled and trained by age 16....we ignored it.

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Where were his models? Presently the Boot Camp for Young Offenders has big "hopes". The Judge will even tell you that jurisdictions are finding loopholes in the statutes by certifying juveniles earlier than they would....to let them be eligible for the Camp.

Why aren't we setting up these Camps for our young offenders? Why wait until they are adults? We are working back-assward.

FACT: **Our model prisoners are the repeat offenders and violent offenders. Though there are exceptions to this, the high percentage are these offenders. We then focus on giving these offenders the privileges within the system because they are our "model prisoners".** Conversely, our first-time offenders and young prisoners often have a bad attitude and do not like the authority and can't "play the game". They, therefore, are kept behind the maximum walls and programming is not as available to them. Is this not back-assward? **Yes, it is.**

Why would this plan work better?

I believe that if the DOC's focus from day one when the inmate enters the system is to make him suitable for return back to society (rather than "model prisoner" and management) **the inmate would be better served, the community would be better served and MOST IMPORTANT ---THERE WOULD NOT BE A SHIFTING OF RESPONSIBILITY, ACCOUNTABILITY AND BLAME FROM ONE BRANCH OF THE CRIMINAL SYSTEM TO ANOTHER.**

(The custody format of DOC needs to be completely revamped....this is not a task of the Legislature, but could be a focus for the Department. The crime history of the juvenile and his risk to society should be the factors considered for privileged programs....each case should be individually examined.)

AGAIN, AS YOU SEE, THE FOCUS NEEDS TO BE WITH THE JUVENILE OFFENDER AND THE JUVENILE SYSTEM----IF WE ARE TO MAKE AN IMPACT ON THE POPULATION OF OUR PRISONS, WE MUST START WHERE WE HAVE SOME HOPE----THE FRONT END.

Suggestion #5:

Limit the power of the prosecutor!

(I speak of this again with firsthand experience. Before serving on the Kansas Parole Board for 5½ years, I was a Prosecutor in Shawnee County for 9 years [leaving in Nov., 1983, as the First Assistant District Attorney]).

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If we had a statewide District Attorney's plan with experienced D.A.s and persons dedicating their careers to public service you would see different results in a lot of jurisdictions. However, we don't, and in many of your counties----because of lack of experience and salary, time and court personnel, you have ridiculous plea negotiations. This happens a lot in our large counties also.

I'm not advocating doing away with plea bargains---they must be there, and often the public and victim want a reasonable negotiation. The courts must also have the tool of plea bargains or they would be more crowded and backed up then they already are! **However, under these Sentencing guidelines, you have given the prosecution the ultimate power tool and control. They could take a violent offenses, i.e. Aggravated Robbery, Class B felony and reduce it to Theft, a nonviolent crime under the grid, Class D felony, and the judge's hands would be tied -----presumptive probation.**

You might say----that doesn't happen very often!!!??? Yes it does. Often murders are reduced to manslaughters, robberies to theft, rapes to battery, and indecent liberties with a child to child abuse. Though some of these reductions are still within the "violent" crime category - the sentences are substantially lower.

In the 1990-91 legislature, we passed a law requiring prosecutors to INFORM victims of "crimes against person" of any negotiations PRIOR to the finality of the negotiation. Though this is a step in the right direction, there still is no control over the negotiations and reductions of the prosecutor. The victim or victim's family need not consent to this negotiation. They just have to be informed.

We must make our prosecutors more accountable to the public, the victims, victims' families and the offenders. Often multiple charges are filed with the idea of dismissal of charges. <u>Their powers and discretion are abused far more often than any judge's discretion.</u>

<u>CONCLUSION:</u>

Though SB50 directed the Commission to formulate a grid, it did NOT direct the Commission to make it a **determinate** grid.

I hope you will give my "formula" of truth in sentencing coupled with discretion and flexibility of the judges a serious look.

****

We must make the **goal** of the judicial system the same -- rather than piecemeal each branch to do only their job. The

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right hand must be educated to know what the left hand is doing.

****

The judges should take over the requirements of the Program Agreement **with the cooperation and coordination of DOC** to eliminate dual testings and costly time.

****

Class D and E felonies should be added to presumptive probation with multiple offenses to be an exception for the judges.

****

Give community corrections a chance to work!! More monies needs to be given to them to allow the nonviolent offender and first-time offender to work out their time within the community.

****

WE CANNOT IGNORE THE JUVENILE SYSTEM ANYMORE---NOR SHOULD WE BE FOCUSING ON GETTING "TOUGHER" WITH OUR JUVENILE OFFENDERS. IT DIDN'T WORK WITH THE "ADULTS"---WHY ARE WE TRYING TO RE-INVENT THE WHEEL WITH THE JUVENILES? They are the ones we should be trying to give a "second chance" to.

****

Technical changes needed:

1) K.S.A. 21-4608 = delete all wording connected with good time and change to "programmatic DOC" time
   3 years - Class A
   2 years - Class B,C
   1 year - Class D,E

2) K.S.A. 21-4620 = suggested change above

3) K.S.A. 22-3725 = Good time chart replaced with chart above and "programmatic DOC" time

4) K.S.A. 21-4602 Definitions
   (4) redefine to make parole presumptive

5) K.S.A. 21-4603 (3) repeal (not needed)
   (5) REWORK

6) K.S.A. 21-4603a
   (1) REWORK
   (2) delete words of CR

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(3) REWORK
(b) REWORK
(4) REWORK
(5) REWORK

7) K.S.A. 21-4608 = REWORK reflecting "programmatic DOC" time -----**also include that with enhancement of sentences there can only be a maximum of double "programmatic DOC" time,** i.e. Class A felony - 6 years
Class B, C - 4 years
Class D, E - 2 years

8) K.S.A. 22-3717 Either repeal or REWRITE (parole suitability, i.e. (e)
(f) public hearings --- NO NEED
public comments, victims' and LE, court comments -- NO NEED

9) K.S.A. 77-415 et. seq. Kansas Parole Board -- Repeal

One final suggestion: I believe the above suggestions are sufficient to control management and "numbers" within the DOC. However, we could have a **CAP LAW --- at 95% capacity.** If so, it should be limited to review of ONLY CLASS D & E FELONIES----PROPERTY CRIMES.

FISCAL NOTE: Kansas Parole Board abolished.
No need for public hearings, public comments
No need for retroactivity because the sentences would be the same or slightly HIGHER (not lower) than those already incarcerated.
Monies saved could be used for additional parole officers, community corrections, and **possible hearing officers.**
No CR -- so savings in paperwork, management, CR release, and staff time
No need to notify District and County Attorneys of parole date
No 120 day callback
No repeat of RDU evaluation
No need to change crime statutes or classes of crimes
(If you want a stronger penalty for a particular crime[s], just change the CLASS)

COST

Hearing officers --- parole violators and review of DRs
Possible need for a review board or appellate review for inmate though there would still exist the Ombudsman Board for inmate complaints to be investigated by.
Appellate review of denial of probation or community corrections for Class E (and maybe D) felonies.

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Thank you for this opportunity to address my Alternative Plan for S.B. 479 ---- Sentencing Guidelines.

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dragon/docs/Sentencin1

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STATE OF KANSAS

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TOPEKA

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VICE-CHAIR: ELECTIONS
MEMBER: JUDICIARY
LOCAL GOVERNMENT
PENSIONS, INVESTMENTS AND BENEFITS

HOUSE OF
REPRESENTATIVES

Testimony for House Judiciary Committee

H.B. 2547

Judith K. Macy
March 18, 1992

Mr. Chairman, members of the committee. The Sub-committee has reviewed H.B. 2547 and presents the following report:

I thought it might be helpful if I gave you a brief history of H.B. 2547. Rep. Roy requested this piece of legislation which was drafted after the Iowa Mobile Home Parks Residential Landlord and Tenant Act.

This bill was referred to our sub-committee late last session and we had a series of meetings attempting to utilize our current Kansas Residential Landlord Tenant Act (KRLTA) to meet the needs of mobile home parks. We found, however, that there were a number of ways in which the situations differed and reached the conclusion that a separate act was warranted.

This bill was referred to the Judicial Council this summer with the charge to determine whether current law could be expanded to include mobile home parks. The Civil Code Committee in their comprehensive review of the problem, concluded that a separate act was warranted. The primary reason for a need for specific law in this area is due to the fact that the KRLTA, while it would address mobile homes owned by a landlord, does not address the special needs when a mobile home is owned by the tenant.

The balloon provided by the Judicial Council at a previous hearing on this subject, was used as the sub-committee's master copy in our series of meetings. During our sub-committee meetings, we received valuable input from Matt Lynch from the Judicial Council and input from conferees representing landlords and tenants. Most of the Judicial Council's changes reflected in the balloon were made in order to bring this Act into uniformity with the KRLTA when feasible. We have made some additions, deletions and changes in the balloon which we feel better address the problems in this area of the law. A detailed explanation of the balloon is attached.

The Sub-committee, comprised of myself, Representatives Snowbarger and Gregory request that you adopt our Sub-committee report.

JC
3-23-92
Attach #2
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Detailed Explanation of
H.B. 2547

Sec. 1 = Title

Sec. 2 = Act applies to rental of mobile home space except when both the space and mobile home are owned by the landlord then KRLTA applies.

Sec. 3 = District Court has jurisdiction; actions may be commenced as limited actions; if relief sought is beyond our jurisdiction of a magistrate it shall be heard by district judge.

Sec. 4 = Definitional section. (The committee struck in line 10 the words "tent, vehicle").

Sec. 5 = Deals with unconscionable rental agreements and their treatment by the court.

Sec. 6 = The committee struck lines 5 through 31 in the bill which appeared to be unnecessary. New Section 6 states that a rental agreement may include terms and conditions not prohibited by the act; it discusses generally the payment of rent and on page 5, discusses the term for the tenancy which is for one year unless otherwise specified. The committee made changes to subparagraph (d) which deals with the running of the term of the agreement. It was felt that after the term of the agreement had run, the tenancy should revert to a month to month, as in KRLTA. We felt that neither the landlord nor the tenant would want the holdover to result in another one year term. An additional burden was placed on the landlord to require a 60 day notice before the mobile home would have to be removed during the month to month time period.

We struck the language in lines 8 through 15 as we felt they were unnecessary as the rental agreement would protect all parties. This language dealt with the death of the owner of a mobile home and subsequent responsibilities.

Sec. 7 = Exclusions from rental agreements. We struck lines 39 through 41 which would have required a tenant to maintain liability insurance on the space naming the landlord as the insured.

Sec. 8 = The instrument shall not permit the receipt of rent unless landlord complies with Sec. 12.

Sec. 9 = This section addresses security deposits and parallels KRLTA. We struck language that would have permitted attorneys fees for the tenant as it was the only exception in the language that did not parallel KRLTA.

H JC
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Attach #2
2084

Sec. 10 = This section addresses disclosure of information by the landlord to the tenant, delivery of the rental agreement and rent increases which require 60 days notice. Such increases may not begin during the term of the lease.

Sec. 11 = Deals with delivery of possession.

Sec. 12 = Specifies duties for landlords. Subparagraph (b) addresses what a landlord may not do in relation to imposition of certain conditions. The word "reasonably" was added to insure that unreasonable conditions would not be imposed on tenants.

Sec. 13 = Termination of liability after a landlord sells the park and after a manager of the park leaves his position as manager.

Sec. 14 = Maintenance of the space by the tenant.

Sec. 15 = Rules and Regulations adopted by the park. Page 10, line 13 lists acts prohibited for a landlord, eg., the charging of entrance or exit fees. Rules regarding the sale of a mobile home to a third party are listed in lines 20 through 31. A paragraph was added to this section prohibiting landlords from charging additional fees for members of the tenants immediate family.

Sec. 16 = The committee changed the language in this section to prohibit the landlord from entering the mobile home but permitting the landlord to enter the space under certain conditions.

Sec. 17 = Tenant may rent mobile home only upon written agreement with management.

Sec. 18 = Breach of the rental agreement by the landlord and remedies for the tenant.

Sec. 19 = Termination of the agreement when landlord fails to deliver possession of the space.

Sec. 20 = If landlord unlawfully removes/excludes tenant from park or willfully diminishes services - remedies for tenant.

Sec. 21 = Breach of the agreement by the tenant and remedies for landlord.

Sec. 22 = Abandonment of a mobile home by the tenant and remedies for the landlord. The committee made changes to subparagraph (b) to require the owner or lienholder to be liable for costs from the point of written notification by the landlord. On page 14, the committee struck language in line 8 and lines 12 through 18 with regard to lienholder information.

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Sec. 23 = Acceptance of performance of tenant by landlord waives termination of agreement.

Sec. 24 = Termination of tenancy after expiration of term of agreement and remedy for landlord if holdover.

Sec. 25 = Deals with access to mobile home space - remedy for both landlord and tenant.

Sec. 26 = Lists specific situations in which a landlord may not increase rent or decrease services. Exception is in the balloon which parallels KRLTA and permits a rent increase under certain conditions. Lines 28 through 36 outline when an action for possession may be brought by the landlord.

Sec. 27 = Prospective application of this Act.

Sec. 28 = Effective date.

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Subcommittee Report
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H.J. 3rd #3 1 of 15

Session of 1991

HOUSE BILL No. 2547

By Committee on Federal and State Affairs

3-4

AN ACT enacting the mobile home parks residential landlord and tenant act.

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

Section 1. This act shall be known and may be cited as the mobile home parks residential landlord and tenant act.

~~Sec. 2. Unless displaced by the provisions of this act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.~~

~~Sec. 3. (a) The remedies provided by this act shall be so administered that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.~~

~~(b) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.~~

Sec. ~~4.~~ The provisions of this act shall not apply to an occupancy in or operation of public housing pursuant to any federal law or regulation with which it might conflict. This act shall govern the rental of mobile home space in mobile home parks, ~~but the residential landlord and tenant act (K.S.A. 59-2540 *et seq.* and amendments thereto) shall govern the rental of mobile homes.~~

When both the mobile home and the space used to accommodate the mobile home are rented or leased by the same landlord, the residential landlord and tenant act, K.S.A. 59-2540 et seq., and amendments thereto, rather than this act, shall apply.

Sec. ~~5.~~ (a) ~~The appropriate~~ district court ~~of this state may exercise~~ shall have jurisdiction over a landlord or tenant with respect to conduct in this state governed by this act or with respect to any claim arising from a transaction subject to this act. ~~An action under this act may be brought as a small claim pursuant to the provisions of the small claims procedure act. In addition to any other method provided by rule and regulation or by statute, personal jurisdiction over a landlord or tenant may be acquired in a civil action or proceeding instituted in the appropriate district court by the service of process in the manner provided by this section.~~

, and notwithstanding the provisions of subsection (b) of K.S.A. 61-1603, and amendments thereto, such actions may be commenced pursuant to the code of civil procedure for limited actions. Unless otherwise specifically provided in this act, the code of civil procedure for limited actions shall govern any action commenced pursuant to this act. If the relief sought is beyond the jurisdiction of a district magistrate judge as provided in K.S.A. 20-302b, and amendments thereto, the action shall be heard by a district judge

~~(b) If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in conduct~~

~~in this state governed by this act, or engages in a transaction subject to this act, the landlord shall designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but the plaintiff or petitioner shall forthwith mail a copy of this process and pleading by certified mail, return receipt requested, to the defendant or respondent at that person's last reasonably ascertained address. If there is no last reasonably ascertainable address and if the defendant or respondent has not complied with subsections (a) and (b) of section 13, service upon the secretary of state shall be sufficient service of process without the mailing of copies to the defendant or respondent. Service of process shall be deemed complete and the time shall begin to run for the purposes of this section at the time of service upon the secretary of state. The defendant shall appear and answer within 30 days after completion thereof in the manner and under the same penalty as if defendant had been personally served with the summons. An affidavit of compliance with this section shall be filed with the clerk of the district court on or before the return day of the process, or within any further time the court allows.~~

Sec. ~~6.~~ 4 Subject to additional definitions contained in subsequent sections of this act which apply to specific sections thereof, and unless the context otherwise requires, in this act:

(a) "Building and housing codes" includes any law, ordinance or governmental rule and regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any mobile home park, dwelling unit or mobile home space.

(b) "Business" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest and any other legal or commercial entity which is a landlord, owner, manager or constructive agent pursuant to section ~~13~~ 10.

(c) "Dwelling unit" excludes real property used to accommodate a mobile home.

(d) "Landlord" means the owner, lessor or sublessor of a mobile home park and it also means a manager of the mobile home park who fails to disclose as required by section ~~13~~ 10.

(e) "Mobile home" ~~means a structure which is:~~ includes manufactured homes and mobile homes as defined in subsections (a) and (b) of K.S.A. 58-4202, and amendments thereto.

~~(1) Transportable in one or more sections;~~

~~(2) (A) when in the traveling mode, is eight body feet or more in width and 36 body feet or more in length or (B) when erected on site, is 320 or more square feet; and~~

~~(3) built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation, when connected to the required utilities.~~

(f) "Mobile home park" shall mean any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, ~~tent, vehicle~~ or enclosure used or intended for use as part of the equipment of such home park.

mobile

(g) "Mobile home space" means a ~~parcel of land for rent which has been designed to accommodate a mobile home and provide the required sewer and utility connections.~~

plot of ground within a mobile home park designed for the accommodation of one mobile home

(h) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership and a right to present use and enjoyment of the mobile home park. The term includes a mortgagee in possession.

(i) "Rent" means ~~a payment~~ to be made to the landlord under the rental agreement.

all payments

, other than the security deposit

(j) "Rental agreement" means agreements, written or those implied by law, and valid rules and regulations adopted under section ~~18~~ 15 embodying the terms and conditions concerning the use and occupancy of a mobile home space.

(k) "Security deposit" means a deposit of money to secure performance of a mobile home space rental agreement under this act other than a deposit which is exclusively in advance payment of rent.

(l) "Tenant" means a person entitled under a rental agreement to occupy a mobile home space to the exclusion of others.

Sec. ~~7.~~ 5 (a) If the court, as a matter of law, finds that:

(1) A rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) A settlement in which a party waives or agrees to forego a claim or right under this act or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision or limit the application of any unconscionable provision to avoid any unconscionable result.

(b) If unconscionability is put into issue by a party or by the

court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making the determination.

~~Sec. 8. (a) An individual has notice of a fact if the individual has~~ actual knowledge of it, has received a written notice of it or, from all the facts and circumstances known to the individual at the time in question, has reason to know that it exists. An individual knows or has knowledge of a fact if the individual has actual knowledge of it. An organization has notice or knowledge of a fact relating to a particular transaction when the fact is brought to the attention of the individual conducting the transaction and, in any event, from the time the fact would have been brought to that individual's attention if the organization had exercised reasonable diligence, but such knowledge shall be subject to proof.

(b) A person notifies or gives notice to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice when it comes to that person's attention. A landlord receives notice when it is delivered by hand or mailed by registered mail to the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication or when it is delivered to any individual who is designated as an agent under section 13. A tenant receives notice when it is: (1) Delivered by hand to the tenant; (2) mailed by registered mail return receipt requested to the tenant at the place held out by the tenant as the place for receipt of the communication or, in the absence of such designation, to the tenant's last known place of residence other than the landlord's mobile home or mobile home space; or (3) posted in a conspicuous place on the ~~premises of the mobile home space rented by the tenant.~~

Sec. 9. (a) The landlord and tenant may include in a rental agreement terms and conditions not prohibited by this act or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

(b) The tenant shall pay as rent the amount stated in the rental agreement. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the mobile home space.

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed periodic rent is payable at the beginning of any term and thereafter in equal monthly installments. Rent shall be uniformly apportionable

from day to day.

(d) Rental agreements shall be for a term of one year unless otherwise specified in the rental agreement. ~~Rental agreements shall~~ be canceled by at least 60 days' written notice ~~given~~ by either party. A landlord shall not cancel a ~~rental agreement~~ solely for the purpose of making the ~~tenant's~~ mobile home space available for another ~~mobile home.~~

(e) If a tenant should die, the surviving joint tenant or tenant in common in the mobile home shall continue as tenant with all rights, privileges and liabilities as the original tenant.

(f) If a tenant who was sole owner of a mobile home dies during the term of a rental agreement then that person's heirs or legal representative or the landlord shall have the right to cancel the tenant's lease by giving 60 days' written notice to the person's heirs or legal representative or to the landlord, whichever is appropriate, ~~and the heirs or the legal representative shall have the same rights, privileges and liabilities of the original tenant.~~

Upon the expiration of such agreement, if a new agreement is not executed, the tenancy shall be month to month. Month to month tenancys shall be canceled by at least 60 days' written notice given by either party.

~~(g)~~ (e) Unless otherwise agreed in writing, improvements, except a natural lawn, purchased and installed by a tenant on a mobile home space shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy, provided that a tenant shall leave the mobile home space in substantially the same or better condition than upon taking possession.

7

Sec. ~~10.~~ (a) A rental agreement shall not provide that the tenant or landlord does any of the following:

(1) Agrees to waive or to forego rights or remedies under this act.

(2) Agrees to pay the other party's attorney fees.

~~(3)~~ Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.

~~(4)~~ Agrees to a designated agent for the sale of tenant's mobile home.

Authorizes any person to confess judgment on a claim arising out of the rental agreement;
(3)

(4)

(5)

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. ~~If a landlord or tenant knowingly uses~~ a rental agreement containing ~~provisions~~ known to be prohibited by ~~this act, the other party may recover actual damages sustained.~~

~~Nothing in this act shall prohibit a rental agreement from requiring~~ a tenant to maintain liability insurance which names the landlord as ~~an insured as relates to the mobile home space rented by the tenant.~~

8

Sec. ~~11.~~ A rental agreement, assignment, conveyance, trust deed or security instrument shall not permit the receipt of rent, unless

the landlord has agreed to comply with subsection (a) of section ~~15.~~ 12

Sec. ~~12.~~ (a) A landlord shall not demand or receive as ~~rental~~ security deposit an amount or value in excess of two months' rent.

(b) All ~~rental~~ security deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank, credit union or savings and loan association which is insured by an agency of the federal government. ~~Rental~~ Security deposits shall not be commingled with the personal funds of the landlord. All ~~rental~~ security deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a ~~rental~~ security deposit shall be the property of the landlord.

(c) ~~A landlord shall, within 30 days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the mobile home space, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:~~

~~(1) To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.~~

~~(2) To restore the mobile home space to its condition at the commencement of the tenancy, ordinary wear and tear excepted.~~

~~(d) In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.~~

~~(e) A landlord who fails to provide a written statement within 30 days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.~~ (g)

~~(f)~~ Upon termination of a landlord's interest in the mobile home park, the landlord or the landlord's agent shall, within a reasonable time, transfer the ~~rental~~ deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to

Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with section 14 and the rental agreement, all as itemized by the landlord in a written notice delivered to the tenant. If the landlord proposes to retain any portion of the security deposit for expenses, damages or other legally allowable charges under the provisions of the rental agreement, other than rent, the landlord shall return the balance of the security deposi to the tenant within 14 days after the determination of the amount of such expenses, damges or other charges, but in no event to exce 30 days after termination of the tenancy, delivery of possession and demand by the tenant. If the tenant does not make such demand within 30 days after termination of the tenancy, the landlord shal mail that portion of the security deposit due the tenant to the tenant's last known address.

(d) If the landlord fails to comply with subsection (c) of this section, the tenant may recover that portion of the security deposit due together with damages in an amount equal to one and one-half the amount wrongfully withheld.

(e) Except as otherwise provided by the rental agreement, a tenant shall not apply or deduct any portion of the security depos from the last month's rent or use or apply such tenant's security deposit at any time in lieu of payment of rent. If a tenant fails to comply with this subsection, the security deposit shall be forfeited and the landlord may recover the rent due as if the deposit had not been applied or deducted from the rent due.

(f) Nothing in this section shall preclude the landlord or tenant from recovering other damages to which such landlord or tenant may be entitled under this act.

the tenant.

Upon the termination of the landlord's interest in the mobile home park and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the ~~rental~~ deposit. security

~~(g)~~ (h) Upon termination of the landlord's interest in the mobile home park, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the ~~rental~~ security deposits, except that if the tenant does not object to the stated amount within 20 days after written notice to the tenant of the amount of ~~rental~~ deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to the landlord's successor and may be given by mail or by personal service.

~~(h) The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed 1 ½ times the security deposit in addition to actual damages.~~

Sec. ~~13.~~ 10 ~~(a) The landlord shall offer the tenant the opportunity to sign a written agreement for a mobile home space.~~

~~(b)~~ (a) The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before ~~entering into the rental agreement~~ the commencement of the tenancy the name and address of:

(1) The person authorized to manage the mobile home park.

(2) The owner of the mobile home park or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

~~(c)~~ (b) The information required to be furnished by this section shall be kept current and ~~refurnished to the tenant upon the tenant's request. When there is a new owner or operator~~ this section extends to and is enforceable against any successor landlord, owner or manager.

~~(d)~~ (c) A person who fails to comply with subsection (a) ~~and (b)~~ becomes an agent of each person who is a landlord for the following purposes:

(1) Service of process and receiving and receipting for notices and demands.

(2) Performing the ~~obligation~~ obligations of the landlord under this act and under the rental agreement and expending or making available for the purpose all rent collected from the mobile home park.

~~(e) If there is a written rental agreement, the landlord must tender and deliver a signed copy of the rental agreement to the tenant and the tenant must sign and deliver to the landlord one fully executed copy of such rental agreement within 10 days after the agreement is executed. Noncompliance with this subsection shall be deemed a material noncompliance by the landlord or the tenant, as the case may be, of the rental agreement.~~

(d) If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to such landlor by the tenant, the knowing acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord

If the tenant does not sign and deliver a written rental agreement which has been signed and delivered to such tenant by the landlord, the knowing acceptance of possession and payment of rent without reservation gives the rental agreemer the same effect as if it had been signed and delivered by the tenant.

If a rental agreement given effect by the operation of this subsection provides for a term longer than one year, it is effective only for one year.

(e) ~~(f)~~ The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall provide a written explanation of utility rates, charges and services to the prospective tenant before the rental agreement is signed unless the utility charges are paid by the tenant directly to the utility company.

(f) ~~(g)~~ Each tenant shall be notified, in writing, of any rent increase at least 60 days before the effective date. Such effective date shall not be sooner than the expiration date of the original rental agreement or any renewal or extension thereof.

Sec. ~~14.~~ 11. At the commencement of the term the landlord shall deliver possession of the mobile home space to the tenant in compliance with the rental agreement and section ~~15.~~ 12. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in section ~~29.~~ 24

Except when prevented by an act of God, the failure of public utility services or other conditions beyond the landlord's control,

Sec. ~~15.~~ 12. (a) The landlord shall:

(1) Comply with the requirements of all applicable city, county and state codes materially affecting health and safety which are primarily imposed upon the landlord.

If the duty imposed by this paragraph is greater than any duty imposed by any other paragraph of this subsection, the landlord's duty shall be determined in accordance with the provisions of this paragraph.

(2) Make all repairs and do whatever is necessary to put and keep the mobile home space in a fit and habitable condition.

(3) Keep all common areas of the mobile home park in a clean and safe condition.

(4) Maintain in good and safe working order and condition all facilities supplied or required to be supplied by the landlord.

(5) Provide for removal of garbage, rubbish, and other waste from the mobile home park.

(6) Furnish outlets for electric, water and sewer services and provide to such outlets an adequate, safe and sanitary supply of such services.

(b) A landlord shall not impose any conditions of rental or occupancy which restrict the tenant in the choice of a seller of fuel, furnishings, goods, services or mobile homes connected with the rental or occupancy of a mobile home space unless such condition is reasonably necessary to protect the health, safety, ~~aesthetic value~~ or welfare of mobile home tenants in the park. The landlord may impose reasonable requirements designed to standardize methods of utility con-

nection and hookup. If any such conditions are imposed which result in charges for such goods or services, the charges shall not exceed the actual cost incurred in providing the tenant with such goods or services.

Sec. ~~16.~~ (a) A landlord who conveys a mobile home park in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this act as to events occurring subsequent to written notice to the tenant of the conveyance.

(b) A manager of a mobile home park is relieved of liability under the rental agreement and this act as to events occurring after written notice to the tenant of the termination of the manager's management, ~~except such notice shall not terminate any agreement or legal liability arising prior to the notice~~.

Sec. ~~17.~~ A tenant shall maintain the mobile home space in as good a condition as when the tenant took possession and shall:

(a) Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county and state codes materially affecting health and safety.

(b) Keep that part of the mobile home park that the tenant occupies and uses reasonably clean and safe.

(c) Dispose from the tenant's mobile home space all rubbish, garbage and other waste in a clean and safe manner.

(d) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the mobile home park or knowingly permit any person to do so.

(e) Act and require other persons in the mobile home park with the tenant's consent to act in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the mobile home park.

Sec. ~~18.~~ (a) A landlord may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the mobile home park. Such rules or regulations are enforceable against the tenant only if they are written and if:

(1) Their purpose is to promote the convenience, safety or welfare of the tenants in the mobile home park, to preserve the landlord's property from abuse, to make a fair distribution of services and facilities held out for the tenants generally, or to facilitate mobile home park management.

(2) They are reasonably related to the purpose for which adopted.

(3) They apply to all tenants in the mobile home park in a fair manner.

(4) They are sufficiently explicit in prohibition, direction or limitation of the tenant's conduct to fairly inform that person of what must or must not be done to comply.

(5) They are not for the purpose of evading the obligations of the landlord.

(6) the prospective tenant is given a copy of them before the rental agreement is entered into.

(b) Notice of all such additions, changes, deletions or amendments shall be given to all mobile home tenants 30 days before they become effective. Any rule or condition of occupancy which is unfair and deceptive or which does not conform to the requirements of this act shall be unenforceable. A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant only if it does not work a substantial modification of that person's rental agreement or the tenant consents to it in writing

(c) A landlord shall not:

(1) Deny rental unless the tenant or prospective tenant cannot conform to park rules and regulations.

(2) Require any person as a precondition to renting, leasing or otherwise occupying or removing from a mobile home space in a mobile home park to pay an entrance or exit fee of any kind unless for services actually rendered ~~or pursuant to a written agreement~~.

(3) Deny any resident of a mobile home park the right to sell that person's mobile home at a price of the person's own choosing, but may reserve the right to approve the purchaser of such mobile home as a tenant but such permission may not be unreasonably withheld, provided however, that the landlord may, in the event of a sale to a third party, in order to upgrade the quality of the mobile home park, require that any mobile home in a rundown condition or in disrepair be removed from the park within 60 days.

(4) Exact a commission or fee with respect to the price realized by the tenant selling the tenant's mobile home, unless the park owner or operator has acted as agent for the mobile home owner pursuant to a written agreement.

~~(5) Require tenant to furnish permanent improvements which cannot be removed without damage thereto or to the mobile home space by tenant at expiration of the rental agreement.~~

(6) Prohibit meetings among tenants in the mobile home park relating to mobile home living and affairs in the park community or recreational hall if such meetings are held at reasonable hours and when the facility is not otherwise in use.

(6) Charge a fee based on the number of members in the tenants immediate family. Immediate family includes the tenant, the tenant's spouse, any children of the tenant or the tenant's spouse, and the parents of the tenant or the tenant's spouse.

Sec. ~~19~~ 16. (a) A landlord shall not have the right of access to a mobile home owned by a tenant ~~unless such access is necessary to prevent damage to the mobile home space or is in response to an emergency situation~~ without consent of the tenant unless it is an extreme hazard involving the potential loss of life or severe property damage

(b) The landlord may enter onto the mobile home space at rea-

sonable hours~~, after reasonable notice,~~ in order to inspect the mobile home space, make necessary or agreed repairs or improvements, supply necessary or agreed services or exhibit the mobile home space to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

(c) The landlord shall not abuse the right of access or use it to harass the tenant.

17

Sec. ~~20.~~ The tenant shall occupy the tenant's mobile home only as a dwelling unit and may rent the mobile home to another, only upon written agreement with the park management.

18

Sec. ~~21.~~ (a) Except as provided in this act, if there is a material noncompliance by the landlord with the rental agreement, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice ~~if the breach is not remedied in 14 days. If there is a noncompliance by the landlord with section 15 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days.~~ The rental agreement shall terminate and the mobile home space shall be vacated as provided in the notice, subject to the following:

or a noncompliance with section 13 materially affecting health and safety

(1) If the breach is remediable by repairs or the payment of damages or otherwise and the landlord ~~adequately remedies~~ the breach ~~prior to the date specified in the notice,~~ the rental agreement ~~will~~ not terminate.

initiates a good faith effort to remedy

within 14 days after receipt of the notice

shall

However, in the event that the same or a similar breach occurs after the fourteen-day period provided herein, the tenant may deliver a written notice to the landlord specifically describing the breach and stating that the rental agreement shall terminate upon a date not less than 30 days after the receipt of such noti by the landlord. The rental agreement then shall terminate as provided in such notice.

(2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person in the mobile home park with the tenant's consent.

(b) Except as provided in this act, the tenant may recover damages, and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or with section ~~15.~~

(c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under subsection (a).

(d) If the rental agreement is terminated, the landlord shall return that portion of the security deposit recoverable by the tenant under section 9.

~~Sec. 22. If there is noncompliance by the landlord with section 15 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning and the landlord fails to comply as promptly as conditions require in case of an emergency or within 14 days after written notice by the tenant specifying the breach and requesting that the landlord remedy it within that period of time, the tenant may cause the work to be done in a skillful manner and submit an itemized bill for the actual and rea-~~

~~sonable cost or the fair and reasonable value thereof, to be applied toward payment of rent on the next date when periodic rent is due or, if the rental agreement is terminated, for immediate payment by the landlord.~~

Sec. ~~23.~~ (a) If the landlord fails to deliver physical possession of the mobile home space to the tenant as provided in section ~~14~~, rent abates until possession is delivered and the tenant:

(1) Upon at least five days' written notice to the landlord, may terminate the rental agreement and upon termination the landlord shall return all of the security deposit; or

(2) may demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the mobile home space against the landlord, or any person in wrongful possession, and recover the damages sustained by the tenant.

(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved party may recover from such person an amount not more than 1 ½ months' periodic rent ~~of 1 ½ times~~ or the actual damages sustained by such party, whichever is greater.

Sec. ~~24.~~ If the landlord unlawfully removes or excludes the tenant from the mobile home park or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession~~, require the restoration of essential services~~ or terminate the rental agreement and, in either case, recover an amount not to exceed 1 ½ months' periodic rent ~~and 1 ½ the actual~~ or the actual damages sustained by the tenant, whichever is greater. If the rental agreement is terminated the landlord shall return that portion of the security deposit recoverable by the tenant under section 9

Sec. ~~25.~~ (a) Except as provided in this act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 14 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. ~~If there is a noncompliance by the tenant with section 17 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. However,~~ The rental agreement shall terminate as provided in the notice, except that if the breach is remediable by repair or the payment of damages or otherwise, and the tenant ~~adequately remedies~~ initiates a good faith effort to remedy the breach prior to the date specified in the notice, the rental agreement will not terminate. However, in the event that the same or a similar breach occurs after the fourteen-day period provided herein, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice without providing the opportunity to remedy the breach. The rental agreement then shall terminate as provided in such notice.

(b) If rent is unpaid when due and the tenant fails to pay rent

within three days after written notice by the landlord of nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(c) Except as otherwise provided in this act, the landlord may recover damages, obtain injunctive relief ~~or recover possession of the mobile home space pursuant to an action in forcible detainer~~ for any material noncompliance by the tenant with the rental agreement or with section ~~17~~ 14

~~(d) The remedy provided in subsection (e) is in addition to any~~ right of the landlord arising under subsection (a).

Sec. 26. If there is noncompliance by the tenant with section 17 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the mobile home space, and cause the work to be done in a skillful manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as additional rent on the next date when periodic rent is due, or if the rental agreement was terminated, for immediate ~~payment.~~

Sec. ~~27.~~ 22 (a) A tenant is considered to have abandoned a mobile home when the tenant has been absent from the mobile home without reasonable explanation for 30 days or more during which time there is a default of rent three days after rent is due or when the rental agreement is terminated pursuant to the provisions of this act. A tenant's return to the mobile home does not change its status as abandoned unless the tenant pays to the landlord all costs incurred for the mobile home space, including costs of removal, storage, notice, ~~attorney fees~~ and utilities due and owing.

(b) If a tenant abandons a mobile home on a mobile home space, the landlord shall notify the legal owner and known ~~or~~ lienholder of the mobile home of the abandonment and communicate to that person that the person is liable for any costs incurred for the mobile home space, including rent and utilities due and owing. However, the person is only liable for costs incurred ~~30 days before the landlord's communication~~ from the point of written notification by the landlord After the landlord's ~~communication~~ notification, costs for which liability is incurred shall then become the responsibility of the legal owner or lienholder of the mobile home. The mobile home may not be removed from the mobile home space without a signed written agreement from the landlord showing clearance for removal, showing that all debts are

paid in full, or an agreement reached with the legal owner and the landlord. The legal owner or lienholder shall be ~~liable~~ to the ~~landlord~~ for the landlord's reasonable costs of removal, storage ~~and sale of~~ the abandoned mobile home ~~at the option of the landlord~~.

(c) A required standardized registration form shall be filled out by each tenant, upon the rental of a mobile home space, showing the mobile home make, year, serial number and ~~license number and also showing if the mobile home is paid for,~~ if there is a lien on the mobile home, and if so the lienholder, and who is the legal owner of the mobile home. The registration cards or forms shall be kept on file with the landlord as long as the mobile home is on the mobile home space within the mobile home park. ~~The tenant shall~~ give notice to the landlord within 10 days of any new ~~lien~~, changes of existing lien or settlement of lien. ~~Intentional~~ falsification of the registration information by the ~~tenant~~, or intentional concealment of changes in lien status with failure to report such changes to the landlord, ~~shall~~ give the landlord the option to terminate the tenancy ~~after three days' notice to the tenant.~~

Sec. ~~28.~~ Acceptance of performance by the tenant that varies from the terms of the rental agreement ~~or rules subsequently adopted by the landlord~~ constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

Sec. ~~29.~~ (a) The landlord may terminate a tenancy only as provided in this act.

(b) ~~Notwithstanding section 18,~~ if the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and ~~recover actual damages.~~ If the tenant's holdover is willful and not in good faith the landlord in addition may recover an amount not to exceed 1 ½ months' periodic rent and 1 ½ the actual damages sustained by the landlord. ~~In any event, the landlord may recover reasonable attorney fees and court costs.~~

Sec. ~~30.~~ (a) If the tenant refuses to allow lawful access to the mobile home space, the landlord may terminate the rental agreement ~~and~~ may recover actual damages.

(b) If the landlord makes an unlawful entry or a lawful entry to the mobile home space in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the tenant may recover actual damages ~~not less than an amount equal to one month's rent plus~~

The right of possession of subject landlord's claim and of late payment of rent from the tenant without reservation by the landlord or acceptance , other than for payment of rent, or , whichever is greater may obtain injunctive relief to compel access or In either case, the landlord

~~attorney fees.~~

~~Sec. 31.~~ (a) Except as provided in this section, a landlord shall not retaliate by increasing rent or decreasing services ~~or by bringing or threatening to bring an action for possession~~ or by failing to renew a rental agreement after any of the following:

(1) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the mobile home park materially affecting health and safety. ~~For this subsection to apply, a complaint filed with a governmental body must be in good faith.~~

(2) The tenant has complained to the landlord of a violation under section ~~15.~~ 12

(3) The tenant has organized or become a member of a tenant's union or similar organization.

~~(4) For exercising any of the rights and remedies pursuant to this act.~~

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in section ~~23~~ 19 and has a defense in an action for possession. ~~In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. For the purpose of this subsection, "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.~~

(c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if either of the following occurs:

(1) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person ~~in the household or~~ upon the premises with the tenant's consent.

(2) The tenant is in default of rent three days after rent is due. The maintenance of the action does not release the landlord from liability under subsection (b) of section ~~21.~~ 18

~~Sec. 32.~~ 28 This act shall take effect and be in force from and after its publication in the statute book.

Notwithstanding the provisions of subsection (a), the landlord may increase the rent of a tenant even though the tenan has complained of a violation as described in clauses (1) or (2) of subsection (a) or has organized or become a member of an organization as described in clause (3) of subsection (a), if such rent increase does not conflict with a lease agreement in effect and is made in good faith to compensate the landlord for expenses incurred as a result of acts of God, public utility service rate increases, property tax increases or other increases in costs of operations.

(d)

Sec. 27. The provisions of this act shall not apply to or affect any valid rental agreement entered into prior to the effective date of this act, nor shall it apply to or affect any conduct or transaction of the parties to such rental agreement, if such conduct or transaction is in accordance with and pursuant to such rental agreement; but the provisior of this act shall apply to and govern any renewal, extension or modification of any such rental agreement, where such renewal, extension or modification is effected on or after the effective date of this act.

S.B. 358
ACLU of Kansas

I am here today to testify on that section of the bill that criminalizes sex between consenting adults of the same sex, pg 13, lines 24-25. We would urge that these lines be stricken. The ACLU opposes the definition of behavior as criminal when such behavior, engaged in either alone or with other consenting adults, does not in and of itself harm another person, or directly force such person to act unwillingly in any way. In particular the organization believes that sex between consenting adults is a private matter in which the state has no legitimate interest.

Current law is not only intrusive and discriminatory, however, but an encouragement to other crime. The individual stigmatized by the criminal sodomy law becomes vulnerable to blackmail, extortion and intimidation, activities the state does have an interest in preventing. Law that encourages the victimization of a class of citizens has no place on the books. The law is also bad for public health reasons. HIV follow-up and the treatment of sexual partners is impeded if the sexual activity is defined as criminal. There are any number of reasons to strike this section from the law.

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3-23-92
Attach #4

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TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 358
MARCH 23, 1992

Mr. Chairman and Members of the Committee:

I appear here today on behalf of the Attorney General's Office and the Kansas Bureau of Investigation (KBI), first in support of Senate Bill 358; and second at the suggestion of Chairman Solbach, to request amendments of SB 358 by incorporating four other criminal justice initiatives that we proposed as separate bills, but which got lost in the shuffle. I believe you have each received a copy of a balloon draft which incorporates these changes.

The first proposed amendment, originally HB 396, mainly corrects an oversight from previous sessions. As you may remember, in 1990, the legislature created a separate offense for manufacturing controlled substances, thus addressing the serious problem of clandestine laboratories and the deadly consequences that can result in some such operations. However, since it is now a separate statute, K.S.A. 65-4159, a death resulting from the commission from such felony would not come under the definition of felony murder as SB 358 currently refers only to the original two drug statutes, K.S.A. 65-4127a and 65-4127b. Therefore, we are requesting amendment to Section 77 of SB 358, page 49, line 8, by including reference to K.S.A. 65-4159 at that location.

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The second proposed amendment incorporates what was originally proposed as House Bill 3123, the creation of a forensic laboratory fee assessment for those persons convicted in cases where the KBI laboratory was utilized. The proposal I handed out last week in a memorandum, I plagiarized from an Oklahoma statute which has been used successfully by our sister state to the south. However, I have been informed by the Office of Judicial Administration, that for administrative reasons they would prefer such a fee be treated as part of court costs in a criminal case, and so be handled by the process that is already in place for collecting court costs. In response to their concern, I have drafted such a version which would be Section 81 of SB 358, wherein this fee is incorporated as part of court costs under K.S.A. 22-3801.

Forensic technology has made some exciting strides in recent years. The Automatic Fingerprint Identification System (AFIS) and DNA technology are allowing us to solve cases that previously would have let murderers and rapists go free. However, such technology is not cheap and it seems most appropriate that the party to bear the costs of such technology would be those persons who require it to be utilized - the criminals. While a number of defendants will be unable to pay due to finances, incarceration or skipping bond, it seems eminently appropriate that defendants who are convicted in cases where the KBI laboratory was utilized to convict them, should help defray the costs of that technology, rather than the taxpayers.

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The third proposed amendment is to incorporate House Bill 3052 as SEction 82 of SB 358, which adds to the authorized dispositions the court has at sentencing to include repayment of any rewards paid by a crime stoppers chapter or government agency when that reward facilitated the apprehension and conviction of the defendant.

The second part of this bill would specifically authorize the courts, in appropriate cases, to order the repayment of public funds utilized to purchase controlled substances during the investigation which lead to defendant's conviction, what we call "buy funds", as part of the sentencing procedure. In those cases where a defendant has sufficient assets and it is the defendant's actions that cause those funds to be expended, it would be morally appropriate to make repayment part of the sentence, literally repaying his or her debt to society. Further, it would enable the reward systems to continue to function, be they Crime Stoppers or from a governmental organization, by replenishing the supply of money available to offer rewards. The Crime Stoppers programs have been incredibly successfuly in Kansas as elsewhere and have resulted in hundreds of arrests, the recovery of hundreds of thousands of dollars of stolen property, as well as the seizure of contraband and other assets in economic crimes. While the public, through their contributions to crime stoppers or the government, will have to be the primary source of funds for rewards, it again seems appropriate where the defendants have the assets available and their actions caused expenditure of the reward funds, that they should be held accountable and repay their debt to society

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through repayment of the reward. The provision for buy funds would also be helpful as an investigation will frequently involve numerous small purchases as we work our way up the drug distribution ladder until the actual arrest. The money expended during the earlier purchases frequently cannot be located. Forfeiture procedures may not apply as it is sometimes impossible to show some assets of a defendant to be drug proceeds. However, if we can show that our undercover agent gave him "x" number of dollars for cocaine, we feel it would be appropriate for the court to have the option to order the dealer to repay that money.

The final proposed amendment is the resurrection of SB 292 as Section 83 of SB 358, making it a crime to launder illegal drug money in Kansas. Last year SB 292 passed the senate by a unanimous vote and as amended, was voted out favorably by this committee, but was recalled due to concerns such as impact on the Sentencing Commission and attorneys fees. This committee amended it to specifically exclude attorneys fees and I have spoken with Ben Coates of the Kansas Sentencing Commission and due to the limited number of cases of defendants involved, he has no concerns about it's passage. To my knowledge, there has only been one case brought by the federal government, which has had a similar money laundering statute for years, in the entire history of Kansas. However, twice in the last three years we have come across people in our investigations whose sole function appears to be that of processing and laundering the money for drug operations. We can't tie them to the drugs themselves and so we lack authority to ever investigate their role in processing money. I have

attached copies of my testimony from last year regarding this bill for more detail.

We feel this is an important weapon in the drug war that Kansas law enforcement officers are currently lacking and we ask that now that the concerns have been resolved, that this be amended into SB 358 and passed favorably for consideration by the house.

I would be happy to answer any questions concerning our proposals. Thank you for your consideration.

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ATTACHMENT A

Section 81. K.S.A. 22-3801 is hereby amended to read as follows:

22-3801. (a) If the defendant in a criminal case is convicted, the court costs shall be taxed against the defendant and shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases.

(b) Jury fees are not court costs and shall be paid by the county in all criminal cases.

(c) Whenever jury fees are paid by the county in a case in which the defendant was a person who had been committed to an institution under the control of the secretary of corrections and had not been finally discharged or released from the institution, the department of corrections shall reimburse the county for jury fees paid by the county. The reimbursement shall be paid from funds made available by the legislature for that purpose.

(d) The county shall not be reimbursed for the cost of employing a special prosecutor.

(e) If the defendant is convicted in a case where forensic science or laboratory services are rendered or administered by the Kansas bureau of investigation such defendant shall be ordered to pay in such case an additional separate fee of $150.00 as part of the court costs. The clerk of the district court shall remit at least monthly the fees to the state treasurer for deposit in the state treasury to the credit of the forensic laboratory and materials fee fund of the Kansas bureau of investigation.

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(d) The monies from the Kansas bureau of investigation laboratory analysis fee deposited into the forensic laboratory and materials fee fund of the Kansas bureau of investigation shall be used for the following:

(1) Providing criminalistic laboratory services;

(2) the purchase and maintenance of equipment for use by the laboratory in performing analysis;

(3) education, training, and scientific development of Kansas bureau of investigation personnel; and

(4) the destruction of seized property and chemicals as prescribed in K.S.A. 22-2512 and K.S.A. 65-4135, and amendments thereto.

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ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
ON BEHALF OF ROBERT T. STEPHAN, ATTORNEY GENERAL AND
THE KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY CRIMINAL SUBCOMMITTEE
REGARDING SENATE BILL 292
MARCH 5, 1991

Mr. Chairman and Members of the Subcommittee:

I am Kyle G. Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation's Narcotic Strike Force. On behalf of Attorney General Bob Stephan and the Kansas Bureau of Investigation (KBI), I want to thank you for the opportunity to address you in support of Senate Bill 292.

Senate Bill 292 addresses a current gap in our statutory arsenal in the drug war. It's purpose is to provide appropriate penalties and hence deterrence to those persons involved in the drug trade on the financial end, i.e. money laundering. We can attack drug dealers by attacking the profits of drug dealing.

The vast amounts of cash generated by the illegal drug trade not only corrupt our youth by luring them into a deadly world of ostentatious wealth and easy money, but can also have a corrupting influence on a business community. The potential for high profits in return for simple money transfers or forgetting to file a federal form has tempted businessmen, attorneys, and financial institutions across this country. It would be naive to think that it is not occurring here in Kansas.

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Under current Kansas law there is no crime for a person to go around converting small bills into large, even though that agent or "smurf" has full knowledge that these are drug profits and that he is working for drug dealers. There is no state law against an attorney or an accountant setting up, with full knowledge of his client's business, a drug laundering operation including sham corporations, multiple accounts, and off-shore multiple money transfers.

Money laundering has three primary stages. The first stage is called the placement stage. This is the conversion of cash into legitimate investments by placing it in banks, security brokers or other businesses involved in handling cash. It is at this stage that drug traffickers are most exposed and the opportunity is greatest for detection and prosecution. At the placement stage the drug trafficker has four choices: 1) the money can be hidden or spent as cash, which besides the obvious security risks, fails to draw any interest; 2) the money can be smuggled out of the country, which statistics show is occurring more and more frequently; 3) the money can be placed in the aforementioned financial institutions or through businesses which handle large amounts of cash, e.g. precious metal dealers, brokers, casinos; or 4) or the money can become mingled with a legitimate business's legal income.

The second stage is called layering, which as it's name implies, is the process of clouding the paper trail generated by financial documents by creating layers of transactions through wire transfers, money orders, cashiers checks, travel vouchers and letters of credit.

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The third stage is integration back into the economy turning the drug proceeds into useable wealth through sham loans, purchases through nominees, or purchases of legitimate businesses, which can in turn be used to launder additional drug proceeds. This bill attacks all three phases of laundering.

Subsection (a) addresses those individuals who knowingly or intentionally receive or acquire proceeds or engage in transactions involving proceeds from the illegal drug trade.

Subsection (b) deals with those individuals who knowingly or intentionally provide finances or property that they know will be used to violate the drugs laws.

Subsection (c) addresses those individuals who are supervising, directing or facilitating the transportation or transfer of proceeds known to be derived from the drug trade.

Subsection (d) addresses the problem of 'structuring', wherein criminals structure payments to avoid federal cash payment reports and currency transaction reports. For example, a drug dealer may go to four different banks and purchase a $9,000 cashier check at each bank to use in the purchase of a $36,000 airplane for his drug trade. The drug dealer has structured his finances to avoid the $10,000 trigger that requires federal reporting. This would itself be a crime and has been used successfully in the federal system to place a drug dealer on the dilemma of either causing the reporting of financial transactions or committing a crime in an attempt to conceal those transactions.

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The activity made illegal under Kansas law in Senate Bill 292 is already prohibited under federal law. As such, this statute will not expose any businesses or individuals to new liability, but would only broaden the authority to investigate such crimes to state and local agencies and their greater resources.

A second point is that for prosecution for any of these offenses it must be shown that a person intentionally or knowingly gets involved with drug money. This should protect the innocent vendor or businessman who unknowingly finds himself to have dealt with drug dealers.

While I don't believe that this statute would result in numerous prosecutions, the handful of individuals who are involved in money laundering that come to light each year could be appropriately punished.

We respectfully request that you pass Senate Bill 292. Thank you.

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RATIONALE FOR REPEAL OF THAT PORTION OF KSA 21-3505
THAT PERTAINS TO ACTS BETWEEN CONSENTING ADULTS OF THE SAME SEX

By: Byron C. Cook
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Sodomy Law Repeal Supports Freedom of Religion

Laws which regulate the private consensual sexual behavior of adult citizens are inappropriate in a pluralistic democracy which values religious freedoms and separation of church and state.

- In our diverse culture, no one religious group, regardless its strength or numbers, should impose its teachings or beliefs on persons who do not share those beliefs.
- To codify into law the teachings of any one religion erodes religious freedoms of all and ignores the fact that the interfaith religious community has not reached consensus on private, adult, consensual, sexual behavior.
- A founding principle of our government is separation of church and state which is violated by codifying the teachings of any one religion.

Sodomy Law Repeal Assists Public Health Officials

Sodomy laws do not and will not reduce or halt the spread of HIV, the virus thought to cause AIDS.

- There is no connection between the repeal of sodomy laws and AIDS. HIV is highly efficient in transmissibility. HIV does not know nor does it care if transmission occurs in the context of licit or currently illicit behavior.
- Public health officials now face an awkward situation. They must educate citizens to avoid exposure or transmission of this deadly virus during sex, and yet to do so appears to condone felonious conduct.
- In Arkansas, Georgia and North Carolina, state officials have censored safe sex education materials which would have helped prevent the spread of HIV because, they claimed, the materials encouraged "lawlessness.
- In the 25 states which have repealed sodomy laws, no such obstacle to safe sex education exists. The question haunts: "How many people have been needlessly exposed to a deadly virus because public health officials are stymied by laws regulating private, adult, consensual sexual behavior?"
- The American Public Health Association and countless public health experts have testified that criminalizing and stigmatizing sexual behavior discourages people from coming forward to seek the care and counseling they need for sexually transmitted diseases. Any law or policy which alienates a client population from health care providers is detrimental to public health. AIDS must be dealt with openly and honestly and those who become infected need humane medical treatment, not fear of harassment by law enforcement officials.

Sodomy Law Repeal Facilitates Hate/ Bias Crime Data Collection

Kansas is mandated by the Federal Government to begin Hate/Bias Crime Data Collection in 1993. If persons are classified as criminals, they are more reluctant to report these type of crimes if to do so would expose their "criminal" behavior.

Sodomy Law Repeal Will Correct Constitutional Violation of Kansas Bill of Rights

Section 1 of the Kansas Bill of Rights provides that: "All men are possessed of equal and inalienable natural rights, among them which are life, liberty, and the pursuit of happiness." In light of this section, the question of unconstitutionality arises because the statute singles out persons of the same sex who engage in sodomy, while the same conduct by persons of opposite sexes is allowed.

- Judge Patrick Kelly of the Federal district Court for the district of Kansas addressed the issue of

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discrimination on the basis of homosexual orientation in Jantz v. Muci, 759 F. Supp. 1543 [D.Kan. 1991]. The Jantz case involved claims that a public school teacher was denied employment because of perceived "homosexual tendencies." After reviewing recent cases and contemporary scientific evidence, Judge Kelly concluded that a history of " deep-seated societal prejudice against homosexuals" supports the conclusion that a " government classification based on an individual's sexual orientation is inherently suspect." 759 F. Supp at 1549, 1551.

- Although constitutionality of the Kansas criminal sodomy statute is not directly controlled by the Jantz case, Judge Kelly noted that discrimination based on orientation is not the same as discrimination against a person or group because of their conduct. Because the Kansas statute applies to acts of sodomy between persons of the same sex, it involves discrimination on the basis of orientation rather than conduct.
- In reviewing the Kansas criminal sodomy statute, it is likely that the statute would not meet a mere rational basis test of constitutionality. " There is no possible rational basis for discrimination in this day and age."Judge Kelly, 759 F.Supp at 1551. Thus there is no rational basis for treating sodomy differently when it involves persons of the same sex.

-Discrimination against persons of the same sex who engage in sodomy is based on traditional fear and hostility rather than on any rational basis. Criminal statutes based solely upon public ignorance and animosity towards a group of people are unconstitutional.

Sodomy Law Repeal Will Reduce Discrimination Against Gay and Lesbian Citizens

Sodomy laws, nearly unenforceable as written, are applied in a variety of non-criminal contexts to discriminate against lesbians and gay men.

- Sodomy laws are used to remove children from the custody of their gay and lesbian parents.
- Sodomy laws are used to discharge lesbian and gay military personal for no reason other than their sexual orientation.
- Sodomy laws are used to reject or revoke operating licenses of lesbian and gay professionals.
- Sodomy laws define lesbian and gay people as unconvicted criminals, which promotes and encourages other forms of discrimination.

Repeal of Sodomy Law Will Not Legalize Non-consensual Behaviors

Repeal of that portion of KSA 21-3505 dealing with consensual, adult, same-sex acts will not remove sanctions against non-consensual, public or commercial sex, nor will sodomy law repeal remove laws prohibiting sex with minors.

- Only the sanctions against private, adult, consensual, and non-commercial sexual behavior will be removed.
- Sanctions against public sex, forcible rape, sexual conduct with minors, and prostitution will be retained.

Sodomy Law Repeal is Supported by Public Opinion and Legislative Precedent

To date, 25 states have repealed laws regulating private, adult consensual sexual behavior. Kansas is one of only five remaining states that continues to criminalize acts between consenting adults of the same sex.

- In 1955 the American Law Institute recommended that states adopt its Model Penal Code, which stated "no harm to the secular interests of the community is involved in typical sex practices in private between consenting adult partners."
- A Newsweek/Gallup Poll, released on July 14, 1986 showed 74% of americans believe that states should not have the right to prohibit particular sexual practices between consenting adults. The poll also showed that 57% of Americans believe that states should not have the right to prohibit particular sexual practices between consenting adults of the same sex.

-Statistics from the Kinsey Institute indicate that well over 85% of all adults at some time have engaged in sexual behaviors which are defined as criminal.

-States which have repealed their sodomy laws are: Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Maine, Nebraska, New Hampshire, New Jersey, New Mexico, New York North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. [Kentucky, Michigan and Texas laws have been struck down as unconstitutional but are awaiting appeal.]

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ENDORSERS OF SODOMY LAW REFORM

PROFESSIONAL ASSOCIATIONS

American Law Institute (Model Penal Code, Section 213.2; Article 207, 1955)
American Psychological Association (1975)
American Public Health Association (1975)
American Medical Association (1975)
American Sociological Association (1978)
National Association of Social Workers (1977)
Association of the Bar of the City of New York (1986)

RELIGIOUS ASSOCIATIONS

The Presbyterian Church, U.S.A. (1970)
The Philadelphia Yearly Meeting of Friends (1973)
The American Friends Service Committee (1976)
The Unitarian Universalist Association (1970)
The United Church of Christ (1969)
The Episcopal Church Executive Council, Diocese of Michigan (1974)
The Episcopal Church Convention, Diocese of New York (1974)
Protestant Episcopal Church in the U.S.A. (1976)
The Lutheran Church in America (1970)
The American Lutheran Church (1977)
The United Methodist Church (1976)
National Federation of Roman Catholic Priests' Councils (1974)
The National Council of Churches of Christ (1973)
The American Jewish Congress (1973)
The Union of American Hebrew Congregations (1977)

INDIVIDUALS

The Right Reverend Paul Moore, Jr. Bishop for Episcopal Diocese of New York (1974)
Robert Gordis, Professor of Theology and Editor of Judaism magazine (1982)
John Van De Kamp, Attorney General of the State of California (1986)
Robert Abrams, Attorney General of the State of New York (1986)
George F. Will, conservative syndicated columnist (July, 1986)

MAJOR PUBLICATIONS

The New York Times (July, 1986)
The Boston Globe (July, 1986)
The Los Angeles Times (July, 1986)
The National Law Journal (July, 1986)
Atlanta Constitution (July, 1986)

CONSTITUENCY GROUPS

American Civil Liberties Union Americans for Democratic Action (1981)
Bay Area Lawyers for Human Rights (1986)
California Lawyers for Individual Freedom (1986)
Gay and Lesbian Advocates and Defenders, Boston, MA
Lambda Legal Defense and Education Fund, Inc.
Lesbian Rights Project, San Francisco (1986)
Los Angeles Lawyers for Human Rights (1986)
National Gay and Lesbian Task Force
National Gay Rights Advocates
National Institute of Women of Color (1981)
National Organization for Women (1986)
National Women's Law Center (1986)
National Women's Political Caucus (1981)
The Bar Association for Human Rights of Greater New York
The Gay and Lesbian Alliance Against Defamation
The Massachusetts Lesbian and Gay Bar Association
Women's Legal Defense Fund (1986)

HJC
3-23-92
#6
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I am Dr. Don Miller, Senior Minister at Central Congregational Church in Topeka. I would like to to thank you for the opportunity to testify before you today in support of an amendment to repeal the portion of KSA 21-3505, the criminal statutes for the State of Kansas, which criminalizes sodomy between persons of the same sex. The Church which I serve is part of the United Church of Christ, a 1.7 million member denomination with more than 80 churches in Kansas.

In 1975 , a Pronouncement was passed by the governing body of the United Church of Christ, that affirmed the civil liberties of gay and lesbian people. The following statement comes from that Pronouncement: "... recognizing that a person's affectional or sexual preference is not legitimate grounds on which to deny her or his civil liberties, the Tenth General Synod of the United Church of Christ proclaims the Christian conviction that all persons are entitled to full civil liberties and equal protection under the law. Further, the Tenth General Synod declares its support for the enactment of legislation at the federal, state and local levels of government that would guarantee the liberties of all persons without discrimination related to affectional or sexual preference."

In 1977, at General Synod Eleven, this Pronouncement was reaffirmed and a resolution was passed urging "congregations, Associations, Conferences, and Instrumentalities to work for the decriminalization of private sexual acts between consenting adults."

In 1987, the Sixteenth General Synod of the United Church of Christ, reaffirmed the actions of past General Synods supporting the human rights of all persons, regardless of sexual orientation as well as further affirming "the right to privacy, free from government intrusion, for all adults in their private, consensual, sexual relationships ..." This action further urged United Church of Christ bodies meeting in states which have so-called "sodomy laws" (which includes the State of Kansas) to make public witness to the church's commitment to defend the right to privacy.

Sodomy laws which criminalizes oral and anal sex, even in the context of marriage, are used exclusively against the gay and lesbian community to criminalize a lifestyle. Criminal sodomy laws are used as a pretext for firing persons for being gay. Criminal sodomy laws are used to deny custody of children to a particular parent in divorce proceedings because he or she is gay or lesbian. The State of Kansas has no business denying such civil rights and no business regulating the private, consensual, non-commercial sexual activities of adults, but should respect the fundamental right to privacy guaranteed by the U.S. Constitution. I urge you to repeal that portion if KSA 21-3505 which criminalizes sodomy. Thank you.

Central Congregational Church, 1248 SW Buchanan, Topeka 66604

HJ 3-23-92 Attachment #7

KANSAS WILDLIFE & PARKS

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DEPARTMENT OF WILDLIFE AND PARKS
JOAN FINNEY, Governor
JACK LACEY, Secretary
JOHN S. C. HERRON, Assistant Secretary

Testimony Before House Judiciary Committee
Regarding S.B. 358

Chairperson Solbach, Members of the Committee.

Thank you for allowing us to appear before you today in the matter of S.B. 358.

We appreciate the committee's effort to recodify the Kansas Criminal Code but in regard to S.B. 358 there are some changes which will cause the Department of Wildlife and Parks as well as the citizens of Kansas some problems that we feel were probably not intended. Those problems are as follows.

Sec. 46 on page ~~18~~ 29 we are not sure what is intended by nonnavigable body of water and would like some clarification.

Sec. 48 on page 30 (lines 16 through 18) apparently removes the landowner permission exception for hunting, shooting, trapping, pursuing any bird or animal, or fishing from public roads, public road rights-of-way or railroad rights-of-way. This will close some lands to those activities that do not warrant being closed. Even the department operates certain lands and waters which would no longer be available for those type of activities.

Sec. 48 on page 30 (lines 34 through 38) removes the exception for pursuing wounded animals. This provision has value, but has been abused by some. What it really does is allow individuals to pursue wounded animals without risk of being charged with "unlawful (criminal) hunting". However, they are still subject to a charge of criminal trespass if they remain in defiance of an order to not enter or an order to leave, or if the property is posted, locked, etc.

Sec. 73 on page 43 (line 43) and page 44 (lines 1 through 3) again addresses certain public rights-of-way and subjects individuals to a criminal discharge of firearms charge. Certain lands and waters previously open to discharge of firearms would be closed. This would also involve portions of our properties.

Sec. 81 on page 50 (line 13) repeals K.S.A. 32-1013. This is a Wildlife and Parks statute which provides for landowner posting of lands and waters as hunting, fishing or trapping by written permission. Our department can assist landowners under this statute without the landowner becoming directly involved. It has been quite popular among landowners and tenants. We strongly recommend against repeal of this statute. I will be happy to answer any questions.

HJC
3-25-92
Attach #8

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
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Joan Finney
Governor

Gary Stotts
Secretary

TO: House Judiciary Committee

FROM: Gary Stotts, Secretary of Corrections

RE: Senate Bill No. 358

DATE: March 23, 1992

The Department of Corrections has two proposed amendments to Senate Bill No. 358. These proposals involve amendments to existing criminal code statutes.

The first proposed amendment is to redefine the crime of trafficking in contraband (KSA 21-3826). This statute is contained within SB 358 at Section 58 (page 35-36). In addition to the amendments to the statute as set forth in section 58, it is suggested that on page 36, line 1, the words "any item whatsoever, including" be inserted after the word "institution." (See Attachment #1.) This is necessary because the list of items presently included in the statute does not include items which clearly would present a threat to the security of a correctional facility. For example, it would not be a violation of this statute to bring into a correctional facility food items, such as yeast or sugar, which could be used to make homemade alcohol, nor would it be a violation to bring in tools, such as a saw, which could be used to facilitate an escape. Contraband introduction is a serious and ongoing concern in correctional facilities and all reasonable measures to control it should be attempted.

The final amendment we propose involves the offense of obstructing legal process or official duty (KSA 21-3808). This amendment is set forth in SB 557 and is intended to make it clear that it is a class E felony for an individual to obstruct or resist the service of a warrant for a parole or probation violation from a felony offense. (See Attachment #2.)

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Attach #9
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A court in Shawnee county recently ruled that parole revocation is a civil process and not a criminal process. Consequently, the court held that an individual who resisted or interfered with service of a warrant for parole revocation could not be convicted of a felony under KSA 21-3808. We believe that if an individual is on parole or probation from a felony offense and resists or interferes with service of a parole or probation violation warrant, a felony prosecution should result.

As a matter of public safety it is important that individuals for whom parole or probation violation warrants have been issued be taken into custody as soon as possible. If an individual believes that they face only a misdemeanor offense for resisting the service of such a warrant, that individual may be more likely to resist service. Any resistance a law enforcement officer receives places that officer at a greater risk to his or her personal safety.

The Senate Committee took no action on SB 557 after a hearing on the bill. We believe the amendment proposed will provide an additional supervision and public safety tool in dealing with felony offenders and urge its inclusion in SB 358.

We believe the amendments proposed herein are important for public safety reasons and will better enable the Department of Corrections to provide for the safe and orderly operation of correctional facilities and the supervision of individuals in the community.

GS/CES:pa

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Attach #9
2 of 4

own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of subsection (1) of this section.

(3) The provisions of subsection (1) of this section shall not apply to any person who forfeits a cash bond supplied pursuant to law upon an arrest for a traffic offense.

(4) Failure to appear is a class B misdemeanor.

Sec. 55. [On and after January 1, 1993,] K.S.A. 21-3818 is hereby amended to read as follows: 21-3818. Falsely reporting a crime is informing a law enforcement officer or state investigative agency that a crime has been committed, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information.

Falsely reporting a crime is a class A misdemeanor.

Sec. 56. [On and after January 1, 1993,] K.S.A. 21-3820 is hereby amended to read as follows: 21-3820. (1) Simulating legal process is:

(a) Sending or delivering to another any document which simulates or purports to be, or is ~~reasonably~~ designed to cause others to believe it to be, a summons, petition, complaint, or other judicial process, with intent thereby to induce payment of a claim; or

(b) Printing, distributing or offering for sale any such document, knowing or intending that it shall be so used.

(2) Subsection (1) of this section does not apply to the printing, distribution or sale of blank forms of legal documents intended for actual use in judicial proceedings.

(3) Simulating legal process is a class A misdemeanor.

Sec. 57. [On and after January 1, 1993,] K.S.A. 21-3824 is hereby amended to read as follows: 21-3824. False impersonation is representing oneself to be a public officer or public employee or a person licensed to practice or engage in any profession or vocation for which a license is required by the laws of the state of Kansas, with knowledge that such representation is false.

False impersonation is a class B misdemeanor.

Sec. 58. [On and after January 1, 1993,] K.S.A. 21-3826 is hereby amended to read as follows: 21-3826. (1) Traffic in contraband in a penal institution is introducing or attempting to introduce into or upon the grounds of any penal institution ~~under the supervision and control of the director of penal institutions or any jail,~~ or taking, sending, attempting to take or attempting to send ~~therefrom~~ from any penal institution or any unauthorized possession while in ~~aforesaid~~ any penal institution or distributing

any item whatsoever, including

within any ~~aforesaid~~ penal institution, any narcotic, synthetic nar cotic, drug, stimulant, sleeping pill, barbiturate, nasal inhaler, coholic liquor, intoxicating beverage, firearm, ammunition, gu powder, weapon, hypodermic needle, hypodermic syringe, currency, coin, communication, or writing without the consent of the ~~warden, superintendent or jailer~~ administrator of the penal institution.

(2) For purposes of this section, "penal institution" means any state correctional institution or facility, conservation camp, state security hospital, state youth center, community correction center or facility for detention or confinement, juvenile detention facility or jail.

(3) Traffic in contraband in a penal institution is a class E felony.

Sec. 59. [On and after January 1, 1993,] K.S.A. 21-3827 is hereby amended to read as follows: 21-3827. ~~An unlawful~~ Criminal disclosure of a warrant is making public in any way, except at the request of a law enforcement officer for the purpose of assisting in the execution of such warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such warrant is based, prior to the execution thereof but the above shall not apply to personnel of a law enforcement agency disclosing a warrant: (1) For the purpose of encouraging the person named in the warrant to voluntarily surrender; or (2) issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant.

~~An unlawful~~ Criminal disclosure of a warrant is a class B misdemeanor.

Sec. 60. [On and after January 1, 1993,] K.S.A. 21-3829 is hereby amended to read as follows: 21-3829. Aggravated interference with the conduct of public business is interference with the conduc of public business as defined in K.S.A. 21-3828, when in possession of any firearm or weapon as described in K.S.A. 21-4201 and amendments thereto.

Aggravated interference with the conduct of public business is a class D felony.

Sec. 61. [On and after January 1, 1993,] K.S.A. 21-3901 is hereby amended to read as follows: 21-3901. Bribery is:

(a) Offering, giving or promising to give, directly or indirectly, to any person who is a public officer, candidate for public office or public employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence t' person with respect to the performance of the person's powers duties as a public officer or employee; or

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ATTACHMENT "1"

ATTACHMENT "2"

Session of 1992

SENATE BILL No. 557

By Committee on Judiciary

1-31

AN ACT concerning crimes and punishment; relating to obstructing legal process or official duty; amending K.S.A. 21-3808 and repealing the existing section.

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

Section 1. K.S.A. 21-3808 is hereby amended to read as follows: 21-3808. Obstructing legal process or official duty is knowingly and willfully obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(Obstructing legal process or official duty) in a case of felony, *or resulting from parole or any authorized disposition for a felony,* is a class E felony. Obstructing legal process or official duty in a case of misdemeanor, *or resulting from any authorized disposition for a misdemeanor,* or a civil case is a class A misdemeanor.

Sec. 2. K.S.A. 21-3808 is hereby repealed.

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

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STATE OF KANSAS

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Joan Finney
Governor

Gary Stotts
Secretary

TO: House Judiciary Committee

FROM: Gary Stotts
Secretary of Corrections

RE: Senate Bill 556

DATE: March 23, 1992

The Department of Corrections requested this bill in order assist in addressing a problem of sexual relationships between employees and inmates. The bill provides that it would be unlawful for an employee of the Department of Corrections, or an employee of a contractor who is under contract to provide services in a correctional institution, to engage in sexual relations with an inmate or parolee. Consent of the inmate or parolee would not be a defense to this action. Violation of this law would be a class E felony.

Personal relationships between employees and inmates adversely impacts the security and orderly operation of correctional facilities. The credibility of the employee, and the Department, is diminished by such relationships and the opportunity for pressure to introduce contraband or take part in other improper activities is increased. This makes the facility less secure and less safe for other employees and inmates.

In the past the Department of Corrections has taken disciplinary action against employees who have been found to have participated in sexual relationships with inmates. When such incidents have been confirmed the disciplinary action has been to terminate the employee. However, the threat of disciplinary action has not fully resolved the problem. Unfortunately, some employees still participate in this kind of activity. To create a greater deterrent to such activity, it is suggested that the activity be made unlawful.

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Although the relationship between the inmate and the employee may appear to be voluntary on the part of both parties, it is clear that an employee is in a position of authority over inmates or parolees. This authority position creates the opportunity for an employee to gain sexual favors from an inmate through pressure or coercion whether direct or indirect. Even when the inmate may appear to consent, this may not in fact be the case. As such, the legislation provides that the employee would not be able to use the consent of the inmate as a defense to a prosecution for this offense.

It is recommended that SB 556 as it passed the Senate be amended into SB 358 with one amendment. This amendment is to add the word "consensual" before the word "sexual" in lines 13, 20, 25,29, and 33. Adding this word is due to a concern that enactment of this law applicable to a specific group (corrections employees, employees of contractors, court services officers, and community corrections employees) may be interpreted to preclude a prosecution for a higher class felony (i.e. rape, aggravated sodomy, sexual battery) because of court rulings that a specific statute controls over a general statute. It is certainly not our intent to preclude a prosecution for a higher class felony for sexual actions of an involuntary nature committed by a corrections employee or employee of a contractor providing services at a correctional facility. Amending the language as proposed herein would limit this law to only those consensual acts not currently unlawful. Lines 37 and 38 of SB 556 could then be deleted from the bill.

Favorable action on SB 556, as amended by the Senate committee and as suggested herein, is therefore requested.

GS:CES/pa

HJC
3-23-92
Attach #10
2 of 3

ATTACHMENT

As Amended by Senate Committee

Session of 1992

SENATE BILL No. 556

By Committee on Judiciary

1-31

AN ACT concerning crimes and punishment; creating the crime of unlawful sexual relations and prescribing the penalty therefor.

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

Section 1. (a) Unlawful sexual relations is engaging in ~~sexual~~ consensual intercourse or sodomy with a person who is not married to the offender if:

(1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution ~~as defined by subsection (b) of K.S.A. 75-5202 and amendments thereto; and~~

~~(2)~~ *and* the person with whom the offender is engaging in ~~sexual~~ consensual intercourse or sodomy is an inmate ~~as defined by subsection (c) of K.S.A. 75-5202 and amendments thereto or is an inmate who has been released on parole or conditional release;~~

(2) the offender is a parole officer and the person with whom the offender is engaging in ~~sexual intercourse or sodomy~~ consensual is an inmate who has been released on parole or conditional release under the supervision and control of the offender;

(3) the offender is a court services officer and the person with whom the offender is engaging in ~~sexual intercourse or sodomy~~ consensual was released on probation under the supervision and control of the offender; or

(4) the offender is a community corrections officer or employee and the person with whom the offender is engaging in ~~sexual intercourse or sodomy~~ consensual was assigned to a community correctional services program whether in a residential setting or, in a nonresidential setting, under the supervision and control of the offender.

~~(b) The consent of the inmate or parolee shall not be a defense to this offense.~~

~~(c)~~ (b) *For purposes of this act: (1) "Community correctional services program" means the same as prescribed by K.S.A. 21-4602 and amendments thereto;*

(2) "correctional institution" means the same as prescribed by K.S.A. 75-5202 and amendments thereto;

(3) "inmate" means the same as prescribed by K.S.A. 75-5202 and amendments thereto;

(4) "parole officer" means the same as prescribed by K.S.A. 75-5202 and amendments thereto; and

(5) "probation" means the same as prescribed by K.S.A. 21-4602 and amendments thereto.

(d) Unlawful sexual relations is a class E felony.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

HJC
3-23-92
Attach # 10
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Kansas County & District Attorneys Association

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Testimony in Support of

SENATE BILL NO. 649

Before the House Judiciary Committee

The Kansas County and District Attorneys Association supports SB 649, which amends K.S.A. 21-3732 by expanding the definition of incendiary device to include pipe bombs.

The problem that arises is that the only reported case construing the statute applies the rule of strict construction in criminal cases, and holds that since the device involved was a railroad torpedo, it was not included in the statutory definition of "molotov cocktail", and the statute did not apply. In re D.W.A., 244 Kan. 114, 765 P.2d 704. The Supreme Court clearly limits the statute to a molotov cocktail, and specifically excludes contact explosives. There are no reported cases that make a determination as to other kinds of explosives equipped with a fuse, wick, or any other detonative device as described in the statute (such as a pipe bomb). The Court of Appeals, on the other hand, has upheld the sufficiency of a complaint alleging a violation of the statute which omitted reference to "molotov cocktail". State v. Kirkwood, 62996, an unpublished opinion dated December 22, 1989. But the case actually involved molotov cocktails.

In conclusion, given the more common use of pipe bombs as the explosive of choice, K.S.A. 21-3732 should be amended to specifically include pipe bombs, as the language in SB 649 presently does; or more generally, to include any type of explosive device equipped with a fuse, wick, or any detonative device. This could be accomplished simply by deleting the reference to "molotov cocktail".

HJC
3-23-92
Attach #11

Kansas County & District Attorneys Association

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Testimony in Support of

SENATE BILL NO. 650

Before the House Judiciary Committee

The Kansas County and District Attorneys Association supports Senate Bill 650, which amends the statutes dealing with escape from custody to include those persons committed to Larned State Security Hospital after being found not guilty by reason of insanity. As pointed out by the attached statement from T.R. Gross, Pawnee County Attorney, the escape of such persons poses a serious threat to public safety and needs no further elaboration.

There are two other concerns that the bill raises:

1. Making a crime out of what is basically a civil commitment. This issue has been considered and decided in favor of the public safety in K.S.A. 21-3611, aggravated juvenile delinquency, which among other acts, makes it a class E felony the second time a juvenile runs away from an SRS institution after having been declared a juvenile offender, which is a civil proceeding.

2. The possible impact on the criminal justice system. Such instances described are rare, after all it is a security hospital. Further, actual convictions may be difficult, as a defendant will surely raise the defense of insanity. The real purpose behind SB 650 is to allow rapid detection and apprehension through entry into NCIC and coverage by extradition proceedings, and not to further punish the offender.

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3-23-92
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T. R. GROSS, Pawnee County Attorney

(316) 285-2139 • Pawnee County Courthouse, Larned, Kansas 67550

February 24, 1992

Committee Members
Senate Judiciary Committee

RE: Senate Bill #650

It was at my request that Senator Moran has introduced the above captioned legislation. Since Pawnee County houses the only State Security Hospital in Kansas, these changes are almost entirely directed toward my jurisdiction. I would like to try to express how vital these changes are to the safety of the people of the State of Kansas and elsewhere.

When a person is committed to State Security Hospital by a plea of not guilty by reason of insanity under K.S.A. 22-3428, they are found to have committed the alleged crimes, but not had the ability to form the criminal intent necessary for a criminal conviction due to mental problems. These persons are usually involved in some of the most violent and public cases in our state. As our laws now provide, if a person committed under K.S.A. 22-3428 escapes from the custody of State Security Hospital he cannot be charged with the crime of escape from custody. To establish that crime he must be held under a charge or conviction. The recourse is to hold him in contempt of court for violating his commitment. His name cannot be entered in the crime computer and since it is a civil matter, he cannot be extradited. This means that some of the most dangerous persons in our state could conceivably be loosed upon our community to wreck havoc, without legal recourse.

This problem surfaced recently when an individual at State Security Hospital held under K.S.A. 22-3428, attempted to escape. He had in the past plea not guilty by reason of insanity to crimes of kidnapping, rape, and aggravated battery. He is considered to be very dangerous at this time. If he had succeeded to escape, he planned on hiding out in Topeka. This would have put innocent Kansans at risk of being victims of violent crime.

In closing, I sincerely wish that each of you strongly back these changes. I am sorry that I am unable to personally argue my cause, however I cannot escape from my duties as County Attorney at this time.

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If any of you have questions, please feel free to contact me.

Sincerely,

T.R. Gross

T.R. Gross
Pawnee County Attorney

#JC 3-23-92 #12 383

Kansas County & District Attorneys Association

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Testimony in Support of

SENATE BILL NO. 742

The Kansas County and District Attorneys Association appears in support of SB 742. It was introduced by the Senate Judiciary Committee at our request.

The bill amends the self-contained enhanced sentences found in the controlled substances statutes to allow consideration of convictions from other jurisdictions. Presently, a person with a prior conviction from a Kansas court shall be sentenced at a higher level for a second or subsequent conviction. For example, a person with one prior offense for possession of one marijuana cigarette may be sentenced as a class D felon for a second conviction; yet another person convicted of the same offense, but with prior convictions of major drug offenses in another state, may only be sentenced as a class A misdemeanor. The purpose of this bill is to give full faith and credit to similar offenses from other jurisdictions for the purpose of enhancing sentences in drug cases.

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