

Approved: Feb. 23, 1998  
Date *amended*

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Vice Chairperson Keith Schraad at 10:14 a.m. on February 20, 1998 in Room 514-S of the Capitol.

All members were present except: Senator Emert (excused)  
Senator Feleciano (excused)  
Senator Petty (excused)

Committee staff present: Mike Heim, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: Tom Graber, District Judge, Wellington, Kansas  
Janet Schalansky, Deputy Secretary, SRS  
Attorney General Carla Stovall  
John Badger, Chief Counsel, SRS  
Tracy Ramirez, Lee's Summit, Missouri

Others attending: See attached list

### **SB 598-Endangering a child and abuse of a child** **SB 615-An act concerning the Kansas code for care of children; reporting requirements;violations of orders**

Conferee Graber testified in support of **SB 598** and **SB 615**. He stated that both bills were developed to enhance child protection in Kansas and that they are part of the recommendations that were developed by a legislative work group that was created from a "Child Protection Symposium" held in Wichita last September. He defined **SB 598** as "a proposed amendment to increase the protection of children who are in danger" and stated that the amendment increases the penalty for endangering a child from a Class A Misdemeanor to a level 5 felony. He explained the rationale for this. He discussed the language change amendments in **SB 615** and the rationale for each. (attachment 1)

Conferee Schalansky testified in support of **SB 598** and **SB 615**. She presented an overview of the Kansas Child Protection Symposium and discussed the purpose of each of these bills. (attachment 2)

Attorney Natalie Haag offered support for **SB 598** and **SB 615** on behalf of Governor Graves.

### **SB 671-Sex Predator Act Amendments**

Conferee Stovall testified in support of **SB 671**. After presenting the history behind the Sexually Violent Predator law, she discussed the technical/procedural, legally significant, and substantive changes this bill affects (attachment 3) detailing each from a prepared outline of the bill. (attachment 4) She also covered balloon amendments from SRS. (attachment 5) Discussion followed.

Conferee Badger testified in support of **SB 671**. He briefly summarized the bill stating the proposed amendments "would create a new three step process of release which would allow the person to be transitioned back into the community over a period of time." He discussed concern SRS had with the bill as it is presently written because it would make juvenile offenders subject to the sex predator law but stated, in discussing this with AG Stovall, she agreed to propose removal of the provisions related to juveniles in the bill. (attachment 6)

### **SB 650-Chemical treatment for certain offenders convicted of sexually violent offenses**

Conferee Stovall testified in support of **SB 650**. She stated the bill "would allow a sentencing judge, when granting probation to a sex offender, to place as a condition of his probation, a requirement to obtain biochemical treatments." She detailed two concerns expressed by people who, she stated, "don't understand the bill." (attachment 7) There was extended discussion with clarification by the AG on questions raised by Committee regarding the subject of chemical treatment.

Conferee Ramirez testified in support of **SB 650**. She related her brother's experience as a convicted sex offender who, in the past under the care of a psychiatrist, has taken medication for his "physical abnormality" and who, since his incarceration seven and a half years ago, has not been able to obtain this medication. She

described the medication her brother had been taking and cited references that support it's effectiveness in reducing the rate of recidivism. She stated that she supported chemical castration of a sex offender prior to his release. (attachment 8)

Written testimony on **SB 650** and **SB 671** was submitted by the Board of County Commissioners, Sedgwick County, expressing concern about the unfunded impacts these two bills would have on their community. They requested Committee consider including funds in the bill to assist in defense expenses in their county. (attachment 9 & 10)

Written testimony on **SB 650** was submitted by the Department of Corrections. The testimony addresses "some of the bill's operational aspects and potential fiscal impact". (attachment 11)

The meeting adjourned at 11:14 a.m. The next scheduled meeting is Monday, February 23.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/20/98

NAME	REPRESENTING
Kay Talley	Third Judicial Dist
Paul Moses	27 <sup>th</sup> Judicial Dist.
Jeanne S Turner	5 <sup>th</sup> Judicial District
John House	SRS
John Balge	SRS
Patricia Mangum	SRS / CFS
Aurora Lyon	
Ann Roberts	
Judge Miller	Ks. Assn of Counties
Jan Johnson	KDOC
Orckid Lynn Hessel	Budget
Jane Heinen	22 <sup>nd</sup> Judicial District
Janet England	6 <sup>th</sup> Judicial District
Maribeth Kehl	Linn County District Court
Marsha Spangler	Sedgewick Co. District Ct. 18 <sup>th</sup>
Rhonda Truhlar	Morton County District Court 26 <sup>th</sup>
Mary R Hillm	SRS / CFS
Jonathan Kirsch	WIBW
Amy Bollig	KCSOV

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/20/98

NAME	REPRESENTING
DR. RICHARD IRONS	MENNINGER CLINIC
Kelli L. Newton	Attorney General's office
Jane Nohr	Attorney General
Stephen R. McAllister	Attorney General
Carla Stewart	AG
Nancy Lindberg	AG
Terry Gross	AG
Natalie Haag	Gov. office
Connie Hudec	SRS
Janet Schalansky	SRS
Tessa Malowitz	SRS
Glacy Ramirez	Public
Mike Hattles	SRS
Kenneth Starr	
BECKY TOPLIFT	21ST J. Dist Court Admin.
Norma J. Finley	15th J. Dist
KEVIN GRAHAM	KAN. SENT. COMM.
Jim Clow	KCDAA
Kathy Powell	ADA



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**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE  
IN REGARD TO SENATE BILLS No. 598 & 615  
GIVEN BY JUDGE THOMAS H. GRABER  
FEBRUARY 20TH, 1998**

These two bills are part of the outcome of the "Child Protection Symposium" held in Wichita last September. The symposium was strongly supported Governor Bill Graves, Chief Justice Kay McFarland, and Attorney General Carla Stovall. As a part of the symposium, a legislative work group was created and these bills are part of the recommendations that were developed to enhance child protection in Kansas.

Senate Bill No. 598 is a proposed amendment to increase the protection of children who are in danger. It would amend K.S.A. 21-3608 by changing the current penalty of a Class A person misdemeanor to a Class 5 person felony. K.S.A. 21-3608 provides in part:

**"21-3608. Endangering a child.** (a) Endangering a child is intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered."

The current penalty allows a court to impose a sentence of up to one year in the county jail and a fine of up to \$2,500.00. The proposed amendment would set a sentencing range at level 5 of the sentencing guidelines. A copy of the sentencing range is exhibit "A" attached to this written testimony and the level 5 range is highlighted. In the symposium it was agreed that the existing penalty needed to be increased to provide an appropriate penalty for the serious danger of harm to a child as prohibited by K.S.A. 21-3608. The level 5 category was selected because any

*Senate Judiciary*  
2-20-98  
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lesser level would establish a presumed probation for the offense. Level five is the first level at which the sentencing court has discretion to sentence the perpetrator to jail. If any lesser felony punishment were provided, the court's ability to impose an appropriate sentence would be less than if the penalty remained as it is currently.

Senate Bill No. 615 has three sections. The first section is an amendment to K.S.A. 38-1502 by adding a new subsection "u" which defines a "Juvenile intake and assessment worker". It is simply cleanup language to define the workers under the intake and assessment system established by K.S.A. 75-7023 which is used in other parts of the code.


The second section involves two amendments. The first is to specifically set a time frame for reports to be made by mandatory reporters in regard to a child who has been a victim of abuse. The current law provides for the abuse to be reported "promptly". The fact is that there have been significant delays in reporting and the consensus of the symposium participants was that the delays unreasonably endangered children who had already suffered abuse. I would propose that the language of the bill at line 17 on page 4 be further amended as reflected in exhibit "B" attached to this testimony. It would provide for prompt reporting but require a maximum of 48 hours for that prompt reporting excluding weekends and holidays. Failure to report timely may not only endanger a child but it also endangers law enforcement's ability to prosecute a perpetrator.

The second amendment adds language necessitated by SRS's contracting for services. With the amendment, worker's for a contract provider would be mandatory reporters. For example, the workers for the contractor provider for services in my county, Methodist Youthville, would have to report under the statute regardless of their job description. These workers have

close contact with the children and they simply need to be added to the existing list.

The third section of the bill is an amendment which would clean up the provisions for implementing a valid court order. These orders are imposed to prevent CINC's from running away from placements and providing secure options if an order is violated. There have been previous amendments to facilitate these provisions but the language found on line 9 page 7 of the bill needs to be changed to make it consistent and to avoid the need for separate adjudication for running away.

Respectfull submitted by

  
Thomas H. Graber, District Judge  
30th Judicial District, Sumner County  
Wellington, Kansas



## SENTENCING RANGE - NONDRUG OFFENSES

1-4

Category→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
I	816 776 740	772 732 692	356 340 322	334 316 300	308 292 276	282 268 254	254 244 230	232 220 208	206 194 184
II	616 584 552	576 548 520	270 256 242	250 238 226	230 218 206	210 200 190	192 182 172	172 164 154	154 146 136
III	206 194 184	190 180 172	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

### LEGEND

Presumptive Probation

Border Box

Presumptive Imprisonment

**Recommended probation terms are:**

36 months for felonies classified in Severity Levels 1 - 5  
24 months for felonies classified in Severity Levels 6 - 10

**Postrelease terms are:**

For felonies committed before 4/20/95

24 months for felonies classified in Severity Levels 1 - 6  
12 months for felonies classified in Severity Level 7 - 10

For felonies committed on or after 4/20/95

36 months for felonies classified in Severity Levels 1 - 6  
24 months for felonies classified in Severity Level 7 - 10

1 respective facilities; (B) total separation in all juvenile and adult program  
2 activities within the facilities, including recreation, education, counseling,  
3 health care, dining, sleeping, and general living activities; and (C) separate  
4 juvenile and adult staff, including management, security staff and direct  
5 care staff such as recreational, educational and counseling.

6 (t) "Kinship care" means the placement of a child in the home of the  
7 child's relative or in the home of another adult with whom the child or  
8 the child's parent already has a close emotional attachment.

9 (u) "*Juvenile intake and assessment worker*" means a responsible  
10 adult authorized to perform intake and assessment services as a part of  
11 the intake and assessment system established pursuant to K.S.A. 75-7023  
12 and amendments thereto.

13 Sec. 2. K.S.A. 1997 Supp. 38-1522 is hereby amended to read as  
14 follows: 38-1522. (a) When any of the following persons has reason to  
15 suspect that a child has been injured as a result of physical, mental or  
16 emotional abuse or neglect or sexual abuse, the person shall report the

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promptly but in no  
case more than 48  
hours, after having  
reason to suspect  
the child has been  
injured,

17 matter ~~promptly within 48 hours~~ excluding Saturdays and Sundays and  
18 legal holidays as provided in subsection (c) or (e): Persons licensed to  
19 practice the healing arts or dentistry; persons licensed to practice optom-  
20 etry; persons engaged in postgraduate training programs approved by the  
21 state board of healing arts; licensed psychologists; licensed professional  
22 or practical nurses examining, attending or treating a child under the age  
23 of 18; teachers, school administrators or other employees of a school  
24 which the child is attending; chief administrative officers of medical care  
25 facilities; registered marriage and family therapists; persons licensed by  
26 the secretary of health and environment to provide child care services or  
27 the employees of persons so licensed at the place where the child care  
28 services are being provided to the child; licensed social workers; firefigh-  
29 ters; emergency medical services personnel; mediators appointed under  
30 K.S.A. 23-602 and amendments thereto; juvenile intake and assessment  
31 workers; *persons providing direct services to children through a contract*  
32 *with the state department of social and rehabilitation services*; and law  
33 enforcement officers. The report may be made orally and shall be fol-  
34 lowed by a written report if requested. When the suspicion is the result  
35 of medical examination or treatment of a child by a member of the staff  
36 of a medical care facility or similar institution, that staff member shall  
37 immediately notify the superintendent, manager or other person in  
38 charge of the institution who shall make a written report forthwith. Every  
39 written report shall contain, if known, the names and addresses of the  
40 child and the child's parents or other persons responsible for the child's  
41 care, the child's age, the nature and extent of the child's injury (including  
42 any evidence of previous injuries) and any other information that the  
43 maker of the report believes might be helpful in establishing the cause

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**State of Kansas  
Department of Social  
& Rehabilitation Services**

Rochelle Chronister, Secretary  
Janet Schalansky, Deputy Secretary



For additional information, contact:

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**Senate Judiciary Committee  
Friday, February 20, 1998**

**Testimony: Senate Bills 598 and 615**

**Children and Family Services  
Teresa Markowitz, Commissioner  
(785) 368-6448**

*Senate Judiciary  
2-20-98  
att 2*

**KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES**  
**Rochelle Chronister, Secretary**

**Senate Judiciary**  
**Senate Bills 598 and 615**

**February 20, 1998**

Mr. Chairman and members of the Committee, I am Janet Schalansky, Deputy Secretary of Social and Rehabilitation Services. I appear before you today in support of Senate Bills 598 and 615.

Both of these bills are the result of recommendations emanating from the Kansas Child Protection Symposium sponsored by Governor Graves, Attorney General Stovall and Chief Justice McFarland. At this symposium 125 experts in child abuse investigation came together to work on ways to improve the state's response to child abuse. Participating in the symposium were prosecutors, social workers, law enforcement officials, advocates and foster care providers.

As a result of the symposium several committees were formed to follow through on issues identified during the symposium. One of the committees was charged with reviewing legislative needs to address improved safety of children and increase the successful prosecution of child abuse. Senate Bill 598 increases the severity level for endangerment of a child from a class A misdemeanor to severity level 5, person felony. We fully support this change.

We also support the amendments offered in SB 615. The extension of the persons mandated to report child abuse and neglect to all who provide direct services to children through a contract with SRS makes clear that paraprofessionals working with youth have the same responsibility to report as do the social workers, psychologists and medical personnel. We agree with the language that requires mandated reporters to report promptly "but in no case more than 48 hours after having reason to suspect the child has been injured." The passage of these two pieces of legislation will be a step forward in meeting the goals of the symposium to improve safety of children and improve prosecution of child abuse.

Many of the same persons who attended the symposium met again in January and laid out a plan for a coordinated response to the investigation of child abuse reports. Model communities are developing protocols defining the roles and responsibilities of the key players and a major training initiative for SRS social workers, law enforcement officers, prosecutors and other key players is being planned and training will soon be available.

Thank you for the opportunity to appear before you today.



State of Kansas

## Office of the Attorney General

CARLA J. STOVALL  
ATTORNEY GENERAL

**TESTIMONY OF ATTORNEY GENERAL CARLA STOVALL  
SENATE BILL 671 -  
AMENDMENTS TO SEXUALLY VIOLENT PREDATOR LAW (KSA 59-29a01 et seq)  
SENATE JUDICIARY  
FEBRUARY 20, 1998**

This legislature took the courageous step in 1994 to enact a controversial, but innovative, approach to dealing with repeat sex offenders when it passed the Sexually Violent Predator law. As we expected, the law was challenged. As perhaps we did not expect, the Kansas Supreme Court struck it down, but as you know, the United States Supreme Court upheld it on June 23, 1997. The High Court's decision affected not just Kansas but the entire country, as it gave the "go ahead" for other states to enact similar legislation. Since the decision, Illinois and North Dakota have passed commitment laws and currently six states of which I am aware have bills pending in their legislatures.

The United States Supreme Court decision established the parameters in which a law like this can exist constitutionally. Our current law clearly falls within those parameters, but it is time to revise our law within the framework provided by the Court to make the law more workable and more effective. During the last couple of years, I have "lived" this law, and have identified changes that are desirable. In addition, my attorneys who handle these cases and the laws in other states have provided additional considerations. By combining all that we have learned, we have the chance to have a "new and improved" commitment law and to continue in the national leadership role that we have been thrust into by virtue of the *Kansas v Hendricks* case. As such, I propose many revisions and additions to the current law. In addition, this is the perfect time to make these revisions because no person committed under the law has been recommended for release from the program yet. That may not be the case by next year's legislative session. Changing the law at that point in time would be troubling from both a constitutional and practical perspective.

Now I'd like to deal with the most important portions of this bill, as I see them, but will obviously be happy to address questions about anything I don't cover in my testimony.

This commitment law exists in Kansas because of the advocacy of Stephanie Schmidt's parents in this very room four years ago. You responded to the compelling and poignant message of their daughter's rape and murder at the hands of a previously convicted sex offender by passing this law. The law has informally been referred to as "Stephanie's Law," and even 60 Minutes, the

television magazine show, called it that during its recent broadcast. I ask you to officially name this law "Stephanie's Law," to allow the legacy of the 19 year old to be formally recognized. While we have not generally given names to laws in Kansas, it is most appropriate. Eight year old Megan Kanka's legacy is the registration and notification laws that the federal government and all 50 states adopted. These laws swept the country after we learned Megan's story. The little girl had accepted the invitation of a neighbor to enter his house to play with his new puppy. The only animal awaiting Megan that day in her neighbor's house was the neighbor himself. He raped and murdered Megan. Neither she nor her parents had known this neighbor was on parole for child sex crimes. Just as Megan's Law exists to prevent another child from losing her life at the hands of a previously convicted sex offender - so does "Stephanie's Law" serve an important preventative function.

The handout I have prepared titled "Outline" will simplify the explanation of the provisions of this bill and I have grouped the changes in three categories: Technical/Procedural, those with Legal Significance, and Substantive changes.

1. The Technical or Procedural changes are very basic and I won't comment on each of them. Let me just establish that "E" is purely a policy decision for you to make. Current law is silent on this point and I think we need to clarify who bears the financial responsibility for the defense of the person. The Sedgwick County Commission has sent me a letter (attached to my testimony) asking that the state be made responsible for these costs. I have no stake in whether the county or state pays and would have preferred to leave this blank for you to fill in - but your revisor wouldn't let me! As the Commission's letter points out, steps were taken previously to make the state financially responsible for these costs but because the current law was upheld these changes did not go into effect.

2. Changes with Legal Significance are next. All of these changes are in accord with the United States Supreme Court decision finding this a civil commitment law and not a criminal law. Hence, we have made the burden of proof the civil "clear and convincing" burden and removed the requirement that a jury decision be unanimous, which is also consistent with civil trials. As with the traditional mental illness commitment proceedings, a judge - not a jury - determines when someone should be released from the commitment. And, because at least one judge has allowed someone against whom a commitment action had been filed to be placed under house arrest - in violation of the intent of the law, in my opinion - we specifically prohibit such a practice. This, too, is consistent with the High Court's finding that this law is civil and not criminal.

3. Substantive changes deal with the evaluation and release procedures. We basically establish four phases to the commitment program. First, the initial commitment when the person is at the Unit and undergoes treatment. Second, placement by order of the court in transitional release (e.g., halfway houses, work release centers). Currently, we have no such mechanism and the concern is with an offender who has been in Kansas prison 10 years and in Larned for 3 years, who is, all of a sudden, released to the community at large with no transition or adjustment. That

is not reasonable for the offender nor for the public. The third phase is conditional release which occurs when the court finds the person's mental abnormality or personality disorder has so changed so as to make the person safe to be at large. The court orders the release of the person subject to his compliance with a treatment plan. The fourth and final phase is final discharge and is after the person has successfully completed five years of conditional release.

We have mirrored as much as possible the conditional release provisions in the traditional mental illness commitment statutes in developing these phases so as to continue to ensure we deal with these persons in the context of civil commitment and not implicate the criminal justice system.

Another change within the evaluation and release procedures authorizes the Secretary of SRS to convene an Evaluation Panel to provide input into the assessments and recommendations required under the act.

I have been formulating these changes since the decision in *State v Hendricks* came down in June. SRS is generally supporting this bill and it is my understand that John Badger, General Counsel for SRS, will be testifying to offer some balloon amendments to which I do not object. The amendments are either to clean up drafting errors or are definitional in nature. The concepts of substance affecting the program were approved by the Program Director and Clinical Director at the Sex Predator Unit at Larned. I have also worked closely with Professor Steve McAllister of KU's Law School. As you know, he has been a tremendous resource to this Legislature on many occasions and his help on the *Hendricks* case was more than valuable. He is also here to answer any questions you may have.

I think all Kansans should be very proud of the leadership we have provided the country as we wrestle with effective ways to deal with repeat sex offenders. Public policy makers, lawyers, psychiatrists and others must combine our knowledge and experience to create viable and constitutional options. I believe the changes to our current law that I have proposed are essential to making our commitment law effective and workable and very, very strongly urge your favorable consideration. Failure to do so will let pass this window of opportunity to perfect our statute.

I am happy to answer any questions you may have and would be pleased to do so at this time.



State of Kansas

## Office of the Attorney General

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ATTORNEY GENERAL

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### OUTLINE OF SENATE BILL 671

#### I. TECHNICAL/PROCEDURAL CHANGES.

A. Amend the preamble to clarify the reason a separate commitment proceeding is established. (Sec. 2, page 1, lines 21-43; page 2, lines 1-16).

B. Add "Incest" and "Aggravated Incest" as sexually violent crimes and remove the definition of "predatory." (Sec. 3, page 2, lines 28-30; page 3, lines 11-13).

C. Establish venue for these actions, the number of jurors and peremptory challenges available to each side. (Sec. 5, page 5, lines 34-43; New Sec. 9, page 9, lines 14-16; Sec. 7, page 7, lines 29-34).

D. Remove the Prosecutor Review Committee and establish the membership of the Multi disciplinary Committee. (Sec. 4, page 5, lines 10-29).

E. Establish that the county bears the financial burden of the defense of the offender. (Sec. 7, page 7, lines 20-22).

F. Eliminate the filing requirement within 75 days of the attorney general receiving written notice by the agency with jurisdiction. (Sec. 5, page 5, lines 34-43).

#### II. CHANGES WITH LEGAL SIGNIFICANCE.

A. Change the burden of "beyond a reasonable doubt" to "clear and convincing." (Sec. 8, page 7, lines 36-38).

B. Eliminate the requirement for a unanimous jury. (Sec. 8, page 7, lines 38-41).

C. Allow a jury only at the initial commitment hearing only. (Sec. 7, page 7, lines 23-26).

D. Clarify that no bail, bond, O.R. bond, house arrest, or other is permitted. (New Sec. 10, page 9, lines 17-21).

E. Expand the opportunities for a person to receive a favorable report by the treatment staff by eliminating the annually-only review requirement and substituting "...or at any other time deemed appropriate by the treatment staff..." (Sec. 12, page 12, line 33).

#### III. SUBSTANTIVE CHANGES.

A. Authorize the Secretary of SRS to convene an Evaluation Panel to assist the treatment staff with evaluations. (Sec. 11, page 10, lines 33-40).

Senate Judiciary  
2-20-98  
att 4



B. Authorize the Secretary of SRS to contract for transitional release facilities (e.g., work release, halfway houses). (Sec. 11, page 11, lines 29-30).

C. Require a court to order a person be placed in transitional release and allow the placement to be ended if necessary. (Sec. 11, page 11, lines 22-25, 34-43; page 12, lines 1-15).

D. Allow the court to order a treatment plan, upon the conditional release of the person and to return him to the program in the event of failure to comply with the treatment plan. (New Sec. 13, page 14, lines 3-6; page 15, lines 25-43; page 16, lines 1-6).

E. Allow final discharge from the treatment plan after a minimum of five years. (New Sec. 13, page 14, lines 15-34).

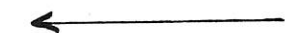
\*F. Extend jurisdiction to juveniles. (Not supported by SRS and no longer requested by the Attorney General.) (Sec. 3, page 3, lines 37-39).

SENATE BILL No. 671

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Senate Judiciary  
2-20-18  
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- 1 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and
- 2 amendments thereto;
- 3 (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and
- 4 amendments thereto;
- 5 (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-
- 6 ~~2511~~ 21-3511 and amendments thereto;
- 7 (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and
- 8 amendments thereto;
- 9 (9) aggravated sexual battery as defined in K.S.A. 21-3518 and
- 10 amendments thereto;
- 11 (10) incest as defined in K.S.A. 21-3602 and amendments thereto;
- 12 (11) aggravated incest as defined in K.S.A. 21-3603 and amendments
- 13 thereto;
- 14 (12) any conviction for a felony offense in effect at any time prior to
- 15 the effective date of this act, that is comparable to a sexually violent
- 16 offense as defined in subparagraphs (1) through (9) (11) or any federal
- 17 or other state conviction for a felony offense that under the laws of this
- 18 state would be a sexually violent offense as defined in this section;
- 19 ~~(11)~~ (13) an attempt, conspiracy or criminal solicitation, as defined in
- 20 K.S.A. 21-3301, 21-3302 and 21-3303, and amendments thereto, of a
- 21 sexually violent offense as defined in this subsection; or
- 22 ~~(12)~~ any act which either at the time of sentencing for the offense or
- 23 subsequently during civil commitment proceedings pursuant to this act,
- 24 has been determined beyond a reasonable doubt to have been sexually
- 25 motivated.
- 26 (14) any offense for which the judge makes a specific finding on the
- 27 record that based on the circumstances of the case, the person's offense
- 28 should be considered a sexually violent offense.
- 29 (f) "Agency with jurisdiction" means that agency which releases upon
- 30 lawful order or authority a person serving a sentence or term of confine-
- 31 ment and includes the department of corrections, the department of so-
- 32 cial and rehabilitation services, ~~the juvenile justice authority~~ and the Kan-
- 33 sas parole board.
- 34 (g) "Convicted of a sexually violent offense" means convicted of a
- 35 sexually violent offense, whether by trial, guilty plea, or plea of nolo con-
- 36 tendere, found not guilty of such offense by reason of mental illness or
- 37 found incompetent to stand trial for such offense. ~~It also means a person~~
- 38 ~~adjudicated to be a juvenile offender for an act that would constitute a~~
- 39 ~~sexually violent offense if committed by a person 18 years of age or older.~~
- 40 (h) "Person" means an individual who is a potential or actual subject
- 41 of proceedings under this act.
- 42 (i) "Treatment staff" means the persons, agencies or firms employed
- 43 by or contracted with the secretary to provide treatment, supervision or



5

1 other services at the sexually violent predator facility.

2 (j) "Transitional release" means any halfway house, work release or  
3 other placement designed to assist the person's adjustment and reintegration  
4 into the community once released from commitment.

5 ~~(k) "Secretary" means the secretary of the department of social and  
6 rehabilitation services.~~

7 Sec. 4. K.S.A. 1997 Supp. 59-29a03 is hereby amended to read as  
8 follows: 59-29a03. (a) When it appears that a person may meet the cri-  
9 teria of a sexually violent predator as defined in K.S.A. 59-29a02 and  
10 amendments thereto, the agency with jurisdiction shall give written notice  
11 of such to the attorney general and the multidisciplinary team established  
12 in subsection (d), 90 days prior to: The attorney general and the multi-  
13 disciplinary team shall be given notice by the agency with jurisdiction  
14 when it appears that a person who has been convicted of a sexually violent  
15 offense, before:

16 (1) The anticipated release from total confinement of a person who  
17 has been convicted of a sexually violent offense; except that in the case  
18 of persons who are returned to prison for no more than 90 days as a result  
19 of revocation of postrelease supervision; written notice shall be given as  
20 soon as practicable following the person's readmission to prison from the  
21 department of corrections;

22 (2) release of a person who has been charged with a sexually violent  
23 offense and who has been determined to be incompetent to stand trial  
24 pursuant to K.S.A. 22-3305 and amendments thereto;

25 (3) release of a person who has been found not guilty by reason of  
26 insanity of a sexually violent offense pursuant to K.S.A. 22-3428 and  
27 amendments thereto; or

28 (2) the anticipated hearing regarding possible release from confine-  
29 ment pursuant to a finding of not guilty by reason of mental illness pur-  
30 suant to K.S.A. 22-3428 and amendments thereto or guilty but mentally  
31 ill pursuant to K.S.A. 22-3430 and amendments thereto;

32 (3) the anticipated hearing on competency to stand trial after a find-  
33 ing of incompetency to stand trial on a charge of a sexually violent offense;

34 (4) release after a finding of a person who has been found not guilty  
35 of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments  
36 thereto, and when the jury who returned the verdict of not guilty answers  
37 answered in the affirmative to the special question asked pursuant to  
38 K.S.A. 22-3221; or

39 ~~(5) the anticipated release from the custody of the commissioner of  
the juvenile justice authority.~~

40 (b) The agency with jurisdiction shall inform the attorney general and  
41 the multidisciplinary team established in subsection (d) of the following:

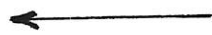
42 (1) The Notice shall include the person's name, identifying factors,

secure

(k) "Conditional release" means any placement  
in independent or semi-independent living  
supervised pursuant to court order and involving  
living, working and treatment conditions designed  
to assist the person's adjustment and reinte-  
gration into the community once released from  
treatment.

(1)

OR



1 *sexually violent predator and state facts sufficient to support the allega-*  
2 *tion.*

3 Sec. 6. K.S.A. 1997 Supp. 59-29a05 is hereby amended to read as  
4 follows: 59-29a05. (a) Upon *the* filing of a petition under K.S.A. 59-29a04  
5 *and amendments thereto*, the judge shall determine whether probable  
6 cause exists to believe ~~that~~ the person named in the petition is a sexually  
7 violent predator. If such determination is made, the judge shall direct  
8 that person be taken into custody.

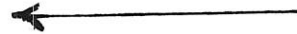
9 (b) Within 72 hours after a person is taken into custody pursuant to  
10 subsection (a), such person shall be provided with notice of, and an op-  
11 portunity to appear in person at, a hearing to contest probable cause as  
12 to whether the ~~detained~~ person is a sexually violent predator. At this  
13 hearing the court shall: ~~(1) verify the detainer's identity; and (2) determine~~  
14 whether probable cause exists to believe that the person is a sexually  
15 violent predator. The *state attorney general* may rely upon the petition  
16 and supplement the petition with additional documentary evidence or  
17 live testimony *or both*.

18 (c) At the probable cause hearing as ~~provided in subsection (b)~~, the  
19 ~~detained person shall have the following rights in addition to the rights~~  
20 ~~previously specified: and at all other hearings pursuant to this act, the~~  
21 ~~person shall have the rights previously specified in addition to the right:~~

22 (1) To be represented by counsel *or to have the court appoint counsel if*  
23 *the person is determined to be indigent*; (2) to present evidence on such  
24 person's behalf; (3) to cross-examine witnesses who testify against such  
25 person; and (4) to view and copy all petitions and reports in the court  
26 file.

27 (d) If the probable cause determination is made, the court shall direct  
28 that the person be transferred to an appropriate secure facility, including,  
29 but not limited to, a county jail, for an evaluation as to whether the person  
30 is a sexually violent predator. The evaluation shall be conducted by a  
31 person deemed to be professionally qualified to conduct such an exami-  
32 nation.

33 Sec. 7. K.S.A. 1997 Supp. 59-29a06 is hereby amended to read as  
34 follows: 59-29a06. (a) Within 60 days after the completion of any hearing  
35 held pursuant to K.S.A. 59-29a05 and amendments thereto, the court  
36 shall conduct a trial to determine whether the person is a sexually violent  
37 predator. The trial may be continued upon the request of either party  
38 and a showing of good cause, or by the court on its own motion in the  
39 due administration of justice, and when the ~~respondent person~~ will not  
40 be substantially prejudiced. At all stages of the ~~proceedings under this~~  
41 ~~act, any person subject to this act shall be entitled to the assistance of~~  
42 ~~counsel; and if the person is indigent, the court shall appoint counsel to~~  
43 ~~assist such person. Whenever any person is subjected to an examination~~



1 of the secretary of social and rehabilitation services for control, care and  
2 treatment until such time as the person's mental abnormality or person-  
3 ality disorder has so changed that the person is safe to be at large. Such  
4 control, care and treatment shall be provided at a facility operated by, or  
5 *under contract with*, the department of social and rehabilitation services.  
6 At all times, persons committed for control, care and treatment by the  
7 department of social and rehabilitation services to the custody of the sec-  
8 retary pursuant to this act shall be kept in a secure facility, separate and  
9 such persons shall be segregated at all times from any other patient under  
10 the supervision of the secretary of social and rehabilitation services and  
11 commencing June 1, 1995, such persons committed pursuant to this act  
12 shall be kept in a facility or building separate from any other patient under  
13 the supervision of the secretary, *except as authorized by the court pur-*  
14 *suant to K.S.A. 59-29a12 and amendments thereto.* The department of  
15 social and rehabilitation services is authorized to enter into an interagency  
16 agreement with the department of corrections for the confinement of  
17 such persons. Such persons who are in the confinement of the secretary  
18 of corrections pursuant to an interagency agreement shall be housed and  
19 managed separately from offenders in the custody of the secretary of  
20 corrections, and except for occasional instances of supervised incidental  
21 contact, shall be segregated from such offenders. If the court or jury is  
22 not satisfied beyond a reasonable doubt that the person is a sexually vi-  
23 olent predator, the court shall direct the person's release. Upon a mistrial,

24 (b) *In the event a mistrial is declared by the court, the attorney gen-*  
25 *eral may refile the case and the court shall direct that the person be held*  
26 *at an appropriate secure facility, including, but not limited to, a county*  
27 *jail, until another trial is conducted. Any subsequent such trial following*  
28 *a mistrial shall be held within 90 days of the previous trial mistrial having*  
29 *been declared, unless such subsequent trial is continued as provided in*  
30 *K.S.A. 59-29a06 and amendments thereto.*

31 ~~(b)~~ (c) *If the person attorney general has filed a petition pursuant to*  
32 *the provisions of K.S.A. 59-29a05 and amendments thereto, seeking the*  
33 *commitment of a person who had been charged with a sexually violent*  
34 *offense has but who had been found incompetent to stand trial, and who*  
35 *is now about to be released pursuant to K.S.A. 22-3305 and amendments*  
36 *thereto, and such person's commitment is sought pursuant to subsection*  
37 ~~(a)~~ *, the court shall first hear evidence and, prior to or in conjunction with*  
38 *the trial provided for in K.S.A. 59-29a07 and amendments thereto, hold*  
39 *a hearing to determine whether the person did actually commit the act*  
40 *or acts the person had been charged.* The hearing on this issue ~~must shall~~ with  
41 comply with all the procedures specified in this section K.S.A. 59-29a07  
42 and amendments thereto. In addition, the rules of evidence applicable in  
43 criminal cases shall apply, and all constitutional rights available to de-

1. of the evaluation panel, along with the report of the examination by the  
2. treatment staff, shall be forwarded to the court with venue. The court  
3. shall review the same but shall not be required to conduct a formal hear-  
4. ing to review the reports if both the evaluation panel and treatment staff  
5. reports do not recommend that the person be considered for final dis-  
6. charge. However, if the court determines that probable cause exists to  
7. believe that the person's mental abnormality or personality disorder has  
8. so changed that the person is safe to be finally discharged or if both  
9. reports of the evaluation panel and the treatment staff recommend that  
10. the person is safe to be finally discharged, the court shall then set a formal  
11. hearing on the issue. ~~The attorney general shall have the burden of proof~~  
12. ~~by a clear and convincing standard.~~ The person shall have the same rights  
13. as enumerated in K.S.A. 59-29a05 and amendments thereto. The attorney  
14. general shall have the right to have the person evaluated by experts cho-  
15. sen by the attorney general. The person shall also have the right to be  
16. evaluated by experts of such person's own choosing, who have been ap-  
17. pointed by the court in the event the person is determined to be indigent.  
18. The hearing shall be to the court and the attorney general shall have the  
19. burden to show by clear and convincing evidence that the person remains  
20. a sexually violent predator and is not appropriate for final discharge. Upon  
21. such proof, the court shall continue custody of the person with the sec-  
22. retary for placement in a secure facility, transitional release program or  
23. conditional release program. In the event the court does not order final  
24. discharge of the person, the person still retains the right to annual reviews.  
25. (d) At any time during which the person is on conditional release and  
26. the professional person designated by the court in the treatment plan to  
27. monitor the person's compliance with it determines that the person has  
28. violated any material condition of that plan, that professional person may  
29. request the district court with venue to issue an emergency ex parte order  
30. directing any law enforcement officers to take the person into custody  
31. and return the person to the secure commitment facility. Any such re-  
32. quest may be made verbally or by telephone, but shall be followed in  
33. written or facsimile form delivered to the court not later than 5:00 p.m.  
34. of the first day the district court is open for the transaction of business  
35. after the verbal or telephonic request was made.  
36. (e) Upon the person being returned to the secure commitment fa-  
37. cility from conditional release, notice thereof shall be given by the sec-  
38. retary to the court with venue. The court shall set the matter for a hearing  
39. within two working days of receipt of notice of the person's having been  
40. returned to the secure commitment facility and cause notice thereof to  
41. be given to the attorney general, the person and the secretary. The at-  
42. torney general shall have the burden of proof to show probable cause  
43. that the person violated conditions of conditional release. The hearing



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**State of Kansas  
Department of Social  
& Rehabilitation Services**

Rochelle Chronister, Secretary  
Janet Schalansky, Deputy Secretary



For additional information, contact:

**SRS Office of Research**  
Suzanne Woods, Director  
915 SW Harrison Street, Sixth Floor  
Topeka, Kansas 66612-1570  
☎785.296.3329 / Fax 785.296.4685

For fiscal information, contact:

**SRS Finance Office**  
Diane Duffy, CFO  
915 SW Harrison Street, Tenth Floor  
Topeka, Kansas 66612-1570  
☎785.296.6216 / Fax 785.296.4676

**Senate Judiciary Committee  
Friday, February 20, 1998**

**Testimony: SB 671**

**Legal Division  
John Badger, Chief Counsel  
785.296.3967**

*Senate Judiciary  
2-20-98.  
att 6*

**Kansas Department of Social and Rehabilitation Services**  
**Rochelle Chronister, Secretary**

**Senate Committee on Judiciary**  
**SB 671**

**February 20, 1998**

Mr. Chairman and members of the committee, I am John Badger, Chief Counsel for the Department of Social and Rehabilitation Services. Thank you for this opportunity to appear before you today on behalf of Secretary Chronister in support of Senate Bill 671.

Attorney General Stovall and her staff have worked closely with SRS in developing this legislation and we agree the proposed changes will have a positive impact on the Kansas sex predator law. As it currently stands, a person committed under this act is either locked up in the treatment facility now located in Larned, or they are released entirely with no strings attached. The proposed amendments would create a new three step process of release which would allow the person to be transitioned back into the community over a period of time. We think this greatly enhances the likelihood of the person successfully fitting back into the general population and becoming a worthwhile member of society.

The bill as it is presently written would make juvenile offenders subject to the sex predator law. This caused SRS concern because we believe the existing program which the department has established would be inappropriate for juveniles. If a new program had to be developed and set up in order to treat juveniles this could result in significant additional costs. This concern was discussed with the Attorney General and she has agreed to propose removal of the provisions related to juveniles from the bill.

With the removal of juvenile offenders from the bill, SRS supports SB 671 and urges this committee to recommend it favorably for passage.

John Badger, Chief Counsel

SRS Legal Division  
915 SW Harrison, DSOB - 5<sup>th</sup> Floor  
Topeka, Kansas 66612  
(785)296-3967

6-2





State of Kansas

## Office of the Attorney General

CARLA J. STOVALL  
ATTORNEY GENERAL

**TESTIMONY OF ATTORNEY GENERAL CARLA STOVALL  
SENATE BILL 650 - BIOCHEMICAL TREATMENT FOR CERTAIN OFFENDERS  
SENATE JUDICIARY  
FEBRUARY 20, 1998**

Thank you for the opportunity to testify in support of SB 650, which is commonly called the "chemical castration" bill. The bill would allow a sentencing judge, when granting probation to a sex offender, to place as a condition of his probation a requirement to obtain biochemical treatments. It would also allow the Kansas Parole Board to place the same requirement upon a sex offender who is being released from prison.

Let me address up-front two concerns I have heard from people who have not taken the time to understand the bill. And they are legitimate concerns - however, not relevant to this proposal.

Number One. Some have criticized the concept out of fear that if the offender agrees to undergo this treatment he is treated more leniently. Nothing in this proposal authorizes such a response. The bill does not allow any *quid pro quo*, which is to say no one receives probation, as opposed to prison, by undergoing this biochemical treatment. Nor does any one get an early parole by undergoing this treatment. It is simply an option for a sentencing judge or the Parole Board in dealing with a sex offender who is going to be back in our communities anyway. I believe it is an appropriate option to make available.

Number Two. Some argue that this treatment is not effective for all sex offenders because some sex offenses are violent offenses and this chemical treatment, which reduces the production of testosterone, would not have any affect on them. That is absolutely correct and I totally agree! Those who commit their sex crimes out of rage, a desire to overpower, humiliate, and degrade their victims would not be appropriate for this treatment. That criminal is not motivated to commit these crimes due to his sex drive. These individuals are simply violent criminals who have chosen sex as their weapon - no different than another violent offender would choose a knife, gun or other even more unspeakable methods of injuring a victim. Because of that distinction, this biochemical treatment would not be medically appropriate for all sex offenders. Both the sentencing judges and Parole Board members would have to make independent determinations, with the benefit of medical evaluations, as to whether or not the particular offender in front of them was appropriate for this treatment.

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Having responded to those concerns, let me tell you why I think this is a viable option for Kansas officials. Because of the rates of recidivism of sex offenders and the nature of the injury they cause, we must be vigilant about developing an entire continuum to deal with them. Long prison sentences, counseling in prison, the Sexually Violent Predator commitment laws, extended periods of parole, intensive counseling upon parole, and Sex Offenders Registration are all options to deal with those who have committed sexual offenses. Every option is not appropriate for every sex offender - but all of the options should be on the continuum available to allow us to best protect our public.

The chemical that is required by the bill is medroxyprogesterone acetate (MPA), commonly known as Depo Provera and is the drug authorized in all states with similar legislation. Studies using different drugs are being conducted and more effective drugs may be discovered in the future and the statute could be changed to so reflect.

Studies exist which demonstrate a reduction in recidivism when subjects receive biochemical treatment. One study reported in Volume I of *The Sex Offender*, Chapter 18 "Psychopharmacological Options for Sex Offenders," showed a contrast of 15% recidivism of sex offenders who had been treated with MPA as opposed to a 68% of recidivism for the control group. Another study reported that 18% of sex offenders reoffended while on the medication, 35% reoffended after stopping the medication and 58% with no treatment at all reoffended.

No study nor no expert would declare that such a treatment guarantees no sex crime would be committed while an offender is undergoing this treatment. There is NO guarantee - not even surgical castration! But the studies which show a reduction in recidivism are impressive and are the basis for this legislation.

The treatments are generally weekly injections. The bill requires the offender to bear the cost of the treatments, however, inability to pay does not relieve them of the obligation to undergo treatment. In that case, the state or county would assume the cost which could be recovered at some point from the offender much like reimbursement of defense attorney fees, court costs, fines, fees, and restitution. The best estimate of cost is \$40 per injection or \$2,080 per year.

Six state legislatures have adopted some form of biochemical treatment and five currently have bills under consideration. By far the majority provide for the judge at time of sentencing to order this treatment when the individual is eventually released from prison. I think it more appropriate that the entity which deals with an offender immediately before his release back into the communities is in the best position to decide whether such a treatment is appropriate. That is why I've written this to allow judges granting probation and Parole Board to order this.

Some of the laws in other states make this treatment mandatory upon conviction for

certain offenses - especially when there is a history of similar crimes. This bill never requires the treatment, but authorizes the appropriate officials to order it when, in the exercise of their discretion, such treatment is appropriate.

The bill also allows the judge and Parole Board to extend the time the offender is on supervision for so long as it is deemed appropriate for the treatments to continue. Stopping the treatment after five years, because that is the length of supervision for sex offenders, seems not in the best interests of the offenders of the public. There will be a cost for the increase in supervision periods for those offenders ordered to undergo this treatment and who have their supervision extended.

We cannot reasonably predict how many offenders in Kansas might be required to undergo this treatment. The Department of Corrections is currently housing 1,874 sex offenders and they estimate that 1,100 have the potential to be released within the next five years. That is a large pool which might be *considered* for the treatment, but there is no way to predict how many might be medically appropriate for it. Just as with the Sexually Violent Predator commitment law, there is a large pool but few have been found appropriate for the commitment. We have, in fact, evaluated over 850 sex offenders since the commitment law went into effect, but only 14 have been found to be predators.

My concerns initially with this concept were of a constitutional nature. Would a court approve the condition or find it violative of the constitution of either Kansas or the federal government? No statute has been successfully challenged, but any challenge would be defended upon the grounds the chemical treatment is not "punishment," but rather a non-punitive public safety measure. It is also important to remember that biochemical treatment, unlike surgery, can be easily reversed. The reduction in testosterone production continues only so long as the regular injections are maintained. After looking at the laws in other states, researching the efficacy studies, and consulting with Professor Steve McAllister of the University of Kansas School of Law, I am more than willing to defend any challenges to this law which might arise.

Please give us another option to deal with the threat posed by repeat sex offenders. Thank you for your consideration.

STJ  
2-20-18  
att 8  
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**Committee Members:**

**For me, it's time to take the gloves off. I have been silent now for almost seven years, afraid of offending. Well, I can no longer tiptoe around this issue, concerning the treatment of sex offenders, and I reiterate, the treatment, because it is an illness. Unfortunately, some members of our society say, "lock them up," and the problem will be solved or send them to a mental institute and let them try to deal with them. This solves nothing. It only enhances, or should I say, stimulates the condition for those who want treatment.**

**What I'm saying is, if you are willing to make this an option for those individuals who are being paroled, Depo-Provera is a medication, and these individuals are sick. If they are willing to try this medication upon their parole release, some as a ploy to get out, others who are serious about their illness and desperately wanting help, why wait until they are released to see if the medication is going to work. Then we are taking the chance of someone else getting hurt or worse. Let's work on these men's problem now, while they are still incarcerated, not wait to see if the drug works after the fact.**

**You see, I have a brother who has been incarcerated at Lansing Correctional Facility for the last 7 ½ years. Subsequent to his conviction**

*Senate Judiciary*  
2-20-18  
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of a sexual offense, he has continually requested, of the KDOC officials, the prescription drug known as Depo-Provera. This has been to no avail.

In laymen terms, this drug is used worldwide to reduce a males sex drive. In short, prior to his confinement, my brother had been diagnosed as suffering from a physical abnormality which consists of an excessive amount of testosterone and a Sexual Impulse Disorder. David was under a psychiatrist's care for a period of nine months and was administered this drug on a bi-weekly basis during the time which included the period subsequent to his arrest and prior to his confinement. The psychiatrist which cared for David was William Logan of the professional establishment, Meninger Clinic, located within your fine city. Dr. Logan did recommend that David continue the use of Depo-Provera for an unlimited period of time.

Depo-Provera is a female hormone used for birth control. When given to males by injection, it dramatically decreases their testosterone level to that of a woman. When given by injection, you're assured compliance. It literally knocks out the sex drive completely. In combination with Paxil or Prozac, it further eliminates the sex drive and decreases the intrusive, obsessive, unwanted sexual thoughts. It works 100% of the time. You can check blood levels to monitor compliance.

**If what Attorney General Stovalt is proposing is for the public's best interest, and it is, why wait until these individuals are released. There are many of them that are wanting to work on curing their illness before they are released.**

**The forensic journals support that a medical intervention for this type of disorder is far superior to that of simple incarceration. In fact, forensic journals support that a punitive approach to these disorders increases the recidivism rate, where as a medical approach can in fact control and intercede without any additional offenses. This is supported quite clearly by comparing the rate of recidivism for Sexual Impulse Control Disorder with that of other felony offenses. It is quite clear that the recidivism rate is much higher following incarceration than for that of any other type of felony.**

**Therefore, let's work on the problem before they get out, so that sexual crimes can be put to a stop. I lived with David for those nine months before his incarceration and saw first hand the dramatic changes in him. I know it works.**

5/20/99



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KANSAS ATTORNEY GENERAL  
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**BOARD OF COUNTY COMMISSIONERS**

**MARK SCHROEDER**  
CHAIRMAN  
FIFTH DISTRICT

**BETSY GWIN**  
COMMISSIONER  
FIRST DISTRICT

**BILL HANCOCK**  
CHAIRMAN PRO TEM  
SECOND DISTRICT

**MELODY C. MILLER**  
COMMISSIONER  
FOURTH DISTRICT

**TOM WINTERS**  
COMMISSIONER  
THIRD DISTRICT

COUNTY COURTHOUSE • SUITE 320 • 525 NORTH MAIN • WICHITA, KANSAS 67203-3759 • TELEPHONE (316) 383-7411 • FAX (316) 383-8275

February 4, 1998

The Honorable Carla Stovall  
Attorney General of Kansas  
301 SW 10th Avenue  
Topeka, KS 66612

Dear Attorney General Stovall:

The Board of County Commissioners support the progress made toward keeping dangerous sex offenders incarcerated and applauds your efforts to make this happen. However, the Sexual Predator Law has caused concerns in Sedgwick County due to the requirement that counties are responsible for the defense expenses of these cases.

We are aware that you are working on possible legislation to modify the current law and this may contain a fiscal note. Please consider including the funds needed for defense. This has been supported by the legislature twice who passed laws in 1996 and 1997 relating to the Sexual Predator Law. They were to go into effect and provided for the State to take over the payments for indigent defense but this was only if the current law was found unconstitutional. Through your work we were able to maintain the law, however, we would ask that the modifications you are proposing include correcting this problem.

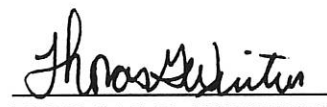
This is an important issue for us since, as you are aware, the majority of individuals at Larned are from Sedgwick County. We appreciate your consideration of this request.

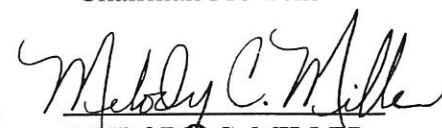
Sincerely,

  
MARK F. SCHROEDER  
Chairman

  
BILL HANCOCK  
Chairman Pro Tem

  
BETSY GWIN  
Commissioner

  
THOMAS G. WINTERS  
Commissioner

  
MELODY C. MILLER  
Commissioner

*Senate Judiciary*  
2-20-98  
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SEDGWICK COUNTY, KANSAS

BOARD OF COUNTY COMMISSIONERS



MARK SCHROEDER  
CHAIRMAN  
FIFTH DISTRICT

BETSY GWIN  
COMMISSIONER  
FIRST DISTRICT

BILL HANCOCK  
CHAIRMAN PRO TEM  
SECOND DISTRICT

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THIRD DISTRICT

COUNTY COURTHOUSE • SUITE 320 • 525 NORTH MAIN • WICHITA, KANSAS 67203-3759 • TELEPHONE (316) 383-7411 • FAX (316) 383-8275

**TO:** Senate Judiciary Committee  
**FROM:** Mark F. Schroeder, Chairman  
**DATE:** February 20, 1998  
**RE:** Senate Bill 650 and Senate Bill 671

Chairman Emert and members of the Senate Judiciary Committee, Sedgwick County wishes to share concerns on Senate Bill 650 (chemical treatment for certain offenders convicted of sexually violent offenses) and Senate Bill 671 (civil commitment of sexually violent predators – “Stephanie’s Law”).

Both Senate Bill 650 and 671 allow for further unfunded mandates for counties; these unfunded state mandates have a significant negative impact on our local communities and the programs we must provide for our citizens.

In addition, Sedgwick County has grave concerns about Senate Bill 671, which provides for the release of sexual predators back into communities. The proposed legislation allows for sexual predators to be released from in-patient treatment back into communities for local treatment on an out-patient basis. We believe this poses a danger to the children and citizens of our community. As well, it is unclear if the appropriate treatment programs are in place to be prepared to handle these types of cases in local communities. This presents additional responsibilities on the counties to ensure safety for citizens, while at the same time, determining how to meet the demands of these cases.

Again, as the largest county in the state, we are greatly concerned about the unfunded impacts of these two bills on our community.

Respectfully,

MARK F. SCHROEDER  
Chairman

MFS/jc  
Senate Judiciary  
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Bill Graves  
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Charles E. Simmons  
 Secretary

## MEMORANDUM

DATE: February 20, 1998  
 TO: Senate Judiciary Committee  
 FROM: Charles E. Simmons  
 Secretary of Corrections *[Signature]*  
 RE: SB 650

SB 650 authorizes the Kansas Parole Board as a condition of parole or postrelease supervision and district courts as a condition of probation to order the administration of medroxyprogesterone acetate treatment (or its chemical equivalent). Additionally, the period of probation or postrelease supervision of persons for whom this treatment has been ordered may be extended indefinitely. The Department of Corrections wishes to take this opportunity to address some of the bill's operational aspects and potential fiscal impact.

Currently, the Department has 1,874 inmates incarcerated who have been convicted of at least one sexually violent offense and 660 such offenders on parole or postrelease supervision. Of the released offenders, 136 are being supervised in other states through interstate compact agreements. A requirement for hormonal treatment may dictate that some of those offenders remain in Kansas in order to receive treatment. Of the 1,874 inmates currently incarcerated, approximately 1,100 have the potential to be released within the next five years. To implement SB 650, the Department anticipates screening and evaluating sex offenders prior to their release in order to advise the Kansas Parole Board of the appropriateness of imposing hormonal treatment as a condition of parole or postrelease supervision. The cost of this evaluation is unknown by the Department at this time. Additionally, the number of offenders for whom this treatment is appropriate and thus imposed as a condition of supervision is likewise unknown.

SB 650 provides that the offender is to be financially responsible for the cost of hormonal treatment, but if the offender is unable to pay the cost, the Department shall bear the cost until such time as the offender is able to pay. Because offenders often have numerous legal obligations for making restitution and other payments, the bill should be amended to reflect the priority of payments associated with chemical treatments as opposed to other financial obligations of the offender.

MEMO: Senate Judiciary Committee  
Re: SB 650  
February 20, 1998  
Page 2

The per capita cost for treatment per year would consist of the following:

- Cost for injectable medication is estimated at \$1,414.
- Cost for injecting the medication is estimated in the range of \$10 to \$15 per injection, totaling between \$520 and \$780.
- Periodic laboratory testing for adverse side effects. This treatment presents potential for several serious side effects. Further consultation with medical staff is necessary to identify an appropriate testing protocol to monitor the health status of offenders receiving this treatment.
- It is anticipated that medical personnel prescribing hormonal treatment would do so only in conjunction with ongoing sex offender counseling. The per capita cost of sex offender counseling for offenders on parole or post release supervision is approximately \$1,350 per year. However, the treatment provided through existing contracts does not include treatment by medical personnel who are licensed to prescribe medications nor is it designed to complement a chemically based treatment. Therefore, the costs for counseling associated with hormonal treatment may be higher.
- The Department's contracts for community based sex offender treatment programs are currently at capacity with a waiting list of more than 60 released offenders.

The Department has a concern relative to situations in which a local medical provider cannot be identified to provide the hormonal treatment to the released offender. The Department has made preliminary inquiries with the mental health community in order to explore the utilization of existing mental health providers for the administration of this treatment. Concerns were raised regarding the availability of psychiatrists or physicians necessary to prescribe the hormonal therapy as well as the staff qualified to administer injections and the use of the same facility for the treatment of patients seeking mental health treatment who may be psychologically vulnerable and convicted sex offenders.

SB 650 also provides that when the Kansas Parole Board imposes hormonal treatment as a condition of release, the treatment shall begin one week prior to the offender's release. Rather than establish a statutorily mandated starting date for the commencement of treatment, the Department believes more general language providing that such treatment be commenced prior to release in a medically appropriate time frame.

Finally, SB 650 provides for the continuation of an offender on probation or postrelease supervision indefinitely for as long as hormonal treatment is necessary to provide for the safety of the public. This likely will result in more offenders on postrelease supervision with potentially higher caseloads, as well as the possibility for increased numbers of revocations, although we are unable at this time to quantify this impact.

CES/TGM/nd

cc: Legislative file

11-2