

Approved: 4.2.99  
Date

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 23, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused  
Representative Andrew Howell - Excused  
Representative Candy Ruff - Excused  
Representative Clark Shultz - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

### **SB 130 - enacting the revised Kansas Trademark Act**

Representative Carmody made the motion to report SB 130 favorably for passage. Representative Long seconded the motion.

Representative Pauls made the substitute motion to amend the bill by stating that the filing fee for registration and renewal of a trademark would be \$25, and any other fees in the bill would be \$5. Representative Klein seconded the motion. The motion carried.

Representative Long made the motion to report SB 130 favorably for passage, as amended. Representative Carmody seconded the motion. The motion carried.

### **SB 131 - crimes, punishments, sentencing**

The committee was provided a balloon amendment that addressed the Romeo & Juliet issue, reinserting the Hard 50, reinserting that those that meet the Romeo & Juliet requirement would not have to register, and some technical amendments. (Attachment 1)

Representative Haley made the motion to adopt the balloon amendment. Representative Lightner seconded the motion. The motion was divided the following way:

1. the age of the offender has to be less than age 19 and that there has to be no less than 4 years difference between the two - The motion carried. Representative Haley requested that he be recorded as voting yes. Representatives Edmonds, Swenson, Long & Carmody requested that they be recorded as voting no.
2. reinsert that these persons would not be required to register - The motion carried. Representatives Edmonds & Long requested that they be recorded as voting no.
3. reinsert the Hard 50 - The motion carried. Representative Haley requested he be recorded as voting no.
4. technical amendments - The motion carried.

Representative Loyd made the motion to amend the penalty section of K.S.A. 21-3435 so that intentionally exposing another to a life threatening disease would be a severity level 7, person felony. Representative Lloyd seconded the motion. The motion carried.

Representative Haley made the motion to amend in the provisions of SB 334 - absolute liability for certain crimes, but strike the reference to K.S.A. 8-262 & 8-287. Representative Klein seconded the motion. The motion failed. Having voted on the prevailing side, Representative Pauls requested that the committee reconsider its action. The motion carried.

Representative Crow made the motion to delete lines 23,24 & 30 on page 16, requiring mandatory sentencing requirements. Representative Rehorn seconded the motion. The motion carried.

Representative Loyd made the motion that upon application to the courts, it may hold a hearing to determine whether the juvenile who is under the age of 19, needs to continue to register. Representative Lightner seconded the motion. The committee was concerned that this would create two classes of offenders. With permission of the second, Representative Loyd withdrew his motion.

Representative Lightner made the motion to make the provisions of the bill retroactive and that those who are currently registered would need to contact the courts to have their registration requirement removed. Representative Gregory seconded the motion. The motion carried.

Representative Swenson made the motion to report SB 131 favorably for passage, as amended. Representative Klein seconded the motion. The motion carried. Representatives Long & Carmody requested that they be recorded as voting no.

### **HB 2500 - Kansas offender registration act; registration requirements**

The committee was provided with a balloon that would make the effective date in Section 6 be "on and after July 1, 1999" and amend in the Romeo & Juliet provisions.(Attachment 2)

Representative Long made the motion to amend in the balloon. Representative Rehorn seconded the motion. The motion carried.

Representative Flaharty made the motion to have the date be prospective application date. Representative Long seconded the motion. The motion carried.

Representative Haley made the motion to amend in the provisions of **HB 2309 - hate crimes, presumed imprisonment, civil remedies, reporting and training**, with the following change: strike new section 3 so there would be no doubling of sentencing. Representative Loyd seconded the motion. The motion failed 4-7.

Representative Loyd made the motion to report HB 2500 favorably for passage, as amended. Representative Lightner seconded the motion. The motion carried.

### **HB 2553 - civil commitment of sexually violent predators**

Representative Carmody made the motion to report HB 2553 favorably for passage. Representative Long seconded the motion.

Representative Carmody made the substitute motion to adopt the amendments suggested by the Department of Social & Rehabilitation Services. (Attachment 3) Representative Long seconded the motion. The motion carried.

Representative Carmody made the motion to amend the Kansas timelines to add Florida's jurisdictional language. (Attachment 4) Representative Long seconded the motion. The motion carried.

Representative Carmody made the motion to delete the language on page 3, line 4. Representative Long seconded the motion. The motion carried.

Representative Pauls made the motion to amend in the preamble that the acts have to be "repeated acts or likely to engage in those acts". Representative Klein seconded the motion. The motion carried.

Representative Klein made the motion to amend in "repeated acts" on line 23, page2 and everywhere that it needs to appear. Representative Gregory seconded the motion. The motion carried.

Representative Carmody made the motion to report HB 2553 favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

The committee meeting adjourned at 6:00 p.m.

As Amended by Senate Committee

Session of 1999

SENATE BILL No. 131

By Committee on Judiciary

1-26

House Judiciary  
3-23-99  
Attachment 1

12 AN ACT concerning crimes, criminal procedure and punishment; pre-  
13 scribing certain penalties; amending K.S.A. 21-3503, 21-3504, 21-  
14 3505, 21-3510, 21-3520, 21-3705, ~~and 21-4605, 21-4635 and 21-4638~~  
15 ~~and K.S.A. 1998 Supp. 8-262, 8-287, 21-3402, 21-3810, 21-4603d, 21-~~  
16 ~~4704, 21-4706, 22-3717, 22-4902 and 75-5217 and repealing the exist-~~  
17 ~~ing sections.~~

21-4635 and 21-4638

18  
19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. K.S.A. 1998 Supp. 8-262 is hereby amended to read as  
21 follows: 8-262. (a) (1) Any person who drives a motor vehicle on any  
22 highway of this state at a time when such person's privilege so to do is  
23 canceled, suspended or revoked shall be guilty of a: (A) Class B nonperson  
24 misdemeanor on the first conviction; *and* (B) class A nonperson misde-  
25 meanor on the second conviction; *and* (C) severity level 9, nonperson  
26 felony on a third or subsequent conviction.

27 (2) No person shall be convicted under this section if such person  
28 was entitled at the time of arrest under K.S.A. 8-257, and amendments  
29 thereto, to the return of such person's driver's license or was, at the time  
30 of arrest, eligible under K.S.A. 8-256, and amendments thereto, to apply  
31 for a new license to operate a motor vehicle.

32 (3) Except as otherwise provided by subsection (a)(4), every person  
33 convicted under this section shall be sentenced to at least five days' im-  
34 prisonment and fined at least \$100 and upon a second or subsequent  
35 conviction shall not be eligible for parole until completion of five days'  
36 imprisonment.

37 (4) If a person (A) is convicted of a violation of this section, commit-  
38 ted while the person's privilege to drive was suspended or revoked for a  
39 violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of  
40 any city or a law of another state, which ordinance or law prohibits the  
41 acts prohibited by that statute, and (B) is or has been also convicted of a  
42 violation of K.S.A. 8-1567, and amendments thereto, or of a municipal  
43 ordinance or law of another state, which ordinance or law prohibits the

1 Sec. 4. K.S.A. 21-3503 is hereby amended to read as follows: 21-  
2 3503. (a) Indecent liberties with a child is engaging in any of the following  
3 acts with a child who is 14 or more years of age but less than 16 years of  
4 age *and the offender is more than ~~three~~ years older than the child.*

5 (1) Any lewd fondling or touching of the person of either the child  
6 or the offender, done or submitted to with the intent to arouse or to  
7 satisfy the sexual desires of either the child or the offender, or both; or

8 (2) soliciting the child to engage in any lewd fondling or touching of  
9 the person of another with the intent to arouse or satisfy the sexual desires  
10 of the child, the offender or another.

11 (b) It shall be a defense to a prosecution of indecent liberties with a  
12 child as described in subsection (a)(1) that the child was married to the  
13 accused at the time of the offense.

14 (c) Indecent liberties with a child is a severity level 5, person felony.

15 Sec. 5. K.S.A. 21-3504 is hereby amended to read as follows: 21-  
16 3504. (a) Aggravated indecent liberties with a child is:

17 (1) Sexual intercourse with a child who is 14 or more years of age but  
18 less than 16 years of age *and the offender is ~~more than three~~ years older*  
19 *than the child;* ~~LESS~~ *four*

20 (2) engaging in any of the following acts with a child who is 14 or  
21 more years of age but less than 16 years of age *and the offender is more*  
22 *than three years older than the child and who the child does not consent*  
23 *thereto:*

24 (A) Any lewd fondling or touching of the person of either the child  
25 or the offender, done or submitted to with the intent to arouse or satisfy  
26 the sexual desires of either the child or the offender, or both; or

27 (B) causing the child to engage in any lewd fondling or touching of  
28 the person of another with the intent to arouse or satisfy the sexual desires  
29 of the child, the offender or another; or

30 (3) engaging in any of the following acts with a child who is under 14  
31 years of age:

32 (A) Any lewd fondling or touching of the person of either the child  
33 or the offender, done or submitted to with the intent to arouse or to  
34 satisfy the sexual desires of either the child or the offender, or both; or

35 (B) soliciting the child to engage in any lewd fondling or touching of  
36 the person of another with the intent to arouse or satisfy the sexual desires  
37 of the child, the offender or another.

38 (b) It shall be a defense to a prosecution of aggravated indecent lib-  
39 erities with a child as provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A)  
40 that the child was married to the accused at the time of the offense.

41 (c) Aggravated indecent liberties with a child as described in subsec-  
42 tions (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated  
43 indecent liberties with a child as described in subsection (a)(2) is a severity

1 level 4, person felony.

2 Sec. 6. K.S.A. 21-3505 is hereby amended to read as follows: 21-  
3 3505. (a) Criminal sodomy is:

4 (1) Sodomy between persons who are 16 or more years of age and  
5 members of the same sex or between a person and an animal;

6 (2) sodomy with a child who is 14 or more years of age but less than  
7 16 years of age and the offender is ~~more than~~ <sup>less</sup> ~~three~~ years older than the  
8 child; or

9 (3) causing a child 14 or more years of age but less than 16 years of  
10 age and the offender is more than ~~three~~ years older than the child to  
11 engage in sodomy with any person or animal.

12 (b) It shall be a defense to a prosecution of criminal sodomy as pro-  
13 vided in subsection (a)(2) that the child was married to the accused at the  
14 time of the offense.

15 (c) Criminal sodomy as provided in subsection (a)(1) is a class B non-  
16 person misdemeanor. Criminal sodomy as provided in subsections (a)(2)  
17 and (a)(3) is a severity level 3, person felony.

18 Sec. 7. K.S.A. 21-3510 is hereby amended to read as follows: 21-  
19 3510. (a) Indecent solicitation of a child is:

20 (1) Enticing or soliciting a child 14 or more years of age but less than  
21 16 years of age and the offender is ~~more~~ <sup>less</sup> than ~~three~~ years older than the  
22 child to commit or to submit to an unlawful sexual act; or

23 (2) inviting, persuading or attempting to persuade a child 14 or more  
24 years of age but less than 16 years of age and the offender is ~~more~~ <sup>less</sup> than  
25 ~~three~~ years older than the child to enter any vehicle, building, room or  
26 secluded place with intent to commit an unlawful sexual act upon or with  
27 the child.

28 (b) Indecent solicitation of a child is a severity level 7, person felony.

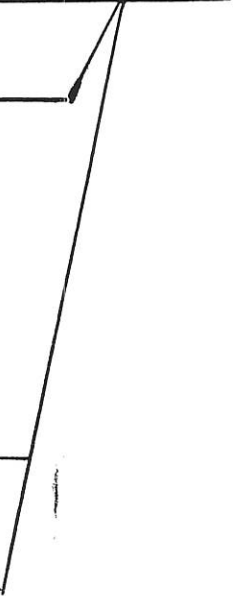
29 Sec. 8. K.S.A. 21-3520 is hereby amended to read as follows: 21-  
30 3520. (a) Unlawful sexual relations engaging in consensual sexual in-  
31 tercourse, lewd fondling or touching, or sodomy with a person who is not  
32 married to the offender if:

33 (1) The offender is an employee of the department of corrections or  
34 the employee of a contractor who is under contract to provide services in  
35 a correctional institution and the person with whom the offender is en-  
36 gaging in consensual sexual intercourse, lewd fondling or touching, or  
37 sodomy is an inmate; or

38 (2) the offender is a parole officer and the person with whom the  
39 offender is engaging in consensual sexual intercourse, lewd fondling or  
40 touching, or sodomy is an inmate who has been released on parole or  
41 conditional release or postrelease supervision under the direct supervision  
42 and control of the offender; or

43 (3) the person with whom the offender is engaging in voluntary: (i)

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1 Sexual intercourse; (ii) lewd fondling; (iii) touching; or (iv) sodomy is  
2 between the ages of 14 or more years of age but less than 16 years of age  
3 and the offender is not ~~more~~ <sup>less</sup> than ~~three~~ <sup>four</sup> years older than the victim.

four

4 (b) For purposes of this act:

5 (1) "Correctional institution" means the same as prescribed by K.S.A.  
6 75-5202, and amendments thereto;

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

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

11 (4) "postrelease supervision" means the same as prescribed in the  
12 Kansas sentencing guidelines act in K.S.A. 21-4703.

13 (c) Unlawful sexual relations as provided in subsection (a)(3) is a se-  
14 verity level 8 person felony. Unlawful sexual relations as provided in sub-  
15 section (a)(1) and (a)(2) is a severity level 10 person felony.

16 Sec. 9. K.S.A. 21-3705 is hereby amended to read as follows: 21-  
17 3705. (a) Criminal deprivation of property is obtaining or exerting unau-  
18 thorized control over property, with intent to deprive the owner of the  
19 temporary use thereof, without the owner's consent but not with the  
20 intent of depriving the owner permanently of the possession, use or ben-  
21 efit of such owner's property.

22 (b) Criminal deprivation of property that is a motor vehicle, as de-  
23 fined in K.S.A. 8-1437, and amendments thereto, is a class A nonperson  
24 felony misdemeanor. Upon a first conviction of this subsection, a person  
25 shall be sentenced to not less than 30 days nor more than one year's  
26 imprisonment and fined not less than \$100. Upon a second or subsequent  
27 conviction of this subsection, a person shall be sentenced to not less than  
28 60 days nor more than one year's imprisonment and fined not less than  
29 \$200. The person convicted shall not be eligible for release on probation,  
30 suspension or reduction of sentence or parole until the person has served  
31 the minimum mandatory sentence as provided herein. The mandatory  
32 provisions of this subsection shall not apply to any person where such  
33 application would result in a manifest injustice.

34 (c) Criminal deprivation of property other than a motor vehicle, as  
35 defined in K.S.A. 8-1437, and amendments thereto, is a class A nonperson  
36 misdemeanor. Upon a second or subsequent conviction of this subsection,  
37 a person shall be sentenced to not less than 30 days imprisonment and  
38 fined not less than \$100, except that the provisions of this subsection  
39 relating to a second or subsequent conviction shall not apply to any person  
40 where such application would result in a manifest injustice.

41 Sec. 10. K.S.A. 1998 Supp. 21-3810 is hereby amended to read as  
42 follows: 21-3810. (a) Aggravated escape from custody is:

43 (a) (1) Escaping: (A) While held in lawful custody upon a charge or

1 corrections, all reports under subsection (a)(1) shall be sent to the sec-  
2 retary of corrections and, in accordance with K.S.A. 75-5220, and amend-  
3 ments thereto, to the warden of the state correctional institution to which  
4 the defendant is conveyed.

5 (e) Nothing in this section shall be construed as prohibiting the at-  
6 torney for the defendant from disclosing the report of the presentence  
7 investigation, or other diagnostic reports, to the defendant after receiving  
8 court approval to do so.

9 (d) Notwithstanding subsections (a), (b) and (c), the presentence re-  
10 port, any report that may be received from the Topeka correctional facility  
11 or the state security hospital and other diagnostic reports, shall be made  
12 available upon request to the Kansas sentencing commission for the pur-  
13 pose of data collection and evaluation. *The presentence report shall be-*  
14 *come part of the court record and shall be accessible to the public, except*  
15 *that the official version, the defendant's version, the victim's statement,*  
16 *any psychological reports and any drug and alcohol reports shall be ac-*  
17 *cessible only to the parties [attorney for the state and the counsel for*  
18 *the defendant], the sentencing judge, the department of corrections and*  
19 *if requested, the Kansas sentencing commission. If the offender is com-*  
20 *mitted to the custody of the secretary of corrections, the report shall be*  
21 *sent to the secretary and, in accordance with K.S.A. 75-5220 and amend-*  
22 *ments thereto, to the warden of the state correctional institution to which*  
23 *the defendant is conveyed.*

24 (e) (c) For felony crimes committed on or after July 1, 1993, the  
25 provisions of this section are not applicable to the presentence investi-  
26 gation report.

27 See. 13. K.S.A. 21-4635 is hereby amended to read as follows: 21-  
28 4635. (a) Except as provided in K.S.A. 21-4634, if a defendant is convicted  
29 of the crime of capital murder and a sentence of death is not imposed,  
30 or if a defendant is convicted of murder in the first degree based upon  
31 the finding of premeditated murder, the court shall determine whether  
32 the defendant shall be required to serve a mandatory term of imprison-  
33 ment of 40 years *or for crimes committed on and after July 1, 1990, a*  
34 *mandatory term of imprisonment of 50 years* or sentenced as otherwise  
35 provided by law.

36 (b) In order to make such determination, the court may be presented  
37 evidence concerning any matter that the court deems relevant to the  
38 question of sentence and shall include matters relating to any of the ag-  
39 gravating circumstances enumerated in K.S.A. 21-4636 and any mitigating  
40 circumstances. Any such evidence which the court deems to have pro-  
41 bative value may be received regardless of its admissibility under the rules  
42 of evidence, provided that the defendant is accorded a fair opportunity  
43 to rebut any hearsay statements. Only such evidence of aggravating cir-

1 circumstances as the state has made known to the defendant prior to the  
2 sentencing shall be admissible and no evidence secured in violation of  
3 the constitution of the United States or of the state of Kansas shall be  
4 admissible. No testimony by the defendant at the time of sentencing shall  
5 be admissible against the defendant at any subsequent criminal proceed-  
6 ing. At the conclusion of the evidentiary presentation, the court shall allow  
7 the parties a reasonable period of time in which to present oral argument.

8 (e) If the court finds that one or more of the aggravating circum-  
9 stances enumerated in K.S.A. 21-4636 and amendments thereto exist and,  
10 further, that the existence of such aggravating circumstances is not out-  
11 weighed by any mitigating circumstances which are found to exist, the  
12 defendant shall be sentenced pursuant to K.S.A. 21-4638 and amend-  
13 ments thereto; otherwise, the defendant shall be sentenced as provided  
14 by law. The court shall designate, in writing, the statutory aggravating  
15 circumstances which it found. The court may make the findings required  
16 by this subsection for the purpose of determining whether to sentence a  
17 defendant pursuant to K.S.A. 21-4638 notwithstanding contrary findings  
18 made by the jury or court pursuant to subsection (c) of K.S.A. 21-4624  
19 and amendments thereto for the purpose of determining whether to sen-  
20 tence such defendant to death.

21 See: 14. K.S.A. 21-4638 is hereby amended to read as follows: 21-  
22 4638. When it is provided by law that a person shall be sentenced pur-  
23 suant to this section, such person shall be sentenced to imprisonment for  
24 life and shall not be eligible for probation or suspension, modification or  
25 reduction of sentence. In addition, a person sentenced pursuant to this  
26 section shall not be eligible for parole prior to serving 40 years' impris-  
27 onment, and such 40 years' imprisonment shall not be reduced by the  
28 application of good time credits. *For crimes committed on and after July*  
29 *1, 1999, a person sentenced pursuant to this section shall not be eligible*  
30 *for parole prior to serving 50 years' imprisonment, and such 50 years'*  
31 *imprisonment shall not be reduced by the application of good time credits.*  
32 Upon sentencing a defendant pursuant to this section, the court shall  
33 commit the defendant to the custody of the secretary of corrections and  
34 the court shall state in the sentencing order of the judgment form or  
35 journal entry, whichever is delivered with the defendant to the correc-  
36 tional institution, that the defendant has been sentenced pursuant to  
37 K.S.A. 21-4638.

38 See: 15. 13. K.S.A. 1998 Supp. 21-4704 is hereby amended to read  
39 as follows: 21-4704. (a) For purposes of sentencing, the following sen-  
40 tencing guidelines grid for nondrug crimes shall be applied in felony cases  
41 for crimes committed on or after July 1, 1993:

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28 Sec. 13. K.S.A. 21-4635 is hereby amended to read as follows: 21-

29 4635. (a) Except as provided in K.S.A. 21-4634, if a defendant is convicted  
30 of the crime of capital murder and a sentence of death is not imposed,  
31 or if a defendant is convicted of murder in the first degree based upon  
32 the finding of premeditated murder, the court shall determine whether  
33 the defendant shall be required to serve a mandatory term of imprison-  
34 ment of 40 years or for crimes committed on and after July 1, 1999, a  
35 mandatory term of imprisonment of 50 years or sentenced as otherwise  
provided by law.

36 (b) In order to make such determination, the court may be presented  
37 evidence concerning any matter that the court deems relevant to the  
38 question of sentence and shall include matters relating to any of the ag-  
39 gravating circumstances enumerated in K.S.A. 21-4636 and any mitigating  
40 circumstances. Any such evidence which the court deems to have pro-  
41 bative value may be received regardless of its admissibility under the rules  
42 of evidence, provided that the defendant is accorded a fair opportunity  
43 to rebut any hearsay statements. Only such evidence of aggravating cir-  
cumstances as the state has made known to the defendant prior to the  
2 sentencing shall be admissible and no evidence secured in violation of  
3 the constitution of the United States or of the state of Kansas shall be  
4 admissible. No testimony by the defendant at the time of sentencing shall  
5 be admissible against the defendant at any subsequent criminal proceed-  
6 ing. At the conclusion of the evidentiary presentation, the court shall allow  
7 the parties a reasonable period of time in which to present oral argument.

8 (c) If the court finds that one or more of the aggravating circum-  
9 stances enumerated in K.S.A. 21-4636 and amendments thereto exist and,  
10 further, that the existence of such aggravating circumstances is not out-  
11 weighed by any mitigating circumstances which are found to exist, the  
12 defendant shall be sentenced pursuant to K.S.A. 21-4638 and amend-  
13 ments thereto; otherwise, the defendant shall be sentenced as provided  
14 by law. The court shall designate, in writing, the statutory aggravating  
15 circumstances which it found. The court may make the findings required  
16 by this subsection for the purpose of determining whether to sentence a  
17 defendant pursuant to K.S.A. 21-4638 notwithstanding contrary findings  
18 made by the jury or court pursuant to subsection (e) of K.S.A. 21-4624  
19 and amendments thereto for the purpose of determining whether to sen-  
20 tence such defendant to death.

21 Sec. 14. K.S.A. 21-4638 is hereby amended to read as follows: 21-  
22 4638. When it is provided by law that a person shall be sentenced pur-  
23 suant to this section, such person shall be sentenced to imprisonment for  
24 life and shall not be eligible for probation or suspension, modification or  
25 reduction of sentence. In addition, a person sentenced pursuant to this  
26 section shall not be eligible for parole prior to serving 40 years' impris-  
27 onment, and such 40 years' imprisonment shall not be reduced by the  
28 application of good time credits. For crimes committed on and after July

29 1, 1999, a person sentenced pursuant to this section shall not be eligible  
30 for parole prior to serving 50 years' imprisonment, and such 50 years'  
31 imprisonment shall not be reduced by the application of good time credits.  
32 Upon sentencing a defendant pursuant to this section, the court shall  
33 commit the defendant to the custody of the secretary of corrections and  
34 the court shall state in the sentencing order of the judgment form or  
35 journal entry, whichever is delivered with the defendant to the correc-  
36 tional institution, that the defendant has been sentenced pursuant to  
37 K.S.A. 21-4638.

6-1

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional  
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or  
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, aggravated as-  
6 sult against a law enforcement officer or K.S.A. 21-3415, aggravated  
7 battery against a law enforcement officer and amendments thereto which  
8 places the defendant's sentence in grid block 6-H or 6-I shall be pre-  
9 sumed imprisonment. The court may impose an optional nonprison sen-  
10 tence upon making a finding on the record that the nonprison sanction  
11 will serve community safety interests by promoting offender reformation.

12 Any decision made by the court regarding the imposition of the optional  
13 nonprison sentence, if the offense is classified in grid block 6-H or 6-I,  
14 shall not be considered departure and shall not be subject to appeal.

15 (h) When a firearm is used to commit any person felony, the of-  
16 fender's sentence shall be presumed imprisonment. The court may im-  
17 pose an optional nonprison sentence upon making a finding on the record  
18 that the nonprison sanction will serve community safety interests by pro-  
19 moting offender reformation. Any decision made by the court regarding  
20 the imposition of the optional nonprison sentence shall not be considered  
21 a departure and shall not be subject to appeal.

22 (i) The sentence for the violation of the felony provision of K.S.A. 8-  
23 1567 and ~~subsection (b) of K.S.A. 21-3705,~~ and subsection ~~[(b)(3)]~~ of  
24 K.S.A. 21-3412 and amendments thereto shall be as provided by the spec-  
25 ific mandatory sentencing requirements of that section and shall not be  
26 subject to the provisions of this section or K.S.A. 21-4707 and amend-  
27 ments thereto. Notwithstanding the provisions of any other section, the  
28 term of imprisonment imposed for the violation of the felony provision  
29 of K.S.A. 8-1567 and ~~subsection (b) of K.S.A. 21-3705,~~ and subsection  
30 ~~[(b)(3)]~~ of K.S.A. 21-3412 and amendments thereto shall not be served in  
31 a state facility in the custody of the secretary of corrections.

(c)(3)

32 (j) The sentence for any persistent sex offender whose current con-  
33 victed crime carries a presumptive term of imprisonment shall be double  
34 the maximum duration of the presumptive imprisonment term. The sen-  
35 tence for any persistent sex offender whose current conviction carries a  
36 presumptive nonprison term shall be presumed imprisonment and shall  
37 be double the maximum duration of the presumptive imprisonment term.  
38 Except as otherwise provided in this subsection, as used in this subsection,  
39 "persistent sex offender" means a person who: (1) Has been convicted in  
40 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and  
41 amendments thereto; and (2) at the time of the conviction under subsec-  
42 tion (1) has at least one conviction for a sexually violent crime, as defined  
43 in K.S.A. 22-3717 and amendments thereto in this state or comparable

1 payments for such services.

2 (n) If the court which sentenced an inmate specified at the time of  
3 sentencing the amount and the recipient of any restitution ordered as a  
4 condition of parole or postrelease supervision, the Kansas parole board  
5 shall order as a condition of parole or postrelease supervision that the  
6 inmate pay restitution in the amount and manner provided in the journal  
7 entry unless the board finds compelling circumstances which would ren-  
8 der a plan of restitution unworkable.

9 (o) Whenever the Kansas parole board grants the parole of an inmate,  
10 the board, within 10 days of the date of the decision to grant parole, shall  
11 give written notice of the decision to the county or district attorney of the  
12 county where the inmate was sentenced.

13 (p) When an inmate is to be released on postrelease supervision, the  
14 secretary, within 30 days prior to release, shall provide the county or  
15 district attorney of the county where the inmate was sentenced written  
16 notice of the release date.

17 (q) Inmates shall be released on postrelease supervision upon the  
18 termination of the prison portion of their sentence. Time served while  
19 on postrelease supervision will vest.

20 (r) An inmate who is allocated regular good time credits as provided  
21 in K.S.A. 22-3725 and amendments thereto may receive meritorious good  
22 time credits in increments of not more than 90 days per meritorious act.  
23 These credits may be awarded by the secretary of corrections when an  
24 inmate has acted in a heroic or outstanding manner in coming to the  
25 assistance of another person in a life threatening situation, preventing  
26 injury or death to a person, preventing the destruction of property or  
27 taking actions which result in a financial savings to the state.

28 ~~Sec. 18-16.~~ K.S.A. 1998 Supp. 22-4902 is hereby amended to read  
29 as follows: 22-4902. As used in this act, unless the context otherwise  
30 requires:

31 (a) "Offender" means: (1) A sex offender as defined in subsection (b);  
32 (2) a violent offender as defined in subsection (d); (3) any person who,  
33 on and after the effective date of this act, is convicted of any of the  
34 following crimes when the victim is less than 18 years of age:

35 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments  
36 thereto, except by a parent;

37 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-  
38 ments thereto; or

39 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments  
40 thereto, except by a parent;

41 (4) any person convicted of any of the following criminal sexual con-  
42 duct if one of the parties involved is less than ~~18~~ years of age and the  
43 offender is three or more years of age older than the child;

19

and the offender is four or <sup>less</sup> ~~more~~ years of age older than the child

1 Sec. ~~20~~ 18. K.S.A. 21-3503, 21-3504, 21-3505, 21-3510, 21-3520,  
 2 21-3705, ~~(and) 21-4605, 21-4635 and 21-4638, and K.S.A. 1998 Supp. 8-~~  
 3 ~~262, 8-287, 21-3402, 21-3810, 21-4603d, 21-4704, 21-4706, 22-3717, 22-~~  
 4 ~~4902, and 75-5217 are hereby repealed.~~  
 5 Sec. ~~21~~ 19. This act shall take effect and be in force from and after  
 6 its publication in the statute book.

21-4635 and 21-4638

||  
||  
||



HOUSE BILL No. 2500

By Committee on Judiciary

2-12

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to the Kansas offender registration act; prescribing certain offender  
11 registration requirements; penalties; relating to collection of speci-  
12 mens; amending K.S.A. 22-4903 and K.S.A. 1998 Supp. 21-2511, 22-  
13 4902, 22-4904, 22-4905, 22-4906 and 22-4908 and repealing the exist-  
14 ing sections.

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

17 Section 1. K.S.A. 1998 Supp. 21-2511 is hereby amended to read as  
18 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as  
19 a juvenile offender because of the commission of an unlawful sexual act  
20 as defined in subsection (4) of K.S.A. 21-3501, and amendments thereto,  
21 or convicted as an adult or adjudicated as a juvenile offender because of  
22 the commission of a violation of K.S.A. 21-3401, 21-3402, 21-3510, 21-  
23 3511, 21-3516, 21-3602, 21-3603 or 21-3609, and amendments thereto,  
24 including an attempt, as defined in K.S.A. 21-3301, and amendments  
25 thereto, conspiracy, as defined in K.S.A. 21-3302, and amendments  
26 thereto, or criminal solicitation, as defined in K.S.A. 21-3303, and amend-  
27 ments thereto, any offense which requires such person to register as an  
28 offender pursuant to the Kansas offender registration act, K.S.A. 22-4901  
29 et seq., or a violation of subsection (a)(1) of K.S.A. 21-3505, 21-3508, 21-  
30 3602 or 21-3609 and amendments thereto, including an attempt, con-  
31 spiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or  
32 21-3303 and amendments thereto, of any such offenses provided in this  
33 subsection regardless of the sentence imposed, shall be required to sub-  
34 mit specimens of blood and saliva to the Kansas bureau of investigation  
35 in accordance with the provisions of this act, if such person is:

- 36 (1) Convicted as an adult or adjudicated as a juvenile offender be-  
37 cause of the commission of a crime specified in subsection (a) on or after  
38 the effective date of this act;
- 39 (2) ordered institutionalized as a result of being convicted as an adult  
40 or adjudicated as a juvenile offender because of the commission of a crime  
41 specified in subsection (a) on or after the effective date of this act; or
- 42 (3) convicted as an adult or adjudicated as a juvenile offender because  
43 of the commission of a crime specified in this subsection before the ef-

2-2

1 bureau of investigation for analysis and categorizing into genetic marker  
2 groupings.

3 (f) The genetic marker groupings shall be maintained by the Kansas  
4 bureau of investigation. The Kansas bureau of investigation shall establish,  
5 implement and maintain a statewide automated personal identification  
6 system capable of, but not limited to, classifying, matching and storing  
7 analysis of DNA (deoxyribonucleic acid) and other biological molecules.  
8 The genetic marker grouping analysis information and identification sys-  
9 tem as established by this act shall be compatible with the procedures  
10 specified by the federal bureau of investigation's combined DNA index  
11 system (CODIS). The Kansas bureau of investigation may participate in  
12 the CODIS program by sharing data and utilizing compatible test pro-  
13 cedures, laboratory equipment, supplies and computer software.

14 (g) The genetic marker grouping analysis information obtained pur-  
15 suant to this act shall be confidential and shall be released only to law  
16 enforcement officers of the United States, of other states or territories,  
17 of the insular possessions of the United States, or foreign countries duly  
18 authorized to receive the same, to all law enforcement officers of the state  
19 of Kansas and to all prosecutor's agencies.

20 (h) The Kansas bureau of investigation shall be the state central re-  
21 pository for all genetic marker grouping analysis information obtained  
22 pursuant to this act. The Kansas bureau of investigation may promulgate  
23 rules and regulations for the form and manner of the collection of blood  
24 and saliva samples and other procedures for the operation of this act. The  
25 provisions of the Kansas administrative procedure act shall apply to all  
26 actions taken under the rules and regulations so promulgated.

27 Sec. 2. K.S.A. 1998 Supp. 22-4902 is hereby amended to read as  
28 follows: 22-4902. As used in this act, unless the context otherwise  
29 requires:

30 (a) "Offender" means: (1) A sex offender as defined in subsection (b);  
31 (2) a violent offender as defined in subsection (d); (3) any person who,  
32 on and after the effective date of this act, is convicted of any of the  
33 following crimes when the victim is less than 18 years of age:

34 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments  
35 thereto, except by a parent;

36 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-  
37 ments thereto; or

38 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments  
39 thereto, except by a parent;

40 (4) any person convicted of any of the following criminal sexual con-  
41 duct if one of the parties involved is less than 18 years of age;

42 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

43 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-

and the offender is four or <sup>less</sup> more  
years of age older than the child

2-3

1 (2) (A) The court shall: (i) Explain the duty to register and the pro-  
2 cedure for registration;

3 (ii) obtain the information required for registration as provided in  
4 K.S.A. 22-4907 and amendments thereto;

5 (iii) inform the offender that the offender must give written notice  
6 of any change of address within 10 days of a change in residence to the  
7 law enforcement agency where last registered and the Kansas bureau of  
8 investigation;

9 (iv) inform the offender that if the offender changes residence to  
10 another state, the offender must inform the law enforcement agency  
11 where last registered *and the Kansas bureau of investigation* of such  
12 change in residence and must register in the new state within 10 days of  
13 such change in residence; and

14 (v) require the offender to read and sign the registration form which  
15 shall include a statement that the requirements provided in this subsec-  
16 tion have been explained to the offender.

17 (B) The court shall give one copy of the form to the person and,  
18 within three days, shall send two copies of the form provided by subsec-  
19 tion (2)(A)(v) to the Kansas bureau of investigation which shall then for-  
20 ward one copy to the law enforcement agency having jurisdiction where  
21 the person expects to reside upon release. The Kansas bureau of inves-  
22 tigation must immediately ensure that such information is entered in the  
23 state law enforcement record system. The Kansas bureau of investigation  
24 shall transmit such conviction data and fingerprints to the federal bureau  
25 of investigation.

26 Sec. 6. K.S.A. 1998 Supp. 22-4906 is hereby amended to read as  
27 follows: 22-4906. (a) Any person required to register as provided in this  
28 act shall be required to register: (1) Upon the first conviction of a sexually  
29 violent crime as defined in subsection (c) of K.S.A. 22-4902 and amend-  
30 ments thereto, any offense as defined in subsection (a) of K.S.A. 22-4902  
31 and amendments thereto or any offense as defined in subsection (d) of  
32 K.S.A. 22-4902 and amendments thereto, if not confined, for a period of  
33 10 years after conviction, or, if confined, for a period of 10 years after  
34 paroled, discharged or released; or (2) upon a second or subsequent con-  
35 viction for such person's lifetime.

36 (b) Upon the first conviction, liability for registration terminates, if  
37 not confined, at the expiration of 10 years from the date of conviction,  
38 or, if confined, at the expiration of 10 years from the date of parole,  
39 discharge or release, if the convicted offender does not again become  
40 liable to register as provided by this act during that period.

41 (c) Any person who has been convicted of an aggravated offense shall  
42 be required to register for such person's lifetime.

43 Sec. 7. K.S.A. 1998 Supp. 22-4908 is hereby amended to read as

On and after July 1, 1999,



KANSAS DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

Representative Carmody,  
Representative O'Neal,

March 18, 1999

RE: House Bill no. 2553

I apologize. Yesterday I must not have clearly heard Rep. Carmody's question with regard to the amendments proposed in section 5 of the bill (on page 6). SRS requests this amendment to protect against two circumstances:

1.) We have had at least two individuals removed from the sex predator treatment unit in Larned on charges of parole violation. They were returned to prison. The question we anticipate that their attorneys will raise, when those individuals are again about to be released from prison, is will not the Dept. of Corrections or the Parole Board be required to give a new notice to the Attorney General? Will not the screening panels have to again review their cases? Will not the Attorney General have to timely file a new petition to have them civilly committed? Will not all of the witnesses have to return to court and be required to go thru a whole new civil trial? Has not the intervening criminal action superceded the civil commitment action, and, in effect, terminated the jurisdiction of the civil court's proceeding since the person could no longer be held subject to the civil court orders? We think not. We think the intervening criminal proceedings have only suspended the civil proceedings, but we are sure that we will be challenged. We think that the Legislature would help matters if these amendments were adopted to make the law clear.

2.) We are concerned that a criminal prosecution for an assault or other serious crime not involving any sexual act committed against one of the staff at the sex predator treatment unit will not be considered to be a "sexually motivated" crime, as required by the law, and that upon the person's release from prison for that offense, the person will argue the civil commitment law no longer applies to them because the offense for which they are then being released will not be one of the crimes listed in the act which qualifies a person for being found to be a sexually violent predator. We do not wish for our staff to be considered as a door thru which someone can punch their way out of the sex predator law.

We intended by the proposed language "If ... committed ..." to be present tense. We

specifically did not use the phrases "who was committed" or "who has previously been committed", which would imply past tense. However, adding the word "**while**" and deleting the word "**subsequently**", so that the amending language would read "**If any person, while committed to the custody of the secretary pursuant to this act, shall be taken into custody by ...**" might make it more clear.

Finally, in follow-up to the other questions asked during the hearing yesterday, we do believe that the amendments in sections 6 and 7 of the bill are technical in nature and do not change the current meaning of the act. The proposed amendments in section 3 concerning the time lines may make the process more workable, and, therefore, we generally support those, but would suggest that some deadline for the Attorney General to file her petition should be retained. Maybe requiring that the filing occur at least 7 days before release, in order to make sure there is adequate time to transfer the person to whatever other facility the person will be ordered to be held at by the judge in the civil case, and to make sure that no one is accidentally released before it is known that a petition is going to be filed, would work. The deletion of the prosecutors review committee, also in section 3, we do not take a position on.

The amendments deleting the predator concept, in section 2 of the bill, is something that we agree should be approached very carefully. That element has been extremely significant in the clinical screening process. Deleting it and adding the incest crimes will likely have a dramatic effect on the numbers of persons committed to the program, and the cost of providing this treatment.

If you have any other questions I could answer, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. House", written over a horizontal line.

John H. House  
Office of the General Counsel  
Kansas Dept. of S.R.S.  
915 SW Harrison, Suite 530  
Topeka, KS 66612-1570  
(785) 296-3967



**WEST'S FLORIDA STATUTES ANNOTATED**  
**TITLE XLVII. CRIMINAL PROCEDURE AND CORRECTIONS**  
**CHAPTER 916. MENTALLY DEFICIENT AND MENTALLY ILL DEFENDANTS**  
**PART IV. INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS**

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Current through End of 1998 2nd Reg. Sess.

916.33. Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary team

(1) The agency with jurisdiction over a person who has been convicted of a sexually violent offense shall give written notice to the multidisciplinary team, and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense, 180 days or, in the case of an adjudicated committed delinquent, 90 days before:

(a) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who have been returned to confinement for no more than 90 days, written notice must be given as soon as practicable following the person's return to confinement; or

(b) The anticipated hearing regarding possible release of a person who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense.

(2) The agency with jurisdiction shall provide the multidisciplinary team with the following information:

(a) The person's name; identifying characteristics; anticipated future residence; the type of supervision the person will receive in the community, if any; and the person's offense history; and

(b) Documentation of institutional adjustment and any treatment received and, in the case of an adjudicated delinquent committed to the Department of Juvenile Justice, copies of the most recent performance plan and performance summary.

The provisions of this section are not jurisdictional, and failure to comply with them in no way prevents the state attorney from proceeding against a person otherwise subject to the provisions of ss. 916.31-916.49.

(3) The Secretary of Children and Family Services shall establish a multidisciplinary team, which shall include two licensed psychiatrists or psychologists, or one licensed psychiatrist and one licensed psychologist, designated by the Secretary of Children and Family Services. The Attorney General's Office shall serve as legal counsel to the multidisciplinary team. The team, within 45 days after receiving notice, shall assess whether the person meets the definition of a sexually violent predator and provide the state attorney with its written assessment and recommendation.

CREDIT(S)

1998 Electronic Pocket Part Update

Added by Laws 1998, c. 98-64, § 5, eff. Jan. 1, 1999.

West's F. S. A. § 916.33

FL ST § 916.33