

Approved: Feb. 16, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:09 a.m. on February 11, 1999 in Room 123-S of the Capitol.

All members were present except: Senator Oleen (excused)
Senator Pugh (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Barbara Tombs, Kansas Sentencing Commission
Charles Simmons, Secretary, Department of Corrections
Paul Morrison, Kansas Sentencing Commission
Tim Chambers, Reno County Attorney
Marilyn Scafe, Parole Board Chair
Natalie Haag, Governor's Legal Counsel

Others attending: see attached list

The minutes of the February 10 meeting were approved on a motion by Senator Donovan and seconded by Senator Vratil. Motion carried.

SB 131—an act concerning crime; prescribing certain penalties

Conferee Tombs testified in support of **SB 131**. She stated that the bill reflects the deliberations done by the Sentencing Commission over the past months relating to the underlying intent and goals of the Sentencing Guidelines and that its purpose is to address the issue of proportionality in sentencing. She discussed the proposed changes to the sentencing guidelines addressing: the three classifications of offenses, e.g., Off-Grid, Grid, and Non-Grid; sentence enhancements and recommendations; and procedural issues. (attachment 1) Discussion followed regarding certain language in the bill and Conferee Tombs referenced a handout on proposed amendments to the language of the bill. (attachment 2)

Conferee Simmons testified in support of **SB 131** with the exception of the reduction of the presumptive prison sentences established for non-drug Severity Levels I and II offenses. He stated that this reduction would send the wrong message to citizens of Kansas, to crime victims, and to criminals. He commented on several specific provisions of the bill relating to sexual offenses, criminal deprivation of a motor vehicle, and escape from a Department facility. He discussed a change in the language of the bill which addresses felony domestic battery. He further stated that the Department is currently not able to project a numerical impact of the bill on the custody classifications of the inmate population. (attachment 3)

Conferee Morrison testified in support of **SB 131**. He discussed the necessary modifications made to the sentencing grid since the Guidelines were passed in 1993 and the unintended consequences of these changes which resulted in certain inequities in the grid. He stated that **SB 131** addresses the proportionality problems within the guidelines. (attachment 4) Discussion followed.

Conferee Chambers testified in opposition to several changes in the Kansas Criminal Code and Code of Criminal Procedures contained within **SB 131**, changes which relate to felony driving offenses and sexual offenses. (attachment 5)

Conferee Scafe discussed a portion of **SB 131** which addresses Waiver of Final Revocation Hearing and briefly outlined its benefits for post release violators. (attachment 6)

Conferee Haag expressed Governor Graves support of **SB 131** with the exception of the proposal that "calls for a 20 percent reduction of all sentence lengths for all criminal history categories on non-drug grid levels I and II." (attachment 7)

Written testimony on **SB 131** was received from the following: Kansas County and District Attorney's Association who supported most of the provisions in the bill but opposed the provisions related to sex crimes based on the offender's age (attachment 8); Office of the Attorney General who supported the bill with the exception of the provision to reduce the sentencing range for severity level 1 and 2 criminal offenses (attachment 9); and Kansas Peace Officers Association who expressed concern over certain language in the bill related to sex crimes against children and recommended deletion of Sections 4 through 7 of the bill. (attachment 10)

The meeting adjourned at 11:03 a.m. The next scheduled meeting is Tuesday, February 16, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-11-99

NAME	REPRESENTING
Tim Chambers	Zeno County Attorney
Roy Smith	KS Bar Assoc
Marcus Lee	Sedgwick County
Sarah Bennett	KSNA FHSU
Amanda Beatt	USWA FHSU
Nancy Lindberg	Atty Gen.
Deb Redigo	JJA
James Clark	KCDAA
Joe Beatt	KSNA
MIKE BENNETT	KSNA
Sue Boas	KSNA - Fort Hays State
Charles Simmons	Dept. of Corrections
Oliver Krabel	KTLLH
Shirley Baumgartner	KSNA - Pratt C.C.
Denise Barnes	KSNA - Pratt C.C.
Katry Porter	CSA

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 11, 1999

NAME	REPRESENTING
Stephanie Buchanan	DOB
Natalie Haag	Governor's office
Marilyn Scafe	KPB
Bruce Jones	KSC
Kevin A. Ah	KSC
Kunlin Chang	KSC
Mary Luna	KSC
Billo R. Bove	Robin Jennison
Robin Barnett	Robin Jennison
Eeri Casner	Robin Jennison
Miranda York	Robin Jennison
Lisa Moornau	Robin Jennison
Shirley Beyer	KSNA
Lo Bowman	KSNA
David Allen	Attorney General
Ann	Ju. Co. D. A.
Peter Bell	KSNA
Vicki Baldwin	KSNA - Chairman
VICTOR BRADEN	USA

DAILY AGENDA

February 11, 1999

Hearing and possible action on:

SB 131—an act concerning crime; prescribing certain penalties

Proponent

Opponent

SB 131 ✓ *Barb Tombs*
✓ Paul Morrison, Kansas Sentencing Co.

✓ Secretary Charles Simmons

Marilyn Scafe, Parole Board Chair

Natalie Haag, Governor's Chief Legal Counsel

Teresa Sittenauer, Kansas Police Officers Assn

✓ Tim Chambers, Reno Co. Att'y

Jim Clark, Ks. Co & DA's Assn

Approval of February 10 minutes



5 Jwd.
2-11-99

State of Kansas
KANSAS SENTENCING COMMISSION

Honorable Richard D. Walker, Chair
District Attorney Paul Morrison, Vice Chair
Barbara S. Tombs, Executive Director

**Testimony on Senate Bill 131
Senate Judiciary Committee
February 11, 1999**

The Kansas Sentencing Commission is testifying today in support of Senate Bill 131. The proposed bill reflects the Commission's discussions and deliberations over the past months relating to the underlying intent and goals of Sentencing Guidelines. In addition, the bill addresses the issue of proportionality in sentencing, which has become a growing concern of the Commission.

Sentencing Guidelines were legislatively enacted into law on July 1, 1993. Five years after enactment, the Sentencing Commission met for two days last fall to review the sentencing guidelines and examine changes that have occurred over the past years. From the issues raised during that meeting, a Subcommittee was appointed to complete a comprehensive review and identify changes and modifications to the guidelines and sentencing grids that support the underlying philosophy that incarceration should be reserved for the most violent and chronic offenders. The Subcommittee met several times and drafted a set of recommendations that were presented to the full Commission for review and approval. In January, the Sentencing Commission voted to present its recommendations to the 1999 Legislature.

Senate Bill 131 before you contains a package of comprehensive changes to the sentencing guidelines that promote both public safety and enhanced penalties for our most violent offenders, while at the same time providing a clearer sense of proportionality for all felony sentences. During the past five years numerous changes have been made to sentencing guidelines in a fragmented manner. Although each individual change may have been made with the best of intentions, the cumulative effect of these changes has resulted in some grave inequities with regards to sentencing. All three classifications of offenses under Sentencing Guidelines, Off-Grid, Grid, and Non-Grid, were examined and evaluated with respect to public safety and equity in sentencing. The primary purpose of this bill is to address the proportionality issues in sentencing that have arisen since the passage of the sentencing guidelines.

Included in this bill are several sentence enhancements that clearly result in longer sentences for many of the Off-Grid offenses. The Sentencing Commissions believes and supports the premise that this specific offender group, representing the most serious of all offenders whose intentional

Sen Jud
2-11-99
att 1

actions result in the loss of a human life, should remain incarcerated for a considerably long period of time, regardless of the number of prison beds required to accommodate these offenders. Of all criminal actions, those that deprive an individual of his or her life must be viewed as the greatest threat to public safety. In addition, the sentence lengths for nondrug severity level III have been increased to address the inequity of sentence lengths between severity level II and severity level III and the seriousness of severity level III offenses.

Specific enhancements contained in this bill contain the following recommendations:

(a) Hard 40 sentence for Capital Murder and Premeditated First Degree Murder be increased to a Hard 50 sentence. This represents a modification that makes the sentence for these specific types of murder conviction more representative of a "true life sentence." Since this sentence is often imposed as an alternative to the Death Penalty, the fact that an offender must serve the entire 50 years, with no good time credits allowed, even before appearing before the Parole Board provides a significant period of incarceration and enhances public safety.

(b) Life sentence for Felony Murder and Treason be increased from 15 years to 20 years before parole eligibility. This increase represents an adjustment to the proportionality of off-grid sentences and the seriousness of the actions that would constitute a conviction for this offense.

(c) Increasing the sentence lengths in all criminal history categories on Nondrug severity level III by 20 percent. This recommendation would result in the range of sentences being increased from the current minimum of 3.8 years to 4.6 years and the current maximum from 17.2 years to 20.6 years. The mean sentence for that severity level increases from 6.1 years to 7.3 years. This enhancement is presented because of the seriousness of many of the offenses classified as severity level III crimes, including kidnapping, aggravated robbery, voluntary manslaughter and aggravated indecent liberties with a child. When reviewing the guidelines, it became apparent that there was a great inequity between sentence lengths on severity level II and those on severity level III. Given the serious nature of the offenses on severity level III, the Commission believed an across the board increase was warranted.

(d) Reclassification of Intentional Second Degree Murder from an off-grid offense to a severity level I offense. Although initially this may not appear to be an enhancement since the reclassification designates the offense as a grid crime, the actual sentence length increases on grid. Under current statute, an offender convicted of Intentional Second Degree Murder is parole eligible, regardless of criminal history, at ten years. Severity level I provides a sentence range of 15.3 years to 68 years, depending on criminal history classification. The mean sentence for this severity level is 24.3 years. Even though 15 percent good time credits are available, the offender would still serve as much and, in most cases more time, than under the current off-grid classification.

(e) A new sentencing rule was created that designates a presumptive prison sentence for a conviction of Residential Burglary, when the offender has a prior conviction for either a residential burglary or a non-residential burglary. This recommendation is in response to numerous concerns raised by judges, prosecutors, and the public regarding the number of residential burglary convictions that must occur before an offender is sentenced to prison.

(f) Enhance the penalty for Aggravated Escape from Custody, from a severity level 6 person felony to a severity level 5 person felony, when the offender is in the custody of the Secretary of Corrections and escapes from a state operated correctional facility. This proposal differentiates the degree of seriousness in escaping from a community corrections facility versus a correctional institution, even though both offenders can be in the custody of the Secretary of Corrections.

The bill also contains several recommendations that reclassify some low level felony offenses and attempt to address the proportionality issues that became very apparent when the Commission examined changes to the Sentencing Guidelines. These recommendations were developed based on two primary guiding principals: (1) Incarceration should be reserved for the most violent and chronic offenders and (2) the length of sentences should increase in proportion to the severity of the offense, with the loss of a human life representing the most severe threat to public safety.

(a) Sentence lengths in all criminal history categories on Nondrug severity levels I and II be reduced by 20 percent. Although this may not be a popular recommendation, there are sound and rational public policy reasons to support the proposed adjustment. This proposal would result in the minimum sentence for severity level I be changed from 15.3 years to 12.2 years and the maximum sentence from 68 years to 54.4 years, with the mean adjusted from 24.3 years to 19.5 years. Even with the proposed change, the lengths of sentences are by no means short. It should be noted that even with the enhanced penalties for off-grid offenses noted above (20 to 50 years), severity level I sentences are very close in length. Under Sentencing Guidelines, a conviction for an attempted off-grid murder results in sentencing as a severity level I offense. This has resulted in some offenders pleading up from an attempted murder charge to murder charge because the sentence for an off-grid offense is actually shorter than for a severity level I offense. This type of action is not reflective of good sentencing policy, which should provide the longest sentences for more serious offenses. The Commission acknowledges the seriousness of the offenses classified as severity level I (rape, aggravated kidnapping and attempted murder) and supports long periods of incarceration for convictions of these offenses. However, in reviewing the proportionality of sentences, the Commission feels that a conviction for the crime of murder should carry the most severe sentence.

(b) Felony Driving with a Suspended License and the Habitual Violator statute, both current severity level 9, nonperson felonies be reclassified as Class A, nonperson misdemeanors. Sentencing Guidelines distinguishes offenses by person and nonperson, which differentiates between crimes against a person and crimes against property. These

specific offenses are basically of the traffic nature and can be more appropriately dealt with at the local level. A severity level 9 felony, for most criminal history categories imposes a presumptive nonprison sentence. Even if the offender violates his or her probation and a revocation occurs, the underlying prison sentence for that severity level only ranges from 5 to 13 months. If the offense is classified as a Class A misdemeanor, the judge may impose up to a 12 month jail sentence upon conviction. If the intent is to stop offenders from driving while their drivers license is suspended, then the offense can be more adequately and efficiently dealt with at the local level.

(c) Criminal Deprivation of Property - a Motor Vehicle is reclassified from a non-grid felony to a Class A, nonperson misdemeanor. This statute is commonly referred as the "joy riding" statute and the current classification as a non-grid felony sets forth that incarceration be at the local level. In attempting to attain consistency in sentencing policy, the reclassification would address the proportionality issue.

(d) Amendment to K.S.A. 21-3520, Unlawful Sexual Relations, which would create a new sentencing structure for what is commonly referred to as the "Romeo and Juliet" situations. The new section would allow for a severity level VIII, person felony conviction, when the offender is less than three years older than the victim and the victim is greater than 14 years of age but less than 16 years of age and the sexual activity is voluntary. Numerous concerns have been raised by judges on the sentencing when the parties are in a mutual relationship and the parents or other parties initiate prosecution. This would allow for the sanctioning of the activity as a person felony, but would designate a presumptive nonprison sentence. In addition, a conviction under this new section would not require the offender to register as a sex offender, which may result in long term consequences.

(e) Designates the location of incarceration for a Third or Subsequent Felony Domestic Battery Conviction, a nongrid felony, to be at the local level to provide consistency with other nongrid felonies, such as DUI. Nongrid felonies are not assigned a severity level nor a determinate period of incarceration. As with felony DUI, the Commission believed incarceration should occur at the local level.

In addition to the above enhancements and proportionality adjustments, the Commission reviewed several procedural issues in which recommendations for change are included in this bill. One issue relates to procedures surrounding postrelease revocation hearings. Under current law, when an offender violates the conditions of postrelease supervision, the offender must wait until the revocation hearing before the Parole Board occurs, to start serving the appropriate sentence for the violation. The change proposed would allow the offender to waive his/her right to a revocation hearing and begin to immediately serve the appropriate period of incarceration. The offender would still have the right to request a hearing and wait until the hearing takes place to begin serving, if warranted, the incarceration period. However, if the offender voluntarily chooses to waive the right to a hearing, the offender could begin his sentence immediately.

This bill also contains a section which recommends that misdemeanor Pre-Sentence Investigation Reports be part of the official court record and accessible to the public in the same manner as current law allows for felony Pre-Sentence Investigation Reports. This would allow for consistency in sentencing and providing reliable data.

Finally, this bill contains a proposal, which is very similar to SB 435, which was introduced by the Sentencing Commission during the 1998 Legislative Session. The proposal requests that when an offender commits a new felony while released on felony bond, that the judge shall impose consecutive sentences upon a conviction.

In the past the Sentencing Commission has limited introduction of bills to either technical or clarification issues surrounding the Sentencing Guidelines Act. In a perfect world, the Guidelines would have been implemented in 1993 and allowed to operate for a period of time before amendments were introduced and changes imposed. However, we do not operate in a perfect world. The Sentencing Commission is mandated by statute to monitor the Sentencing Guidelines and recommend changes to the Legislature. Senate Bill 131 represents a comprehensive review of the Sentencing Guidelines after five years of enactment.

Senate Bill 131 contains a mix of recommendations that support the underlying goals of the Sentencing Guidelines and support public safety. For the past ten years the consensus of the criminal justice community has been to get tough on crime and we have. Violent offenders are serving much longer sentences than they had prior to sentencing guidelines. Offenders are now being held more accountable for their actions. However, in developing good sentencing policy, we need to be both tough and smart about crime. Distinguishing between criminals we are afraid of and criminals we are mad at, is often necessary but difficult to do at times. Senate Bill 131 represents this effort by the Sentencing Commission. Good public policy is not only concerned with current issues but also anticipates future consequences.

For Additional Information Contact:

Barbara Tombs
Executive Director

SJwd. att 2
2-11-99

**Proposed Amendments
to the language of**

SENATE BILL No. 131

By Committee on Judiciary

AN ACT concerning crimes, criminal procedure and punishment; prescribing certain penalties; amending K.S.A. 21-3503, 21-3504, 21-3505, 21-3510, 21-3520, 21-3705, 21-4605, 21-4635, and 21-4638 and K.S.A. 1998 Supp. 8-262, 8-287, 21-3402, 21-3810, 21-4603d, 21-4704, 21-4706, 22-3737, 22-4902 and 75-5217 and repealing the existing sections.

Sections to be Amended:

1. At Section 5, page 3 of the bill, beginning at line 18, delete the phrase "*and the offender is more than three years older than the child*" from the proposed language for K.S.A. 21-3504(a)(2).
2. At Section 18, page 25 of the bill, beginning at line 42, delete the phrase "*and the offender is three or more years of age older than the child*" from the proposed language for K.S.A. 1998 Supp. 22-4902(a)(4).

Please refer to the attached pages to see how the proposed amendments would appear in Senate Bill 131.

Sen Jud
2-11-99
att 2

AMENDED

Session of 1999

SENATE BILL No. 131

By Committee on Judiciary

1-26

9 AN ACT concerning crimes, criminal procedure and punishment; pre-
10 scribing certain penalties; amending K.S.A. 21-3503, 21-3504, 21-
11 3505, 21-3510, 21-3520, 21-3705, 21-4605, 21-4635 and 21-4638 and
12 K.S.A. 1998 Supp. 8-262, 8-287, 21-3402, 21-3810, 21-4603d, 21-4704,
13 21-4706, 22-3717, 22-4902 and 75-5217 and repealing the existing
14 sections.

15

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

17 Section 1. K.S.A. 1998 Supp. 8-262 is hereby amended to read as
18 follows: 8-262. (a) (1) Any person who drives a motor vehicle on any
19 highway of this state at a time when such person's privilege so to do is
20 canceled, suspended or revoked shall be guilty of a: (A) Class B nonperson
21 misdemeanor on the first conviction; and (B) class A nonperson misde-
22 meanor on the second conviction; and ~~(C) severity level 0; nonperson~~
23 ~~felony on a third~~ or subsequent conviction.

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

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

34 (4) If a person (A) is convicted of a violation of this section, commit-
35 ted while the person's privilege to drive was suspended or revoked for a
36 violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of
37 any city or a law of another state, which ordinance or law prohibits the
38 acts prohibited by that statute, and (B) is or has been also convicted of a
39 violation of K.S.A. 8-1567, and amendments thereto, or of a municipal
40 ordinance or law of another state, which ordinance or law prohibits the
41 acts prohibited by that statute, committed while the person's privilege to
42 drive was so suspended or revoked, the person shall not be eligible for
suspension of sentence, probation or parole until the person has served

2-2

1 *age and the offender is more than three years older than the child:*

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

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

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

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

12 Sec. 5. K.S.A. 21-3504 is hereby amended to read as follows: 21-
13 3504. (a) Aggravated indecent liberties with a child is:

14 (1) Sexual intercourse with a child who is 14 or more years of age but
15 less than 16 years of age *and the offender is more than three years older*
16 *than the child;*

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

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

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

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

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

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

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

38 (c) Aggravated indecent liberties with a child as described in subsec-
39 tions (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated
40 indecent liberties with a child as described in subsection (a)(2) is a severity
41 level 4, person felony.

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

→ [The phrase "*and the offender is more than three years older than the child*" has been deleted from the proposed language for K.S.A. 21-3504(a)(2).]

h-2

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 render
8 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. K.S.A. 1998 Supp. 22-4902 is hereby amended to read as
29 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-
duct if one of the parties involved is less than 18 years of age ~~and the
offender is three or more years of age older than the child.~~

[The phrase "and the offender is three or more years of age older than the child" has been deleted from the proposed language for K.S.A. 1998 Supp. 22-4902(a)(4).]



2-5

- 1 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
2 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
3 3505, and amendments thereto;
4 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-
5 ments thereto;
6 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and
7 amendments thereto;
8 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and
9 amendment thereto; or
10 (F) unlawful sexual relations as defined by *subsection (a)(1) or (2) of*
11 *K.S.A. 21-3520*, and amendments thereto;
12 (5) any conviction for an offense in effect at any time prior to the
13 effective date of this act, that is comparable to any crime defined in sub-
14 subsection (3) or (4), or any federal or other state conviction for an offense
15 that under the laws of this state would be an offense defined in subsection
16 (3) or (4); or
17 (6) an attempt, conspiracy or criminal solicitation, as defined in
18 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
19 fense defined in subsection (3) or (4).
20 Upon such conviction, the court shall certify that the person is an of-
21 fender subject to the provisions of K.S.A. 22-4901 *et seq.* and amend-
22 ments thereto and shall include this certification in the order of commit-
23 ment. Convictions which result from or are connected with the same act,
24 or result from crimes committed at the same time, shall be counted for
25 the purpose of this section as one conviction. Any conviction set aside
26 pursuant to law is not a conviction for purposes of this section. A convic-
27 tion from another state shall constitute a conviction for purposes of this
28 section.
29 (b) "Sex offender" includes any person who, after the effective date
30 of this act, is convicted of any sexually violent crime set forth in subsection
31 (c). Upon such conviction, the court shall certify that the person is a sex
32 offender and shall include this certification in the order of commitment.
33 Convictions which result from or are connected with the same act, or
34 result from crimes committed at the same time, shall be counted for the
35 purpose of this section as one conviction. Any conviction set aside pur-
36 suant to law is not a conviction for purposes of this section. A conviction
37 from another state shall constitute a conviction for purposes of this
38 section.
39 (c) "Sexually violent crime" means:
40 (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;
41 (2) indecent liberties with a child as defined in K.S.A. 21-3503 and
amendments thereto;
(3) aggravated indecent liberties with a child as defined in K.S.A. 21-



DEPARTMENT OF CORRECTIONS
 OFFICE OF THE SECRETARY
 Landon State Office Building
 900 S.W. Jackson — Suite 400-N
 Topeka, Kansas 66612-1284
 (785) 296-3317

Bill Graves
 Governor

Charles E. Simmons
 Secretary

MEMORANDUM

DATE: February 11, 1999
 TO: Senate Judiciary Committee
 FROM: Charles E. Simmons
 Secretary of Corrections
 RE: SB 131

SB 131 is a legislative initiative of the Kansas Sentencing Commission. SB 131 contains a number of amendments to the definitions of crimes and criminal penalties, some of which involve proposals raised by the Department of Corrections. The Department supports the provisions of SB 131 with the exception of the reduction of the presumptive prison sentences established for nondrug Severity Levels I and II offenses. The Department also recommends amendments to SB 131 to achieve conformity with other statutory provisions and to correct technical errors.

The Kansas Sentencing Commission has estimated that the cumulative impact of the various sections of SB 131 will increase KDOC capacity needs by 113 beds over a several year period. Our initial impression is that there will be a reduction in the number of minimum custody inmates due to the reclassification of some felony offenses to misdemeanors and possibly an increase in the number of medium custody inmates as a result of longer sentences or changes in sentencing presumptions. The Department, however, is not able at this time to project a numerical impact of SB 131 on the custody classifications of the inmate population.

This testimony will comment on several specific provisions of SB 131:

- Amendment of unlawful sexual relations to include consensual lewd fondling or touching by both employees of the Department and the Department's contractors.

Current law prohibits consensual sexual intercourse and sodomy between corrections personnel and offenders. The Department believes that it is inappropriate and should be unlawful for any form of sexual activity to occur between offenders and those with a custodial responsibility for supervision

Memo: Senate Judiciary Committee
Re: SB 131
February 11, 1999
Page 2

of them. True consent cannot be given under these circumstances. Moreover, sexual relations between offenders and employees leads to a number of operational and security problems.

- The crime of criminal deprivation of a motor vehicle is reduced to a class A nonperson misdemeanor from an unclassified felony. The penalty for that offense would stay the same.

This amendment is consistent with the law, codified at K.S.A. 21-4704, that offenders convicted of "joy riding" not be confined in a state correctional facility. However, since K.S.A. 21-4704 characterizes violations of K.S.A. 21-3705(b) as a felony, subject to local sanctions, K.S.A. 21-4704 should be amended to delete the classification of 21-3705(b) as a felony. A balloon amendment addressing this recommendation through amendment of section 15 at page 16 is attached.

- The Department recommends an additional amendment of section 15 at page 16 regarding the reference to felony domestic battery at lines 23-24 and 29-30. That reference should be changed from "subsection (b)(3) of K.S.A. 21-3412" to "subsection (c)(3) of K.S.A. 21-3412". A balloon amendment is attached.

The citation to "subsection (b)(3)" is erroneous since that subsection does not exist. Additionally, the felony definition for K.S.A. 21-3412 is at subsection (c)(3) of that statute.

- Increasing the penalty for the crime of escaping from a Department facility from a severity level VIII or Severity Level VI offense to a Severity Level V offense.

The Department has the concern that the Sentencing Guidelines Act does not take into account the entire criminal history of an inmate who escapes when applying the sentencing grid matrix. In fact, since a felony conviction is a necessary element of the crime, the KSGA prohibits the use of the current convictions in determining the criminal history of a person convicted of escape. Thus, first time offenders who escape from confinement have a criminal history classification of "I". (1 misdemeanor conviction or no record). Rather than create a special rule relative to criminal history for escape, the Sentencing Commission determined that increasing the severity level for the offense would be the preferred course of action. The Department supports this proposal.

- Finally, the one provision of SB 131 that the Department does not support is the 20% reduction in the presumptive prison sentences for nondrug Severity Level I and II offenses as set out in section 15.

3-2

Memo: Senate Judiciary Committee
Re: SB 131
February 11, 1999
Page 3

Recent reports indicate that crime rates for violent crimes are down. A reduction in sentences at this time for the most severe offenses is the wrong message to be sending to the citizens of this state, to crime victims, and to criminals.

CES/TGM/nd
Attachments

cc: Legislation file w/attachments

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 spe-
25 cific 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)

(c)

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

SB 131

1 felony under the laws of another state, the federal government or a for-
2 eign government. The provisions of this subsection shall not apply to any
3 person whose current convicted crime is a severity level 1 or 2 felony.

4 (k) If it is shown at sentencing that the offender committed any felony
5 violation for the benefit of, at the direction of, or in association with any
6 criminal street gang, with the specific intent to promote, further or assist
7 in any criminal conduct by gang members, the offender's sentence shall
8 be presumed imprisonment. Any decision made by the court regarding
9 the imposition of the optional nonprison sentence shall not be considered
10 a departure and shall not be subject to appeal. As used in this subsection,
11 "criminal street gang" means any organization, association or group of
12 three or more persons, whether formal or informal, having as one of its
13 primary activities the commission of one or more person felonies or felony
14 violations of the uniform controlled substances act, K.S.A. 65-4101 et seq.,
15 and amendments thereto, which has a common name or common iden-
16 tifying sign or symbol, whose members, individually or collectively engage
17 in or have engaged in the commission, attempted commission, conspiracy
18 to commit or solicitation of two or more person felonies or felony viola-
19 tions of the uniform controlled substances act, K.S.A. 65-4101 et seq.,
20 and amendments thereto, or any substantially similar offense from an-

S. Jud
2-11-99
att

OFFICE OF DISTRICT ATTORNEY
PAUL J. MORRISON, DISTRICT ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 131

As a public official, one of the most important things we can do for the people of this State is help ensure their safety. This is primarily accomplished through the operation of our criminal justice system. Our primary goal has always been to protect the public and punish those who break the law. Overall, I have been very impressed over the years with how the legislature has handled these issues. We must never forget that the primary goal of the criminal justice system is to provide justice.

Since the Guidelines were passed in 1993, we have seen many modifications to the sentencing grid. Most of these modifications involved lengthening of sentences for career and violent offenders. They have been good, necessary changes that have received a lot of support from the criminal justice community. For example, some offenders who commit severity level 1 and 2 type crimes have had their sentences quadrupled in the last few years. For the most part, this has been great news for the people of Kansas. However, there have been some unintended consequences. One of those consequences has been the fact that some inequities have been created within the sentencing grid. For example, many severity level 1 crimes now carry much lengthier sentences than their more severe off-grid counterparts. As a specific example, many times a failed attempt to commit a homicide will carry a much lengthier prison sentence than a completed murder. Rapes and aggravated kidnappings now many times carry much lengthier sentences than first degree murder. The list goes on and on. I do not believe that these inequities were created intentionally. I believe that they often occur as a result of "patchwork" type amendments to the grid.

The reason I am supportive of Senate Bill 131 is that it attempts to address much of the proportionality problems within the guidelines. Many, many sentences are increased under this bill. A few are reduced. The reductions are modest and more importantly are an attempt to establish a greater parity within the grid.

Sen Jud
2-11-99
att

COUNTY ATTORNEY

Timothy J. Chambers

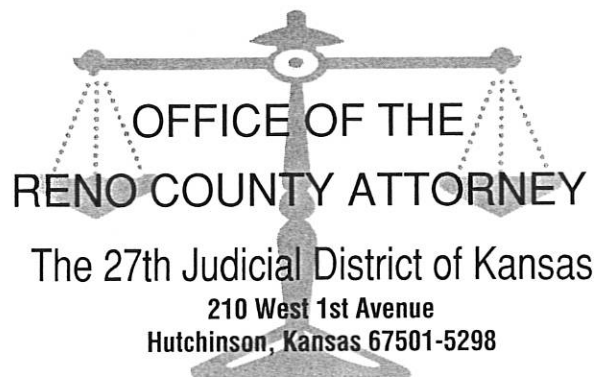
ASSISTANT COUNTY ATTORNEYS

Keith E. Schroeder

Stacy L. Cuning

JoAnna L. Derfelt

Linda L. Blackburn - Juvenile



TELEPHONE: (316) 694-2715

FAX : (316)-694-2711

E-Mail: coatt@southwind.net

Juvenile
(316) 694-2760

Victim-Witness Service
(316) 694-2718

Diversion Coordinator
(316) 694-2716

Testimony of Timothy J. Chambers, Reno County Attorney
Prepared For The
Committee on Judiciary of the Kansas Senate regarding
Senate Bill 131, February 11, 1999

I appreciate the opportunity to appear before this committee to speak regarding changes in the Kansas Criminal Code and Code of Criminal Procedures contained within Senate Bill 131.

The proposed legislation will eliminate felony offenses of Driving While Suspended and Driving as an Habitual Violator and relegate those offenses to misdemeanor status. I assume the impetus behind these amendments to current law is to prevent the incarceration of what is perceived as non-violent offenders within the state penal system.

Last year in Reno County, one hundred and seventeen (117) felony driving while suspended or habitual violator cases were filed.

By the time an individual is charged with a felony driving offense, they have exhibited a continued disregard for the driving laws of this State and the court system. Our court services chief has indicated to me a Supreme Court study has shown a non-violent offender on the average will be allowed six technical violations of probation before incarceration is a serious option.

The experience in Reno County has shown incarceration within the Department of Corrections occurs only with extreme cases and if it does occur, because of the commission of new offenses.

Twenty-eight felony D.U.I.'s were filed in Reno County last year. The majority committed the offense while their driving privileges were suspended or while declared to be habitual violators. Third time D.U.I.'s presently are listed as felonies, but in actuality are misdemeanors. At least with felony status for driving while suspended offenses and habitual violator offenses, some effective punishment is allowed to deal with the repeat driving offender.

Sen Jud
2-11-99
att 5

I personally consider felony driving offenders to be violent. As a prosecutor, I have spent twenty years going to the scene of fatality accidents. Individuals who face incarceration in the state penal system for driving offenses are a danger to the people of this State. They have exhibited a continued pattern of dangerous driving patterns and a complete disregard for the laws of this State. Prosecution and law enforcement should not be further restricted in their efforts to combat this problem.

The second concern I wish to express concerning Senate Bill 131 deals with the so called "Romeo and Juliet" provisions. Sexual offenses involving fourteen and fifteen year old females where the perpetrator is within three years or less in age of the victim are proposed to be reclassified as "unlawful sexual relations". The new offense is a level eight offense and most generally will result in a minimal presumptive probation sentence.

Such a change in Kansas law will send a dangerous message to the young men and women of this State. I would urge the committee to reject this proposed statutory amendment. You are no less of a sexual predator because you select a victim who is near to you in age.

Before such a message is sent to the people of the State of Kansas, please contact the juvenile authorities across the State to learn their views concerning the problem that presently exists in sexual crimes against fourteen and fifteen year old females. Please contact police officers, juvenile prosecutors, judges, school officials, sexual assault centers and parents to become aware of the problem that presently exists.

Granted, a relationship can exist between a high school freshman female and a high school senior male. Prosecutor discretion and the courts exist to handle that situation. I submit that it is far too common where high school seniors prey on a particularly vulnerable segment of society, the younger female, when it is not a romantic relationship. That situation exists, and will continue to exist. I urge upon you, do not send a message that fourteen and fifteen year old girls are entitled to less protection and it is somehow less of an offense if the perpetrator happens to be near them in age. Thank you.

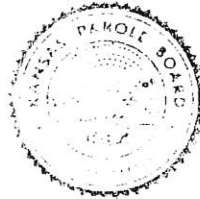
Timothy J. Chambers

Marilyn Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson

Bob J. Mead
Member

Larry D. Woodward
Member



S. J. Ad
2-11-99
att 8

Teresa L. Saiya
Administrator

KANSAS PAROLE BOARD
LANDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
TOPEKA, KANSAS 66612-1236
(913) 296-3469

MEMORANDUM

TO: Senator Tim Emert, Chairman
Committee on Judiciary, Kansas Senate

FROM: Marilyn Scafe, Chair *MS*
Kansas Parole Board

RE: SB 131
Waiver of Final Revocation Hearing

DATE: February 11, 1999

Under the current law, all offenders must have a personal interview with a Board member in order to revoke a period of post release, parole, or conditional release supervision. SB 131 would allow offenders under the determinate sentences to waive their appearance at the final hearing, if they admit guilt to all of their violations. The Board would then make an administrative decision regarding the revocation. Responsibility for oversight and review of all cases to ensure due process would continue to rest with the Board. If deemed necessary, the Board could set a hearing regardless of the waiver. If there are pending charges, the offender will not be eligible to waive the final hearing. The Department of Corrections would be responsible for the timing of the waiver and the full explanation of the rights waived and the consequences thereof.

At this time, offenders serving indeterminate sentences whose releases are governed by the Kansas Parole Board, will not be given the opportunity to waive their final hearings. Wide discretion exists for setting penalties and planning release in those cases. Therefore, it is felt that personal interview are needed in order to determine the length of pass and recommendations for programs and treatment.

Sen J. Ad
2-11-99
att 6

Benefits of the waiver of the final revocation hearing for post release violators are:

- Time (90 or 180 days) would start with the signing of the waiver rather than the appearance before the Board. This would be more in keeping with the legislative intent for violators.
- Use of the waivers will result in a reduction of the average daily population. It is difficult to project a reduction in actual bed space using the Prophet Model, due to the data format. However, it is reasonable to project some impact for a reduction.
- This is an efficient use of the Board's time. The Board has limited or no discretion for penalties if the offender admits guilt to the violations or has a new conviction. Personal interviews cannot change the options for final decisions.
- Since it is the offender's decision to waive, there will be fewer appeals to process.

33
2-11-99 att 7

**Senate Judiciary Committee
Testimony of Natalie G. Haag,
Office of the Governor
Senate Bill 131
February 11, 1999**

Mr. Chair and members of the committee:

Thank you for the opportunity to address this committee regarding Senate Bill 131. On behalf of Governor Graves, let me express sincere appreciation for the difficult and dedicated work of the Sentencing Commission. The proposals recommended by the Commission and set forth in SB 131 are important steps in our continued fight against crime. The Governor supports increasing penalties as recommended by the Commission. He was pleased to see these recommendations include changes creating presumptive imprisonment upon a second conviction for residential burglary.

Statistical data shows crime rates are decreasing. The State of Kansas should not regress in its battle against crime. Accordingly, the Governor urges you to abandon the specific proposal that would result in shorter sentences for many of those considered the most dangerous to society. The proposal in question calls for a 20 percent reduction of all sentence lengths for all criminal history categories on non-drug grid levels I and II (at page 14 of the bill). The result could be shorter prison time for those convicted of a number of heinous crimes, such as kidnapping and rape.

Governor Graves urges your support for all remaining provisions of Senate Bill 131.

Sen Haag
2-11-99
att 7

Julie A. McKenna, President
 David L. Miller, Vice-President
 Jerome A. Gorman, Sec.-Treasurer
 William E. Kennedy, III, Past President



Written att 8
 2-11

DIRECTORS

William B. Elliott
 John M. Settle
 Christine C. Tonkovich
 Gerald W. Woolwine

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
 (785) 357-6351 • FAX (785) 357-6352 • e-mail kcdaa01@ink.org
 EXECUTIVE DIRECTOR, JAMES W. CLARK

February 11, 1999

TO: Senate Judiciary Committee

FROM: Kansas County and District Attorneys Association

RE: **SB 131**

The Kansas County and District Attorneys Association is generally supportive of the provisions in SB 131, and is appreciative of the deliberation that went into the suggested changes to Kansas criminal law.

However, we are opposed to the provisions that distinguish sex crimes based on the offender's age. As a matter of policy, a crime is a crime, whether committed by a 19-year old or a 22-year old. The fact that the offender and victim may be young and in love should not determine whether the conduct is criminal. After all, there is no statutory distinction made if they are young and in love and snorting cocaine. As a matter of constitutional law, is there a violation of the equal protection clause? What is the state interest in making a distinction based on the difference in age? Is the victim less fondled or, in the extreme case, made less pregnant, simply because a defendant is near his or her own age? Finally, proving a sex crime beyond a reasonable doubt when it involves consensual conduct between "Romeo and Juliette" is one of the most difficult cases a prosecutor faces. Adding to the problems of recanting or at least reluctant testimony of the victim, and jury nullification, by requiring the State to prove additional elements of the offender's age in relation to the victim's is not good policy, and is a waste of prosecutorial and judicial resources.

Likewise, the bundling of the various consensual sex acts between Romeo and Juliette into a single crime is no answer to the questions posed above. The constitutional and evidentiary questions remain. More importantly, the bundling raises separate constitutional and policy issues. When we make distinctions between the type of consensual sex acts for the population in general, what is the overwhelming state interest in erasing those distinctions for certain protected class of offender who happen to be within three years of their "victim"? And as a policy matter, do we want to tell Romeo and Juliette that sexual intercourse, with the possible consequences of teen pregnancy, is legislatively regarded as the same as touching or sodomy?

Other concerns: 1) why treat serious traffic offenses differently than DUI? 2) why the change in language regarding access to the PSI from attorneys to "parties"? 3) for crimes committed while on bond, why not use the language from last year's SB 435, which hopefully has now been amended into this year's SB 98, already approved by this Committee? 4) in dealing with the career property offender, why not borrow from SB 223 and make all nonperson felonies eligible to count toward presumptive imprisonment, instead of limiting the bill to career burglars?

Sen Jud
 2-11
 PJ 8



written
2-11
att 9
55

State of Kansas

Office of the Attorney General

CARLA J. STOVALL
ATTORNEY GENERAL

February 11, 1999

Senator Tim Emert, Chair
Senate Judiciary Committee
State Capitol
Topeka, Kansas 66612-1504

Dear Chairperson Emert and Members of the Senate Judiciary Committee:

Senate Bill 131 is a comprehensive bill amending several key provisions of the current criminal law. For the most part I have no objection and am in favor of some of the amendments within this bill, such as Sec. 13 which would replace the current Hard 40 sentence with a Hard 50 sentence and Sec. 15 which would allow a presumptive sentence for an individual convicted of burglary to a dwelling when that individual has a prior conviction of burglary to a dwelling or building.

However, I cannot support and would urge the Committee not to accept the reduction of the sentencing range for severity level 1 and 2 criminal offenses.

As proposed in Section 15 of this bill the result would be to decrease the sentencing range of severity level 1 and 2 offenses by 20%. These criminal offenses include: Attempted First Degree Murder (1), Conspiracy to Commit Murder in the First Degree (2), Intentional Second Degree Murder (1), pursuant to Sec. 3 of this bill, Reckless Second Degree Murder (2), Aggravated Kidnapping (1), Rape (1 & 2), Aggravated Criminal Sodomy (2), Attempted Treason (1) and Conspiracy to Commit Treason (2).

As you can see these offenses involve some of the most violent crimes that take place against our society. The individuals who commit these crimes are a danger to the public and our children. Currently these defendants are entitled to earn 15% good time credit by which their prison sentence can be reduced. An additional reduction of 20% off the top is not warranted nor appropriate when we remember the safety of our communities demand that these criminals be isolated from the society in which they have inflicted so much physical and emotional trauma. This amendment is a reward to the criminals who terrorize our streets. In essence it violates the trust that the public has placed in our hands.

See feed
2-11-99
att 9

For these reasons I cannot support and urge this Committee not to adopt that portion of Sec. 15 which would authorize the reduction of the sentence for level 1 and 2 criminal offenses.

I am also opposed to amending the present law regarding aggravated indecent liberties with a child, indecent liberties with a child, criminal sodomy and indecent solicitation of a child to allow for an exception to the criminal conduct of the perpetrator if that individual is less than three years older than the victim and the victim is between the ages of 14 and 16 years of age. These laws were enacted to provide protection to children of tender years. If we are to provide for the guidance and protection which the young members of our society require and need, then it is imperative that the Sec. 4, 5, 6, and 7 be deleted from this bill.

I must further disagree with the recommendation to delete the felony penalty provisions for driving while suspended, canceled, revoked or as a habitual violator as set out in Sec. 1 and 2 of the bill. "FATAL" is a task force that was created by myself this past year to review traffic and alcohol laws. One of the recommendations of this committee was to amend K.S.A. 21-3204, which provides for guilt without criminal intent, to include felony offenses involving driving while suspended, operating a motor vehicle while a habitual violator and DUI. These recommendations have been presented to the Senate Federal and State Committee and will be forthcoming in bill form. I believe this is a more appropriate manner in which to handle these offenses.

Thank you for your consideration and support for the other portions of this bill.

Sincerely,



Carla J. Stovall
Attorney General

Written
2-11-99
att 10

MEMORANDUM

TO: Senator Tim Emert, Chair
Senate Judiciary Committee

FROM: Teresa Sittenauer
Kansas Peace Officers Association

DATE: February 11, 1999

RE: SB 131

Mr. Chairman, members of the committee, my name is Teresa Sittenauer and I appear today on behalf of the Kansas Peace Officers Association ("KPOA"), Kansas' largest professional law enforcement organization, with more than 3,500 members statewide. We appreciate this opportunity to express our concerns with SB 131.

We have several concerns with the language of this bill. First, the legislation would narrow the category of persons who can be prosecuted for sex crimes against children. Specifically, it would prohibit prosecution of persons who are less than three years older than the victim for indecent liberties with a child; aggravated indecent liberties with a child; criminal sodomy; and indecent solicitation of a child. The Legislature created these crimes to protect children. It is unwise to dilute that protection. The result is to decriminalize an otherwise unlawful act, based on the fortuitous circumstance that the suspect is not sufficiently older than the victim.

Sen Jud
2-11-99
att 10

For these reasons, we would recommend deletion of Sections 4 through 7 of the bill. We appreciate the opportunity to express our concerns. Please do not hesitate to contact me if you have questions or need further information.