

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on February 7, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Dean Newton - Excused  
Representative Clark Shultz - Excused  
Representative Daniel Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Tom Stanton, Kansas County & District Attorneys Association  
Susan Bechard, Kansas County & District Attorneys Association  
John Badger, Chief General Council, Social & Rehabilitation Services

Hearings on **HB 2136 - for criminal history classification for involuntary manslaughter while DUI, prior violation of DUI law would be considered**, were opened.

Tom Stanton, Kansas County & District Attorneys Association, appeared as a proponent of the bill. This bill would include municipal court convictions for DUI as a prior convictions. Each DUI conviction, regardless of whether it is in district court or municipal court, represents an occasion during which a defendant has place the lives of others at risk of being killed. (Attachment 1)

Hearings on **HB 2136** were closed.

Hearings on **HB 2137 - traffic citation for violation of habitual violator statute**, were opened.

Susan Bechard, Kansas County & District Attorneys Association, appeared before the committee in support of the bill. The proposed bill simply list violations of K.S.A. 8-287 as offenses that may be filed by citation, which would be timesaving to law enforcement officers, court and prosecutors. (Attachment 2)

Hearings on **HB 2137** were closed.

Hearings on **HB 2178 - controlled substances; gamma hydroxybutyric acid, recognizing the differences between the illicit drug & the medical use drug**, were opened.

Susan Bechard, Kansas County & District Attorneys Association, appeared on behalf of Matt Treaster, Harvey County Attorney. She commented that the proposed bill would mirror federal law which recognizes the differences between illicit GHB & the medical GHB. (Attachment 3)

Written testimony was provided by the following people: Bonnie Martin (Attachment 4), Mrs. Janet Sharp (Attachment 5), Orphan Medical Corporation (Attachment 6), Susan Linn, Kansas State Board of Pharmacy (Attachment 7)

Hearings on **HB 2178** were closed.

Hearings on **HB 2176 - unlawful sexual relations; offender is an employee of SRS; victim is a patient**, were opened.

John Badger, Chief General Counsel SRS, would like to criminalize those employees who have sexual relations with patients in an SRS facility. He requested an amendment that the bill apply only to those 16 years of age or older. (Attachment 8)

Hearings on **HB 2176** were closed.

**HB 2194 - admissibility of forensic reports**

Representative Pauls made the motion to report **HB 2194** favorably for passage. Representative Rehorn seconded the motion. The motion carried.

**HB 2208 - district magistrate judges have jurisdiction over limited actions**

Representative Long made the motion to report **HB 2208** favorably for passage. Representative Swenson seconded the motion.

Representative Long made the substitute motion to add on line 30 language to the affect that "excluding actions filed under the code of civil procedure for limited actions, K.S.A. 2000 Supp. 61-2801 et seq., and amendments thereto." Representative Swenson seconded the motion. The motion carried.

Representative Long made the motion to report **HB 2208** favorably for passage as amended. Representative Swenson seconded the motion. The motion carried.

**HB 2137 - traffic citation for violation of habitual violator statute**

Representative Pauls made the motion to report **HB 2137** favorably for passage. Representative DeCastro seconded the motion. The motion carried.

**HB 2178 - controlled substances; gamma hydroxybutyric acid, recognizing the differences between the illicit drug and the medical use drug**

Representative Klein made the motion to report **HB 2178** favorably for passage. Representative Long seconded the motion. The motion carried.

The committee meeting adjourned at 4:30 p.m. The next meeting is scheduled for February 8, 2001.

DIS ATTORNEY

Keith E. Schroeder

DEPUTY DISTRICT ATTORNEY

Thomas R. Stanton

ASSISTANT DISTRICT ATTORNEYS

Kevin K. Stephenson

F. Terry Bruce

Linda L. Blackburn - Juvenile



TELEPHONE: (620) 694-

Fax: (620) 694-2711

E-mail: Renoda@rngov.reno.ks.us

Victim-Witness Service:

(620) 694-2718

Juvenile:

(620) 694-2760

February 7, 2001

House Judiciary Committee  
Kansas House of Representatives

Re: House Bill No. 2136

Dear Ladies and Gentlemen:

My name is Tom Stanton, and I am the Deputy District Attorney in Reno County. Thank you for giving me the opportunity to testify regarding House Bill 2136.

On December 11, 1994, a Honda passenger car occupied by Weltha Diana Oborg, Weltha Langerman and Howard Holdsclaw III was traveling south of Salina on Interstate 135 toward McPherson. Weltha Oborg was operating the car in a safe manner and at a safe speed.

On December 11, 1994, a Chevrolet Blazer driven by Vincent L. Brown was traveling north on Interstate 135. Unlike Weltha Oborg, however, Brown was not operating his truck in a safe manner. He was intoxicated.

Vincent Brown lost control of the Blazer. It veered across the highway and struck the car carrying the three innocent victims. Weltha Diana Oborg, Weltha Langerman and Howard Holdsclaw III were killed instantly. The Blazer came to rest on its top. Containers of alcohol beverages were scattered around the Blazer. Brown was not seriously injured. Brown's blood alcohol content was measured at .251.

Vincent Brown should not have been on the road that day. His license had been suspended for driving while under the influence of alcohol. He had no insurance on his car because of his terrible driving record. Brown had been convicted of driving under the influence of alcohol four times between January 1987 and April 1994.

On May 15, 1995, Vincent Brown pleaded guilty to three counts of Involuntary Manslaughter for the deaths of Diana Oborg, Weltha Langerman and Howard Holdsclaw. Both the defendant and the State filed motions to depart from the presumptive sentences that would be imposed in the case.

House Judiciary

2-7-01

Attachment 1

On August 4, 1995, Vincent Brown appeared before Judge Dan Boyer for sentencing. Both parties agreed that Brown's criminal history score should be found to be category A based on the provisions of K.S.A. 21-4711(c) which require that every prior conviction for driving under the influence of alcohol be scored as a person felony if the crime of conviction is involuntary manslaughter while driving under the influence of alcohol. Judge Boyer, after hearing evidence from both the State and the defendant, denied the motions to depart and sentenced Brown to a controlling term of 204 months. The sentence represented the maximum the court could order without granting the State's motion for an upward departure. Judge Boyer would later state that he had hoped to impose a sentence that was "appeal proof." However, the fact that three of Brown's prior four D.U.I. convictions were convictions in municipal court would drastically affect that sentence.

Brown appealed the sentence, and the Kansas Court of Appeals ruled that, because the statute did not specifically include municipal convictions for driving under the influence of alcohol in the enhancement provisions of K.S.A. 21-4711(c), Brown's prior municipal convictions for D.U.I. could not be scored as person felonies. The appellate court vacated the sentence and remanded the case for re-sentencing.

Brown returned to Saline County District Court on August 25, 1997, to be re-sentenced. Brown was assigned a much less serious criminal history score of D, reducing the presumptive prison range from 122 to 136 months down to 50 to 55 months. The State prosecutor put on additional evidence on the State's motion to depart. The trial court granted the State's motion and departed on the base sentence. However, the total sentence was reduced to 178 months from the original sentence of 204 months. Had the court not granted the motion to depart, the maximum sentence Brown could have received would have been 123 months.

A bill was subsequently introduced to amend the language of K.S.A. 21-4711(c) to specifically include municipal court convictions for D.U.I. However, the bill was apparently withdrawn after the Supreme Court decision in State v. Vega-Fuentes, 264 Kan. 10, 955 P.2d 1235 (1998)(filed March 3, 1998) because legislators believed that the decision in that case corrected the problem addressed by the proposed legislation. However, the Vega-Fuentes decision was an interpretation of the sentencing provisions found in K.S.A. 21-4710(d)(7) and K.S.A. 21-4711(a). The decision did not address the problem in K.S.A. 21-4711(c), and the use of municipal court convictions for D.U.I. under the enhancement provisions of K.S.A. 21-4711(c) remains unresolved.

Most of the statutes which address prior convictions as enhancements have been modified to include convictions stemming from municipal ordinances or county resolutions. The legislature should do the same with K.S.A. 21-4711(c). House Bill 2136 accomplishes that goal. The bill simply amends the language of the statute to include "a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567 and amendments thereto" as offenses that, if resulting in conviction, diversion or juvenile adjudication, will be enhanced to person felonies if a person stands convicted of the crime of involuntary manslaughter while driving under the influence of alcohol or drugs.

It makes no moral, legal, or intellectual sense to count only prior convictions for D.U.I. pursuant to K.S.A. 8-1567 as person felonies for the purposes of enhancement under K.S.A. 21-4711(c). The purpose of the statute is to increase the penalty for killing another human being while driving under the influence of alcohol or drugs if the defendant has had one or more prior D.U.I. convictions. The court in which such a conviction occurred has no logical connection to whether the defendant's criminal history score should be enhanced. Each D.U.I. conviction represents an occasion during which the defendant has placed the lives of innocent members of society at risk by driving a deadly weapon under the influence. Whether the arrest occurred one block inside a city, thus subjecting the defendant to municipal prosecution, or one block outside a city, thus subjecting the defendant to State prosecution, should make no difference in the application of K.S.A. 21-4711(c).

There may be a perception that convictions from a municipal court are somehow less reliable than convictions from a district court, so I want to address that issue. Many State convictions arise out of magistrate courts where the judge is not required to have a law degree. In Saline County, for example, all traffic misdemeanors committed outside of city limits that are not connected with a criminal count are tried to Judge Adrian Lapka, a magistrate judge who is not a lawyer. Judge Lapka requires that D.U.I. defendants either be represented by counsel or sign an appropriate waiver form. Many municipal court judges are practicing attorneys. All municipal judges in cities of the first class (cities with a population in excess of 15,000) are required by K.S.A. 21-4105(c)(2) be attorneys admitted to practice law in Kansas. Certainly these attorneys, many of whom defend persons charged with D.U.I. in other jurisdictions, are just as insistent that due process be observed as is Judge Lapka. There is no reason to believe that municipal convictions for D.U.I. are less reliable than State convictions.

I have spoken to Mary Ann Khoury of the DUI Victim Center of Kansas. The Center vigorously supports the passage of this legislation.

As you approach milepost 81 on Interstate 135 south of Salina, you will see three white crosses in the fence. These three crosses memorialize the lives of the three human beings Vincent Brown callously destroyed. Brown's actions tore gaping wounds in the lives and emotions of the family and friends of these innocent victims. Brown should not have been driving on December 11, 1994. He should have received the full punishment he deserved based on his four previous D.U.I. convictions. Instead, he was able to take advantage of a mistake in the language of the statute that failed to include his crimes in the enhancement provisions of K.S.A. 21-4711(c). This legislature can cure the problem. Please pass House Bill 2136.

Thank you for your time and attention.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stanton', with a large, sweeping flourish extending to the left.

Thomas R. Stanton



David L. Miller, President  
Jerome A. Gorman, Vice-President  
John M. Settle, Secretary-Treasurer  
Julie McKenna, Past President  
Steven F. Kearney, Executive Director



Edmond D. Brancart  
Thomas J. Drees  
Christine K. Tonkovich  
Gerald W. Woolwine

## Kansas County & District Attorneys Association

1200 W. 10th Street  
Topeka, KS 66604  
(785) 232-5822 • Fax: (785) 234-2433

February 7, 2001

To: Chairman O'Neal and Members of the House Judiciary  
From: Kansas County and District Attorneys Association  
Re: Testimony on HB 2137 (proponent)

During the 1999 legislative session, the Kansas legislature changed the status of the offense of driving while a habitual violator (K.S.A. 8-287) from a felony to a misdemeanor effective July 1, 1999. Prior to that date, prosecutors were required to file this charge in a formal complaint or information based on a sworn affidavit setting out the probable cause to believe the offense had been committed. This practice is required in all felony cases but it is not mandatory in misdemeanor traffic cases.

Most misdemeanor traffic charges and traffic infractions prosecuted in the district courts are filed via a citation issued by law enforcement officers as authorized by K.S.A. 2000 Supp. 8-2106 and include a notice to appear in court on a specified date. This statute enumerates the specific offenses or infractions that can be charged by citation. However, it does not now list a violation of K.S.A. 8-287, thus requiring the much more lengthy and involved process of filing a formal complaint or information in order to commence a prosecution for the misdemeanor offense of driving while a habitual violator. Violations of K.S.A. 8-287 are frequently charged throughout the state. During 1999 in Sedgwick County alone, over 300 such charges were filed.

House Bill 2137 seeks to remedy this situation by listing violations of K.S.A. 8-287 as offenses that may be filed by citation, resulting in great time savings for law enforcement officers, prosecutors and the courts. It also removes violations of repealed statutes as violations for which a citation may be given and makes current the proper statutory citation for the offense of transporting an open container.

Thank You,

Susan Bechard  
KCDAA

House Judiciary  
2-7-01  
Attachment 2

OFF

David L. Miller, President  
Jerome A. Gorman, Vice-President  
John M. Settle, Secretary-Treasurer  
Julie McKenna, Past President  
Steven F. Kearney, Executive Director



DIRECTOR

Edmond D. Brancart  
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Gerald W. Woolwine

## Kansas County & District Attorneys Association

1200 W. 10th Street  
Topeka, KS 66604  
(785) 232-5822 • Fax: (785) 234-2433

February 7, 2001

To: Chairman O'Neal and Members of the House Judiciary Committee  
From: Kansas County and District Attorneys Association  
Re: GHB/GBL Legislation

Mr. Chairman and Members of the Committee:

Please accept my written testimony as I am in jury trial on this date. I would like to start by providing you with a little bit of history on how the KCDA and I became interested in GHB/GBL legislation.

My concern with GHB arose out of a case I prosecuted in Rice County in 1999. In that case two 14-year-old girls were given GHB by two 30-year-old men. The girls thought the GHB was an alcohol "shot". Once the effects of the GHB took hold of the girls the men had sexual intercourse with them. Eventually we executed search warrants on the residence of one of the men and found a liquid we thought was GHB. Once tested it turned out to be GBL. It was very frustrating to learn that we could not charge the men with the illegal possession of the GBL, which was the instrument of their crime. Once the men learned this, the GHB/GBL trade in Rice County flourished. In the span of twelve months we had four suspected overdoses of GHB/GBL. Each of those suspected overdoses was life threatening and required emergency room treatment.

HB 2178 would mirror federal law that was enacted in February 2000 to recognize the differences between illicit GHB, the industrial chemicals that convert to GHB and the benefit of medical GHB. This bill asks the Kansas Legislature to adopt a split schedule to distinguish medical GHB from the homemade, illicitly used concoction. The chemicals that metabolize into GHB will be treated as Schedule I substances under the "controlled substance analogue" definition and FDA approved medical GHB will be listed in Schedule III. However, illicit use of medical GHB will be penalized by Schedule I penalties. In addition, this bill also amends the "controlled substance analog" provision to control the key ingredient for homebrewed GHB, gamma butyrolactone (GBL), and to control those other legal industrial chemicals that convert to GHB when ingested, such as 1,4 butanediol (1,4 BD).

Again, thank you for your time today and I would like to strongly encourage you to support this bill.

Matt Treaster  
Harvey County Attorney

House Judiciary  
2-7-01  
Attachment 3

2/7/01

To: Judiciary committee members  
c/o Cindy O'Neil  
Judiciary Committee Secretary

Re: legislation involving GHB

Please remember people like me who have Narcolepsy and Cataplexy at the hearing you are having Wednesday February 7, 2001. I have had these afflictions for over 40 years. These afflictions are terrible to live with. This drug is needed to control Cataplexy for people like me. There are a lot of us in this country with this decease. Please don't block our being able to use this drug.

Please protect all of us out here who need this drug so badly. I can't even drive a car because of having Narcolepsy and Cataplexy. These new drugs are needed so badly by so many of us out here. Please don't forget us out here waiting for new drugs to help us function. One comes that will help so many us and don't stop us from getting the help.

Thank You!

Bonnie Martin

1913 So. 5th St.

Leavenworth, Kansas 66048

Phone 913 682 2400

Email Dogpatch@lvnworth.com

House Judiciary  
2-7-01  
Attachment 4



Judiciary Committee Members  
c/o Cindy O'Neil  
Judiciary Committee Secretary

Re: HB 2178

As a sufferer with narcolepsy for most of my life, I urge you to vote to keep GHB available to those who need it daily for a quality of life. Try to imagine your life without ever having a deep hearty laugh, because you'll drop whatever you are holding, including a child, or fall out of your chair! That's the cataplexy part. The other half is the narcosis, the dropping off to sleep without knowing it until you wake up, or someone is kind enough to do so --- or almost killing yourself (or others) behind the wheel of a car (as I almost did). That means that every time you want to go anywhere, even to the grocery store for one or two necessary items, you have to have someone available to take you. That is a total loss of independence! Or imagine falling asleep in the middle of a sentence, with friends, or with customers (again as I have done).

Narcoleptics need all the help they can get to lead a fairly normal life. Please don't deny us our necessary medication. It's as day-to-day important to us as insulin is to diabetics.

Thank you.

Mrs. Janet Sharp  
1913 S 5th St  
Shawnee Mission, KS 66207  
913 682-2400  
dogpatch@lvnworth.com

House Judiciary  
2-7-01  
Attachment 5

**Date:** 2/7/2001  
**Pages:** 3  
**Sender:** 952 852 8140  
**Fax Number:**  
**Type:** Fax

**Time:** 1:36 PM  
**Duration:** 1 min 43 sec  
**Company:**  
**Subject:**

02/07/2001 WED 14:25 FAX 952 852 8140 Colle McVoy

002/003



**Combating Illicit Use of Various Forms of GHB  
without Hurting the Treatment of People with Narcolepsy**

- Like the federal "Date Rape Drug Prohibition Act of 2000, HB 2178 recognizes that gamma hydroxybutyrate (GHB) comes in several forms:
  - ◆ An easily-made, home-brewed concoction used by body-builders as a muscle-enhancer, by rave party-goers as a euphoric when mixed with alcohol, and by sexual predators to facilitate sexual assault.
  - ◆ Commonly used industrial chemicals that when ingested are naturally converted into GHB in the body. According to law enforcement authorities around the country, illicit use of these industrial chemicals by body-builders rave party-goers and sexual predators has surpassed illicit use of homemade GHB.
  - ◆ A promising, FDA-sanctioned investigational new drug for the treatment of cataplexy, a disabling symptom of the rare disease, narcolepsy.
- The federal law lists illicit GHB as a Schedule I substance. The chemicals that metabolize into GHB are treated as Schedule I substances under the federal "controlled substance analogue" statute. And FDA-approved medical GHB is listed in Schedule III. However, illicit use of medical GHB is penalized by Schedule I penalties.
- HB 2178 mirrors federal law in the scheduling of GHB. Kansas law conveys similar penalties on the illicit use of depressant drugs in Schedules I, II and III.
- HB 2178 also reflects federal law in its proposal to amend the Kansas "controlled substance analog" provision. Such an amendment would provide tools for state and local law enforcement authorities to combat the sale and use of industrial chemicals for their GHB effect. The legal and appropriate use of these chemicals by Kansas manufacturers would be protected.
- However, HB 2178 would require reporting of sales by chemical suppliers of those industrial solvents that have the potential to be diverted as GHB substitutes. Last year, more than 100 million gallons of gamma butyrolactone (GBL) and 1,4 butanediol (1,4 BD) were produced in the US for legitimate manufacturing use in making plastics, synthetic clothing and cosmetics. GBL and 1,4 BD are the primary industrial chemicals that are diverted and used for their GHB effect.

13911 Ridgedale Drive, Suite 475 • Minnetonka, Minnesota 55305 • 612-513-6900 • Fax: 612-541-9209

House Judiciary  
2-7-01  
Attachment 6

## Received Event (Event Succeeded)

**Date:** 2/7/2001  
**Pages:** 3  
**Sender:** 952 852 8140  
**Fax Number:**  
**Type:** Fax

**Time:** 1:36 PM  
**Duration:** 1 min 43 sec  
**Company:**  
**Subject:**

02/07/2001 WED 14:26 FAX 952 852 8140 Colle McVoy

003/003

- Authorities in Florida, Alabama, California North Carolina and Texas report a dramatic increase in the use of common industrial solvents that produce a GHB effect. Additionally, the primary age of abusers has dropped to young people in their teens and early 20s.
- No other currently available drug therapy provides the therapeutic benefits that medical GHB has demonstrated in people with narcolepsy. According to clinical studies being reviewed by FDA, doctor-prescribed GHB restores natural sleep, allowing patients to live a normal life. Absent GHB therapy, they suffer daily attacks of cataplexy. FDA approval of doctor-prescribed, medical GHB is expected in April.
- Cataplexy is the sudden loss of muscle control. A total cataplectic attack results in a total body collapse. A cataplexy attack is triggered by emotional highs and lows — stress, fatigue, laughter, fear, surprise, sadness.
- Cataplexy affects about 65 percent of the estimated 180,000 Americans with narcolepsy. In Kansas, about 1,300 residents have narcolepsy, of which an estimated 850 suffer from cataplexy — about the population of a small city, such as Alma or Benton, Kansas.

Date: 2/7/2001  
Pages: 2  
Sender: 785 296 8420  
Fax Number:  
Type: Fax

Time: 9:55 AM  
Duration: 0 min 50 sec  
Company:  
Subject:

02/07/01 WED 10:55 FAX 785 296 8420

KS BD OF PHARMACY

002

*Kansas State Board of Pharmacy*

LONDON STATE OFFICE BUILDING  
900 S.W. JACKSON STREET, ROOM 313  
TOPEKA, KANSAS 66612-1231

PHONE (785) 296-4086  
FAX (785) 296-5420  
www.ink.org/public/pharmacy  
pharmacy@ink.org

February 7, 2001

STATE OF KANSAS



BILL GRAVES  
GOVERNOR

Representative Michael O'Neal  
Chair, House Judiciary Committee  
Topeka State Capitol, Room 170-W  
Topeka, Kansas 66612

Dear Representative O'Neal:

**Subject: K.S.A. 65-4102**

I serve as the executive secretary of the Kansas State Board of Pharmacy. Pursuant to K.S.A. 65-4102, the Board annually submits its proposal to the Speaker of the House and the President of the Senate with a listing of medications for scheduling/rescheduling as controlled substances.

HB 2178, introduced by the House Committee on Judiciary, includes the following change supported by the Board:

- GHB (gamma hydroxybutyric acid), currently listed as a Schedule IV in Kansas changed to Schedule I. GHB has been added federally to the listing of Schedule I controlled substances.

The Board of Pharmacy is respectfully requesting favorable passage of HB 2178. There is no financial impact on the operation of the Board of Pharmacy

If I may answer any questions, or be of further help, please contact me at 296-8419.

Sincerely,

Susan A. Linn  
Executive Secretary

House Judiciary  
2-7-01  
Attachment 7

**Kansas Department of Social and Rehabilitation Services**  
**Janet Schalansky, Secretary**



Docking State Office Building  
915 SW Harrison, 6<sup>th</sup> Floor North  
Topeka, Kansas 66612-1570

*for additional information, contact:*

Operations  
Diane Duffy, Deputy Secretary

Office of Budget  
J.G. Scott, Director

Office of Planning and Policy Coordination  
Trudy Racine, Director

*phone:* 785.296.3271 *fax:* 785.296.4685

**House Judiciary Committee**  
February 7, 2001

**Testimony on House Bill 2176**

Health Care Policy  
Laura Howard, Assistant Secretary  
785.296.3773

**Kansas Department of Social and Rehabilitation Services**  
**Janet Schalansky, Secretary**

House Judiciary Committee  
February 7, 2001

**Testimony on House Bill 2176**

Mr. Chairman and members of the committee, I am Janet Schalansky, Secretary of SRS. Thank you for the opportunity to appear before you today to present testimony in support of HB 2176.

HB 2176 amends K.S.A. 1999 Supp. 21-3520 by adding a new provision (7) in subsection (a) to make it a criminal act of unlawful sexual relations for an SRS employee or an employee hired by a contractor who is providing services in a state institution to have consensual sexual relations with a patient in the institution where the employee works. Currently, the statute makes such behavior a crime if it occurs in correctional facilities and juvenile correctional facilities. However, there is nothing in current law which makes such behavior a crime in our state hospitals. Thus, if such behavior occurs at an SRS institution the employee is subject to disciplinary action (most likely termination) but is not subject to criminal prosecution. This type of offense is considered very serious because patients at our state hospitals are often extremely vulnerable and staff have a great deal of control and influence over them. Making the crime of unlawful sexual relations apply to these situations should help deter this kind of activity.

SRS Human Resource Policy 2-3, which is considered a Condition of Employment at SRS, is shared with every employee. Each SRS employee is required to sign a statement indicating that they have read the policy and understand its meaning and the consequences of non-compliance. In addition, some hospitals have adopted their own, separate policy prohibiting sexual contact between staff and patients/clients. This policy does not extend to contract employees.

Approximately 26 employees have been terminated in the past five years for engaging in sexual contact with a patient.

Attached to my testimony is one suggested amendment which I would ask the committee to make to HB 2176. This amended language, which would make the crime of unlawful sexual relations only applicable if the victim is a person 16 years of age or older, is being offered after discussions with staff from the Attorney General's office. The reason for this amendment is that a sexual act committed against a person under 16 years of age is already a more serious crime than unlawful sexual relations which is



a severity level 10 person felony. We want to make sure HB 2176 does not have the unintended consequence of lessening the penalty for an employee who engages in sexual relations with a minor patient.

For the above reasons, it is requested that this committee amend HB 2176 by inserting the language suggested, and that it act favorably on the bill as amended.

## HOUSE BILL No. 2176

By Committee on Judiciary

1-25

9 AN ACT concerning crimes and punishment; relating to unlawful sexual  
10 relations; amending K.S.A. 2000 Supp. 21-3520 and repealing the ex-  
11 isting section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2000 Supp. 21-3520 is hereby amended to read as  
15 follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual  
16 sexual intercourse, lewd fondling or touching, or sodomy with a person  
17 who is not married to the offender if:

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

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

28 (3) the offender is a law enforcement officer, an employee of a jail,  
29 or the employee of a contractor who is under contract to provide services  
30 in a jail and the person with whom the offender is engaging in consensual  
31 sexual intercourse, lewd fondling or touching, or sodomy is a person 16  
32 years of age or older who is confined by lawful custody to such jail; or

33 (4) the offender is a law enforcement officer, an employee of a ju-  
34 venile detention facility or sanctions house, or the employee of a con-  
35 tractor who is under contract to provide services in such facility or sanc-  
36 tions house and the person with whom the offender is engaging in  
37 consensual sexual intercourse, lewd fondling or touching, or sodomy is a  
38 person 16 years of age or older who is confined by lawful custody to such  
39 facility or sanctions house; or

40 (5) the offender is an employee of the juvenile justice authority or  
41 the employee of a contractor who is under contract to provide services in  
42 a juvenile correctional facility and the person with whom the offender is  
43 engaging in consensual sexual intercourse, lewd fondling or touching, or

4-80

S-8

1 sodomy is a person 16 years of age or older who is confined by lawful  
2 custody to such facility; or

3 (6) the offender is an employee of the juvenile justice authority or  
4 the employee of a contractor who is under contract to provide direct  
5 supervision and offender control services to the juvenile justice authority  
6 and the person with whom the offender is engaging in consensual sexual  
7 intercourse, lewd fondling or touching, or sodomy is 16 years of age or  
8 older and (A) released on conditional release from a juvenile correctional  
9 facility under the direct supervision and control of the offender or (B)  
10 placed in the custody of the juvenile justice authority under the direct  
11 supervision and control of the offender; or

12 (7) the offender is an employee of the department of social and re-  
13 habilitation services or the employee of a contractor who is under contract  
14 to provide services in a social and rehabilitation services institution and  
15 the person with whom the offender is engaging in consensual sexual in-  
16 tercourse, lewd fondling or touching, or sodomy is a patient in such  
17 institution.

is a person 16 years of age or older who

18 (b) For purposes of this act:

19 (1) "Correctional institution" means the same as prescribed by K.S.A.  
20 75-5202, and amendments thereto;

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

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

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

27 (5) "juvenile detention facility" means the same as prescribed by  
28 K.S.A. 38-1602, and amendments thereto;

29 (6) "juvenile correctional facility" means the same as prescribed by  
30 K.S.A. 38-1602, and amendments thereto;

31 (7) "sanctions house" means the same as prescribed by K.S.A. 38-  
32 1602, and amendments thereto;

33 (8) "institution" means the same as prescribed by K.S.A. 76-12a01,  
34 and amendments thereto.

35 (c) Unlawful sexual relations is a severity level 10 person felony.

36 Sec. 2. K.S.A. 2000 Supp. 21-3520 is hereby repealed.

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