

Approved

Date: 3-8-02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:35 a.m. on March 7, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Representative Garry Boston
Bud Handshy, Wilson County Sheriff
Bruce Roberts, Director of Division of Information Systems and Communication (DISC)

Others attending: see attached list

The minutes of the March 6th, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

HB 2630—medical expenses of prisoners

Conferee Representative Boston testified as a proponent of **HB 2630**, a bill which would allow counties to seek reimbursement from incarcerated individuals who receive medical care while in custody of the county. He reviewed the bill and discussed the financial impact this has on counties and taxpayers in those counties. (attachment 1) He referenced a written handout from Sheriff Byron L. Motter from Harvey County, Kansas, who supports the bill. (attachment 2)

Conferee Handshy testified in support of **HB 2630**. He discussed the increase in Wilson County's prison population over 28 years and reviewed inmate medical expenses in Wilson County over the past year. He further discussed the financial strain it has placed on the county and provided a list of inmate medical expenses from sheriff's offices in southeast Kansas. He stated that the state needs to require "those people who prey upon society" to be held responsible for their own medical care. (attachment 3) Discussion followed.

HB 2629—fingerprinting of certain personnel in the department of administration

Conferee Roberts testified in support of **HB 2629**, a bill which he stated, "would require, as a condition of employment, the fingerprinting of individuals who have unescorted access to the data center, telecommunications facilities, or other areas designated by the secretary of administration." He discussed why the bill was necessary and how the provisions would be implemented. (attachment 4) Discussion followed.

SB 521—departure sentencing; procedures

Senator Adkins reviewed the proposed amendments to **SB 521**. (attachment 5) Following discussion, Senator Adkins moved to amend the bill to include the language in the balloon amendment, Senator Schmidt seconded. Carried. Following further discussion Senator Adkins moved to amend the amended bill to make it effective upon publication in the Kansas register, Senator Goodwin seconded. Carried. Senator Haley made a motion to amend the bill so that certain language replace the language in current law, Senator Oleen seconded. Following discussion, Senator Haley moved to amend his amendment so that certain language be added to the bill rather than replace language in current law, Senator Oleen amended her second. Carried. (attachment 6) Discussion followed. Senator Adkins moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried with Senator Pugh requesting his no vote be recorded.

The meeting adjourned at 10:32 a.m. The next meeting is March 8, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-7-02

NAME	REPRESENTING
Mary Hanson	USO# 282-283-286
Joan Bird	student Elk county
Sony Allen	Office of State Bank Commissioner
Jacq Kile	student - GW County
Andrea Luthi	student - GW County
Megan Ballard	" "
Nora Kay	student - GW County
Karen Engle	observer GWCo.
Edy M. Hearrell	KANSAS Judicial Council
KETIA LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
David Wynn	citizen
Bud Jones	KSC
Joe Herald	KSC
Bud HANDSHY	sheriff Wilson County
Jeff Boffberg	Kansas Sheriffs Assoc. / etc
James A. McClinton	JJA
Scott Heidner	KS Ass. of Defense Council
Connie Burns	Whitney B Demron, PA
Kathy Porter	Judicial Branch

GARRY G. BOSTON
REPRESENTATIVE SEVENTY-SECOND DISTRICT
14 CIRCLE DRIVE
NEWTON, KANSAS 67114-1328

STATE OF KANSAS



TOPEKA
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENT
CHAIRMAN: HEALTH & HUMAN SERVICES
MEMBER: FINANCIAL INSTITUTIONS
FISCAL OVERSIGHT
INSURANCE
LONG TERM CARE TASK FORCE

March 7, 2002

HB 2630 - County general fund reimbursement for medical expenses of indigent prisoner

Chairman Vratil and members of the Committee:

Thank you for the opportunity to appear before you regarding **HB 2630** and the need for this legislation as it relates to every county in Kansas.

A syllabus of the court in Haskell County concluded that with no statute to the contrary, any prisoner in custody who had serious medical problems without health insurance, became the financial responsibility of the county where he was confined.

There is no provision for the controlling authority to seek reimbursement from the individual for the cost of medical services provided, and the county is then responsible for paying the medical costs from taxpayer funds and is not able to seek repayment.

This cost Haskell County \$50,000 and could impact many counties substantial and unbudgeted taxpayer expense. The bill would allow counties the authority to seek reimbursement from the individual recipient of the medical costs associated with the case.

Harvey County Sheriff Byron Motter brought this situation to my attention. At this time I would be happy to stand for any questions.

A handwritten signature in black ink that reads "Garry Boston".

Garry Boston
Representative, 72nd District

Others appearing before the House Judiciary Committee as proponents:

Sheriff Byron Motter - written testimony
Judy Moler, Kansas Association of Counties
Mike Petoan, Sedgwick County Sheriff
Bud Handshy, Wilson County Sheriff

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3-17-02
att 1



Office of Sheriff, Harvey County, Kansas

Byron L. Motter, Sheriff
120 E. 7th • P.O. Box 231 • Newton, Kansas 67114
(316) 284-6960 • Fax (316) 284-6967

SUPPORT OF HOUSE BILL 2630

Mr. Chairman and members of the committee, I am Byron Motter, Sheriff of Harvey County. I wish to thank you for giving me the opportunity to address you today on House Bill 2630, which I support. In the past Harvey County as well as other counties in Kansas sought reimbursement for medical treatment it provided for prisoners in their custody. In 2000 we became aware of a Kansas Appeals Court case Haskell County Commissioners v. Sullivan that ended that practice. In the syllabus by the court it stated that absent a statute relating to reimbursement, a governmental agency is not entitled to seek reimbursement from a prisoner for cost of medical treatment received by the prisoner while in the agency's custody. When a determination has been made that the prisoner has no other resources, the prisoner's medical expense must be paid from the counties general fund.

I understand and agree if a prisoner requires medical treatment we must provide it, if that prisoner is indigent I understand the county is responsible for the payment of the treatment. What I do not agree with is the county can not seek reimbursement for that expense when the prisoner is returned to the community and may have other sources of income. Without this legislation the county is saddled with unlimited liability without recourse. Prisoners booked into jail are aware we are responsible for their medical and dental care, which they have neglected to address while in the community. But, once in jail that treatment in their mind is a medical emergency.

I believe this bill addresses the concerns of the appeals court in that a statute does not exist. I would appreciate your support of this bill. Thank you for your time and consideration.

Byron L. Motter
Sheriff
Harvey County, KS

House Judiciary
Attachment 3
1-23-02

5/5/02
3-7-02
Atty

Harvey County Detention Center Medical Expense

80000
70000
60000
50000
40000
30000
20000
10000
0

Year	1998	1999	2000	2001	2002
MEDICAL EXPENSE	70264	47267	39146	60000	64500

\$281,177 in 5 years, Avg of \$56,235 a year



THE OFFICE OF THE SHERIFF

WILSON COUNTY

421 NORTH 7TH • FREDONIA, KANSAS 66736
1-620-378-3622
1-800-532-9054
FAX # 1-620-378-4510

BUD HANDSHY
SHERIFF

TONY ALBIN
UNDERSHERIFF

March 6, 2002

To: Chairman and members of the Senate Judiciary

Thank you Chairman and members of the Senate Judiciary Committee for allowing me to speak on HB 2630. My name is Bud Handshy, I have been in law enforcement for over 27 years. As of January 8, 2001, I became the Sheriff of Wilson County, and have had 26 years experience with the Kansas Highway Patrol.

Medical expenses for prisoners have continued to soar throughout the years which results in increase in yearly taxes. Expenses, that are having to be paid for by the citizens of our counties.

This past November, I contacted the Kansas Sheriff's Association, the National Sheriff's Association and the Association of Missouri, Iowa, Nebraska, Arkansas, Texas, South Dakota and Colorado. During these conversations, I learned that this is not only a major problem for the state of Kansas but also a major problem that all of our states are having to deal with.

Twenty eight years ago we averaged maybe 3 inmates per week. We are now averaging 25-30 inmates per day with only a 16 bed jail. This is partly because of state mandated sentencing requiring longer terms in county jails and the increase in crime throughout the United States. Most terms were seldom more than 90 days, where as now 13 months are not uncommon.

Just in one year of serving our county, we have had incidents in which our medical expenses have come to over \$125,188.27. One incident alone came to \$68,113.63 in which an inmate in our custody became ill. He had a life threatening illness which forced us to spend on this alone. Another costly incident that came out of county general fund was \$29,336.80. Our dental expenses were \$5,921.00, other medical expenses including doctors visits, \$11,283.00, hospitalizations \$4,346.00 and prescriptions \$6,187.84 totaling \$125,188.27. This amount exceeds salaries of one of our departments.

And in summation, by coming here today, we hope to make a difference by requiring those people who prey upon our society to be held responsible for at least their own medical expenses, as we tax payers of Kansas must do. We realize this is not a solution, but an attempt that may help compensate our tax payers.

Thank you.

A handwritten signature in cursive script that reads "Bud Handshy".

Bud Handshy, Sheriff
Wilson County Sheriff's Office
Fredonia, Kansas

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3-7-02
att3

March 4, 2002

Inmate Medical Expenses From Sheriff's Offices in Southeast Kansas

ALLEN COUNTY:	\$72,000.00
ANDERSON COUNTY:	\$30,500.00
BOURBON COUNTY:	\$93,901.19
CHAUTAUQUA COUNTY:	\$1,611.22
CHEROKEE COUNTY:	\$134,653.25
COFFEY COUNTY:	\$16,083.60
CRAWFORD COUNTY:	\$116,793.00
ELK COUNTY:	non available
GREENWOOD COUNTY:	\$30,000.00
LABETTE COUNTY:	\$45,000.00
MONTGOMERY COUNTY:	\$109,640.00
NEOSHO COUNTY:	\$15,000.00
LINN COUNTY:	\$16,363.59
LYON COUNTY:	\$105,000.00
<u>WILSON COUNTY:</u>	<u>\$125,188.27</u>
TOTAL	\$911,734.12

House Bill 2629
Testimony
Bruce Roberts, DISC Director
Before Senate Judiciary Committee
March 7, 2002

Mr. Chairman, members of the committee. My name is Bruce Roberts. I am the Director for the Division of Information Systems and Communications, Department of Administration. I appreciate the opportunity to testify on HB 2629 today.

The proposed legislation would require, as a condition of employment, the fingerprinting of individuals who have unescorted access to the data center, telecommunications facilities, or other areas designated by the secretary of administration. The House amended the bill's language to specify designated areas to be "security sensitive." The fingerprints of such individuals would be submitted to the KBI and the FBI for verification of identity and for obtaining records of criminal arrests and convictions.

From the late 1970s, the Division of Information Systems and Communications operated the telecommunications switch for the law enforcement network. Under a Memorandum of Agreement with the KBI, DISC established security clearances for employees that had unescorted access to the KBI switching facilities. As part of the agreement, the KBI performed background checks for employees, including checks for records of arrests and convictions in state and federal criminal history databases. The purpose of establishing and sustaining the clearances of these employees was to insure the security of law enforcement messages, databases, and operations of data and telecommunications systems.

With the implementation of the Criminal Justice Information System (CJIS) network, the KBI took on more direct responsibilities for the management of law enforcement switching technologies, and in April 2001 ended its memorandum of agreement with the Department of Administration. DISC continues to provide the wide area network for CJIS and closely coordinates network security issues with the KBI. Under an interim agreement with the KBI, DISC has continued obtaining records of arrests and convictions.

Because the security of the computer and telecommunications infrastructure is critical to both law enforcement and other state agencies, the Department of Administration needs appropriate statutory authority to obtain records of arrests and convictions from both the KBI and the FBI. The FBI has reviewed the language in this bill and indicates that it qualifies under the public laws applicable to FBI Criminal History Record Information.

The Department installs and maintains computers and telecommunication equipment throughout state government. Over the last five years, information technology has become increasingly open and subject to a much higher level of security threats. With the advent of the Internet and such broad implementation of personal computers, and data communications, there are greater exposures. And with the active development of E-government and open access through information technology, we see greater complexity and risks in assuring secure systems and communications. For these reasons, it is critical that security clearances be established and maintained for Department employees with unescorted access to this physical infrastructure. With such security clearances, the Department can address its responsibilities for assuring the security of state-managed networks and information technologies. With that, Mr. Chairman, I stand for questions.

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20-6-5
3-6-55
Att 5

SENATE BILL No. 521

Proposed Amendments to SB No. 521

By Committee on Judiciary

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to departure sentencing, procedures; amending K.S.A. 21-4718
11 and K.S.A. 2001 Supp. 21-4716 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2001 Supp. 21-4716 is hereby amended to read as
15 follows: 21-4716. (a) The sentencing judge shall impose the presumptive
16 sentence provided by the sentencing guidelines for crimes committed on
17 or after July 1, 1993, unless the judge finds substantial and compelling
18 reasons to impose a departure ~~[Other than the fact of a prior conviction,~~
19 ~~any fact that would increase the penalty for a crime beyond the statutory~~
20 ~~maximum, must be submitted to a jury or to the court in a bench trial,~~
21 ~~and proved beyond a reasonable doubt.]~~ If the sentencing judge departs
22 from the presumptive sentence, the judge shall state on the record at the
23 time of sentencing the substantial and compelling reasons for the
24 departure.

Except as provided in subsection (b),

(b) Subject to the provisions of subsection (b)(1) of K.S.A. 21-4718, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt.

c)

25 (1) Subject to the provisions of subsection (b)(3), the following
26 nonexclusive list of mitigating factors may be considered in determining
27 whether substantial and compelling reasons for a departure exist:

28 (A) The victim was an aggressor or participant in the criminal conduct
29 associated with the crime of conviction.

30 (B) The offender played a minor or passive role in the crime or par-
31 ticipated under circumstances of duress or compulsion. This factor is not
32 sufficient as a complete defense.

33 (C) The offender, because of physical or mental impairment, lacked
34 substantial capacity for judgment when the offense was committed. The
35 voluntary use of intoxicants, drugs or alcohol does not fall within the
36 purview of this factor.

37 (D) The defendant, or the defendant's children, suffered a continuing
38 pattern of physical or sexual abuse by the victim of the offense and the
39 offense is a response to that abuse.

40 (E) The degree of harm or loss attributed to the current crime of
41 conviction was significantly less than typical for such an offense.

42 (2) Subject to the provisions of subsection (b)(3), the following no-
43 nexclusive list of aggravating factors may be considered in determining

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1 whether substantial and compelling reasons for departure exist:

2 (A) The victim was particularly vulnerable due to age, infirmity, or
3 reduced physical or mental capacity which was known or should have
4 been known to the offender.

5 (B) The defendant's conduct during the commission of the current
6 offense manifested excessive brutality to the victim in a manner not nor-
7 mally present in that offense.

8 (C) The offense was motivated ^{because of defendant's belief/perception} entirely or in part by the race, color,
9 religion, ethnicity, national origin or sexual orientation of the victim.

10 (D) The offense involved a fiduciary relationship which existed be-
11 tween the defendant and the victim.

12 (E) The defendant, 18 or more years of age, employed, hired, used,
13 persuaded, induced, enticed or coerced any individual under 16 years of
14 age to commit or assist in avoiding detection or apprehension for com-
15 mission of any person felony or any attempt, conspiracy or solicitation as
16 defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto
17 to commit any person felony regardless of whether the defendant knew
18 the age of the individual under 16 years of age.

19 (F) The defendant's current crime of conviction is a crime of extreme
20 sexual violence and the defendant is a predatory sex offender. As used in
21 this subsection:

22 (i) "Crime of extreme sexual violence" is a felony limited to the
23 following:

24 (a) A crime involving a nonconsensual act of sexual intercourse or
25 sodomy with any person;

26 (b) a crime involving an act of sexual intercourse, sodomy or lewd
27 fondling and touching with any child who is 14 or more years of age but
28 less than 16 years of age and with whom a relationship has been estab-
29 lished or promoted for the primary purpose of victimization; or

30 (c) a crime involving an act of sexual intercourse, sodomy or lewd
31 fondling and touching with any child who is less than 14 years of age.

32 (ii) "Predatory sex offender" is an offender who has been convicted
33 of a crime of extreme sexual violence as the current crime of conviction
34 and who:

35 (a) Has one or more prior convictions of any crimes of extreme sexual
36 violence. Any prior conviction used to establish the defendant as a pred-
37 atory sex offender pursuant to this subsection shall also be counted in
38 determining the criminal history category; or

39 (b) suffers from a mental condition or personality disorder which
40 makes the offender likely to engage in additional acts constituting crimes
41 of extreme sexual violence.

2 (iii) "Mental condition or personality disorder" means an emotional,
43 mental or physical illness, disease, abnormality, disorder, pathology or

because of defendant's belief/perception
whether or not def
believed or perceived

1 condition which motivates the person, affects the predisposition or desires
2 of the person, or interferes with the capacity of the person to control
3 impulses to commit crimes of extreme sexual violence.

4 (G) The defendant was incarcerated during the commission of the
5 offense.

6 In determining whether aggravating factors exist as provided in this
7 section, the court shall review the victim impact statement.

8 (3) If a factual aspect of a crime is a statutory element of the crime
9 or is used to subclassify the crime on the crime severity scale, that aspect
10 of the current crime of conviction may be used as an aggravating or mit-
11 igating factor only if the criminal conduct constituting that aspect of the
12 current crime of conviction is significantly different from the usual crim-
13 inal conduct captured by the aspect of the crime.

(d) 14 ~~(e)~~ In determining aggravating or mitigating circumstances, the court
15 shall consider:

- 16 (1) Any evidence received during the proceeding;
- 17 (2) the presentence report;
- 18 (3) written briefs and oral arguments of either the state or counsel
19 for the defendant; and
- 20 (4) any other evidence relevant to such aggravating or mitigating cir-
21 cumstances that the court finds trustworthy and reliable.

22 Sec. 2. K.S.A. 21-4718 is hereby amended to read as follows: 21-
23 4718. (a) (1) Whenever a person is convicted of a felony, the court upon
24 motion of either the defendant or the state, shall hold a hearing to con-
25 sider imposition of a departure sentence *other than an upward durational*
26 *departure sentence*. The motion shall state the type of departure sought
27 and the reasons and factors relied upon. The hearing shall be scheduled
28 so that the parties have adequate time to prepare and present arguments
29 regarding the issues of departure sentencing. The victim of a crime or
30 the victim's family shall be notified of the right to be present at the hear-
31 ing for the convicted person by the county or district attorney. The parties
32 may submit written arguments to the court prior to the date of the hearing
33 and may make oral arguments before the court at the hearing. The court
34 shall review the victim impact statement. Prior to the hearing, the court
35 shall transmit to the defendant or the defendant's attorney and the pros-
36 ecuting attorney copies of the presentence investigation report.

37 (2) At the conclusion of the hearing or within 20 days thereafter, the
38 court shall issue findings of fact and conclusions of law regarding the
39 issues submitted by the parties, and shall enter an appropriate order.

40 ~~(b)~~ (3) If the court decides to depart on its own volition, without a
41 motion from the state or the defendant, the court must notify all parties
42 of its intent and allow reasonable time for either party to respond if ~~they~~
43 ~~request requested~~. The notice shall state the type of departure intended

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1 by the court and the reasons and factors relied upon.

2 (e) (4) In each case in which the court imposes a sentence that de-
3 viates from the presumptive sentence, the court shall make findings of
4 fact as to the reasons for departure *as provided in this subsection* regard-
5 less of whether a hearing is requested.

6 (b) (1) *Whenever a person is convicted of a felony, the court, upon*
7 *motion of the county or district attorney, or upon the filing of a written*
8 *notice of the court itself, shall conduct a separate departure sentence pro-*
9 *ceeding to determine whether the defendant might be subject to an up-*
10 *ward durational departure sentence. Such notice shall be filed by the court*
11 *within five days from the date of the arraignment and allow reasonable*
12 *time for either party to respond if requested and shall state the specifics*
13 *of the departure intended by the court and the reasons and factors relied*
14 *upon. If the county or district attorney decides to seek an upward dura-*
15 *tional departure sentence, the county or district attorney must file a mo-*
16 *tion within five days from the date of the arraignment. The proceeding*
17 *shall be conducted by the court before the trial jury as soon as practicable.*
18 *If any person who served on the trial jury is unable to serve on the jury*
19 *for the upward durational departure sentence proceeding, the court shall*
20 *substitute an alternate juror who has been impaneled for the trial jury. If*
21 *there are insufficient alternate jurors to replace trial jurors who are unable*
22 *to serve at the upward durational departure sentence proceeding, the*
23 *court may summon a special jury of 12 persons which shall determine all*
24 *of the specific facts that may serve to enhance the maximum sentence.*
25 *Jury selection procedures, qualifications of jurors and grounds for exemp-*
26 *tion or challenge of prospective jurors in criminal trials shall be applicable*
27 *to the selection of such special jury. The jury at the upward durational*
28 *departure sentence proceeding may be waived in the manner provided by*
29 *K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the*
30 *jury at the upward durational departure sentence proceeding has been*
31 *waived or the trial jury has been waived, the upward durational departure*
32 *sentence proceeding shall be conducted by the court.*

not less than 30 days prior to the date of
trial or if the trial date is to take place in
less than 30 days then

33 (2) In the upward durational departure sentence proceeding, evi-
34 dence may be presented concerning any matter that the court deems rel-
35 evant to the question of determining if any specific factors exist that may
36 serve to enhance the maximum sentence as provided by K.S.A. 21-4716
37 or 21-4717, and amendments thereto. Only such evidence as the state has
38 made known to the defendant prior to the departure sentence proceeding
39 shall be admissible, and no evidence secured in violation of the constitu-
40 tion of the United States or of the state of Kansas shall be admissible. No
41 testimony by the defendant at the upward durational departure sentence
proceeding shall be admissible against the defendant at any subsequent
criminal proceeding. At the conclusion of the evidentiary presentation,

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1 *the court shall allow the parties a reasonable period of time in which to*
2 *present oral argument.*

3 *(3) The court shall provide oral and written instructions to the jury*
4 *to guide its deliberations.*

5 *(4) If, by unanimous vote, the jury finds beyond a reasonable doubt*
6 *that one or more specific factors exist that may serve to enhance the max-*
7 *imum sentence, the defendant may be sentenced pursuant to K.S.A. 21-*
8 *4716 through 21-4719, and amendments thereto; otherwise, the defendant*
9 *shall be sentenced as provided by law. The jury, if its verdict is a unani-*
10 *mous recommendation that one or more of the specific factors that may*
11 *serve to enhance the maximum sentence exists, shall designate in writing,*
12 *signed by the foreman of the jury, the specific factor or factors which the*
13 *jury found beyond a reasonable doubt. If, after a reasonable time for*
14 *deliberation, the jury is unable to reach a verdict of finding any of the*
15 *specific factors, the court shall dismiss the jury and shall only impose a*
16 *sentence as provided by law. In nonjury cases, the court shall follow the*
17 *requirements of this subsection in determining if one or more of the spe-*
18 *cific factors that may serve to enhance the maximum sentence exists.*

19 *Sec. 3. K.S.A. 21-4718 and K.S.A. 2001 Supp. 21-4716 are hereby*
20 *repealed.*

21 *Sec. 4. This act shall take effect and be in force from and after its*
22 *publication in the statute book.*

AMENDMENT TO SB 521 :

ON PAGE 2, AT LINE 8 (Sec. c), the
Sentence will read :

" The offense was motivated because of
the defendant's belief or perception
, entirely or in part, of the race, color,
religion, ethnicity, national origin or
sexual orientation of the victim whether
or not the defendant's belief or
perception was correct. "



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