

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on February 25, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Office of Revisor
Mitch Rice - Office of Revisor
Jerry Ann Donaldson - Legislative Research Department
Martha Dorsey - Legislative Research Department
Bev Renner - Committee Secretary

HB 2125 - Child in need of care code, child's current foster parents could not be excluded from certain proceedings, emergency change of placement.

Revisor Jill Walters explained the balloon to **HB 2125**. Adding language to the section on the pilot project that the Court could not exclude from any hearing the child's foster parent; the policy that two people could be designated by the parent of the child to attend the hearing, one of whom has participated in a parent advocate orientation program approved by the judicial administrator; and, an explanation of what the advocate orientation program will include.

Representative Dillmore made a motion that the distributed balloon be included in **HB 2125**. The motion was seconded by Representative Kassebaum. The motion carried. (Attachment 1)

Representative Goering made a motion to pass **HB 2125** favorably as amended. Representative Huntington seconded the motion. The motion carried.

HB 2271 - Certain crimes against property, raising \$500 threshold to \$2,000.

Ranking Minority Member Ward distributed a balloon for **HB 2271**. The balloon would add theft of property of \$100,000 or more at a severity level 5, nonperson felony and raises a class A nonperson misdemeanor from theft of property less than \$500 to \$1,000; raises the threshold of worthless checks to \$1,000; and, strike out "within five years immediately preceding commission of the crime" so that repetitive misdemeanor theft becomes a felony regardless of the theft. The second balloon deletes the provision for worthless checks. (Attachment 2) (Attachment 3)

Ranking Minority Member Ward made a motion to amend **HB 2271** with the second balloon taking out the worthless check provisions. Representative Dillmore seconded the motion. The motion carried.

Representative Swenson made a motion to amend **HB 2271** to reinstate the \$2,000 threshold for felony theft. Representative Goering seconded the motion. The motion failed.

Representative Pauls made a motion to amend **HB 2271** to restore the current language regarding the five year limit. Vice-Chairperson Owens seconded the motion. The motion failed; 5 for and 11 against.

Ranking Minority Member Ward made a motion to pass **HB 2271** favorably as amended. The motion was seconded by Representative Carlin. The motion carried.

HB 2391 - Second or subsequent rape, hard 40; prostitution of a minor; endangering the child; aggravated battery on a law enforcement officer.

Revisor Jill Walters explained the balloon for **HB 2391**. The first section amends the aggravated battery against a law enforcement officer by adding "and intended to commit such injury because such officer is a law enforcement officer". The second amendment addresses the concern of the Domestic Violence

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 25, 2003, in Room 526-S of the Capitol.

Coalition when a child is endangered by the manufacture of methamphetamine while the person who may be in a domestic violence situation. A definition of "intimate partner" is added and an explanation in a court order situation that a person is not guilty if the person has informed the court of the specific circumstances creating the danger.

(Attachment 4)

Representative Carter made a motion to amend HB 2391 by adding the balloon. The motion was seconded by Representative Goering. The motion carried.

Chairperson Loyd had concerns about rape provisions in the bill in terms of the intention to take second or subsequent rape to the level of an off-grid crime. Statutes and sentencing guidelines to this point have reserved off-grid to murder or treason and there is a fear that once we add another crime to this ruling we will be revisiting the issue on a regular basis.

Revisor Jill Wolters explained the balloon requested by Chairperson Loyd. In current law, K.S.A. 21-4704 section (j) regarding the persistent sex offender, the sentence is double the maximum duration of the prison term. In **HB 2391**, strike sections 2, 5, 6 and 7 and leave rape as severity level one or two but have the person sentenced pursuant to the persistent sex offender statute.

Chairperson Loyd made a motion to amend HB 2391 to add this balloon in lieu of present section 2, 5, 6 and 7. Representative Goering seconded the motion.

The motion carried on a vote of 11 for and 4 against.

Representative Dillmore made a motion to pass HB 2391 favorably as amended. Representative Goering seconded the motion. The motion carried.

HB 2049 - Creating the office of district attorney in judicial districts that vote for approval.

Representative Goering was recognized as the Chairperson of the **HB 2049** Subcommittee to give the report. He thanked the members of the Subcommittee for their input and diligence. Changes on page one were in an attempt to get all counties in the judicial district involved in voting for the common office of district attorney. On page two, the requirement is added for a majority vote in each county to create the office of district attorney. New section (g) is added to address disagreements between counties by creating a district attorney interlocal cooperation agreement to provide for payment of salaries, office expenses, office space and dispute resolution. Also, the resolution of any problems that might occur if the decision was made to terminate the office of district attorney was addressed.

Chairperson Loyd suggested that consideration could be given to holding the bill without working it and refer it to an interim so that those who would be directly impacted could have an opportunity to read, react to it and comment. Also, consideration may be to pass it out of committee as long as Leadership had the understanding that intentions would be to not work the bill on the floor this year but that the committee report could be drafted in a bill form as a substitute bill or as an amended bill, depending on the wishes of the committee. This would make the bill available as a printed document or online to allow people the opportunity to access and review.

Representative Goering made a motion to accept the HB 2049 Subcommittee Report. Representative Crow seconded the motion. The motion carried.

Representative Goering made a motion to adopt the Subcommittee report as a substitute for HB 2049 and the bill be reported favorably for passage. Representative Horst seconded the motion.

(Attachment 5)

Representative Pauls made a substitute motion to provide that the 80% rule applies to new district attorneys established with this act. Representative Carter seconded the motion. The motion carried.

Representative Goering's motion to accept Substitute HB 2049 was carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 25, 2003, in Room 526-S of the Capitol.

Chairperson Loyd thanked the committee for the good work accomplished during this session.

The meeting was adjourned at 3:31 p.m. The next scheduled meeting is March 5, 2003.

HOUSE BILL No. 2125

By Committee on Appropriations
(By request of the Joint Committee on Children's Issues)

1-30

Proposed amendment
February 25, 2003

H. Corr. & J.S.
2-25-03
Attachment 1

AN ACT concerning the support and care of children; relating to children in need of care; concerning rights of foster parents to be present at certain proceedings; emergency change of placement; amending K.S.A. 38-1552 and 38-1567 and repealing the existing sections.

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

Section 1. K.S.A. 38-1552 is hereby amended to read as follows: 38-1552. (a) The court may exclude from any hearing all persons except the guardian *ad litem*, interested parties ~~and~~, their attorneys, officers of the court ~~and~~ the witness testifying *and the child's current foster parents*. Upon agreement of all interested parties, the court shall allow other persons to attend the proceedings, unless the court finds the presence of the persons would be disruptive to the proceedings.

Sec. 2. K.S.A. 38-1567 is hereby amended to read as follows: 38-1567. (a) (1) When an emergency exists requiring immediate action to assure the safety and protection of the child; or (2) the secretary is notified that the *parent, relative*, foster parents or shelter facility refuse to allow the child to remain, the secretary may transfer the child to another foster home or shelter facility without prior court approval, but the secretary shall notify the court of the action at the earliest practical time. When the child is removed from the home of a parent after having been placed in the home ~~or facility~~ for a period of six months or longer, the secretary shall present to the court in writing the specific nature of the emergency and request a finding by the court whether remaining in the home was contrary to the welfare or not in the best interests of the child. In making the finding, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If the secretary requests such a finding, the court shall provide the secretary with a written copy of the finding by the court not more than 45 days from the date of the request.

(b) *When a child in the custody of the secretary is removed from the home of a parent or relative or from a foster home after having lived in the home for six months or longer based on a determination by the secretary that an emergency exists which required immediate action to assure*

1 the safety and protection of the child: (1) The parent, relative or foster
 2 parent may request a hearing within 24 hours excluding Saturdays, Sun-
 3 days and legal holidays. (2) Upon receipt of a request for hearing, the
 4 court shall schedule a hearing to be held within 72 hours excluding Sat-
 5 urdays, Sundays and legal holidays. The court shall give notice of the
 6 hearing to each parent whose address is available, the relative or foster
 7 parent who requested the hearing, any interested party, the child, if 12
 8 or more years of age, and the child's guardian ad litem. (3) At the hearing
 9 the court shall determine whether an emergency existed which threatened
 10 the safety of the child and required immediate removal for the child's
 11 protection, and the court shall determine whether it is in the child's best
 12 interest to be immediately returned.

13 (c) (1) Notwithstanding K.S.A. 38-1552, and amendments thereto
 14 and any other provision of law to the contrary, and within the limits of
 15 appropriations therefor, a pilot project shall be established by the office
 16 of judicial administration in one rural and one urban judicial district in
 17 which such judicial district shall implement proceedings under the Kansas
 18 code for care of children in which the court may exclude from any hearing
 19 all persons except the guardian ad litem, interested parties and their at-
 20 torneys, officers of the court, the witness testifying and up to two people
 21 designated by the parent of the child. Upon agreement of all interested
 22 parties, the court shall allow other persons to attend the proceedings,
 23 unless the court finds the presence of the persons would be disruptive to
 24 the proceedings. The court shall not remove the parent's designee or des-
 25 ignees from any proceeding unless such designee becomes disruptive in
 26 such proceeding.

27 (2) The provisions of this subsection shall expire on July 1, 2005.

28 Sec. 3. K.S.A. 38-1552 and 38-1567 are hereby repealed.

29 Sec. 4. This act shall take effect and be in force from and after its
 30 publication in the statute book.

31
32
33
34
35
36
37
38
39
40
41
42
43

, the child's foster parents
 , one of whom has participated in a parent advocate orientation program approved by the judicial administrator, and
 Such parent advocate orientation program shall include but not be limited to information concerning the confidentiality of the proceedings; the child and parent's right to counsel; the definitions and jurisdiction pursuant to the Kansas code for care of children; the types and purposes of the hearings; options for informal supervision and dispositions; placement options; the parent's obligation to financially support the child while the child is in the state's custody; obligations of the secretary of social and rehabilitation services; obligations of entities that contract with the department of social and rehabilitation services for family preservation, foster care and adoption; the termination of parental rights; the procedures for appeals; and the basic rules regarding court procedure.

Session of 2003

HOUSE BILL No. 2271

By Committee on Corrections and Juvenile Justice

2-11

AN ACT concerning crimes and punishment; relating to crimes against property; amending K.S.A. 21-3704 and 21-3720 and K.S.A. 2002 Supp. 21-3701 and 21-3707 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 21-3701 is hereby amended to read as follows: 21-3701. (a) Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

- (1) Obtaining or exerting unauthorized control over property;
- (2) obtaining by deception control over property;
- (3) obtaining by threat control over property; or
- (4) obtaining control over stolen property knowing the property to have been stolen by another.

(b)(1) Theft of property of the value of \$100,000 or more is a severity level 5, nonperson felony.

(b) (1) Theft of property of the value of \$25,000 or more is a severity level 7, nonperson felony.

but less than \$100,000

(2) Theft of property of the value of at least \$500 but less than \$25,000 is a severity level 9, nonperson felony.

at least

(3) Theft of property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony.

(4) Theft of property of the value of less than \$500 is a class A nonperson misdemeanor.

\$1,000

(5) Theft of property of the value of less than \$500 is a severity level 9, nonperson felony if committed by a person who has within five years immediately preceding commission of the crime been convicted of theft two or more times.

(c) Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

renumber paragraphs and sections accordingly

Sec. 2. K.S.A. 21-3704 is hereby amended to read as follows: 21-3704. (a) Theft of services is obtaining services from another by deception,

H. Corr.; J.J.
2-25-03
Attachment 2

1 threat, coercion, stealth, tampering or use of false token or device.

2 (b) "Services" within the meaning of this section, includes, but is not
3 limited to, labor, professional service, cable television service, public or
4 municipal utility or transportation service, telephone service, lodging, en-
5 tertainment and the supplying of equipment for use.

6 (c) "Tampering" within the meaning of this section, includes, but is
7 not limited to:

8 (1) Making a connection of any wire, conduit or device, to any service
9 or transmission line owned by a public or municipal utility, or by a cable
10 television service provider;

11 (2) defacing, puncturing, removing, reversing or altering any meter
12 or any connections, for the purpose of securing unauthorized or unmea-
13 sured electricity, natural gas, telephone service or cable television service;

14 (3) preventing any such meters from properly measuring or
15 registering;

16 (4) knowingly taking, receiving, using or converting to such person's
17 own use, or the use of another, any electricity or natural gas which has
18 not been measured; or any telephone or cable television service which
19 has not been authorized; or

20 (5) causing, procuring, permitting, aiding or abetting any person to
21 do any of the preceding acts.

22 (d) In any prosecution under this section, the existence of any of the
23 connections of meters, alterations or use of unauthorized or unmeasured
24 electricity, natural gas, telephone service or cable television service, spec-
25 ified in subsection (c), shall be prima facie evidence of intent to violate
26 the provisions of this section by the person or persons using or receiving
27 the direct benefits from the use of the electricity, natural gas, telephone
28 service or cable television service passing through such connections or
29 meters, or using the electricity, natural gas, telephone service or cable
30 television service which has not been authorized or measured.

31 ~~(e) (1)~~ Theft of services of the value of \$25,000 or more is a severity
32 level 7, nonperson felony.

33 ~~(2)~~ Theft of services of the value of at least \$500 ~~to~~ but less than
34 \$25,000 is a severity level 9, nonperson felony.

35 ~~(3)~~ Theft of services of the value of less than \$500 ~~to~~ is a class A
36 nonperson misdemeanor.

37 ~~Sec. 3. K.S.A. 2002 Supp. 21-3707 is hereby amended to read as~~
38 ~~follows: 21-3707. (a) Giving a worthless check is the making, drawing,~~
39 ~~issuing or delivering or causing or directing the making, drawing, issuing~~
40 ~~or delivering of any check, order or draft on any bank, credit union,~~
41 ~~savings and loan association or depository for the payment of money or~~
42 ~~its equivalent with intent to defraud and knowing, at the time of the~~
43 ~~making, drawing, issuing or delivering of such check, order or draft, that~~

(e)(1) Theft of services of the value of \$100,000 or more is a severity level 5, nonperson felony.

but less than \$100,000

at least

\$1,000

renumber paragraphs and sections accordingly

1 ~~the maker or drawer has no deposit in or credits with the drawee or has~~
2 ~~not sufficient funds in, or credits with, the drawee for the payment of~~
3 ~~such check, order or draft in full upon its presentation.~~

4 ~~(b) In any prosecution against the maker or drawer of a check, order~~
5 ~~or draft payment, of which has been refused by the drawee on account~~
6 ~~of insufficient funds, the making, drawing, issuing or delivering of such~~
7 ~~check shall be prima facie evidence of intent to defraud and of knowledge~~
8 ~~of insufficient funds in, or on deposit with, the drawee: (1) Unless the~~
9 ~~maker or drawer pays the holder thereof the amount due thereon and a~~
10 ~~service charge not exceeding \$30 for each check, within seven days after~~
11 ~~notice has been given to the maker or drawer that such check, draft or~~
12 ~~order has not been paid by the drawee. As used in this section, "notice"~~
13 ~~includes oral or written notice to the person entitled thereto. Written~~
14 ~~notice shall be presumed to have been given when deposited as restricted~~
15 ~~matter in the United States mail, addressed to the person to be given~~
16 ~~notice at such person's address as it appears on such check, draft or order;~~
17 ~~or (2) if a postdated date is placed on the check, order or draft without~~
18 ~~the knowledge or consent of the payee.~~

19 ~~(c) In addition to all other costs and fees allowed by law, each pros-~~
20 ~~ecuting attorney who takes any action under the provisions of this section~~
21 ~~may collect from the issuer in such action an administrative handling cost,~~
22 ~~except in cases filed in a court of appropriate jurisdiction. The cost shall~~
23 ~~not exceed \$10 for each check. If the issuer of the check is convicted in~~
24 ~~district court, the administrative handling costs may be assessed as part~~
25 ~~of the court costs in the matter. The moneys collected pursuant to this~~
26 ~~subsection shall be deposited into a trust fund which shall be administered~~
27 ~~by the board of county commissioners. The funds shall be expended only~~
28 ~~with the approval of the board of county commissioners, but may be used~~
29 ~~to help fund the normal operating expenses of the county or district at-~~
30 ~~torney's office.~~

31 ~~(d) It shall not be a defense to a prosecution under this section that~~
32 ~~the check, draft or order upon which such prosecution is based:~~

33 ~~(1) Was postdated, unless such check, draft or order was presented~~
34 ~~for payment prior to the postdated date; or~~

35 ~~(2) was given to a payee who had knowledge or had been informed,~~
36 ~~when the payee accepted such check, draft or order, that the maker did~~
37 ~~not have sufficient funds in the hands of the drawee to pay such check,~~
38 ~~draft or order upon presentation, unless such check, draft or order was~~
39 ~~presented for payment prior to the date the maker informed the payee~~
40 ~~there would be sufficient funds.~~

41 ~~(e) (1) Giving a worthless check is a severity level 7, nonperson felony~~
42 ~~if the check, draft or order is drawn for \$25,000 or more.~~

43 ~~(2) Giving a worthless check is a severity level 9, nonperson felony if~~

1 ~~the check, draft or order is drawn for at least \$500 \$2,000 but less than~~
2 ~~\$25,000.~~

3 (3) Giving a worthless check is a class A nonperson misdemeanor if
4 the check, draft or order is drawn for less than ~~\$500 \$2,000.~~

5 (4) Giving a worthless check, draft or order drawn for less than \$500
6 \$2,000 is a severity level 9, nonperson felony if committed by a person
7 who has, within five years immediately preceding commission of the
8 ~~crime, been convicted of giving a worthless check two or more times.~~

9 Sec. 4 K.S.A. 21-3720 is hereby amended to read as follows: 21-
10 3720. (a) Criminal damage to property is by means other than by fire or
11 explosive:

12 (1) Intentionally injuring, damaging, mutilating, defacing, destroying,
13 or substantially impairing the use of any property in which another has
14 an interest without the consent of such other person; or

15 (2) injuring, damaging, mutilating, defacing, destroying, or substan-
16 tially impairing the use of any property with intent to injure or defraud
17 an insurer or lienholder.

18 (b) (1) Criminal damage to property is a severity level 7, nonperson
19 felony if the property is damaged to the extent of \$25,000 or more.

20 (2) Criminal damage to property is a severity level 9, nonperson fel-
21 ony if the property is damaged to the extent of at least ~~\$500~~ \$2,000 but
22 less than \$25,000.

23 (3) Criminal damage to property is a class B nonperson misdemeanor
24 if the property damaged is of the value of less than ~~\$500~~ \$2,000 or is of
25 the value of ~~\$500~~ \$2,000 or more and is damaged to the extent of less
26 than ~~\$500~~ \$2,000 \$1,000

27 Sec. 5 K.S.A. 21-3704 and 21-3720 and K.S.A. 2002 Supp. ~~21-3701~~
28 ~~and~~ 21-3707 are hereby repealed.

29 Sec. 6 This act shall take effect and be in force from and after its
30 publication in the statute book.

31
32
33
34
35
36
37
38
39
40
41
42
43

renumber paragraphs
and sections accordingly

Session of 2003

HOUSE BILL No. 2271

By Committee on Corrections and Juvenile Justice

2-11

AN ACT concerning crimes and punishment; relating to crimes against property; amending K.S.A. 21-3704 and 21-3720 and K.S.A. 2002 Supp. 21-3701 and 21-3707 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 21-3701 is hereby amended to read as follows: 21-3701. (a) Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

- (1) Obtaining or exerting unauthorized control over property;
- (2) obtaining by deception control over property;
- (3) obtaining by threat control over property; or
- (4) obtaining control over stolen property knowing the property to have been stolen by another.

~~(b)(1)~~ Theft of property of the value of \$25,000 ~~or more~~ is a severity level 7, nonperson felony.

~~(2)~~ Theft of property of the value of at least \$500 ~~to \$2,000~~ but less than \$25,000 is a severity level 9, nonperson felony.

~~(3)~~ Theft of property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony.

~~(4)~~ Theft of property of the value of less than \$500 ~~to \$2,000~~ is a class A nonperson misdemeanor.

~~(5)~~ Theft of property of the value of less than \$500 ~~to \$2,000~~ is a severity level 9, nonperson felony if committed by a person who has ~~within five years immediately preceding commission of the crime,~~ been convicted of theft two or more times.

(c) Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

Sec. 2. K.S.A. 21-3704 is hereby amended to read as follows: 21-3704. (a) Theft of services is obtaining services from another by deception,

(b)(1) Theft of property of the value of \$100,000 or more is a severity level 5 nonperson felony.

but less than \$100,000

at least

\$1,000

renumber paragraphs and sections accordingly

H. Corr & J.J.
2-25-03
Attachment 3

1 threat, coercion, stealth, tampering or use of false token or device.

2 (b) "Services" within the meaning of this section, includes, but is not
3 limited to, labor, professional service, cable television service, public or
4 municipal utility or transportation service, telephone service, lodging, en-
5 tertainment and the supplying of equipment for use.

6 (c) "Tampering" within the meaning of this section, includes, but is
7 not limited to:

8 (1) Making a connection of any wire, conduit or device, to any service
9 or transmission line owned by a public or municipal utility, or by a cable
10 television service provider;

11 (2) defacing, puncturing, removing, reversing or altering any meter
12 or any connections, for the purpose of securing unauthorized or unmea-
13 sured electricity, natural gas, telephone service or cable television service;

14 (3) preventing any such meters from properly measuring or
15 registering;

16 (4) knowingly taking, receiving, using or converting to such person's
17 own use, or the use of another, any electricity or natural gas which has
18 not been measured; or any telephone or cable television service which
19 has not been authorized; or

20 (5) causing, procuring, permitting, aiding or abetting any person to
21 do any of the preceding acts.

22 (d) In any prosecution under this section, the existence of any of the
23 connections of meters, alterations or use of unauthorized or unmeasured
24 electricity, natural gas, telephone service or cable television service, spec-
25 ified in subsection (c), shall be prima facie evidence of intent to violate
26 the provisions of this section by the person or persons using or receiving
27 the direct benefits from the use of the electricity, natural gas, telephone
28 service or cable television service passing through such connections or
29 meters, or using the electricity, natural gas, telephone service or cable
30 television service which has not been authorized or measured.

31 ~~(e) (1)~~ Theft of services of the value of \$25,000 ~~or more~~ is a severity
32 level 7, nonperson felony.

33 ~~(2)~~ Theft of services of the value of at least \$500 ~~but less than~~
34 \$25,000 is a severity level 9, nonperson felony.

35 ~~(3)~~ Theft of services of the value of less than \$500 ~~is a class A~~
36 nonperson misdemeanor.

37 Sec. 3. K.S.A. 2002 Supp. 21-3707 is hereby amended to read as
38 follows: 21-3707. (a) Giving a worthless check is the making, drawing,
39 issuing or delivering or causing or directing the making, drawing, issuing
40 or delivering of any check, order or draft on any bank, credit union,
41 savings and loan association or depository for the payment of money or
42 its equivalent with intent to defraud and knowing, at the time of the
43 making, drawing, issuing or delivering of such check, order or draft, that

(e)(1) Theft of services of the value of \$100,000 or more is a severity level 5, nonperson felony.

but less than \$100,000

-at least

\$1,000

renumber paragraphs

1 the maker or drawer has no deposit in or credits with the drawee or has
2 not sufficient funds in, or credits with, the drawee for the payment of
3 such check, order or draft in full upon its presentation.

4 (b) In any prosecution against the maker or drawer of a check, order
5 or draft payment, of which has been refused by the drawee on account
6 of insufficient funds, the making, drawing, issuing or delivering of such
7 check shall be prima facie evidence of intent to defraud and of knowledge
8 of insufficient funds in, or on deposit with, the drawee: (1) Unless the
9 maker or drawer pays the holder thereof the amount due thereon and a
10 service charge not exceeding \$30 for each check, within seven days after
11 notice has been given to the maker or drawer that such check, draft or
12 order has not been paid by the drawee. As used in this section, "notice"
13 includes oral or written notice to the person entitled thereto. Written
14 notice shall be presumed to have been given when deposited as restricted
15 matter in the United States mail, addressed to the person to be given
16 notice at such person's address as it appears on such check, draft or order;
17 or (2) if a postdated date is placed on the check, order or draft without
18 the knowledge or consent of the payee.

19 (c) In addition to all other costs and fees allowed by law, each prosec-
20 cuting attorney who takes any action under the provisions of this section
21 may collect from the issuer in such action an administrative handling cost,
22 except in cases filed in a court of appropriate jurisdiction. The cost shall
23 not exceed \$10 for each check. If the issuer of the check is convicted in
24 district court, the administrative handling costs may be assessed as part
25 of the court costs in the matter. The moneys collected pursuant to this
26 subsection shall be deposited into a trust fund which shall be administered
27 by the board of county commissioners. The funds shall be expended only
28 with the approval of the board of county commissioners, but may be used
29 to help fund the normal operating expenses of the county or district at-
30 torney's office.

31 (d) It shall not be a defense to a prosecution under this section that
32 the check, draft or order upon which such prosecution is based:

33 (1) Was postdated, unless such check, draft or order was presented
34 for payment prior to the postdated date; or

35 (2) was given to a payee who had knowledge or had been informed,
36 when the payee accepted such check, draft or order, that the maker did
37 not have sufficient funds in the hands of the drawee to pay such check,
38 draft or order upon presentation, unless such check, draft or order was
39 presented for payment prior to the date the maker informed the payee
40 there would be sufficient funds.

41 (e) (1) Giving a worthless check is a severity level 7, nonperson felony
42 if the check, draft or order is drawn for \$25,000 or more.

43 (2) Giving a worthless check is a severity level 9, nonperson felony if

1 the check, draft or order is drawn for at least \$500 ~~[\$2,000]~~ but less than
2 \$25,000.

3 (3) Giving a worthless check is a class A nonperson misdemeanor if
4 the check, draft or order is drawn for less than \$500 ~~[\$2,000]~~

5 (4) Giving a worthless check, draft or order drawn for less than \$500
6 ~~[\$2,000]~~ is a severity level 9, nonperson felony if committed by a person
7 who has, within five years immediately preceding commission of the
8 crime, been convicted of giving a worthless check two or more times.

9 Sec. 4. K.S.A. 21-3720 is hereby amended to read as follows: 21-
10 3720. (a) Criminal damage to property is by means other than by fire or
11 explosive:

12 (1) Intentionally injuring, damaging, mutilating, defacing, destroying,
13 or substantially impairing the use of any property in which another has
14 an interest without the consent of such other person; or

15 (2) injuring, damaging, mutilating, defacing, destroying, or substan-
16 tially impairing the use of any property with intent to injure or defraud
17 an insurer or lienholder.

18 (b) (1) Criminal damage to property is a severity level 7, nonperson
19 felony if the property is damaged to the extent of \$25,000 or more.

20 (2) Criminal damage to property is a severity level 9, nonperson fel-
21 ony if the property is damaged to the extent of at least \$500 ~~[\$2,000]~~ but
22 less than \$25,000.

\$1,000

23 (3) Criminal damage to property is a class B nonperson misdemeanor
24 if the property damaged is of the value of less than \$500 ~~[\$2,000]~~ or is of
25 the value of \$500 ~~[\$2,000]~~ or more and is damaged to the extent of less
26 than \$500 ~~[\$2,000]~~

27 Sec. 5. K.S.A. 21-3704 and 21-3720 and K.S.A. 2002 Supp. 21-3701
28 and 21-3707 are hereby repealed.

29 Sec. 6. This act shall take effect and be in force from and after its
30 publication in the statute book.

H. Corr. & J.J.
2-25-03 Attachment 4

HOUSE BILL No. 2391

By Committee on Corrections and Juvenile Justice

2-14

AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 21-3513 and 21-3608 and K.S.A. 2002 Supp. 21-3415, 21-3502, 21-4635, 21-4638 and 21-4706 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 21-3415 is hereby amended to read as follows: 21-3415. (a) Aggravated battery against a law enforcement officer is: (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, committed against a uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;

(2) an aggravated battery, as defined in subsection (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against a uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; ~~or~~

(3) intentionally causing bodily harm to a uniformed or properly identified state, county or city law enforcement officer with a motor vehicle, while the officer is engaged in the performance of the officer's duty; or

~~(4) an aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto, committed against a state, county or city law enforcement officer or intentionally causing bodily harm to a state, county or city law enforcement officer with a motor vehicle, and the offender has actual knowledge that such officer is a law enforcement officer.~~

and intended to commit such injury because such officer is a law enforcement officer

(b) (1) Aggravated battery against a law enforcement officer as described in subsection (a)(1) ~~or~~ (a)(3) or (a)(4) is a severity level 3, person felony.

(2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level 6, person felony.

(3) A person convicted of aggravated battery against a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.

Sec. 2. K.S.A. 2002 Supp. 21-3502 is hereby amended to read as

H. Corr. & J.J.
2-25-03 Attachment 4

1 (2) Promoting prostitution when the prostitute is 16 or more years of
2 age is a severity level 7, person felony if committed by a person who has,
3 prior to the commission of the crime, been convicted of promoting
4 prostitution.

5 (3) Promoting prostitution is a severity level 6 5, person felony when
6 the prostitute is under 16 years of age.

7 Sec. 4. K.S.A. 21-3608 is hereby amended to read as follows: 21-
8 3608. (a) Endangering a child is:

9 (1) Intentionally and unreasonably causing or permitting a child un-
10 der the age of 18 years to be placed in a situation in which the child's
11 life, body or health may be injured or endangered; or

12 (2) knowingly and intentionally causing or permitting a child under
13 the age of 18 years to be present where:

14 (A) A person is selling, offering for sale or having in such person's
15 possession with intent to sell, deliver or distribute; prescribe; administer;
16 deliver; distribute; dispense; compound; unlawfully manufacturing; or at-
17 tempt to unlawfully manufacture any methamphetamine as defined by
18 subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;
19 or

20 (B) drug paraphernalia or volatile, toxic or flammable chemicals are
21 stored for the purpose of unlawfully manufacturing or attempting to un-
22 lawfully manufacture any methamphetamine as defined by subsections
23 (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

24 (b) Nothing in this section shall be construed to mean a child is en-
25 dangered for the sole reason the child's parent or guardian, in good faith,
26 selects and depends upon spiritual means alone through prayer, in ac-
27 cordance with the tenets and practice of a recognized church or religious
28 denomination, for the treatment or cure of disease or remedial care of
29 such child.

30 (c) Endangering a child as described in subsection (a)(1) is a class A
31 person misdemeanor. Endangering a child as described in subsection
32 (a)(2) is a severity level 9, person felony.

33 (d) As used in this section, "manufacture" shall have the meaning
34 ascribed to that term in K.S.A. 65-4101, and amendments thereto, and
35 "drug paraphernalia" shall have the meaning ascribed to that term in
36 K.S.A. 65-4150, and amendments thereto. Δ

37 Sec. 5. K.S.A. 2002 Supp. 21-4635 is hereby amended to read as
38 follows: 21-4635. (a) Except as provided in K.S.A. 21-4634 and amend-
39 ments thereto, if a defendant is convicted of:

40 (1) The crime of capital murder and a sentence of death is not im-
41 posed, or if a defendant is convicted of murder in the first degree based
42 upon the finding of premeditated murder, the court shall determine
43 whether the defendant shall be required to serve a mandatory term of

A person is not guilty of endangering a child when such person acted:

(1) Under the imminent threat or a pattern of threats of great bodily harm or death, or when such person reasonably believed that great bodily harm or death would be inflicted upon such person, such person's spouse, intimate partner, brother, sister or children; or (2) pursuant to a court order and has informed the court through testimony or a written report filed with the court describing the specific circumstances creating the danger.

(e)

: (1)

(2) "Intimate partners" means persons who are or have been in a dating relationship, persons who reside together or who have formerly resided together or persons who have had a child in common.

1-2

H. Corr. & J.J.
2-25-03
Attachments 5

HOUSE BILL No. 2049

By Committee on Corrections and Juvenile Justice

1-23

9 AN ACT concerning district attorneys; relating to the creation of the
10 office of district attorney in certain judicial districts; amending K.S.A.
11 22a-106 and K.S.A. 2002 Supp. 22a-105 and 22a-107 and repealing the
12 existing sections.
13

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

15 New Section 1. (a) An office of district attorney may be established
16 in a judicial district in the following manner.

17 (b) Each county commission in a judicial district may pass a resolution
18 submitting to the qualified electors in each judicial district the proposition
19 of creating the office of district attorney in such judicial district. If ~~a~~
20 majority of county commissions in the judicial district pass such a reso-
21 lution, the secretary of state shall place on the ballot at the next election
22 in which all of the qualified electors of the judicial district are entitled to
23 vote the proposition stated in subsection (d).

24 (c) The secretary of state shall place on the ballot at the next election
25 in which all of the qualified electors of the judicial district are entitled to
26 vote the proposition stated in subsection (d), if the secretary of state
27 receives a petition requesting an election on the proposition, signed by
28 not less than 5% of the qualified electors in the judicial district. ~~Not less~~
29 ~~than 2% of the qualified electors in each county shall have signed a peti-~~
30 ~~tion in order to reach the not less than 5% of the qualified electors in~~
31 ~~the judicial district.~~ The following shall appear on the petition:

32 "We request an election to determine whether the present method of
33 selecting county attorneys in this judicial district shall be discontinued
34 and replaced in this judicial district with the office of district attorney,
35 which shall be elected by the voters of this judicial district."

36 (d) The proposition on the ballot at an election held pursuant to this
37 section for the adoption of the office of district attorney in the judicial
38 district shall be as follows:

39 "The present method of selecting county attorneys in this judicial dis-
40 trict shall be discontinued and there is hereby adopted in this judicial
41 district the office of district attorney, which shall be elected by the voters
42 of this judicial district." Provision shall be made for marking the question
43 "yes" or "No."

all

in each of the counties

each of the counties in

in each county in the judicial district

1 (e) If a majority of the votes cast and counted on the proposition is
2 in favor of the establishment of the office of district attorney, the provi-
3 sions of this act shall govern the selection of the district attorney in the
4 judicial district. If a majority of the votes cast and counted is against the
5 establishment of the office of district attorney, the offices of the county
6 attorneys shall continue.

in any county in the judicial district

7 (f) It shall be the duty of the state board of canvassers to canvass the
8 votes in each judicial district voting on the proposition of the establish-
9 ment of the office of district attorney in the judicial district in the manner
10 prescribed by K.S.A. 25-3206, and amendments thereto. Upon comple-
11 tion of the final canvass and certification of the results, the secretary of
12 state shall transmit a copy of the results for each such judicial district to
13 the board of county commissioners of each county in such judicial district,
14 which voted in favor of the establishment of the office of district attorney
15 in such judicial district.

in each county in the judicial district

16 New Sec. 2. (a) Whenever the majority of the votes cast and counted
17 on the proposition is in favor of the establishment of the office of district
18 attorney pursuant to section 1, and amendments thereto, there is hereby
19 established the office of district attorney in such judicial district.

20 (b) Commencing with the next general election following the certi-
21 fication date of the election on the office of district attorney, and at the
22 general election every four years thereafter, a district attorney shall be
23 elected in the judicial district for a four-year term, commencing on the
24 second Monday in January next following the election. Upon such date,
25 the offices of county attorney in such judicial district shall be and is hereby
26 abolished.

27 (c) The district attorney authorized by this section is hereby declared
28 to be an executive officer of the judicial district in which such attorney is
29 elected, with the office constituting a separate entity within the district
30 for administrative purposes. In no event shall the district attorney be
31 deemed an officer of any county.

32 (d) Before entering upon the duties of the office, the district attorney
33 shall take the oath of office required by law for public officers and shall
34 execute a good and sufficient surety bond in the manner prescribed by
35 K.S.A. 75-4101 et seq., and amendments thereto.

36 (e) If the office of district attorney is established pursuant to this
37 section, the district attorney, or the district attorney's deputies or assis-
38 tants shall maintain office hours of not less than 60 hours per month in
39 each city which is the county seat of each county in the judicial district.

40 (f) The provisions of K.S.A. 22a-102, 22a-103, 22a-104, 22a-105, 22a-
41 106 and 22a-107, and amendments thereto, shall be applicable to the
42 office of district attorney established pursuant to sections 1 and 2, and
43 amendments thereto.

(g) If the office of district attorney is established pursuant to this section, the board of county commissioners of each county of such judicial district shall enter into an interlocal cooperation agreement for the purpose of jointly and cooperatively performing any of the services, duties, functions, activities, obligations or responsibilities which are authorized or required by law to be performed by the counties for an office of district attorney. The following conditions shall apply to such interlocal cooperation agreements:

(1) A district attorney interlocal cooperation agreement shall establish a board of directors which shall be responsible for administering the joint or cooperative undertaking. The agreement shall specify the organization and composition of and manner of appointment to the board of directors. Only members of boards of county commissioners of counties in the judicial district shall be eligible for membership on the board of directors. Each county shall hold equal representation on the board. The terms of office of members of the board of directors shall expire concurrently with their terms as board of county commission members. Vacancies in the membership of the board of directors shall be filled within 30 days from the date of the vacancy in the manner specified in the agreement.

(2) Pursuant to K.S.A. 2002 Supp. 22a-105 and K.S.A. 22a-106, and amendments thereto, a district attorney interlocal cooperation agreement shall provide for payment of salaries, office expenses, office space and dispute resolution.

(3) A district attorney interlocal cooperation agreement shall be subject to change or termination by the legislature.

(4) The duration of a district attorney interlocal cooperation agreement for joint or cooperative action in performing any of the services, duties,

functions, activities, obligations or responsibilities which are authorized or required by law to be performed by the counties for an office of district attorney, shall be for a term of four years and shall be renegotiated and reviewed at the end of such term.

(5) The duration of the office of district attorney shall be perpetual unless the voters of the judicial district vote to terminate the office of district attorney in the manner described in new section 3, and amendments thereto.

(6) The district attorney interlocal cooperation agreement shall specify the method or methods for disposing of the property acquired by the office of district attorney in the event that such office is terminated in the manner described in new section 3, and amendments thereto.

(h) As used in this section: "district attorney interlocal cooperation agreement" means an agreement which is entered into by the boards of county commissioners of each county within each judicial district which has established the office of district attorney in such judicial district pursuant to the provisions of this section.

New Sec 3. (a) An office of district attorney may be terminated in a judicial district in the following manner.

(b) Each county commission may pass a resolution submitting to the qualified electors in each judicial district the proposition of terminating the office of district attorney in such judicial district. If all county commissions in each of the counties in the judicial district pass such a resolution, the secretary of state shall place on the ballot at the next election in which all of the qualified electors of the judicial district are entitled to vote the proposition stated in subsection (d).

(c) The secretary of state shall place on the ballot at the next election in which all of the qualified electors of the judicial district are entitled to vote the proposition stated in subsection (d), if the secretary of state receives a

petition requesting an election on the proposition, signed by not less than 5% of the qualified electors in each of the counties in the judicial district. The following shall appear on the petition:

“We request an election to determine whether to terminate the office of district attorney in the judicial district and replace it with offices of county attorneys in each county in the judicial district.”

(d) The proposition on the ballot at an election held pursuant to this section to terminate the office of district attorney in the judicial district shall be as follows:

“The office of district attorney in this judicial district shall be terminated and replaced with offices of county attorneys in each county in the judicial district, elected by the voters of each county.” Provision shall be made for marking the question “Yes” or “No.”

(e) If a majority of votes cast and counted in each county in the judicial district on the proposition is in favor of terminating the office of district attorney in the judicial district, the counties shall return to electing the offices of county attorney in each county. If the majority of the votes cast and counted in each county in the judicial district is against terminating the office of district attorney in the judicial district, the office of district attorney shall continue.

(f) It shall be the duty of the state board of canvassers to canvass the votes in each judicial district voting on the proposition of terminating the office of district attorney in the judicial district in the manner prescribed by K.S.A. 25-3206, and amendments thereto. Upon completion of the final canvass and certification of the results, the secretary of state shall transmit a copy of the results to the board of county commissioners of each county in such judicial district.

5-6

1 Sec. 3. K.S.A. 2002 Supp. 22a-105 is hereby amended to read as
 2 follows: 22a-105. Each of the district attorneys elected under this act shall
 3 receive an annual salary in the amount of no less than ~~the~~ salary provided
 4 for district judges in K.S.A. 75-3120g and amendments thereto. The salary
 5 of each district attorney shall be paid by the county or counties comprising
 6 the judicial district in which the district attorney is elected in equal
 7 monthly installments and in the manner ~~county officers and employees~~
 8 ~~are paid~~ *The counties shall contribute to the district attorney's salary*
 9 *based on the population of the county.* The district attorneys and their
 10 deputies and assistants shall be reimbursed for their actual travel and
 11 subsistence expenses incurred while in the performance of their official
 12 duties within or without the district.

13 Sec. 4. K.S.A. 22a-106 is hereby amended to read as follows: 22a-
 14 106. (a) Within the limits of appropriations therefor, the district attorney
 15 shall appoint such assistant district attorneys, deputy district attorneys and
 16 other stenographic, investigative and clerical hire as may be necessary to
 17 carry out the functions of the district attorney's office in such judicial
 18 district ~~and he~~. *The district attorney shall determine the annual com-*
 19 *pensation of each assistant district attorney and other persons appointed*
 20 *pursuant to this subsection. The county commissioners shall determine*
 21 *and allow such reasonable sums from funds of the county for the com-*
 22 *pensation of assistants, deputies and other stenographic, investigative and*
 23 *clerical hire and for other expenses of such office as may be necessary to*
 24 *carry out the function of such office* *The counties shall contribute to such*
 25 *compensation and other expenses based on the population of the county.*

26 (b) Each assistant and deputy district attorney shall have been regu-
 27 larly admitted to practice law within the state of Kansas prior to his ap-
 28 pointment. Each district attorney and his assistant district attorneys shall
 29 devote full time to official duties and shall not engage in the civil practice
 30 of law, except as required in performing his official duties while serving
 31 as district attorney or assistant district attorney, and shall not refer any
 32 client or other person or any matter to any designated attorney or firm
 33 of attorneys.

34 (c) The board of county commissioners of each county contained in
 35 judicial districts ~~3, 10, 18 and 29~~ *which have an office of district attorney*
 36 *shall provide suitable office space within such county for the district at-*
 37 *torney, his the district attorney's assistants, deputies, office personnel and*
 38 *equipment.*

39 (d) Notwithstanding any of the provisions of this act the district at-
 40 torney, ~~with the approval of the board of county commissioners,~~ may
 41 appoint and employ special counsel when necessary to assist the district
 42 attorney in the discharge of his the district attorney's duties, such special
 43 counsel not to be subject to the restrictions contained in ~~paragraph sub-~~

80% of the

ratably

ratably

as provided in the district attorney interlocal cooperation agreement

as provided in the district attorney interlocal cooperation act or otherwise

5-7

1 section (b) ~~herein~~.

2 (e) Any county contained in judicial districts ~~3, 10, 18 or 29~~ which
3 have an office of district attorney may receive and expend for the oper-
4 ation of the office of district attorney any federal moneys made available
5 therefor.

6 [Sec. 5.] K.S.A. 2002 Supp. 22a-107 is hereby amended to read as
7 follows: 22a-107. Whenever in any of the statutes of this state the term
8 "county attorney" is used, it shall be construed to include district attor-
9 neys provided for by K.S.A. 22a-101, 22a-108 and, K.S.A. 2002 Supp.
10 22a-109 and section 2, and amendments thereto, unless the context oth-
11 erwise requires.

12 [Sec. 6.] K.S.A. 22a-106 and K.S.A. 2002 Supp. 22a-105 and 22a-107
13 are hereby repealed.

14 [Sec. 7.] This act shall take effect and be in force from and after its
15 publication in the statute book.

renumber paragraphs and
sections accordingly