

Approved:
Date 10-07-04

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on February 18, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Jerry Ann Donaldson, Legislative Research Department
Becky Krahl, Legislative Research Department
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Representative Annie Kiether
Representative Ray Merrick
Captain Robert Keller, Johnson County Sheriff
Judge Steve Tatum, Johnson County
Judge Ernest Johnson, Wyandotte County
Kyle Smith, KBI
Representative Jim Yonally
Sheryl Bussell, Wyandotte County DA
Stacey Mann, KCSDV
Aimee Patton, SAFEHome Advocate

Others attending:

See Attached List.

HR 6012 – Memorializing Congress regarding identity theft

Chairman Loyd opened the hearing on **HR 6012**.

Representative Annie Kuether, appeared before the committee in favor of the resolution. The resolution requests that Congress takes all necessary steps to reduce the incidents of identity theft. (Attachment 1)

Chairman Loyd closed the hearing on **HR 6012**.

HR 6012 – Memorializing Congress regarding identity theft

Representative Horst made the motion to report HR 6012 favorably for passage. Representative Kassebaum seconded the motion.

Representative Pauls made a substitute motion to amend to also send to House Minority Leader. Representative Ward seconded the motion. The motion carried.

Representative Pauls made the motion to report HR 6012 favorably for passage as amended. Representative Owens seconded the motion. The motion carried.

HB 2726 – Preliminary examinations may be conducted by two-way electronic audio-video communication

Chairman Loyd opened the hearing on **HB 2726**.

Representative Ray Merrick, appeared before the committee in support of the bill and to introduce

Captain Keller. (Attachment 2)

Captain Robert Keller, Johnson County Sheriff Department, spoke in favor of the bill and amending language proposed. The bill allows the magistrate the option of conducting the hearing through the use of audio-video equipment. The amendment being proposed will not undermine an accused individual's right to a fair and impartial judicial process. (Attachment 3)

Chief Judge Steve Tatum, Tenth Judicial District Johnson County, appeared as an opponent of the bill. It is the judgment of the judges based on experience that this technology would not be well suited to use for preliminary examinations. (Attachment 4)

Chairman Loyd closed the hearing on **HB 2726**.

HB 2869 – Preliminary examinations, admissibility of field tests for controlled substances

Chairman Loyd opened the hearing on **HB 2869**.

Judge Ernie Johnson, Wyandotte County District Judge, appeared before the committee in favor of the bill as it allows the field test to provide evidence at the preliminary hearing. (No written testimony was provided)

Kyle Smith, KBI, spoke in favor of the bill as it would provide 'field tests' on substances used to manufacture methamphetamine would be admissible and sufficient to establish probable cause at preliminary hearings. (Attachment 5)

Chairman Loyd closed the hearing on **HB 2869**.

HB 2785 – Domestic battery in the presence of a child, increased penalty to a class A person misdemeanor with mandatory jail time

Chairman Loyd opened the hearing on **HB 2785**.

Sheryl Bussell, Assistant District Attorney Wyandotte County, appeared as a proponent of the bill. The bill addresses the impact of domestic violence on the children who witness it, and who live with it in their homes and hold to higher account those perpetrators who ignore the presence of a child's eyes and ears when doing violence to an adult caretaker. (Attachment 6)

Representative Jim Yonally spoke in favor of the bill. A balloon amendment was provided that removes what happens to the minor child and increases the penalty. (Attachment 7)

Stacey Mann, Kansas Coalition Against Sexual and Domestic Violence, supports the concept of enhancing all domestic battery penalties and forming an interim study committee on domestic violence. (Attachment 8)

Aimee Patton, SAFEHOME Advocate, provided testimony in support of the bill. SAFEHOME supports an increased penalty for persons convicted of domestic battery. (Attachment 9)

Chairman Loyd closed the hearing on **HB 2785**.

HB 2602 – Allowing more prosecutorial discretion for immediate intervention programs for juveniles

Representative Ward made a motion to move HB 2602 favorably for passage. Representative Yoder seconded the motion. The motion carried.

The meeting was adjourned at 3:15 PM. The next scheduled meeting is February 19, 2004.

**HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST**

DATE 2-18-04

| NAME | REPRESENTING |
|------------------|-----------------------------------|
| Rose Dillon | Student |
| Carol Gallegos | WSS Student |
| Marcia Worland | WSS Student |
| ALLISON | Student legislative day |
| Tiffany White | KNASW Student Day |
| Crystal Strunk | KNASW Student Legislative Day |
| Corrie Yoder | " " |
| Cadie Koffler | KNSAW Student Legislative Day |
| Emily Smith | " |
| Art Thompson | Officer of Judicial Adm. |
| Steve Tatum | Judge, Johnson County |
| ERNEST L JOHNSON | JUDGE, WYCO |
| Bob Keller | Johnson County Sheriff's Office |
| Colleen O'Hare | BSW Student, University of Kansas |
| Kate Esterling | " " |
| Meredith Thomas | " " |
| Breva Rose | |
| Sarah Goswowski | " " |
| Jill Evans | " " " " " |
| J Biggs | KS Sent Comm |
| J Butler | KS Sent Comm |
| Christine Bulley | BSW student Park University |
| Beate Markus | " " " " |
| GARY E BACHMAN | Park University / myself |

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 2-18-04

| NAME | REPRESENTING |
|-------------------|-------------------------|
| Julia Guinan | Student Legislative Day |
| Peg McFadden | Student Legislative Day |
| Beth Jones | Student Legislative Day |
| Kate Berniger | " |
| Carolyn Bridges | " |
| Cynthia Martin | " |
| Don Gloeckner | " |
| Carol Myers | WASHBURN University |
| Keena George | Student Legislative Day |
| Janice Spuller | Legislative Day |
| Janice Patton | SAFEHOME |
| Stacey Mann | KCSDV |
| Jason Herndon | Student Legislative Day |
| Susan Langston | Student Legislative Day |
| Lori Oden | Student Legislative Day |
| Kelly Bunt | Student Legislative Day |
| Melinda Turner | Student Legislative Day |
| Karen Huggin | Student Legislative Day |
| Amber Huggin | " |
| Angela Cannon | " |
| Jamie Nelson | " |
| Jim Schieferdecke | K.B.I. |
| Lesha Nolan | Student Legislative Day |
| Staci Nelson | Student Legislative Day |

ANNIE KUETHER

REPRESENTATIVE, FIFTY-FIFTH DISTRICT
 SHAWNEE COUNTY
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 (785) 232-0717

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 (SESSION ONLY)



TOPEKA

HOUSE OF
 REPRESENTATIVES

House Resolution 6012

Rep. Annie Kuether

February 18, 2004

COMMITTEE ASSIGNMENTS

RANKING DEMOCRAT: UTILITIES
 MEMBER: GEN. GOVT. & HUMAN RESOURCES
 BUDGET
 HIGHER EDUCATION
 NEW ECONOMY
 NCSL: EDUCATION COMMITTEE ON
 STATE AND FEDERAL AFFAIRS
 LABOR AND WORKFORCE
 DEVELOPMENT COMMITTEE

House Resolution 6012 memorializes the Congress regarding the public problem of identity threat.

Because of the rapid and widespread use of technology, more Kansas citizens are unfortunately being made victims of identity theft. Because of the way computers and the Internet use and store information, social security numbers, bank account numbers, credit card numbers and personal information are being stolen and the information used to the benefit of hackers and identity thieves.

In fact, a recent survey by the Federal Trade Commission found that between four and six percent of those surveyed had discovered they had been victims of some form of identity theft. This means that within the past year, **nearly 10 million Americans** have suffered some form of identity theft.

Identity theft ruins lives. People whose identities are stolen may be denied loans, housing, education, job opportunities. They may be driven deeply into unwarranted debt and even arrested for crimes they did not commit.

Victimization means people's lives are never the same. An innocent victim too often is forced to spend inordinate amounts of time – sometimes months or years -- and often great amounts of money to try to clean up problems they did not cause. They often suffer untold emotional trauma as they try to protect or recover their good names. Too often, they are forced to prove who they are and what actions they have or have not committed..

We, as state legislators, are asked to address this insidious problem by the people whom we represent. Across the country, other state legislatures, with the support of the National Conference of State Legislatures, are addressing the roots of the problem. There are some solutions. For example, Individuals can be more protective of sensitive personal identifying information. States can increase penalties and prosecute more cases. However, it will take a national initiative by the federal level to abate this cancer.

House Resolution 6012 resolves that we ask Congress to take all necessary steps to reduce the incidents of identity theft. This is a crime that crosses all state boundaries, exceeds our reach and requires that we do all we can to reduce these incidents before further, law abiding citizens are violated.

Thank you.

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RAY MERRICK
REPRESENTATIVE 27TH DISTRICT
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STATE CAPITOL— 180-W
TOPEKA, KANSAS 66612-1504
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COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
CALENDAR AND PRINTING
INTERSTATE COOPERATION
PUBLIC SAFETY BUDGET
TOURISM AND PARKS

TOPEKA
HOUSE OF
REPRESENTATIVES
ASSISTANT MAJORITY LEADER

February 18, 2004

HB2726

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to come before you today to speak in support of HB2726.

The Johnson County Sheriff, Currie Myers, requested this legislation as a way to save budget dollars.

The expense of transporting prisoners from the county correctional facility to the courts continues to increase.

This legislation would allow resources to be used in a more efficient manner.

I will let Captain Keller testify on behalf of the Sheriff's Department.



Lynn C. Myers
Sheriff

OFFICE OF THE
Johnson County Sheriff

Courthouse
125 N. Cherry
Olathe, Kansas 66061

Telephone
913-791-5800
Fax
913-791-5806

Testimony of:

Captain Bob Keller
Johnson County Sheriff's Office
Olathe, Kansas

House Bill #2726

Chairperson Loyd, Members of the House Committee on Corrections and Juvenile Justice.

My name is Bob Keller and I am representing the Johnson County Sheriff's Office in support of House Bill # 2726. The amending language would allow the use of two-way electronic audio-video equipment in lieu of a personal appearance by the defendant or defendant's counsel in the courtroom. The two-way electronic technology is already being utilized in Johnson County for individuals making their initial court appearance in District Court cases, and is used by 9 of the 14 Municipal courts in Johnson County. The degree of use at the municipal level varies from initial court appearance to full trials being conducted with the technology.

In 2003, the Johnson County Sheriff's Office delivered 9,252 inmates to scheduled and unscheduled court appearances. A recent review of the court appearances indicated 78% of the hearings conducted were non-evidentiary in nature. These types of hearings are brief in duration, and are used primarily to continue the case to a future date and time. The large number of prisoners being removed from the secure environment of a detention facility and being placed in a courtroom is not in the best interests of public safety.

The use of audio-video equipment for initial court appearances has proven to be an efficient and safe response to in handling the increasing number of prisoners being held in the detention facilities. In 2003, the Johnson County Sheriff's Office delivered 10,084 prisoners to video court appearances within the detention facilities. This represents a 6.5% increase over the number of video appearances that occurred within the facility in 2002.

It is important to note, that the amending language being proposed simply allows the magistrate the option of conducting the hearing through the use of audio-video equipment. The language also clearly states that the "defendant shall be informed of the defendant's right to be personally present in the courtroom during such preliminary examination if the defendant so requests". The amendment being proposed will not undermine an accused individual's right to a fair and impartial judicial process.

I encourage you to recommend the adoption of the amending language being offered in House Bill #2726. Thank you for allowing me the opportunity to testify before you today on this important matter. I will be happy to answer any questions you may have.

Captain Bob Keller
Johnson County Sheriff's Office
Olathe, Kansas 66061

TESTIMONY OF THE HONORABLE STEPHEN TATUM
Chief Judge – 10th Judicial District – Johnson County
February 18, 2004

I appreciate the opportunity to speak to you today in opposition to House Bill 2726, which would authorize having defendants at remote locations—connected by video hook-up—for their preliminary examinations.

Our judges have for several years used video hook-ups to handle first appearances of defendants in criminal cases. In our judgment, based on this experience, this technology would not be well suited to use for preliminary examinations.

First, I want to be sure you have some idea of the quality of the technology now in use in our courts. It is not the type of video that you would see on your TV screens at home. The video quality in our video arraignments is not always clear. The sound quality is not always clear, and sometimes hard to understand.

Second, there are lots of practical reasons why it's better at a preliminary examination to have the prosecutor, the defendant, and the defense counsel all in the same location. Often, plea negotiations can be completed immediately before a preliminary hearing. Sometimes, prosecutors make certain offers available only if accepted before the preliminary hearing is held. The defense attorney may have been realistically unable to confer in advance of that time in person with the defendant. The defendant may have been shipped out to another county to be held, since there's not enough space in Johnson County for all of those being held in custody. Deciding whether to take a plea offer, or how seriously to take the advice of your attorney, is better done when the discussions take place in person, and this is just the sort of thing that often takes place right before the preliminary hearing.

There are other practical considerations as well. I can't imagine a defense attorney choosing to be at a remote location rather than the courtroom. Effective cross-examination and evaluation of witness demeanor and credibility will require the in-person presence of the defense attorney. The defendant's understanding of the strength of the

State's case will be greatly enhanced by in-person attendance as well.

A final practical consideration I'd like to mention is the quality of the record produced from such a hearing. Court reporters work hard to provide accurate transcripts of court proceedings, and a preliminary hearing is an important part of the case record. If a defense attorney does choose to be present with his or her client at the remote location, taking down an accurate record of that attorney's questioning of witnesses will be especially difficult. Attorneys and witnesses frequently talk over one another. That's hard enough to take down accurately when it happens in the courtroom, but it will be especially difficult in this proposed format.

I know that this proposal is one that the Johnson County Sheriff's Department believes would be a useful and cost-saving one. I want you to know that our judges and our Sheriff's Department have a good working relationship, and we continue to value the great work done by the personnel of the Sheriff's office. We just think that this is a proposal that will not work well in practice.

Thank you for considering our views.



Kansas Bureau of Investigation

Larry Welch
Director

Testimony in Support of HB 2869
Before the House Corrections and Juvenile Justice Committee
Kyle G. Smith
Director of Public and Governmental Affairs
Kansas Bureau of Investigation
February 18, 2004

Phill Kline
Attorney General

Representative Loyd and Members of the Committee:

On behalf of the KBI I am here to support HB 2869. This legislation would provide that 'field tests' on substances used to manufacture methamphetamine would be admissible and sufficient to establish probable cause at preliminary hearing. Hopefully this would allow agents and other trained law enforcement officers to conduct field tests and testify to the results at preliminary hearing. This would allow cases to proceed more quickly as the prosecutor wouldn't have to wait until the lab tests were back. As many of these cases are plead out, this might reduce the number of cases where the forensic scientists have to actually do the tests. Since preliminary hearing is not constitutionally required, the legislature is free to set whatever rules it wants for how they are conducted.

While we appreciate the interest and motive behind the legislation, an effort to speed these cases up and provide some relief to our forensic chemists, I feel compelled to note that the peculiar requirements of investigating methamphetamine laboratories will substantially limit the practical effectiveness of this bill.

The first problem is that field tests are normally developed for controlled substances, not for the legal chemicals. As such, there may not be 'generally recognized' field tests for all the items used in meth production. And the scientist may still have to testify as to the field tests being 'generally recognized in the forensic scientific community' at least until there are appellate court cases reported on the tests. There are new tests and equipment, such as Portable Infra Red Scanners, that may resolve some of these issues, if and when we can afford them.

Finally, while it is hoped that cases will be plead after preliminary, and so no actual full forensic tests conducted, as a practical matter I suspect most defense attorneys will not plead their clients until the KBI lab test results are in – there are false positives with field tests. So the tests will still need to be done and if the backlog continues to grow we will have merely pushed the bottleneck farther back down the system.

Thank you again for your interest in this topic. I would be happy to stand for questions.

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Office of The
DISTRICT ATTORNEY
Of The 29th Judicial District of Kansas


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DISTRICT ATTORNEY
Nick A. Tomasic

February 18, 2004

Mr. Chairman, Committee members:

My name is Sheryl Bussell, and as assistant District Attorney here in Wyandotte County, and I am the chair of the Children's Subcommittee of the Mayor's Council Against Domestic Violence. The mission of our subcommittee is to address the impact of domestic violence on the children who witness it, and who live with it in their homes. One of the early efforts that we made was to have some type of ordinance adopted that would clearly define children as victims in domestic violence situations. One of the people on my subcommittee did extensive research in the area, studying what other states and cities have adopted. We made some suggestions, and then another subcommittee, called the Justice Committee, studied the options that we presented. The justice committee is made up of prosecutors, victim advocates, police officers and judges. The final result is a municipal ordinance that is identical to the proposed statute that you have before you now. This was carefully chosen to make it clear that the community would no longer tolerate the witnessing of violence in the home by children. The result has been many negotiated pleas of guilty in these cases, without the necessity of a trial, where the victims often have to testify.

In Kansas, we have a constitutional amendment that represents a commitment to care for victims of crime. In domestic violence cases, under the current law, the children are not considered the "victims." Therefore the rights under our constitution do not attach to the children. The most vulnerable people in the situation are sometimes, but not usually, recognized by the police officers and prosecutors as victims. This law will shift some of the thinking of those members of the system to include the children.

The impact of witnessing violence in their homes, especially on a chronic basis, is immense. We know that statistically, many of those children go on to become perpetrators or victims of violence in adulthood. We also know that witnessing domestic violence as a child increases the risk of becoming offenders of the law as juveniles, and substantially increases the risk of the child becoming an abuser of drugs and alcohol. Recent research has even begun to strongly suggest that infants who are in homes where domestic violence is present suffer physical harm, in the development of their brains.

This research suggests that these infants have significant risk for developmental delays, and even permanent injury to their ability to concentrate, to learn, to control impulses, and to develop connections and relationships with others.

This legislation would be a great message from this body that, as a state, progressive in our thinking, and aggressive in the protection of our children, we will hold to higher account those perpetrators who ignore the presence of a child's eyes and ears when doing violence to an adult caretaker. I urge the committee to favorably act upon this bill.

Sincerely,

Sheryl A. Bussell
Assistant District Attorney

Session of 2004

HOUSE BILL No. 2785

By Representatives Yonally, Barbieri-Lightner, Davis, Neighbor, Reitz and Storm

2-10

Proposed Amendment
Representative Yonally
February 17, 2004

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AN ACT concerning crimes and punishment: relating to domestic battery: amending K.S.A. 2003 Supp. 21-3412a and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 21-3412a is hereby amended to read as follows: 21-3412a. (a) Domestic battery is:

(1) Intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or

(2) intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

(b) (1) ~~Except as provided in subsection (1)~~ upon a first conviction of a violation of domestic battery, a person shall be guilty of a class ~~B~~ person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

A

(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a second time, such person shall be guilty of a ~~class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of a sentence or parole or is otherwise released.~~

severity level 10, person felony.

As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.

1 (3) If, within five years immediately preceding commission of the
 2 crime, a person is convicted of a violation of domestic battery a third or
 3 subsequent time, such person shall be guilty of ~~a person felony and sen-~~ severity level 9, person felony.
 4 tenced to not less than 90 days nor more than one year's imprisonment
 5 and fined not less than \$1,000 nor more than \$2,500. The person convicted
 6 shall not be eligible for release on probation, suspension or reduction
 7 of sentence or parole until the person has served at least 90 days

8 ~~imprisonment.~~ The court may ~~also~~ require as a condition of parole that
 9 such person enter into and complete a treatment program for domestic
 10 violence. ~~The 90 days' imprisonment mandated by this subsection may~~
 11 ~~be served in a work release program only after such person has served~~
 12 ~~48 consecutive hours' imprisonment, provided such work release program~~
 13 ~~requires such person to return to confinement at the end of each day in~~
 14 ~~the work release program.~~

15 ~~(4) If a person is convicted of a violation of domestic battery and such~~
 16 ~~battery is committed in the immediate presence of, or is witnessed by, the~~
 17 ~~person's or the victim's minor child or stepchild or a minor child residing~~
 18 ~~within the household of the person or victim, such person shall be guilty~~
 19 ~~of a class A person misdemeanor and sentenced to not less than 90 days~~
 20 ~~nor more than one year's imprisonment and fined not less than \$500 nor~~
 21 ~~more than \$1,000. The five days' imprisonment mandated by this subsection~~
 22 ~~may be served in a work release program only after such person has~~
 23 ~~served 48 consecutive hours' imprisonment, provided such work release~~
 24 ~~program requires such person to return to confinement at the end of each~~
 25 ~~day in the work release program. The person convicted must serve at least~~
 26 ~~five consecutive days' imprisonment before the person is granted proba-~~
 27 ~~tion, suspension or reduction of sentence or parole or is otherwise re-~~
 28 ~~leased. As a condition of any grant of probation, suspension of sentence~~
 29 ~~or parole or of any other release, the person shall be required to enter~~
 30 ~~into and complete a treatment program for domestic violence prevention.~~

31 (c) As used in this section:

32 (1) Family or household member means persons 18 years of age or
 33 older who are spouses, former spouses, parents or stepparents and chil-
 34 dren or stepchildren, and persons who are presently residing together or
 35 who have resided together in the past, and persons who have a child in
 36 common regardless of whether they have been married or who have lived
 37 together at any time. Family or household member also includes a man
 38 and woman if the woman is pregnant and the man is alleged to be the
 39 father, regardless of whether they have been married or have lived to-
 40 gether at any time; and

41 (2) for the purpose of determining whether a conviction is a first,
 42 second, third or subsequent conviction in sentencing under this section;

43 (A) "Conviction" includes being convicted of a violation of this sec-

1 tion or entering into a diversion or deferred judgment agreement in lieu
2 of further criminal proceedings on a complaint alleging a violation of this
3 section;

4 (B) "conviction" includes being convicted of a violation of a law of
5 another state, or an ordinance of any city, or resolution of any county,
6 which prohibits the acts that this section prohibits or entering into a di-
7 version or deferred judgment agreement in lieu of further criminal pro-
8 ceedings in a case alleging a violation of such law, ordinance or resolution;

9 (C) only convictions occurring in the immediately preceding five
10 years including prior to the effective date of this act shall be taken into
11 account, but the court may consider other prior convictions in determin-
12 ing the sentence to be imposed within the limits provided for a first,
13 second, third or subsequent offender, whichever is applicable; and

14 (D) it is irrelevant whether an offense occurred before or after con-
15 viction for a previous offense.

16 Sec. 2. K.S.A. 2003 Supp. 21-3412a is hereby repealed.

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

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Sec. 2. K.S.A. 2003 Supp. 21-4704. [see attached]

Sec. 3. K.S.A. 2003 Supp. 74-5602. [see attached]

Renumber remaining sections accordingly.

, 21-4704 and 74-5602 are

Sec. 2. K.S.A. 2003 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

SENTENCING RANGE - NONDRUG OFFENSES

7-5

| Category → | A | | | B | | | C | | | D | | | E | | | F | | | G | | | H | | | I | | |
|---------------------|---------------------|-----|-----|-------------------|-----|-----|---------------------------------|-----|-----|-----------------|-----|-----|------------------------|-----|-----|----------------------|-----|-----|--------------------|-----|-----|------------------|-----|-----|-------------------------|-----|-----|
| Severity Level ↓ | 3 + Person Felonies | | | 2 Person Felonies | | | 1 Person & 1 Nonperson Felonies | | | 1 Person Felony | | | 3 + Nonperson Felonies | | | 2 Nonperson Felonies | | | 1 Nonperson Felony | | | 2 + Misdemeanors | | | 1 Misdemeanor No Record | | |
| I | 653 | 620 | 592 | 618 | 586 | 554 | 285 | 272 | 258 | 267 | 253 | 240 | 246 | 234 | 221 | 226 | 214 | 203 | 203 | 195 | 184 | 186 | 176 | 166 | 165 | 155 | 147 |
| II | 493 | 467 | 442 | 460 | 438 | 416 | 216 | 205 | 194 | 200 | 190 | 181 | 184 | 174 | 165 | 168 | 160 | 152 | 154 | 146 | 138 | 138 | 131 | 123 | 123 | 117 | 109 |
| III | 247 | 233 | 221 | 228 | 216 | 206 | 107 | 102 | 96 | 100 | 94 | 89 | 92 | 88 | 82 | 83 | 79 | 74 | 77 | 72 | 68 | 71 | 66 | 61 | 61 | 59 | 55 |
| IV | 172 | 162 | 154 | 162 | 154 | 144 | 75 | 71 | 68 | 69 | 66 | 62 | 64 | 60 | 57 | 59 | 56 | 52 | 52 | 50 | 47 | 48 | 45 | 42 | 43 | 41 | 38 |
| V | 136 | 130 | 122 | 128 | 120 | 114 | 60 | 57 | 53 | 55 | 52 | 50 | 51 | 49 | 46 | 47 | 44 | 41 | 43 | 41 | 38 | 38 | 36 | 34 | 34 | 32 | 31 |
| VI | 46 | 43 | 40 | 41 | 39 | 37 | 38 | 36 | 34 | 36 | 34 | 32 | 32 | 30 | 28 | 29 | 27 | 25 | 26 | 24 | 22 | 21 | 20 | 19 | 19 | 18 | 17 |
| VII | 34 | 32 | 30 | 31 | 29 | 27 | 29 | 27 | 25 | 26 | 24 | 22 | 23 | 21 | 19 | 19 | 18 | 17 | 17 | 16 | 15 | 14 | 13 | 12 | 12 | 11 | 11 |
| VIII | 23 | 21 | 19 | 20 | 19 | 18 | 19 | 18 | 17 | 17 | 16 | 15 | 15 | 14 | 13 | 13 | 12 | 11 | 11 | 10 | 9 | 11 | 10 | 9 | 9 | 8 | 7 |
| IX | 17 | 16 | 15 | 15 | 14 | 13 | 13 | 12 | 11 | 13 | 12 | 11 | 11 | 10 | 9 | 10 | 9 | 8 | 9 | 8 | 7 | 8 | 7 | 6 | 7 | 6 | 5 |
| X | 13 | 12 | 11 | 12 | 11 | 10 | 11 | 10 | 9 | 10 | 9 | 8 | 9 | 8 | 7 | 8 | 7 | 6 | 7 | 6 | 5 | 6 | 5 | 4 | 5 | 4 | 3 |

| LEGEND |
|--------------------------|
| Presumptive Probation |
| Order Bond |
| Presumptive Imprisonment |

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease

supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid

blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer or K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567 and ~~7-subsection-(b)(3)-of-K.S.A.--21-3412a7~~ and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as provided by the specific mandatory

sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. ~~8-1567-subsection-(b)(3)-of-K.S.A.--21-3412a~~ and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments thereto shall not be served in a state facility in the custody of the secretary of corrections.

(j) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term. Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who: (1) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (2) at the

time of the conviction under subsection (1) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government. The provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

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

and amendments thereto, or any substantially similar offense from another jurisdiction.

(1) The sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

Sec. 3. K.S.A. 2003 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603 and amendments thereto.

(b) "Commission" means the Kansas law enforcement training commission, created by K.S.A. 74-5606 and amendments thereto.

(c) "Dean" means the dean of the division of continuing education of the university of Kansas.

(d) "Director," as created in K.S.A. 74-5603 and amendments thereto, means the director of police training at the law enforcement training center.

(e) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms

shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858 and amendments thereto; conservation officers of the Kansas department of wildlife and parks; campus police officers at all state educational institutions or a municipal university; law enforcement agents of the director of alcoholic beverage control; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol area security guards, existing under the authority of K.S.A. 75-4503 and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524 and amendments thereto; and school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222 and amendments thereto. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the commissioner of juvenile justice, the secretary of corrections or the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife and parks; or any employee of a city or county who is employed solely to perform correctional duties

related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(f) "Full-time" means employment requiring at least 1,000 hours of work per year.

(g) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of work per year.

(h) "Misdemeanor crime of domestic violence" means a violation of domestic battery as provided by subsection (b)(1) of K.S.A. 2003 Supp. 21-3412a and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(i) "Auxiliary personnel" means members of organized nonsalaried groups which operate as an adjunct to a police or sheriff's department, including reserve officers, posses and search and rescue groups.

Stacey Mann



UNITED AGAINST VIOLENCE

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

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HB 2785

February 18, 2004

Chairman Loyd and Members of the Committee:

KCSDV applauds the efforts of Representative Yonally and members of this committee for grappling with the complex issues of domestic violence.

HB 2785 as it is was introduced concerns KCSDV because we lack data or other information that would help us to predict or assess the impact of this law, if enacted, on victims, who are primarily women and children.

Currently we must rely on anecdotal information about the experience of victims that is provided by domestic violence program advocates in Kansas. Advocates from almost every program tell us that law enforcement are struggling a great deal with determining who is the predominant aggressor, which often results in the arrest of victims or both parties. Victims express that they are already afraid to involve law enforcement because of the fear that they will be arrested, or that they may lose their children, or that the system will fail and nothing will happen to hold the perpetrator accountable.

Unfortunately, Kansas collects information only about the number of law enforcement calls that are designated as domestic violence on the Standard Offense Report, the number of arrests, and the crimes that were the foundation for the arrest. We have no information about dispositions of those cases, such as how many are dropped, pled to lesser crimes, or end in pre-file or other diversions. We have no information about how many cases are dropped because the person arrested was not the predominant aggressor.

What we do know is that many, many women say they will never call the police for help again regardless of how violent the batterer is. This is not the response any of us had hoped for when enacting laws that were intended to help protect victims and their children.

After Representative Yonally heard from numerous programs about these concerns, he explored with KCSDV several options:

- 1) Addressing the problem of identifying the predominant aggressor by amending K.S.A. 22-2307, which requires law enforcement agencies to have policies about how they handle domestic violence calls. These policies must include, among other thing: a) the definition of domestic violence; b) that they will make an arrest when probable cause exists that a crime was committed; c) that they will refer victims to services, etc. Consideration was given to adding language that would

require law enforcement agencies to define predominant aggressor and gives law enforcement officers direction on making such determinations. It is our belief that when the predominant aggressor is accurately identified and arrested it would minimize the impact of child witnessing penalties against victims of domestic violence. However, that would require all law enforcement agencies to amend their policies and train every officer on the concepts and practices of making predominant aggressor determinations. Amending K.S.A. 22-2307 would have a tremendous fiscal impact on law enforcement agencies. KCSDV has no resources to engage in a statewide law enforcement initiative to assist with policy development or training of officers. The existing problem was created, in part, because Kansas enacted the pro-arrest statute, but removed the resources for training.

- 2) The second option we reviewed was to enhance the penalties across the board for domestic battery crimes. Although this may not help victims be any more comfortable with calling law enforcement for help, and will still result in victims being arrested and prosecuted, this option does appear to have the least detrimental impact on victims. Evidence that victims are prosecuted or agree quickly to diversions comes from advocates and batterer intervention program providers who are now offering victim groups to those referred from the courts as batterers. What we do not know is whether the stories we hear from these groups are the majority of cases or if this is just the tip of the iceberg of cases where victims end up in the system rather than the batterer.

It became even more apparent during the process of trying to assess the impact of this legislation on victims and perpetrators of domestic violence that the issue is complex and with each legislative change we seem to create as many unintended consequences as desired ones. This year, perhaps more than any year I can recall, even election years, there are more legislative proposals intended to help victims of domestic violence. It is becoming increasingly difficult to support these proposals because of the lack of information available about their impact.

After almost twenty years of having laws that are meant to help protect victims and children it is time to study why existing laws may or may not help. Information about the actual impact of existing laws, the availability of victim services and the effectiveness of batterer intervention programs must be collected and considered when forming a comprehensive response to domestic violence. The first step in this process is to evaluate current law and practices. Representative Yonally is prepared to request an interim committee on domestic violence to begin evaluating current laws. KCSDV requests this committee support Representative Yonally's request for an interim study committee.

KCSDV supports the concept of enhancing all domestic battery penalties and forming an interim study committee on domestic violence.



House Bill No. 2785
Corrections and Juvenile Justice
Chairperson: Representative Ward Loyd

Testimony from: Aimee Patton, SAFEHOME Advocate

SAFEHOME is Johnson County’s only provider of shelter and support services for victims of domestic violence. Thank you for allowing me to provide testimony in support of house bill number 2785. SAFEHOME supports an increased penalty for persons convicted of domestic battery.

In 2003, SAFEHOME’s Court Advocates met with 935 victims of domestic violence. Our court advocates guided victims through the court system and assisted them in applying for protection from abuse orders, restraining orders or offering support in court. In 2002, there were approximately 1700 cases of domestic violence that went through the court system. That figure is alarming and it is only for one county in the state of Kansas.

SAFEHOME provides many services that help the victim break the vicious cycle of domestic violence. We focus on the victim and their children to help them build themselves up after being beaten down. Increasing the penalty for domestic battery will prove to the victim that the state of Kansas is serious about punishing those who hurt others. It will offer victims hope that the Representatives in Kansas are on their side. Increasing the penalty will also prove to the abusers that Kansas takes domestic battery seriously. Helping the victims break the cycle of violence is a community effort. It takes the victim’s willingness to step forward and the continued support of domestic violence agencies, police, judges and representatives to help the victims in this courageous effort.

“The most important goals of the justice system should be to assure both the short-term and long-term safety of battered women. The justice system must do everything it can to support battered women in every act that reduces their isolation and promotes safety and self-esteem.” When Violence Begins At Home, K.J. Wilson, Ed.D.

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