

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:05 a.m. on Friday, March 12, 2004, in Room 313-S of the Capitol.

All members were present except:

Senator David Haley - Arrived 9:10, left 9:35, returned 9:45
Senator Derek Schmidt - Arrived 9:10
Senator Edward Pugh - Arrived 9:10

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Others attending: See attached list.

Chairman Vratil announced that Senator Jay Emler had a special request. Senator Pugh's sub-committee had not had an opportunity to hear **SB 389**. Senator Emler recommended that the revised **SB 389** be amended into a House bill that had been tabled. The revised bill was changed by striking the majority of the bill and retaining Sections 1, 2, and 3. The deleted sections were expunged in accordance with a compromise worked out between the Highway Patrol, Kansas Bureau of Investigation, Lenexa Police Department, Overland Park Police Department, Kansas Law Enforcement Training Commission, Kansas City Police Department and the Sheriff Departments of Sedgwick, Hays, Clark and Finney Counties. Senator Emler explained that there were a few definitions that were changed within the revised bill. (Attachment 1)

Chairman Vratil said that **HB 2133** had been tabled during the last session, and the Committee could pull it off the table and do a gut and go, inserting the first three sections of **SB 389**. Committee discussion followed.

Senator Goodwin moved to take **HB 2133** off the table, seconded by Senator Donovan, and the motion carried.

Senator Pugh made a motion to do a substitute for **HB 2133** by eliminating all of the provisions in that bill and substitute in the enacting clause, the first three sections, Section 7 with adjustments to accurately reflect the repealer, and Section 8 which shows the date that it takes effect of **SB 389**. The motion was seconded by Senator Donovan, and the motion carried.

Senator O'Connor moved to recommend favorably the substitute bill **HB 2133** as amended, seconded by Senator Donovan, and the motion carried.

Final Action on:

SB - 528 - Kansas parole board actions

Chairman Vratil called for discussion and final action on **SB 528**. The Chairman explained that the bill clarified that actions of the Kansas Parole Board must be by a majority vote of the Board.

Senator Haley made a motion to amend this bill by adding at least one member to the Parole Board of a racially minority group in order to make it more equitable. The motion was seconded by Senator Betts. (Attachment 2)

Considerable Committee discussion followed. The Chair called for a vote on the amendment. The motion to amend failed.

Senator Haley made a motion to amend **SB 528** to change the Parole Board back to four members instead of three members, seconded by Senator Betts. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:00 a.m. on Friday, March 12, 2004 in Room 313-S of the Capitol.

Committee discussion followed with input from Marilyn Scafe, Chairperson of the Kansas Parole Board. The Chairman called for a vote on the motion to amend. The motion to amend failed.

Chairman Vratil called for any other amendments to the bill, and there were none.

Senator Goodwin moved to recommend favorably for passage **SB 528**, seconded by Senator O'Connor, and the motion carried.

HB 2057 - Identity theft, defrauding for any benefit, not just economic

Chairman Vratil called for discussion and final action on the bill. The Chair explained the bill, and said there were some amendments offered by the Kansas Bureau of Investigation (KBI). (Attachment 4) He distributed a copy of an email addressed to Representative Long-Mast from John Cowles, Assistant District Attorney in Johnson County, in which he supported the bill, but suggested an amendment on the wording for misdemeanor ID theft. (Attachment 5)

Committee discussion followed with clarification of the intent of suggested amendments.

Senator Schmidt moved to table the bill, seconded by Senator Betts. The motion carried to table **HB 2057**.

HB 2542 - Collection of specimens by KBI when convicted by certain crimes

Chairman Vratil called for discussion and final action on the bill. The Chair explained the bill, and said it only added a statutory reference on page 1, line 42.

Senator O'Connor moved to pass **HB 2542** out favorably with placement on the Consent Calendar, seconded by Senator Oleen, and the motion carried.

HB 2617 - Allowing land surveyors to enter upon property for a land survey, not considered a trespass; if damages, surveyor liable

Chairman Vratil called for discussion and final action on the bill. The Chair explained the bill.

Senator Haley moved to recommend the bill favorably, seconded by Senator O'Connor, and the motion carried. Senator Pugh requested his "no" vote be recorded.

HB 2742 - Child in need of care records, confidentiality

Chairman Vratil called for discussion and final action on the bill. The Chairman recognized Senator Goodwin, who served on the Judicial Council committee which recommended the bill.

Senator Goodwin explained the work of the Judicial Council committee, and some of the concerns she had with the drafting of the bill relating to a legislator having access to an individual's records.

Senator Goodwin made a motion to amend on page 11 under Section (e) that the "legislative access" be stricken from lines 8 through 22, and again strike the language on page 8, lines 1 through 13. Senator Schmidt seconded the motion.

Committee questions and discussion followed.

The Chairman announced that the meeting time had elapsed, and that final action on **HB 2742** would be continued at a later meeting.

The meeting was adjourned at 10:00 a.m. The next scheduled meeting is March 15, 2004.

SENATE BILL No. 389

By Senator Emler

1-29

AN ACT relating to law enforcement; concerning special deputies; relating to multijurisdictional law enforcement groups; amending K.S.A. 22-2404 and 74-5608a and K.S.A. 2003 Supp. 19-805a, 19-805b, 19-828 and 21-4201 and repealing the existing sections.

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

Section 1. K.S.A. 2003 Supp. 19-805a is hereby amended to read as follows: 19-805a. In all counties ~~having a population in excess of 100,000,~~ the sheriff shall have authority to appoint so many special deputies as the sheriff deems proper and for whose official acts the sheriff shall be responsible. Before an appointment shall be made the sheriff or marshal of the district court shall have the right to demand an indemnity bond before any commission as special deputy shall be issued. The appointments may be revoked at the pleasure of the appointing officer, except that all appointments made by a sheriff pursuant to this section shall automatically be revoked at the time that such appointing sheriff's service as sheriff concludes. Except as provided by K.S.A. 2003 Supp. 19-827, and amendments thereto, a special deputy appointed under this section shall not receive any payment, for services rendered, from public funds.

Sec. 2. K.S.A. 2003 Supp. 19-805b is hereby amended to read as follows: 19-805b. Except as provided by K.S.A. 2003 Supp. 19-827, and amendments thereto, special deputies appointed pursuant to K.S.A. 19-805a, and amendments thereto, may be limited in their authority to perform the acts of a peace officer in or about certain specified premises or relating thereto or to provide crime prevention or security services on or about any public facility or property when so directed by the sheriff, but shall have a general right in event of riot, sabotage, terroristic attack or serious disturbances or breach of the peace to call upon and deputize any other peace officer or private citizen to assist such special deputy in quelling such riot or disturbance events.

Sec. 3. K.S.A. 2003 Supp. 19-828 is hereby amended to read as follows: 19-828. Any county in the state of Kansas which borders another state, with the agreement of the sheriff, may enter into agreement with the political subdivisions in such other state's contiguous county to form a multijurisdictional law enforcement group for the enforcement of drug

RETAIN P. 1, LINES 9-43;
RETAIN P. 2, LINES 1-13;
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1 and controlled substances laws *or for the prevention, detection or inves-*
 2 *tigation of any terroristic activity.* Such other state's law enforcement
 3 officers may be deputized as officers of the counties of this state partic-
 4 ipating in such an agreement and shall be deemed to have met all require-
 5 ments of law enforcement training and certification required under
 6 K.S.A. 74-5601 *et seq.* and amendments thereto if such officers have sat-
 7 isfied the applicable law enforcement officer training and certification
 8 standards in force in such other state. Such other state's law enforcement
 9 officers shall have the same powers and immunities as law enforcement
 10 officers certified and commissioned in Kansas while conducting investi-
 11 gations to enforce drug and controlled substances laws *or engaged in the*
 12 *prevention, detection or investigation of terroristic activity* with the mul-
 13 tijuisdictional enforcement group.

14 Sec. 4. K.S.A. 2003 Supp. 21-4201 is hereby amended to read as
 15 follows: 21-4201. (a) Criminal use of weapons is knowingly:

16 (1) Selling, manufacturing, purchasing, possessing or carrying any
 17 bludgeon, sandclub, metal knuckles or throwing star, or any knife, com-
 18 monly referred to as a switch-blade, which has a blade that opens auto-
 19 matically by hand pressure applied to a button, spring or other device in
 20 the handle of the knife, or any knife having a blade that opens or falls or
 21 is ejected into position by the force of gravity or by an outward, downward
 22 or centrifugal thrust or movement;

23 (2) carrying concealed on one's person, or possessing with intent to
 24 use the same unlawfully against another, a dagger, dirk, billy, blackjack,
 25 slungshot, dangerous knife, straight-edged razor, stiletto or any other dan-
 26 gerous or deadly weapon or instrument of like character, except that an
 27 ordinary pocket knife with no blade more than four inches in length shall
 28 not be construed to be a dangerous knife, or a dangerous or deadly
 29 weapon or instrument;

30 (3) carrying on one's person or in any land, water or air vehicle, with
 31 intent to use the same unlawfully, a tear gas or smoke bomb or projector
 32 or any object containing a noxious liquid, gas or substance;

33 (4) carrying any pistol, revolver or other firearm concealed on one's
 34 person except when on the person's land or in the person's abode or fixed
 35 place of business;

36 (5) setting a spring gun;

37 (6) possessing any device or attachment of any kind designed, used
 38 or intended for use in suppressing the report of any firearm;

39 (7) selling, manufacturing, purchasing, possessing or carrying a shot-
 40 gun with a barrel less than 18 inches in length or any other firearm de-
 41 signed to discharge or capable of discharging automatically more than
 42 once by a single function of the trigger; or

43 (8) possessing, manufacturing, causing to be manufactured, selling,

1 offering for sale, lending, purchasing or giving away any cartridge which
2 can be fired by a handgun and which has a plastic-coated bullet that has
3 a core of less than 60% lead by weight.

4 (b) Subsections (a)(1), (2), (3), (4) and (7) shall not apply to or affect
5 any of the following:

6 (1) Law enforcement officers, or any person summoned by any such
7 officers to assist in making arrests or preserving the peace while actually
8 engaged in assisting such officer;

9 (2) wardens, superintendents, directors, security personnel and keep-
10 ers of prisons, penitentiaries, jails and other institutions for the detention
11 of persons accused or convicted of crime, while acting within the scope
12 of their authority;

13 (3) members of the armed services or reserve forces of the United
14 States or the Kansas national guard while in the performance of their
15 official duty; or

16 (4) manufacture of, transportation to, or sale of weapons to a person
17 authorized under subsections (b)(1), (2) and (3) to possess such weapons.

18 (c) Subsection (a)(4) shall not apply to or affect the following:

19 (1) Watchmen, while actually engaged in the performance of the du-
20 ties of their employment;

21 (2) licensed hunters or fishermen, while engaged in hunting or
22 fishing;

23 (3) private detectives licensed by the state to carry the firearm in-
24 volved, while actually engaged in the duties of their employment;

25 (4) detectives or special agents regularly employed by railroad com-
26 panies or other corporations to perform full-time security or investigative
27 service, while actually engaged in the duties of their employment;

28 (5) the state fire marshal, the state fire marshal's deputies or any
29 member of a fire department authorized to carry a firearm pursuant to
30 K.S.A. 31-157 and amendments thereto, while engaged in an investigation
31 in which such fire marshal, deputy or member is authorized to carry a
32 firearm pursuant to K.S.A. 31-157 and amendments thereto; or

33 (6) special deputy sheriffs described in K.S.A. 2003 Supp. 19-827,
34 and amendments thereto, who have satisfactorily completed the basic
35 course of instruction required for permanent appointment as a part-time
36 law enforcement officer under K.S.A. 74-5607a and amendments
37 thereto; or

38 (7) any person holding a class A law enforcement license issued by
39 the state of Missouri department of public safety, or who has completed
40 not less than 600 hours of instruction in a police academy certified by the
41 Missouri department of public safety, and has completed the course of
42 instruction in criminal investigation conducted by the Kansas City area
43 metropolitan major case unit (metro squad).

1 (d) Subsections (a)(1), (6) and (7) shall not apply to any person who
2 sells, purchases, possesses or carries a firearm, device or attachment
3 which has been rendered unserviceable by steel weld in the chamber and
4 marriage weld of the barrel to the receiver and which has been registered
5 in the national firearms registration and transfer record in compliance
6 with 26 U.S.C. 5841 *et seq.* in the name of such person and, if such person
7 transfers such firearm, device or attachment to another person, has been
8 so registered in the transferee's name by the transferor.

9 (e) Subsection (a)(8) shall not apply to a governmental laboratory or
10 solid plastic bullet.

11 (f) Subsection (a)(6) shall not apply to a law enforcement officer who
12 is:

13 (1) Assigned by the head of such officer's law enforcement agency to
14 a tactical unit which receives specialized, regular training;

15 (2) designated by the head of such officer's law enforcement agency
16 to possess devices described in subsection (a)(6); and

17 (3) in possession of commercially manufactured devices which are:
18 (A) Owned by the law enforcement agency; (B) in such officer's posses-
19 sion only during specific operations; and (C) approved by the bureau of
20 alcohol, tobacco and firearms of the United States department of justice.

21 (g) It shall be a defense that the defendant is within an exemption.

22 (h) Violation of subsections (a)(1) through (a)(5) is a class A nonper-
23 son misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8) is a se-
24 verity level 9, nonperson felony.

25 (i) As used in this section, "throwing star" means any instrument,
26 without handles, consisting of a metal plate having three or more radiating
27 points with one or more sharp edges and designed in the shape of a
28 polygon, trefoil, cross, star, diamond or other geometric shape, manufac-
29 tured for use as a weapon for throwing.

30 Sec. 5. K.S.A. 22-2404 is hereby amended to read as follows: 22-
31 2404. (1) As used in this section:

32 (a) "State" means any state of the United States and the District of
33 Columbia.

34 (b) "Law enforcement officer" means any member of any duly or-
35 ganized state, county or municipal law enforcement organization of an-
36 other state.

37 (c) "Fresh pursuit" means the pursuit without unnecessary delay of
38 a person who has committed a crime, or who is reasonably suspected of
39 having committed a crime.

40 (2) Any law enforcement officer of another state who enters this state
41 in fresh pursuit and continues within this state in fresh pursuit of a person
42 in order to arrest him on the ground that he has committed a crime in
43 the other state has the same authority to arrest and hold such person in

1 custody as law enforcement officers of this state have to arrest and hold
2 a person in custody.

3 (3) If an arrest is made in this state by a law enforcement officer of
4 another state in accordance with the provisions of this section he shall
5 without unnecessary delay take the person arrested before a magistrate
6 of the county in which the arrest is made. Such magistrate shall conduct
7 a hearing for the purpose of determining the lawfulness of the arrest. If
8 the magistrate determines that the arrest was lawful, he shall commit the
9 person arrested to await for a reasonable time the issuance of an extra-
10 dition warrant by the governor of this state, or the waiver thereof, or shall
11 permit such person to go at large upon giving an appearance bond, with
12 or without surety. If the magistrate determines that the arrest was unlaw-
13 ful, he shall order the discharge of the person arrested.

14 (4) *Any law enforcement officer of another state assigned to a regional
15 or metropolitan major case unit engaged in an investigation of a felony
16 committed in this state may, under exigent circumstances, make a felony
17 arrest. Such officer of another state shall be entitled in the same attach-
18 ment of immunities for their official acts as law enforcement officers of
19 this state.*

20 Sec. 6. K.S.A. 74-5608a is hereby amended to read as follows: 74-
21 5608a. (a) The director may, in the exercise of discretion, award a certifi-
22 cate attesting to the satisfactory completion of a basic course of instruc-
23 tion to any person who has been duly certified under the laws of another
24 state or territory if, in the opinion of the director, the requirements for
25 certification in such other jurisdiction equal or exceed the qualifications
26 required to complete satisfactorily the basic course of instruction at the
27 training center.

28 (b) The director may waive any number of the hours or courses re-
29 quired to complete the basic course of instruction at the training center,
30 80 hour part-time school, reciprocity school or for the hours required for
31 annual continuing education for any person who, in the opinion of the
32 director, has received sufficient training or experience that such hours of
33 instruction at the training center would be, unless waived, unduly bur-
34 densome or duplicitous.

35 (c) *Any person issued a class A law enforcement license by the state
36 of Missouri department of public safety, or who has completed not less
37 than 600 hours of instruction at a police academy certified by the Missouri
38 department of public safety, and who has completed a course of instruc-
39 tion in criminal investigation conducted by the Kansas City area metro-
40 politan major case unit (metro squad), may apply to the Kansas law en-
41 forcement training center for a reciprocal certification as a part-time law
42 enforcement officer. The director of the Kansas law enforcement training
43 center shall certify such applicant as a part-time officer upon the appli-*

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~~cant's successful completion of a written examination, not to exceed 50 questions in length, on the Kansas criminal code and the Kansas code of criminal procedure. Such examination shall directly correspond to the same examination material required by a police academy certified by the Kansas law enforcement training center. The examination may be taken at any certified Kansas police academy. Such police academy may assess reasonable fees to recover the costs of examination preparation, administration and processing. The police academy shall promptly furnish the name of an applicant successfully completing this examination, pursuant to that academy's existing academic standards, to the director of the Kansas law enforcement training center, who shall enter the applicant's name as a part-time officer in the central registry. Annual training requirements for such registrants shall be waived, provided that the registrant maintains an active law enforcement license with the Missouri department of public safety and satisfies the continuing training requirements established by that department.~~

~~Sec. 7. K.S.A. 22-2404 and 74-5608a and K.S.A. 2003 Supp. 19-805a, 19-805b, 19-828 and 21-4201 are hereby repealed.~~

~~Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.~~

Sec. 2. K.S.A. 2003 Supp. 22-3707 is hereby amended to read as follows: 22-3707. (a) Except as otherwise provided by this section, the Kansas parole board shall consist of three members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person shall exercise any power, duty or function as a member of the board until confirmed by the senate. No successor shall be appointed as provided in this section for the office of one of the members of the Kansas parole board whose term expires on January 15, 2003. No appointment to the board shall be made that would result in more than two members of the board being members of the same political party. At least one member of the Kansas parole board shall be a member of a racial minority group. The term of office of the members of the board shall be four years and until their successors are appointed and confirmed. If a vacancy occurs in the membership of the board before the expiration of the term of office, a successor shall be appointed for the remainder of the unexpired term in the same manner that original appointments are made. Each member of the board shall devote the member's full time to the duties of membership on the board.

(b) The governor may not remove any member of the Kansas parole board except for disability, inefficiency, neglect of duty or malfeasance in office. Before removal, the governor shall give the member a written copy of the charges against the member and shall fix the time when the member can be heard at a public hearing, which shall not be less than 10 days thereafter. Upon removal, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the findings thereupon, with a complete record of the proceedings.

Senate Judiciary

3-12-04
Attachment 2

SENATE BILL No. 528

By Committee on Ways and Means

2-17

Proposed amendment #2

Senator Haley

March 8, 2004

2.2

9 AN ACT concerning the Kansas parole board amending K.S.A. 2003
10 Supp. 22-3709 and repealing the existing ~~Section~~ 22-3707 and
11 sections

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

13 Section 1. K.S.A. 2003 Supp. 22-3709 is hereby amended to read as
14 follows: 22-3709. The chairperson and vice-chairperson of the Kansas
15 parole board shall be designated by the governor. The chairperson of the
16 board shall have the authority to organize and administer the activities of
17 the board. The chairperson of the board may designate panels, consisting
18 of two members of the board, which shall have the full authority and
19 power of the board to order the denial, grant or revocation of an inmate's
20 parole or conditional release, or for crimes committed on or after July 1,
21 1993, grant parole for off-grid crimes or revocation of post-release super-
22 vision or to order the revocation of an inmate's conditional release, upon
23 hearing by one or more members of the panel, *and by a majority vote of*
24 *the board.*

Sec. 2. K.S.A. 2003 Supp. 22-3707 is hereby amended to read as follows:
[see attached]
Renumber remaining sections accordingly.

25 Sec. 2. K.S.A. 2003 Supp. 22-3709 ~~is~~ hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
27 publication in the statute book.
are
22-3707 and

Sec. 2. K.S.A. 2003 Supp. 22-3707 is hereby amended to read as follows: 22-3707. (a) ~~Except as otherwise provided by this section~~ On and after July 1, 2005, the Kansas parole board shall consist of ~~three~~ four members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person shall exercise any power, duty or function as a member of the board until confirmed by the senate. ~~No successor shall be appointed as provided in this section for the office of one of the members of the Kansas parole board whose term expires on January 15, 2003.~~ No appointment to the board shall be made that would result in more than two members of the board being members of the same political party. The term of office of the members of the board shall be four years and until their successors are appointed and confirmed. If a vacancy occurs in the membership of the board before the expiration of the term of office, a successor shall be appointed for the remainder of the unexpired term in the same manner that original appointments are made. Each member of the board shall devote the member's full time to the duties of membership on the board.

(b) The governor may not remove any member of the Kansas parole board except for disability, inefficiency, neglect of duty or malfeasance in office. Before removal, the governor shall give the member a written copy of the charges against the member and shall fix the time when the member can be heard at a public hearing, which shall not be less than 10 days thereafter. Upon removal, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the findings thereupon, with a complete record of the proceedings.

Senate Judiciary

3-2-04

Attachment 3

SENATE BILL No. 528

By Committee on Ways and Means

2-17

Proposed amendment #1

Senator Haley

March 8, 2004

3-2

9 AN ACT concerning the Kansas parole board, amending K.S.A. 2003
10 Supp. 22-3709 and repealing the existing ~~section~~

22-3707 and
sections

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

12 Section 1. K.S.A. 2003 Supp. 22-3709 is hereby amended to read as

(a)

13 follows: 22-3709. ~~The chairperson and vice-chairperson of the Kansas~~
14 ~~parole board shall be designated by the governor. The chairperson of the~~
15 ~~board shall have the authority to organize and administer the activities of~~
16 ~~the board. The chairperson of the board may designate panels, consisting~~
17 ~~of ~~any~~ members of the board, which shall have the full authority and~~
18 ~~power of the board to order the denial, grant or revocation of an inmate's~~
19 ~~parole or conditional release, or for crimes committed on or after July 1,~~
20 ~~1993, grant parole for off-grid crimes or revocation of postrelease super-~~
21 ~~vision or to order the revocation of an inmate's conditional release, upon~~
22 ~~hearing by one or more members of the panel ~~and by a majority vote of~~~~
23 ~~the board.~~

three

(b) Any decision of the Kansas parole board granting original parole to an inmate sentenced for a class A or class B felony or for off-grid crimes committed on or after July 1, 1993, shall be by unanimous vote of all members of the three-member panel acting on such parole except that, if two members of such panel vote to parole the inmate, the full membership of the board shall review the decision of the panel and may parole such inmate upon the vote of three members of the board.

24 Sec. 2. K.S.A. 2003 Supp. 22-3709 ~~is~~ hereby repealed.

Sec. 2. K.S.A. 2003 Supp. 22-3707 is hereby amended to read as follows:
[see attached]

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.
27

Renumber remaining sections accordingly.

are
22-3707 and



Vratil 572-1
Reed

Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

January 27, 2004

RE: **HB 2057**

Chairman Vratil and Members of the Judiciary Committee:

At yesterday's hearing, I was requested to research whether courts had, in fact, interpreted the Kansas Identity Theft Statute, K.S.A. 21-4018 as to hold it inapplicable to those situations where a person does not obtain direct economic benefit. Fortunately, my legal assistant found a case directly on point, *City of Liberal vs. Vargas*, which is attached. In that case, Mr. Vargas did fraudulently obtain employment, which he would not otherwise have been able to do as an illegal alien. As the Court concluded:

The statute requires an "intent to defraud". Vargas admitted that he intended to use a false identity only to work at National Beef. There is no evidence in the record on appeal that Vargas intended to defraud National Beef by stealing money or by being compensated for services not actually rendered. In addition, we fail to see how Vargas received the economic benefits mentioned in K.S.A. 2000 Supp. 21-4018.

While the motive in the *Vargas* case was merely to obtain employment, the events in the months that followed that decision, specifically on September 11, 2001, reminded us that there are persons who may assume identities with a more nefarious intent.

The second issue raised was dealt with the specific language of HB 2057, in particular, the retention of the term "economic benefit" in the sentencing structure.

After conferring with Representative Long-Mast, and the definition of intent to defraud contained in K.S.A. 21-3110(9), we are in agreement that some additional amendments need to be incorporated. A balloon is attached with those proposed amendments. In short, it would strike all the language that references "specific intent to defraud for economic benefit". In some ways that is redundant as the definition in K.S.A. 21-3110(9) states:

Senate Judiciary

3-12-04
Attachment 4

Intent to defraud means an intent to deceive another person and to induce such other person in reliance upon such deception to assume, create, transfer, alter or terminate a right, obligation or power with *reference to property*.
Emphasis added.

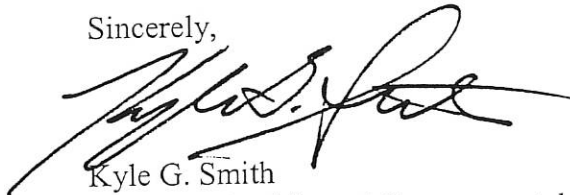
We would suggest striking that language and replacing it with simply "*and unlawfully*". In short, the new offense would be "...knowingly and unlawfully obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor".

Further, we would suggest striking the language that creates a distinction between identity theft committed for economic benefit and non-economic benefit. As Representative Long-Mast pointed out in hearing, the concern of the Floor in the House that resulted in this distinction dealt with under-age persons trying to obtain unlawfully obtained alcohol, cigarettes, etc. by using someone else's identification. As is pointed out by Senator Pugh, such activities are currently covered by other criminal statutes and so we would suggest simply stating that this section does not apply to cases involving attempts to buy alcohol, tobacco, cigarettes, or to view adult materials.

The language in the balloon was "borrowed" from HB 2586, which came out yesterday, but seems to fit our issues as well.

Please advise if you need additional information or have questions.

Sincerely,



Kyle G. Smith
Director of Public and Governmental Affairs

HOUSE BILL No. 2057

By Representative P. Long

1-24

AN ACT concerning crimes and punishment; relating to identity theft; amending K.S.A. 2002 Supp. 21-4018 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 21-4018 is hereby amended to read as follows: 21-4018. (a) Identity theft is knowingly and with intent to defraud ~~for economic any benefit~~ and unlawfully obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor.

(b) "Identification documents" means the definition as provided in K.S.A. 21-3830, and amendments thereto.

(c) Identity theft ~~for economic benefit~~ is a severity level 7, person felony. ~~Identity theft for non economic benefit is a class A, nonperson misdemeanor.~~

(e) ~~(d)~~ This section shall be part of and supplemental to the Kansas criminal code.

Sec. 2. K.S.A. 2002 Supp. 21-4018 is hereby repealed.

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

- (d) The conduct prohibited in subsection (a) does not apply to:
 - (1) A person less than 21 years of age who uses the identification documents of another person to acquire an alcoholic beverage, as defined in K.S.A. 8-1599, and amendments thereto;
 - (2) a person less than 18 years of age who uses the identification documents of another person to acquire:
 - (A) Cigarettes or tobacco products as defined in K.S.A. 79-3301, and amendments thereto;
 - (B) a periodical, a videotape, or other communication medium that contains or depicts nudity;
 - (C) admittance to a performance, live or film, that prohibits the attendance of the person based on age; or
 - (D) an item that is prohibited by law for use or consumption by such person.

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Court of Appeals of Kansas.

CITY OF LIBERAL, Kansas, Appellant,
v.
Juan VARGAS, Appellee.

No. 85,583.

April 13, 2001.
Review Denied June 12, 2001.

Defendant was acquitted in District Court, Seward County, Kim R. Schroeder, J., of **identity theft**. City appealed. The Court of Appeals, Marquardt, J., held that defendant did not commit **identity theft** when he obtained false identification card and social security card in order to obtain work.

Affirmed.

West Headnotes

[1] **Criminal Law** ⤵ 1026.10(2.1)
110k1026.10(2.1) Most Cited Cases

[1] **Criminal Law** ⤵ 1179
110k1179 Most Cited Cases

Appellate court had jurisdiction over city's appeal from acquittal of defendant charged with identity theft, where defendant pleaded guilty in the municipal court, then appealed merits of case to district court; prohibition against appeals did not apply to pleas accepted by judge of municipal court. K.S.A. 22-3602(a).

[2] **Statutes** ⤵ 212.6
361k212.6 Most Cited Cases

The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted.

[3] **False Personation** ⤵ 2
169k2 Most Cited Cases

Defendant did not commit **identity theft** when he obtained false identification card and social security card in order to obtain work; statute specifically required that defendant obtain identification

documents of another person as element of offense, but there was no real person whose **identity** was stolen by defendant. K.S.A. 21-4018(a).

[4] **False Personation** ⤵ 2
169k2 Most Cited Cases

Defendant did not have intent to defraud required to be found guilty of **identity theft**, where defendant used false **identity** of non-existent person only to find work and defendant's only economic benefit was the pay he received for time he worked. K.S.A. 21-4018(a), 21-3110(9).

**155 *867 Syllabus by the Court

1. K.S.A.2000 Supp. 21-4018(a) is interpreted and applied.

2. K.S.A. 21-3110(9) is interpreted and applied.

Kevin D. Weakley, of Sharp, McQueen, McKinley, Dreiling & Tate, P.A., of Liberal, for appellant.

Peter G. Olson, of Brooks, Allen & Olson, of Liberal, for appellee.

Before PIERRON, P.J., MARQUARDT, J., and BUCHELE, Special Judge.

MARQUARDT, J.:

The City of Liberal (City) appeals the district court's ruling that Juan Vargas did not **156 commit the crime of identity theft. We affirm.

In February 2000, Officer Rogers was on duty and noticed a car being driven without a tag light. Officer Rogers stopped the vehicle and asked the driver for his driver's license and proof of insurance. The driver produced Missouri and National Beef Packing Company (National Beef) identification cards bearing the name of Guillermo Hernandez. Officer Rogers ran the name through a regional system. The system produced five identical matches in other states.

The driver admitted that his name was Juan Vargas. He later confessed that he was not authorized to work in the United States and that he had bought papers identifying himself as Guillermo Hernandez so that he could obtain employment at National

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Beef. Vargas pled guilty in municipal court to one count of identity theft, one count of no seat belt, one count of no tag light, and one count of no driver's license. Vargas appealed the municipal court's decision to the district court.

The district court convicted Vargas of one count of no tag light, one count of no seat belt, and one count of no driver's license. Vargas was acquitted on the count of **identity theft**. The district *868 court held that the City failed to meet its burden to show fraud in the use of the false **identity** card. The City appeals.

[1] We note at the outset a jurisdictional peculiarity. Vargas pled guilty in the municipal court, yet he appealed the merits of his case to the district court. However, the prohibition against appeals provided for in K.S.A. 22-3602(a) does not apply to pleas accepted by a judge of a Kansas municipal court. See *City of Dodge City v. Frey*, 26 Kan.App.2d 559, 560, 990 P.2d 1240 (1999). Therefore, this court does have jurisdiction to consider this issue.

The City asks this court to determine whether Vargas' use of a false identification to secure employment and receive the economic benefit of a salary is tantamount to defrauding another person.

Interpretation of a statute is a question of law, and this court's review is unlimited. See *State v. Patterson*, 25 Kan.App.2d 245, 247, 963 P.2d 436, rev. denied 265 Kan. 888 (1998).

"Identity theft is knowingly and with intent to defraud for economic benefit, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor." K.S.A.2000 Supp. 21-4018(a).

" 'Intent to defraud' means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property." K.S.A. 21-3110(9).

[2] It is a fundamental rule of statutory construction that the intent of the legislature governs if that intent can be ascertained. The legislature is presumed to have expressed its intent through the language of

the statutory scheme it enacted. *In re Marriage of Killman*, 264 Kan. 33, 42, 955 P.2d 1228 (1998).

Without state or federal cases to guide our inquiry, we turn to the legislative history of K.S.A.2000 Supp. 21-4018.

The crime of **identity theft** was created by the 1998 Kansas Legislature. See L.1998, ch. 179, § 1. Representative Bonnie Sharp, a proponent of the legislation, believed it was necessary to criminalize **identity theft**. She cited the example of a person's social security number being used by another to obtain an illegal checking account and/or a credit card. Representative Sharp stated that the *869 citizens of Kansas should be protected from "this potentially devastating crime." Minutes of the House Committee on Federal and State Affairs, February 12, 1998, p. 1.

Kyle Smith, an assistant attorney general for the Kansas Bureau of Investigation, testified on behalf of the bill. Smith was concerned that the "surreptitious acquisition of information done with the intent to defraud" was not illegal at the time the bill was proposed. Smith cited the examples of a motel clerk selling a credit card number or a "trasher" obtaining a social security number, **157 which would allow an individual to access other information, leading to **theft**. Minutes of the House Committee on Federal and State Affairs, February 12, 1998, p. 1.

The committee also heard testimony from Dave Schroeder, a special agent from the Kansas Bureau of Investigation. Agent Schroeder defined **identity theft** as "[a]cquiring someone's personal identifying information in an effort to impersonate them or commit various criminal acts in that person's name." Agent Schroeder went on to state that individuals who are armed with a stolen **identity** can commit numerous forms of fraud. Agent Schroeder was specifically concerned about the **theft** of personal information such as social security numbers; birth certificates; passports; driver's licenses; dates of birth; addresses; telephone numbers; family history information; credit or bank card numbers; and personal identification numbers. Minutes of the House Committee on Federal and State Affairs, February 12, 1998, Attachment Three, p. 2.

K.S.A.2000 Supp. 21-4018 requires that a defendant obtain, possess, transfer, use, or attempt

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to obtain the identification documents or personal identification numbers of another. This would occur, for example, when a defendant "took" another person's social security number and used that number when applying for a credit card or bank account.

[3] In the case currently before the court, Vargas admitted that he bought the identification. The record on appeal reflects that Vargas obtained a Missouri identification card as well as a social security card. However, there is no evidence that Guillermo Hernandez is a real person who had his identity "stolen."

*870 It appears from the committee minutes that the legislature passed K.S.A.2000 Supp. 21-4018 in order to protect individuals who have their identity stolen. The testimony is replete with references to individuals who have been defrauded by perpetrators who misappropriate personal information such as a social security or bank account number. There was no mention of any intent by the legislature to protect a third party from identity theft.

We do not believe that the legislature intended to criminalize the act of which Vargas is now accused. Vargas lied to his employer and obtained employment through false means. There are other appropriate remedies for a situation such as this. Vargas was terminated from his employment. There may also be federal immigration laws which apply. However, we do not believe that K.S.A.2000 Supp. 21-4018 is applicable to the situation currently before the court.

[4] However, even if K.S.A.2000 Supp. 21-4018 did apply to the facts of this case, we do not believe that Vargas could be found guilty. The statute requires an "intent to defraud." Vargas admitted that he intended to use a false identity only to work at National Beef. There is no evidence in the record on appeal that Vargas intended to defraud National Beef by stealing money or by being compensated for services not actually rendered.

In addition, we fail to see how Vargas received the economic benefit mentioned in K.S.A.2000 Supp. 21-4018. Vargas was paid for the time he worked. Vargas' work product was rated as satisfactory. In fact, the record on appeal indicates that National Beef would rehire Vargas in the future.

The City's main argument is that National Beef relied upon Vargas' statement that he was Guillermo Hernandez when it hired him. Essentially, the City claims that National Beef would not have hired Vargas had it known of his status as an illegal alien. This fact is not borne out in the record on appeal. The personnel director for National Beef testified that he had a "responsibility" to refrain from hiring undocumented workers. However, there is nothing in the record on appeal which would indicate that National Beef was in any way defrauded by Vargas' actions.

*871 Vargas did not steal Guillermo Hernandez's identity in order to commit a theft. He bought identification under a false name so that he could work in this state. There is no evidence that Vargas intentionally defrauded anyone in order to receive a monetary benefit. In addition, Vargas was appropriately paid for services rendered. The district **158 court correctly interpreted K.S.A.2000 Supp. 21-4018 when it reversed Vargas' conviction of identity theft.

Affirmed.

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END OF DOCUMENT

From: "Cowles, John, DAT" <John.Cowles@jocoks.com>
To: "longp@house.state.ks.us" <longp@house.state.ks.us>
Date: Fri, Jan 31, 2003 11:32 AM
Subject: Identity Theft

Rep. Long,

I recently saw your proposed amendment to the identity theft statute, **HB 2057**.

I am a prosecutor in Johnson County, and much of my case load is Identity Theft.

Your proposed legislation is a great idea, but I wanted to offer my thoughts to you.

Frequently, I get complaints that non-economic benefit Identity Theft is being perpetrated. This will take the form of the perpetrator using victim's information to make airline reservations, hotel reservations, magazine subscriptions, and so forth. It's a headache for the victim, but the perpetrator receives no economic benefit for him or her self. What concerns me about your bill is the wording "with intent to defraud for any benefit..." In the above scenarios, there is no benefit at all to the perpetrator, unless you would consider his sense of satisfaction in making the victim's life miserable, which would still not be with intent to "defraud."

Could the wording for the misdemeanor ID theft be something to the effect of "with intent to harrass or affect the credit worthiness of the victim"

Just a thought. Thank you for your interest in this important issue.

John E. Cowles,
Assistant District Attorney

Senate Judiciary

3-12-04
Attachment 5