

Approved: 10-09-05 Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 P.M. on February 15, 2005 in Room 241-N of the Capitol.

All members were present except:  
Kevin Yoder- excused

Committee staff present:  
Jill Wolters, Revisor of Statutes Office  
Diana Lee, Revisor of Statutes Office  
Jerry Ann Donaldson, Kansas Legislative Research  
Connie Burns, Committee Secretary

Conferees appearing before the committee:  
Kyle Smith, KBI  
Lt. John Eichkorn, KS Highway Patrol  
Toby Taylor, KS Ignition Interlock Association  
Marcy Ralston, Driver Control Bureau  
John P. Wheeler, Jr., Finney County Attorney  
Mark Gleeson, OJA  
Tim Madden, KDOC  
Sheriff Vernon Chinn, Pratt County  
Kevin Graham, Office of the Attorney General  
Dr. Lorne Phillips, Center for Health and Environmental Statistics

Others attending:  
See attached list.

**HB 2304 – Criminal act to ingest or inject certain controlled substances**

Chairman Loyd opened the hearing on **HB 2304**.

Representative Kathe Decker appeared before the committee in support of the bill. (Attachment 1) The 2004 Special Judiciary committee held hearings over the summer and the suggestion was to take current law and amend the statute to give a broader definition of possession.

Kyle Smith, KBI, appeared in support of the bill. (Attachment 2) It is self-evident that if it is illegal to possess a controlled substance that it should also be illegal to use a controlled substance. The committee was also made aware that the equipment used by the KBI cannot detect those level, and until replaced will not be able to properly analyze those cases because of the levels showing ingestion are so small.

Lt. John Eichkorn, Kansas Highway Patrol, testified in support of the bill. (Attachment 3) The bill proposes to make a change to KSA 65-4160 by adding ingest or inject to the list of unlawful acts. The following amendment was offered:

(e) any test of blood or urine, requested by a law enforcement officer pursuant to the provisions of KSA 8-1001 and amendments thereto, shall further be admissible at a trial arising from a violations of this section.

Chairman Loyd closed the hearing on **HB 2304**.

**HB 2313 – Driving under the influence and use of interlock devices.**

Chairman Loyd opened the hearing on **HB 2313**.

Toby Taylor, Kansas Ignition Interlock Association spoke in favor of the bill. ([Attachment 4](#)) The bill increases compliance with the requirement to limit operation to vehicles equipped with an ignition interlock device for certain DUI offenders.

Marcy Ralston, Drivers Control Bureau, Division of Motor Vehicles, appeared neutral on the bill. ([Attachment 5](#)) The proposed amendment to KSA 8-1015(b) does not adversely impact procedural administrations, but suggested rewording the amendment to read: “upon receipt by the division of proof of installation of the device”, instead of the existing language which give the appearance that the installation is to be done by the division.

Chairman Loyd closed the hearing on **HB 2313**.

**HB 2386 – Unlawful sexual relations includes court services officers and community correctional officers**

Chairman Loyd opened the hearing on **HB 2386**.

John P. Wheeler, Jr., Finney County Attorney, appeared in support of the bill. ([Attachment 6](#)) The bill is to correct what is thought to be an oversight in KSA 21-3520, Unlawful Sexual Relations by adding Section 1 (9) and (10) to include court service officers and community corrections officers.

Mark Gleeson, Office of Judicial Administration, supports the bill. ([Attachment 7](#)) The bill conveys to those responsible for creating and maintaining a high degree of integrity and confidence among those who supervise offenders.

Tim Madden, Chief Legal Counsel, KDOC, spoke in favor of the bill. ([Attachment 8](#)) The department supports this bill and would offer a balloon to include contract employees providing direct supervision and control over an offender on behalf of court services or community corrections.

Chairman Loyd closed the hearing on **HB 2386**.

**HB 2180 – Inherently dangerous felonies**

Chairman Loyd opened the hearing on **HB 2180**.

Sheriff Vernon Chinn, Pratt County, appeared as a proponent on the bill. ([Attachment 9](#)) The bill addresses criminals who are committing felonies, fleeing the scene of a crime or trying to avoid capture of a warrant, without any thought of the officer’s life that is pursuing or the life of anyone else.

Kevin Graham, Office of the Attorney General, offered testimony in support of the bill. ([Attachment 10](#)) Amends the crime of Involuntary Manslaughter and adds acts of “fleeing or attempting to elude a police officer” to the list of acts which may support the charge of Involuntary Manslaughter if a death occurs.

Kyle Smith, Kansas Peace Officers Association, appeared as a proponent of the bill. ([Attachment 11](#)) The bill recognizes one of the most dangerous situations to both citizens and officers, that is persons attempting to flee and elude apprehension.

Mike Jennings, submitted written testimony in support of the bill. ([Attachment 12](#))

The bed impact is three to twenty-three additional prison beds in 2006 and nine to thirty-five additional prison beds in 2015.

Chairman Loyd closed the hearing on **HB 2380**.

**HB 2179 – Penalties relating to vital records**

Chairman Loyd opened the hearing on **HB 2179**.

Dr. Lorne Phillips, Center for Health and Environmental Statistics, appeared as a proponent of the bill.

(Attachment 13) A balloon was presented to the committee that would amend the language of the bill into **HB 2087**. (Attachment 14) The current statute KSA 65-2434 addresses only the willful making or alteration of certificates and attaches a penalty of a class B misdemeanor, these measures are not sufficient to deter vital record fraud.

Chairman Loyd closed the hearing on **HB 2179**.

The meeting was adjourned at 2:55 pm. The next meeting is February 16, 2005.

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

DATE 2-15-05

NAME	REPRESENTING
Kyle Smith	KBI / KPOA
P Biggs	KSC
B Harmon	RSC
Donna Calabrese	KDHE
Leanne A. Phillips	KDHE
VERNON CHINN	ROBERTS CO. SHERIFF
Jeff Bottoming	KS State House Asst
Marie Landry	KSDV
Wade H. Zoules, Jr.	SJA
Mark Gleeson	Judicial Branch
Emily Mueller	intern for Rep. Huntington
Tim Madden	KDOC
Jana Butler	KSC
Bryan Behgam	intern Rep. Davis
Richard A. Somerville	Kumey & Assoc.



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TOPEKA  
 HOUSE OF  
 REPRESENTATIVES

REPRESENTATIVE, SIXTY-FOURTH DISTRICT  
 CLAY, DICKINSON, GEARY,  
 AND RILEY COUNTIES

STATE CAPITOL  
 ROOM 303-N  
 TOPEKA 66614-1504  
 (785) 296-7637

COMMITTEE ASSIGNMENTS  
 CHAIR: EDUCATION  
 MEMBER: EDUCATION BUDGET

HB2304  
 2-15-06

Thank you Chairman Loyd for hearing HB2304 today. Last year this committee and the full house passed a bill dealing with internal possession of drugs. The Senate did not have time to hear the bill during session and asked for the Joint Judiciary committee to hold hearings this summer.

In the process of those hearings it was suggested to myself and the other proponents to not limit cases where internal injecting or ingesting would be considered being in possession of an illegal narcotic. The suggestion from the Joint committee was to take current law and amend the statute to give a broader definition of possession.

There will be an impact on lab cost and man power needed at the KBI as well as bed space in our correction facilities. I believe those cost are well worth the effort in the war against drugs.

Two years ago in Clay Center a young man became high on a narcotic, stripped off his clothing and ran through the neighborhood until he decided he was at his fathers home and tried to get into the property. It was not his dads but he did not care nor could the people of the residence make him understand his mistake. When authorities arrived the only course of action they had was for the owners to press trespassing charges against him or have him get his clothes and go home. He did the later. Everyone in town knew this young man was going through stress over his parents divorce but also knew he had started recently into the drug culture. If he could have been charged of possession, perhaps he could have gotten some help.

Please consider HB2304 favorable for passage from your committee. I will ask for technical questions to be directed at Klye Smith, KBI or John Eichorn, KHP.

Rep. Kathe Decker



## Kansas Bureau of Investigation

Larry Welch  
Director

Phill Kline  
Attorney General

Before the House Corrections and Juvenile Justice Committee  
In Support of HB 2304  
Kyle G. Smith, Special Agent  
Director of Public and Governmental Affairs  
Kansas Bureau of Investigation  
February 15, 2005

Chairman Loyd and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation, in support of HB 2304. It seems self-evident that if it's illegal to possess a controlled substance that it should also be illegal to use a controlled substance. And is the person driving while high on LSD less dangerous to society than the person who has it in their pocket? Is the meth user beating his wife not more of a problem than the meth user carrying it in a baggy? It would seem that society would have an real public safety interest in being able to bring users before the courts, just as much as possessors.

This strange dichotomy stems from a Kansas supreme court decision, *State v Flinchpaugh*, 232 Kan. 831, 659 P.2d 208 (1983) where the court held that if you've ingested controlled substances you no longer possess them. Ever since then, the presence of controlled substances in a persons system could not be the basis for the charge of possession.

At hearings this summer on last session's HB 2649, several procedural problems were raised concerning that bill which tried to set up a new crime and procedures for testing. It was suggested that a better approach might be to just reverse the *Flinchpaugh* decision by adding 'ingestion' to the existing crimes involving 'possession'. That is what HB 2304 does.

By making this change to existing controlled substances statutes we can take advantage of the existing procedures, safeguards and case law. I'd be surprised if there are any great number of these cases out there each year, but if it turns out that there are, the fiscal impact would be about the only concern we'd have with the bill. And I should make the committee aware that some levels showing ingestion are so small that our equipment cannot detect those levels and until replaced, we will still be unable to properly analyze those cases.

Thank you for your time and attention. I'd be happy to respond to questions.



# KANSAS

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2304  
to  
House Corrections and Juvenile Justice**

**Presented by  
Lieutenant John Eichkorn  
Kansas Highway Patrol**

**February 15, 2005**

Good afternoon, Mr. Chairman and members of the committee. My name is Lieutenant John Eichkorn, and I appear before you on behalf of Colonel William Seck and the Kansas Highway Patrol to comment on HB 2304.

HB 2304 proposes to make a change to K.S.A. 65-4160 by adding ingest or inject to the list of unlawful acts. Under current law, it is illegal for a person to "possess or have under such person's control" controlled substances, but once a drug is inside a person's body, we enter a legal gray area that 2304 attempts to address.

As a law enforcement agency, the Patrol routinely comes into contact with individuals under the influence of illegal drugs. In a driving situation, we have the ability to arrest and charge a driver found operating a motor vehicle while under the influence of drugs. Current law allows officers to conduct evidentiary test or tests to support a DUI charge. The results of these tests are often used in prosecution of DUI. Unfortunately, there is no provision in current law that makes it illegal to internally possess controlled substances found during these tests. And while HB 2304 takes steps to make it illegal to internally possess illegal drugs, the Patrol would propose the following concept be looked at as you consider the overall bill:

**(e) Any test of blood or urine, requested by a law enforcement officer pursuant to the provisions of K.S.A. 8-1001 and amendments thereto, shall further be admissible at a trial arising from a violation of this section.**

Because most of our contacts with individuals possessing illegal drugs (internally and externally) take place during roadside traffic stops, this additional language would streamline the process of making a case against a suspect.

The Patrol is committed to the war on drugs. We have an active Criminal Interdiction Program, specially trained police service dogs, certified Drug Recognition Experts, and award-winning troopers who are dedicated to removing drugs from the state's roadways. However, we know that we do not stop all contraband traveling through our state. Unfortunately, controlled substances do reach individuals who commit further crimes, sometimes violent crimes.

This bill would strengthen the state's drug laws and help the nation fight the war on drugs. Thank you for the opportunity to address you today, and on behalf of the Patrol, I urge this committee to give HB 2304, with the proposed change, a favorable report. I will be happy to stand for any questions you might have.

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# Kansas Ignition Interlock Association (KIIA)

## LEGISLATIVE TESTIMONY

TO: Chairman Ward Loyd and Members of the House Committee  
Corrections and Juvenile Justice

FROM: Toby Taylor, Kansas Ignition Interlock Association

DATE: February 15, 2005

SUBJECT: HB 2313 – Driving under the influence and use of interlock  
devices

Matt Strausz  
Smart Start

Toby Taylor  
Guardian Interlock  
Systems

Mr. Chairman and Members of the Committee, my name is Toby Taylor and I am treasurer of the Kansas Ignition Interlock Association. I am the Director of Operations for Guardian Interlock Network, one of the limited number of companies certified to distribute ignition interlock devices in Kansas. I appreciate the opportunity to appear to today in support of HB 2313.

The goal of HB 2313 is to increase compliance with the requirement to limit operation to vehicles equipped with an ignition interlock device for certain DUI offenders. In 2001, the Legislature passed SB 67, which made significant changes in the state's DUI laws. One provision of this act required the use of ignition interlocks for second, third and fourth-time offenders for one year following an initial one-year suspension.

As we have monitored the installation of our devices since this act became effective; it became apparent that compliance with this requirement was low. Prior to the session, we requested information from the Kansas Department of Revenue to determine if our observations could be verified. The following table presents the information received from the Department:

Year	Interlock Required	Interlock Installed	Percent Compliance
2002	592	65	11.0%
2003	1,547	499	32.3%
2004	1,241	364	29.3%

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The bill in front of you today makes two changes to existing law that we believe will substantially increase the level of compliance. In Section 1(b), under current law offender's licenses are restricted to driving to work, school and under other limited circumstances unless they opt for a license restricted to driving a vehicle equipped with an ignition interlock device. The change proposed would require the person to provide proof of installation of the device to the division of motor vehicles if they request that alternative sanction.

In Section 2(c), under current law, after the one-year suspension for 2<sup>nd</sup> through 4<sup>th</sup> offenses, the person's license is restricted to driving a vehicle equipped with an interlock device. The proposed change would require the person to provide proof of installation to the division of motor vehicles. During that second year of sanction, the license would remain suspended until this proof is provided.

Again, these changes are designed to increase compliance with the intent of the 2001 legislation. We would be happy to discuss alternative measures to accomplish our intent.

I thank the committee for its time and attention and would stand for any questions.





# K A N S A S

IOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE  
DIVISION OF VEHICLES

KATHLEEN SEBELIUS, GOVERNOR

TO: Chairman Ward Loyd  
Members of the House Committee Corrections and Juvenile Justice

FROM: Marcy Ralston, Manager,  
Driver Control Bureau, Division of Motor Vehicles

DATE: February 15, 2005

RE: House Bill 2313, DUI and Ignition Interlock Use

Mr. Chairman and Members of the Committee, my name is Marcy Ralston and I am the manager of the Driver Control Bureau, Division of Motor Vehicles, Department of Revenue. I am pleased to speak with you today regarding House Bill 2313.

The proposed amendment to K.S.A. 8-1015(b) does not adversely impact procedural administrations. It simply reflects the current process by the Division of Vehicles for a person who chooses to operate a motor vehicle equipped with an ignition interlock device in lieu of the standard restrictions imposed for a first violation of chemical test failure or DUI conviction. We offer a suggestion to re-word the amendment as: "upon receipt by the division of proof of installation of the device", instead of the existing language which gives the appearance that the installation is to be done by the division.

The proposed amendment to K.S.A. 8-1015(c) will create several problems in the administration of driving sanctions resulting from a DUI conviction or chemical test refusal. The amendment to provide for an indefinite suspension period would conflict with the language in K.S.A. 8-1014(b)(2), which would still require the Division to suspend for one year and then restrict for one year. Additionally, at the time of an alcohol occurrence, the person is required to be provided with notices regarding the suspension period. Amending K.S.A. 8-1015(c) without amending the notices provision in the implied consent law would create challenges to the actions taken under the implied consent law, K.S.A. 8-1001(f).

Additionally, current law K.S.A. 8-1014(h), allows a person whose privileges are restricted to driving a vehicle with an ignition interlock installed, to drive an employer's vehicle during normal business activities without an ignition interlock device. Therefore, a person who does not own a motor vehicle, can continue to drive for this reason. The proposed amendment would require the continued suspension of their driving privileges and as such, eliminate their ability to drive a vehicle for employment purposes.

Lastly, the proposed amendment appears to cause a discrepancy in the total withdrawal period based upon the time a person installs the ignition interlock device.

Thank you for your time, and I stand for questions.



(b)

**OFFICE OF THE COUNTY ATTORNEY  
FINNEY COUNTY, KANSAS**

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BRIAN R. SHERWOOD, ASSISTANT COUNTY ATTORNEY  
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To: House Committee on Corrections and Juvenile Justice

From: John P. Wheeler, Jr., Finney County Attorney

Re: House Bill 2386

Date: February 15, 2005

I thank the Chair for allowing me to supplement the record on House Bill 2386 with this written testimony. I am appearing here to day to testify as a proponent of this bill.

The purpose of House Bill 2386 is to correct what I believe was an oversight in K.S.A. 21-3520, Unlawful Sexual Relations. As originally passed in 1993, K.S.A. 21-3520 prohibited only consensual sexual relations between department of corrections employees with inmates and between state parole officers and persons under their supervision. Through various amendments over the years, K.S.A. 21-3520 now also prohibits forms of consensual sexual relations between law enforcement officers and jailers with inmates; between law enforcement officers or employees of juvenile detention and sanction house facilities with persons confined in those facilities; between juvenile justice authority employees and persons confined in JJA facilities; between juvenile justice authority employees and persons under supervision of JJA on conditional release or placed in the

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custody of JJA; between social and rehabilitation services employees with patients in SRS institutions; and between teachers or persons in authority in schools where the other party is a student at the school where the offender is employed. Persons who provide services to the agencies covered by the statute, other than contracted services for schools, are also prohibited from engaging in sexual conduct with the persons protected by the statute.

Persons conspicuously absent from the statutory prohibition are court service officers and community corrections officers. The proposed amendment by adding Section 1 (9) and (10) to include these two groups within a criminal prohibition of engaging in unlawful sexual relations with persons under their direct supervision is the specific purpose of House Bill 2386. There is no question that persons in both court services and community corrections exercise a great deal of power and authority over the persons under their supervision. They hold positions of authority that can cause a person to go to prison should they not accede to their sexual demands. I am asking you to correct this glaring omission in the statute by passing House Bill 2386 from Committee with a favorable recommendation for passage by the House of Representatives.

I appreciate the opportunity to appear before the committee and for your time and attention in listening to my views.

John P. Wheeler, Jr.  
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State of Kansas

**Office of Judicial Administration**

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

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Testimony in Support of House Bill 2386

Office of Judicial Administration  
Presented by Mark Gleeson  
Family and Children Program Coordinator

February 15, 2005

House Bill 2386 makes it unlawful for Court Services Officers to engage in consensual sex with offenders under their direct supervision. We support this bill and the message it conveys to those responsible for creating and maintaining a high degree of integrity and confidence among those who supervise offenders.

Thank you for the opportunity to testify this afternoon. Feel free to contact me at (785) 291-3224 if you have questions.

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2-15-05  
Attachment 7



# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2386  
to  
The House Committee on Corrections and Juvenile Justice

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

February 15, 2005

House Bill 2386 amends K.S.A. 21-3520 by expanding the definition of unlawful sexual relations to include those acts committed by court services and community corrections officers. The Department of Corrections supports passage of this legislation, however, the department recommends that HB 2386 be amended to also include contract employees providing direct supervision and control over an offender on behalf of court services or community corrections. A balloon amendment incorporating that recommendation is attached.

K.S.A. 21-3520 establishes the public policy of prohibiting sexual relations between public officials and persons subject to their unique control even if the sexual relationship is consensual. Currently, K.S.A. 21-3520 prohibits sexual relations by school teachers, employees of the Department of Corrections, Juvenile Justice Authority, jail and detention facilities, facilities of the Department of Social and Rehabilitation Services, and certain employees of contractors of those agencies. HB 2386 extends that prohibition to court services and community corrections officers.

The professional responsibility and authority of court services and community corrections officers relative to offenders under their supervision is identical to that of parole officers employed by the Department of Corrections. Due to the responsibilities and authority of court services and community correction officers, those law enforcement officers should fall under the provisions of K.S.A. 21-3520 as provided by HB 2386. The public interest served by prohibiting consensual sexual relations by law enforcement officers with persons under their supervision is recognized nationally. The Center for Innovative Public Policies, Inc. reported that as of 2004, 25 states have enacted legislation prohibiting staff sexual misconduct with offenders in a community corrections setting. (Source: *Preventing and Addressing Staff Sexual Misconduct in Community Corrections: A Training Program for Agency Administrators*, March 2004).

Due to the use of contract services by court services and community corrections agencies for surveillance, home and employment visits, and other supervision services, the Department recommends that the employees of contractors who provide direct supervision and control over an offender should likewise be prohibited from engaging in consensual sexual relations with that offender. This recommendation is consistent with the provisions of K.S.A. 21-3520 currently applicable to the employees of contractors providing services on behalf of jails, the Department, SRS and the Juvenile Justice Authority.

The Department urges favorable consideration of HB 2386 with the proposed amendment.

W/attachment

## HOUSE BILL No. 2386

By Committee on Corrections and Juvenile Justice

2-9

9 AN ACT concerning crimes and punishment; relating to unlawful sexual  
10 relations; amending K.S.A. 2004 Supp. 21-3520 and repealing the ex-  
11 isting section.

12

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

14 Section 1. K.S.A. 2004 Supp. 21-3520 is hereby amended to read as  
15 follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual  
16 sexual intercourse, lewd fondling or touching, or sodomy with a person  
17 who is not married to the offender if:

18 (1) The offender is an employee of the department of corrections or  
19 ~~the employee of a contractor~~ who is under contract to provide services  
20 for a correctional institution and the person with whom the offender is  
21 engaging in consensual sexual intercourse, lewd fondling or touching, or  
22 sodomy is a person 16 years of age or older who is an inmate; or

23 (2) the offender is a parole officer or ~~the employee of a contractor~~  
24 ~~who is under contract to provide supervision services for persons on pa-~~  
25 ~~role, conditional release or postrelease supervision, and the person with~~  
26 ~~whom the offender is engaging in consensual sexual intercourse, lewd~~  
27 ~~fondling or touching, or sodomy is a person 16 years of age or older who~~  
28 ~~is an inmate who has been released on parole or conditional release or~~  
29 ~~postrelease supervision under the direct supervision and control of the~~  
30 ~~offender; or~~

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

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

43 (5) the offender is an employee of the juvenile justice authority or



1 the employee of a contractor who is under contract to provide services in  
2 a juvenile correctional facility and the person with whom the offender is  
3 engaging in consensual sexual intercourse, lewd fondling or touching, or  
4 sodomy is a person 16 years of age or older who is confined by lawful  
5 custody to such facility; or

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

15 (7) the offender is an employee of the department of social and re-  
16 habilitation services or the employee of a contractor who is under contract  
17 to provide services in a social and rehabilitation services institution and  
18 the person with whom the offender is engaging in consensual sexual in-  
19 tercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502,  
20 and amendments thereto, lewd fondling or touching, or sodomy, not oth-  
21 erwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments  
22 thereto, is a person 16 years of age or older who is a patient in such  
23 institution; or

24 (8) the offender is a teacher or a person in a position of authority and  
25 the person with whom the offender is engaging in consensual sexual in-  
26 tercourse, lewd fondling or touching or sodomy is 16 or 17 years of age  
27 and a student enrolled at the school where the offender is employed. If  
28 the offender is the parent of the student, the provisions of K.S.A. 21-  
29 3603, and amendments thereto, shall apply, not this subsection-;

30 (9) ~~the offender is a court services officer and the person with whom~~  
31 ~~the offender is engaging in consensual sexual intercourse, lewd fondling~~  
32 ~~or touching, or sodomy is a person 16 years of age or older who has been~~  
33 ~~placed on probation under the direct supervision and control of the of-~~  
34 ~~fender; or~~

35 (10) ~~the offender is a community correctional services officer and the~~  
36 ~~person with whom the offender is engaging in consensual sexual inter-~~  
37 ~~course, lewd fondling or touching, or sodomy is a person 16 years of age~~  
38 ~~or older who has been assigned to a community correctional services pro-~~  
39 ~~gram under the direct supervision and control of the offender.~~

40 (b) For purposes of this act:

41 (1) "Correctional institution" means the same as prescribed by K.S.A.  
42 75-5202, and amendments thereto;

43 (2) "inmate" means the same as prescribed by K.S.A. 75-5202, and

or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision

or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision

- 1 amendments thereto;
- 2 (3) "parole officer" means the same as prescribed by K.S.A. 75-5202,
- 3 and amendments thereto;
- 4 (4) "postrelease supervision" means the same as prescribed in the
- 5 Kansas sentencing guidelines act in K.S.A. 21-4703, and amendments
- 6 thereto;
- 7 (5) "juvenile detention facility" means the same as prescribed by
- 8 K.S.A. 38-1602, and amendments thereto;
- 9 (6) "juvenile correctional facility" means the same as prescribed by
- 10 K.S.A. 38-1602, and amendments thereto;
- 11 (7) "sanctions house" means the same as prescribed by K.S.A. 38-
- 12 1602, and amendments thereto;
- 13 (8) "institution" means the same as prescribed by K.S.A. 76-12a01,
- 14 and amendments thereto; and
- 15 (9) "teacher" means and includes teachers, supervisors, principals,
- 16 superintendents and any other professional employee in any public or
- 17 private school.
- 18 (c) Unlawful sexual relations is a severity level 10, person felony.
- 19 Sec. 2. K.S.A. 2004 Supp. 21-3520 is hereby repealed.
- 20 Sec. 3. This act shall take effect and be in force from and after its
- 21 publication in the statute book.

Testimony on House Bill 2180, by Pratt County Sheriff Vernon Chinn  
Feb. 15, 2005  
House Corrections and Juvenile Justice Committee, Chairman Ward Loyd

I come before you today to ask for your support of this bill. This is a major concern to me as a sheriff, and yet probably only those who have suffered at the hands of ones who run from law enforcement, really understand the pain and cost of it all.

As a law enforcement officer and even as sheriff I have had my share of fear. I've taken guns and other weapons from suspects intending harm to myself or others. I've kicked doors into armed methamphetamine labs and dodged drunk drivers coming head on into me on the highway. However, I've never experienced fear like that of a suspect speeding away from me in the middle of the night, not knowing where this is leading. From my first traffic stop to now, I always wonder as I approach the vehicle, "is this the traffic stop that will keep me from going home to my family?" Will I live beyond this stop? When the suspect speeds off, everything goes through your mind. Your knees sometimes literally knock together, to the point you are embarrassed at your fear, you sweat, your heart races, and you know your career and life is on the line. Will it end in a shoot out, as some have, with you alone, miles from back up at times? Is there a kidnapped child in the vehicle, a battered bleeding spouse, a fleeing felon from a shocking crime scene or numerous other possibilities.

As more and more restrictions are put on law enforcement, there is less fear of running and in more cases than we care to admit, everything to gain. For the violator his only concern is escape, without thought or concern of others. These are not for the most part, teenagers, living in a "Dukes and Hazards" mind set. We are talking about criminals who are committing felonies, fleeing the scene of that crime or trying to avoid capture of a warrant, without any thought of the officer's life that is pursuing them, or the life of anyone else.

The officers who have been killed or injured putting out tire deflating devices, or setting up roadblocks are simply trying to protect the public. The public that has been killed and injured by reckless fleeing drivers had no choice in the circumstances that harmed and killed them. These acts are already a felony and I am just asking that you add them to the list of inherently dangerous felonies, listed in KSA 21-3436. These acts are not the acts of innocent teenagers trying to keep from getting a ticket, they are intentional acts to avoid escape no matter the cost to others. Is there really any difference in going around tire deflating devices and killing an officer in the process, than breaking into a home to steal, and causing a death or setting a fire that results in a death? I don't believe so.

Please support this bill, and put the burden of these crimes where they belong, on the criminal, not society. I ask that you consider those who have lost loved ones to these absurd acts and increase the penalty for the violators who choose to endanger others, even to the point of killing, just so they can escape the penalty of whatever felony they have committed. Thank you for your time.



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February 15, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE  
Testimony in Support of  
House Bill No. 2180

By  
Kevin A. Graham  
Office of the Attorney General

Dear Chairman Loyd and Members of the Committee:

Thank you for allowing me to appear and offer testimony in support of HB 2180. In Section 1, HB 2180 amends the crime of Involuntary Manslaughter (found at K.S.A. 2004 Supp. 21-3404) to add acts of "fleeing or attempting to elude a police officer" to the list of acts which may support the charge of Involuntary Manslaughter if a death occurs. Section 2 of HB 2180 would add "fleeing or attempting to elude a police officer" to the list of Inherently Dangerous Felonies (found at K.S.A. 2004 21-3436.) This bill is designed to allow for appropriately severe levels of punishment for individuals who would engage in the obviously extremely risky and dangerous actions of fleeing or attempting to elude a police officer.

Section 1 of the bill specifically provides for an offender to be charged with the crime of Involuntary Manslaughter in the event the driver of a motor vehicle willfully fails or refuses to bring such driver's vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police officer and the offender's conduct results in an a person being killed. This section specifically references incidents of "fleeing and eluding" as defined in subsection (a) of K.S.A. 8-1568. This charge would apply in cases where the offender was given a "visual or audible signal to bring the vehicle to a stop" and the police officer in question was "in uniform, prominently displaying such officer's badge of office" and the officer's vehicle or bicycle was "appropriately marked showing it to be an official police vehicle or police bicycle." The crime of Involuntary Manslaughter is a severity level 5, person felony, which carries a presumptive prison sentence, however, if the defendant is a first time offender his/her sentence under the Kansas Sentencing Guidelines Act would fall in a "border box" and thus the defendant may receive a non-prison sentence.

Section 2 of the bill addresses situations where the offender's actions while "fleeing and eluding" were even more serious and posed even more of a threat to other drivers,

pedestrians, law enforcement officers and others. In the type of cases that would be impacted by Section 2 of the bill, the offender will not only have engaged in an act of "fleeing and eluding" but done so in a manner that rose to a felony level under K.S.A. 8-1568. The statutory factors that give rise to an act of fleeing and eluding becoming a felony include: The offender "(1) Commits any of the following during a police pursuit: (A) Fails to stop for a police road block; (B) drives around tire deflating devices placed by a police officer; (C) engages in reckless driving as defined by K.S.A. 8-1566 and amendments thereto; (D) is involved in any motor vehicle accident or intentionally causes damage to property; or (E) commits five or more moving violations; or (2) is attempting to elude capture for the commission of any felony. . . ." Certainly an offender who commits acts that meet the felony requirements of K.S.A. 8-1568 has chosen to act in a way that any reasonable person would know to pose extreme danger to others. The substantive effect of adding crimes under K.S.A. 8-1568(b) to the list of Inherently Dangerous Felonies found at K.S.A. 2004 Supp. 21-3436, is that if the offender's highly dangerous conduct results in the death of another person, the offender could then be charged with the crime of Felony Murder and face a sentence of 20 years to life in prison.

HB 2180 is intended to impose stronger, appropriate punishments for individuals who cause the death of another person while attempting to flee or elude a law enforcement officer. The bill creates two separate punishment levels that could be imposed based on the facts of an individual case, with the more severe punishment (life imprisonment) available for offenders who engage in the most hazardous/riskiest conduct. The elevated punishment levels sought under the bill are intended to serve multiple purposes, including: (1) Protect other drivers, pedestrians and passengers; (2) protect Kansas law enforcement officers; (3) deter offenders from attempting to flee or elude a law enforcement officer; and (4) appropriately punish offenders whose extremely dangerous conduct has taken the life of another person.

On behalf of Attorney General Phill Kline, I encourage the Committee to support HB 2180 and to recommend the bill favorably for passage.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL  
PHILL KLINE

Kevin A. Graham  
Assistant Attorney General  
Director of Governmental Affairs

# Kansas Peace Officers Association

Before the House Corrections and Juvenile Justice Committee

In Support of HB 2304 2180

Kyle G. Smith, Special Agent

Kansas Peace Officers Association

February 15, 2005

Chairman Loyd and Members of the Committee,

I appear today on behalf of the men and women who belong to the Kansas Peace Officers Association. People who have sworn to try and maintain our safety at risk of their own. HB 2180 recognizes one of the most dangerous situations, to both citizens and officers, that are faced everyday in Kansas, persons attempting to flee and elude apprehension.

While firearms are obviously deadly weapons, experience has shown that more deaths and injuries are caused by thousands of pounds of steel, glass and rubber being driven recklessly by persons trying to avoid capture than from firearms. Knowing this, agencies and officers are regularly torn between the horns of a terrible dilemma – to try and catch a criminal and put the public, and themselves at risk, or to let the criminal go to endanger the public in a different, but possibly equally dangerous way.

By placing the crime of ‘flee and elude’ in its appropriate place as a serious crime that can cause death, it is hoped that suspects will be deterred from risking serious criminal penalties when confronted with possible apprehension. Even if the deterrence from fleeing happens in a fairly small percentage of cases, the savings in lives, injuries and property clearly justify the relatively small prison beds involved.

Thank you for your time and attention. I would be happy to try and answer any question.



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February 15, 2005

Rep. Ward Loyd, Chair  
House Corrections and  
Juvenile Justice Committee  
Statehouse, Topeka

Dear Representative Loyd and Members of the Committee:

I am writing in support of HB 2180. This bill makes fleeing and eluding a police officer an inherently dangerous felony. This recategorization has the benefit of fully according with reality. It creates liability for First Degree Murder when a death is produced during the commission of the crime. To fail to acknowledge this reality is to fail to protect Kansans who are exposed to the risk of death created by those who chose to flee the police. While there will be some bed-space impact, we submit the fiscal note overstates consequences of enactment by alluding to new construction. The note also unjustifiably fails to include a cost-benefit analysis or other assessment of the whether the amendment is worth the cost.

Sincerely,

R. Michael Jennings, ADA  
Chair, KCDAAs Legislative Committee

KDHE Testimony

Testimony on Expanding the Scope and Penalty for Vital Record Fraud  
(House Bill 2179)

To

Committee on Corrections and Juvenile Justice

Presented by Lorne A. Phillips, Ph.D.

State Registrar and Director, Center for Health and Environmental  
Statistics

Kansas Department of Health and Environment

February 15, 2005

Chairperson Loyd and members of the Corrections and Juvenile Justice  
Committee, I am honored to appear before you today to discuss House Bill 2179.

Fraudulent use of vital records has soared within the past two decades. Federal and state statutes require proof of age, identity, and citizenship through presentation of a certified copy of a vital record for such needs as starting a new job, obtaining HUD housing, obtaining Social Security numbers and benefits, school enrollment, and claiming dependents for tax exemptions. Many other sources require these documents in order to obtain insurance benefits, driver's licenses, obtain a passport, visa, or other government documents. The continued increase in public reliance on certified copies of vital records has created a greater need for these documents. This, in turn, has resulted in increased fraudulent use of these records. The critical nature of vital record fraud is evidenced by the reasons this crime is committed: to commit identity theft; to conceal true identity to elude detection and apprehension by law enforcement (this includes terrorists and drug traffickers); to create fictitious records for the financial gain of benefits from government programs and insurance companies.

The current statute, K.S.A. 65-2434, addresses only the willful making or alteration of certificates and attaches a penalty of a class B misdemeanor. These are not sufficient measures to deter vital record fraud. In order to properly combat criminal use of vital records, the law must address any fraudulent creation, alteration, or use of a vital record plus the penalty must be sufficient as a deterrent. The level 9, nonperson felony was recommended by the Kansas Bureau of Investigation and the Attorney General's Office. The penalty is presumptive probation unless, of course, prior criminal history exists. There is no expected impact on bed space.

An example of the financial impact of vital record fraud on this state is the apprehension of Daniel Solis in 1998 in Liberal, Kansas. During a traffic accident, his trunk popped open and a law enforcement officer spotted multiple vital record documents when led to the search of his apartment. Hundreds of fraudulent vital record documents were discovered. SRS conducted an investigation into how many of these documents had been used to obtain benefits. They checked the names listed on 830 fraudulent Kansas records and their system hit on 105 of them. Of those, at least 55 were provided

assistance. Those individuals received a total assistance of at least \$105,000 per month, costing the state a total of \$1,200,000 to \$2,000,000. Nationwide, there were 10 million victims of identity theft in 2003 with an average loss of \$10,200 each. The 9/11 terrorists gained passage on the planes that day using identification obtained with fraudulent vital records.

These activities threaten the physical and financial safety of all people and protection of vital records has risen to a matter of national security. The push for recognition of this critical issue includes the new Intelligence Reform Bill, the September 2000 Office of Inspector General's Report, and the National Association for Public Health Statistics and Information System's standards for fraud prevention. We must respond with appropriate laws as a deterrent and to provide law enforcement and county attorneys the means and motivation to follow through with the pursuit and prosecution of these crimes.

I thank you for the opportunity to appear before the Committee on Corrections and Juvenile Justice and will gladly stand for questions the committee may have on this topic.

February 15, 2005

Session of 2005

# HOUSE BILL No. 2087

By Representative Mast

1-20

, identity fraud and vital record fraud

K.S.A. 21-3830 and 65-2434 and

9 AN ACT concerning crimes and punishment: relating to identity theft  
10 amending K.S.A. 2004 Supp. 21-4018 and repealing the existing  
11 section.

Section 1 and Sec. 2 → attached

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

14 ~~Section 1~~ K.S.A. 2004 Supp. 21-4018 is hereby amended to read as  
15 follows: 21-4018. (a) Identity theft is knowingly and with intent to defraud  
16 for ~~economic~~ any benefit, obtaining, possessing, transferring, using or  
17 attempting to obtain, possess, transfer or use, one or more identification  
18 documents or personal identification number of another person other  
19 than that issued lawfully for the use of the possessor.

Sec. 3

has the meaning

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

**Identity fraud is:**  
(1) Willfully and knowingly supplying false information intending that the information be used to obtain an identification document;

22 (c) Identity theft ~~for economic benefit~~ is a severity level **9** person  
23 felony. ~~Identity theft for non-economic benefit is a class A, nonperson~~  
24 ~~misdemeanor.~~

(2) making, counterfeiting, altering, amending or mutilating any identification document:

25 (d) This section shall be part of and supplemental to the Kansas criminal code. **K.S.A 21-3830 and 65-2434 and**

(A) Without lawful authority; and

27 **4** Sec. ~~2~~ K.S.A. 2004 Supp. 21-4018 ~~is~~ hereby repealed. **are**

(B) with the intent to deceive; or  
(3) willfully and knowingly obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another for any purpose of deception an identification document.

28 Sec. ~~3~~ This act shall take effect and be in force from and after its  
29 publication in the statute book. **5**

(e) Identity fraud is a severity level 9, nonperson felony.  
(f)

**Section 1. K.S.A. 21-3830 is hereby amended to read as follows: 21-3830.**

(a) Dealing in false identification documents is reproducing, manufacturing, selling or offering for sale any identification document which:

(1) Simulates, purports to be or is designed so as to cause others reasonably to believe it to be an identification document; and

(2) bears a fictitious name or other false information.

(b) As used in this section, "identification document" means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage and divorce certificates, social security cards and employee identification cards.

(c) Dealing in false identification documents is a severity level 4 nonperson felony. 9

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

or banking instrument including, but not limited to, credit or debit card,

**Vital records identity fraud related to birth, death, marriage and divorce certificates is:**

(1) Willfully and knowingly supplying false information intending that the information be used to obtain a certified copy of a vital record;

(2) making, counterfeiting, altering, amending or mutilating any certified copy of a vital record:

(A) Without lawful authority; and

(B) with the intent to deceive; or

(3) willfully and knowingly obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another for any purpose of deception a certified copy of a vital record.

(e) Vital records identity fraud is a severity level 9, nonperson felony.

(f) The prohibitions in subsection (a) and (b) do not apply to:

(1) A person less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage, as defined in K.S.A. 9-1599, 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.

(g)

**Sec. 2. K.S.A. 65-2434 is hereby amended to read as follows: 65-2434.**

~~[(1) Any person who willfully makes or alters any certificate, certified copy thereof or abstract provided for in this act, except in accordance with the provisions of this act, shall be guilty of a class B misdemeanor.]~~

**(a) Vital records identity fraud related to birth, death, marriage and divorce certificates shall be prosecuted pursuant to K.S.A. 21-3830, and amendments thereto.**

~~[(2) Any person who knowingly transports or accepts for transportation, a dead body located in this state to a location outside the boundaries of this state without an accompanying permit issued in accordance with the provisions of K.S.A. 65-2428a, shall be guilty of a class C misdemeanor.]~~

(b)

~~[(3) Except where a different penalty is provided in this section, any person who violates any of the provisions of this act or neglects or refuses to perform any of the duties imposed upon such person by this act, shall be fined not more than \$200.]~~

(c)