

Approved: 05/02/06

Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Lloyd at 1:30 P.M. on March 22, 2005 in Room 241-N of the Capitol.

All members were present except:  
Mike Peterson- absent

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:

Others attending:  
See attached list.

**SB 151- Crimes of trafficking and aggravated trafficking**

Chairman Loyd opened the hearing on **SB 151**.

Melinda Lewis, El Centro, Inc., submitted written testimony in support of the bill. (Attachment 1)

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence, (Attachment 2) Kevin Graham, Attorney Generals Office, (Attachment 3) and Kyle Smith, KBI, (Attachment 4) provided written testimony to support the language in **HB 2004** as amended by this committee and would strongly support the amendment of **SB 151** to reflect those changes.

Chairman Loyd closed the hearing on **SB 151**.

**SB 151 - Crimes of trafficking and aggravated trafficking**

Representative Decker made the motion to report SB 151 favorably for passage. Representative Kelsey seconded the motion.

Staff provided a balloon with the amended language from **HB 2004** that the committee had already passed. (Attachment 5)

Representative Pauls moved the proposed amendment. Representative Owens seconded. The motion carried

Representative Pauls made the motion to report SB 151 favorably as amended for passage. Representative Kelsey seconded the motion. The motion carried.

Chairman Loyd spoke to the committee regarding meth. **SB 27** does not deal with all the issues that are associated with meth, and the problems created by or encountered because of the presence and use of the drug. The chairman requested committee considering of and authority to introduce a committee bill which would include all the elements and components that need to be addressed:

- Mandated public policy for the use of statewide cleanup standards and procedures
- Prevention of property used for meth labs from being re-occupied until certified clean up has been completed.
- Sellers of property to be required to disclose any meth lab previously located on the property.
- Local Law Enforcement required to notify KDHE about potentially contaminated property.

- Authorization for local entities to recover cleanup cost from the person(s) responsible for the waste or contamination.
- The creation of a revolving loan fund for communities to access for funds to correct or clean up meth labs.
- Requiring mandatory locking of anhydrous ammonia tanks or alternatively use of additives to anhydrous ammonia which may be developed commercially.
- The consideration of a tax credit which would be capped and would be available for purchase of locks for the nurse tanks or additives for the anhydrous ammonia.
- Development of a protocol for and funding of a study of treatment for meth addiction.
- A directive to KDOC and KDHA for a study and report on trends and long term impact on offender population from meth use.

If introduced the bill could be recommended for referral for an interim study this summer.

Representative Ward made the motion to authorize the Committee to have drafted and introduced a bill covering those items identified above. Representative Owens seconded the motion. The motion carried.

**SB 27 - Unlawfully selling drug products containing Ephedrine or Pseudoephedrine, pharmacy controls; rebuttable presumption of intent if possession of more than nine grams**

Representative Ward made the motion to report SB 27 favorably for passage. Representative Decker seconded the motion.

Representative Pauls moved the proposed amendment as provided by KBI. Representative Huntington seconded. The motion carried. (Attachment 6)

Representative Pauls moved the proposed amendment on page 5 and adding modified language provided by the revisor that was presented as an attachment with the KBI testimony. Representative Kelsey seconded. The motion carried. (Attachment 7)

Representative Ward moved an amendment on the same balloon on page 3 striking the language on line 19 after licensed pharmacist and new section 2 to read "or prescribed by a prescription". Representative Kelsey seconded the motion. The motion carried.

Representative Horst moved the Loyd amendment that includes a new section 7; and section 9 to amend KSA 21-2501(a) Representative Decker seconded the motion. The motion carried. (Attachment 8)

Representative Huntington moved language that requires Section 9 (c) to read within 30 days to report the incident. Representative Ward seconded the motion. The motion carried.

Representative Crow moved language to clarify on tracking the substances not on schedule V (i.e. liquid form) and the tracking be the primary responsibility of the KBI. Representative Horst seconded the motion. The motion carried.

Representative Pauls made the motion to report SB 27 favorably for passage as amended. Representative Horst seconded the motion. The motion carried.

**SB 72- Worthless checks, more than once in a seven-day period, increased penalty**

Representative Roth made the motion to report SB 72 favorably for passage. Representative Sharp seconded the motion

Representative Swenson moved to amend in the provisions of SB 89 as presented to the committee. Representative Sharp seconded the motion. The motion carried.

Representative Swenson made the motion to report SB 72 favorably for passage as amended. Representative Horst seconded the motion. The motion carried.

**SB 89 – Payment of certain medical expenses of prisoners injured by a state officer or employee**

Representative Kelsey moved to amend in the provisions of HB 2231 as introduced. Representative Roth seconded the motion. The motion carried.

Representative Roth made the motion to report SB 89 favorably for passage as amended. Representative Kelsey seconded the motion. The motion failed.

**Sub for SB 77 – Racial profiling; requirements of law enforcement agencies; civil cause of action**

Representative Faust Goudeau report sub SB 77 favorably for passage. Representative Kelsey seconded the motion.

Staff provided a balloon that amends language on page 2 line 20 striking officers; and inserting agencies, page 3 line 22 – 25 and 29, striking section c in its entirety. (Attachment 9)

Representative Faust Goudeau moved to adopt the balloon. Representative Horst seconded the motion. The motion carried.

Representative Pauls moved that Kansas Human Rights Commission be included in section 2. Representative Horst seconded the motion. The motion carried.

Representative Pauls moved to have gender be struck where ever it appears. Representative Horst seconded. The motion failed.

Representative Ward to change the Attorney General to Kansas Commission Peace Officers standards and training, old section c page 3. Representative Crow seconded the motion. The motion was withdrawn.

Representative Kelsey made the motion to report Sub for SB 77 favorably for passage as amended. Representative Faust Goudeau seconded the motion. The motion carried.

The meeting was adjourned at 3:30 pm.





# El Centro, Inc.

*The Center for Continuous Family Improvement*

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March 16, 2005

Chairman Ward Loyd and Honorable Members of the House Committee on Corrections and Juvenile Justice ,

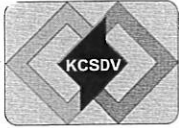
El Centro, Inc. wishes to express our support for SB151, legislation that would define the crime of trafficking and, we hope, reduce incidences of sexual violence and forced labor associated with the smuggling of human beings. Tragically, criminals seeking to exploit desperate and vulnerable people who are trying to get to the United States for a chance to build a better life for themselves and their families have discovered the great profit potential in this illicit activity. The consequences can be devastating. While it is impossible for us to track precisely the damage inflicted by traffickers, due to the hidden nature of the crimes, we know anecdotally of young women who are raped by those who transport them to the U.S. and of many immigrants who live in fear for years (often, even after having obtained legal immigration status) of the gangs who return to extort additional payments from those who were their cargo. We have also heard from immigrants who come to the U.S. with a smuggler, under the promise of a decent-paying job, and are then forced to "repay" their passage with months or even years of unpaid or very poorly-paid hard work. It is no exaggeration to call this indentured servitude, and certainly it runs contrary to our collective sentiment as a nation of immigrants, a nation of laws, and a people who believe in the worth of all human beings.

While these problems may be more pervasive in border states such as Texas and Arizona or in the immigrant-receiving states of California, New York, and Florida, where entire industries support and profit from human trafficking, we can no longer deny the reach of these networks into Kansas. If we can provide law enforcement officers with a new tool to use against those who traffic in human beings, hopefully we can prevent these criminals from ever establishing a strong foothold in our state and send the message that Kansas considers it abhorrent to think of people brought here under violent, sexually abusive, or exploitative conditions.

Clearly, Congress must act to address the problems in immigration law that feed this criminal enterprise and create conditions that facilitate its perpetration. Certainly we believe that such action is an important part of addressing human trafficking. However, we must also recognize that, where there is profit to be made in bringing people to the U.S. for prostitution, forced labor, or economic exploitation, criminal networks will find ways to lure vulnerable individuals into these traps. In order to comprehensively confront the tragedy that is human trafficking, we must codify these crimes in statute, send the message that Kansas will not tolerate such actions, encourage vigorous prosecution of abuses where they occur, and address the underlying dynamics. Each piece is essential, and we believe that SB151 is an important step in that direction.

Sincerely,

Melinda Lewis  
Director of Policy Advocacy and Research, El Centro, Inc.



UNITED AGAINST VIOLENCE

## KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

2

Senate Bill 151  
House Corrections and Juvenile Justice Committee  
March 17 2005

Chairman Loyd and Members of the Committee:

KCSDV supports the language in HB 2004 as amended by this committee and would strongly support the amendment of SB 151 to reflect those changes.

Our testimony on HB 2004 conveyed KCSDV's support of the creation of a state crime of human trafficking in Kansas and applies to the consideration of SB 151.

Rather than repeat the testimony from the HB 2004 hearing, I have just a few additional remarks.

The Committee heard a lot of testimony on HB 2004 that seemed to be global in nature. Trafficking is an issue in Kansas but it has not, to my awareness, presented itself in the dramatic ways indicated by the global perspective. Rather, it is more likely to manifest in small groups of trafficked labor or the selling of foreign-born women for the purpose of marriage.

Because these cases rarely capture the attention of the Federal Bureau of Investigation or the U.S. State Department, victims are left with little federal help and must rely on state law enforcement and prosecution to help. Additionally, one federal provision in the Victims of Trafficking and Violence Prevention Act developed specifically for victims of Trafficking is the T-Visa, which requires local law enforcement to certify that the T-visa applicant is a victim of trafficking. Further, once certified, victims become eligible for all services that are available to refugees. Creating a state crime of human trafficking will make it much easier for local law enforcement to appropriately certify victims.

Thank you so much for your consideration of this matter. Again, KCSDV supports the language in HB 2004 as amended by this committee.

Respectfully Submitted,

Sandy Barnett  
Executive Director



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
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March 16, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Testimony in Support of  
Senate Bill No. 151  
by  
Kevin A. Graham  
Office of the Attorney General

Dear Chairman Loyd and Members of the Committee:

Thank you for allowing me to appear before you on behalf of Attorney General Phill Kline and offer testimony in support of SB 151. As you are aware, SB 151 mirrors the amended language of HB 2004 which your committee recommended favorably earlier during the 2005 legislative session. Attorney General Kline testified before the Corrections and Juvenile Justice Committee on HB 2004, and his testimony on that bill certainly applies to SB 151 as well. I have attached a copy of Attorney General Kline's written testimony regarding HB 2004 for your convenience as you review SB 151. If the committee wishes, I would also be happy to prepare copies of the PowerPoint presentation slides Attorney General utilized during his testimony on HB 2004.

On behalf of Attorney General Phill Kline, I encourage the Committee to support SB 151 and to recommend the bill favorably for passage.

Respectfully,

Kevin A. Graham  
Assistant Attorney General  
Director of Governmental Affairs

House C & JJ  
3-22-05  
Attachment 3



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE  
ATTORNEY GENERAL

2-17-05

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Dear Mr. Chairman and Members of the Committee:

Thank you for the honor of presenting testimony in support of H.B. 2004 that criminalizes the trafficking in human beings and provides severe repercussions to those who engage in and support human trafficking.

Inez, a teenage girl from Veracruz, Mexico and Jill a Midwest teenager have never met but their lives have taken a parallel path as they fell into the hands of predators.

Inez was part of an economically struggling family in Mexico when she was approached by Maria Elena who promised her good work at a restaurant in the United States. Inez was hopeful that her income in the work would allow her to mail cash back to her family and also allow her to begin a life in the United States. Inez was not aware that Ms. Elena was a recruiter for Abel Cadena-Sosa and Patricio Sosa who trafficked in human beings.

Maria Elena arranged a meeting between Inez and the Sosa's wherein Inez was promised a good job and legal immigration status in the United States. In 1997 Inez entered the US through Brownsville, Texas and transported to Houston where she was locked inside a trailer and through physical force was required to enter a life of prostitution. Inez was forced to turn 30-35 tricks a day, for which the men paid \$15 to people Inez refers to as her bosses. Inez was paid \$3 a day but all of her monies were allocated to her debt for shelter, food and transportation.

Jill, on the other hand, was a Midwest teen who fled sexual and physical abuse in her home, only to enter a life of sexual exploitation and physical brutality. After a few weeks of finding meals in dumpsters and washing in the rest rooms of various shopping malls, Jill was approached by a well dressed man who called himself Bruce. Bruce identified with Jill and told her what she wanted to her. He then informed Jill that he liked to help out teens in her circumstances to give her a fresh start by offering good pay from some simply work. Jill asked if the work was prostitution to which Bruce feigned a deep offense and began to leave. Jill, thinking her only hope was walking out the door, apologized and agreed to leave the mall with Bruce. She was convinced she needed to blindfolded as they drove to Bruce's office as Bruce did not want to reveal his location to his competition and he wasn't convinced that Jill really did not work for the competition. At the "office" Jill was led to an area, her hands raised above her head and secured in leather straps. She protested, but a gag was placed in her mouth. Her clothes were then removed and a box she was standing on was kicked from underneath her and she was left suspended from the straps, nude in what was an abandoned warehouse.

Jill was then filmed as she was beaten and told that she would never be let down until she signed a contract to participate in prostitution with S and M clients. Jill had entered her training period as an S and M prostitute. Later she would be sold to men who were allowed to rape her and harm her in any way that



did not result in death. She was fully submerged in water, beaten, shocked with electrical current, hung and whipped. Jill, like Inez, turned to drugs and alcohol to lessen the physical and emotional pain but which only served to enhance their dependency on their exploiters.

These stories are true and they are occurring at this moment.

The actions of these exploiters strikes at the very heart of the promise of America - that all persons are deserving of fundamental rights and that this government will act to protect the rights of the most vulnerable. This requires a firm commitment in law and deed. H.B. 2004 is a step in that direction.

The predator population is sophisticated, organized and monied. Please let me elaborate by sharing with you the following power-point presentation.

### POWER POINT PRESENTATION

I would also like to take a moment to share with you the efforts of our office regarding this issue; to detail other proposals before you that will help in the fight against human trafficking and also, some other issues you may consider.

First, our office is committed to preventing exploitation against all persons regardless of their immigration status. To that end, we will prosecute those who exploit others within our jurisdictional boundaries without concern of whether the victims are illegally in this country. We, therefore, do not inquire as to the status of the victim when pursuing prosecution. If the status is known to immigration officials, rather than deportation, we seek to obtain T immigration status. T status allows the immigrant to remain in America for three years and then petition for legal status.

Our office is already engaged in aggressive action against those who have exploited illegals in our state.

Additionally, you have a bill before you this session that enhances the penalties for the solicitation of a child and aggravated solicitation of a child. Currently the penalty is probation and this is unacceptable. Furthermore, you will consider a bill that provides that the possession of each single image of child pornography is an individual crime. A third bill will increase the statute of limitations on many crimes from 2 to 5 years. A criminal should not escape justice simply because he was able to successfully conceal his criminal conduct.

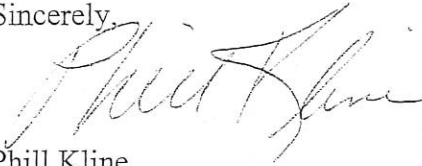
Finally, you may wish to follow the lead of the Bush Administration in the recognition that prostitution is inherently dehumanizing. A US government study of prostitutes in nine foreign nations that have legalized prostitution finds that 70-95% of the prostitutes have suffered assault; 60-75% have been raped; 89% desire to escape the lifestyle and 68% suffer from post dramatic stress syndrome.

Kansas, unfortunately, follows the example of many states in imposing more severe penalties on the women in prostitution than the men who exploit them. In Kansas it is a B misdemeanor to engage in prostitution but a C misdemeanor to visit a prostitute. Furthermore, it is only an A misdemeanor to promote the prostitution of a person 16 years of age or older.

I would urge you to strengthen the penalties on those who profit from the exploitation of those engage in prostitution - on the johns and the pimps. Our jails should not be full of exploited women and children, but rather those who exploit them.

I would be glad to stand for any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Phill Kline".

Phill Kline  
Kansas Attorney General



## Kansas Bureau of Investigation

Larry Welch  
*Director*

**House Committee on Corrections and Juvenile Justice  
Testimony in support of SB 151  
Kyle G. Smith  
Kansas Bureau of Investigation  
March 22, 2005**

Phill Kline  
*Attorney General*

**Chairman Loyd and Members of the Committee,**

I appear today on behalf of the KBI in support of SB 151 which addresses the fortunately rare offense of human trafficking. We would suggest the committee consider amending this bill to conform with the amended version of HB 2004 that you worked earlier this session.

The KBI was created to provide local law enforcement with resources to help in unusual cases. So we are called upon for everything from working methamphetamine labs, undercover operations to complex financial cases and wiretaps. Sooner or later, some local sheriff or highway patrol trooper is going to call me and after they stop a trailer load of immigrants and ask what the crime is? And I'll have to tell them that under current law the activities described in SB 151 are not prohibited by any other Kansas statute. So we'll call Immigration and Naturalization services who will eventually come get the victims for deportation while the smugglers who prey on human misery slip away.

These cases are extremely difficult to uncover and work, as the victims are usually extremely isolated with little or no English. Further, many come from a societal background where indentured servitude and even sexual exploitation is their expected lot in life. The people who profit from this horrendous trade need to be punished. With fewer and fewer federal resources available due to their refocus on terrorism, I'm afraid it will fall to the states to investigate and prosecute these criminals. SB 151 gives us the tool to do that.

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

# SENATE BILL No. 151

By Senator Jordan

2-1

9 AN ACT defining the crimes of trafficking and aggravated trafficking and concerning crimes, punishment and criminal procedure;  
10 prescribing penalties therefor.

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

13 Section 1. (a) Trafficking is:

14 (1) Recruiting, harboring, transporting, providing or obtaining, by any  
15 means, another person knowing that force, fraud, threat or coercion will  
16 be used to cause the person to engage in forced labor or involuntary  
17 servitude; or

18 (2) benefitting, financially or by receiving anything of value, from  
19 participation in a venture that has engaged in acts set forth in subsection  
20 (a)(1).

21 (b) Trafficking is a severity level 2, person felony.

22 (c) This section shall be part of and supplemental to the Kansas crim-  
23 inal code.

24 Sec. 2. (a) Aggravated trafficking is ~~trafficking~~ as defined in section  
25 1, and amendments thereto:

26 ~~(1)~~ Involving the commission or the attempted commission of kid-  
27 napping, as defined in K.S.A. 21-3420, and amendments thereto;

28 ~~(2)~~ committed in whole or in part for the purpose of the sexual grat-  
29 ification of the defendant or another; or

30 ~~(3)~~ resulting in a death.

31 (b) Aggravated trafficking is a severity level 1, person felony.  
32 (c) This section shall be part of and supplemental to the Kansas crim-  
33 inal code.

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

:  
(1) Trafficking

(A)  
(B)  
(C)

; or  
(2) recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another



1 isomers or salts ~~or~~ of isomers if the person knows or reasonably should  
2 know that the purchaser will use the product to manufacture a controlled  
3 substance.

4 (c) It shall be unlawful for any person to market, sell, distribute, ad-  
5 vertise or label any drug product containing ephedrine, pseudoephedrine,  
6 or phenylpropanolamine, or their salts, isomers or salts of isomers for  
7 indication of stimulation, mental alertness, weight loss, appetite control,  
8 energy or other indications not approved pursuant to the pertinent federal  
9 over-the-counter drug final monograph or tentative final monograph or  
10 approved new drug application.

11 ~~(d) It shall be unlawful for any person to purchase, receive or oth-~~  
12 ~~erwise acquire more than nine grams of any controlled substance desig-~~  
13 ~~nated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto,~~  
14 ~~within any thirty-day period.~~

15 ~~—(e) Except as provided in this subsection, possessing, purchasing, re-~~  
16 ~~ceiving or otherwise acquiring a drug product containing more than nine~~  
17 ~~grams of Ephedrine, Pseudoephedrine or Phenylpropanolamine, or their~~  
18 ~~salts, isomers or salts of isomers shall constitute a rebuttable presumption~~  
19 ~~of the intent to use the product as a precursor to methamphetamine or~~  
20 ~~another controlled substance. The rebuttable presumption established by~~  
21 ~~this subsection shall not apply to the following persons who are lawfully~~  
22 ~~possessing drug products in the course of legitimate business:~~

- 23 ~~—(1) A retail distributor of drug products or wholesaler;~~
- 24 ~~—(2) a wholesale drug distributor, or its agents, licensed by the board~~  
25 ~~of pharmacy;~~
- 26 ~~—(3) a manufacturer of drug products, or its agents, licensed by the~~  
27 ~~board of pharmacy;~~
- 28 ~~—(4) a pharmacist licensed by the board of pharmacy; and~~
- 29 ~~—(5) any person licensed by the state board of healing arts under the~~  
30 ~~Kansas healing arts act possessing the drug products in the course of~~  
31 ~~carrying out such person's duties.~~

32 ~~(d) It shall be unlawful for any retailer, as defined pursuant to~~  
33 ~~subsection (ff) of K.S.A. 65-1626, and amendments thereto, to sell,~~  
34 ~~deliver or otherwise transfer three [four] or more packages or con-~~  
35 ~~tainers of any controlled substance designated in subsection (e) or~~  
36 ~~(f) of K.S.A. 65-4113, and amendments thereto, during a single retail~~  
37 ~~transaction. For the purposes of this section, "single-retail trans-~~  
38 ~~action" means a sale by a retail distributor to a specific customer~~  
39 ~~at a specific time.~~

← It shall be unlawful for any person to purchase, receive or otherwise acquire more than three packages of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, within any seven-day period.

40 (e) For persons arrested and charged under this section, bail  
41 shall be at least \$50,000 cash or surety, unless the court determines  
42 on the record that the defendant is not likely to re-offend, the court  
43 imposes pretrial supervision or the defendant agrees to participate

1 in an accredited drug treatment program.

2 ~~(f) A violation of this section subsection (a), (b) or (c) shall be a drug~~  
3 ~~severity level 1 felony. A violation of subsection (d) shall be a class A~~  
4 ~~nonperson misdemeanor. An unclassified misdemeanor, the sentence~~  
5 ~~for which must include, but is not limited to, a minimum \$200 fine.~~

(Go back to existing language)

drug severity level 1 penalty

6 New Sec. 4. (a) It shall be the policy of the state of Kansas to  
7 restrict access to ephedrine and pseudoephedrine for the purpose  
8 of impeding the unlawful manufacture of methamphetamine. In fur-  
9 therance of this policy, the state board of pharmacy shall:

10 (1) Consult with the Kansas bureau of investigation and other  
11 law enforcement agencies to gather information and detect trends  
12 with regard to the types of drug paraphernalia and evidence found  
13 at crime scenes. The board shall take into consideration such infor-  
14 mation and trends in developing the recommendations required by  
15 paragraph (2); and

16 (2) develop recommendations concerning the most appropriate  
17 controls for all products that contain any compound, mixture or  
18 preparation containing any detectable quantity of ephedrine or  
19 pseudoephedrine, its salts, or optical isomers, or salts of optical iso-  
20 mers.

21 (b) Such recommendations shall be submitted on or before Feb-  
22 ruary 1 each year to the standing committee on judiciary in the  
23 senate and the standing committee on corrections and juvenile jus-  
24 tice in the house of representatives.

25 Sec. 5. K.S.A. 65-4152 is hereby amended to read as follows:  
26 65-4152. (a) No person shall use or possess with intent to use:

27 (1) Any simulated controlled substance;

28 (2) any drug paraphernalia to use, store, contain, conceal, in-  
29 ject, ingest, inhale or otherwise introduce into the human body a  
30 controlled substance in violation of the uniform controlled sub-  
31 stances act;

32 (3) any drug paraphernalia to plant, propagate, cultivate, grow,  
33 harvest, manufacture, compound, convert, produce, process, pre-  
34 pare, test, analyze, pack, repack, sell or distribute a controlled sub-  
35 stance in violation of the uniform controlled substances act; or

36 (4) anhydrous ammonia or pressurized ammonia in a container  
37 not approved for that chemical by the Kansas department of agri-  
38 culture.

39 (b) Violation of subsection (a)(1) or (a)(2) is a class A nonperson  
40 misdemeanor.

41 (c) Violation of subsection (a)(3), other than as described in  
42 paragraph (d), or subsection (a)(4) is a drug severity level 4 felony.

43 (d) Violation of subsection (a)(3) which involves the possession

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

## SENATE BILL No. 27

By Senators D. Schmidt, Apple, Barnett, Barone, Bruce, Donovan, Em-  
ler, Gilstrap, Goodwin, Hensley, Jordan, Kelly, Lee, Morris, Pine,  
Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson  
and Wysong

1-10

15 AN ACT concerning controlled substances; relating to schedule V sub-  
16 stances; unlawful acts; amending K.S.A. 65-1643, 65-4113, **65-4152**,  
17 **65-4159**[, **65-7001**] and 65-7006 and repealing the existing sections.  
18

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

20 Section 1. K.S.A. 65-1643 is hereby amended to read as follows: 65-  
21 1643. It shall be unlawful:

22 (a) For any person to operate, maintain, open or establish any phar-  
23 macy within this state without first having obtained a registration from  
24 the board. Each application for registration of a pharmacy shall indicate  
25 the person or persons desiring the registration, including the pharmacist  
26 in charge, as well as the location, including the street name and number,  
27 and such other information as may be required by the board to establish  
28 the identity and exact location of the pharmacy. The issuance of a regis-  
29 tration for any pharmacy shall also have the effect of permitting such  
30 pharmacy to operate as a retail dealer without requiring such pharmacy  
31 to obtain a retail dealer's permit. On evidence satisfactory to the board:  
32 (1) That the pharmacy for which the registration is sought will be con-  
33 ducted in full compliance with the law and the rules and regulations of  
34 the board; (2) that the location and appointments of the pharmacy are  
35 such that it can be operated and maintained without endangering the  
36 public health or safety; (3) that the pharmacy will be under the supervision  
37 of a pharmacist, a registration shall be issued to such persons as the board  
38 shall deem qualified to conduct such a pharmacy.

39 (b) For any person to manufacture within this state any drugs except  
40 under the personal and immediate supervision of a pharmacist or such  
41 other person or persons as may be approved by the board after an inves-  
42 tigation and a determination by the board that such person or persons is  
43 qualified by scientific or technical training or experience to perform such

1 duties of supervision as may be necessary to protect the public health and  
2 safety; and no person shall manufacture any such drugs without first ob-  
3 taining a registration so to do from the board. Such registration shall be  
4 subject to such rules and regulations with respect to requirements, sani-  
5 tation and equipment, as the board may from time to time adopt for the  
6 protection of public health and safety.

7 (c) For any person to distribute at wholesale any drugs without first  
8 obtaining a registration so to do from the board.

9 (d) For any person to sell or offer for sale at public auction or private  
10 sale in a place where public auctions are conducted, any drugs without  
11 first having obtained a registration from the board so to do, and it shall  
12 be necessary to obtain the permission of the board in every instance where  
13 any of the products covered by this section are to be sold or offered for  
14 sale.

15 (e) For any person to in any manner distribute or dispense samples  
16 of any drugs without first having obtained a permit from the board so to  
17 do, and it shall be necessary to obtain permission from the board in every  
18 instance where the samples are to be distributed or dispensed. Nothing  
19 in this subsection shall be held to regulate or in any manner interfere  
20 with the furnishing of samples of drugs to duly licensed practitioners, to  
21 mid-level practitioners, to pharmacists or to medical care facilities.

22 (f) Except as otherwise provided in this subsection (f), for any person  
23 operating a store or place of business to sell, offer for sale or distribute  
24 any drugs to the public without first having obtained a registration or  
25 permit from the board authorizing such person so to do. No retail dealer  
26 who sells 12 or fewer different nonprescription drug products shall be  
27 required to obtain a retail dealer's permit under the pharmacy act of the  
28 state of Kansas or to pay a retail dealer new permit or permit renewal fee  
29 under such act. It shall be lawful for a retail dealer who is the holder of  
30 a valid retail dealer's permit issued by the board or for a retail dealer who  
31 sells 12 or fewer different nonprescription drug products to sell and dis-  
32 tribute nonprescription drugs which are prepackaged, fully prepared by  
33 the manufacturer or distributor for use by the consumer and labeled in  
34 accordance with the requirements of the state and federal food, drug and  
35 cosmetic acts. Such nonprescription drugs shall not include: (1) A con-  
36 trolled substance; (2) a prescription-only drug; or (3) a drug product in-  
37 tended for human use by hypodermic injection; but such a retail dealer  
38 shall not be authorized to display any of the words listed in subsection  
39 (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a  
40 pharmacy or drugstore.

41 (g) For any person to sell any drugs manufactured and sold only in  
42 the state of Kansas, unless the label and directions on such drugs shall  
43 first have been approved by the board.



1 (h) For any person to operate an institutional drug room without first  
2 having obtained a registration to do so from the board. Such registration  
3 shall be subject to the provisions of K.S.A. 65-1637a and amendments  
4 thereto and any rules and regulations adopted pursuant thereto.

5 (i) For any person to be a pharmacy student without first obtaining  
6 a registration to do so from the board, in accordance with rules and reg-  
7 ulations adopted by the board, and paying a pharmacy student registration  
8 fee of \$25 to the board.

9 (j) For any person to operate a veterinary medical teaching hospital  
10 pharmacy without first having obtained a registration to do so from the  
11 board. Such registration shall be subject to the provisions of K.S.A. 65-  
12 1662 and amendments thereto and any rules and regulations adopted  
13 pursuant thereto.

14 (k) *It shall be unlawful for any person to ~~dispense, sell or distribute~~  
15 in a pharmacy a controlled substance designated in subsection (e) or (f)  
16 of K.S.A. 65-4113, and amendments thereto, unless:*

17 (1) ~~a. Such controlled substance is ~~dispensed, sold or distributed by a~~  
18 licensed pharmacist, a registered pharmacy technician or a pharmacy  
19 clerk supervised by a licensed pharmacist, or registered pharmacy tech-  
20 nician; and~~ —intern or student

21 ~~(2) b any person purchasing, receiving or otherwise acquiring any such  
22 controlled substance produces a photo identification showing the date of  
23 birth of the person and signs a written log or receipt showing the date of  
24 the transaction, name of the person and the amount of the controlled  
25 substance. The log, receipt book or database shall be available for inspec-  
26 tion during regular business hours to the board of pharmacy and any law  
27 enforcement officer.~~

or  
(2) prescribed by prescription

28 Sec. 2. K.S.A. 65-4113 is hereby amended to read as follows: 65-  
29 4113. (a) The controlled substances or drugs, by whatever official name,  
30 common or usual name, chemical name or brand name designated, listed  
31 in this section are included in schedule V.

32 (b) Unless specifically excepted or unless listed in another schedule,  
33 any material, compound, mixture or preparation containing the following  
34 narcotic drug or its salts:

35 Buprenorphine ..... 9064

36 (c) Any compound, mixture or preparation containing limited quan-  
37 tities of any of the following narcotic drugs which also contains one or  
38 more nonnarcotic active medicinal ingredients in sufficient proportion to  
39 confer upon the compound, mixture or preparation valuable medicinal  
40 qualities other than those possessed by the narcotic drug alone:

41 (1) Not more than 200 milligrams of codeine or any of its salts per  
42 100 milliliters or per 100 grams.

43 (2) Not more than 100 milligrams of dihydrocodeine or any of its salts

1 per 100 milliliters or per 100 grams.

2 (3) Not more than 100 milligrams of ethylmorphine or any of its salts  
3 per 100 milliliters or per 100 grams.

4 (4) Not more than 2.5 milligrams of diphenoxylate and not less than  
5 25 micrograms of atropine sulfate per dosage unit.

6 (5) Not more than 100 milligrams of opium per 100 milliliters or per  
7 100 grams.

8 (6) Not more than .5 milligram of difenoxin (9168) and not less than  
9 25 micrograms of atropine sulfate per dosage unit.

10 (d) Unless specifically excepted or unless listed in another schedule,  
11 any material, compound, mixture or preparation which contains any quan-  
12 tity of the following substances having a stimulant effect on the central  
13 nervous system, including its salts, isomers (whether optical, position or  
14 geometric) and salts of such isomers whenever the existence of such salts,  
15 isomers and salts of isomers is possible within the specific chemical des-  
16 ignation:

17 (1) Propylhexedrine (except when part of a compound used for nasal  
18 decongestion which is authorized to be sold lawfully over the counter  
19 without a prescription under the federal food, drug and cosmetic act,  
20 so long as it is used only for such purpose)..... 8161

21 (2) Pyrovalerone..... 1485

22 (e) ~~Unless specifically excepted or unless listed in another schedule,~~  
23 ~~any product containing as its single ingredient the substance Ephedrine.~~  
24 ~~Except as provided in subsection (g), any compound, mixture or prepa-~~  
25 ~~ration containing any detectable quantity of Ephedrine, its salts or optical~~ e  
26 ~~isomers, or salts of optical isomers.~~

27 (f) ~~Except as provided in subsection (g), any compound, mixture or~~  
28 ~~preparation containing any detectable quantity of Pseudoephedrine, its~~ p  
29 ~~salts or optical isomers, or salts of optical isomers.~~

30 (g) ~~The scheduling of the substances in subsections (e) and (f) shall~~  
31 ~~not apply to any compounds, mixtures or preparations which are in liquid,~~  
32 ~~liquid capsule or gel capsule form if Ephedrine or Pseudoephedrine is not~~ e p  
33 ~~the only active ingredient.~~

34 Sec. 3. K.S.A. 65-7006 is hereby amended to read as follows: 65-  
35 7006. (a) It shall be unlawful for any person to possess ephedrine, pseu-  
36 doephedrine, red phosphorus, lithium metal, sodium metal, iodine, an-  
37 hydrous ammonia, pressurized ammonia or phenylpropanolamine, or  
38 their salts, isomers or salts of isomers with intent to use the product to  
39 manufacture a controlled substance.

(b) It shall be unlawful for any person to market, sell, distribute, ad-  
vertise, or label any drug product containing ephedrine, pseudoephed-  
rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous  
ammonia, pressurized ammonia or phenylpropanolamine, or their salts,

1 isomers or salts ~~or~~ of isomers if the person knows or reasonably should  
2 know that the purchaser will use the product to manufacture a controlled  
3 substance.

4 (c) It shall be unlawful for any person to market, sell, distribute, ad-  
5 vertise or label any drug product containing ephedrine, pseudoephedrine,  
6 or phenylpropanolamine, or their salts, isomers or salts of isomers for  
7 indication of stimulation, mental alertness, weight loss, appetite control,  
8 energy or other indications not approved pursuant to the pertinent federal  
9 over-the-counter drug final monograph or tentative final monograph or  
10 approved new drug application.

11 ~~(d) It shall be unlawful for any person to purchase, receive or oth-~~  
12 ~~erwise acquire more than nine grams of any controlled substance desig-~~  
13 ~~ated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto,~~  
14 ~~within any thirty-day period.~~

15 ~~—(e) Except as provided in this subsection, possessing, purchasing, re-~~  
16 ~~ceiving or otherwise acquiring a drug product containing more than nine~~  
17 ~~grams of Ephedrine, Pseudoephedrine or Phenylpropanolamine, or their~~  
18 ~~salts, isomers or salts of isomers shall constitute a rebuttable presumption~~  
19 ~~of the intent to use the product as a precursor to methamphetamine or~~  
20 ~~another controlled substance. The rebuttable presumption established by~~  
21 ~~this subsection shall not apply to the following persons who are lawfully~~  
22 ~~possessing drug products in the course of legitimate business:~~

23 ~~—(1) A retail distributor of drug products or wholesaler;~~

24 ~~—(2) a wholesale drug distributor, or its agents, licensed by the board~~  
25 ~~of pharmacy;~~

26 ~~—(3) a manufacturer of drug products, or its agents, licensed by the~~  
27 ~~board of pharmacy;~~

28 ~~—(4) a pharmacist licensed by the board of pharmacy; and~~

29 ~~—(5) any person licensed by the state board of healing arts under the~~  
30 ~~Kansas healing arts act possessing the drug products in the course of~~  
31 ~~carrying out such person's duties.~~

32 (d) It shall be unlawful for any retailer, as defined pursuant to  
33 subsection (ff) of K.S.A. 65-1626, and amendments thereto, to sell,  
34 deliver or otherwise transfer ~~three~~ [four] or more packages or con-  
35 tainers of any controlled substance designated in subsection (e) or  
36 (f) of K.S.A. 65-4113, and amendments thereto, during a single retail  
37 transaction. For the purposes of this section, “single retail trans-  
38 action” means a sale by a retail distributor to a specific customer  
39 at a specific time.

40 (e) For persons arrested and charged under this section, bail  
41 shall be at least \$50,000 cash or surety, unless the court determines  
42 on the record that the defendant is not likely to re-offend, the court  
43 imposes pretrial supervision or the defendant agrees to participate

1 ~~in an accredited drug treatment program.~~

2 <sup>(f)</sup> A violation of this section subsection (a), (b) or (c) shall be a drug a licensed  
 3 severity level 1 felony. A violation of subsection (d) shall be ~~a class A~~  
 4 ~~nonperson misdemeanor~~ an unclassified misdemeanor, the sentence  
 5 for which must include, but is not limited to, a minimum \$200 fine.

6 **New Sec. 4.** (a) It shall be the policy of the state of Kansas to  
 7 restrict access to ephedrine and pseudoephedrine for the purpose  
 8 of impeding the unlawful manufacture of methamphetamine. In fur-  
 9 therance of this policy, the state board of pharmacy shall:

10 (1) Consult with the Kansas bureau of investigation and other  
 11 law enforcement agencies to gather information and detect trends  
 12 with regard to the types of drug paraphernalia and evidence found  
 13 at crime scenes. The board shall take into consideration such infor-  
 14 mation and trends in developing the recommendations required by  
 15 paragraph (2); and

16 (2) develop recommendations concerning the most appropriate  
 17 controls for all products that contain any compound, mixture or  
 18 preparation containing any detectable quantity of ephedrine or  
 19 pseudoephedrine, its salts, or optical isomers, or salts of optical iso-  
 20 mers.

21 (b) Such recommendations shall be submitted on or before Feb-  
 22 ruary 1 each year to the standing committee on judiciary in the  
 23 senate and the standing committee on corrections and juvenile jus-  
 24 tice in the house of representatives.

25 **Sec. 5.** K.S.A. 65-4152 is hereby amended to read as follows:  
 26 65-4152. (a) No person shall use or possess with intent to use:

27 (1) Any simulated controlled substance;

28 (2) any drug paraphernalia to use, store, contain, conceal, in-  
 29 ject, ingest, inhale or otherwise introduce into the human body a  
 30 controlled substance in violation of the uniform controlled sub-  
 31 stances act;

32 (3) any drug paraphernalia to plant, propagate, cultivate, grow,  
 33 harvest, manufacture, compound, convert, produce, process, pre-  
 34 pare, test, analyze, pack, repack, sell or distribute a controlled sub-  
 35 stance in violation of the uniform controlled substances act; or

36 (4) anhydrous ammonia or pressurized ammonia in a container  
 37 not approved for that chemical by the Kansas department of agri-  
 38 culture.

39 (b) Violation of subsection (a)(1) or (a)(2) is a class A nonperson  
 40 misdemeanor.

41 (c) Violation of subsection (a)(3), other than as described in  
 42 paragraph (d), or subsection (a)(4) is a drug severity level 4 felony.

43 (d) Violation of subsection (a)(3) which involves the possession



1 of drug paraphernalia for the planting, propagation, growing or  
2 harvesting of less than five marijuana plants is a class A nonperson  
3 misdemeanor.

4 (e) For persons arrested and charged under paragraph (a)(4), bail  
5 shall be at least \$50,000 cash or surety, unless the court determines, on  
6 the record, that the defendant is not likely to re-offend, the court imposes  
7 pretrial supervision or the defendant agrees to participate in ~~an accredited~~ a licensed  
8 drug treatment program.

9 **Sec. 6. K.S.A. 65-4159 is hereby amended to read as follows:**  
10 **65-4159. (a) Except as authorized by the uniform controlled sub-**  
11 **stances act, it shall be unlawful for any person to manufacture any**  
12 **controlled substance or controlled substance analog.**

13 (b) Any person violating the provisions of this section with re-  
14 spect to the unlawful manufacturing or attempting to unlawfully  
15 manufacture any controlled substance or controlled substance an-  
16 alog, upon conviction, is guilty of a drug severity level 1 felony and  
17 the sentence for which shall not be subject to statutory provisions  
18 for suspended sentence, community work service, or probation.

19 (c) For persons arrested and charged under this section, bail shall be  
20 at least \$50,000 cash or surety, unless the court determines, on the record,  
21 that the defendant is not likely to re-offend, the court imposes pretrial  
22 supervision or the defendant agrees to participate in ~~an accredited~~ drug a licensed  
23 treatment program.

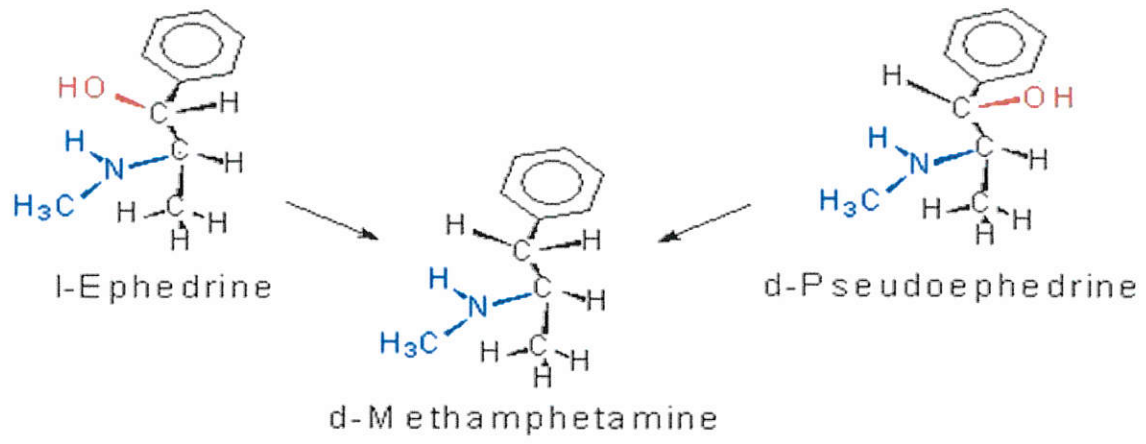
24 (e) (d) The provisions of subsection (d) of K.S.A. 21-3301, and  
25 amendments thereto, shall not apply to a violation of attempting to  
26 unlawfully manufacture any controlled substance pursuant to this  
27 section.

28 **New Sec. 7. The provisions of this act, and any rules and reg-**  
29 **ulations promulgated thereunder shall be applicable and uniform**  
30 **throughout this state and in all cities and counties therein. No city**  
31 **or county shall enact or enforce any law, ordinance, rule, regulation**  
32 **or resolution in conflict with, in addition to, or supplemental to, the**  
33 **provisions of this act unless expressly authorized by law to do so.**

34 [Sec. 8. K.S.A. 65-7001 is hereby amended to read as follows:  
35 65-7001. K.S.A. 65-7001 through 65-7015 and amendments thereto  
36 shall be known and may be cited as the ~~Kansas~~ sheriff Matt Samuels  
37 chemical control act.]

38 Sec. 4 & [9]. K.S.A. 65-1643, 65-4113, 65-4152, 65-4159[, 65-  
39 7001] and 65-7006 are hereby repealed.

40 Sec. 5 & [10]. This act shall take effect and be in force from and  
41 after its publication in the Kansas register.



SENATE BILL No. 27

By Senators D. Schmidt, Apple, Barnett, Barone, Bruce, Donovan, Em-  
ler, Gilstrap, Goodwin, Hensley, Jordan, Kelly, Lee, Morris, Pine,  
Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson  
and Wysong

1-10

15 AN ACT concerning controlled substances; relating to schedule V sub-  
16 stances; unlawful acts; amending <sup>4</sup>K.S.A. 65-1643, 65-4113, ~~65-4152,~~  
17 ~~65-4159~~, ~~65-7001~~ and 65-7006 and repealing the existing sections.

21-2501a,

18  
19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. K.S.A. 65-1643 is hereby amended to read as follows: 65-  
21 1643. It shall be unlawful:

22 (a) For any person to operate, maintain, open or establish any phar-  
23 macy within this state without first having obtained a registration from  
24 the board. Each application for registration of a pharmacy shall indicate  
25 the person or persons desiring the registration, including the pharmacist  
26 in charge, as well as the location, including the street name and number,  
27 and such other information as may be required by the board to establish  
28 the identity and exact location of the pharmacy. The issuance of a regis-  
29 tration for any pharmacy shall also have the effect of permitting such  
30 pharmacy to operate as a retail dealer without requiring such pharmacy  
31 to obtain a retail dealer's permit. On evidence satisfactory to the board:  
32 (1) That the pharmacy for which the registration is sought will be con-  
33 ducted in full compliance with the law and the rules and regulations of  
34 the board; (2) that the location and appointments of the pharmacy are  
35 such that it can be operated and maintained without endangering the  
36 public health or safety; (3) that the pharmacy will be under the supervision  
37 of a pharmacist, a registration shall be issued to such persons as the board  
38 shall deem qualified to conduct such a pharmacy.

39 (b) For any person to manufacture within this state any drugs except  
40 under the personal and immediate supervision of a pharmacist or such  
41 other person or persons as may be approved by the board after an inves-  
42 tigation and a determination by the board that such person or persons is  
43 qualified by scientific or technical training or experience to perform such

8-2

1 of drug paraphernalia for the planting, propagation, growing or  
2 harvesting of less than five marijuana plants is a class A nonperson  
3 misdemeanor.

4 (e) For persons arrested and charged under paragraph (a)(4), bail  
5 shall be at least \$50,000 cash or surety, unless the court determines, on  
6 the record, that the defendant is not likely to re-offend, the court imposes  
7 pretrial supervision or the defendant agrees to participate in an accredited  
8 drug treatment program.

9 Sec. 6. K.S.A. 65-4159 is hereby amended to read as follows:  
10 65-4159. (a) Except as authorized by the uniform controlled sub-  
11 stances act, it shall be unlawful for any person to manufacture any  
12 controlled substance or controlled substance analog.

13 (b) Any person violating the provisions of this section with re-  
14 spect to the unlawful manufacturing or attempting to unlawfully  
15 manufacture any controlled substance or controlled substance an-  
16 alog, upon conviction, is guilty of a drug severity level 1 felony and  
17 the sentence for which shall not be subject to statutory provisions  
18 for suspended sentence, community work service, or probation.

19 (c) For persons arrested and charged under this section, bail shall be  
20 at least \$50,000 cash or surety, unless the court determines, on the record,  
21 that the defendant is not likely to re-offend, the court imposes pretrial  
22 supervision or the defendant agrees to participate in an accredited drug  
23 treatment program.

24 (e) (d) The provisions of subsection (d) of K.S.A. 21-3301, and  
25 amendments thereto, shall not apply to a violation of attempting to  
26 unlawfully manufacture any controlled substance pursuant to this  
27 section.

28 New Sec. 7. The provisions of this act, and any rules and reg-  
29 ulations promulgated thereunder shall be applicable and uniform  
30 throughout this state and in all cities and counties therein. No city  
31 or county shall enact or enforce any law, ordinance, rule, regulation  
32 or resolution in conflict with, in addition to, or supplemental to, the  
33 provisions of this act unless expressly authorized by law to do so.

34 [Sec. 8. K.S.A. 65-7001 is hereby amended to read as follows:  
35 65-7001. K.S.A. 65-7001 through 65-7015 and amendments thereto  
36 shall be known and may be cited as the Kansas sherriff Matt Samuels  
37 chemical control act.]

38 Sec. 4 & [9]. K.S.A. 65-1643, 65-4113, 65-4152, 65-4159[, 65-  
39 7001] and 65-7006 are hereby repealed.

40 Sec. 5 & [10]. This act shall take effect and be in force from and  
41 after its publication in the Kansas register.

Sec. 9. K.S.A. 21-2501a is hereby amended to read as follows:

21-2501a. (a) All law enforcement agencies having responsibility for law  
enforcement in any political subdivision of this state, on forms approved by  
the attorney general, shall maintain a permanent record of all felony and  
misdemeanor offenses reported or known to have been committed within their  
respective jurisdictions.

(b) All law enforcement agencies having the responsibility of maintaining  
a permanent record of offenses shall file with the Kansas bureau of  
investigation, on a form approved by the attorney general, a report on each  
offense for which a permanent record is required within 72 hours after such  
offense is reported or known to have been committed.

(c) It is hereby made the duty of every sheriff, police department or  
countywide law enforcement agency in the state to report, on forms approved  
by the attorney general, any methamphetamine laboratory seizures and any  
theft or attempted theft of anhydrous ammonia that occur in such agency's  
jurisdiction within 30 days of such seizure. incident

Renumber remaining sections accordingly.

21-2501a,

or  
dump site

**Substitute for SENATE BILL No. 77**

By Committee on Federal and State Affairs

2-22

10 AN ACT concerning racial profiling; prohibiting certain actions and pro-  
11 viding remedies for violations.

12

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

14 Section 1. As used in this act:

15 (a) "Governmental unit" means the state, or any county, city or other  
16 political subdivision thereof, or any department, division, board or other  
17 agency of any of the foregoing.

18 (b) "Law enforcement agency" means the governmental unit em-  
19 ploying the law enforcement officer.

20 (c) "Law enforcement officer" has the meaning ascribed thereto in  
21 K.S.A. 74-5602, and amendments thereto.

22 (d) "Racial profiling" means the practice of a law enforcement officer  
23 or agency relying, as the sole factor, on race, ethnicity, national origin,  
24 gender or religious dress in selecting which individuals to subject to rou-  
25 tine investigatory activities, or in deciding upon the scope and substance  
26 of law enforcement activity following the initial routine investigatory ac-  
27 tivity. Racial profiling does not include reliance on such criteria in com-  
28 bination with other identifying factors when the law enforcement officer  
29 or agency is seeking to apprehend a specific suspect whose race, ethnicity,  
30 national origin, gender or religious dress is part of the description of the  
31 suspect.

32 (e) "Routine investigatory activities" includes, but is not limited to,  
33 the following activities conducted by law enforcement officers and agen-  
34 cies in conjunction with traffic stops: (1) Frisks and other types of body  
35 searches, and (2) consensual or nonconsensual searches of persons or  
36 possessions, including vehicles, dormitory rooms, school lockers, homes  
37 and apartments.

38 (f) "Collection of data" means that information collected by Kansas  
39 law enforcement officers after each traffic or pedestrian stop.

40 Sec. 2. A 15-member task force shall be appointed by the governor  
41 to design a method for the uniform collection of data. The task force shall  
42 include representatives of the Kansas attorney general's office, the Kansas  
43 highway patrol, city and county law enforcement agencies, the Hispanic



1 and Latino American affairs commission, the advisory commission on Af-  
2 rican-American affairs, the department of revenue, Kansas district courts,  
3 Kansas civil rights advocates and others who can assist in the uniform  
4 collection of data. The task force shall make a final report and recom-  
5 mendations to the governor and the legislature not later than November  
6 1, 2005.

7 Sec. 3. It shall be unlawful for any law enforcement officer or any  
8 law enforcement agency to engage in racial profiling.

9 Sec. 4. The race, ethnicity, national origin, gender or religious dress  
10 of an individual or group shall not be the sole factor in determining the  
11 existence of probable cause to take into custody or to arrest an individual  
12 or in constituting a reasonable and articulable suspicion that an offense  
13 has been or is being committed so as to justify the detention of an indi-  
14 vidual or the investigatory stop of a vehicle.

15 Sec. 5. (a) All law enforcement agencies in this state shall adopt a  
16 detailed, written policy to preempt racial profiling. Each agency's policy  
17 shall include the definition of racial profiling found in section 1, and  
18 amendments thereto.

19 (b) Policies adopted pursuant to this section shall be implemented by  
20 all Kansas law enforcement ~~officers~~ <sup>↑</sup> within one year after the effective  
21 date of this act. The policies and data collection procedures shall be avail-  
22 able for public inspection during normal business hours.

agencies
----------

23 (c) The policies adopted pursuant to this section shall include, but  
24 not be limited to, the following:

25 (1) A prohibition of racial profiling.

26 (2) Annual educational training which shall include, but not be lim-  
27 ited to, an understanding of the historical and cultural systems that per-  
28 petuate racial profiling, assistance in identifying racial profiling practices,  
29 and providing officers with self-evaluation strategies to preempt racial  
30 profiling prior to stopping a citizen.

31 (3) For law enforcement agencies of cities of the first class, establish-  
32 ment or use of current independent citizen advisory boards which include  
33 participants who reflect the racial and ethnic community, to advise and  
34 assist in policy development, education and community outreach and  
35 communications related to racial profiling by law enforcement officers  
36 and agencies.

37 (4) Policies for discipline of law enforcement officers and agencies  
38 who engage in racial profiling.

39 (5) A provision that, if the investigation of a complaint of racial pro-  
40 filing reveals the officer was in direct violation of the law enforcement  
41 agency's written policies regarding racial profiling, the employing law en-  
42 forcement agency shall take appropriate action consistent with applicable  
43 laws, rules and regulations, resolutions, ordinances or policies, including

1 demerits, suspension or removal of the officer from the agency.

2 (6) Provisions for community outreach and communications efforts  
3 to inform the public of the individual's right to file with the law enforce-  
4 ment agency or the attorney general's office complaints regarding racial  
5 profiling, which outreach and communications to the community shall  
6 include ongoing efforts to notify the public of the law enforcement  
7 agency's complaint process.

8 (7) Procedures for individuals to file complaints of racial profiling  
9 with the agency, which, if appropriate, may provide for use of current  
10 procedures for addressing such complaints.

11 (d) Each law enforcement agency shall compile an annual report of  
12 all complaints of racial profiling received and shall submit the report on  
13 or before January 31 to the office of the attorney general for review. The  
14 annual report shall include: (1) The date the complaint is filed; (2) ac-  
15 tion taken in response to the complaint; (3) the decision upon disposition  
16 of the complaint; and (4) the date the complaint is closed. Annual reports  
17 filed pursuant to this subsection shall be open public records and shall  
18 be posted on the official website of the attorney general.

19 Sec. 6. (a) Any person who believes such person has been subjected  
20 to racial profiling by a law enforcement officer or agency may file a com-  
21 plaint with the law enforcement agency. The complainant may also file a  
22 complaint with the attorney general's office. If a complaint is filed with  
23 the attorney general's office, the attorney general or the attorney general's  
24 designee shall review and, if necessary, investigate the complaint. The  
25 attorney general or attorney general's designee shall consult with the head  
26 of the law enforcement agency before making final recommendations  
27 regarding discipline of any law enforcement officer or other disposition  
28 of the complaint.

**the Kansas commission  
on peace officers'  
standards and training.**

**The commission**

**commission's**

29 (b) Upon disposition of a complaint by the attorney general's office,  
30 the complainant shall have a civil cause of action in the district court  
31 against the law enforcement officer or law enforcement agency, or both,  
32 and shall be entitled to recover damages if it is determined by the court  
33 that such persons or agency engaged in racial profiling. The court may  
34 allow the prevailing party reasonable attorney fees and court costs.

**as provided for in  
subsection (a)**

35 ~~(c) A law enforcement agency shall not be eligible to receive grants  
36 or other moneys from the state for the fiscal year following a finding by  
37 the attorney general or the attorney general's designee that a law enforce-  
38 ment agency has engaged in racial profiling or has failed to discipline a  
39 law enforcement officer in accordance with the recommendations of the  
40 attorney general or the attorney general's designee pursuant to this sec-  
41 tion. The provisions of this subsection shall not apply if the complainant  
42 files a civil cause of action pursuant to this section and the district court  
43 finds that racial profiling did not occur.~~

1     Sec. 7. This act shall take effect and be in force from and after its  
2     publication in the statute book.