

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 27, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Stanton Hazlett, Office of the Disciplinary Administrator
Senator Emler
Jeff Bottenberg, Legislative Counsel, Kansas Sheriff's Association

Others attending:

See attached list.

Chairman Vratil opened the meeting and asked if there were bill introductions. Jim Clark, Kansas Bar Association, requested the introduction of a bill affecting the Consumer Protection Act to include the warranty of workmanship for a service contract. (Attachment 1) Senator O'Connor moved, seconded by Senator Goodwin, and the motion carried.

Commissioner Denise Everhart, Juvenile Justice Authority, requested the introduction of five bills: (1) an amendment to K.S.A. 38-1691, which would modify the Kansas statute to comply with the Federal Office of Juvenile Justice and Delinquency Programs sight and sound separation requirements between juveniles and adults; (2) an amendment to K.S.A. 38-1632 that would eliminate pre-adjudication custody of an offender to the commissioner; (3) an amendment to K.S.A. 38-1663 that would add clarifying language to the sentencing statute that makes it clear than an offender is in the custody of the commissioner when the offender has been directly committed to a juvenile correctional facility, and also for the period of aftercare; (4) an amendment to K.S.A. 38-1611 that would permit the taking of fingerprints and photographs of juveniles taken into custody pursuant to K.S.A. 38-1624 during processing at juvenile intake and assessment offices; and (5) an amendment to K.S.A. 21-3826 that would permit the Commissioner to be an official who can define contraband for purposes of criminal prosecution of employees who bring such contraband into a correctional institution. (Attachments 2-6) Senator Goodwin moved, seconded by Senator Umbarger, and the motion carried.

Senator O'Connor introduced a conceptual bill that would provide for civil legal action to be taken against individuals who are convicted of the crime of hosting parties where minors are in attendance and alcohol is served. Senator Umbarger moved, seconded by Senator O'Conner, and the motion carried.

Chairman Vratil opened the hearing on SB 39.

SB 39--Service of process fees charge by sheriff; single payment for same case

Proponents:

Senator Emler testified that this bill came about as a result of an experience in his law practice when he was serving subpoenas on two individuals for a hearing. He made out one check for \$10, which was the total fee for two subpoenas at \$5 each. The day before trial, Senator Emler received the subpoenas and the check back, because the Sheriff's office wanted two checks instead of one. Senator Emler checked with other colleagues and in other communities, and the fees were handled different ways. The bill would authorize one check or more to be acceptable, at the option of the person writing the check.

Jeff Bottenberg, Legislative Counsel for the Kansas Sheriff's Association, testified that the organization had no problem with this bill, that they were the primary supporter of the 2004 bill, HB 2293, which passed, requiring the \$5 fee for papers served by the sheriff. (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 27, 2005, in Room 123-S of the Capitol.

Chairman Vratil closed the hearing on **SB 39** and opened the hearing on **SB 36**.

SB 36 The supreme court may require applicants to practice law to be fingerprinted and submit to a national criminal history record check

Proponent:

Stanton Hazlett testified on behalf of his office, the Office of Kansas Disciplinary Administrator, in support of the bill. The Disciplinary Administrator, who initially reviews every application for the board of law examiners, requested permission to take fingerprints, pursuant to the authority already granted by the Kansas Supreme Court rule 704 in order to: 1) provide a positive means of identification of applicants; and, 2) to conduct a criminal history background check on all applicants to verify the information provided by the applicants. The Supreme court authorized Mr. Hazlett's office to proceed to secure the necessary legislation. The cost of the background check will be borne by the applicants. (Attachment 8)

Chairman Vratil closed the hearing on **SB 36**. Chairman Vratil asked the Committee to give consideration to **SB 27**.

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

Chairman Vratil handed out written testimony from the Attorney General and asked the Committee to review it. (Attachment 9) Additionally, written testimony was handed out from the Kansas Bureau of Investigation. (Attachment 10) Chairman Vratil also handed out an outline of the bill and briefly discussed the outline. (Attachment 11) Chairman Vratil stated that, since the hearing, it has been learned that ephedrine and pseudoephedrine in liquid form and in gel cap form are precursors for the manufacturer of methamphetamine.

Chairman Vratil shared a letter from the Kansas Pharmacists Association. (Attachment 12) The Association supports restricted access to the tablets, liquids and gel caps. By restricted access, the Association means keeping the product behind the pharmacy or customer service counter, or on a locked shelf, unavailable to the general public. The Association asked that the Committee not make the product a Schedule V substance, primarily because of the record keeping and reporting requirements. The Association also supports the preemption of local ordinances so that all localities would have to comply with the state statute and could not impose more severe restrictions on the sale of the product. The Association asked that the nine gram limit be changed to a three package limit, which would be easier to keep track of the product.

Chairman Vratil passed out a letter from the Kansas Food Dealers Association. (Attachment 13) The Association believes restricted access to the product can be handled effectively, and they oppose scheduling the product as Schedule V substances.

Senator Bruce stated that federal legislation had been introduced in the past several days with language similar to the Oklahoma law. The federal act includes the nine gram limit, requires photo identification to purchase, and it is not limited to the liquid form but all ephedrine and pseudoephedrine products.

Chairman Vratil handed out a proposed amendment from Representative Scott Schwab, which would significantly reduce the requirements imposed by the bill. It would require identification and signing a log to purchase ephedrine and pseudoephedrine products. It would not apply to the liquid or gel caps, and the log would be available for inspection at any time. (Attachment 14)

Chairman Vratil handed out a proposed amendment from Senator Vicki Schmidt, concerning wholesalers and distributors of ephedrine and pseudoephedrine, requiring them to report to the Kansas Bureau of Investigation any transactions involving the purchase of an extraordinary quantity of the product. (Attachment 15)

Chairman Vratil handed out a proposed balloon amendment of the bill for the Committee to review. (Attachment 16) Senator Derek Schmidt also offered a proposed amendment to the new section (4). (Attachment 17) Chairman Vratil asked the Committee to review all the handouts and amendments over the next few days and then the bill would be considered again.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 27, 2005, in Room 123-S of the Capitol.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for January 31, 2005.

Continue to route

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/27/05

NAME	REPRESENTING
Michael White	KCDAA
Kevin Barone	KTLA
Nancy Mosback	KSRN
Alan Blum	KSRN
Yvonne Anderson	KDUE
Leslie Kaufman	Ks Coop Council
Kelly Keak	SRS / AAPS
Jeff Bottanberg	Pol. Sineelli, et al
Jenny Davis	Conlee Consulting
Stacy Hazlett	Disciplinary Administrator's Office
Gayle Larkin	Disciplinary Administrator's Office
Francine Acree	Attorney Admissions - Supervisor
J Butler	KSC
B. Harmon	KSC
P. Biggs	KSC
LARRY BUENING	BO OF HEALING ARTS
Bill Muskell	JJA
Denise Everhart	JJA
Bob Billingley	KBOPharmacy

Submitted
by Jim CLARK.

50-639. Disclaimer or limitation of warranties; liabilities; attorney fees, when; section inapplicable to seed for planting, livestock for agricultural purposes or disposal of surplus property by a governmental entity. (a) Notwithstanding any other provisions of law, with respect to property which is the subject of or is intended to become the subject of a consumer transaction in this state, no supplier shall:

(1) Exclude, modify or otherwise attempt to limit the implied warranties of merchantability as defined in K.S.A. 84-2-314, and amendments thereto, ~~and~~ fitness for a particular purpose, as defined in K.S.A. 84-2-315, and amendments thereto, or the implied warranty of workmanlike performance; or

(2) exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of implied warranty of merchantability ~~and~~ , for a breach of fitness for a particular purpose, or for a breach of workmanlike performance.

(b) Notwithstanding any provision of law, no action for breach of warranty with respect to property subject to a consumer transaction shall fail because of a lack of privity between the claimant and the party against whom the claim is made. An action against any supplier for breach of warranty with respect to property subject to a consumer transaction shall not, of itself, constitute a bar to the bringing of an action against another person.

(c) A supplier may limit the supplier's implied warranty of merchantability and fitness for a particular purpose with respect to a defect or defects in the property only if the supplier establishes that the consumer had knowledge of the defect or defects, which became the basis of the bargain between the parties. In neither case shall such limitation apply to liability for personal injury or property damage.

(d) Nothing in this section shall be construed to expand the implied warranty of merchantability as defined in K.S.A. 84-2-314, and amendments thereto, to involve obligations in excess of those which are appropriate to the property.

(e) A disclaimer or limitation in violation of this section is void. If a consumer prevails in an action based upon breach of warranty, and the supplier has violated this section, the court may, in addition to any damages recovered, award reasonable attorney fees and a civil penalty under K.S.A. 50-636, and amendments thereto, to be paid by the supplier who gave the improper disclaimer.

(f) The making of a limited express warranty is not in itself a violation of this section.

(g) This section shall not apply to seed for planting.

(h) This section shall not apply to sales of livestock for agricultural purposes, other than sales of livestock for immediate slaughter, except in cases where the supplier knowingly sells livestock which is diseased.

(i) This section shall not apply to the disposal of surplus property by any governmental entity if the governmental entity has given conspicuous written notice of the warranty limitation, exclusion or disclaimer. In the case of surplus property which is a motor vehicle, a notice of such limitation, exclusion or disclaimer shall be affixed to a side window of the motor vehicle. Such notice shall comply with the buyers guide required by 16 CFR 455.2 and 16 CFR 455.3 (as in effect on the effective date of this act).

History: L. 1973, ch. 217, § 17; L. 1974, ch. 230, § 5; L. 1976, ch. 236, § 8; L. 1981, ch. 215, § 1; L. 1988, ch. 193, § 2; L. 1991, ch. 159, § 11; L. 1998, ch. 99, § 2; Apr. 16.

Submitted by Jim CLARK

Senate Judiciary

1-27-05

Attachment 1



KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Senator John Vratil, Chair
Senate Committee on the Judiciary

FROM: Denise L. Everhart, Commissioner

SUBJECT: Request for Bill Introduction

DATE: January 27, 2005

I respectfully request the Committee on the Judiciary introduce a proposal on behalf of the Juvenile Justice Authority that will modify Kansas statute to comply with the Federal Office of Juvenile Justice and Delinquency Programs sight and sound separation requirements between juveniles and adults. In Kansas, the filing of a motion requesting prosecution as an adult allows for the youth to be detained as an adult. For the JJJPA to regard a juvenile as an adult and beyond the scope of the Act, the juvenile must be formally waived to the adult criminal court. Therefore, juveniles held as adults on the basis of a motion requesting prosecution as an adult would be considered a violation of the Jail Removal requirement of the OJJJPA. This proposal was passed in 2004 in HB 2862 by the House Committee on Corrections and Juvenile Justice Oversight and the House Committee of the Whole and referred to the Senate Committee on the Judiciary.

This proposal will amend K.S.A. 38-1691(c)(1).

K.S.A. 38-1691 would be amended to read as follows:

38-1691. Prohibiting placement or detainment of juvenile in jail; exceptions; review of records and determination of compliance by juvenile justice authority. (a) On and after January 1, 1993, no juvenile shall be detained or placed in any jail pursuant to the Kansas juvenile justice code except as provided by subsections (b), (c) and (d).

(b) Upon being taken into custody, an alleged juvenile offender may be detained temporarily in a jail, in quarters with sight and sound separation from adult prisoners, for the purpose of identifying and processing the juvenile and transferring the juvenile to a youth residential facility or juvenile detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be detained only for the minimum time necessary, not to exceed six hours, and in no case overnight.

(c) The provisions of this section shall not apply to detention of a juvenile:

(1) (A) Against whom a motion has been filed requesting prosecution as an adult pursuant to K.S.A. 38-1636, and amendments thereto; ~~and~~ (B) who has received the benefit of a detention hearing pursuant to K.S.A. 38-1640, and amendments thereto; *and (C) who, on the record, has waived the right to a hearing on the motion requesting prosecution as an adult filed pursuant to K.S.A. 38-1636, and amendments thereto;*

(2) whose prosecution as an adult or classification as an extended jurisdiction juvenile has been authorized pursuant to K.S.A. 38-1636, and amendments thereto; or

(3) who has been convicted previously as an adult under the code of criminal procedure or the criminal laws of another state or foreign jurisdiction.

(d) The provisions of this section shall not apply to the detention of any person 18 years of age or more who is taken into custody and is being prosecuted in accordance with the provisions of the Kansas juvenile justice code.

(e) The Kansas juvenile justice authority or the authority's contractor shall have authority to review jail records to determine compliance with the provisions of this section.

(f) This section shall be part of and supplemental to the Kansas juvenile justice code.



KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Senator John Vratil, Chair
Senate Committee on the Judiciary

FROM: Denise L. Everhart, Commissioner

SUBJECT: Request for Bill Introduction

DATE: January 27, 2005

I respectfully request the Committee on the Judiciary introduce a proposal on behalf of the Juvenile Justice Authority that will eliminate pre-adjudication custody of an offender to the Commissioner. This proposal was passed in 2004 as HB 2862 by the House Committee on Corrections and Juvenile Justice Oversight and the House Committee of the Whole and referred to the Senate Committee on the Judiciary.

This proposal will amend K.S.A. 38-1632(g).

K.S.A. 38-1632 would be amended to read as follows:

38-1632. Detention hearing; waiver; notice; procedure; removal from custody of parent; audio-video communications. (a) *Length of detention.* (1) Whenever an alleged juvenile offender is taken into custody and is thereafter taken before the court or to a juvenile detention facility or youth residential facility designated by the court, the juvenile shall not remain detained for more than 48 hours, excluding Saturdays, Sundays and legal holidays, from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, that further detention is necessary.

- (2) If a juvenile is detained in jail pursuant to subsection (b) of K.S.A. 38-1691 and amendments thereto, the detention hearing required by this section shall be held within 24 hours after the juvenile is taken into custody.

(b) *Waiver of detention hearing.* The right of a juvenile to a detention hearing may be waived if the juvenile and the attorney for the juvenile consent in writing to waive the right to a detention hearing and the judge approves the waiver. Whenever the right to a detention hearing has been waived, the juvenile, the attorney for the juvenile or the juvenile's parents may reassert the right at any time not less than 48 hours prior to the time scheduled for trial by submitting a written request to the judge. Upon request, the judge shall immediately set the time and place for the hearing, which shall be held not more than 48 hours after the receipt of the request excluding Saturdays, Sundays and legal holidays.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by subsection (b)(1) of K.S.A. 38-1691 and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived, and shall be in substantially the following form:

(Name of Court)
(Caption of Case)

NOTICE OF DETENTION HEARING

TO: _____

(Juvenile)

(Father)

(Mother)

(Other having custody- (Address) relationship)

On _____, _____, _____, at ___ o'clock ___ m.
(day) (date) (year)

there will be a hearing for the court to determine if there is a need for further detention of the above named juvenile. Each parent or other person having legal custody of the juvenile should be present at the hearing which will be held at _____.

You have the right to hire an attorney to represent the above juvenile. Upon failure to hire an attorney the court will appoint an attorney for the juvenile and the juvenile, parent or other person having legal custody of the juvenile may be required to repay the court for the expense of the appointed attorney. The court may order one or both parents to pay child support.

Date: _____, _____
Clerk of the District Court

by _____
(Seal)

REPORT OF SERVICE

I certify that I have delivered a true copy of the above notice on the persons above named in the manner and at the times indicated below:

Name Location of Service Manner of Service Date Time
(other than above)

Date Returned: _____, _____

(Signature)

(Title)

(d) Oral notice. When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk in substantially the following form:

(Name of Court)
(Caption of Case)

CERTIFICATE OF ORAL NOTICE OF DETENTION HEARING

I gave oral notice that the court will hold a hearing at _____ o'clock __ m. on _____, _____, to the persons listed, in the manner and at the times indicated below:

Name Relationship Date Time Method of Communication
(in person or telephone)

I advised each of the above named persons that:

- (1) The hearing is to determine if the above named juvenile shall be detained;
- (2) each parent or person having legal custody should be present at the hearing;
- (3) they have the right to hire an attorney of their own choice for the juvenile;
- (4) if an attorney is not hired, the court will appoint an attorney for the juvenile;
- (5) the juvenile, parent or other person having custody of the juvenile may be required to repay the court for the expense of the appointed attorney; and
- (6) the court may order one or both parents to pay child support.

_____ (Signature) _____ (Name Printed)

_____ (Title)

(e) *Hearing, finding, bond.* At the time set for the detention hearing if no retain^{er} is present to represent the juvenile, the court shall appoint an attorney for the juvenile, and may recess the hearing for 24 hours to obtain attendance of the attorney appointed unless the juvenile is detained in jail pursuant to subsection (b)(1) of K.S.A. 38-1691 and amendments thereto. At the detention hearing, if the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate. If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and amendments thereto. In the absence of either finding, the court shall order the juvenile released or placed in temporary custody as provided in subsection (f).

In determining whether to place a juvenile in a juvenile detention facility pursuant to this subsection, the court shall consider all relevant factors, including but not limited to the criteria listed in K.S.A. 38-1640 and amendments thereto. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(f) *Temporary custody.* If the court determines that it is not necessary to detain the juvenile but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of a youth residential facility or some other suitable person willing to accept temporary custody.

~~(g) The court may enter an order removing a juvenile from the custody of a parent and placing the child in the temporary custody of the commissioner pursuant to K.S.A. 38-1664, and amendments thereto.~~

(h) (g) *Audio-video communications.* Detention hearings may be conducted by two-way electronic audio-video communication between the alleged juvenile offender and the judge in lieu of personal presence of the juvenile or the juvenile's counsel in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's counsel during such proceedings or counsel may be personally present in court as long as a means of communication between the juvenile and the juvenile's counsel is available for consultation between the juvenile and the juvenile's counsel in confidence.



JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Senator John Vratil, Chair
Senate Committee on the Judiciary

FROM: Denise L. Everhart, Commissioner

SUBJECT: Request for Bill Introduction

DATE: January 27, 2005

I respectfully request the Committee on the Judiciary introduce a proposal on behalf of the Juvenile Justice Authority that will add clarifying language to the sentencing statute that makes it plain and clear that an offender is in the custody of the commissioner when the offender has been directly committed to a juvenile correctional facility and also for the period of aftercare. This proposal was passed in 2004 as HB 2862 by the House Committee on Corrections and Juvenile Justice Oversight and the House Committee of the Whole and referred to the Senate Committee on the Judiciary.

This proposal will amend 38-1663(a)(8).

K.S.A. 38-1663 would be amended to read as follows:

38-1663. Sentencing alternatives. (a) When a respondent has been adjudicated to be a juvenile offender, the judge may select from the following alternatives:

- (1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate based on the juvenile justice programs in the community, including a requirement of making restitution as required by subsection (d).
- (2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders based on the juvenile justice programs in the community, including a requirement of making restitution as required by subsection (d).

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(3) Place the juvenile offender in the custody of a youth residential facility or, in the case of a chronic runaway youth, place the youth in a secure facility, subject to the terms and conditions the court orders.

(4) Place the juvenile offender in the custody of the commissioner, as provided in K.S.A. 38-1664, and amendments thereto.

(5) Commit the juvenile offender to a sanctions house for a period no longer than seven days. Following such period, the court shall review the placement. The court may continue to recommit the juvenile offender to a sanctions house for a period no longer than seven days followed by a court review. Commitment to a sanctions house shall not exceed 28 total days for the same act or transaction. If in the adjudication order, the court orders a sanctions house placement for a verifiable probation violation and such probation violation occurs, the juvenile may immediately be taken to a sanctions house and detained for no more than 48 hours, excluding Saturdays, Sundays and holidays, prior to court review of the placement. The court and all other interested parties shall be notified of the sanctions house placement. An offender over 18 years of age or less than 23 years of age at sentencing may be committed to a county jail, in lieu of a sanctions house, under the same time restrictions imposed by this paragraph. No offender may be committed under this paragraph unless such offender has violated the terms of probation.

(6) Commit the juvenile offender to a community based program available in such judicial district subject to the terms and conditions the court orders.

(7) Impose any appropriate combination of paragraphs (1) through (6) of this subsection and make other orders directed to the juvenile offender as the court deems appropriate.

(8) Commit the juvenile offender ***directly to the custody of the commissioner for a period of confinement in*** a juvenile correctional facility as provided by the placement matrix established in K.S.A. 38-16,129, and amendments thereto. The provisions of K.S.A. 38-1664, and amendments thereto, shall not apply to juvenile offenders committed directly to ***the custody of the commissioner for a period of confinement in*** a juvenile correctional facility ***and any aftercare term.***

(9) Place the juvenile offender under a house arrest program administered by the court pursuant to K.S.A. 21-4603b, and amendments thereto.

(b) (1) In addition to any other order authorized by this section, the court may order the: (A) Juvenile offender and the parents of the juvenile offender to:

(i) Attend counseling sessions as the court directs; or

(ii) participate in mediation as the court directs. Participants in such mediation may include, but shall not be limited to, the victim, the juvenile offender and the juvenile offender's parents. Mediation shall not be mandatory for the victim;

(B) parents of the juvenile offender to participate in parenting classes; or

(C) juvenile offender to participate in a program of education offered by a local board of education including placement in an alternative educational program approved by a local board of education.

(2) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 10 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent. If the parent does not request a hearing within 10 days after entry of the order, the order shall take effect at that time. If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 38-1606, and amendments thereto.

(3) The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than what the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than what the mediator would have charged the person participating in the mediation if the person had requested mediation on the person's own initiative.

(c) (1) If a respondent has been adjudged to be a juvenile offender, the court, in addition to any other order authorized by this section, may suspend the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state. The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court. The court shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any respondent who is adjudicated to be a juvenile offender who does not have a driver's license may have such juvenile offender's driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court.

(2) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any respondent adjudicated to be a juvenile offender, as provided in subsection (c)(1), the court in which such juvenile offender was adjudicated to be a juvenile offender may enter an order which places conditions on such juvenile offender's privilege of operating a motor vehicle on the streets and highways of this state, a certified copy of which such juvenile offender shall be required to carry any time such juvenile offender is operating a motor vehicle on the streets and highways of this state. Any such order shall prescribe the duration of the conditions imposed and shall specify that such duration shall be for a definite time period to be determined by the court. Upon entering an order restricting a juvenile offender's license hereunder, the court shall require such juvenile offender to surrender such juvenile offender's driver's license to the court. The court shall transmit the license to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the juvenile offender for whom the license was issued any time such juvenile offender is operating a motor vehicle on the streets and highways of this state. If the juvenile offender is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of such juvenile offender's state of residence. Such court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such juvenile offender's privilege to operate a motor vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any juvenile offender shall violate any of the conditions imposed under this subsection, such juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be revoked for a period as determined by the court in which such juvenile offender is convicted of violating such conditions.

(d) Whenever a juvenile offender is placed pursuant to subsection (a)(1) or (2), the court, unless it finds compelling circumstances which would render a plan of restitution unworkable, shall order the juvenile offender to make restitution to persons who sustained loss by reason of the offense. The restitution shall be made either by payment of an amount fixed by the court or by working for the persons in order to compensate for the loss. If the court finds compelling circumstances which would render a plan of restitution unworkable, the court may order the juvenile offender to perform charitable or social service for organizations performing services for the community.

Nothing in this subsection shall be construed to limit a court's authority to order a juvenile offender to make restitution or perform charitable or social service under circumstances other than those specified by this subsection or when placement is made pursuant to subsection (a)(3) or (4).

(e) In addition to or in lieu of any other order authorized by this section, the court may order a juvenile offender to pay a fine not exceeding \$250 for each offense. In determining whether to impose a fine and the amount to be imposed, the court shall consider the following:

(1) Imposition of a fine is most appropriate in cases where the juvenile offender has derived pecuniary gain from the offense.

(2) The amount of the fine should be related directly to the seriousness of the juvenile offender's offense and the juvenile offender's ability to pay.

(3) Payment of a fine may be required in a lump sum or installments.

(4) Imposition of a restitution order is preferable to imposition of a fine.

(5) The juvenile offender's duty of payment should be limited in duration and in no event should the time necessary for payment exceed the maximum term which would be authorized if the offense had been committed by an adult.

(f) In addition to or in lieu of any other order authorized by this section, if a juvenile is adjudicated to be a juvenile offender by reason of a violation of K.S.A. 41-719, 41-727, 65-4101 through 65-4164 or K.S.A. 2000 Supp. 8-1599, and amendments thereto, the court shall order the juvenile offender to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The court may waive such evaluation if the court finds that the juvenile offender has completed successfully an alcohol and drug evaluation, approved by the community-based alcohol and drug safety action program, within 12 months before sentencing. If such evaluation occurred more than 12 months before sentencing, the court shall order the juvenile offender to resubmit to and complete such evaluation and program as provided herein. If the court finds that the juvenile offender and those legally liable for the offender's support are indigent, the fee may be waived. In no event shall the fee be assessed against the commissioner or the juvenile justice authority. The court may require the parent or guardian of the juvenile offender to attend such program with the juvenile offender.

(g) The board of county commissioners of a county may provide by resolution that the parents or guardians of any juvenile offender placed under a house arrest program pursuant to subsection (a)(9) shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall prepare a sliding financial scale based on the ability of the parents to pay for such a program.

(h) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the respondent the court may order, and when custody is placed with the commissioner shall order, one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent already is subject to an order to pay support for the respondent. If the parent currently is not ordered to pay support for the respondent and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-16,117, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 *et seq.*, and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-16,119, and amendments thereto. The parent also shall be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

(i) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the court's journal.

(j) In addition to the requirements of K.S.A. 38-1671, and amendments thereto, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense if committed by an adult would constitute the commission of a felony, the court shall forward a signed copy of the journal entry to the commissioner within 30 days of final disposition.

(k) The sentencing hearing shall be open to the public as provided in K.S.A. 38-1652, and amendments thereto.



KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Senator John Vratil, Chair
Senate Committee on the Judiciary

FROM: Denise L. Everhart, Commissioner

SUBJECT: Request for Bill Introduction

DATE: January 27, 2005

I respectfully request the Committee on the Judiciary introduce a proposal on behalf of the Juvenile Justice Authority that will permit the taking of fingerprints and photographs of juveniles taken into custody pursuant to K.S.A. 38-1624 during processing at juvenile intake and assessment offices. This proposal was passed in 2004 in HB 2862 by the House Committee on Corrections and Juvenile Justice Oversight and the House Committee of the Whole and referred to the Senate Committee on the Judiciary.

This proposal will amend K.S.A. 38-1611(a)(4) and K.S.A. 75-7023(d)(9).

K.S.A. 38-1611 would be amended to read as follows:

38-1611. Fingerprints and photographs. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of the juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3105 and amendments thereto, a class A or B misdemeanor or assault, as defined by K.S.A. 21-3408, and amendments thereto; and

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501 and amendments thereto if the juvenile has been:

(A) Prosecuted as an adult by reason of 38-1636, and amendments thereto; or

(B) convicted of aggravated juvenile delinquency as defined by K.S.A. 21-3611 and amendments thereto; or taken into custody for an offense described in subsection (b)(1) or (2) of K.S.A. 38-1602 and amendments thereto.

(4) Fingerprints or photographs of a juvenile may be taken pursuant to K.S.A. 75-7023(d)(9) and amendments thereto.

(b) Fingerprints and photographs taken under subsection (a)(1) or (2) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsection (a)(3) may be kept in the same manner as those of persons of the age of majority.

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to a state or federal repository if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to a state or federal repository if taken under subsection (a)(2); and

(3) fingerprints or photographs taken under subsection (a)(3) shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 38-1617 and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of a juvenile taken under the provisions of subsection (a)(2) as it existed before the effective date of this act may be sent to a state or federal repository on or before December 31, 1984.

(f) Any law enforcement agency that willfully fails to make any report required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

K.S.A. 75-7023 would be amended to read as follows:

75-7023. Juvenile intake and assessment system; confidentiality of records; information collected; dispositional alternatives; custody of child; conditions of release. (a) The supreme court through administrative orders shall provide for the establishment of a juvenile intake and assessment system and for the establishment and operation of juvenile intake and assessment programs in each judicial district. On and after July 1, 1997, the secretary of social and rehabilitation services may contract with the commissioner of juvenile justice to provide for the juvenile intake and assessment system and programs for children in need of care. Except as provided further, on and after July 1, 1997, the commissioner of juvenile justice shall promulgate rules and regulations for the juvenile intake and assessment system and programs concerning juvenile offenders. If the commissioner contracts with the office of judicial administration to administer the juvenile intake and assessment system and programs concerning juvenile offenders, the supreme court administrative orders shall be in force until such contract ends and the rules and regulations concerning juvenile intake and assessment system and programs concerning juvenile offenders have been adopted.

(b) No records, reports and information obtained as a part of the juvenile intake and assessment process may be admitted into evidence in any proceeding and may not be used in a child in need of care proceeding except for diagnostic and referral purposes and by the court in considering dispositional alternatives. However, if the records, reports or information are in regard to abuse or neglect, which is required to be reported under K.S.A. 38-1522, and amendments thereto, such records, reports or information may then be used for any purpose in a child in need of care proceeding pursuant to the Kansas code for care of children.

(c) Upon a juvenile being taken into custody pursuant to K.S.A. 38-1624, and amendments thereto, a juvenile intake and assessment worker shall complete the intake and assessment process as required by supreme court administrative order or district court rule prior to July 1, 1997, or except as provided above rules and regulations established by the commissioner of juvenile justice on and after July 1, 1997.

(d) Except as provided in subsection (g) and in addition to any other information required by the supreme court administrative order, the secretary, the commissioner or by the district court of such district, the juvenile intake and assessment worker shall collect the following information:

- (1) A standardized risk assessment tool, such as the problem oriented screening instrument for teens;
- (2) criminal history, including indications of criminal gang involvement;

- (3) abuse history;
- (4) substance abuse history;
- (5) history of prior community services used or treatments provided;
- (6) educational history;
- (7) medical history; and
- (8) family history.

(9) ***Notwithstanding any other provision of law, the intake and assessment worker is authorized to obtain fingerprints and photographs for all juveniles taken into custody pursuant to K.S.A. 38-1624, and amendments thereto, for the purposes of maintaining accurate identification of the juvenile within the Juvenile Justice Information System.***

(e) After completion of the intake and assessment process for such child, the intake and assessment worker may:

(1) Release the child to the custody of the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that it would be in the best interest of the child and it would not be harmful to the child to do so.

(2) Conditionally release the child to the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that if the conditions are met, it would be in the child's best interest to release the child to such child's parent, other legal guardian or another appropriate adult; and the intake and assessment worker has reason to believe that it might be harmful to the child to release the child to such child's parents, other legal guardian or another appropriate adult without imposing the conditions. The conditions may include, but not be limited to:

- (A) Participation of the child in counseling;
- (B) participation of members of the child's family in counseling;
- (C) participation by the child, members of the child's family and other relevant persons in mediation;
- (D) provision of inpatient treatment for the child;
- (E) referral of the child and the child's family to the secretary of social and rehabilitation services for services and the agreement of the child and family to accept and participate in the services offered;
- (F) referral of the child and the child's family to available community resources or services and the agreement of the child and family to accept and participate in the services offered;

(G) requiring the child and members of the child's family to enter into a behavior contract which may provide for regular school attendance among other requirements; or

(H) any special conditions necessary to protect the child from future abuse or neglect.

(3) Deliver the child to a shelter facility or a licensed attendant care center along with the law enforcement officer's written application. The shelter facility or licensed attendant care facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer pursuant to K.S.A. 38-1528, and amendments thereto.

(4) Refer the child to the county or district attorney for appropriate proceedings to be filed or refer the child and family to the secretary of social and rehabilitation services for investigations in regard to the allegations.

(5) Make recommendations to the county or district attorney concerning immediate intervention programs which may be beneficial to the juvenile.

(f) The commissioner may adopt rules and regulations which allow local juvenile intake and assessment programs to create a risk assessment tool, as long as such tool meets the mandatory reporting requirements established by the commissioner.

(g) Parents, guardians and juveniles may access the juvenile intake and assessment programs on a voluntary basis. The parent or guardian shall be responsible for the costs of any such program utilized.



KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Senator John Vratil, Chair
Senate Committee on the Judiciary

FROM: Denise L. Everhart, Commissioner

SUBJECT: Request for Bill Introduction

DATE: January 27, 2005

I respectfully request the Committee on the Judiciary introduce a proposal on behalf of the Juvenile Justice Authority that will permit the Commissioner to be an official who can define contraband for purposes of criminal prosecution of employees who bring such contraband into a correctional institution. This proposal would provide the Commissioner of the Juvenile Justice Authority with authority similar to that of the Secretary of Corrections. This proposal was passed in 2004 in HB 2862 by the House Committee on Corrections and Juvenile Justice Oversight and the House Committee of the Whole and referred to the Senate Committee on the Judiciary.

This proposal will amend K.S.A. 21-3826(c)(2).

K.S.A. 21-3826 would be amended to read as follows:

21-3826. Traffic in contraband in a correctional institution. (a) Traffic in contraband in a correctional institution is introducing or attempting to introduce into or upon the grounds of any correctional institution or taking, sending, attempting to take or attempting to send from any correctional institution or any unauthorized possession while in any correctional institution or distributing within any correctional institution, any item without the consent of the administrator of the correctional institution.

(b) For purposes of this section, "correctional institution" means any state correctional institution or facility, conservation camp, state security hospital, juvenile correctional facility, community correction center or facility for detention or confinement, juvenile detention facility or jail.

(c) (1) Traffic in contraband in a correctional institution of firearms, ammunition, explosives or a controlled substance which is defined in subsection (e) of K.S.A. 65-4101, and amendments thereto, is a severity level 5, nonperson felony.

(2) Traffic in any contraband, as defined by rules and regulations adopted by the secretary *or the commissioner of juvenile justice*, in a correctional institution by an employee of a correctional institution is a severity level 5, nonperson felony.

(d) Except as provided in subsection (c), traffic in contraband in a correctional institution is a severity level 6, nonperson felony.

Memorandum

TO: HONORABLE JOHN VRATIL, CHAIRMAN, SENATE JUDICIARY COMMITTEE

FROM: JEFF BOTTENBERG, LEGISLATIVE COUNSEL, KANSAS SHERIFFS' ASSOCIATION

RE: SB 39

DATE: JANUARY 27, 2005

Mr. Chairman, members of the Committee, my name is Jeff Bottenberg and I am submitting written testimony in support of SB 39 on behalf of the Kansas Sheriffs' Association ("KSA"). KSA is comprised of approximately 2,100 members, both law enforcement and civilian personnel, that work in county sheriff departments throughout the state.

Last year the Legislature passed HB 2293, which requires a \$5 fee for every paper to be served by the sheriff. The KSA was the primary supporter of HB 2293, and we want to thank the members of this Committee for their support of this important law enforcement legislation. The KSA supports SB 39 as well, as the bill allows an attorney to pay all process fees that arise out of one legal action with a single check or money order. The KSA believes that this bill merely clarifies what was the original intent of HB 2293. Obviously, it is the attorney's duty to know how many persons will be served in the case in order to pay all fees with one check.

The KSA would also like to inform the Committee that HB 2293 has generated significant revenues for sheriff offices since it became effective on July 1, 2004. For instance, almost \$100,000 in process fees was generated in Sedgwick County last year, and that number is expected to double for this fiscal year. Furthermore, almost \$6,000 in process fees was collected in Dickinson County last year. This amount of revenue is substantial for a smaller county.

Therefore, the KSA once again wants to thank the members of the Committee for their support of HB 2293, and urges the passage of SB 39. Please do not hesitate to contact me if you have any questions.

JSB:kjb

One AmVestors Place
555 Kansas Avenue, Suite 301
Topeka, KS 66603
Telephone: (785) 233-1446
Fax: (785) 233-1939

Senate Judiciary

1-27-05

Attachment 7

STATE OF KANSAS

STANTON A. HAZLETT
Disciplinary Administrator

FRANK D. DIEHL
ALEXANDER M. WALCZAK
JANITH A. DAVIS
Deputy Disciplinary Administrators

GAYLE B. LARKIN
Admissions Attorney



701 Jackson St.
1st Floor
Topeka, Kansas 66603-3729
Telephone: (785) 296-2486
Fax: (785) 296-6049

OFFICE OF
THE DISCIPLINARY ADMINISTRATOR

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 36:
An Act concerning the admission to practice law; requirements;
fingerprints and criminal history

Bill Text: The text of the bill is attached.

Bill Summary: The state board of law examiners, appointed by the Supreme Court, already conducts a general background check in connection with the Court's determination of an applicant's character and fitness to practice law. See Supreme Court Rule 704, 204 Kan. Ct. R. 594. However, until now that background check has been based primarily on information furnished by the applicant on an application to take the bar examination.

The Disciplinary Administrator of the Kansas Supreme Court, who initially reviews every application for the board of law examiners, requested permission to take fingerprints, pursuant to the authority already granted by the Kansas Supreme Court in Supreme Court Rule 704, (204 Kan. Ct. R. 594), in order to: 1) provide a positive means of identification of applicants, should that be necessary; and, 2) to conduct a criminal history background check on all applicants to verify the information provided by the applicants. The Supreme Court has authorized the Disciplinary Administrator's Office to proceed to secure the necessary legislation.

Specific legislation is necessary because Public Law 92-544, and 28 C.F.R. 20.33 permits the exchange of federal criminal history information with state and local governments for purposes of employment and licensing if authorized by state statute. Since Kansas does not presently have a state statute authorizing the request of the Federal Bureau of Investigation for criminal history information for licensing of prospective lawyers, specific legislation to that effect is required. This legislative proposal is submitted to satisfy that requirement.

Senate Judiciary

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Attachment 8

Presently, pursuant to K.S.A. 22-4701, *et seq.*, we can request the Kansas Bureau of Investigation to provide a report of Kansas arrests and if the applicant has such a record then the KBI can get further information from the FBI about arrests and convictions elsewhere. However, if the applicant does not have a Kansas arrest record, then the KBI cannot get the further information from the FBI. A separate FBI report is necessary for those applicants who apply for admission to practice law from outside the state. Over the past six years applicants from outside the state total from 43% to 51% of all applicants. In January the Kansas Supreme Court will consider a reciprocity rule which will allow out of state attorneys to apply for admission to the Kansas bar if the attorney is from a state that permits mutuality of admission without examination for members of the Kansas bar. If the rule is adopted, it could result in several hundred additional out of state applicants.

The proposed legislation will have no material effect on any state agency operations. The cost of the background check will be borne by the applicants. The policy implications and background have been stated in the bill summary. This bill has no material impact on other state agencies. The Kansas Bureau of Investigation advises that these criminal history background requests can and will be handled in the ordinary course of business.

SENATE BILL No. 36

By Committee on Judiciary

1-13

9 AN ACT concerning the admission to practice law; requirements; fin-
10 gerprints and criminal history.

11

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

13 Section 1. (a) The supreme court may require an applicant for ad-
14 mission to practice law in this state to be fingerprinted and submit to a
15 national criminal history record check. The fingerprints shall be used to
16 identify the applicant and to determine whether the applicant has a record
17 of criminal arrests and convictions in this state or other jurisdictions. The
18 supreme court and the state board of law examiners are authorized to
19 submit the fingerprints to the Kansas bureau of investigation and the
20 federal bureau of investigation for a state and national criminal history
21 record check. The state board of law examiners and the supreme court
22 may use the information obtained from fingerprinting and the applicant's
23 criminal history only for purposes of verifying the identification of any
24 applicant and in the official determination of character and fitness of the
25 applicant for admission to practice law in this state.

26 (b) Local and state law enforcement officers and agencies shall assist
27 the supreme court in taking and processing of fingerprints of applicants
28 seeking admission to practice law in this state and shall release all records
29 of an applicant's arrests and convictions to the supreme court and the
30 state board of law examiners.

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



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

January 27, 2005

SENATE JUDICIARY COMMITTEE
Written testimony for Senate Bill No. 27

Dear Chairman Vratil and Members of the Senate Judiciary Committee:

Thank you for allowing me to submit this written testimony regarding SB 27, an important piece of legislation designed to help prevent the illegal and extremely dangerous production of methamphetamine at clandestine "labs" across the State of Kansas. SB 27 follows a very successful model that has been implemented in the State of Oklahoma that has reduced the number of "meth labs" seized in that State dramatically by making it more difficult for the offenders attempting to manufacture methamphetamine to acquire one of the critical ingredients necessary for the production of methamphetamine.

In very simple terms, what Oklahoma did was to take hard pill and/or powder forms of products containing ephedrine and pseudoephedrine off of the publicly accessible shelves of retail stores and require that those products be sold from the pharmacist's counter. Purchasers of these products are not required to have a prescription, but they must present photo identification and they must sign a log book recording the purchase. Effectively this forces offenders who would seek to acquire hard pill/powder products containing ephedrine and pseudoephedrine for the purposes of manufacturing methamphetamine to expose themselves to increased levels of identification, scrutiny and record-keeping, that those offenders are very aware will increase their chances of being arrested and prosecuted for their crimes. Statistics coming from Oklahoma indicate between a 50% to 80% reduction in the number of clandestine "meth labs" being seized throughout the State since the adoption of the law. The success of the Oklahoma law is difficult to ignore, and adopting a similar statute in Kansas has the potential for allowing our law enforcement professionals to make great strides towards reducing the number of illegal and deadly meth labs that threaten our State.

The Committee has heard testimony already that law enforcement authorities in the most southern counties of the State of Kansas are beginning to report an increased number of incidents where offenders from Oklahoma are traveling north to acquire ephedrine and pseudoephedrine containing products in our State. We recognize the passage of this bill will impose some additional duties and responsibilities on pharmacists and pharmacy retailers in Kansas, and it may be that those issues can be addressed without compromising the integrity of the bill. If so, we respect the

Committee's actions that regard. It is important however to move this matter forward to protect Kansans from the scourge of methamphetamine.

On behalf of Attorney General Phill Kline, I encourage the Committee to support SB 27 and to recommend the bill favorably for passage.

[Please note that liquid and gel based products containing ephedrine and pseudoephedrine are not included in restrictions to be imposed under SB 27 for two primary reasons: (1) It is considerably more difficult and time consuming to manufacture methamphetamine from liquid or gel forms of the drugs, thus there has not been wide-spread utilization of those forms of the products to "cook meth" in the past; and (2) by exempting liquid and gel forms of these products stores that do not have pharmacies may continue to carry these medications and offer them to their customers – just in a different form.]

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

A handwritten signature in dark ink, appearing to read "Kevin A. Graham", with a long horizontal flourish extending to the right.

Kevin A. Graham
Assistant Attorney General
Criminal Division



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Senate Judiciary
Proposed Amendments to SB 27
Kyle Smith, KBI
1/27/05

Chairman Vratil and members of the committee,

The KBI, after consulting with various senators and other interested parties, would submit the attached balloon amendments for the committee to consider. Executive Director Deb Billingsley of the Kansas Pharmacy Board has advised that these amendments have satisfied the board's concerns.

Both the KBI and the Kansas Peace Officers Association would **oppose any amendments to exclude multi-ingredient products from schedule 5** as those products can and are being used to manufacture methamphetamine in Kansas. In about 25% of the meth lab cases submitted to the KBI's forensic laboratory the criminals are using multi-ingredient products already. That percentage would simply rise to 100% if those products were not on schedule 5.

And both the KBI and KPOA would also **oppose any amendment to insert a preemption clause into SB 27**. First because there is no need for such language: no Kansas city is or can do a charter ordinance out from the controlled substances act as it is a uniform act. Sequence, if SB 27 becomes law, there would be no incentive for cities to care or get involved in such regulation. And third, a preemption clause would be extremely controversial as certain groups and individuals, including a number of sheriffs and chiefs, are strongly against any effort by the state to deprive local units of government of any powers they now hold.

There are some changes from the balloon submitted last week. First, Senator Schmidt advised requested that we offer some language that would reinsert the 'anti-smurfing' language in section 3 yet satisfy the prosecutors and pharmacists concerns. I have tried to do that by using "packages" instead of grams which was requested by the pharmacists and inserting clarifying language to minimize the chances that our courts will view the 3 package limit as a minimum for charging manufacture or other crimes. We have also reduced the time limitation to within 7 days from the original 30 days. This should alleviate concerns that these restrictions are too tight yet still cover the 'Smurfs' that drive into town and go from store to store in a single day or two.

Senate Judiciary
1-27-05
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The remaining amendments were done at the behest of the pharmacists and the Pharmacy Board. I would be happy to explain them individually or answer questions.

Finally, I appreciate that SB 27 might cause some inconvenience to pharmacists and retailers. I have been meeting with them repeatedly since September and we have done all that we can while maintaining the effective parts of the bill to accommodate their concerns. And I appreciate the manufacturers are concerned about SB 27. The meth epidemic has been a windfall for them. Perigo Company, the largest supplier of generic or store brand equivalents of over the counter cold medicines does an industry survey each year. From 2002 to 2004 the sales of over the counter cold medicines went up \$600,000,000 while all other over the counter sales were just steady. But inconvenience and some lost profit must be balanced against the lives of men like Sheriff Matt Samuels, the lives of our children and the safety of our state.

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

2 AN ACT concerning controlled substances; relating to schedule V sub-
3 stances; unlawful acts; amending K.S.A. 65-1643, 65-4113 and 65-7006
4 and repealing the existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*
7 Section 1. K.S.A. 65-1643 is hereby amended to read as follows: 65-
8 1643. It shall be unlawful:

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

(b) For any person to manufacture within this state any drugs except
25 under the personal and immediate supervision of a pharmacist.

1 subject to such rules and regulations with respect to requirements, sani-
2 tation and equipment, as the board may from time to time adopt for the
3 protection of public health and safety.

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

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

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

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

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

41 (h) For any person to operate an institutional drug room without first
42 having obtained a registration to do so from the board. Such registration
43 shall be subject to the provisions of K.S.A. 65-1637a and amendments

1 thereto and any rules and regulations adopted pursuant thereto.
 2 (i) For any person to be a pharmacy student without first obtaining
 3 a registration to do so from the board, in accordance with rules and reg-
 4 ulations adopted by the board, and paying a pharmacy student registration
 5 fee of \$25 to the board.

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

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

14 (1) *Such controlled substance is dispensed, sold or distributed by a*
 15 *licensed pharmacist, a registered pharmacy technician or a pharmacy*
 16 *intern or student supervised by a licensed pharmacist or registered pharmacy tech-*
 17 *nician; and*

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

intern or student

and completes in a form approved by the board.

25 Sec. 2. K.S.A. 65-4113 is hereby amended to read as follows: 65-
 26 4113. (a) The controlled substances or drugs, by whatever official name,
 27 common or usual name, chemical name or brand name designated, listed
 28 in this section are included in schedule V.

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

32 Buprenorphine 9064

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

38 (1) Not more than 200 milligrams of codeine or any of its salts per
 39 100 milliliters or per 100 grams.

40 (2) Not more than 100 milligrams of dihydrocodeine or any of its salts
 41 per 100 milliliters or per 100 grams.

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

1 (4) Not more than 2.5 milligrams of diphenoxylate and not less than
2 25 micrograms of atropine sulfate per dosage unit.

3 (5) Not more than 100 milligrams of opium per 100 milliliters or per
4 100 grams.

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

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

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

18 (2) Pyrovalerone..... 1485

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

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

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

(1) products containing pseudoephedrine or ephedrine that are dispensed
pursuant to a valid prescription by a licensee; or
(2) to

31 Sec. 3. K.S.A. 65-7006 is hereby amended to read as follows: 65-
32 7006. (a) It shall be unlawful for any person to possess ephedrine, pseu-
33 doephedrine, red phosphorus, lithium metal, sodium metal, iodine, an-
34 hydrous ammonia, pressurized ammonia or phenylpropanolamine, or
35 their salts, isomers or salts of isomers with intent to use the product to
36 manufacture a controlled substance.

37 (b) It shall be unlawful for any person to market, sell, distribute, ad-
38 vertise, or label any drug product containing ephedrine, pseudoephed-
39 rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
40 ammonia, pressurized ammonia or phenylpropanolamine, or their salts,
41 isomers or salts or of isomers if the person knows or reasonably should
42 know that the purchaser will use the product to manufacture a controlled
43 substance.

three packages

Seven

The limits set out in this separate and independent offense are unique elements to this crime and not intended to set any standard for any other criminal offense.

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

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

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

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

29 (f) A violation of this section subsection (a), (b) or (c) shall be a drug
30 severity level 1 felony. A violation of subsection (d) shall be a class A
31 nonperson misdemeanor.

32 Sec. 4. K.S.A. 65-1643, 65-4113 and 65-7006 are hereby repealed.

33 Sec. 5. This act shall take effect and be in force from and after its
34 publication in the Kansas register.

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

Basic overview of SB 27: Will classify Ephedrine and Pseudoephedrine as controlled substances and list them in schedule V. It will also change the restrictions on distribution of products with Ephedrine or Pseudoephedrine as component parts.

Section 1: Changes how controlled substances can be sold.

Under K.S.A. 65-1643, an addition would make it unlawful for any person to sell or distribute in a pharmacy a controlled substance listed in schedule V unless they are

1. a licensed pharmacist
2. a registered pharmacy technician
3. a pharmacy intern

Additionally, any person receiving the controlled substance must

1. show a photo id with birth date
2. sign a written log or receipt to show the date of the substance

This log would be available to the board of pharmacy and law enforcement.

Section 2: Adds Ephedrine and Pseudoephedrine to the list of controlled substances, making them available only behind the counter as described in Section 1.

Under K.S.A. 65-4113, an addition would add to schedule V

- Ephedrine
- Pseudoephedrine

It would NOT apply to liquids, liquid or gel capsules if Ephedrine or Pseudoephedrine is not the only active ingredient.

Section 3: Makes it punishable to possess more than nine grams of a controlled substance, including Ephedrine and Pseudoephedrine.

Under K.S.A. 65-7006, an addition would limit purchasing to no more than nine grams of any controlled substance within thirty days.

Possession of more than nine grams presumes the intent to use the product as a precursor to methamphetamine. A violation would be a Class A nonperson misdemeanor.

This excludes

1. retail distributors
2. whole sale manufacturers
3. pharmacists
4. any person licensed by the state board of healing arts



Kansas Pharmacists Association
Kansas Society of Health-System Pharmacists
Kansas Employee Pharmacists Council
1020 SW Fairlawn Road
Topeka KS 66604-2275
Phone 785-228-2327 + Fax 785-228-9147 + www.kansaspharmacy.org

January 27, 2005

Senator John Vratil
Chairman
Senate Judiciary Committee
300 SW 10th Street, Room 522S
Topeka, KS 66612

Dear Senator Vratil:

As Executive Director of the Kansas Pharmacists Association, I have been authorized to present this letter on behalf of the Kansas Pharmacy Coalition. The Kansas Pharmacy Coalition is comprised of the Kansas Pharmacists Association and the Kansas Federation of Chain Pharmacies. We have reviewed SB 27 relating to restrictions on the sale of methamphetamine precursors. I testified as neutral on the specifics of SB 27 on behalf of the Kansas Pharmacists Association but in support of legislation which would control meth precursors with the intent to benefit law enforcement in their effort to eradicate meth production in this state.

We do not have a problem with the following issues which have been suggested by others and which we have discussed with law enforcement:

- **Restricted Access** - We believe that a restricted sale by the retailer can be as effective as a schedule V restricted sale.
- **Preemption of Local Ordinances** - We believe a law such as this requires a state-wide uniform enforcement. Preemption is necessary for chain stores to have the same rules in all locations statewide. We expect this would be beneficial for law enforcement as well, especially statewide law enforcement such as the Highway Patrol.
- **9 Grams vs. 3 Package Limit** - A three package limit is easier for retailers to comply with than a 9 gram limit.

We hope that this adequately responds to questions that have been raised.

Sincerely,

JOHN L. KIEFHABER
Executive Director

Senate Judiciary

1-27-05
Attachment 12



OFFICERS

PRESIDENT
JIM MCGUFFEY
Cheney

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

ASST. TREASURER
JOHN CUNNINGHAM
Shawnee Mission

BOARD OF DIRECTORS

CHAIRMAN
CLIFF O'BRYHIM
Overbrook

MIKE BRAXMEYER
Atwood

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MIKE FLOERSCH
Clay Center

DOUGLAS GARRETT
Sabetha

BRIAN GIESY
Osage City

ARNIE GRAHAM
Emporia

SKIP KLEIER
Carbondale

GEORGANNA McCARY
Russell

JOHN McKEEVER
Loulsburg

LEONARD McKINZIE
Overland Park

BILL WEST
Ablene

January 27, 2005

Senator John Vratil
Chairman, Senate Judiciary Committee
300 SW 10th Street
Room 522S
Topeka, KS 66612

Dear Senator Vratil:

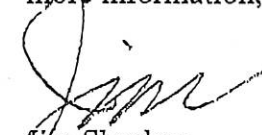
As Executive Director of the Kansas Food Dealers Association (KFDA), I would like to respond to your question as to the position of the KFDA on SB 27, relating to restrictions on sales of methamphetamine precursors. The KFDA did not testify at the hearing for SB 27. Some of our stores have pharmacies, and some do not. As a result, our facilities are impacted differently.

We like the opportunity to have the local retailer decide how to restrict the sale of the products covered by SB 27. We believe restricted access can be handled effectively utilizing pharmacies, or utilizing restricted access with customer service counters, as determined by the individual retailer.

We are willing to assist law enforcement in restricting access for those meth precursors identified as a problem in SB 27. But having some flexibility with regards to restricting the sale is important to our members. Utilization of the schedule V eliminates much of that flexibility.

Flexibility for the retailer while still restricting access to the precursors identified in SB 27 is our most important issue.

I hope that this adequately responds to your request and if I can provide any more information, please feel free to contact me.


Jim Sheehan
913-384-3838

Submitted by
Rep. Schwab

Substitute for Senate Bill No. 27
By Committee on Judiciary

AN ACT concerning crimes and punishment; relating to the unlawful selling of ephedrine or pseudoephedrine.

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

Section 1. (a) Except as provided in subsection (b), it shall be unlawful for any person to sell or distribute any compound, mixture or preparation containing any detectable quantity of ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers unless the person purchasing, receiving or otherwise acquiring any such compound produces a photo identification showing the date of birth of the person and signs a written log or receipt showing the date of the transaction, name of the person and the amount of the compound. Violation of this section is a class A nonperson misdemeanor.

(b) The compounds, mixtures or preparations shall not apply to any such compounds which are in liquid, liquid capsule or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient.

(c) The log, receipt book or database shall be available for inspection during regular business hours to the any law enforcement officer. The owner of the retail outlet which is selling or distributing such compounds shall be responsible for the log, receipt book or database. The owner, in writing, may designate such responsibility to an employee.


Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Mail Message

Submitted by Sen. V. Schmidt

Novell.

[Close](#) [Previous](#) [Next](#) [Forward](#) [Reply to Sender](#) [Reply All](#) [Move](#) [Delete](#) [Read Later](#) [Properties](#)

From: "Billingsley, Debra" <debra.billingsley@pharmacy.state.ks.us>
To: Vicki Schmidt
Date: Friday - January 21, 2005 3:11 PM
Subject: Meth Bill Info
 Mime.822 (3609 bytes) [View](#) [Save As](#)

21 CFR 1310.05 (a)(1) requires each regulated person to report to the DEA (1) any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in a violation.

(2) requires reporting a person whose description or other identifying characteristics the DEA has previously furnished to the regulated person.

The criminal penalties are found in 21 CFR 842(a)(10).

If you need the statutes verbatim let me know.

Thanks,
Deb

Senate Judiciary

1-27-05Attachment 15

New Section 1. (a) Any transaction or delivery by a wholesaler or distributor involving an extraordinary quantity of any compound, mixture or preparation containing any detectable quantity of ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers; an uncommon method of payment or delivery for such compound; or any other circumstance that the wholesaler or distributor believes may indicate that such compound will be used in violation of the uniform controlled substances act or the Kansas chemical control act, shall be reported to the Kansas bureau of investigation within five business days from the date of such transaction or delivery.

(b) Violation of this section shall be a misdemeanor, and upon conviction thereof be punished by a fine not to exceed \$10,000.

(c) As used in this section :

(1) "Wholesaler" means any person within this state or another state who sells, transfers, or in any manner furnishes a drug product described in subsection (a) to any other person in this state for the purpose of being resold.

(2) "Distributor" means any person within this state or another state, other than a wholesaler, who distributes or in any manner furnishes a drug product described in subsection (a) to any person in this state who is not the ultimate user or consumer of the product.

facsimile
TRANSMITTAL*Submitted by
CHAIRMAN Vratile*

TO: Senator John Vratile

FAX #: 913-451-0875

FROM: Jill Ann Wolters, Senior Assistant Revisor
Office of the Revisor of Statutes
300 SW 10th Avenue
Statehouse, Rm. 322-S
Topeka, KS 66612-1592
(785)296-4399
fax (785)296-6668
jillw@rs.state.ks.us

RE: Balloon amendments to SB 27

7 Pages, including cover sheet.

Greetings.

In the balloon:

1. Tablets remain a schedule V controlled substance. Only sold at pharmacy. Must have Id and sign. Pharmacy required to keep log/database, if not, pharmacy subject to violation of Pharmacy Act, an unclassified misdemeanor.
2. Gelcaps/liquid sold at retailers, retailers required to keep log/database. No penalty for failure to do so. (New Sec. 4)
3. In drug paraphernalia statute, K.S.A. 65-4152, amended to include as a violation if person purchases/acquires more than 9 grams of ephedrine or pseudoephedrine w/in 30 days, class A nonperson misdemeanor.

Thank you.

This document and the information herein is protected by the attorney-client privilege and is confidential. It shall not be disclosed except to the persons to whom it is addressed. Any other disclosure is inadvertent, unintentional and does not amount to any waiver of any applicable privilege or confidentiality. Any unauthorized use of this document or the information contained herein is prohibited. If you are an unintended recipient of this document, please return it immediately to the Office of Revisor of Statutes, at the address shown above.

Senate Judiciary

1-27-05

Attachment 16

SENATE BILL No. 27

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

1-10

12 AN ACT concerning controlled substances: relating to schedule V sub-
13 stances: unlawful acts; amending K.S.A. 65-1643, 65-4113 and ~~65-7006~~ 65-4152
14 and repealing the existing sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 65-1643 is hereby amended to read as follows: 65-
18 1643. It shall be unlawful:

19 (a) For any person to operate, maintain, open or establish any phar-
20 macy within this state without first having obtained a registration from
21 the board. Each application for registration of a pharmacy shall indicate
22 the person or persons desiring the registration, including the pharmacist
23 in charge, as well as the location, including the street name and number,
24 and such other information as may be required by the board to establish
25 the identity and exact location of the pharmacy. The issuance of a regis-
26 tration for any pharmacy shall also have the effect of permitting such
27 pharmacy to operate as a retail dealer without requiring such pharmacy
28 to obtain a retail dealer's permit. On evidence satisfactory to the board:

29 (1) That the pharmacy for which the registration is sought will be con-
30 ducted in full compliance with the law and the rules and regulations of
31 the board; (2) that the location and appointments of the pharmacy are
32 such that it can be operated and maintained without endangering the
33 public health or safety; (3) that the pharmacy will be under the supervision
34 of a pharmacist, a registration shall be issued to such persons as the board
35 shall deem qualified to conduct such a pharmacy.

36 (b) For any person to manufacture within this state any drugs except
37 under the personal and immediate supervision of a pharmacist or such
38 other person or persons as may be approved by the board after an inves-
39 tigation and a determination by the board that such person or persons is
40 qualified by scientific or technical training or experience to perform such
41 duties of supervision as may be necessary to protect the public health and
42 safety; and no person shall manufacture any such drugs without first ob-
43 taining a registration so to do from the board. Such registration shall be

1 subject to such rules and regulations with respect to requirements, sani-
2 tation and equipment, as the board may from time to time adopt for the
3 protection of public health and safety.

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

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

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

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

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

41 (h) For any person to operate an institutional drug room without first
42 having obtained a registration to do so from the board. Such registration
43 shall be subject to the provisions of K.S.A. 65-1637a and amendments

1 thereto and any rules and regulations adopted pursuant thereto.
 2 (i) For any person to be a pharmacy student without first obtaining
 3 a registration to do so from the board, in accordance with rules and reg-
 4 ulations adopted by the board, and paying a pharmacy student registration
 5 fee of \$25 to the board.

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

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

14 (1) *Such controlled substance is dispensed, sold or distributed by a*
 15 *licensed pharmacist, a registered pharmacy technician or a pharmacy*
 16 *clerk supervised by a licensed pharmacist or registered pharmacy tech-*
 17 *nician; and*

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

25 Sec. 2. K.S.A. 65-4113 is hereby amended to read as follows: 65-
 26 4113. (a) The controlled substances or drugs, by whatever official name,
 27 common or usual name, chemical name or brand name designated, listed
 28 in this section are included in schedule V.

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

32 Buprenorphine 9064

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

38 (1) Not more than 200 milligrams of codeine or any of its salts per
 39 100 milliliters or per 100 grams.

40 (2) Not more than 100 milligrams of dihydrocodeine or any of its salts
 41 per 100 milliliters or per 100 grams.

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

16-5

1 (4) Not more than 2.5 milligrams of diphenoxylate and not less than
2 25 micrograms of atropine sulfate per dosage unit.

3 (5) Not more than 100 milligrams of opium per 100 milliliters or per
4 100 grams.

5 (6) Not more than .5 milligram of difenoxin (9165) and not less than
6 25 micrograms of atropine sulfate per dosage unit.

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

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

18 (2) Pyrovalerone..... 1455

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

24 (f) ~~Except as provided in subsection (g), any compound, mixture or~~
25 ~~preparation containing any detectable quantity of Pseudoephedrine, its~~
26 ~~salts or optical isomers, or salts of optical isomers.~~

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

31 ~~Sec. 3. K.S.A. 65-7006 is hereby amended to read as follows. 65-~~
32 ~~7006. (a) It shall be unlawful for any person to possess ephedrine, pseudo-~~
33 ~~ephedrine, red phosphorus, lithium metal, sodium metal, iodine, an-~~
34 ~~hydrous ammonia, pressurized ammonia or phenylpropanolamine, or~~
35 ~~their salts, isomers or salts of isomers with intent to use the product to~~
36 ~~manufacture a controlled substance.~~

37 (b) ~~It shall be unlawful for any person to market, sell, distribute, ad-~~
38 ~~vertise, or label any drug product containing ephedrine, pseudoephed-~~
39 ~~rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous~~
40 ~~ammonia, pressurized ammonia or phenylpropanolamine, or their salts,~~
41 ~~isomers or salts of isomers if the person knows or reasonably should~~
42 ~~know that the purchaser will use the product to manufacture a controlled~~
43 ~~substance.~~

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

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

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

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

29. ~~(f) A violation of this section subsection (a), (b) or (c) shall be a drug~~
 30. ~~severity level 1 felony. A violation of subsection (d) shall be a class A~~
 31. ~~nonperson misdemeanor.~~

32. ~~Sec. 4. K.S.A. 65-1643, 65-4113 and [65-1000] are hereby repealed. 65-4152~~

33. ~~Sec. 5. This act shall take effect and be in force from and after its~~
 34. ~~publication in the Kansas register.~~

Sec. 3. K.S.A. 65-4152 is hereby amended to read as follows: [see attached]
 New Sec. 4. [see attached]

Sec. 3. K.S.A. 65-4152 is hereby amended to read as follows: 65-4152. (a) No person shall use or possess with intent to use:

- (1) Any simulated controlled substance;
- (2) any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act;
- (3) any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the uniform controlled substances act; or
- (4) anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.

(b) No person, within any thirty-day period, shall purchase, receive or otherwise acquire more than nine grams of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, or nine grams of any compound, mixture or preparation containing any detectable quantity of ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers which are in liquid, liquid capsule or gel capsule form.

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

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

~~(d)~~ (e) Violation of subsection (a)(3) which involves the possession of drug paraphernalia for the planting, propagation, growing or harvesting of less than five marijuana plants is a class A nonperson misdemeanor.

(f) Except as provided in this subsection, possessing, purchasing, receiving or otherwise acquiring a drug product containing more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers shall constitute a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subsection shall not apply to the following persons who are lawfully possessing drug products in the course of legitimate business:

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

New Sec. 4. No person to sell or distribute any compound, mixture or preparation containing any detectable quantity of ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers which are in liquid, liquid capsule or gel capsule form unless the person purchasing, receiving or otherwise acquiring any such compound produces a photo identification showing the date of birth of the person and signs a written log or receipt showing the date of the transaction, name of the person and the amount of the compound. The log, receipt book or database shall be available for inspection during regular business hours to the any law enforcement officer.

In equivalence of the policy set forth in paragraph a,

New Sec. 4. ~~(a)~~ *(b)* The state board of pharmacy shall:

(1) Develop recommendations concerning the most appropriate controls for all products that contain any compound, mixture or preparation containing any detectable quantity of ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

(2) Consult with the Kansas bureau of investigation and other law enforcement agencies to keep informed and detect trends of drug paraphernalia and evidence found at crime scenes.

c ~~(b)~~ Annually, on or before February 1, such recommendations shall be submitted to the house corrections and juvenile justice committee and senate judiciary committee.

[Renumber remaining sections]

and shall take into account such information and trends in developing the recommendations required by sub paragraph I.

(a) It shall be the policy of the state of Kansas to restrict access to ephedrine and pseudoephedrine for the purpose of impeding the ~~state's~~ unlawful manufacture of methamphetamine.