

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 3, 2005, in Room 123-S of the Capitol.

All members were present except:

Donald Betts- excused

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:

Ed Cross, Kansas Independent Oil & Gas Association
Doug Wareham, Kansas Bankers Association
Kyle Smith, Kansas Bureau of Investigation
Bill Miskel, Special Assistant to Commissioner, Juvenile Justice Authority

Others attending:

See attached list.

Chairman Vratil opened the hearing on HB 2104.

HB 2104 UCC securities interest in oil and gas production

Proponents:

Ed Cross, Executive Vice President, Kansas Independent Oil & Gas Association, testified in support of the bill. Mr. Cross stated that he understood that the bill was written to correct an oversight which occurred when Article 9 of the Uniform Commercial Code was amended in 2000, but which left out K.S.A. 84-9-319. Chairman Vratil suggested that the 2000 amendments were not an oversight, that the provisions for adding K.S.A. 84-9-319 back into the bill were not in the Uniform Law Commissioners' recommended amendments to the UCC. Chairman Vratil stated that the whole basis for perfecting security interests under UCC is notice filing. Chairman Vratil requested that Mr. Cross consult with his attorney and provide written answers as to why the oil and gas producers should be treated differently than any other person or entity who claims a security interest and also, how extenders of credit are to know that there is a claim of a security interest. Mr. Cross stated he would address these questions and get back to the Committee. (Attachment 1)

Written testimony was provided by Lee Allison, Kansas Energy Council. (Attachment 2)

Neutral:

Doug Wareham, Kansas Bankers Association, testified that the Association wanted to offer a balloon amendment to the bill. Currently, K.S. A. 84-9-501 (a) provides that if a lender's security interest is in "as-extracted collateral", the lender must perfect its security interest in that collateral by filing a financing statement with the Office of the Register of Deeds in the county where the property (from which the oil or gas is extracted) is located. Mr. Wareham stated that the Association is neutral on the bill but would like the amendment considered. (Attachment 3)

Chairman Vratil stated, under K.S.A. 84-9-501(a) any lender must file a UCC financing statement or claim for security interest to perfect their security interest. Under this bill, a producer does not have to file anything to perfect his security interest. He posed the question to Mr. Wareham whether there should be a difference between how those two classes of security interests are treated. Mr. Wareham stated that he felt bankers live with this issue every day, but in general, the banks take a dim view anytime special treatment is granted. They are not fans of hidden liens that they were not aware of or cannot identify through the Register of Deeds office. However, there are many bankers that have a strong interest in financing oil and gas providers, and Mr. Wareham stated he believed he could line up bankers on both sides of this issue.

Senator Donovan used an analogy of his car business and how a blanket lien with GMAC and the bank is put

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 3, 2005, in Room 123-S of the Capitol.

in place to cover new and used cars and inventory. Chairman Vratil stated that the concept of a blanket lien may be one to explore for oil and gas. He questioned, in approaching this problem, whether a landowner might be required to file a blanket lien at the time of first production on that landowner's property. Mr. Wareham stated that he'd be willing to work with Mr. Cross to see if that would satisfy their needs and might improve our position on the bill. Mr. Cross indicated that he would research the idea with his attorney and see if they could come up with something together.

Chairman Vratil closed the hearing on **HB 2104** and opened the hearing on **HB 2314**.

HB 2314 Timing of offender registration

Proponents:

Kyle Smith, Kansas Bureau of Investigation (KBI), testified in support of the bill. Mr. Smith stated that the Kansas Offender Registration Act requires an individual convicted of certain crimes, generally sexual offenses, murder or kidnaping, to register for a period of 10 years on first offenses, second offenses, or if it was a crime against a child, the individual must register for a lifetime. The Act was originally passed in 1993 and modified in 1994. The KBI has since discovered some drafting errors. There is some confusion about when the registration period starts: from the conviction, parole or discharge. The KBI's intention is that the registration period start from the date of the individual's last release. The bill defines the period as not including time while the individual was in jail, or while the person is intentionally and knowingly violating the act. The second section of the bill deals with a similar problem with juveniles. The juveniles are covered by this act register until they are 18 or for five years from their adjudication. The bill defines the period as from the release date and the period does not include time while juveniles are incarcerated, or while knowingly violating the act.

Chairman Vratil closed the bill on **HB 2314** and opened the hearing on **HB 2347**.

HB 2327 Authority for Juvenile Justice authority to test offenders for infectious diseases

Proponent:

Bill Miskel, Special Assistant to the Commissioner of the Juvenile Justice Authority (JJA), testified in support of the bill. Mr. Miskel stated that the JJA had requested the bill. Juvenile corrections employees are not frequently exposed to the body fluids of a juvenile offender. However, when such exposure does occur, the authority to request a court to order to test a juvenile offender and the results of that test to be disclosed to the exposed employee provides the employee with information that is important in helping to make informed health care decisions. (Attachment 4)

Senator Bruce questioned whether there was already a statute pertaining to law enforcement officers in dealing with exposure to bodily fluids. Mr. Miskel acknowledged there was another statute that pertains to law enforcement officers, but this bill would include juvenile correctional employees in the same category as adult correctional employees. Mr. Smith offered that there are three definitions in the statutes he is aware of for law enforcement officers. Because juvenile correctional employees are not part of the training act and they are trained differently, they are excluded from that definition. Mr. Bowie, legal counsel for JJA and guest in the meeting, stated that correctional employees are excluded specifically from the definitions. Chairman Vratil asked that copies of the statutes they are talking about be provided to the Committee, as the Committee needs to verification that juvenile corrections officers are clearly not covered under the statutes that now apply to law enforcement officers. Mr. Miskel pointed out that this bill would also cover all juvenile correctional employees and not just juvenile correctional officers.

Chairman Vratil closed the hearing on **HB 2327**.

Chairman Vratil asked the Committee to address **SB 179**.

SB 179 Enhancing penalties for offenses against children

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 3, 2005, in Room 123-S of the Capitol.

Chairman Vratil stated, in reviewing the status of the bill, that the bill increases the severity level for various crimes against children and has a significant bed space impact. Kevin Graham, Assistant Attorney General (AG) and guest at the meeting, offered several amendments to reduce the impact on bed space. Mr. Graham stated that the AG's office would like to see the bill passed as it is written, as their office feels that the increase in severity level is both justified and necessary. However, regarding the Chairman's concern regarding the bed space impact, the first balloon amendment Mr. Graham offered would decrease bed space while preserving the intent of the bill. (Attachment 5) The amendment would strike section one of the bill and strike the increase in severity level for indecent solicitation of a child. However, it would leave the increased penalty level for aggravated indecent solicitation of a child. Chairman Vratil questioned how this change might affect the bed space impact. Mr. Graham stated that there would be very little change in the bed space impact, but some. Chairman Vratil asked Ms. Patricia Biggs, Executive Director of the Kansas Sentencing Commission and guest in the meeting, to address the bed space impact if section one was left in, and Ms. Biggs stated she would work on providing that.

Mr. Graham offered a second option balloon, indicating that, after reviewing federal law and how it has been interpreted, he eliminated "or appears to be" on page 2, line 3, and the "affirmative defense" language found on, page 2, lines 39-43, and page 3, lines 1-3. (Attachment 6) Mr. Graham handed out a third balloon, which required some clarifications by the Committee. (Attachment 7).

Chairman Vratil stated that the Committee could not take final action on the bill until there was additional bed space impact information could be provided. Senator Donovan suggested it might be reasonable to make an amendment on the bill, and Chairman Vratil concurred. There was a motion to adopt the second balloon option provided by Mr. Graham (Attachment 6). Chairman Vratil summarized that the motion amended the bill on page 2, line 3, by deleting the words, "or appears to be" and on page 2, beginning with line 39, deleting everything on the remainder of that page and deleting everything on page 3 through line 19. Senator Donovan moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 7, 2005.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mar. 3, 2005

NAME	REPRESENTING
Michael White	KCPAA
KEVIN GRAHAM	AG
Ed Cross	KIOGA
Paul Biggs	KSC
Brenda Harmon	KSC
Julia Futler	KSC
JEREMY S BARCLAY	KDOC
Lana Walsh	OJA
Jeff Bottomley	KSA
Kevin Barone	KTLA
JIM CLARK	KBA
Suzanne Simon	KS Reg of Deeds Assn.
Marilyn Nichols	" " " " "
Maretha Strahm	CWA of 100
Judy Smith	CWA of KS
Darby Parrish	CWA OF KS
Dale Wareham	Kansas Bankers Assn.
Janelle Nuessen	Hein Law Firm

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: MARCH 3, 2005

NAME	REPRESENTING
Bill MISWELL	JJA
Wade BOWIE	JJA
Tom GACHES	GBBA

Kansas Independent Oil & Gas Association
800 S.W. Jackson Street – Suite 1400
Topeka, Kansas 66612
785-232-7772
Email: kiogaed@swbell.net

Testimony to the Senate Judiciary Committee
House Bill 2104 – An Act concerning the uniform commercial code;
concerning securities interests in oil and gas production

Edward P. Cross, Executive Vice President
Kansas Independent Oil & Gas Association

March 3, 2005

Good morning Chairman Vratil and members of the committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association and I am here today to express our support for House Bill 2104.

House Bill 2104 is intended solely to correct an oversight which occurred when Article 9 of the Uniform Commercial Code was amended in the 2000 session of the Kansas legislature. The 2000 amendments to the UCC were recommended in 1998 by the National Conference of Commissioners on Uniform State Laws. All sections of the article in effect at such time were repealed and the numbers reassigned to the new sections of the revised article by Senate Bill 366.

At that time, Kansas UCC Section 9-319 (K.S.A. 84-9-319) was repealed. Prior to its repeal, K.S.A. 84-9-319 provided a security interest in favor of interest owners (as secured parties) to secure the obligations of the first purchaser of oil and gas production (as debtor) to pay the purchase price. Among other provisions, the statute established that a signed writing giving the interest owner a right under real estate laws operated as a security agreement created under Article 9. Certain acts of the first purchaser, including signing an agreement to purchase oil or gas production or issuing a division order, operated as an authentication and adoption of the security agreement which was perfected automatically without the filing of a financing statement. The security interests were treated as purchase money security interests for purposes of determining their relative priority under 84-9-312 over other security interests not provided for by 84-9-319.

The disadvantage caused by the repeal of K.S.A. 84-9-319 became painfully obvious when Farmland Industries, Inc., filed for protection under the United States Bankruptcy Code. Several oil and gas producers who had sold oil to Farmland (on some occasions, with the oil being picked up from the tank batteries on the very day of the filing of the bankruptcy petition) would arguably

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3-3-05

Attachment 1

be only general unsecured creditors with respect to the money owed them. K.S.A. 84-9-319 would have been of assistance to many of them.

It appears that the repeal of K.S.A. 84-9-319 was by oversight rather than design. The purposes for the 2000 amendments to the UCC, which included the statutory accommodation of the advent of electronic filing of financing statements, was not substantially related to security interests in oil and gas. In these regards, note that K.S.A. 84-9-319 was modeled after similar provisions existing in the UCC in effect in Oklahoma (52 Okl. St. Ann. Sec. 548) and Texas (TX Bus & Com Sec. 9.343). Although the UCC was amended in those states for largely the same intents and purposes as the 2000 amendments in Kansas, 52 Okl. St. Ann. Sec. 548 and TX Bus & Com Sec. 9.343 remain in effect.

Oil and gas operators will benefit if K.S.A. 84-9-319 is placed back in the UCC in effect in Kansas. Therefore, I would urge Kansas Legislature to pass House Bill 2104.

**Testimony on HB2104
presented to the
Senate Judiciary Committee**

March 3, 2005

**Lee Allison, Chair
Kansas Energy Council**

Thank you for the opportunity to submit comments in support of HB 2104.

The Kansas Energy Council formally recommended five legislative actions in the 2005 Kansas Energy Report. One of them was to “amend Article 9 of the Uniform Commercial Code to restore a priority creditor status for sellers of oil and gas production when a purchaser is in bankruptcy. Such an amendment would follow the language of the former K.S.A. 84-9-319, which was repealed in 2000.”

House Bill 2104 will carry out the recommendation of the Kansas Energy Council. I urge you to pass it out favorably.

Senate Judiciary

3-3-05

Attachment 2



March 3, 2005

To: Senate Committee on Judiciary

From: Doug Wareham, Kansas Bankers Association

Re: HB 2104: Reinstating former 84-9-319

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today regarding **HB 2104**, which reinstates a Kansas-specific provision in the Uniform Commercial Code, Article 9 – the former K.S.A. 84-9-319.

As described in the Kansas Comments, this nonuniform amendment was adopted by the legislature in 1991 to give the oil and gas interest owner a security interest in any oil or gas production and in the proceeds to secure the purchase price and all taxes that should be withhold or paid. The security interest is automatically perfected and is treated in the same manner as a security interest in inventory.

The KBA is here today to offer an amendment that we believe helps to answer a question we have regarding the effect that this provision has on the existing language found in Article 9 dealing with extracted oil and gas and the effect that this change will have on existing security interests. Currently, K.S.A. 84-9-501(a), provides that if a lender's security interest is in "as-extracted collateral", the lender must perfect its security interest in that collateral by filing a financing statement with the Office of the Register of Deeds in the county where the property (from which the oil or gas is extracted) is located.

New Section 1, subsection (2) of this bill provides that interest owners (as secured parties) do not need to file a financing statement as their security interest is perfected automatically. We believe this could cause confusion for those wishing to perfect a security interest in oil and gas that is extracted and suggest the attached clarifying amendment.

We have some lingering questions, too, how this change would affect existing security interests created under the current law over the past four years, however we have no answers to these questions today.

In conclusion, we would respectfully ask that the Committee favorably consider our request for an amendment to **HB 2104**. Thank you.

HOUSE BILL No. 2104

By Committee on Judiciary

1-20

9 AN ACT concerning the uniform commercial code; concerning securities
10 interests in oil and gas production; amending K.S.A. 2004 Supp. 84-9-
11 324 and repealing the existing section.
12

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

14 New Section 1. (1) This section provides a security interest in favor
15 of interest owners (as secured parties) to secure the obligations of the
16 first purchaser of oil and gas production (as debtor) to pay the purchase
17 price. A signed writing giving the interest owner a right under real estate
18 law operates as a security agreement created under article 9 of chapter
19 84 of the Kansas Statutes Annotated, and amendments thereto. The act
20 of the first purchaser in signing an agreement to purchase oil or gas
21 production, in issuing a division order, or in making any other voluntary
22 communication to the interest owner or any governmental agency rec-
23 ognizing the interest owner's right operates as an authentication and
24 adoption of the security agreement in accordance with K.S.A. 84-1-
25 201(39), and amendments thereto.

Notwithstanding the provisions of
K.S.A. 84-9-501, and amendments
thereto,

26 (2) The security interest provided by this section is perfected auto-
27 matically without the filing of a financing statement. If the interest of the
28 secured party is evidenced by a deed, mineral deed, reservation in either,
29 oil or gas lease, assignment, or any other such writing recorded in the
30 real estate records of a register of deeds, that writing is effective as a filed
31 financing statement for purposes of K.S.A. 2004 Supp. 84-9-309, 84-9-
32 310, 84-9-311, 84-9-312, 84-9-315, 84-9-322, 84-9-323, 84-9-324, 84-9-
33 501, 84-9-502, 84-9-503, 84-9-504, 84-9-506, 84-9-507, 84-9-512, 84-9-
34 515, 84-9-516, 84-9-519, 84-9-521, 84-9-522 and 84-9-525, and
35 amendments thereto, but no fee is required except that otherwise re-
36 quired by the register of deeds, and there is no requirement of refiling
37 every five years to maintain effectiveness of the filing.

38 (3) The security interest exists in oil and gas production, and also in
39 the following proceeds of such production owned by, received by, or due
40 to the first purchaser:

41 (a) For an unlimited time if:

42 (i) The proceeds are oil or gas production, inventory of raw, refined
43 or manufactured oil or gas production, or rights to or products of any of

KANSAS


JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

Submitted by
Bill Miskel

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

FROM: Denise L. Everhart, Commissioner 

DATE: March 3, 2005

SUBJECT: Testimony on HB 2327

Mr. Chairman and members of the Committee, I appear before you today to request your favorable consideration of House Bill 2327. JJA has requested introduction of HB 2327 in an effort to provide the Commissioner of JJA with the statutory authority to obtain a court order to have an offender's blood tested for infectious diseases when staff at a juvenile correctional facility has been exposed to that offender's body fluids.

HB 2327 brings juvenile corrections employees and juvenile offenders under the purview of both K.S.A. 65-6015 *et seq.*, and K.S.A. 65-6017 *et seq.* HB 2327 would authorize the results of a juvenile offender's blood test to be disclosed to the court that ordered the test, to the juvenile offender who was tested, and to either the health care provider or counselor designated by the employee who was exposed to the body fluids. In addition, the results would be disclosed to JJA for inclusion in the offender's medical record. Disclosure of those test results beyond those specifically identified in the legislation would not be authorized.

Juvenile corrections employees are not frequently exposed to the body fluids of a juvenile offender. However, when such exposure does occur, the authority to request a court to order that a juvenile offender be tested and the results of that test to be disclosed to the exposed employee provides that employee with information that is important in helping to make informed health care decisions.

Your favorable consideration of HB 2327 is appreciated. I appreciate the opportunity to address you today, and would be pleased to respond to any questions from the Committee.

BALLOON AMENDMENT 3/3/2005

①

- INTENDED TO HELP ADDRESS CONCERNS ABOUT PRISON BED IMPACT
- DELETE LINES 14-22 OF PAGE 1.
- STRIKES INCREASE TO SEVERITY LEVEL FOR INDECENT SOLICITATION OF A CHILD.

Session of 2005

SENATE BILL No. 179

By Committee on Judiciary

2-2

Submitted by
Kevin
Graham

9 AN ACT concerning offenses against children; relating to enhancing pen-
10 alties; amending K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp.
11 21-3516 and repealing the existing sections.
12

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

14 Section 1. ~~K.S.A. 21-3510 is hereby amended to read as follows: 21-~~
15 ~~3510. (a) Indecent solicitation of a child is:~~

16 ~~(1) Enticing or soliciting a child 14 or more years of age but less than~~
17 ~~16 years of age to commit or to submit to an unlawful sexual act, or~~

18 ~~(2) inviting, persuading or attempting to persuade a child 14 or more~~
19 ~~years of age but less than 16 years of age to enter any vehicle, building,~~
20 ~~room or secluded place with intent to commit an unlawful sexual act upon~~
21 ~~or with the child.~~

22 ~~(b) Indecent solicitation of a child is a severity level 7-6, person felony.~~

23 Sec. 2. K.S.A. 21-3511 is hereby amended to read as follows: 21-
24 3511. Aggravated indecent solicitation of a child is:

25 (a) Enticing or soliciting a child under the age of 14 years to commit
26 or to submit to an unlawful sexual act; or

27 (b) inviting, persuading or attempting to persuade a child under the
28 age of 14 years to enter any vehicle, building, room or secluded place
29 with intent to commit an unlawful sexual act upon or with the child.

30 Aggravated indecent solicitation of a child is a severity level 6-5, person
31 felony.

32 Sec. 3. K.S.A. 2004 Supp. 21-3516 is hereby amended to read as
33 follows: 21-3516. (a) Sexual exploitation of a child is:

34 (1) Employing, using, persuading, inducing, enticing or coercing a
35 child under 18 years of age to engage in sexually explicit conduct for the
36 purpose of promoting any performance;

37 (2) possessing any ~~film, photograph, negative, slide, book, magazine~~
38 ~~or other printed or visual medium or any audio tape recording or any~~
39 ~~photocopy, video tape, video laser disk, computer hardware, software,~~
40 ~~floppy disk or any other computer related equipment or computer gen-~~
41 ~~erated image that contains or incorporates in any manner any film, pho-~~
42 ~~tograph, negative, photocopy, video tape or video laser disk in which a~~
43 ~~visual depiction visual depiction, including any photograph, film, video~~

Senate Judiciary

3.3.05

Attachment 5

- 1 *picture, digital or computer generated image or picture, whether made*
2 *or produced by electronic, mechanical or other means, where such visual*
3 *depiction is, or appears to be, of a child under 18 years of age is shown*
4 *or heard engaging in sexually explicit conduct with intent to arouse or*
5 *satisfy the sexual desires or appeal to the prurient interest of the offender,*
6 *the child or another;*
- 7 (3) being a parent, guardian or other person having custody or control
8 of a child under 18 years of age and knowingly permitting such child to
9 engage in, or assist another to engage in, sexually explicit conduct for any
10 purpose described in subsection (a)(1) or (2); or
- 11 (4) promoting any performance that includes sexually explicit conduct
12 by a child under 18 years of age, knowing the character and content of
13 the performance.
- 14 (b) As used in this section:
- 15 (1) "Sexually explicit conduct" means actual or simulated: Exhibition
16 in the nude; sexual intercourse or sodomy, including genital-genital, oral-
17 genital, anal-genital or oral-anal contact, whether between persons of the
18 same or opposite sex; masturbation; sado-masochistic abuse for the pur-
19 pose of sexual stimulation; or lewd exhibition of the genitals, female
20 breasts or pubic area of any person.
- 21 (2) "Promoting" means procuring, selling, providing, lending, mail-
22 ing, delivering, transferring, transmitting, distributing, circulating, dis-
23 seminating, presenting, producing, directing, manufacturing, issuing,
24 publishing, displaying, exhibiting or advertising:
- 25 (A) For pecuniary profit; or
26 (B) with intent to arouse or gratify the sexual desire or appeal to the
27 prurient interest of the offender, the child or another.
- 28 (3) "Performance" means any film, photograph, negative, slide, book,
29 magazine or other printed or visual medium, any audio tape recording or
30 any photocopy, video tape, video laser disk, computer hardware, software,
31 floppy disk or any other computer related equipment or computer gen-
32 erated image that contains or incorporates in any manner any film, pho-
33 tograph, negative, photocopy, video tape or video laser disk or any play
34 or other live presentation.
- 35 (4) "Nude" means any state of undress in which the human genitals,
36 pubic region, buttock or female breast, at a point below the top of the
37 areola, is less than completely and opaquely covered.
- 38 (c) Sexual exploitation of a child is a severity level 5, person felony.
- 39 (d) *It shall be an affirmative defense to a charge filed under this sec-*
40 *tion that:*
- 41 (1) (A) *The alleged child pornography was produced using an actual*
42 *person or persons engaging in sexually explicit conduct; and*
43 (B) *each such person was an adult at the time the material was pro-*

- 1 *duced; or*
2 *(2) the alleged child pornography was not produced using any actual*
3 *minor or minors.*
4 *(e) No affirmative defense under subsection (d) shall be available in*
5 *any prosecution that involves child pornography as described in 18*
6 *U.S.C. §1460 - 1470, §2241 - 2248 or §2251 - 2260.*
7 *(f) A defendant may not assert an affirmative defense to a charge of*
8 *violating paragraphs (1), (2), (3) or (4) of subsection (a) unless, within*
9 *the time provided for filing pretrial motions or at such time prior to trial*
10 *as the judge may direct, but in no event later than 10 days prior to trial,*
11 *the defendant provides the court and the prosecution with notice of the*
12 *intent to assert such affirmative defense and the substance of any expert*
13 *or other specialized testimony or evidence upon which the defendant in-*
14 *tends to rely. If the defendant fails to comply with this subsection, the*
15 *court shall, absent a finding of extraordinary circumstances that prevents*
16 *timely compliance, prohibit the defendant from asserting such defense to*
17 *a charge of violating paragraph (1), (2), (3) or (4) of subsection (a) for*
18 *presenting any evidence for which the defendant has failed to provide*
19 *proper and timely notice.*
20 *(g) This section shall be part of and supplemental to the Kansas crim-*
21 *inal code.*
22 *Sec. 4. K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp. 21-3516*
23 *are hereby repealed.*
24 *Sec. 5. This act shall take effect and be in force from and after its*
25 *publication in the statute book.*

Submitted by
Kevin Graham

Session of 2005

SENATE BILL No. 179

By Committee on Judiciary

2-2

9 AN ACT concerning offenses against children; relating to enhancing pen-
10 alties; amending K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp.
11 21-3516 and repealing the existing sections.

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

14 Section 1. K.S.A. 21-3510 is hereby amended to read as follows: 21-
15 3510. (a) Indecent solicitation of a child is:

16 (1) Enticing or soliciting a child 14 or more years of age but less than
17 16 years of age to commit or to submit to an unlawful sexual act; or

18 (2) inviting, persuading or attempting to persuade a child 14 or more
19 years of age but less than 16 years of age to enter any vehicle, building,
20 room or secluded place with intent to commit an unlawful sexual act upon
21 or with the child.

22 (b) Indecent solicitation of a child is a severity level ~~7~~6, person felony.

23 Sec. 2. K.S.A. 21-3511 is hereby amended to read as follows: 21-
24 3511. Aggravated indecent solicitation of a child is:

25 (a) Enticing or soliciting a child under the age of 14 years to commit
26 or to submit to an unlawful sexual act; or

27 (b) inviting, persuading or attempting to persuade a child under the
28 age of 14 years to enter any vehicle, building, room or secluded place
29 with intent to commit an unlawful sexual act upon or with the child.

30 Aggravated indecent solicitation of a child is a severity level ~~6~~5, person
31 felony.

32 Sec. 3. K.S.A. 2004 Supp. 21-3516 is hereby amended to read as
33 follows: 21-3516. (a) Sexual exploitation of a child is:

34 (1) Employing, using, persuading, inducing, enticing or coercing a
35 child under 18 years of age to engage in sexually explicit conduct for the
36 purpose of promoting any performance;

37 (2) possessing any ~~film, photograph, negative, slide, book, magazine~~
38 ~~or other printed or visual medium or any audio tape recording or any~~
39 ~~photocopy, video tape, video laser disk, computer hardware, software,~~
40 ~~floppy disk or any other computer related equipment or computer gen-~~
41 ~~erated image that contains or incorporates in any manner any film, pho-~~
42 ~~tograph, negative, photocopy, video tape or video laser disk in which a~~
43 ~~visual depiction~~ visual depiction, including any photograph, film, video

1 picture, digital or computer generated image or picture, whether made
2 or produced by electronic, mechanical or other means, where such visual
3 depiction is, ~~or appears to be~~, of a child under 18 years of age is shown
4 or heard engaging in sexually explicit conduct with intent to arouse or
5 satisfy the sexual desires or appeal to the prurient interest of the offender,
6 the child or another;

7 (3) being a parent, guardian or other person having custody or control
8 of a child under 18 years of age and knowingly permitting such child to
9 engage in, or assist another to engage in, sexually explicit conduct for any
10 purpose described in subsection (a)(1) or (2); or

11 (4) promoting any performance that includes sexually explicit conduct
12 by a child under 18 years of age, knowing the character and content of
13 the performance.

14 (b) As used in this section:

15 (1) "Sexually explicit conduct" means actual or simulated: Exhibition
16 in the nude; sexual intercourse or sodomy, including genital-genital, oral-
17 genital, anal-genital or oral-anal contact, whether between persons of the
18 same or opposite sex; masturbation; sado-masochistic abuse for the pur-
19 pose of sexual stimulation; or lewd exhibition of the genitals, female
20 breasts or pubic area of any person.

21 (2) "Promoting" means procuring, selling, providing, lending, mail-
22 ing, delivering, transferring, transmitting, distributing, circulating, dis-
23 seminating, presenting, producing, directing, manufacturing, issuing,
24 publishing, displaying, exhibiting or advertising:

25 (A) For pecuniary profit; or

26 (B) with intent to arouse or gratify the sexual desire or appeal to the
27 prurient interest of the offender, the child or another.

28 (3) "Performance" means any film, photograph, negative, slide, book,
29 magazine or other printed or visual medium, any audio tape recording or
30 any photocopy, video tape, video laser disk, computer hardware, software,
31 floppy disk or any other computer related equipment or computer gen-
32 erated image that contains or incorporates in any manner any film, pho-
33 tograph, negative, photocopy, video tape or video laser disk or any play
34 or other live presentation.

35 (4) "Nude" means any state of undress in which the human genitals,
36 pubic region, buttock or female breast, at a point below the top of the
37 areola, is less than completely and opaquely covered.

38 (c) Sexual exploitation of a child is a severity level 5, person felony.

39 (d) ~~It shall be an affirmative defense to a charge filed under this sec-~~
40 ~~tion that:~~

41 (1) (A) ~~The alleged child pornography was produced using an actual~~
42 ~~person or persons engaging in sexually explicit conduct; and~~

43 (B) ~~each such person was an adult at the time the material was pro-~~

~~1 duced, or
2 (2) the alleged child pornography was not produced using any actual
3 minor or minors.
4 (e) No affirmative defense under subsection (d) shall be available in
5 any prosecution that involves child pornography as described in 18
6 U.S.C. §1460 - 1470, §2241 - 2248 or §2251 - 2260.
7 (f) A defendant may not assert an affirmative defense to a charge of
8 violating paragraphs (1), (2), (3) or (4) of subsection (a) unless, within
9 the time provided for filing pretrial motions or at such time prior to trial
10 as the judge may direct, but in no event later than 10 days prior to trial,
11 the defendant provides the court and the prosecution with notice of the
12 intent to assert such affirmative defense and the substance of any expert
13 or other specialized testimony or evidence upon which the defendant in-
14 tends to rely. If the defendant fails to comply with this subsection, the
15 court shall, absent a finding of extraordinary circumstances that prevents
16 timely compliance, prohibit the defendant from asserting such defense to
17 a charge of violating paragraph (1), (2), (3) or (4) of subsection (a) for
18 presenting any evidence for which the defendant has failed to provide
19 proper and timely notice.
20 (g) This section shall be part of and supplemental to the Kansas crim-
21 inal code.
22 Sec. 4. K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp. 21-3516
23 are hereby repealed.
24 Sec. 5. This act shall take effect and be in force from and after its
25 publication in the statute book.~~

BALLOON AMENDMENT

3

Submitted by
Kevin Graham

Session of 2005

SENATE BILL No. 179

By Committee on Judiciary

2-2

9 AN ACT concerning offenses against children; relating to enhancing pen-
10 alties; amending K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp.
11 21-3516 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 21-3510 is hereby amended to read as follows: 21-
15 3510. (a) Indecent solicitation of a child is:

16 (1) Enticing or soliciting a child 14 or more years of age but less than
17 16 years of age to commit or to submit to an unlawful sexual act; or

18 (2) inviting, persuading or attempting to persuade a child 14 or more
19 years of age but less than 16 years of age to enter any vehicle, building,
20 room or secluded place with intent to commit an unlawful sexual act upon
21 or with the child.

22 (b) Indecent solicitation of a child is a severity level 7 6, person felony.

23 Sec. 2. K.S.A. 21-3511 is hereby amended to read as follows: 21-
24 3511. Aggravated indecent solicitation of a child is:

25 (a) Enticing or soliciting a child under the age of 14 years to commit
26 or to submit to an unlawful sexual act; or

27 (b) inviting, persuading or attempting to persuade a child under the
28 age of 14 years to enter any vehicle, building, room or secluded place
29 with intent to commit an unlawful sexual act upon or with the child.

30 Aggravated indecent solicitation of a child is a severity level 6 5, person
31 felony.

32 Sec. 3. K.S.A. 2004 Supp. 21-3516 is hereby amended to read as
33 follows: 21-3516. (a) Sexual exploitation of a child is:

34 (1) Employing, using, persuading, inducing, enticing or coercing a
35 child under 18 years of age to engage in sexually explicit conduct for the
36 purpose of promoting any performance;

37 (2) possessing any film, photograph, negative, slide, book, magazine
38 or other printed or visual medium or any audio tape recording or any
39 photocopy, video tape, video laser disk, computer hardware, software,
40 floppy disk or any other computer related equipment or computer gen-
41 erated image that contains or incorporates in any manner any film, pho-
42 tograph, negative, photocopy, video tape or video laser disk in which a
43 ~~visual depiction~~ *visual depiction, including any photograph, film, video*

Senate Judiciary

3.3.05

Attachment 7

- 1 *picture, digital or computer generated image or picture, whether made*
2 *or produced by electronic, mechanical or other means, where such visual*
3 *depiction is ~~or appears to be~~ of a child under 18 years of age is shown*
4 *or heard engaging in sexually explicit conduct with intent to arouse or*
5 *satisfy the sexual desires or appeal to the prurient interest of the offender,*
6 *the child or another;*
- 7 (3) being a parent, guardian or other person having custody or control
8 of a child under 18 years of age and knowingly permitting such child to
9 engage in, or assist another to engage in, sexually explicit conduct for any
10 purpose described in subsection (a)(1) or (2); or
- 11 (4) promoting any performance that includes sexually explicit conduct
12 by a child under 18 years of age, knowing the character and content of
13 the performance.
- 14 (b) As used in this section:
- 15 (1) "Sexually explicit conduct" means actual or simulated: Exhibition
16 in the nude; sexual intercourse or sodomy, including genital-genital, oral-
17 genital, anal-genital or oral-anal contact, whether between persons of the
18 same or opposite sex; masturbation; sado-masochistic abuse for the pur-
19 pose of sexual stimulation; or lewd exhibition of the genitals, female
20 breasts or pubic area of any person.
- 21 (2) "Promoting" means procuring, selling, providing, lending, mail-
22 ing, delivering, transferring, transmitting, distributing, circulating, dis-
23 seminating, presenting, producing, directing, manufacturing, issuing,
24 publishing, displaying, exhibiting or advertising:
- 25 (A) For pecuniary profit; or
26 (B) with intent to arouse or gratify the sexual desire or appeal to the
27 prurient interest of the offender, the child or another.
- 28 (3) "Performance" means any film, photograph, negative, slide, book,
29 magazine or other printed or visual medium, any audio tape recording or
30 any photocopy, video tape, video laser disk, computer hardware, software,
31 floppy disk or any other computer related equipment or computer gen-
32 erated image that contains or incorporates in any manner any film, pho-
33 tograph, negative, photocopy, video tape or video laser disk or any play
34 or other live presentation.
- 35 (4) "Nude" means any state of undress in which the human genitals,
36 pubic region, buttock or female breast, at a point below the top of the
37 areola, is less than completely and opaquely covered.
- 38 (c) Sexual exploitation of a child is a severity level 5, person felony.
39 (d) *It shall be an affirmative defense to a charge filed under this sec-*
40 *tion that:*
- 41 (1) (A) *The alleged child pornography was produced using an actual*
42 *person or persons engaging in sexually explicit conduct; and*
43 (B) *each such person was an adult at the time the material was pro-*
- 39
- 17-2

1 *duced; or*

2 *(2) the alleged child pornography was not produced using any actual*
3 *minor or minors.*

4 *(e) No affirmative defense under subsection (d) shall be available in*
5 *any prosecution that involves child pornography as described in 18*
6 *U.S.C. §1460 - 1470, §2241 - 2248 or §2251 - 2260.*

7 *(f) A defendant may not assert an affirmative defense to a charge of*
8 *violating paragraphs (1), (2), (3) or (4) of subsection (a) unless, within*
9 *the time provided for filing pretrial motions or at such time prior to trial,*
10 *as the judge may direct, but in no event later than 10 days prior to trial,*
11 *the defendant provides the court and the prosecution with notice of the*
12 *intent to assert such affirmative defense and the substance of any expert*
13 *or other specialized testimony or evidence upon which the defendant in-*
14 *tends to rely. If the defendant fails to comply with this subsection, the*
15 *court shall, absent a finding of extraordinary circumstances that prevents*
16 *timely compliance, prohibit the defendant from asserting such defense to*
17 *a charge of violating paragraph (1), (2), (3) or (4) of subsection (a) for*
18 *presenting any evidence for which the defendant has failed to provide*
19 *proper and timely notice.*

20 *(g) This section shall be part of and supplemental to the Kansas crim-*
21 *inal code.*

22 *Sec. 4. K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp. 21-3516*
23 *are hereby repealed.*

24 *Sec. 5. This act shall take effect and be in force from and after its*
25 *publication in the statute book.*