

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 1, 2006 in Room 313-S of the Capitol.

All members were present except:

Michael Peterson- excused
Ward Loyd- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Trish Kilpatrick
Mark Lunsford, Self
Phil Kline, Attorney General
Tim Madden, Kansas Department of Corrections
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence
Jennifer Garrett, Self
Shaun Bennet, Self
Tempe Persyn, Self
Curtis & Lisa Jacobs, Individuals
Jennifer Roth & Stacey Donovan, Public Defenders, Lawrence

Representative Powers requested a bill be introduced that would increase jury compensation from \$10 to \$40 per day. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Chairman O'Neal opened the hearing on **HB 2576 - persistent sex offender life without the possibility of parole; hard 25 or 50 for certain sex offenders; task force to review feasibility of GPS monitoring of certain offenders.**

Representative Trish Kilpatrick, appeared as the sponsor of the proposed bill because thousands of children are effected by sex predators every year. The U.S. Department of Justice estimates that on average, there is one child molester per square mile in the United States. They are often babysitters, coaches, teachers and family members. More than 1.2 million families will report child sexual abuse by the end of the year with fewer than five percent of the offenders ever being apprehended.

HB 2576 increases the penalty for first-time offenses to 25 years hard time. Judges have the option of trying juvenile offenders as adults if they meet certain aggravating circumstances. It also increases the penalty for failing to register from level 10 non-person felony to a level 5 person felony, and for every 30 days that one fails to register, they would be charged with a new felony. Second-time offenders would be sentenced to no less than 50 years. (Attachment 1)

Mark Lunsford relayed his story of how his 9-year-old daughter, Jessica, was tortured, molested, and buried alive in February 2005 by a registered sex offender in Homosassa, Florida. Since that time he has been lobbying to reform sentencing laws in many states. "Jessica's Law" is about protecting our children. He urged Kansas to become the fifth state to pass Jessica's Law.

Attorney General Phil Kline stated that Kansas does not have a firm policy in place to protect children from sex offenders. In Kansas, 13.7% of those required to register have not. The U.S. Department of Justice estimates that predators commit an addition 16 sexual crimes while on probation.

Tim Madden, Kansas Department of Corrections, supported the proposed legislation but requested some technical changes that would make the bill consistent with **SB 334 & 474:**

- change the term "persistent offender" to "aggravated habitual sex offender"
- make a distinction between the crimes that are subject to enhanced sentencing and those

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 1, 2006 in Room 313-S of the Capitol.

crimes which may serve as the criminal history prerequisite for establishing that the offender is a habitual criminal.

- incorporate the aggravating circumstances as found in K.S.A. 21-4636
- do not list the risk factors in statute because they change due to current research and validated assessments. (Attachment 2)

Representative Ann Mah while in support of the concept of the bill had concerns with not allowing judges to depart downward when treatment is warranted instead of jail. She also suggested that more emphasis needed to be placed on prevention, victim assistance and successful prosecution. (Attachment 3)

Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence, appeared as a proponent of the bill but requested amendments that would close the gaps between reporting, arrest, prosecution, and conviction. (Attachment 4)

Jennifer Garrett, Self, relayed her story about being sexually abused. She said she was "tired of paying the price for the offenders acts" and hoped that the committee would make sure that these individuals not be allowed to return to society.

Shaun Bennet, Self, stated that individuals who have sexual types of crimes committed against them spend the rest of their lives simply trying to survive. (Attachment 5)

Tempe Persyn, Self, supported the bill but was concerned with it including juveniles because they do not have an understanding of sexuality and the difference between right and wrong. She agreed that there needs to be consequences for any action one does and requested that once a juvenile has met all the court orders that their name be removed from the website and their record expunged as not to affect their adult life. (Attachment 6)

Curtis & Lisa Jacobs, proposed an amendment that would prevent a student, who has been adjudicated of a sexual act, from attending the same school as the victim. (Attachments 7 & 8) The proposal would address instances, such as Lisa's, where the boy who sexual abused her on several occasions was allowed to continue to attend the same attendance center.

Jennifer Roth & Stacey Donovan, Public Defenders, Lawrence, didn't disagree that sexual predators shouldn't be locked away but were concerned with departing from the current sentencing grid. They were also concerned that the bill includes juveniles and their prior history. (Attachment 9)

The hearing on **HB 2576** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on Thursday, February 2, 2006 in room 313-S.

BEFORE THE HOUSE JUDICIARY COMMITTEE
TESTIMONY OF REPRESENTATIVE PATRICIA KILPATRICK
STATE REPRESENTATIVE
RE: HOUSE BILL 2576
February 1, 2006

Chairman O'Neal and members of the committee, thank you for allowing me to speak with you today. I am here to introduce to you HB 2576, also known as the Jessica Marie Lunsford Act – "Jessica's Law".

Early this past summer, I was contacted by a constituent whose three children were raped and molested by their father. She and her eldest son demanded to know why "Jessica's Law" was being "stalled" in Kansas. After looking into it, I was told that it was not being carried at all. I then began the long journey to where I am today.

Shortly afterward, Attorney General Phill Kline created the Security and Firm Enforcement for Kansans (S.A.F.E) Task Force to which I was appointed. This task force consisted of a mixture of members within the law enforcement community, prosecutors and legislators from both the House and Senate.

Together we thoroughly analyzed how sex offenders are dealt with in the state of Kansas and spoke with many victims and their parents – most notably Roger Kemp (the father of slain teen Ali Kemp), and Mark Lunsford (the father of Jessica Lunsford - who is here with us today). After six months of research, testimony and due diligence, we developed the language for HB2576.

Violent, sexual crimes against our innocent children are perhaps the most heinous imaginable. I am pleased that Kansas is poised to become the 5th state to enact a version of the Jessica Marie Lunsford Act. I commend the Kansas Legislature for addressing this issue in such a comprehensive and thorough manner. More importantly, I am humbled by a man who has endured the most horrific nightmare that a parent can undergo, and managed to bring about change in millions of lives through his grief. Mark, I am proud that you call me your friend.

This legislation is an important element of a very strong set of laws and regulations we have implemented to address sexual predators and sexual offenders.

House Judiciary

Date 2-1-06

Attachment # 1

Let's carefully examine the type of person we are talking about. Sexual predators. They commit the most heinous acts against the most defenseless members of our society – They are everywhere and they can strike at any time – and they come in all shapes and sizes. The U.S. Department of Justice estimates that on average, there is one child molester per square mile in the United States. They often are disguised as harmless and caring people; they may interact with your children as their baby-sitters, youth group leaders, clergy, teachers, coaches, neighbors, medical professionals, and family members.

Sexual crimes are more prevalent than most people would ever imagine. More than 1.2 million families will report child sexual abuse by the end of this year. One in four girls and one in six boys will have sexual contact with an adult. Many hundreds of thousands more boys and girls from all backgrounds and of all ages may experience abuse that is not reported.

Even more alarming is the fact that fewer than five percent of sex offenders are ever apprehended - only 5%. The average child molester victimizes between 50 and 150 children before he is ever arrested – many more afterwards. One man that I read about during my research admitted to victimizing more than 1,000 children before he was ever incarcerated. He's now considered only a first-time offender.

Contrary to popular belief, rape and molestation are rarely crimes of impulse. Predators act with careful premeditation and use sophisticated deception techniques to gain our trust, often playing double roles in the community. Most start their pattern of abuse in their early teens. The US Department of Justice statistics reveal that 23% of all sexual offenders are under the age of 18 and that the largest numbers of sexual offenders in ANY AGE GROUP are 14-year-olds!

Even after they are apprehended, many offenders manage to avoid conviction. Accused offenders plea bargain to lesser offenses to keep their names from appearing on the Sex Offender Registry. Prosecutors accept these offers in order to secure a conviction, therefore creating a problem that is two-fold: Offenders avoid registration and don't get the treatment that they need, making it more likely that they will commit another offense.

The Sex Offender Registration was sanctioned federally, brought about by Megan's Law that was enacted in 1996. The goal of the Sex Offender Registry is to ensure that accurate and complete information about a released sex offender is made available to protect the public and prevent further victimization. Under HB 2576, offenders required to register under the Kansas Offender Registration Act (KORA) every year must re-register with the sheriff in person in the county where they reside every six months and must submit to the taking of a new photograph at every registration.

There are currently 549,038 registered sex offenders in the United States – 4,026 in the State of Kansas. Sex offenders pose an enormous challenge for policy makers: they evoke unparalleled fear among constituents; their offenses are associated with a great risk of psychological harm; and most of their victims are children and youth. As policy makers address the issue of sex offenders, they are confronted with some basic realities:

- **Most sex offenders are not in prison and those who are tend to serve limited sentences** – HB 2576 increases the penalty for a first-time offense to 25 years hard time. Judges have the option of trying juvenile offenders as adults if they meet certain aggravating circumstances. These offenses include: rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, indecent solicitation of a child, aggravated indecent solicitation of a child, sexual exploitation of a child, aggravated sexual battery, and aggravated incest.
- **Most sex offenders are largely unknown to people in the community** – HB 2576 increases the penalty for failing to register from a level 10 non-person felony, to a level 5 person felony, and for every 30 days that they fail to register, they continue to add a new and separate offense. HB 2576 also instructs the Kansas Board of Education to appoint a task force to study the feasibility of requiring all Kansas school districts to adopt district policies mandating all schools conduct a check of the internet site maintained by the KBI prior to permitting any unescorted, non-instructional personnel who are on school grounds while students are present. HB 2576 advises the Governor of Kansas to designate the Kansas Criminal Justice Coordinating Council to form a task force to research the potential utilization of electronic monitoring devices, specifically including devices capable of utilizing GPS technology, for the purpose of monitoring and tracking the locations of released offenders.
- **Sex offenders have a high risk of re-offending** – with the increase in the number years incarcerated, offenders are kept off the streets and out of our neighborhoods for longer periods of time. When faced with the reality that a second-time offense carry's with it an incarceration period of no less than 50 years and a third offense of true life, offenders should think twice before committing another crime.

Let's remove the veil of secrecy from the widely misunderstood crime of sexual abuse, and give law enforcement the tools they need to protect our children and prosecutors the power to punish their offenders. HB 2576 is another step towards ending the crimes perpetrated upon our children. There is hope though, and that hope lies in the faith we have in you to do what is right and responsible.

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2576
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

February 1, 2006

I wish to express my support for HB 2576. The Department of Corrections introduced two bills in the Senate Judiciary Committee, SB 473 and SB 474 as part of Governor Sebelius' response to sex offenders. I have also testified in support of SB 334 before that Senate Committee. These bills are intended to accomplish the same goal as HB 2576, greater safety for Kansans. While there are some differences in detail regarding penalties and definitions of the target populations, the intent of all of these bills and the methods are similar. It is not important which bill serves as the vehicle to accomplish these goals, but that the job get done. We wish to work with you to see that this happens. We would request that you consider the ideas presented in these bills and determine whether it is appropriate to incorporate those ideas into one of the bills pending this session.

Also we would like to make some technical suggestions regarding HB 2576, should the Committee determine that it prefers to proceed with this bill essentially in its current form.

In regard to the criminal procedures of HB 2576, I would like to take this opportunity to raise the following issues for your consideration:

- Use of the term "persistent offender"

HB 2576 uses the term "persistent offender" in defining the sex offender subject to an enhanced sentence for repeatedly committing sex offenses. The department notes that the term "persistent sex offender" is also used in K.S.A. 21-4704 to define those offenders subject to a doubling of the otherwise presumptive guidelines sentence. The Committee may wish considering use of a different term such as "aggravated habitual sex offender". This suggestion was incorporated into SB 334.

- Use of “sexually motivated” crimes in the definition of the primary crime for which the enhanced sentence is being imposed.

The department recommends that a distinction be made between the crimes that are subject to enhanced sentencing and those crimes which may serve as the criminal history prerequisite for establishing that the offender is a habitual criminal. The term “sexually violent crime” includes those crimes “which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated.’sexually motivated’ means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification”. While this definition serves the purpose of providing a catch all measure when establishing whether an offender should be required to register as a sex offender or even to establish the criminal history prerequisite for an enhanced sentence for a subsequent sex offense, it is the department’s recommendation that “sexually motivated” not be used to define a primary crime for which the enhanced sentence is being imposed. To illustrate the department’s concern, consider the situation where a person burglarizes a convenience store stealing money, cigarettes and adult magazines.

The department in its habitual offender proposal in SB 474 at page 9 has attempted to separately define those crimes for which an enhanced sentence may be imposed and those offenses which may serve as a criminal history prerequisite.

- Definition of Aggravating Circumstances.

HB 2576 at page 13 (f)(2) and page 14 (f)(3) incorporate the “aggravating circumstances” enumerated in K.S.A. K.S.A. 21-4636 for the enhancement of the sentence to be imposed and limits enhancement to those factors. The circumstances enumerated in K.S.A. 21-4636 are currently employed for crimes involving murder. The department recommends that factors for assessing aggravating circumstances pertaining to sex crimes be tailored to those offenses. The department has attempted to do this in SB 473 at page 3 new section 2 regarding enhanced penalties for rapists.

- Risk Assessments and Level of Supervision

HB 2576 at pages 3-4, new section 3 provides that the department is to identify, assess and monitor high-risk sex offenders. The department is to develop a graduated risk assessment for postrelease supervision for sex offenders who have previously been incarcerated, violated the conditions of their supervision, have a history of domestic violence, substance abuse, unemployment/financial difficulties, or sexual abuse of children.

The department recommends that risk factors not be established by statute but rather be based upon current research and validated assessment instruments. The department and its sex offender treatment provider, DCCCA, currently use an arsenal of risk assessment instruments, including the Static Risk Assessment -99, Minnesota Sex Offender Screening Tool -Revised, Sex Offender Needs Assessment Review, Level of Service Inventory -Revised, Multiphasic Sexual Inventory, Sex Offender Acceptance of Responsibility Scale, Assessment of Participation and Goal Attainment, and the Violence Risk Assessment Guide. These instruments evaluate

different factors regarding risk. Historically, the relevance of factors evaluated by risk assessment instruments have changed through research and validation and are expected to be further refined or altered in the future.

In order to utilize the most current research and validated risk assessment instruments, the department recommends that HB 2576 be amended by striking at page 4, line 4 after "supervision" through line 15.

The department urges favorable consideration of its recommendations.

ANN E. MAH

REPRESENTATIVE, 53RD DISTRICT
 3351 SE MEADOWVIEW DR
 TOPEKA, KANSAS 66605
 (785) 266-9434



TOPEKA

HOUSE OF
 REPRESENTATIVES

Testimony – HB 2576
 House Judiciary Committee

COMMITTEE ASSIGNMENTS
 EDUCATION
 FEDERAL AND STATE AFFAIRS
 WILDLIFE, PARKS AND TOURISM

STATE CAPITOL BUILDING—ROOM 273-W
 TOPEKA, KANSAS 66612-1504
 (785) 296-7690

I would like to thank the committee for allowing me to speak on HB 2576. I served on the S.A.F.E. Kansans Task Force and appreciate the effort made by the Attorney General, Representative Kilpatrick, and all who participated to make Kansas a safer place for children. This bill makes a statement that we take our children's safety seriously.

My purpose today is to support the general provisions of the bill and to ask for even more. Stronger sentences make sense, but when we focus largely on those who have been prosecuted for sexual offenses, we are only addressing the "tip of the iceberg". Over two-thirds of sexual offenses aren't even reported, let alone prosecuted, and that is a concern we should also address.

Assaults are not reported for a variety of reasons, but the biggest one may be that the perpetrator is known by the victim. Victims are reluctant to turn in people they know. When the sentence for a first conviction becomes a hard 25 years, don't be surprised if the tip of the iceberg gets even smaller. Who will turn in cousin George or a boyfriend if they think he will go to jail for 25 years?

My second concern is that there is a difference between "stupid" and "evil", particularly with juvenile offenders, and one-size sentencing doesn't fit all. I know this because I was molested by a juvenile relative when I was a child. He wasn't evil. He didn't need jail time. He needed help. If we pass a law that inadvertently reduces reporting and puts mixed-up kids in jail, then we have gone backwards.

So I ask for more. We must be sure there is flexibility in the sentencing guidelines to allow judges to depart downward when treatment is warranted instead of jail or when an offender should be removed from the offender registration. The judge is in the best position to determine the sentence that fits the situation and when there are mitigating factors.

We need more emphasis on prevention, victim assistance, and successful prosecution. If funding recommendations are made, please consider the following:

- Education programs to prevent assaults and encourage reporting
- Expansion of the Sexual Assault Nurse Examiner/Sexual Assault Response Team (SANE/SART) program
- Training for local law enforcement to improve prosecution rates
- More rape crisis centers

This bill is a good effort that will be even better if we tackle the rest of the iceberg. At the end of the day, let's make more than headlines. Let's make Kansas truly a safer place to raise children

House Judiciary

Date 2-1-06Attachment # 3

634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

**House Bill 2576
House Judiciary Committee
February 1, 2006
Proponent**

Chairman O'Neal and Members of the House Judiciary Committee:

The Kansas Coalition Against Sexual and Domestic Violence is responsible for representing the voices and interests of victims of sexual and domestic violence in a number of venues: the public policy arena is perhaps one of the more important.

KCSDV takes this responsibility seriously and, as this responsibility relates to HB 2576, I believe that this Bill meets the needs of some victims but not necessarily the majority of sexual assault victims.

There is little, if any, doubt that most victims of sexual assault believe the rapist or perpetrator deserves harsh penalties, and should get them. Sex offenders do heinous things to their victims, sometimes robbing them of their childhood, their dignity, their sense of self and spirit, their sense of security in their own home and community, their sense of family connections, their health, education, and employment, and sometimes even their life.

Victims who have found success in the criminal justice system through a conviction of the perpetrator would wholeheartedly support this bill. HB 2576 would also bring welcome relief to those victims who were able to participate in the prosecution of the perpetrator but then saw this convicted offender receive a sentence of only 6 months in jail followed by probation.

On their behalf KCSDV fully supports HB 2576.

That said, it is also important to speak for the other victims for whom HB 2576 will do nothing. For those victims, the barriers of getting to the penalty phase are simply too great. Consider the following stories:

- 1) A 19 year old woman away from home for the first time attending a state university in Kansas. She went out for the evening with her roommate and

ran into friends, one of them a hometown rodeo hero. The evening turned cold and the hometown friend offered her a ride home, but he detoured to show her the fair/rodeo grounds where he hoped to compete the following summer – you know the rest of the story. She rebuffed his advances for some time, asking him to take her home. But, after a while, the more she fought the more aggressive he became and she grew more fearful. Finally, she decided she should acquiesce to him rather than risk further violence. He then took her home. For him, it was just a good night out. For her, this night changed her life forever. For three hours, she scrubbed herself, taking one shower after another. She then called the hotline for help. The only thing she wanted was for someone to tell her Dad. After several hours of talking about options of reporting to law enforcement and her fears of telling her family, I loaded her in my car and took her to talk with her Dad. Her Mom was there too; she cried. Her Dad cried too and then took her in his arms and told her to come home they would put this behind them all. Her Dad didn't do this because he disbelieved her, or because he thought the rodeo hero had a right to rape his daughter. He did it because he cared deeply about her and could not imagine the horror of going through a criminal trial. He knew that in these cases it was a "he said-she said" ordeal. Remember, for the rodeo rider, it was just a good night out. For her, she lost her virginity and her education—it changed her life forever!

- 2) The man who called our hotline was middle aged and had experienced a brutal sexual assault several months prior. In recent days, he had begun to think he was crazy because the assault invaded his thoughts at every hour and he was unsure why that was happening now – four months later. As the story unfolded, the brutality he had sustained by several male attackers had caused severe rectal damage. He had been healing from several surgeries for months and just now could begin to deal with the emotional realities. He refused to give law enforcement any information – he would not go through the embarrassment of a public trial.
- 3) A woman came into shelter with her three children fleeing from an abusive husband. Her children were pretty wild; they would not even sit to eat dinner. About four weeks into her stay at shelter, she disclosed that her husband raped her often, sometimes with implements like a hammer handle. She told of one time when he raped her on the dining room floor while he made the kids eat dinner facing the wall. For many months, he controlled her by giving hints that it could happen again. We talked at length about the pro's and con's of reporting both the physical and sexual assaults to law enforcement. To report the rape meant that her children were likely to be called as witnesses to testify against their Dad. To stay quiet meant that her children were likely to be sent to visit their Dad on weekends. A Hobson's choice if ever there was one!

For these three victims, and countless others, enhanced penalties would not matter because they didn't and couldn't get that far. The barriers experienced by these particular victims are commonly shared by most victims of sexual assault. Fear of public exposure and humiliation, embarrassment, self blame, fear of the criminal justice system, and the fear that they won't be believed are in fact powerful barriers to reporting or maintaining participation in the system. The statistics bear out that many rapes (the following statistics address rape only and do not include all sexual assault) are reported but never prosecuted or are lost at trial.

- Only 10% to 33% of all rapes are reported (U.S. Justice Dept.) There is no good information about the actual prevalence of all sexual violence.
- Only 35% to 49% result in an arrest
- Only 14% to 35% result in prosecution, and
- Only 14% to 17% result in a conviction.

Essentially that means HB 2576 will address only 1% to 6% of rapists living in our communities; probably an even smaller number if all sexual assaults are considered. Even if we assume that many convicted sex offenders perpetrate numerous times, this still leaves the vast majority of perpetrators unidentified or unsuccessfully held accountable by the criminal justice system. These numbers show an obvious gap between the numbers of victims who will benefit from the enhanced penalties found in HB 2576 and the numbers of victims who cannot or will not come forward because the cost is too great, the risk too severe, the support too scarce.

We MUST address this gap if enhanced penalties are going to mean anything to the majority of victims.

We CAN address this gap. These measures will help:

- Increase reporting by increasing access to rape crisis counseling, even for minors
- Improve the climate of the criminal justice system for victims by prohibiting the use of polygraphs on victims
- Increase the reporting and arrest rate by increased training for law enforcement and rape crisis advocates
- Increase prosecution by enhancing prosecutorial resources, training, and support
- Increase plea and conviction rates by enhancing forensic evidence collection through sexual assault nurse examiner programs and appropriate child disclosure programs
- Increase conviction rates by supporting victims who can participate in the criminal justice system by, for example, enhanced privacy protection
- And, finally, educate the jury pool about the realities of sexual violence through public awareness campaigns

Sexual violence is a complex criminal and social problem.

I commend the Kansas Legislature in its attempts to even consider addressing this complex issue. And, it appears to me that the public and legislative commitment to enhanced penalties for sex offenders may well serve some victims but, without addressing the entire system, HB 2576 may create higher stakes for perpetrators and, therefore, for victims.

Consider this story:

A young woman in Marysville, Kansas, very bravely reported her rape to law enforcement; they handled it pretty well and the case moved to prosecution. A very talented and energetic attorney from Topeka represented the defendant, and together they mounted a defense based on "he said-she said" and the belief that the sure way to win is to make the defendant more credible than the victim by denigrating her. The defense was successful and the jury returned a not-guilty verdict. It is difficult to explain to victims that 'not-guilty' and 'innocent' do not mean the same thing. Even today, I wonder how this trial outcome affected the reporting rate of rape or sexual assault in Marysville and the surrounding communities. Often after publicity about sexual assault or rape where the victim is publicly humiliated or the outcome appears to be a miscarriage of justice, I hear women exclaim, "there is NO way I would report a rape and go through that." In fact, as I remember it today, in this case the mother of this young woman even lost her wedding planning business because no one wants rape associated with their wedding.

Without addressing the numbers and services gaps in the system we may create even more situations like this one because:

- Substantially higher penalties may create a situation where a defendant has nothing to lose by going to trial.
- Victims who are unable or unwilling for whatever reason to endure a trial may decide the stakes are too high and many defendants will go free.
- Because the stakes are so high, the focus will be on victim credibility at these trials. Without additional support from victim advocates, sexual assault victims will be eaten alive at trial, again, resulting in fewer victims coming forward to report the sexual assault.

Without addressing the gaps in the entire system enhanced penalties may even have a paradoxical effect because:

- There will be more court time and, thus, higher costs
- There will be more prosecutor time required for preparation for trials
- There will be fewer cases prosecuted because of lack of resources, training, victim capacity, etc.
- And, although it often feels that plea agreements are misused, they are sometimes the best resolution for a victim. HB 2576 does not leave

much room for either victims or prosecutors to rely on entering a plea rather than going to trial. The stakes are too high for defendants.

The success of HB 2576 relies on closing the gaps between reporting, arrest, prosecution, and conviction. Without closing the gaps – it all falls apart!

And, finally, we **MUST** work to prevent sexual violence not just intervene after it happens – let's develop a zero tolerance for sexual violence.

- Primary prevention will decrease the number of sexual assaults in Kansas
- Primary prevention is less expensive than dealing with the aftermath of sexual violence

If you as the Kansas public policy leadership are seriously going to take on the issue of sexual violence, then I challenge you, on behalf of all the victims whose lives are changed forever but have no access to justice, to do the job fully and completely. Do not just address the 1% of sexual assaults that actually result in a conviction.

A 1 percent solution is insufficient to support the claim that victim and community safety have been enhanced!

Respectfully submitted,

Sandy Barnett
Executive Director

1 (3) capital murder, as provided in K.S.A. 21-3439, and amendments
2 thereto;

3 (4) rape, as provided in K.S.A. 21-3502, and amendments thereto;

4 (5) aggravated criminal sodomy, as provided in K.S.A. 21-3506, and
5 amendments thereto;

6 (6) sexual exploitation of a child, as provided in K.S.A. 21-3516, and
7 amendments thereto;

8 (7) kidnapping as provided in K.S.A. 21-3420, and amendments
9 thereto,

10 (8) aggravated kidnapping, as provided in K.S.A. 21-3421, and
11 amendments thereto;

12 (9) criminal restraint, as provided in K.S.A. 21-3424, and amend-
13 ments thereto;

14 (10) indecent solicitation of a child, as provided in K.S.A. 21-3510,
15 and amendments thereto;

16 (11) aggravated indecent solicitation of a child, as provided in K.S.A.
17 21-3511, and amendments thereto;

18 (12) indecent liberties with a child, as provided in K.S.A. 21-3503,
19 and amendments thereto;

20 (13) aggravated indecent liberties with a child, as provided in K.S.A.
21 21-3504, and amendments thereto;

22 (14) criminal sodomy, as provided in K.S.A. 21-3505, and amend-
23 ments thereto;

24 (15) aggravated child abuse, as provided in K.S.A. 21-3609, and
25 amendments thereto;

26 (16) aggravated robbery, as provided in K.S.A. 21-3427, and amend-
27 ments thereto;

28 (17) burglary, as provided in K.S.A. 21-3715, and amendments
29 thereto;

30 (18) aggravated burglary, as provided in K.S.A. 21-3716, and amend-
31 ments thereto;

32 (19) theft, as provided in K.S.A. 21-3701, and amendments thereto;

33 (20) vehicular homicide, as provided in K.S.A. 21-3405, and amend-
34 ments thereto;

35 (21) involuntary manslaughter while driving under the influence, as
36 provided in K.S.A. 21-3442, and amendments thereto; or

37 (22) stalking, as provided in K.S.A. 21-3438, and amendments
38 thereto.

(23) any domestic violence-related
crime

39 (b) The secretary of corrections shall submit such report to the
40 speaker of the house of representatives and the president of the senate
41 annually, beginning January 1, 2007.

42 New Sec. 3. (a) The department of corrections shall be required to
43 identify, assess and monitor high-risk sex offenders in the custody of the

1 secretary of corrections.

2 (b) The department is directed to develop a graduated risk assess-
3 ment that identifies, assesses and closely monitors a high-risk sex offender
4 who is placed on postrelease supervision and who:

5 (1) has previously been on postrelease supervision in this or another
6 state and has a history of committing multiple violations while on such
7 supervision or has previously been incarcerated in this or another state;
8 or

9 (2) has experienced one or more of the following risk factors:

10 (A) Previous conviction for domestic violence;

11 (B) history of domestic violence;

12 (C) history of substance abuse;

13 (D) unemployment or substantial financial difficulties;

14 (E) previous conviction for violence or sex acts against children, ~~par-~~
15 ~~ticularly involving strangers;~~ or

16 (F) any other risk factor identified by the department.

17 New Sec. 4. The Kansas board of education shall appoint a task force
18 to study the feasibility of requiring all Kansas school districts to adopt
19 district policies mandating all schools conduct a check of the internet site
20 maintained by the Kansas bureau of investigation concerning registered
21 offenders prior to permitting any unescorted, noninstructional personnel,
22 including but not limited to, any vendor or entity under contract with the
23 school board, to be on school grounds while students are present. The
24 task force's study shall be completed and the task force shall submit a
25 report containing its findings and recommendations to the Kansas board
26 of education, the speaker of the house of representatives and the presi-
27 dent of the senate on or before January 1, 2007.

28 Sec. 5. K.S.A. 2005 Supp. 21-3447 is hereby amended to read as
29 follows: 21-3447. (a) Aggravated trafficking is:

30 (1) Trafficking, as defined in K.S.A. 2005 Supp. 21-3446, and amend-
31 ments thereto:

32 (A) Involving the commission or attempted commission of kidnap-
33 ping, as defined in K.S.A. 21-3420, and amendments thereto;

34 (B) committed in whole or in part for the purpose of the sexual grat-
35 ification of the defendant or another; or

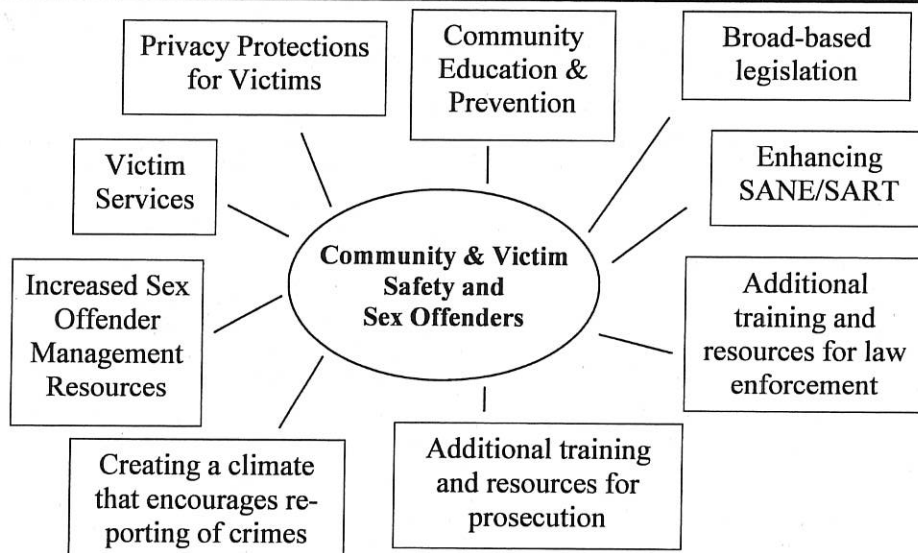
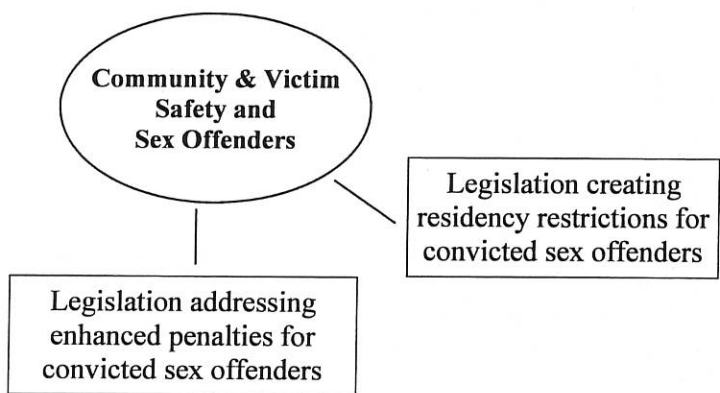
36 (C) resulting in a death; or

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

42 (b) *Except as provided further, aggravated trafficking is a severity*
43 *level 1, person felony. Aggravated trafficking, if the victim is less than 14*

The Multi-Faceted Approach

to addressing Community & Victim Safety and Sex Offender Management



or

Approach addresses 1% to 6%* of all sex offenders

*Most sex offenders are not convicted. Research indicates that only 1% to 6% of all sex offenders will ever be convicted of, plead guilty to, and/or be imprisoned for their crimes.

Approach addresses 94% to 99%* of all sex offenders

*Most sex offenders live in our communities, not in prisons. Research indicates that only a small number make it through the criminal justice system to a conviction.

A One Percent Solution is Insufficient to Protect Victims and Communities.



Provided by the Kansas Coalition Against Sexual and Domestic Violence
 Safety. Accountability. Justice.

Sex Offender Management

What Keeps Communities & Victims Safe?

What Works

- ⇒ Policies that address victims and offenders of all types of sexual violence
- ⇒ Evidence-based policies
- ⇒ Legislation that is part of a multi-faceted strategy to create a climate that encourages reporting of sex crimes

KCSDV advocates a multi-faceted approach:

- Providing victim services
- Enhancement of sexual assault nurse examiners and sexual assault response teams
- Increased training and resources for law enforcement and prosecution
- Community education & prevention
- Creating a climate that encourages victims to report crimes

What Doesn't Work

- ⇒ Narrowly focused policies that address 1% of the sex offending population*
- ⇒ Legislation directed only at enhanced penalties
- ⇒ Legislation including residency restrictions for sex offenders
- ⇒ Policies that are based on the following myths:

All sex offenders re-offend.
Treatment doesn't work.
Stranger danger.

*Most sex offenders are not convicted. Research indicates that at best only 1 to 6% of all sex offenders will ever be convicted of, plead guilty to, and/or be imprisoned for their crimes. In other words, only a small number of sex offenders make it through the criminal justice system to conviction.

We must do more.

We can do more.

Focusing on enhanced penalties is not enough.

A One Percent Solution Is Not Enough.



Provided by the **Kansas Coalition Against Sexual and Domestic Violence**
Safety. Accountability. Justice.

My name is Shaun Bennett. I am a father, a member of Bikers Against Child Abuse, and a minister with 8 years of experience working with and counseling teenagers. My experience in counseling sexual abuse survivors is that they do just that. They survive. They never get over it. My experience has also shown me that it never happens just once. Not one person that I have ever counseled has ever said that it only happened once, and that they were the only victim.

Last Thursday, here in Topeka, Ronald Eugene King was found guilty of 4 counts of aggravated indecent liberties with a child, and one count of aggravated criminal sodomy. The truly sad part of this story is that if Jessica's Law had been in force in 1986, there would have been no trial, there would never have been a case to try. This would not have happened at all. This child would never have been molested, would never have had her innocence taken, her childhood stolen. This child would not spend the rest of her life having to live in pain, waking up in the middle of the night screaming. All of this could have been avoided if Ronald Eugene King had been sentenced to the 25 years Jessica's Law provides, for his **FIRST** convictions of molesting a child. King was convicted of 2 counts of aggravated incest in 1989 for raping his own flesh and blood. King was paroled after serving just 6 years. Three years for each conviction of aggravated incest. If Jessica's Law had been in force, King would be in prison until 2014, and the second child would still be living the life of a child, not the nightmare of the abused.

According to the Center for Sex Offender Management's article on Recidivism of Sex Offenders and the 1997 study by Prentky, Lee, Knight and Cerce, 52 percent of child molesters will reoffend within the 25 years that Jessica's Law would have them locked away. That means that 1/3 of the victims of convicted child sex offenders would not be molested. While it is true that most likely there will be more trials in the beginning, if there are fewer repeat offenders, then in the long run, there will be fewer trials. There will also be fewer children molested. In the beginning there will be more sex offenders in prison for longer periods of time, but if 52 percent will end up back in prison for molesting another child, then that isn't actually increasing the time they spend in prison, it is just making it one sentence instead of two. Two sentences separated by the freedom that allows them to molest the second child. When it comes to figuring the price of Jessica's Law, if we eliminate the second offense of the 52 percent of those who are convicted, we will eliminate the cost of investigating and trying 1/3 of the cases of those who are convicted of molesting children. But even more important, we eliminate the emotional cost to hundreds of children who will not be molested.

I have often heard that children are resilient, that they bounce back. The reason I am standing in front of you today is that that saying is not entirely true. Six months ago my wife woke up in the middle of the night, screaming, crying hysterically. When I finally managed to calm her down, she told me that she had had a nightmare. It was actually a flashback, to when she was molested by an uncle, when she was **FOUR YEARS OLD**. She woke up screaming, covered in sweat, vividly recalling the abuse she had endured 37 years earlier. Yes, she lives a healthy productive life. She is a wonderful mother and wife and a contributing citizen in our society. But that does not mean that she is not affected by it every day she lives.

I would give up everything that I own to be able to go back and protect my wife when she needed someone. I would, without hesitation, give my life to protect my 12 year old daughter from being molested. I would bet that you would do the same for your own precious children.

When my wife was finally able to stop crying, she looked at me and said, "You are in Bikers Against Child Abuse to protect the children. Why wasn't there anyone there to protect me?"

You have the wonderful responsibility that allows you the opportunity to protect hundreds of children from abuse, by simply voting YES.

House Judiciary

Date 2-1-06

Attachment # 5

“Man guilty in sex case” from The Capital-Journal 1-27-06

Ronald Eugene King, 54, of Topeka, was convicted in Shawnee County District Court on Thursday of aggravated criminal sodomy of a child and four counts of aggravated indecent liberties with a child.

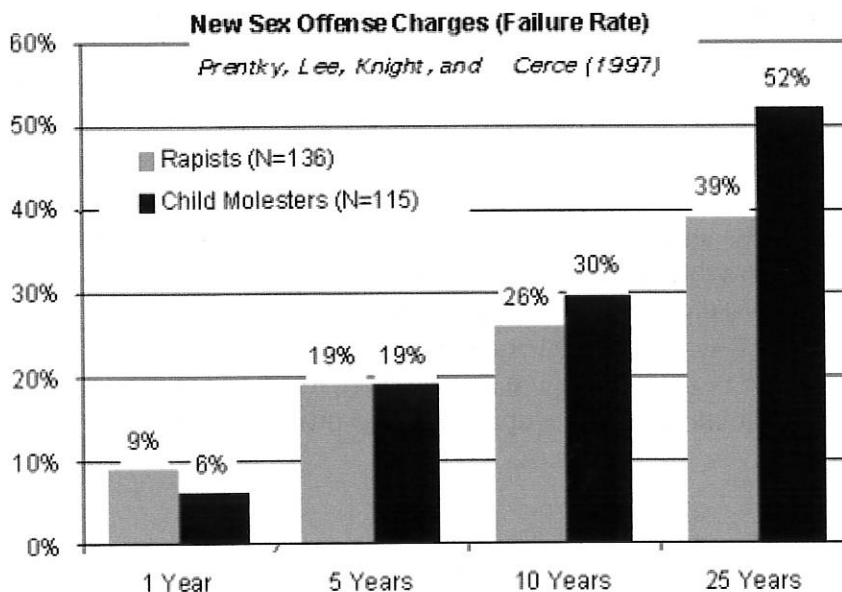
King, whose last known address was 1930 S.W. Central Park, could be sentenced to between 34 1/2 to 38 1/3 years in prison for the aggravated criminal sodomy with a child charge and 17 to 19 years for each aggravated indecent liberties offense, said District Attorney Robert Hecht.

King was convicted in 1986 of two counts of aggravated incest. The current case originally was filed in 2003, but a mistrial was declared when a witness improperly referred to the defendant's prior conviction. A second trial also ended in a mistrial when a juror recalled that he had previously served on a jury that convicted the defendant, sending him to the penitentiary.

Center for Sex Offender Management,
<http://www.csom.org/pubs/recidsexof.html>

Recidivism of Sex Offenders May 2001

Prentky, Lee, Knight, and Cerce (1997) found that over a 25-year period, child molesters had higher rates of reoffense than rapists. In this study, recidivism was operationalized as a failure rate and calculated as the proportion of individuals who were rearrested using survival analysis (which takes into account the amount of time each offender has been at risk in the community). Results show that over longer periods of time, child molesters have a higher failure rate—thus, a higher rate of rearrest—than rapists (52 percent versus 39 percent over 25 years).



February 1, 2006

Michael O'Neal
Chairman
Lance Kinzer
Vice Chair
Committee on the Judiciary

RE: House Bill 2576 AN ACT concerning crimes, punishments, and criminal procedure; enacting a lifetime imprisonment sentence for persistent offenders; mandatory penalties for certain sex offenses; duties of board of education, department of corrections and criminal justice coordinating council; relating to offender registration: amending K.S.A 21-3504, 21-3506, 21-3513, 21-3812 and 21-4625 and K.S.A 2005 Supp. 21-3447, 21-3502, 21-3516, 21-4611, 21-4635, 21-2638, 21-4704, 22-3717, 22-4903, 22-4904, 22-4406 and 74-9501 and repealing the existing sections.

Committee Members,

I want to first state that I support any and all bills that require tougher punishments on CONVICTED ADULT sex offenders.

I am however concerned with the procedures or lack of procedures when charging children as young as 10, 11, 12, 13 as sexual predators and listing them on the Kansas sex offender website, and the affect that it will have on them long term.

First I wonder how children are even being charged with these crimes. Let's say a 15 and a 16 year old have consensual sex. The 16 year old could be listed as a sex offender because according to Kansas statues the 15 year old is not of the mind set to consent to such an act and currently the way the statues are written it states the act must be done "with the intent to arouse or to satisfy a sexual desire". These children are 10, 11, 12, and 13 years old and do they really understand sexual desire? Yet they are being charged for a first time act and treated just as an adult. They are adjudicated of the crimes not convicted yet they hold the same consequences as an adult. For a mistake or for healthy curiosity that is made as a child it will continue to follow them into their adult life. As these adjudications are not something that can be expunged from their records. Children can not apply for a clemency with the Governor because it is adjudication and not a conviction. There is currently no process of evaluation before they are listed as a sexual predator/offender and listed on the web site. As I support the web site and listing of sexual offenders I wonder about what is really taking place with the children. I believe that statues were not written with the intent of children and they have been overlooked in all the amendments that have been made over time.

My main concern is the long term affect this is going to have on these children. For a one time act at the age of 10, 11, 12, 13 years old this will affect them into their adult's lives. For an example a child has a goal to join the Air force and study sports medicine after high school. This dream is nothing but an unattainable goal to him because of something

House Judiciary

Date 2-1-06

Attachment # 6

he had done at a tender age. I know that we have all made mistakes that we are not proud of, so should these children have to pay for this the rest of their lives?

I feel that society is not aware of what is really taking place with the children. Studies done by ATSA (The Association for the treatment of Sexual Abusers) listing children on a website and branding them as sex offenders "is likely to stigmatize the child, fostering peer rejection, isolation, and increased anger" and "that with treatment and counseling these children will cease this behavior by the time they reach adulthood, and that they are more responsive to treatment than their adult counterparts due to the emerging development. These studies in addition to clinical observation support the growing optimism that many juvenile sexual offenders can be successfully treated."

I believe that there needs to be consequences for all actions, with that being said, I would like to see all children between the ages 10-14 that have been charged with a crime less than rape or sodomy to be removed from the website completely. I don't believe that they really understand what they are doing. This is when majority of children are going through puberty and trying to figure out their own sexuality. I do believe that they should be required to go through individual counseling and go through a sex offender's course. This will help them have an understanding of sexuality and insure that they will not offend again. Should there be a re-offend then I believe that they should be listed and treated as an adult.

As far as children 15-18 I believe that they do have an understanding of sexuality and understand the difference between right and wrong. For a first time offense I think that they should be required to perform community service, probation, individual counseling and attend the sex offender program. Now the question is do we list these children that are ages 15-18 on the Kansas sex offender's website? Again, I believe that there needs to be consequences for all actions. So list them on the website but once all court ordered requirements are completed give them an evaluation determining whether they are a threat to society. If not then remove them from the website and make sure that their records are expunged as not to affect their adult life.

I also feel that the courts should be given the ability to judge these children. Right now when a child is charged the judge does not have the ability to "judge" a case. The laws are defined and the courts hands are tied. So if a child was acting out something that happened to them or something they have seen that is not even taken into effect. Yet when someone commits murder surrounding circumstances are taken into effect. So again give the judges the ability to judge.

I have attached copies of reports from The Association for the Treatment of Sexual Abusers. I hope that you will find this information informative and helpful when reviewing the bills you have before your committee.

Thank You,



Tempe Persyn



The Association for the Treatment of Sexual Abusers

[ABOUT ATSA](#)
[ATSA CONFERENCE](#)
[CONTACT US](#)
[SITE MAP](#)
[Home](#)
[Members Only](#)
[Membership](#)
[Conferences](#)
[State Chapters](#)
[Public Policy](#)
[Publications](#)
[Awards & Grants](#)
[Employment](#)
[Research](#)
[Form Central](#)
[Resources](#)

The Effective Legal Management of Juvenile Sexual Offenders

Adopted by the ATSA Executive Board of Directors on March 11, 2000

Juvenile Sexual Offending Represents A Serious National Concern Which May Be Best Addressed By a Balanced Approach Involving A Strong Rehabilitative Focus, As Well As Criminal Justice Sanctions When Warranted

The Association for the Treatment of Sexual Abusers (ATSA) believes that juvenile sexual offending represents a significant problem and merits careful legal and professional attention. Current estimates suggest that juveniles account for approximately 20% of the individuals charged for a sexual assault in the United States and Canada (Barbaree, Hudson, & Seto, 1993; Federal Bureau of Investigation, 1993; Statistics Canada, 1997; Weinrott, 1996). Furthermore, retrospective studies of adult sexual offenders indicate that juvenile sexual offending may, under certain circumstances, indicate more chronic patterns of sexual aggression (Kaufman, Holmberg, Orts., McCrady, Rotzien, Daleiden & Hilliker, 1998; Marshall, Barbaree & Eccles, 1991). ATSA believes that effective public policy requires the careful balancing of criminal justice sanctions which are designed both to enhance public safety and to punish criminal acts, with providing interventions. Youthful offenders who appear amenable to rehabilitation should receive those interventions. ATSA's support of rehabilitative programs is consistent with both the juvenile justice policy in a number of countries (e.g., United States, Canada) as well as the emerging research related to juvenile sexual offending.

Juvenile Sexual Offenders Differ From Their Adult Counterparts in Important Ways and Are Likely to Benefit From High Quality Treatment Efforts

Recent research suggests that there are important distinctions between juvenile and adult sexual offenders, as well as the finding that not all juvenile sexual offenders are the same. There is little evidence to support the assumption that the majority of juvenile sexual offenders are destined to become adult sexual offenders. Moreover, the significantly lower frequency of more extreme forms of sexual aggression, fantasy, and compulsivity among juveniles than among adults suggests that many juveniles have sexual behavior problems that may be more amenable to intervention.

In fact, recent prospective and clinical outcome studies suggest that many juveniles who sexually abuse will cease this behavior by the time they reach adulthood, especially if they are provided with specialized treatment and supervision. Research also indicates that juvenile offenders may be more responsive to treatment than their adult counterparts due to their emerging development. Juvenile treatment efforts may benefit as well, from the involvement of parents, caregivers, and family members, who are rarely participants in adult offender treatment. These studies, in addition to clinical observation, support the growing optimism that many juvenile sexual offenders can be successfully treated.

Recommendations:

6-3

1. The Association for the Treatment of Sexual Abusers suggests that high quality, juvenile specific, community based treatment be mandated for juvenile sexual offenders whenever possible.

ATSA questions the appropriateness of imposing adult sentences for the majority of the juvenile sexual offenders. Incarcerating juveniles in adult correctional settings may restrict their access to treatment, expose them to the potentially detrimental influences of anti-social adult role models, as well as create management and safety issues. ATSA believes that most juvenile sexual offenders can be safely and effectively managed in the community if they receive specialized treatment and court supervision. Such treatment should be based upon a comprehensive assessment that allows for the tailoring and titration of interventions based upon the risks presented by the juvenile offender. It is important to recognize that community-based treatment also offers opportunities for family involvement in the treatment process as well as reintegration into productive community roles (e.g., student, employee, family member). We also recognize that some juveniles require treatment in a structured, secure residential program due to the severity of their psychosexual and psychiatric problems. ATSA recommends that sanctions which best serve the long-term interests of the community and the juvenile be considered and that those who make the final decisions have access to a broad range of potential sanctions and placement options.

2. The Association for the Treatment of Sexual Abusers believes that juveniles should be subject to community notification procedures in only the most extreme cases and instead that enhanced community monitoring and supervision should be provided to ensure public safety.

ATSA believes that juveniles should be subject to community notification procedures in only the most extreme cases. The wide variation in how communities interpret and implement notification laws is problematic, especially with juvenile sexual offenders. In some states notification is restricted to the immediate area in which the adolescent resides, ignoring their ability to move beyond these limited geographic boundaries. In other areas, the implementation of community notification varies from jurisdiction to jurisdiction with some more restrictive in their commitment to implementing notification than others. Despite the questionable public safety benefits of community notification with juveniles, it is likely to stigmatize the adolescent, fostering peer rejection, isolation, increased anger, and consequences for the juvenile's family members. Until research has demonstrated the protective efficacy of notification with juveniles and explored the impact of notification on the youth, their families and the community, notification--if imposed at all for juveniles--should be done conscientiously, cautiously, and selectively.

3. The Association for the Treatment of Sexual Abusers encourages the prosecution and adjudication of adolescent sexual offenders in the juvenile courts. At the same time, ATSA supports and encourages continued adherence to the Juvenile Justice system's long standing commitment to a rehabilitative focus with juvenile sexual offenders.

We believe that juveniles should be held legally accountable for their behavior. Such accountability is necessary to assist the offender in taking responsibility for their offending behavior, to ensure compliance with therapeutic requirements, and to address the needs of the victim. As part of the adjudication process, it is recommended that juvenile sex offenders be evaluated by clinicians with specialized training in working with this population. Such evaluations should determine if the juvenile is amenable to treatment and to assist the court in identifying the most appropriate type and level of care. Treatment should be a court ordered requirement for each juvenile offender and should also be provided by clinicians who have specialized training and experience with this population. Evidence suggests that the vast majority of juvenile sexual offenders respond well to treatment and do not recidivate. Most juvenile sexual offenders can be safely and effectively treated in the community, if they are provided with specialized treatment and on-going court supervision.

4. The Association for the Treatment of Sexual Abusers supports the

6-4

development of primary* (i.e., community focused) and secondary* (i.e., focused toward "at-risk" juveniles) prevention efforts as a potentially effective means of reducing risk factors that may foster the development of sexual offending in juveniles.

Recent research suggests the potential for identifying risk factors related to child sexual abuse and the promise of utilizing such information to enhance the efficacy of national and community based prevention initiatives. Efforts to conceptualize child sexual abuse as a community health problem and to apply the Public Health Model (McMahon & Puett, 1999) to its prevention represent critical steps toward more effective prevention initiatives. ATSA will continue to advocate for increased prevention funding for intervention as well as research in this area.

5. The Association for the Treatment of Sexual Abusers encourages continued research on the etiology, assessment, prevention and treatment of juvenile sexual offending.

We particularly support research efforts directed at creating a juvenile sex offender typology and linking offender classification with risk assessment. Such research will contribute to an improved understanding of effective prevention and management strategies for addressing juveniles who engage in sexual aggression and provide needed guidance in determining the most appropriate clinical and legal dispositions for individual offenders.

References

Barbaree, H., Hudson, S., & Seto, M. (1993). Sexual assault in society: The role of the juvenile offender. In H.E. Barbaree, W.L. Marshall, & S.M. Hudson (Eds.), *The juvenile sex offender* (pp.1-24). New York: Guilford.

Federal Bureau of Investigation. (1993). *Uniform crime reports for the United States*. Washington, DC: U.S. Department of Justice.

Kaufman, K., Holmberg, J., Orts, K., McCrady, F., Rotzien, A., Daleiden, E., & Hilliker, D. (1998). Factors influencing sexual offenders' modus operandi: An examination of victim-offender relatedness and age. *Sexual Abuse: A Journal of Research and Treatment*, 3, 349-361.

Marshall, W., Barbaree, H., & Eccles, A. (1991). Early onset and deviant sexuality in child molesters. *Journal of Interpersonal Violence*, 6, 323-336.

McMahon, P. & Puett, R. (1999) Child sexual abuse as a public health issue: Recommendations of an expert panel. *Sexual Abuse: A Journal of Research and Treatment*, 11, 257-266. Statistics Canada. (1997). *Canadian Crime Statistics, 1996*.

Ottawa, Ontario, Canada: Statistics Canada, Canadian Centre for Justice Statistics. Weinrott, M.R. (1996). *Juvenile sexual aggression: A critical review*. Boulder, CO: Center for the Study and Prevention of Violence.

[Top of Page](#) | [Home](#) | [Contact Us](#) | [Site Map](#) | [ATSA Conference](#)

©2001 ATSA. All rights reserved.



A T S A

The Association for the Treatment of Sexual Abusers

[ABOUT ATSA](#)
[ATSA CONFERENCE](#)
[CONTACT US](#)
[SITE MAP](#)
[Home](#)
[Members Only](#)
[Membership](#)
[Conferences](#)
[State Chapters](#)
[Public Policy](#)
[Publications](#)
[Awards & Grants](#)
[Employment](#)
[Research](#)
[Form Central](#)
[Resources](#)

August 15, 2005

Honorable Arlen Specter
Chairman
Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20515-6275

Honorable F. James Sensenbrenner, Jr.
Chairman
Honorable John Conyers
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Re: Pending Sex Offender Registry Legislation (HR 3132, S 792, S 1086)

Dear Congresspersons:

As researchers, treatment professionals, law enforcement officials, and child advocates, we have devoted our professional careers to preventing child abuse. The recent tragic events involving adult sex offenders are something about which the public is rightly concerned. We have followed with interest several legislative proposals regarding sexual offenders. We applaud your attention to this important problem. As child abuse researchers and advocates for children, however, we urge that such legislation be amended to make it more effective and cost-efficient in promoting community safety and prevention of sexual violence.

The Sex Offender Registration and Notification Act (H.R. 3132) states that its purpose is to respond to "vicious attacks by violent sexual predators." In fact, by being inclusive of anyone who has been convicted of any sexual offense, it applies to some who are not in fact violent sexual predators and do not pose a substantial risk of re-offense.

Specifically, we offer the following major recommendations for HR 3132, all of which can be supported with scientific data:

1. Delete the requirement of lifetime registration for juvenile offenders, who are very different from adult sex offenders in both their development and their risk for reoffense.
2. Require or at least encourage states to adopt a tiered approach to identifying "high risk" offenders based on empirically-based risk factors, such that aggressive notification and internet disclosure would be reserved for high-risk sex offenders.
3. Allow a reasoned process for low-risk offenders to be removed from state and federal registries.
4. Adopt a more accurate definition of the term "sexual predator" for the purposes of registration and notification.

Following, you will find more specific recommendations and research supporting

6-6

them.

1. We respectfully but strongly suggest that the lifetime registration requirement for juvenile sex offenders be eliminated from this proposal.
 - The vast majority of these youth remain free of sexual offense recidivism at long-term follow-up. Low sex offense recidivism rates are a consistent finding across over five decades of follow-up research comprising over 30 U.S. follow-up studies (e.g., less than 8% in most treatment follow-up studies).
 - As many as 1/3 of sexually abused children will demonstrate some sort of sexual behavior problem, usually transient and minor, in response to their own abuse. In some cases, this behavior may even involve other children or younger children and result in a delinquent adjudication. However, the motivation and manifestation of these sexually inappropriate behaviors are very different from those of adult offenders. And, children with sexual behavior problems generally respond well to treatment interventions. As advocates for sexually abused children, we do not wish to see the added burden of mandatory lifetime public labeling as a "sex offender" adding to the stigma of abused children.
 - The United States has a long tradition of separating our handling of juvenile delinquents from our handling of adult criminals. We recognize, and the data support, that most youth who break the law during their childhood or early adolescence can and will mature out of this behavior given appropriate guidance and limits. Consequently, our society believes that individuals should not be stigmatized for life on the basis of their childhood behavior. Including juveniles under H.R. 3132 violates this tradition of American justice and creates a unique class of juvenile delinquents who will be denied fair opportunities for employment, education, and housing, despite research evidence that very few of them will go on to commit new sexual or violent offenses. Juveniles should not be subjected to registration or notification.
 - Additionally, we further suggest exemptions for young adults under age 22 who have had a consensual relationship with a minor not more than 4 years younger.

2. States should be required or strongly encouraged to adopt a tiered approach to identifying "high risk" offenders using research-based risk factors, such that aggressive notification and internet disclosure would be reserved for high-risk sex offenders. In fact, many states have decided that because the consequences of notification are so severe, they will only notify the public about offenders who pose a high risk. As well, some states have recognized that over-inclusive notification can actually be harmful to public safety by diluting the ability to identify truly dangerous offenders and by disrupting the stability of low risk offenders in ways that may increase their risk. The careful work that these states have done to differentiate risk levels of sexual offenders can inform a national model of registration and notification.
 - There is a perception that the vast majority of sex offenders will repeat their crimes. However, sex offenders comprise a very broad range of offense patterns and re-offense risk. Research studies by the US Dept. of Justice and the Canadian Government have found that sexual offense recidivism rates are much lower than commonly believed. The Bureau of Justice Statistics found that of 9,691 sex offenders released from prison in 1994, 5.3% were rearrested for a new sex crime within the 3-year follow-up period. Sex offenders were less likely than non-sex offenders to be rearrested for any offense – 43 percent of sex offenders

versus 68 percent of non-sex offenders. The Solicitor General's Office of Canada, in a study of 29,000 sex offenders from Canada, the U.S., and England, found, on average, that 14% were rearrested for a new sex crime within 4 years. Some subgroups of sex offenders are more dangerous than others. Studies that have tracked sex offenders over longer follow-up periods have found that pedophiles who molest boys, and rapists of adult women, were most likely to recidivate. Sex offenders with past arrests are more likely to reoffend than first-time offenders. Those who comply with probation and treatment have lower reoffense rates than those who violate the conditions of their release. Sex offenders who target strangers are more dangerous than those with victims inside their own family. Although official recidivism rates may underestimate true offense rates, the most aggressive sex offender registration and notification strategies should be reserved for the sex offenders who pose a high risk to public safety.

- Progress has been made in the science of risk assessment, which allows us to estimate the likelihood that a sex offender will commit a new sex crime in the future. Although we cannot predict with certainty that any particular offender will act in a specific way, we can estimate, with moderate accuracy, whether or not an offender belongs to a high- or low-risk group. Using risk factors that have been empirically correlated with recidivism, qualified practitioners can use scientific risk assessment tools to screen offenders into risk categories. These procedures are similar to the ways in which insurance companies assess risk and assign premiums, and how doctors evaluate a patient's risk for developing a medical illness. Risk assessment allows us to identify the most dangerous sex offenders, and apply the most intensive interventions to those who need the greatest level of supervision, treatment, and restriction.
- It should be noted that there is no evidence that community notification reduces sex offense recidivism or increases community safety. The only study to date found no statistically significant difference in recidivism rates between offenders who were subjected to notification in Washington (19% recidivism) and those who were not (22% recidivism). Sex offenders who were subjected to community notification were, however, arrested more quickly for new sex crimes than those not publicly identified. It was found that 63% of the new sex offenses occurred in the jurisdiction where notification took place, suggesting that notification did not deter offenders or motivate them to venture outside their jurisdictions (where they would be less likely identified) to commit crimes. Based on these findings, community notification appears to have little effect on sex offense recidivism.
- Research suggests that about one-third to one-half of sex offenders subjected to community notification experience dire events such as the loss of a job or home, threats or harassment, or property damage. Physical assault seems to occur in 5-16% of cases. About 19% of sex offenders report that these negative consequences have affected other members their households. It has been suggested that notification may, ironically, interfere with its stated goal of enhancing public safety by exacerbating the stressors (e.g., isolation, disempowerment, shame, depression, substance abuse, lack of social supports) that may trigger some sex offenders to relapse, or to commit other types of crimes. Such dynamic factors have been associated with increased recidivism, and although sex offenders inspire little sympathy from the public, ostracizing them may inadvertently

increase their risk.

- Sexual offender policies are based partly on the myth that sex offenders cannot be treated. Early studies, conducted in the 70's and 80's, were unable to detect differences in recidivism rates between sex offenders who had undergone treatment and those who had not. This finding was widely publicized, leading to skepticism about the benefits of treatment, and opening the door to punitive public policies. Actually, although the research is not unequivocal, treatment has been found to decrease sex offense recidivism. Recent, statistically sophisticated studies with extremely large combined samples have found that contemporary cognitive-behavioral treatment does help to reduce rates of sexual reoffending by as much as 40%. However, treatment does not work equally well for all offenders (like any psychological or mental health treatment – or medical interventions, for that matter). Treatment failure is associated with higher recidivism rates, and research indicates that sex offenders who successfully complete a treatment program reoffend less often than those who do not demonstrate that they "got it."

3. Allow for a reasoned process by which low risk offenders can petition to be removed from state and federal registries.

- There are times that public notification would cause undue harm to the offender's family such that the risks of notification would outweigh the benefits to the community. In particular, incestuous perpetrators have a low risk of re-offense, and their families and/or victims may be reluctant to report sexual abuse if it means loss of breadwinner's job and inadvertent public identification of the family.
- Lifetime registration may not be necessary for all sex offenders and may in fact interfere with the stability of low-risk offenders by limiting their employment and housing opportunities. Sex offenders represent a wide range of offense patterns and future risk. Research has found that community notification of low risk offenders may unnecessarily isolate them and lead to harassment and ostracism, which can inadvertently increase their risk.
- It is recommended that sex offenders should be allowed to petition for release from registration when the sex offender is deemed to pose a low risk to the community AND the offender has successfully completed a sex offender treatment program AND the offender has been living in the community offense-free for at least five years.
- Regarding strict culpability on those who fail to register or update their information, the penalty is so severe—5-10 years—that there should be some consideration for an honest mistake in reporting (especially for low-level/low-risk offenders).

4. We are concerned that the definition of "predator" in HB 3132 is too broad. We need to reserve such inflammatory terminology for the most dangerous and violent sex offenders. Using the label indiscriminately dilutes the public's ability to identify truly high risk offenders and to respond accordingly. If states require an individual to register as a "sexual predator," they should clearly distinguish such offenders as discussed below.

- The definition of "predator" differs from state to state, but is generally reserved for the most dangerous sex offenders. Many states use similar terminology to describe this type of sex offender and the offenses he perpetrates. The term should more accurately reflect the clinical construct to which it refers, describing individuals who have longstanding patterns of sexually

deviant behaviors and who meet criteria for paraphilic disorders. In the words of the Kansas Sexually Violent Predator Act, "predatory acts" are those *"acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization."* The state of California states: *"Predatory' means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization."* In some states, the definition includes criteria involving the use of violence, weapons, or causing injury during the commission of a sex crime, or those offenders who have had multiple victims. Repeat offenders, and those who have committed abduction of children or adults for sexual purposes may also be considered predators. Such definitions are more consistent with the term "sexually violent predator" as defined in civil commitment proceedings, which require a convicted sex offender to have a mental abnormality predisposing him to a likelihood of future sexually violent crimes.

- The term "sexual predator" should be reserved for sex offenders who have engaged in a long-term pattern of sexually deviant behavior, who are assessed to be at high risk to reoffend, who have assaulted strangers or non-relatives, who have used violence, weapons, or caused injuries to victims, who have had multiple victims and/or arrests, or who have committed abduction, kidnapping, false imprisonment, or sexually motivated murder or attempted murder.
- It is important to remember that although recent media attention has been focused on child abduction, rapists of adult women can also be highly dangerous sexual predators. They often have many victims, and are more likely than child molesters to use violence or weapons to gain compliance from victims. The majority of victims of sexually motivated murders are adult women.
- It is also important to remember that recent high-profile cases do not represent the "typical" sex offender. Sexually motivated abduction and murder are rare events, and such cases should not become the impetus for legislation affecting the heterogeneous group of sexual offenders.
- Electronic monitoring may be a useful tool for repeat offenders who have predatory offense patterns, a history of violence, a history of absconding or probation violations, and/or are considered at high risk for recidivism. Lifetime electronic monitoring, however, is neither necessary nor cost effective to implement with all sex offenders.

We hope that these ideas are useful to you in undertaking this most important task, and wish you the very best in your efforts. We believe our communities' safety is vitally important and thank you for the opportunity to contribute our recommendations.

Sincerely,

Raymond Knight, Ph.D.
President - ATSA
Gryzmish Professor of Human Relations
Brandeis University, Waltham, MA

Robin McGinnis, M.S.W.
President Elect - ATSA
Alternative Behavior
Treatment Centers
Mundelein, IL

ATSA Board of Directors

6-10

Gerry D. Blasingame, M.A.
David L. Burton, M.S.W., Ph.D.
Maia Christopher, B.A.
David A. D'Amora, M.S., LPC, CFC
Grace L. Davis, LMSW-ACP
Arthur Gordon, Ph.D.
Peggy Heil, L.C.S.W.
Craig A. Latham, Ph.D.
Elizabeth J. Letourneau, Ph.D.
Jill S. Levenson, Ph.D., M.S.W.
Rebecca Palmer, M.S.
Robert Parham, MA, LMHC, NCC
David S. Prescott, L.I.C.S.W.
Robert A. Shilling, Jr.
Paul Stern, J.D.
Robin Wilson, Ph.D.

About The Association for the Treatment of Sexual Abusers:

The Association for the Treatment of Sexual Abusers is an international, multi-disciplinary professional association dedicated to the research, treatment, and prevention of sexual assault. ATSA's members include the world's leading researchers in the study of sexual violence and also professionals who conduct evaluations and treat sexual offenders, sexually violent predators, and victims. Members work closely with public and private organizations such as prisons, probation departments, child protection agencies, State Attorney's Offices, Public Defender's Offices, the National Council Against Sexual Violence, and state Legislatures in an effort to protect citizens from sexual assault. We advocate for evidence-based practices and policies that are most likely to protect the public from sexual violence, while allowing for the rehabilitation of sexual offenders.

[Top of Page](#) | [Home](#) | [Contact Us](#) | [Site Map](#) | [ATSA Conference](#)
©2001 ATSA. All rights reserved.



The Association for the Treatment of Sexual Abusers

[ABOUT ATSA](#)
[ATSA CONFERENCE](#)
[CONTACT US](#)
[SITE MAP](#)
[Home](#)
[Members Only](#)
[Membership](#)
[Conferences](#)
[State Chapters](#)
[Public Policy](#)
[Publications](#)
[Awards & Grants](#)
[Employment](#)
[Research](#)
[Form Central](#)
[Resources](#)

Ten Things You Should Know About Sex Offenders and Treatment

1. Over 95% of convicted sex offenders eventually return to the community. Treatment improves the chance for successful reintegration.
2. Most sexual offenders assault victims whom they know. Children are most likely to be assaulted by members of their family followed by acquaintances (e.g., neighbors, family friends); adults are most likely to be assaulted by a current or former husband, a cohabitating partner or a date.
3. Sexual perpetrators represent an extremely diverse group of offenders in educational, income, and racial background, as well as personality and coping skills. Assessment results often uncover unique patterns of deficits and strengths. Treatment and supervision must be tailored to the unique characteristics and needs of the offender.
4. Treatment has a substantially better chance of working if the offender takes responsibility for his past and future actions.
5. Fewer than 5 percent of sex offenders suffer from a psychotic mental illness. Current sexual offender treatment uses cognitive-behavioral techniques to teach the offender to control his thoughts and behaviors to prevent future offending.
6. Many treatment providers use a relapse prevention approach that assumes the escalation prior to the offense is relatively unique to, and consistent for, each offender. This pattern of escalation (often called a crime cycle) can be used to monitor the offender's level of risk at any point in time. This allows the offender and sometimes those treating and monitoring him to take action, when necessary, to prevent new offenses when re-offense risk is high.
7. Sex offenders vary widely in their risk to re-offend. Estimates suggest that 40%-45% of untreated sexual offenders will sexually re-offend in their lifetime. These rates are considerably lower than rates of re-offense for other types of violent offenders.
8. Research has shown that well-designed sex offender treatment can reduce the recidivism of sexual offenders.
9. Lifestyle circumstances can affect the chances of new offenses. Stable housing and employment, healthy social and leisure activities, a vigilant and pro-social support system, and ongoing treatment are all important to ensure success.
10. Despite its effectiveness, treatment is only one component of an effective strategy to protect the community from sex offenders. Monitoring and support by community corrections agents, other professionals, the offender's social support system, and the entire community play a crucial role.

[Top of Page](#) | [Home](#) | [Contact Us](#) | [Site Map](#) | [ATSA Conference](#)

©2001 ATSA. All rights reserved.

6-12

1/29/2006

Speech for Wednesday February 1st, 2005

My name is Lisa Jacobs, and I am for House Bill 2576. I was raped approximately two and a half years ago. At the time I was only 15 and so was the rapist. He was only six days older than me. This incident happened more than once. The first time we had the exact date because I remember I was put on medicine, and it was 2 days after that. The first time was on October 3rd, 2003. This occurred about six to eight times. We could not get all the dates exactly, because I wasn't able to remember.

I had lived with my dad's ex girlfriend, because of school problems at Topeka West. My dad and Dora (his ex girlfriend) thought if I tried a new school it would help me for the better. Dora lived in Holton, and the school I went to was Jackson Heights. Before he started raping me it started out with other things. Like I remember specifically one night that I went out to my dad's car, because he asked me to get some stuff out of there for him. Tyler (the guy who raped me) followed me out and started forcefully trying to finger me I tried to get him off but he wouldn't stop. Many times he tried to force me to do other things with him than to have sex, before he started raping me. I will need to say this though, I never told the prosecutor about what he did since I knew that there was no point because he was going to get let off anyways. I remember the first time the rape happened. I was still a virgin, and he took that from me. It was on the night of October 3rd, 2003. This was on a Friday night, after his football game. This was either the first or second time I had stayed the night up there. It was Tyler,

House Judiciary

Date 2-1-06

Attachment # 7

Shelby (his step sister) and me. Shelby asked me to stay upstairs, so that she could stay downstairs. I did not understand why she didn't want to stay upstairs in her bed, so I had told her I would, and she seemed happy that I wanted too. On that night Shelby went downstairs to go to sleep. I stayed upstairs to get ready for bed and everything, and I had gone to lay down and Tyler asked me to come into his room. Well since this never happened, I did because I thought he had wanted to talk about his ex girlfriend that he still liked or just to talk. When I went in there he pushed me onto the bed, and started forcefully kissing me. I tried to get him off, but he was a football player and I am a lot smaller than he is. I remember asking him what he was doing, and he did not respond he just kept going. I told him to get off and he wouldn't, and he started taking all my clothes off, I did not wanted to tell anyone because I knew that my dad loved his girlfriend at the time, and I tried so hard not to mess anything up with him. So I kept telling him to get off of my quietly and he did not listen. This same instance happened the other times he raped me too.

The reason I told on the night of November 16, 2003, was that I had surgery six days prior to this rape. A week before November 8, 2003, I was having lower abdominal pains. It was not as bad as I had made it to be, because I was willing to do anything and everything to get out of that house. On November 8, ~~2003~~²⁰⁰³ I went into the emergency room with sever pains. I had gone in the first time, and they told me if I was still having pains to come back in six hours. So I went home and I was having the pains worse, so we ended up going back to the emergency room before that time, and when I had gone back they

brought a surgeon in, and he said I was going to have emergency surgery, since they could not find the cause of my pains. During the surgery the surgeon found cysts on my ovaries. After surgery I had been told that I could not lift anything over 10 pounds, and I could not do any physical activities including gym days for thirty-days.

On November 16th, 2003, I went back up to Dora's house, and I needed help with a lot of things, since I was in a lot of pain still. Well I went upstairs once again, and I was in bed, and Tyler came into the room, at this point I knew this was not any good because I knew what he was going to do. So Tyler once again, got on top of me, and started trying to kiss me, I told him to get off, and he didn't. I tried to do as much as I could, but I couldn't push him because that could of ripped an incision. That night my friend Nickol (who was my friend) had kept calling my cell phone, because she knew what Tyler had done to me previously. So Tyler tried to take down my pants, and I could not reach to stop him, and he was taking my shirt off. He forcefully did this, and when I tried to do everything to get him off but it didn't work. I didn't said no, I just kept trying to push him off and told him to get off. He knew that I was in so much pain that night. Who would want to have sex six days after surgery? After he had done this, I laid upstairs crying for about five minutes. I was contemplating whether to call my mom or not. So finally I went downstairs, and I called my mom. my brother answered and I told him to get Emily (my brother's girlfriend) on the phone, and I told her what Tyler did. Immediately Chris (my brother) and Emily were on their way. When Chris and Emily got there they came inside and got me.

After I was with them, they took me to St. Francis to the rape center. I met the detective there. One of the nurses there told me I needed to go to Stormont-Vail. They wanted me to go there because they would offer me the morning after pill, and give me better care than they could. So when I got to Stormont-Vail the detective started talking to me. I told him this only happened once, because at this point of time two things played an important role. First was that I was so emotional, and my head was not in the right state of mind that night. Second I did not want any guys around me. When I got taken into the area of examination, they got me prepared. They took my clothes and they had taken a camera and put it into my vagina, but they did not get very far because it hurt so bad. They took so many samples, and I was in so much pain physically and emotionally. That night when they had to take a camera and insert it into my vagina, I was crying because of the abrasions and tears. Nothing could ever describe how I ever felt that night, I have tried to put it into words, yet it still does not describe it.

Now it's time to talk about the court process. I think in my personal opinion I did have one of the best lawyers ever. On December 31, 2003, Tyler had to take a lie detector test, and he confessed that he raped me. Yet he still only got a Romeo and Juliet, but this will be discussed later. I met with the prosecutor, and I told him I did not want to go on with the case if he was not going to get anything. I wanted him to feel everything that I had to go through each and every time he raped me. So my lawyer, Mickie Brassel, Doug Fisher the prosecutor, and me, had a meeting. I wrote an affidavit and tell him everything that happened. I told him what I wanted and he did not listen to me. I did not want to

go through the court case and relive everything unless he was actually going to pay for it. The whole time I was not treated right by Tyler's family. I was called a whore, and was always being put down. Yet, if I said anything about him, I would of been reprimanded and been in so much trouble. What I do not understand is why the criminals get off so easy, yet the victims can not do anything. I have not been able to do anything on my own, it was always someone else standing up for me or taking control. Now this is my time to take control and hope you guys will realize how this feels on the victims stand point. When I went to court, Tyler laughed, and he was always smiling, because he knew that he was going to get off and nothing bad was going to happen to him. Tyler entered a plea bargain and he got the Romeo and Juliet. At 15 years old, I knew what I was doing, and so did he. He knew what the consequences were, but he did not think I would ever tell. That is the only thing he will ever be sorry for is that he got caught. I do not think the judicial system treated me well at all. My court hearings were finally concluded in January 6, 2005.

After Tyler got his plea bargain, he was put on probation for two years. The judge had told him to specifically remove me from his e-mail list, and he did not do it. During the last month of the court proceedings Tyler sent me a forward which had sparked the judge to tell him that. In June 2005, Tyler sent me another forward, and I had to take it to the probation office, and people at the probation office put me down. They said I was very paranoid, they brought up that I was called a whore at Topeka West (which was my previous school), and that TYLER HAD TO LIVE WITH THIS FOR THE REST OF HIS LIFE! The two

ladies that were in the probation office felt sorry for him. They told me that I needed to go to counseling. They also let him go to Canada. I could not believe that the probation office would let him go to Canada after what he did, and the fact that he was on probation. I had to get representative Becky Hutchins to get some where with the e-mail. She called the sheriffs department, and finally they took care of it. The sheriffs department went over to Tyler's house to remove me from his e-mail list. He never deleted my e-mail address. I was told by the probation office that it was my job to block and delete Tyler from my e-mail list. My question to you is, what if he sent me an e-mail saying he was going to be at my house on July 31st, and I didn't not get it, what would happen? That is a threat and I do not see why me being the victim, I have to do everything. Why can't Tyler actually get responsibility for once for what he did? I am always the one being blamed for what I have done, or for what I did not do. Not once has the court system looked at him and blamed him for what he did to me. He is not the one who has to wake up everyday remembering what happened. I can not even trust anyone anymore. He has destroyed my life in a lot of ways. Yet I am the one who is blamed for everything. It does not make sense, he was found guilty, confessed that he did it, and yet everything has been my fault.

I am going to inform you of what emotional problems victims of rape have to go through. After the incident with Tyler, I got into a relationship for two years, and I used to be able to trust anyone. Well my trust became completely gone, I tried to trust him and tell myself he was not going to hurt me, but it did not work, and he got tired of it so we are not together anymore. It not only effects you for a

little while. After being rape, it effects your whole life. I am always scared about what could happen, or if I will ever get raped again. Everyday I wake up and have to deal with the fact that this happened to me. I went to counseling and that did not work. When I went to high school, so many girls were raped, and none of them had told because they saw what I went through. Many of them were raped by many guys. Yet because of what they saw me go through, they are out and still doing what they did to those victims. I am afraid everyday that Tyler will come back, because he knows he can get away with it. He was able to go to Canada, and the probation office does not keep a watch on him. We need to be more concerned with the victims considering we did not ask for anything to happen to us. Before Tyler had done this to me, I always was able to trust, hang out with people and not be afraid to what might happen to me next. I can not even get a restraining order against him.

With the House Bill 2567 I think that it would keep victims safer, and I believe that at fifteen years old Tyler knew what he was doing, but he just did not think I would ever tell. I was fifteen when this happened and I was completely aware of what would happen and the consequences to my actions. We have to keep victims safe. We also can not let the rapists go. If a rapist gets off once, he will think he can get off numerous times and he will keep doing this until the system will do something to him. Juveniles need to be taught consequences when they are young, else there will be a tremendous problem when they become adults. Jessica's law will honestly help keep children safe. It will help with offenders to not repeat because they will get time for the crimes committed.

Citizens need to realize the seriousness of these crimes. Victims have to live with this for the rest of their lives. Victims also needed to be treated fairer in the courtrooms, and be able to have a say in what happens. As a victim of this crime, I realize what happens and what a victim has to live with for the rest of her life. Please take this case into consideration as this bill is trying to be passed. We have to keep the victims and even the children this hasn't happen too safe. I would not want to see a rapist get out and do this to another person, we have to stop this before a rapist would have another chance.

HOUSE BILL 2576

- 1) Introduction**
- 2) Current Situation**
- 3) House Bill 2576: Why We Should Register the JSO**
- 4) House Bill 2576: Why We Should Use Electronic Monitoring Devices**
- 5) The 10 Year Old on the Registered Offender's List**
- 6) KSHSAA Handbook: Notify KSHSAA of the JSO**
- 7) Problems Occur when the Perpetrator and Victim Attend the Same School**
- 8) The Victim Should Have Rights in Plea Bargains**
- 9) Proposed Amendments to House Bill 2576**
- 10) Kansas Statute KS 21-3522 (Romeo and Juliet)**
- 11) Conclusion**
- 12) References**

Presentation by:

**Curtis Jacobs
3424 SW Watson Ave
Topeka, KS 66614
(913) 634-5109
curtis.w.jacobs@dfas.mil**

House Judiciary

Date 2-1-06

Attachment # 8

1) INTRODUCTION

Mr. Judiciary Chairman, Senators, Representative, ladies and gentleman, thank you for giving me the time to speak before you today. I consider it an honor that you will listen to a voice of concern.

I am here to advocate what is right for the citizens of Kansas. Although I am not a professional with years of experience in a very tough field, I do feel that my qualifications and experience are both strong and pertinent enough to be heard. I have three college degrees. My first is a bachelor's degree in Criminal Justice. I have also earned a Masters in Management of Information Systems. I would like to give you some of my background on the subject of Juvenile Sex Offenders (known as the JSO). I was in the Military Police, and I once worked in the Johnson County, Missouri Juvenile Office. In my bachelor's degree I probably have more course hours in sexual assault than most psychologists and other professionals that will discuss the field of sexual assault before you. I wrote several college term papers on rape. One of my college papers was a review of the book, "Men Who Rape: The Psychology of the Offender", written in 1980 by A. Nicholas Groth. Ironically, when I was in debate in high school and college, the topic one-year was on "Resolved: America should have major reforms of the penal code". That year, I only lost 5 rounds on the affirmative. What was my topic while on the affirmative? It was the mandatory adjudication of juveniles as adults for the crimes of rape and murder. And for the record, in 1981, our CMSU "Talking Mules" took 2nd place at nationals. I am not discounting the credentials of other professionals, nor am I saying that I am more qualified than they are, but I do have training, education and personal experience in this field, and I feel you should hear my different perspective.

The reason that the psychology of rape interested me from the beginning was because of a personal experience in my family. Before I was born, my grandfather was convicted of raping a nine-year-old girl. My mother's family was devastated from his actions. The small community shunned the entire family. I learned of the hardships that a family endures from a community when something like this happens.

Then, I had the reverse experience happen. While in college, my fiancé was raped. In 2003, my daughter was raped. Please read my daughter's testimony for how the rape and the process affected her.

The rape of my daughter also affected me greatly. In January 2005, I received the worst job evaluation I had ever received in my 25 years of my professional life. I lost my job at General Electric in September 2005. My daughter and I cried a lot. The saddest day I can recall that broke me down for days, was when my daughter questioned God. She said there was no God, because if there was a God, He was not there for her when she needed Him. I will always remember her asking, "Where was God", and in my heart, I felt she was really asking where her dad was. To this day, remembering those words can still break me down. My daughter and I fought before and after almost every court appearance because of my reassurances that the judicial system would do her right. Sadly, in the end, my daughter was wiser than her own father.

It saddens me greatly to think that another woman will endure what my daughter went through, despite my daughter's best efforts to do what was right and to prosecute. To me the real question is not if he will rape again, but rather when. I have serious doubts that his next victim will come forward and prosecute the case. If his next victim has seen or heard what my daughter went through, I seriously doubt she would come forward. I am not here to be vindictive, but rather, I am here before you asking you to what is right for the perpetrator and the victim, which in the end will be the right thing for society. The point being is that I know first hand, both ends of the spectrum of rape. **Please listen to what I have to say.**

2) Current Situation

Over the last couple of decades, Society has progressed in regard to rape laws and rape rehabilitation.

- We now recognize, as a society, that rape is a high recidivism crime.
- We now recognize that as a male rapist ages, his crimes become more violent while his victims are younger.
- We now recognize that rape is not an act of sex, but rather an act of violence.
- We have instituted laws that are harsh for repeat offenders.
- We now have registered offender's lists.
- We are attempting new and innovative measures for rehabilitation.

But everyone on the House Judiciary Committee must sincerely recognize that those measures are not effective enough.

To quote Kansas Senator and Kansas Senate Judiciary Chairman Vratil, *"Up to this point in time, we've seen no great rate of success to cure sex offenders"*.

The following problems are so statistically proven that they cannot be refuted.

- 1) Rape is the least reported crime. (Statistically, around 85% of rapes remain unreported).
- 2) Young victims report rape at an even lower percentage than adult victims.
- 3) The crime has a very high recidivism rate, the highest of all crimes.

Despite the success stories, overall, the current methods are failing. We continue with a very high rate of unreported rapes. We still are saddled with a crime that has a very high recidivism rate. Our society needs to take new and different measures to reduce this crime. It is time for our society to institute laws that sincerely address the issues that are causing the ripple effects that help to produce recidivism

The bottom line is that the current system is NOT working.

3) House Bill 2576: Why We Should Register the Juvenile Sex Offender

Juveniles commit roughly 20% of national sexual assaults, and according to the "Bureau of Justice Statistics - Data Online" Kansas is within a reasonable margin of error of the nation.

In a study conducted by Fehrenbach, Smith, Monastersky, and Deisher, eighty-nine percent of juvenile sexual offenders also commit other types of violent offenses as adults. As adults, violent juvenile sex offenders are more dangerous than other juvenile offenders.

What can we do differently that might improve the system for the JSO and the victim? The biggest failure that I see in our judicial system is the confidentiality of the JSO. I believe the Registered Offenders List for the adults will someday prove to be one of the most effective measures ever introduced into our society to reduce recidivism among the adult rapists. I believe this because society has become the watchdog for these high-risk offenders. Society has become additional cops on the street monitoring their actions and reporting behavior that is questionable. Another result of the Registered Offenders List is that society is holding the perpetrator accountable for his actions. It is more difficult now for the adult offender to be surrounded by enablers, who justify or rationalize their actions. The proof of their crime is publicly available for all of society to openly view.

Juvenile sex offenders, however, still maintain their anonymity. They do not have that society watchdog holding them accountable. The JSO does not have that societal monitoring of their behavior. The people that most need to know about the JSO simply do not know. For example, teachers, sometimes the most influential people in our lives, simply do not know that a JSO needs immediate behavior modification. A teacher that overhears the remark, "I'd like to have her behind an alley at night" will not take that remark as a serious threat or mannerism that needs immediate behavior correction.

Parents of the JSO will deny the conviction. They are ashamed and embarrassed. But their shame and embarrassment produce a result of denial and dismissal of guilt. This naturally results in juvenile sex offenders being surrounded by enablers.

In the meantime, the victim's name, does not really remain anonymous. While the victim is restrained by law not to go public with the information of the conviction of her juvenile attacker, the rapist is free to publicly defame the character of the victim. Students will hear horrible untruths about the victim in school. If rumors eventually do get around that there was a rape, the character and credibility of the victim have already been discredited, and thus, the assault "allegations" are simply dismissed as being inaccurate. This is especially true in our small rural schools in Kansas. My daughter's case is NOT unique. I have heard two such stories from members in the Kansas Legislature who responded to my emails.

Simply put, our current judicial system is not utilizing its best resource to rehabilitate a JSO, our own local communities. To compound the injustice, victims receive very little vindication for what they suffer. Protection of the identities of juvenile perpetrators results in both reinforcing the attackers' denial of the crime and the further defamation of their victim's character.

Considering that a young lady, having been raped by a juvenile with no or only one prior felony conviction will have her name publicly smeared by the defendant, his friends, and his family;

Considering that the juvenile that raped the young woman will have his records and actions sealed from the public;

Considering that a woman will have to endure a lengthy court process, be interviewed by mostly men--including the detective and the prosecutor, and then have to face her rapist numerous times in court;

Considering that this convicted rapist will be given a maximum sentence of only a couple of years of probation;

Considering that the rapist will NOT have this personal felony on his permanent record, will NOT be on the Kansas Registered Sex Offenders list, and his crime will be TOTALLY unknown to other potential rape victims, including with reference to future prosecutions;
Considering this, I ask the following question:

Why would a young lady, especially a teenage girl, ever want to prosecute the case?

For this question alone, I feel the victim is deserving, entitled, and justified in having the perpetrator's name on the Registered Offenders List.

The perpetrator is also a high risk to society (Eighty-nine percent of juvenile sexual assaulters also commit other types of violent offenses as adults. As adults, violent juvenile sex offenders are more dangerous than other juvenile offenders). Society should be given that extra protection of identification of those that have committed such crimes because they are likely to commit the crimes again.

As for the juvenile perpetrator, he also stands the best likelihood of reform if society becomes the watchdog.

To further this cause, I am presenting the case example of Jeremiah Sexton. In Sedgwick County, Kansas, Jeremiah was convicted and placed on two years' probation for four counts of "indecent liberties with a child." Five years later, he was caught repeating his crimes, but this time in Texas, **and not Kansas**. Jeremiah Sexton was sentenced to **396 years in prison by the state of Texas**.

The victims of Jeremiah Sexton, in the order that they testified, were:

1. A 10-year-old Arlington girl. She was 9 when she was kidnapped and sexually assaulted Feb. 15 while walking to Anderson Elementary School. This is the incident for which Sexton was convicted.
2. An 18-year-old Kansas woman related to Sexton. She said Sexton groped her when she was 10 and 11 in the back seat of his parents' car and at church. **Sexton was about 17 at the time.**
3. A 13-year-old girl from Kansas. She said she was 7 when Sexton would assault her in the back of a church van after Sunday services. Her younger sister was often in the van at the time. She did not remember how many times this happened.
4. A 14-year-old girl from Kansas. She said Sexton began molesting her at church when she was 6 and did so for about a year.
5. A 15-year-old woman from Kansas. She said Sexton abused her for months when she was 8, including an incident during which he pulled her between cars in their church parking lot.
6. A 9-year-old Arlington girl. She was 7 when she was kidnapped and sexually assaulted while walking to Knox Elementary School in September 2004. During sentencing, she pointed out Sexton in the courtroom as the man who attacked her.
7. A 12-year-old Springtown girl. She said Sexton touched her inappropriately when she was 7 in his bedroom during a game of Hot Wheels.
8. A 15-year-old Springtown girl. She said Sexton molested her at a picnic when she was 6. He did the same while they watched a movie when she was 8, she said.

How many more young victims do we need before we decide to prosecute juveniles who rape and molest children with tougher sentences and improved social monitoring? If we have not crossed that number yet, exactly where is that threshold?

4) House Bill 2576: Why We Should Use Electronic Monitoring Devices

The problems with NOT using the electronic monitoring devices are as follows:

Those on probation and parole have curfews and other limitations set by the courts. Those in charge of the terms of the probation are not capable of monitoring the whereabouts accurately or effectively. Recently, the records of thirty-two registered sex offenders were audited for reporting and registration accuracy. It was discovered that nineteen offenders (59%!) were not complying with Kansas State law.

In my daughter's case, the Juvenile Intake Office PERMITTED the JSO to travel unsupervised into Canada. For the record, persons with felony convictions, driving while intoxicated records or other offenses may be denied admittance into Canada. They are to contact the Canadian embassy or nearest consulate before they travel to Canada. Can you imagine the international problems that might occur IF they were to discover that while in Canada, this JSO was on probation when he did those things in Canada?

I have positive proof that the terms of the curfew were not being strictly enforced. My daughter and I attended a Juvenile Corrections Advisory Board meeting where we presented those concerns. These concerns were not addressed Juvenile Corrections Advisory Board. (If they were addressed, my daughter and I were never informed.) As a result, my daughter feels less safe. Many victims probably share her same concern for their safety. Victims are entitled to a sense of safety. Victims are entitled to know the judicial system will protect them from the perpetrator that harmed them.

The electronic monitoring device has only recently been put to use, and long-term results are yet to be fully known. My belief is that this technology will someday show better results than any other reform methods we have been using. An example of where it can lead is a recent development that enables the device to monitor a wearer's arousal.

An electronic monitoring device not only monitors the whereabouts of the perpetrator, but also, in a not so subtle manner, assists in his rehabilitation. Rape is about power, dominance, and control. The rapist is wearing this device because his victims succeeded over him. As a result of the actions of the victims, the perpetrator is now subdued. The rapist is reminded day in and day out that he is no longer the one in control. The reverse for the victims is also true. They feel more power and control over their perpetrator. Their hope for emotional recovery improves.

Because I work on the cutting edge of Information Technology, computer applications to enhance Law Enforcement is of great interest to me. For example, I see this device being tied to the Internet someday, where victims can log onto a protected web site and view where their perpetrator is at any given moment. That kind of power that victims would have over their perpetrator I feel would be very beneficial to both the reform of rapists and the recovery of victims.

The bottom line is that this current system is NOT effective and simply put, is NOT working.

Instituting the use of electronic monitoring devices will improve the protection of Kansas citizens. Rapists are high-risk criminals that SHOULD be more closely monitored.

5) The 10 Year Old on the Registered Offender's List

Society and myself included have great sympathy and compassion for those falsely accused, and those wrongly convicted. In the matter of the 10 year-old that was placed on the registered offender's list, many questions remain unanswered. We, as a society, are simply not entitled to know the entire facts of this case, as this case involves a juvenile.

I believe the mother to establish a reasonable doubt that the state has usurped its jurisdiction, or acted inappropriately, needs to demonstrate a past pattern of behavior by both the prosecutor and the judge. Otherwise, I tend to believe the judicial process has handled the matter correctly. I believe there must have been aggravating circumstances for this juvenile to have been placed on the registered offenders list. It has been my personal experience from my daughter's case and what I have researched, that the Kansas juvenile justice system has ALWAYS erred on the side of the JSO, rather than the harm done to the victim.

I feel the mother may be hiding the truth of the case behind the secrecy of the juvenile records. This mother is able to present her one side of the issue, while the prosecution MUST remain silent. I notice that her statements to the press are vague, and leave a lot of holes in the story. Some things appear to be missing in her statements to the press. My written testimony in previous sections covers this kind of problem in quite detail, where the family is ashamed and embarrassed. While the perpetrator that raped my daughter publicly smears the reputation of my daughter, this mother hides behind anonymity to degrade the system. In an effort to diminish the acts of the crime, the perpetrator is surrounded by enablers.

The mother infers that her son's life is greatly damaged by being placed on the Registered Offender's List. She claims that her son cannot enjoy the life expectancy of liberties such as joining the military or a profession in sports medicine.

The problem with this inference is that it is NOT the registered offender's list that would decrease any "life, liberty, and pursuit of happiness". Instead, the REAL reason for not being able to enjoy some of life's liberties, or rather the loss of some freedoms (if there are any), are a result of the crime(s) and the subsequent sentence. Being on the registered offender's list, in itself, does not afford anyone the loss of these freedoms. Her association with the loss of liberties to the registered offender's list is misguided and extremely misleading.

Personally, I believe that this case further justifies the adjudication of the juvenile as an adult BEFORE they are put on the registered offender's list. I believe the perpetrator would then be afforded their constitutional rights of due process with a fair and public trial by peers and having scrutiny of the free press. I am certain that the mother of this 10 year old boy would cringe at such a suggestion, because I believe she would not want the public to know what her son REALLY did. The end result, however, would be a fair legal process to all parties, including the victim, the perpetrator, and society.

Even though, according to the Koch Crime Commission Juvenile Justice System Task Force, Recommendations on Changes to the Juvenile Justice System in Kansas, 90% of citizens in Kansas believe juveniles that rape and murder SHOULD be prosecuted as adults, this legislature will never "bite the bullet" to enact such legislation.

But I do find it offensive that this mother is publicly denigrating the system while hiding behind the anonymity of the crime her son has committed.

If my daughter's perpetrator had been adjudicated as an adult, and the case had the scrutiny of the press, I strongly feel that my daughter's case would have been handled much differently. If that had been done, then the perpetrator, despite the plea bargain agreement, could not have had publicly defended himself the manner that he did and also publicly denigrated the character of my daughter. The public records would have been there for all to review.

6) KSHSAA Handbook: Notify KSHSAA of the Juvenile Sex Offender

The following is directly from the text of the Kansas State High School Athletic Association (KSHSAA) Handbook (<http://kshsaa.org/FORMS/KSHSAAhandbook.pdf>):

Page 27:

Art. 2: A student who is under penalty of suspension or whose character or conduct brings discredit to the school or to the student, as determined by the principal, is not in good standing and is ineligible for a period of time as specified by the principal.

Art. 3: A student who uses any form of tobacco, illegal drugs, alcoholic beverages, etc., at school events is not in good standing.

If the above is all true, then a boy is charged with rape but then plea bargains to a lesser conviction, (level 8 personal felony) he IS eligible to play sports, BUT a student that uses tobacco is ineligible!

The student that raped my daughter, was charged with rape, failed a polygraph by the Kansas Bureau of Investigation and confessed to the rape, yet he was allowed to play football and basketball, and act in the school musical play. Did the school administration have the ability to decide whether he should be allowed to participate in these unstructured extra-curricular activities? Did they even know about the conviction?

The student that raped my daughter, was charged with rape, failed a polygraph by the KBI, confessed to the rape, continued to play football, basketball, and was in the school musical play. Despite a curfew of 8:00 weekdays and 10:00 weekends, this convicted felon is continuing life without much change in lifestyle. This does nothing to his reform and rehabilitation. The convicted felon has received little discipline for his hideous acts. Do we sincerely believe this is corrective behavior modification?

As a means to prove my point that those in authority at KSHSAA are not legally able to be informed or act on these issues, I wrote KSHSAA emails. I stated that a student that was participating in sports had committed a personal felony, and was still playing sports. I received the following response:

Mr. Jacobs:

This will acknowledge receipt of your message. Given the fact your communication deals with legal issues of a minor, I am advised by legal counsel to make no comment. Thank you for understanding.

Respectfully,

Gary Musselman
KSHSAA Executive Director

Those in charge of the probation should be required to notify the proper authorities within KSHSAA of the crimes of the perpetrator so that they have the necessary information to take the proper steps to enforce their own rules.

7) Problems Occur when the Perpetrator and Victim Attend the Same School

Victims endure many nightmares when prosecuting a rape case. They must face the perpetrator numerous times in court. This is extremely difficult for a rape victim. The problem is further compounded and far more difficult on the rape victim when the perpetrator attends the same educational institution. In rural Kansas, most of the schools are so small that the victim and the perpetrator are likely to be in the same classroom, sitting next to one another. The victim could get away from the situation by refusing to go to school, i.e., dropping out. If the victim is under a certain age, legally, dropping out is not an option. By law, the victim is forced to attend the same school as the perpetrator. The victim should not suffer. It is not the victim that should neither be forced to quit school or endure the further harassment of the perpetrator. The legal system should side with the victim and force the consequences of the actions of the perpetrator on the perpetrator, not the victim.

Currently, the public is not aware of the crime the perpetrator has committed. This information is sealed from the public. Yet, the victim may have already endured much character assassination by the perpetrator, thus making school attendance quite difficult to begin with.

This scenario does happen. It did happen.

This scenario is in line with the mentality of a rapist. The rapist exerts dominance, power, and control of the victim. To degrade a victim is what they seek.

The rapist seeks to control the victim, and being in that same school or even the same classroom with the victim provides the rapist with the mentality each day that they are in control. That power, that control needs to be removed from the perpetrator. That self-dignity needs to be restored to the victim.

Removing that power, that control from the perpetrator will also assist in their reform and rehabilitation. For if the perpetrator sees that they do NOT have that power, that control, and that actually the victim has that power and control, then a major shift has occurred in their reform and rehabilitation.

In a phone conversation, one member of the Kansas Legislature shared with me a personal story of such a rape situation close to her home. The perpetrator and the victim attended the same school. Following his conviction and release to society, the perpetrator, the victim and the victim's siblings all attended the same school. Not only was this extremely painful for the victim, but also it was very difficult on the siblings, as well.

8) Victims Should Have Rights in Plea Bargains

Currently, the victim plays a vital role in the prosecution of a case. Without the victim, the state rarely has a case to prosecute; when crimes are brought to trial, it is the victim alone that leads to the majority of convictions, particularly for crimes of violence. The victim is a bystander to the legal system and has very limited rights in the judicial process. Often the victim is more of a tool of the prosecution.

Over the objections of my daughter and her attorney, the prosecution reached a plea bargain with the defendant. The reasons for the objections of the plea bargain agreement by my daughter and her attorney were not heard until after the judge had accepted the plea bargain, and, then, only at sentencing.

The current plea bargain process completely excludes the victim from having a voice. There is no established legal check and balance to hear the objections of the victim within the court process. There is no required legal procedure for a judge to hear the voices of those impacted by the crime before the acceptance of the plea bargain.

The plea bargain process grants more power to the perpetrator than to the victim. While the perpetrator has the veto power to accept or reject a plea bargain, the victim has little or no say in the matter. Once again, this legal process has demonstrated to the rapist that he has more power and control than does the victim.

As stated by Senators Leahy, Kennedy, Kohl, Fiengold, Schumer, and Durbin on November 7, 2003, "*The result of the plea bargain, specifically, is that the victim is sometimes a victim to government usurpation*". To further quote these senators, "*Victims do not seek to be objects of the government's largesse; rather, they seek as free citizens to be empowered with rights and standing that no judicial or legislative majority can ignore or take away.*"

All plea bargains are approved by a judge. A judge may reject a plea bargain she disagrees with, but this rarely happens even though this is within her judicial authority. According to articles I have read, despite the jury process being a vital role to democracy, plea bargaining has done away with virtually all jury trials. Fewer than 2 percent of all cases in federal courts are heard by juries, and available statistics suggest that fewer than 1 percent of cases in state courts are resolved by jury trial.

Jury trials are important to a democracy, and democracy is likely to suffer with fewer of them. A public trial is our forum for saying what kind of behavior is acceptable. It is a statement of our community standards.

Plea bargaining is detrimental to victims, and in future legal processes they become less likely to cooperate with the judicial system. They presumably decide to either cut their losses or attempt to obtain a remedy personally, thus by-passing the criminal justice system altogether.

It is therefore vital that Kansas establish such a legal process for the victim to be able to voice the objection of the plea bargain before the judge accepts the plea bargain agreement. The victim must be granted more power and control with plea bargains. The victim should be able to motion before the court accepts the plea bargain to have a hearing as to their concerns regarding the plea bargain agreement of the prosecution and the defense. This voice is currently not a part of our legal process that is causing ripple effects within the system. Currently, the voice of the victim is ONLY heard at sentencing. The concerns of the victim should be heard BEFORE the court accepts the plea bargain.

I propose adding to the Victim's Rights Act (74-7333):

The victim SHALL have the right to file a motion to the presiding judge to have a hearing on the acceptance of the plea bargain. The judge SHALL be required to have a hearing to consider the seriousness of the crime and the impact of the crime on victims before accepting the plea bargain agreement.

9) Proposed Amendments to House Bill 2576

NOTIFY KSHSAA:

Modify Statute 21-4611, Chapter 21.--CRIMES AND PUNISHMENTS, PART III.--CLASSIFICATION OF CRIMES AND SENTENCING, Article 46.--SENTENCING to include the following:

For all personal felony juvenile convictions of a level 8 or higher, the department of corrections shall be required to notify the Kansas State High School Athletics Association of the crime for which said juvenile has committed.

Expel Student from the School of the Victim:

For all convictions of level 8 sexual assault crimes or greater, the perpetrator shall be permanently expelled from enrollment of the public school in which the victim is attending at the time of the conviction, to include all elementary, secondary and institutions of higher education. The department of corrections shall be required to notify such schools that said felon is not eligible to attend stated school, unless otherwise authorized by review of the secretary of corrections.

This will also require the change to statute 2-8901, Chapter 72.—SCHOOLS, Article 89.--SUSPENSION AND EXPULSION OF PUPILS, 72-8901.

I propose adding item g) to article 89 with the wording:

Sexual assault crime, level 8 or higher, of a student that attends the same school including elementary, secondary, and institutions of higher education.

Victim's Rights Act:

I advocate adding to the Victim's Rights Act (74-7333):

The victim SHALL have the right to file a motion to the presiding judge to have a hearing on the acceptance of the plea bargain. The judge SHALL be required to have a hearing to consider the seriousness of the crime and the impact of the crime on victims before accepting the plea bargain agreement.

10) Kansas Statute KS 21-3522 (Romeo and Juliet)

There are many problems with the "Romeo and Juliet" statute (KS 21-3522).

The "Romeo and Juliet" statute enables the JSO, their family, and those around them to diminish the crime. The "Romeo and Juliet" law provides a means for which the JSO can shift the burden of the crime to the victim. The statute implies that there was a relationship between the victim and the perpetrator, as if providing "culpability" to the perpetrator for the horrible actions that he has done to harm a victim.

Words have meanings. Although the words "Romeo" and "Juliet" are NOT in the text of this statute, that has become the meaning or interpretation by the public, the media, prosecuting attorneys, and even our judges.

"Words have meanings" is a phrase often used when one needs to "parse sentences" by people who have trouble telling the truth, or those who fail to discern good from evil. So, what exactly do the words, "Romeo" and "Juliet" mean? In the references, I provide the definitions. But what do they mean? They clearly mean that "Romeo" is about "love" and "Juliet" is about being a courageous hero.

What words are missing from these definitions? How about "sex" or "violence"? These words are never used in these definitions.

Then why the law "Romeo and Juliet"?

Simply put, it appears to be a method by which the Kansas Legislature has excused or diminished a violent crime because they believe that the crime of violence was just a boyish, stupid act, or an act that involved love. But rape is NEVER about sex. It is an act of power, an act of violence. It is an act of betrayal of a victim's own personal life. It destroys their trust. It destroys their mental well being. It destroys their life.

I did try to be nice to this legislature. I tried to give you documentation and proof via numerous emails that this law was bad. It is time to roll up the sleeves.

If any of you were to have a daughter that was raped by a boy four times before she cried for help, then to have the accused claim it was simply a situation of "Romeo and Juliet", where the sex just (in his own words) "went too far". In a situation like this, the prosecution suddenly has the burden of proof to prove beyond a shadow of doubt that ALL of the rapes were not consensual, otherwise the "Romeo and Juliet" statute applies. I defy ANY of you to look me in the face and diminish the act of the rapist that attacked my daughter, or to tell me eye to eye that it was an act of love.

To endorse "Romeo and Juliet", you must also diminish the crimes of Scott Peterson and Reverend Byrd as in a manner, you could say that the act was out of a warped love. Why not create a statute for "murder of wife" with sentencing equivalent to involuntary manslaughter? That is what Romeo and Juliet does with sexual assault crimes, including rape.

To endorse "Romeo and Juliet", you must also diminish the crime of Buck Thurman, as in a manner, you could say that the act was out of a warped love. Why not create a statute for "Abuse of spouse" with sentencing equivalent to disturbing the peace? That is what Romeo and Juliet does with sexual assault crimes, including rape.

To endorse "Romeo and Juliet", you must diminish the alleged crimes of 4 rapes committed by convicted juvenile felon that raped my daughter because he simply doing a boyish act. Since convicted JSO felons are out on probation, any of you could have a convicted JSO felon living next door to you and your daughters. Convicted JSO felons could be attending your daughter's school, and even in your daughter's classroom and possibly even sitting next to her. And furthermore, a convicted JSO felon could be taking your daughter to the prom, and you as a parent would never know this because his records are sealed from the public. That is unless you endorse House Bill 2576 (Jessica Lunsford Act), and you repeal Romeo and Juliet.

Some of your attitudes of any sex crime being related in any way shape or form to "Romeo and Juliet" makes me want to puke. For if it were my son that had done something to a young girl what this convicted juvenile felon had done to my daughter, forget what the law would do to him, he better pray that he survives me first.

In the course of battles, there are some hills worth dying for. This is one such hill in my life. Could any of you look me in the eye and **seriously** tell me that rape or any other sex offense, is an act of love? Could any of you look me in the eye and **seriously** say that rape or any other sex offense, is a boyish or stupid act?

If you think I am an angry vengeful father, I am. Not because I want revenge for what happened to my daughter. But rather because I never want to see any other young woman in the state of Kansas suffer through the ordeal of a rape only days after 3 abdominal surgeries. For her to endure a horrible night at the rape center, which ultimately showed marks and abrasions away from the vaginal area, including the posterior forchette. For her to endure a one-year legal process even after the failed polygraph and confession of the accused, only to have the legal system tell her that this was a case of "Romeo and Juliet". Keeping this statute is a bigoted view toward women. Keeping this statute is a male macho, sexist attitude that I find grossly nauseating.

To quote a representative from an email I received, "I understand the issue, but being the mother of a 20 year old son, I can understand the need for the Romeo and Juliet law. I know there is a difference between 'evil' and 'stupid/curious' behavior. We need to leave judges the leeway to tell the difference and apply the appropriate punishment to fit the crime and the criminal." **Then PLEASE explain my daughter's case!**

But let's analyze what this representative stated. She appears to be endorsing her son to fondle, squeeze, caress and even have sex with women unless they verbally say, "No". This is granting a license to every young male to always have one "free squeeze". If he is charged, instead of finding this person guilty of a crime such as "indecent liberties", she would rather say this was just a boy being stupid or curious. Would you let your daughter date a son of a parent that told their son these thoughts? Reading those words from this representative reminded me of similar words the mother of the perpetrator said after the failed polygraph of the boy that raped my daughter, and I find both of their words more than disgusting.

Since the flawed Kinsey Report, our society has excused the behavior of the perpetrator. We have expressed pity and compassion toward the behavior of the perpetrator. The consequences of this attitude has only perpetuated sexual assaults in this country. Recidivism of the crime is extremely high.

The Romeo and Juliet statute has remained out of the limelight. After the much publicity of the Limon case, **I now envision that defense attorneys will be using Romeo and Juliet with great success.**

If I were a rapist, and I raped one of the 85% of young women that didn't report the rape, you know what? I'd go rape her again and again and again. The moment that she reports a rape, I would immediately claim that we were in a relationship, I loved her, and this last time, well, it just went "too far". I would plead guilty to Romeo and Juliet.

Essentially, the complaints against Romeo and Juliet are:

Below are my enumerated issues with KS 21-3522:

1) When a young victim is raped, they OFTEN do NOT know how to act. They are in a situation where they do not know how to act. Being raped is horrible, and to a young victim who has never been exposed to anything like this, they are EXTREMELY vulnerable. THAT is why we have SPECIFIC laws to protect CHILDREN! So, often a young rape victim does not often explicitly say, "NO". They may fight and resist, but they may not actually explicitly say, "No". But with Romeo and Juliet on the books, the burden of proof is now on the prosecution to prove that consent was NOT given, otherwise, the Romeo and Juliet statute applies. The bottom line is that this result is that the statute is doing less to protect the children of Kansas.

2) Many young rape victims simply do not realize that they have been raped, or are being raped. I know this is difficult for society to accept, but it is true. A young victim may believe the act is actually an act of love, when in reality, force had actually been used. After the rape, the victim may actually still be friends with the perpetrator, actually in hopes of a truly "loving" relationship. If this type of situation occurs, the prosecution has a tremendously difficult case, as they have the burden of proof that the victim was indeed raped.

3) According to statistics, 85% of victims do not report rape. For young victims, that is even greater. Considering my first two points I just made, this is easy to understand. Given that a young victim may not report the rape, it invites the perpetrator to repeat the rape on this same victim again. The more times the crime is repeated, the worse the case gets for the prosecution. Most people in society have difficulty understanding a "repeat rape victim" scenario. But those that truly understand and have studied rape (even a little), we see this all the time in child molesters and cases of incest or from someone inside within the family. This does happen a lot. The problem with Romeo and Juliet statute is that those prior sexual contacts make prosecution of higher crimes more difficult. This is a repeat offender that is more difficult to rehabilitate and reform. Although the KS 21-3522 statute does not explicitly state, "Romeo and Juliet" in the words of the statute, but the meaning and interpretation is clearly there. THAT is the interpretation that has been widely accepted by the media and the public, as well as ruling of the Kansas Supreme court.

4) I firmly believe that the cat is out of the bag now about Romeo and Juliet, and defense attorneys will be using this statute to get much lighter sentencing and treatment for the perpetrators.

5) The moment I heard the alias of the statute to be "Romeo and Juliet", I was outraged. The definition for "Romeo" is love and romance. The definition of "Juliet" is hero and heroine. Rape has ABSOLUTELY nothing to do with love and heroism (unless it is Juliet being a hero for prosecuting a case). I am OUTRAGED that ANY sexual assault law would have ANY reference to love and heroism, even if that is an alias. FOR THAT REASON ALONE I WANT ROMEO AND JULIET REPEALED! How dare the state of Kansas have a sexual assault statute that is thought of in that manner. Regardless of ANY other reason, I believe this reason alone (just on principle alone) is justification enough to repeal this statute.

The following is the exact statement made to me in a personal email I received from Kansas Attorney General Phill Kline. I have his explicit, written permission to quote him.

Dear Curtis:

I share your concerns. I support a repeal of "romeo and juliet" as do most Kansas prosecutors. A rape is a rape regardless of the age of the perpetrator.

There was significant testimony at the time the "romeo and juliet" provision passed by prosecutors opposed to the change in law. That testimony is contained in the committee files and perhaps you can request that your Representative or Senator obtain copies of that testimony - it should help you in your effort.

Generally, prosecutors in Kansas believe we should have the opportunity to charge rape in such cases when the evidence indicates exploitation of a child. Prosecutorial discretion has allowed prosecutors for over a century to balance those exploitive cases with the cases of two kids making a mistake. The "romeo and juliet" provision weakens the state's ability to protect children.

*Sincerely,
Phill Kline*

11) Conclusion

Based upon the arguments presented above, I advocate the following be enacted:

Section 3) Endorse House Bill 2576 (Jessica Marie Lunsford Act), which REGISTERS THE juvenile sex offender!

Section 4) Endorse House Bill 2576 and use the electronic monitoring devices to enforce ALL terms of probation and parole, including the juvenile sex offender.

Section 5) Exclude the rapist from school enrollment in which the victim attends, including universities.

Section 6) Once the JSO is registered, require the notification to KSHSAA that the JSO should be considered ineligible from participating in high school sports as INTENDED by KSHSAA rules!

Section 7) Victims Should Have Rights in Plea Bargains - An addition to the Victim's Rights Act (74-7333):

Section 8) Repeal the "Romeo and Juliet" statute (KS 21-3522).

I strongly support House Bill 2576, but I believe existing loopholes need to be closed. Following 9-11, Americans were outraged that the different agencies of our Federal Government did not "connect the dots". They had failed to communicate. The same is true with our judicial system and our schools.

While these measures are not an end all solution to the JSO problem, these measures will provide better protection for the victim and society. These measures will provide the JSO a more effective means of reform and rehabilitation. And finally, these measures will encourage more young victims to report their crimes.

Thank you for listening to the concerns of this one citizen from the great state of Kansas.

12) References:

Current Situation:

Quoting Senator Vratil:

<http://www.kctv5.com/Global/story.asp?S=4417472>

"Up to this point in time, we've seen no great rate of success to cure sex offenders"

Incarceration of juveniles that rape has not lowered their recidivism rate.

<http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/kidslkeadults.html>

Prosecution of juveniles that rape as adults with adult sentencing has not reduced the recidivism rate.

<http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/kidslkeadults.html>

Register the JSO:

High Recidivism rate for the JSO: (Study by Fehrenbach, Smith, Monastersky, and Deisher)

http://resweb.llu.edu/rford/SPOL/studentdocs/Lisa_policy.doc

Percentage of rapes committed by juveniles:

Bureau of Justice Statistics - Data Online <http://www.ojp.usdoj.gov/bjs>

Jeremiah Sexton and his victims:

http://64.233.167.104/search?q=cache:CRwwA5NW39gJ:sastandardtimes.com/sast/home/article/0,1897,SA_ST_4943_3553124,00.html+jeremiah%2Bsexton%2Bindecent%2Bliberties&hl=en&gl=us&ct=clnk&cd=3

<http://www.dfw.com/mld/dfw/news/local/13709479.htm>

<http://www.dfw.com/mld/dfw/news/13716388.htm>

<http://www.dfw.com/mld/dfw/news/13709479.htm>

<http://www.dfw.com/mld/dfw/news/local/13707359.htm>

<http://www.dfw.com/mld/dfw/news/13700778.htm>

Electronic Monitoring Device:

Wyandotte County Registered Offender's Check for address accuracy:

<http://www.kansascity.com/mld/kansascity/news/local/13461112.htm>

10 Year old on the Registered Offender's List:

Koch Report:

Koch Crime Commission Juvenile Justice System Task Force, *Recommendations on Changes to the Juvenile Justice System in Kansas* (November, 1995). (I have a saved copy of this PDF file)

Kansas State High School Athletic Association Handbook:

Rules for eligibility:

(<http://kshsaa.org/FORMS/KSHSAAhandbook.pdf>)

Victim has no say in plea bargains:

Current Victim Rights:

<http://www.kslegislature.org/legsrv-statutes/getStatuteFile.do?number=/74-7333.html>

<http://www.csun.edu/~dgv61315/aboutlaw.html#Plea/Settle>

http://talkleft.com/new_archives/008020.html

Fewer than 2 percent of all cases in federal courts are heard by juries, and available statistics suggest that fewer than 1 percent of cases in state courts are resolved by jury trial.

"Jury trials are important to a democracy, and democracy is likely to suffer with fewer of them. A public trial is our forum for saying what kind of behavior is acceptable. It is a statement of our community standards."

<HTTP://WWW.NVCAP.ORG/DOCS/PCP/FINAL-RESPONSE%20TO%20MINORITY%20SENATORS.DOC>

RESPONSE TO MINORITY VIEWS OF SENATORS LEAHY, KENNEDY, KOHL, FEINGOLD, SCHUMER, AND DURBIN

On November 7, 2003, Senators Leahy, Kennedy, Kohl, Feingold, Schumer, and Durbin presented their "Minority Views" to Senate Report 108-191, the Judiciary Committee's Report accompanying S. J. Res. 1, the Crime Victims Rights Amendment (hereinafter "Minority Senators"). The Minority Senators set forth their reasons for opposing S. J. Res. 1. This is a response to their arguments.

by
Steve Twist
General Counsel
National Victims Constitutional Amendment Project

The centrality of both defendants and victims rights should be protected against government usurpation.

Perhaps the minority view is grounded in the belief that victims are less "central" to our civilized society than defendants. Or perhaps use of the word "treatment" implies that victims are to be simply the objects of a beneficent government's largesse, and if so all will be well. Yet crime victims, along with defendants, simply seek what the minority view asserts to be of central importance to our society. Victims do not seek to be objects of the government's largesse; rather, they seek as free citizens to be empowered with rights and standing that no judicial or legislative majority can ignore or take away.

<http://www.jcs.act.gov.au/eLibrary/lrc/r06/IssuesVC.rtf%20.html>

The personal nature of being a victim naturally causes the victim to think that he or she has an interest in and knowledge of the case which should be catered for by the criminal justice system. However, the modern criminal justice system has no defined role for the victim as such: law enforcement is a matter between the State and the offender (or, to be more precise, the offender's lawyer). The victim is often no more than an interested spectator.

The lack of precise role for the victim, other than as a prosecution witness, belies the victim's actual importance to the criminal justice system. Firstly, victims perform a vital gate-keeping function, determining which matters will be dealt with by the system. Victims do not report all activities, which are criminal to the police. For example, although 94% of car thefts in 1983 were reported, only 43% of robberies, 34% of assaults and 25% of sexual assaults were reported. Other victims presumably cut their losses or attempt to obtain a remedy personally, thus by passing the criminal justice system altogether. When crimes are reported, victim information alone leads to the majority of convictions, particularly for crimes of violence.

The victim is clearly important to the successful and efficient working of the criminal justice system. Advocates of victims' rights argue that such efficiency may be maintained only if the co-operation of victims is retained, which will only occur if victims feel that their needs and interests are being met to a satisfactory extent by the system. If this does not occur, the criminal justice system risks losing not only the future co-operation of current victims of crime, but also that of their friends and relatives.

Romeo and Juliet:

<http://dictionary.reference.com/search?q=romeo>

4 entries found for romeo.

Ro-me-o (P) Pronunciation Key (rm-)

n. pl. Ro-me-os

A man who is devoted to lovemaking or the pursuit of love.

[After Romeo, the hero of Romeo and Juliet by William Shakespeare.]

romeo

n : an ardent male lover [syn: Romeo]

<http://dictionary.reference.com/search?q=juliet>

1 entry found for juliet.

Ju-li-et (P) Pronunciation Key (jl-t, -t, jl-t)

n. The satellite of Uranus that is sixth in distance from the planet.

[After Juliet, heroine of Romeo and Juliet by William Shakespeare.]

<http://dictionary.reference.com/search?q=heroine>

3 entries found for heroine.

her-o-ine (P) Pronunciation Key (hr-n)

n. A woman noted for courage and daring action.

A woman noted for special achievement in a particular field.

The principal female character in a novel, poem, or dramatic presentation. See Usage Note at hero.

heroine

n 1: the main good female character in a work of fiction 2: a woman possessing heroic qualities or a woman who has performed heroic deeds

<http://www.prevent-abuse-now.com/stats.htm>

"Young victims may not recognize their victimization as sexual abuse.

Source: Gilbert, 1988."

<http://members.tripod.com/lmsurratt/section5.htm>

"Koss (1985) suggests that it is the relationship of the survivor and the rapist, that determines whether a woman conceptualizes her experience as rape. The unacknowledged rape victim appeared to encounter her sexual assault in the context of a close personal relationship and shared sexual intimacy that disqualified the experience as rape in the victim's mind, (Koss, 1985, pp. 210). This is frightening, because it seems that most women could become vulnerable to an unacknowledged rape, especially if they are raped by a close acquaintance."

Travel to Canada (Legal Issues):

<http://www.aaa.com/aaa/Traveler/ITT907.pdf>

House Judiciary Committee
House Bill 2576
Opponent
February 1, 2006

Chairman O'Neal and Members of the House Judiciary Committee:

This document sets forth the arguments that will be presented by the following people on February 1, 2006:

Stacey Donovan: I live in Lawrence (45th District) and work in Topeka as a public defender, which I have been for nine years. I have a daughter, age 3.

Jennifer Roth: I live in Lawrence (46th District) and work in Topeka as a public defender, which I have been for five years. I have a daughter, age 2.

Current law provides adequate punishment

- Currently, **defendants convicted of a sexually violent crime** (involving an adult or a child) **who also have one or more prior convictions for a sexually violent crime** (involving an adult or a child) **can have their sentences doubled** pursuant to a "persistent sex offender" finding. (K.S.A. 21-4704).
- The Kansas Sentencing Guidelines also provide for "upward departure" proceedings in any case, which can be brought by the state or the court. **Upward departures can double a defendant's presumptive guidelines sentence** (and possibly double that under the "double-double rule").
- Currently, **a defendant can be charged with capital murder** for an intentional and premeditated killing done in the commission of or subsequent to rape, criminal sodomy, aggravated criminal sodomy, or for an intentional and premeditated killing of a child under 14 in the commission of a kidnapping or aggravated kidnapping, when the kidnapping was committed with intent to commit a sex offense upon a child or with intent to submit the child to a sex offense. **The minimum sentence for capital murder is life without possibility of parole** (the maximum being the death penalty itself). (K.S.A. 21-4635(a)).
- **There is a sexual predator civil commitment proceeding already in place.** While it has been criticized in the recent press, it is a procedure in place. This topic will be addressed further in the fiscal section below.

If the Legislature insists that the current law is not strong enough, a more tailored response is necessary - HB 2576 casts too broad a net

- **What HB 2576 proposes to do is unprecedented in the Legislature's history.** The Legislature has spent years determining the severity levels for different offenses and setting appropriate sentences. **Under HB 2576**

House Judiciary

Date 2-1-06

Attachment # 9

current severity levels of 1 to 6 are all grouped together and deemed off-grid offenses. This is no different than taking all killings (which currently range from off-grid to severity level 5, and actually even include misdemeanor vehicular homicide) and saying that any killing will henceforth be deemed an off-grid offense. Doing away with gradations of offenses is not a wise policy and is completely contrary to what the Legislature has done in the past.

- **This bill sweeps in defendants who have no business being sentenced to life.** For example, rape of a child under 14 is an offense regardless of the circumstances. **Therefore, an 18-year-old young man who has consensual sex with a 13-year-old girl who says she is 16 is looking at life.** There will be testimony of case after case with facts like this – all of those young men will face life in prison. It is important to note that **jurors are not allowed to know the sentencing ranges faced by defendants.** One situation that comes to mind is the case of three young men (two of them were 18) in Lawrence who were convicted (two by jury, one by plea) of having consensual sex with a 13-year-old girl. Judge Paula Martin departed from the sentencing guidelines and placed the young men on probation. In November, 2004, she had to fight to retain her seat on the bench. In the course of this campaign, 16 of the 24 jurors who heard the two jury trials signed their names to an ad in support of Judge Martin and her sentences (of the remaining eight jurors, six could not be found, one had died and another declined to go public because of job considerations). Three jurors attended the news conference to show their support for Judge Martin. Another juror said in an interview with the *Lawrence Journal-World* (published October 26) that **it was hard for him to live with his verdict once he learned that the young men were looking at 13 years in prison and that their conviction was regarded the same as a defendant who forcibly raped a stranger.** The 16 jurors who agreed to publish their names and show support were members of the voting public who were obviously troubled by the law as written.
- **This bill places no age limit on the defendant. In other words, children under 18 could be prosecuted and sentenced to life sentences.** Can a defendant be younger than a victim? When you are talking about children, what determines who is the defendant and who is the victim? There are already children as young as 11 on the offender registry. Apparently the state is already prosecuting children that are the same age range as the children this bill seeks to protect. **Furthermore, it will be easy to prosecute children as adults.** K.S.A. 38-1636 authorizes prosecution of juveniles in adult court under certain circumstances, one being if the juvenile is 14-17 and is charged with what would be an off-grid offense if he was an adult. K.S.A. 38-1636 says the juvenile “shall be presumed to be an adult.” The burden is then on the juvenile to argue why he should not be prosecuted as an adult.
- The 2004 Legislature created the Kansas Criminal Recodification, Rehabilitation and Restoration Project. One of the reasons for this was **between 1993 and 2003, 50 new felonies have been enacted** and **“the inmate population in Kansas**

grew at a rate of 45.7% over the past 10 years, now exceeds 9,100 people, and is currently projected to increase to a population of 10,131 in 2013, and additional 11% increase.” (see House Substitute for Senate Bill No. 45, creating the 3R Commission). It is contrary to the Legislature’s goals to create six off-grid offenses without first hearing from the Project.

This bill will have a huge fiscal impact

On November 18, 2005, Senate Majority Leader Derek Schmidt was quoted in the *Lawrence Journal-World* as saying that longer prison terms for sex offenders could save the state money because it is cheaper to keep someone in prison than in the Sexual Predator Treatment Program. However, consider the following:

- **There is no fiscal note to HB 2576**, at least not on the Legislature’s website. The fiscal note to SB 334 originally said that five additional beds would be needed by end of FY 2007 and 259 by end of FY 2016. That note has since been amended and according to the Supplemental Note to SB 334, **the Kansas Sentencing Commission, the actual number of additional beds needed under the Senate proposal is 969 to 1,013 by the end of FY 2016. The House proposal is even broader than the Senate proposal, and thus the numbers would be even greater.**
- A review of the Kansas Sentencing Commission’s 2004 Annual Report shows the following number of people sentenced for the following convictions that are the subject of HB 2576 - the numbers in parentheses represent the number of people who went to prison on those convictions:

Aggravated criminal sodomy with a child - 49 (48)

Aggravated indecent liberties - 310 (254)

Sexual exploitation - 15 (6)

Rape - 138 (127)

While we don’t have actual figures, arguably most of these convictions were the results of pleas. If HB 2576 passes, **there will be no pleas** because there is nothing for the defendants looking at a life sentence to lose by taking their cases to trial. **In other words, the future holds jury trials on each and every charge.** With this comes an increase in the need for public defenders and the training they require, as well as increases in money for expert witnesses and investigation. Furthermore, there will be an appeal in every case, which can result in retrials. There is little doubt that these appeals will present issues of evidentiary and scientific import. **In short, if people thought it was expensive to litigate death penalty appeals, wait until the number of off-grid jury trials explodes.**

- **There will be a need for additional prosecutors, court advocates, and even judges.** Because the KBI does the lab work for the state, **there will be an increase in the need for forensic scientists.**

- **A new prison will be necessary because of the increase in numbers.** DOC has been operating at near or excess capacity for medium and maximum custody male inmates. It appears that some lawmakers acknowledge that new prison(s) will need to be built to accommodate the drastic change in law. Where is the fiscal impact statement on this? What would the fiscal cost be?
- According to the Department of Corrections website, **housing an inmate for one year ranges from \$18,121 to \$28,697**, depending on the institution. This does not take into account whether different security measures will be implemented for a new wave of sex offenders. Furthermore, there are costs associated with the monitoring/reports that HB 2576 requires of the DOC. Just yesterday, the Topeka Capital-Journal published a story about the staffing crisis at several state prisons and how some institutions are experiencing a 25% turnover rate in guards.
- **The estimate of five beds by end of FY 2007 is woefully low.** For example, HB 2576 amends the crime of failure to register from a severity level 10 nonperson felony to a severity level 5 person felony. Almost everyone on the offender registry (save the number that have to register for misdemeanors) has been convicted of a person felony. Thus, all of them would be presumptive prison. On June 18, 2005, the *Topeka Capital Journal* published an article about the offender registry. In that article, KBI Director Larry Welch is quoted as saying that at least **10% of the offenders on the registry are non-compliant**. The article explains that **there are 3,757 registered offenders**. 10% is 375 people. **If even 10% of the non-compliant are prosecuted, then that results in the need for about 37 prison beds.** Arguably, this focus on the registry's non-compliant has resulted in more prosecutions. For example, in Douglas County, five cases were filed in August 2005 alone. (*Lawrence Journal-World*, November 26, 2005).

Additional concerns

- **HB 2576 as written** (see Section 14) **has no departure provision for defendants convicted of first-time sex offenses.** There is no sentence other than life (Hard 25). HB 2576 does not include language like that found in SB 334, which provides for Hard 25 "unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure." Even under that provision, SB 334 makes the departure sentence that provided by the Guidelines. Does this mean that there are no additional departures allowed? From the current wording of HB 2576, **it appears the departure provision only applies to defendant convicted of second-time offenses and facing the Hard 50.** There is some other language in Section 14 that is confusing (see (f)(1)-(3)).
- **HB 2576 provides that juvenile adjudications for sexually violent crimes be used to enhance defendants to second or subsequent offenses** (and thus the Hard 50 or life without parole). **Juveniles are not entitled to jury trials and are denied a host of other rights in adjudication proceedings.** To use these convictions to enhance them to the Hard 50 or beyond is unthinkable.

- **This bill goes beyond harsher sentences for child sex offenders.** Perhaps that is intentional, but it is worth pointing out. For example, the bill provides for a “persistent offender” provision, in which a defendant convicted of a sexually violent crime for the third time faces life with no parole. However, **the prior convictions do not have to involve a child and the current conviction does not have to involve a child either.** A person could be sentenced to life with no parole without ever having committed an act involving a child.
- This bill adds “the defendant was previously convicted two or more times of a sexually violent crime” as an aggravating factor in considering a death penalty sentence. However, there is no provision that the capital offense be against a child nor a death involving a sex offense. There is no relation required between the priors making up the aggravating factor and the capital offense for which a person is charged.

Conclusion

This annihilation of gradations in severity levels and accompanying extreme mandatory minimum sentences are such a departure from what the Legislature has done historically. While there may be a need for improvement in some areas, we urge you to carefully consider the broad impact these proposed changes will have across the legal system and society as a whole. If you decide to implement these off-grid sentences, then giving defendants every bit of due process guaranteed by the U.S. and Kansas Constitutions becomes even more critical.

Sincerely,



Jennifer Roth and



Stacey Donovan