Approved: 3-22-06
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 14, 2006 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused

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

HB 2414 - penalties for battery against a law enforcement officer and aggravated battery against a law enforcement officer

The committee was provided with a balloon amendment which separates battery into two different penalties: class A person misdemeanor would apply to battery against a law enforcement officer as defined in subsection (a)(1) and battery against a law enforcement officer as defined in subsection (a)(2) or (a)(3). (Attachment 1)

Representative Garcia made the motion to amend in the provisions of the balloon. Representative Colloton seconded the motion. The motion carried.

Representative Davis made the motion to report **HB 2414** favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

HB 2606 - theft of services

Chairman O'Neal reminded the committee that Representative Johnson, the sponsor of the bill, requested an amendment which would include rural water districts and rural electric cooperatives be consider as public utilities.

Representative Loyd made the motion to include the above reference in **HB 2606.** Representative Owens seconded the motion. The motion carried.

Representative Loyd made the motion to report **HB 2606** favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

HB 2616 - state may request a preliminary examination of a felony charge

Representative Loyd made the motion to report **HB 2616** favorably for passage. Representative Kiegerl seconded the motion. The motion carried.

HB 2617 - violation of a protective order includes an order issued in a criminal case ordering the defendant to refrain from having contact with another person

Staff provided the committee with a balloon amendment that would reflect, more accurately, the intent of the sponsor. (Attachment 2)

Representative Owens made the motion to adopt the proposed balloon. Representative Crow seconded the motion. The motion carried.

Representative Owens made the motion to report **HB 2617** favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 14, 2006 in Room 313-S of the Capitol.

Chairman O'Neal directed the committee toward discussing the following bills:

HB 2576 - persistent sex offender life without possibility of parole

Jill Wolters, Revisor of Statute, expressed her concern that **HB 2576** contains both criminal and civil provisions. Many cases that have been handed down talking about offender registration as being a civil aspect and comparing it to *Kansas v. Hendricks*, which was a civil proceeding completely separate from the criminal proceeding. The distance restrictions as to how far a person listed on the offender registration have to live from a school have been discussed in civil proceedings. The retroactivity case *Smith v. Doe* talked about the Alaska sex offender registration act, but stressed that it is a civil proceeding. (Attachment 3)

While revisors placed the offender registration in the criminal statutes, she stressed that once re-codification occurs it should be placed in the civil proceedings chapter. However, the courts have spoken that, for now, it doesn't matter where the registration has been placed, because it is placed by staff, not the legislature.

She proposed two options: split the criminal and civil provisions into separate bills in committee or wait and split the provisions in conference committee.

The committee discussed several possible amendments some of which were:

- concern that it is possible that the crime that is listed in the sexual offender registry is not the original crime they were charged with but the one they were found guilty of or plea bargained to. Some members want the original crime listed so the public would have a truer sense of what the individual is capable of.
- victims having the right to request a hearing in front of a judge before a plea bargain is agreed to
- consider decaying some juvenile offenses so they don't follow the person for the rest of ones life
- make a clearer distinction between the terms "sexual offender" and "sexual predators"

Chairman O'Neal directed committee members to contact the revisor to have their amendments drafted so they would be ready to be offered when the committee worked the bill.

The Department of Corrections provided the committee with a balloon (Attachment 4) that would:

- change the name of those offenders subject to the enhanced penalty from "persistent offender" to "aggravated habitual sex offender"
- excludes offenses that are not specifically defined as sex offenses from the "instant offenses" for which the enhanced penalty can be applied, but retaining those types of offenses for establishment of prior criminal history
- deleting the statutory listing of risk factors
- establishing "aggravating circumstances" that are related to sex offenses

HB 2557 - sex offenders shall not reside within 1,500 feet of a school or 1,000 feet of a child care facility

Members understood that the reason for the bill was to limit the visual stimulation for sexual offenders. Kansas Department of Corrections provided information from Iowa County Attorneys Association on their states' sex offender residency restrictions which states that the number of convicted sex offenders who are unaccounted for increased 100% since the residency restriction went into place. (Attachment 5)

HB 2554 - DNA collection of all arrested for person felony and drug severity level 1 & 2

Representative Colloton provided the committee with a balloon that would raise the severity level to a 10 non-person felony if one refuses to give a DNA sample and provide immunity for those who are authorized to withdraw blood and collect samples. (Attachment 6)

Some members felt that DNA is vastly different from fingerprints and therefore should be excluded from the database if one is not convicted. Others had concerns with the numerous amount of bills that are labeling individuals as felonies and not taking into account the impact it will have on ones life.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on February 15, 2006 in room 313-S.

House Judiciary
Date 2-14-06
Attachment # 1

Session of 2005

HOUSE BILL No. 2414

By Representative Peck

2-9

AN ACT concerning crimes and punishments; amending K.S.A. ~~2004~~ Supp. 21-3413 and 21-3415 and repealing the existing sections.

2005

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

Section 1. K.S.A. ~~2004~~ Supp. 21-3413 is hereby amended to read as follows: 21-3413. Battery against a law enforcement officer is ~~a battery, as defined in K.S.A. 21-3412 and amendments thereto.~~

(a)

:

(1) Battery, as defined in subsection (a)(2) of KSA 21-3412, and amendments thereto, committed against: (A) A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or (B)

~~(a) (1) Committed against~~ a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty;

or

(2) ~~committed against a~~ state correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

battery, as defined in subsection (a)(1) of KSA 21-3412, and amendments thereto, committed against: (A) A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or (B) a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty; or

(3) battery, as defined in KSA 21-3412, and amendments thereto, committed against: (A) A

(B)

~~(3)~~ committed against a juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C)

~~(4)~~ committed against a juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(D)

~~(5)~~ committed against a city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty~~; or~~

~~(6) committed against a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty~~.

(b) Battery against a law enforcement officer ~~as defined in subsection (a)(1) is a class A person misdemeanor. Battery against a law enforcement officer as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5)~~ is a severity

as defined in subsection (a)(1) is a class A person misdemeanor. Battery against a law enforcement officer as defined in subsection (a)(2) or (a)(3)

level 5, person felony.

(c) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections.

(2) "State correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

(3) "Juvenile correctional facility officer or employee" means any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 38-1602 and amendments thereto.

(4) "Juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 38-1602 and amendments thereto.

(5) "City or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility.

Sec. 2. K.S.A. ~~2004~~ 2005 Supp. 21-3415 is hereby amended to read as follows: 21-3415. (a) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(2) an aggravated battery, as defined in subsection (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(3) intentionally causing, with a motor vehicle, bodily harm to: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(b) (1) Aggravated battery against a law enforcement officer as de-

scribed in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

(2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level ~~6~~ *4*, person felony.

(3) A person convicted of aggravated battery against a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.

Sec. 3. K.S.A. ~~2004~~ Supp. 21-3413 and 21-3415 are hereby repealed. 2005

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

3
1

Proposed amendment
February 14, 2006

House Judiciary
Date 2-14-06
Attachment # 2

Session of 2006

HOUSE BILL No. 2617

By Committee on Judiciary

1-17

AN ACT concerning crimes and punishment; relating to violation of a protective order; amending K.S.A. 2005 Supp. 21-3843 and repealing the existing section.

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

Section 1. K.S.A. 2005 Supp. 21-3843 is hereby amended to read as follows: 21-3843. (a) Violation of a protective order is knowingly or intentionally violating:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 and 60-3107, and amendments thereto;

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;

(3) a restraining order issued pursuant to K.S.A. 38-1542, 38-1543, 38-1563 and 60-1607, and amendments thereto;

(4) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence [~~or~~] postrelease supervision that orders the person to refrain from having any direct or indirect contact with another person;

, or at any other time during the criminal case

(5) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; ~~or~~

or

(6) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto[~~; or~~

~~(7) an order issued in a criminal case that orders the defendant to refrain from having any direct or indirect contact with another person~~]

(b) As used in this section, "order" includes any order issued by a municipal or district court.

(c) Violation of a protective order is a class A person misdemeanor.

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

Sec. 2. K.S.A. 2005 Supp. 21-3843 is hereby repealed.

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

Office of Revisor of Statutes
300 S.W. 10th Avenue
Suite 322, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

TO: The Criminal Justice Recodification, Rehabilitation and Restoration Committee

FROM: Jill Wolters, Senior Assistant Revisor

DATE: November 14, 2006

RE: Brief of *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140 (2003)

The state of Alaska enacted the Sex Offender Registration Act (SORA) in May, 1994. [Kansas enacted the Habitual Sex Offender Registration Act on July 1, 1993, and as such, has been amended several times to currently be known as the Kansas Offender Registration Act (KORA).] The Alaska SORA requires sex offenders and child kidnappers to register with the Department of Corrections (DOC) if the offender is incarcerated or the local law enforcement agency if the offender is released. Such offender must provide identifying factors when registering. If the offender is convicted of a single, nonaggravating sex crime, annual verification is required for 15 years. If the offender is convicted of an aggravated sex offense or of two or more sex offenses, verification is required quarterly for the offender's lifetime. The offender must notify authorities if the offender moves. If an offender fails to comply with the registration requirements, a criminal penalty is provided. All information is given to the Department of Public Safety which maintains a central registry of sex offenders. The offenders fingerprints, driver's license number, anticipated change of address and medical treatment records are confidential. By law, certain information is made available to the public. The Alaska Act does not state how the information is to be made public.

Convicted sex offenders filed a Sec. 1983 action challenging the constitutionality of the Alaska SORA as a violation of the *Ex Post Facto* Clause of Article I, Section 10, cl. 1, of the Constitution.

In a six to three decision decided March 5, 2003, the United States Supreme Court determined the Alaska SORA was nonpunitive and its retroactive application did not violate the *Ex Post Facto* Clause.

The first question the Court addresses is "whether the legislature meant the statute to establish 'civil' proceedings." *Kansas v. Hendricks,* 521 U.S. 346, 361 (1997).

> "If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and

nonpunitive, we must further examine whether the statutory scheme is 'so punitive either in purpose or effect as to negate [the State's] intention' to deem it civil." *Smith v. Doe*, 123 S. Ct. 1140, 1148 (2003)

In the Alaska Act, the legislature expressed the objective of the law in the text by identifying protecting the public from sex offenders as the primary governmental interest of the law. The KOFA "contains no express statement of legislative intent or purpose." *State v. Myers,* 260 Kan. 669, 678 (1996). The Kansas Supreme Court in *Myers*, in a thorough analysis reviewing the Minutes of the House and Senate Judiciary Committee meetings, determined that the intent of the act was regulatory and the legislative history suggests a nonpunitive purpose of public safety. I mention this to inform the Committee that the Kansas Court has determined the KORA as regulatory with a nonpunitive purpose. However, the Kansas Court continued by asking "whether the 'statutory scheme was so punitive either in purpose or effect as to negate that intention." *Myers,* 260 Kan. at 681. The Court upheld the constitutionality of the registration requirement but further held:

> "(T)he disclosure provision allowing public access to sex offenders registered information, K.S.A. 22-4909, when applied to Myers, is unconstitutional punishment under the *Ex Post Facto* Clause. The unlimited public accessibility to the registered information and the lack of any initial individualized determination of the appropriateness and scope of disclosure is excessive, giving the law a punitive effect–notwithstanding its purpose, shown in the legislative history, to protect the public." *Myers,* 260 Kan. at 702.

In *Smith v. Doe,* the Supreme Court continues its analysis of the civil v. criminal nature of a statute by citing cases which have held "(T)he location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one." *Smith,* 123 S. Ct. at 1149. The location of the registration provisions of the Alaska SORA is in the code of Criminal Procedure and the notification requirements are codified in the Health, Safety and Housing Code. In Kansas, the entire provisions of the act are codified in the Code of Criminal Procedure.

The opinion further points out the Alaska Code of Criminal Procedure contain provisions that do not involve criminal punishment; the statue itself mandates no procedures, rule and regulation authority is given to the Department of Public Safety; and the Act contains no criminal safeguards associated with the criminal process.

The Court concludes "that the intent of the Alaska legislature was to create a civil, nonpunitive regime". *Smith,* 123 S. Ct. at 1150.

Following the determination the proceeding is civil in nature, the Court in *Smith* relies on the seven factors cited in *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 83 S. Ct. 554, 9 L.Ed.2d 644 (1963) for review on the effect of the Act.

The factors are "whether, in its necessary operation, the regulatory scheme: has been regarded in our history and traditions as punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rationale connection to a nonpunitive purpose; or is excessive with respect to this purpose". *Smith,* 123 S. Ct. at 1150, 1151.

Has been regarded in our history and traditions as punishment

The Court determined "the stigma of Alaska's Megan's Law results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public." *Smith,* 123 S. Ct. at 1151.

Imposes an affirmative disability or restraint

"The Act imposes no physical restraint, and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." *Smith,* 123 S. Ct. at 1152. Periodic verifications do not impose a disability because they are not required to be made in person. The provisions are not similar to post release supervision because there are no limitations on where the offender may live or work.

The *Myers* Court analyzed this *Mendoza-Martinez* factor and determined the "registration requirement imposes no affirmative disability or restraint, because the offender's movements within or without the community are not restricted." *Myers,* 260 Kan. at 695. However, the practical effect of the dissemination of the information "could make it impossible for the offender to find housing or employment. We find that the KSORA public disclosure provision does impose an affirmative disability or restraint." *Myers,* 260 Kan. at 696.

Promotes the traditional aims of punishment

The Court reviewed whether the law is punitive because of deterrence and retribution. The court states "(A)ny number of governmental programs might deter crime without imposing punishment. 'To hold that the mere presence of a deterrent purpose renders such sanctions 'criminal'...would severely undermine the Government's ability to engage in effective regulation." *Smith,* 123 S. Ct. at 1153. In regard to retribution, the offenders argued the differences in the length of registration requirements "appears to be measured by the extent of the wrongdoing, not of the extent of the risk posed." *Smith,* 123 S. Ct. at 1153. The court concluded "(T)he broad categories, however, and the corresponding length of the reporting requirement, are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective." *Smith,* 123 S. Ct. at 1153.

The *Myers* Court also analyzed this *Mendoza-Martinez* factor and determined "the KSORA public disclosure provision may have both a deterrent and retributive effect. However, the nonpunitive purpose of the statute cannot be accomplished without informing the public that a sex offender is in its midst. If the statute limited public disclosure to that necessary to protect the public, then its deterrent effect could be viewed as incidental to its nonpunitive purpose. Unlimited public access to the registry provides a deterrent or retributive effect that goes beyond such purpose." *Myers,* 260 Kan. at 696.

Has a rationale connection to a nonpunitive purpose

The Court points out "the Act has a legitimate nonpunitive purpose of 'public safety which is advanced by alerting the public to the risk of sex offenders in their community.'" *Smith,* 123 S. Ct. at 1153.

Is excessive with respect to this purpose

In finding the regulatory scheme is not excessive with respect to the Act's purpose, the Court determined:

"(T)he State's determination to legislate with respect to convicted sex offenders as

> a class, rather than require individual determination of their dangerousness, does not render the Act punitive. ...Moreover, the wide dissemination of offender information does render the Act excessive, given the general mobility of the population. The question here is not whether the legislature has made the best possible choice to address the problem it seeks to remedy, but whether the regulatory means chosen are reasonable in light of the nonpunitive objective." *Smith,* 123 S. Ct. at 1146.

In reviewing this *Mendoza-Martinez* factor, the *Myers* Court stated the excessive scope of public disclosure of registered information as a key factor. They note "KSORA places no restrictions on who is given access to the registered offender information or what the person does with the information. ...The unrestricted public access leaves open the probability that a registered sex offender could suffer (the kind) public stigma and ostracism" *Myers,* 260 Kan. at 697, such as the Scarlet Letter. The Court concludes "(T)he unrestricted public access given to the sex offender registry is excessive and goes beyond that necessary to promote public safety." *Myers,* 260 Kan. at 699.

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

February 7, 2006

Rep. Michael O'Neal
Chairman House Judiciary Committee
Statehouse, Room 143-N
Topeka, KS 66612

RE: HB 2576
Balloon amendments corresponding to KDOC testimony

Dear Chairman O'Neal,

As you know, Secretary Werholtz presented testimony recommending amendment of HB 2576. The attached balloon incorporates those recommendations. The balloon reflects the following:

- Changing the name of those offenders subject to the enhanced penalty from "persistent offender" to "aggravated habitual sex offender" (Page 1)
- Excludes offenses that are not specifically defined as sex offenses (other than having been judicially found to have been sexually motivated) from the "instant offenses" for which the enhance penalty can be applied, yet retaining those types of offenses for establishment of prior criminal history. (Page 1).
- Deletes the statutory listing of risk factors. (Page 4).
- Establishes "aggravating circumstances" that are related to sex offenses. (Pages 13 and 14).

If the department or I can be of assistance to the Committee, please do not hesitate in contacting me.

Sincerely,

Tim Madden
Sr. Counsel to the Secretary

W/attachment

900 SW Jackson – 4th Floor, Topeka, KS 66612-1284
Voice 785-296-3310 Fax 785-296-0014 http://www.dc.state

House Judiciary
Date 2-14-06
Attachment # 4

Session of 2006

HOUSE BILL No. 2576

By Representative Kilpatrick

1-5

AN ACT concerning crimes, punishment 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, 21-4638, 21-4704, 22-3717, 22-4903, 22-4904, 22-4906 and 74-9501 and repealing the existing sections.

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

New Section 1. (a) ~~A persistent offender~~ An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender's natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) "~~Persistent offender~~ Aggravated habitual sex offender" means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime; and (B) prior to the conviction of the felony under subparagraph (A), has been convicted on at least two prior conviction events of any sexually violent crime , as described in paragraphs (3)(A) through 3(J) or 3(L)

(2) "Prior conviction event" means one or more felony convictions of a sexually violent crime occurring on the same day and within a single count. These convictions may result from multiple counts within an information or from more than one information. If a person crosses a county

secretary of corrections.

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

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

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

~~(A) Previous conviction for domestic violence;~~

~~(B) history of domestic violence;~~

~~(C) history of substance abuse;~~

~~(D) unemployment or substantial financial difficulties;~~

~~(E) previous conviction for violence or sex acts against children, particularly involving strangers; or~~

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

New Sec. 4. The Kansas board of education shall 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 Kansas bureau of investigation concerning registered offenders prior to permitting any unescorted, noninstructional personnel, including but not limited to, any vendor or entity under contract with the school board, to be on school grounds while students are present. The task force's study shall be completed and the task force shall submit a report containing its findings and recommendations to the Kansas board of education, the speaker of the house of representatives and the president of the senate on or before January 1, 2007.

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

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

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

(B) committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or

(C) resulting in a death; or

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

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

Delete- page 4, line 4 after "supervision" through line 15

tencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(d) On and after July 1, 2006, if a defendant is convicted of a crime listed in subsection (c)(1) and such defendant has previously been convicted of a crime listed in subsection (c)(1) or a crime under a law of another jurisdiction which is substantially the same as such crime, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such crime, the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 50 years.

~~(c)~~ *(e)* In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4636, and amendments thereto, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of sentencing shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

~~(d)~~ *(f) (1) If a defendant is convicted of an offense defined in subsection (b),* if the court finds that one or more of the aggravating circumstances enumerated in K.S.A. 21-4636, and amendments thereto, exist and, further, that the existence of such aggravating circumstances ~~is not outweighed by~~ *outweighs* any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to *subsection (a) of* K.S.A. 21-4638, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law.

(2) If a defendant is convicted of an offense defined in subsection (c), if the court finds that one or more of the aggravating circumstances ~~enumerated in K.S.A. 21-4636, and amendments thereto~~, exist and, further, that the existence of such aggravating circumstances outweighs any mitigating circumstances which are found to exist, the defendant shall be sentenced to life without the possibility of parole; otherwise, the defendant shall be sentenced pursuant to subsection (b) of K.S.A. 21-4638, and

following

(A). The victim suffered substantial bodily injury. (B). The defendant has an extensive prior history of such offenses. Extensive history could be dependent on number of victims, length of involvement, number of incidents, or continued involvement subsequent to arrest. (C). The offense was characterized by extreme cruelty or depravity. (D) The victim was unusually vulnerable. (E). There existed a relationship of special trust between the defendant and the victim or the defendant was in a position of authority over the victim. (F). The sex crime was committed upon one victim by two or more persons, acting in concert with the defendant. (G). The sex crime was committed by a person while serving a sentence for a sex crime conviction, or while subject to any provision of a deferred prosecution agreement, deferred judgment, suspended sentence, post imprisonment supervision, or parole for a sex crime. (H). The defendant has previously failed to complete treatment or has completed treatment and reoffended.

amendments thereto.

(3) If a defendant is convicted of an offense defined in subsection (d), if the court finds that one or more of the aggravating circumstances ~~enumerated in K.S.A. 21-4636, and amendments thereto~~, exist and, further, that the existence of such aggravating circumstances outweighs any mitigating circumstances which are found to exist, the defendant shall be sentenced to life without the possibility of parole; otherwise, the defendant shall be sentenced pursuant to subsection (c) of K.S.A. 21-4638, and amendments thereto.

(g) The court shall designate, in writing, the statutory aggravating circumstances which it found.

(h) The court may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to *subsection (a) of* K.S.A. 21-4638, and amendments thereto, notwithstanding contrary findings made by the jury or court pursuant to subsection (e) of K.S.A. 21-4624, and amendments thereto, for the purpose of determining whether to sentence such defendant to death.

Sec. 15. K.S.A. 2005 Supp. 21-4638 is hereby amended to read as follows: 21-4638. *(a)* When it is provided by law that a person shall be sentenced pursuant to this ~~section~~ *subsection*, such person shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. Except as otherwise provided, in addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 40 years' imprisonment, and such 40 years' imprisonment shall not be reduced by the application of good time credits. For crimes committed on and after July 1, 1999, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 50 years' imprisonment, and such 50 years' imprisonment shall not be reduced by the application of good time credits.

(b) When it is provided by law that a person shall be sentenced pursuant to this subsection, such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years or be sentenced as determined in subsection (c)(2) of K.S.A. 21-4635, and amendments thereto, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving such mandatory term of imprisonment, and such imprisonment shall not be reduced by the application of good time credits.

(c) When it is provided by law that a person shall be sentenced pursuant to this subsection, such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 50 years, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not

following

(A). The victim suffered substantial bodily injury. (B). The defendant has an extensive prior history of such offenses. Extensive history could be dependent on number of victims, length of involvement, number of incidents, or continued involvement subsequent to arrest. (C). The offense was characterized by extreme cruelty or depravity. (D) The victim was unusually vulnerable. (E). There existed a relationship of special trust between the defendant and the victim or the defendant was in a position of authority over the victim. (F). The sex crime was committed upon one victim by two or more persons, acting in concert with the defendant. (G). The sex crime was committed by a person while serving a sentence for a sex crime conviction, or while subject to any provision of a deferred prosecution agreement, deferred judgment, suspended sentence, post imprisonment supervision, or parole for a sex crime. (H). The defendant has previously failed to complete treatment or has completed treatment and reoffended.

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KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Memorandum

Date: February 9, 2006

To: Members of the House Judiciary Committee

From: Roger Werholtz, Secretary

Subject: Sex Offender Residency Restrictions

If you read a single item on this subject, please read this document from the Iowa County Attorneys Association.

If you need further information, please contact Jeremy S Barclay, Special Assistant to the Secretary, at (785) 296-4541.

House Judiciary
Date 2-14-06
Attachment # 5

Iowa County Attorneys Association

Hoover State Office Building ◇ 1st Floor ◇ Des Moines, Iowa 50319
Telephone: (515) 281-5428 ◇ Fax: (515) 281-4313

STATEMENT ON SEX OFFENDER RESIDENCY RESTRICTIONS IN IOWA

JANUARY, 2006

The Iowa County Attorneys Association believes that the 2,000 foot residency restriction for persons who have been convicted of sex offenses involving minors does not provide the protection that was originally intended and that the cost of enforcing the requirement and the unintended effects on families of offenders warrant replacing the restriction with more effective protective measures.

The ICAA has the following observations concerning the current restriction:

1. Research shows that there is no correlation between residency restrictions and reducing sex offenses against children or improving the safety of children.
2. Research does not support the belief that children are more likely to be victimized by strangers at the covered locations than at other places.
3. Residency restrictions were intended to reduce sex crimes against children by strangers who seek access to children at the covered locations. Those crimes are tragic, but very rare. In fact, 80 to 90 percent of sex crimes against children are committed by a relative or acquaintance who has some prior relationship with the child and access to the child that is not impeded by residency restrictions. Only parents can effectively impede that kind of access.

4. Law enforcement has observed that the residency restriction is causing offenders to become homeless, to change residences without notifying authorities of their new locations, to register false addresses or to simply disappear. If they do not register, law enforcement and the public do not know where they are living. The resulting damage to the reliability of the sex offender registry does not serve the interests of public safety.
5. There is no demonstrated protective effect of the residency requirement that justifies the huge draining of scarce law enforcement resources in the effort to enforce the restriction.
6. The categories of crimes included in the restriction are too broad, imposing the restriction on many offenders who present no known risk to children in the coveted locations.
7. A significant number of offenders have married or have been reunited with their victims; and, in those cases, the residency restriction is imposed on the victims as well as the offenders.
8. Many offenders have families whose lives are unfairly and unnecessarily disrupted by the restriction, causing children to be pulled out of school and away from friends, and causing spouses to lose jobs and community connections.
9. Many offenders are physically or mentally disabled but are prohibited from living with family members or others on whom they rely for assistance with daily needs.
10. The geographic areas included in the prohibited 2,000 foot zones are so extensive that realistic opportunities to find affordable housing are virtually eliminated in most communities. The lack of transportation in areas not covered by the restriction limits employment opportunities. The adoption of even more restrictive ordinances by cities and counties exacerbates the shortage of housing possibilities.

11. The residency restriction has no time limit; and, for many offenders, the restriction lasts beyond the requirement that they be listed on the sex offender registry. For this reason, there are many offenders who are subject to the residency restriction but who are not required to inform law enforcement of their place of residence, making enforcement nearly impossible.

12. There is no accommodation in the current statute for persons on parole or probation supervision. These offenders are already monitored and their living arrangements approved. The restriction causes many supervised residential placements to be unavailable even though they may be the most appropriate and safest locations for offenders to live.

13. Many prosecutors have observed that the numerous negative consequences of the lifetime residency restriction has caused a reduction in the number of confessions made by offenders in cases where defendants usually confess after disclosure of the offense by the child. In addition, there are more refusals by defendants charged with sex offenses to enter into plea agreements. Plea agreements are necessary in many cases involving child victims in order to protect the children from the trauma of the trial process. This unforeseen result seriously jeopardizes the welfare of child victims and decreases the number of convictions of sex offenders to accurate charges. Consequently, many offenders will not be made fully accountable for their acts and will not be required to complete appropriate treatment or other rehabilitative measures that would enhance the safety of children. Similar unintended negative effects often accompany well-intended efforts to increase prison sentences with mandatory provisions.

14. The drastic reduction in the availability of appropriate housing, along with the forced removal of many offenders from established residences, is contrary to well-established principles of treatment and rehabilitation of sex offenders. Efforts to rehabilitate offenders and to minimize the rate of reoffending are much more successful when offenders are employed, have family and community connections, and have a stable residence. These goals are severely impaired by the residency restriction, compromising the safety of children by obstructing the use of the best known corrections practices.

For these reasons, the Iowa County Attorneys Association supports the replacement of the residency restriction with more effective measures that do not produce the negative consequences that have attended the current statute. For example, the ICAA would support a measure that includes the following:

- A statute creating defined protected areas that sex offenders would be prohibited from entering except in limited and safe circumstances. Such areas might include schools, parks, libraries, and childcare facilities.
- Entrance into the protected areas would be allowed for activities involving an offender's own child with advance notice and approval from those in charge of the location.
- The restriction should cover offenses against "children" (under age 14), rather than "minors" (under 18).
- The statute should specifically preempt local ordinances that attempt to create additional restrictions on sex offenders. Such ordinances result in a variety of inconsistent rules and promote apprehension among local authorities that they

must act to defend themselves from the perceived effects of the actions of other communities.

- Most important, any restriction that carries the expectation that it can be effectively enforced must be applied to a more limited group of offenders than is covered by the current residency restriction. This group should be identified by a competent assessment performed by trained persons acting on behalf of the state. The assessment should be directed at applying the statutory restriction only to those offenders that present an actual risk in public areas to children with whom the offender has no prior relationship

Other measures that might be considered would include educational programs for young children aimed at keeping them safe from all offenders. Illinois has begun such a program.

The observations of Iowa prosecutors are not motivated by sympathy for those committing sex offenses against children, but by our concern that legislative proposals designed to protect children must be both effective and enforceable. Anything else lets our children down.

The Iowa County Attorneys Association strongly urges the General Assembly and the Governor to act promptly to address the problems created by the 2,000 foot residency restriction by replacing the restriction with measures that more effectively protect children, that reduce the unintended unfairness to innocent persons and that make more prudent use of law enforcement resources. The ICAA stands ready to assist in any way with this effort.

Session of 2006

HOUSE BILL No. 2554

By Representatives Colloton, Mays, Huntington and Wolf and Beamer, Goico, Hill, Horst, Hutchins, E. Johnson, Kelsey, Kiegerl, Light, Mast, McLeland, O'Malley, Oharah, Otto, Pottorff, Roth, Schwab, S. Sharp, Sloan and Yoder

12-21

AN ACT concerning criminal procedure; relating to the collection of DNA specimens; creating the DNA database fund; amending K.S.A. 2005 Supp. 21-2511 and repealing the existing section.

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

Section 1. K.S.A. 2005 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any felony; a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto when the victim is less than 18 years of age; a violation of K.S.A. 21-3507, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, and amendments thereto; including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood ~~and saliva *an oral sample*~~ or an oral or other biological sample authorized by the Kansas bureau of investigation to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such con-

Proposed amendment
Representative Pat Colloton
February 14, 2006

House Judiciary
Date 2-14-06
Attachment # 6

viction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide ~~specimens of blood and saliva~~ *an oral sample* shall be ordered by the court to have ~~specimens of blood and saliva~~ *an oral sample* collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide ~~specimens of blood and saliva~~ *an oral sample*, at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation. Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, ~~the specimens of blood and saliva~~ *an oral sample* will be obtained as soon as practical upon arrival at the correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, ~~the specimens of blood and saliva~~ *an oral sample* will be obtained as soon as practical upon arrival.

(d) Any person required by paragraph (a)(3) to provide ~~specimens of blood and saliva~~ *an oral sample* shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.

(e) (1) On and after ~~July 1, 2006~~ through June 30, 2008, any adult arrested or juvenile placed in custody for the commission or attempted commission of any person felony or drug severity level 1 or 2 felony shall be required to submit ~~an oral sample~~ at the same time such person is fingerprinted pursuant to the booking procedure.

(2) On and after July 1, 2008, except as provided further, any adult arrested or juvenile placed in custody for the commission or attempted commission of any felony shall be required to submit ~~an oral sample~~ at the same time such person is fingerprinted pursuant to the booking procedure. The provisions of this paragraph shall not apply to the violations of the felony provisions of K.S.A. 8-1567, and amendments thereto.

such specimen or

such specimen or

January 1, 2007

such specimen or sample

(3) Prior to taking such samples, the arresting or custodial law enforcement agency shall search the Kansas criminal history files through the Kansas criminal justice information system to determine if such person's sample is currently ~~in the database~~. In the event that it cannot reasonably be established that a DNA sample for such person is on file at the ~~bureau~~, the arresting or custodial law enforcement agency shall cause a sample to be collected. If such person's sample is ~~in the database~~, the law enforcement agency is not required to take the sample.

(4) ~~After a determination by the court that probable cause exists for the arrest or placement in custody, the samples shall be submitted to the Kansas bureau of investigation for placement in the DNA database. The court shall ensure, upon the person's first appearance, that the person has submitted such samples.~~

~~(e)~~ *(f)* The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood ~~and saliva oral~~ samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood ~~and collect saliva an oral sample~~, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau shall analyze the samples to the extent allowed by funding available for this purpose.

~~(f)~~ *(g)* The DNA (deoxyribonucleic acid) records and DNA samples shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated DNA databank and DNA database capable of, but not limited to, searching, matching and storing DNA records. The DNA database as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation shall participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

~~(g)~~ *(h)* The DNA records obtained pursuant to this act shall be confidential and shall be released only to authorized criminal justice agencies. *The DNA records shall be used only for law enforcement identification*

on file with the Kansas bureau of investigation

Kansas bureau of investigation

If a court later determines that there was not probable cause for the arrest or placement in custody, the court shall send a copy of such determination to the Kansas bureau of investigation. The Kansas bureau of investigation shall forthwith remove such specimen or sample from the Kansas bureau of investigation records.

(f) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of oral or other biological samples. No person authorized by this section to collect oral or other biological samples , and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to rules and regulations promulgated by the Kansas bureau of investigation. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau shall analyze the samples to the extent allowed by funding available for this purpose.

[re-letter the remaining sections accordingly]

purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.

~~(b)~~ *(i) (1)* The Kansas bureau of investigation shall be the state central repository for all DNA records and DNA samples obtained pursuant to this act. The Kansas bureau of investigation shall promulgate rules and regulations for: *(A)* The form and manner of the collection*, and* maintenance ~~and expungement~~ of DNA samples*;*

(B) a procedure which allows the defendant to request the DNA samples be expunged and destroyed in the event of a dismissal of charges or acquittal at trial; and

(C) other procedures for the operation of this act.

(2) These rules and regulations also shall require compliance with national quality assurance standards to ensure that the DNA records satisfy standards of acceptance of such records into the national DNA identification index.

(3) The provisions of the Kansas administrative procedure act shall apply to all actions taken under the rules and regulations so promulgated.

(j) The Kansas bureau of investigation is authorized to contract with third parties for the purposes of implementing this section. Any other party contracting to carry out the functions of this section shall be subject to the same restrictions and requirements of this section, insofar as applicable, as the bureau, as well as any additional restrictions imposed by the bureau.

(k) ~~*The detention, arrest or conviction of a person based upon a database match or database information is not invalidated if it is determined that the specimen was obtain or placed in the database by mistake or not removed from the database as required by law.*~~

~~*(l)*~~ *Any person who is subject to the requirements of this section, and who, after receiving notification of the requirement to provide a DNA specimen, knowingly refuses to provide such DNA specimen, shall be guilty of a* ~~*class A nonperson misdemeanor*~~*.* severity level 10, nonperson felony

New Sec. 2. (a) Any person required to submit a sample upon arrest or being taken into custody pursuant to section 1, and amendments thereto, upon conviction shall pay a separate court cost of $100 as a Kansas bureau of investigation DNA database fee.

(b) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

(c) Disbursements from the Kansas bureau of investigation DNA database fee deposited into the DNA database fee fund of the Kansas bureau of investigation shall be made for the following:

(1) Providing DNA laboratory services;

(2) the purchase and maintenance of equipment for use by the lab-

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oratory in performing DNA analysis; and

(3) education, training and scientific development of Kansas bureau of investigation personnel regarding DNA analysis.

(d) Expenditures from the DNA database fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.

(e) All fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the DNA database fund, which is hereby established in the state treasury.

(f) Fees received into this fund shall be supplemental to regular appropriations to the Kansas bureau of investigation.

Sec. 3. K.S.A. 2005 Supp. 21-2511 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.