

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 16, 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 2607 - amendments to the Kansas Uniform Trust Code

Representative Kinzer made the motion to adopt the balloon amendments provided by the Kansas Bankers Association, Trust Division. (Attachment 1) Representative Davis seconded the motion. The motion carried.

Representative Crow made the motion to reinsert "act in good faith" on page 3, line 13. Representative Loyd seconded the motion. The motion carried.

Representative Kinzer made the motion to amend section 13, dealing with "exculpatory term" by including a requirement that an attorney who represents a settlor, certify that they have reviewed the exculpatory clause and believe it to be reasonable. Representative Hutchins seconded the motion. The motion carried.

Representative Loyd made the motion to amend on page 11, lines 1 & 11 to include that the beneficiary can request an entire copy of the trust instrument. Representative Davis seconded the motion. The motion carried.

Representative Loyd made the motion to report HB 2607 favorably for passage, as amended. Representative Colloton seconded the motion. The motion carried.

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

Representative Colloton provided the committee with a balloon she handed out at the hearing with an additional amendment that would make the refusal to give a DNA sample a severity level 10, nonperson felony. (Attachment 2) She moved her balloon. Representative Kiegerl seconded the motion. Representative Owens requested the motion be divided.

Part A = adopt the balloon without refusal provisions being a felony, carried.
Part B = adopt the severity level 10, nonperson felony for test refusal

Committee discussion centered on whether a felony label would correctly identify the type of crime that was committed. Currently, it is not a crime for not submitting DNA. It was suggested that if the individual was charged with a felony, then the refusal would be a felony but if the individual was charged with a misdemeanor then the refusal would be a misdemeanor crime. Representative Colloton asked to withdraw Part B of the division. The second did not agree. The motion failed.

Representative Kinzer made the motion to amend the bill so if charges are dropped or the individual is acquitted their DNA would automatically be expunged from the DNA database. (Attachment 3) Representative Owens seconded the motion. The motion carried 9-7.

Representative Roth made the motion to include the taking of DNA samples for those who are arrested for DUI. Representative Watkins seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 16, 2006 in Room 313-S of the Capitol.

Representative Yoder made the motion to add "charging" to the statute to cover those who have not been arrested. Representative Kiegerl seconded the motion. The motion carried.

Representative Colloton made the motion to report **HB 2554** favorably for passage, as amended. Representative Kinzer seconded the motion. The motion carried.

HB 2576 - persistent sex offender life without possibility of parole

Representative Watkins provided the committee with a balloon which would require the court to inform the victim and victim's family of any proposed plea agreement and would provide the right for the victim and victim's family to be present at any hearing where a plea agreement is reviewed. (Attachment 4) Representative Masterson seconded the motion. The motion carried.

Representative Loyd made the motion to amend in the provisions of **HB 2760** dealing with Sex Offender Policy Board. Representative Watkins seconded the motion. (Attachment 5) Chairman O'Neal pointed out that the Criminal Justice Coordinating Council (CJCC) is basically made up of the same individuals and suggested that the committee might want to direct them to undertake the tasks. Representative Pauls pointed out that while there is compensation for the CJCC because they are state employees, there would be no compensation for the Sex Offender Policy Board. With permission of the second, Representative Loyd withdrew his motion.

Representative Kilpatrick provided the committee with a balloon that would prevent any juvenile who has been adjudicated for a sexual act from attending the same secondary school building as the victim. (Attachment 6) Committee discussion focused on schools in rural areas where some are already traveling great distances to get to their education and the constitution requires the state provide an education for each child.

Representative Yonally requested that the committee consider amending in the provisions of **HB 2935 - increasing the penalty of indecent solicitation of a child and aggravated indecent solicitation of a child in certain circumstances; mandatory sex offender.**

Chairman O'Neal announced that the committee would consider Representative Kilpatrick's & Yonally's request at the next meeting.

The committee meeting adjourned at 5:45 p.m. The next meeting was scheduled for 3:30 p.m. on February 20, 2006 in room 313-S.

HOUSE BILL No. 2607

By Committee on Judiciary

1-12

9 AN ACT concerning trusts; amending K.S.A. 58a-103, 58a-105, 58a-108,
10 58a-110, 58a-111, 58a-411, 58a-417, 58a-501, 58a-506, 58a-603, 58a-
11 802, 58a-813 and 58a-1008 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 58a-103 is hereby amended to read as follows: 58a-
15 103. As used in this code:

16 (1) "Action," with respect to an act of a trustee, includes a failure to
17 act.

18 (2) "Beneficiary" means a person that:

19 (A) Has a present or future beneficial interest in a trust, vested or
20 contingent; or

21 (B) in a capacity other than that of trustee, holds a power of appoint-
22 ment over trust property.

23 (3) "Charitable trust" means a trust, or portion of a trust, created for
24 a charitable purpose described in subsection (a) of K.S.A. 58a-405, and
25 amendments thereto.

26 (4) "Conservator" means a person appointed by the court pursuant
27 to K.S.A. 59-3001 *et seq.*, and amendments thereto, to administer the
28 estate of a minor or adult individual.

29 (5) "Environmental law" means a federal, state, or local law, rule,
30 regulation, or ordinance relating to protection of the environment.

31 (6) "Guardian" means a person appointed by the court pursuant to
32 K.S.A. 59-3001 *et seq.*, and amendments thereto, to make decisions re-
33 garding the support, care, education, health, and welfare of a minor or
34 adult individual. The term does not include a guardian ad litem.

35 (7) "Interests of the beneficiaries" means the beneficial interests pro-
36 vided in the terms of the trust.

37 (8) "Jurisdiction," with respect to a geographic area, includes a state
38 or country.

39 (9) "Person" means an individual, corporation, business trust, estate,
40 trust, partnership, limited liability company, association, joint venture,
41 government; governmental subdivision, agency, or instrumentality; public
42 corporation, or any other legal or commercial entity.

43 (10) "Power of withdrawal" means a presently exercisable general

House Judiciary

Date 2-16-06

Attachment # 1

1 power of appointment other than a power:

2 (A) Exercisable by a trustee and limited by an ascertainable standard
3 relating to an individuals health, education, support or maintenance
4 within the meaning of section 2041(b)(1)(A) or 2514 (c)(1) of the Internal
5 Revenue Code of 1986, as in effect on July 1, 2006; or

6 (B) exercisable by another person only upon consent of the trustee
7 or a person holding an adverse interest.

8 (11) "Property" means anything that may be the subject of owner-
9 ship, whether real or personal, legal or equitable, or any interest therein.

10 (12) (A) "Qualified beneficiary" means a beneficiary who, ~~on the~~
11 ~~date of the beneficiary's qualification is determined to be either:~~

12 ~~—(A)—A distributee of trust income or principal, or~~

13 ~~—(B)—a distributee of trust income or principal if the trust terminated~~
14 ~~on that date as of the date in question, either is entitled to receive distri-~~
15 ~~butions of trust income or principal, or would be so entitled, if the trust~~
16 ~~terminated on that date.~~

"eligible"

"mandatory or discretionary"

"eligible"

17 (B) For the purpose of trustee determining "qualified beneficiaries"
18 of a trust in which a beneficial interest is subject to a power of appoint-
19 ment of any nature, the trustee may conclusively presume such power of
20 appointment has not been exercised unless the trustee has been furnished
21 by the powerholder or the legal representative of the powerholder or the
22 powerholder's estate with the original or a copy of an instrument validly
23 exercising such power of appointment, in which event the qualified ben-
24 eficiaries shall be subsequently determined by giving due consideration
25 to such exercise unless and until the trustee has been given notification in
26 a similar manner of an instrument which validly revokes or modifies such
27 exercise.

COMMENT

The change clarifies that beneficiaries of either mandatory or discretionary distributions would be "qualified beneficiaries". The word "eligible" is less susceptible to misinterpretation.

28 (13) "Revocable," as applied to a trust, means revocable by the settlor
29 without the consent of the trustee or a person holding an adverse interest.

30 (14) "Settlor" means a person, including a testator, who creates, or
31 contributes property to, a trust. If more than one person creates or con-
32 tributes property to a trust, each person is a settlor of the portion of the
33 trust property attributable to that person's contribution except to the ex-
34 tent another person has the power to revoke or withdraw that portion.

35 (15) "Spendthrift provision" means a term of a trust which restrains
36 either voluntary or involuntary transfer of a beneficiary's interest.

37 (16) "State" means a state of the United States, the District of Co-
38 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or
39 insular possession subject to the jurisdiction of the United States. The
40 term includes an Indian tribe or band recognized by federal law or for-
41 mally acknowledged by a state.

42 (17) "Terms of a trust" means the manifestation of the settlor's intent
43 regarding a trust's provisions as expressed in the trust instrument or as

1 may be established by other evidence that would be admissible in a ju-
2 dicial proceeding.

3 (18) "Trust instrument" means an instrument executed by the settlor
4 that contains terms of the trust, including any amendments thereto.

5 (19) "Trustee" includes an original, additional, and successor trustee,
6 and a cotrustee.

7 Sec. 2. K.S.A. 58a-105 is hereby amended to read as follows: 58a-
8 105. (a) Except as otherwise provided in the terms of the trust, this code
9 governs the duties and powers of a trustee, relations among trustees and
10 the rights and interests of a beneficiary.

11 (b) The terms of a trust prevail over any provision of this code except:

12 (1) The requirements for creating a trust;

13 (2) the duty of a trustee to ~~act in good faith and~~ *administer the trust*
14 in accordance with the purposes of the trust K.S.A. 58a-801, and amend-
15 ments thereto;

16 (3) the requirement that a trust and its terms be for the benefit of its
17 beneficiaries, and that the trust have a purpose that is lawful, not contrary
18 to public policy and possible to achieve;

19 (4) the power of the court to modify or terminate a trust under K.S.A.
20 58a-410 through 58a-416, and amendments thereto;

21 (5) the effect of the rights of creditors to reach a trust as provided in
22 article 5 of chapter 58a of the Kansas Statutes Annotated, and amend-
23 ments thereto;

24 (6) the power of the court under K.S.A. 58a-702, and amendments
25 thereto, to require, dispense with, or modify or terminate a bond;

26 (7) the power of the court under subsection (b) of K.S.A. 58a-708,
27 and amendments thereto, to adjust a trustee's compensation specified in
28 the terms of the trust which is unreasonably low or high;

29 (8) the effect of an exculpatory term under K.S.A. 58a-1008, and
30 amendments thereto;

31 (9) the rights under K.S.A. 58a-1010 through 58a-1013, and amend-
32 ments thereto, of a person other than a trustee or beneficiary;

33 (10) periods of limitation for commencing a judicial proceeding un-
34 der K.S.A. 58a-604, and amendments thereto;

35 (11) the power of the court to take such action and exercise such
36 jurisdiction as may be necessary in the interests of justice; and

37 (12) the barring of claims against trusts and trustees under K.S.A.
38 58a-818, and amendments thereto.

39 (c) Notwithstanding any provisions of the Kansas uniform trust code
40 to the contrary, any trust created by will and admitted to probate shall be
41 subject to the requirements of chapter 59 of the Kansas Statutes
42 Annotated.

43 Sec. 3. K.S.A. 58a-108 is hereby amended to read as follows: 58a-

1 108. (a) Without precluding other means for establishing a sufficient con-
2 nection with the designated jurisdiction, terms of a trust designating the
3 principal place of administration are valid and controlling if:

4 (1) A trustee's principal place of business is located in or a trustee is
5 a resident of the designated jurisdiction; or

6 (2) all or part of the administration occurs in the designated
7 jurisdiction.

8 (b) A trustee is under a ~~continuing~~ duty to administer the trust at a
9 place appropriate to its purposes, its administration, and the interests of
10 the beneficiaries. *In determining the appropriate place for the adminis-*
11 *tration of the trust, consideration shall be given to the designation of the*
12 *settlor, the purposes of the trust, the interests of the beneficiaries and the*
13 *manner and costs of trust administration.*

14 (c) Without precluding the right of the court to order, approve, or
15 disapprove a transfer, the trustee, in furtherance of the duty prescribed
16 by subsection (b), may transfer the trust's principal place of administration
17 to another state or to a jurisdiction outside of the United States.

18 (d) The trustee shall notify the qualified beneficiaries of a proposed
19 transfer of a trust's principal place of administration not less than 60 days
20 before initiating the transfer. The notice of proposed transfer must
21 include:

22 (1) The name of the jurisdiction to which the principal place of ad-
23 ministration is to be transferred;

24 (2) the address and telephone number at the new location at which
25 the trustee can be contacted;

26 (3) an explanation of the reasons for the proposed transfer;

27 (4) the date on which the proposed transfer is anticipated to occur;
28 and

29 (5) the date, not less than 60 days after the giving of the notice, by
30 which the qualified beneficiary must notify the trustee of an objection to
31 the proposed transfer.

32 (e) The authority of a trustee under this section to transfer a trust's
33 principal place of administration terminates if a qualified beneficiary no-
34 tifies the trustee of an objection to the proposed transfer on or before
35 the date specified in the notice.

36 (f) In connection with a transfer of the trust's principal place of ad-
37 ministration, the trustee may transfer some or all of the trust property to
38 a successor trustee designated in the terms of the trust or appointed
39 pursuant to K.S.A. 58a-704, and amendments thereto.

40 Sec. 4. K.S.A. 58a-110 is hereby amended to read as follows: 58a-
41 110. (a) A charitable organization expressly mandated to receive distri-
42 butions under the terms of a trust ~~or has the rights of a qualified bene-~~
43 *fiary under this code, if the charitable organization, on the date the*

1 *charitable organization's qualification is being determined:*

2 (1) *Is a distributee of trust income or principal;*

3 (2) *would be a distributee of trust income or principal upon the ter-*
4 *mination of the interests of other distributees then receiving or eligible to*
5 *receive distributions; or*

6 (3) *would be a distributee of trust income or principal if the trust*
7 *terminated on that date.*

8 (b) A person appointed to enforce a trust created for the care of an
9 animal or another noncharitable purpose as provided in K.S.A. 58a-408
10 or 58a-409, and amendments thereto, has the rights of a qualified bene-
11 ficiary under this code.

12 (b) (c) The attorney general of this state has the rights of a qualified
13 beneficiary with respect to a charitable trust having its principal place of
14 administration in this state.

15 Sec. 5. K.S.A. 58a-111 is hereby amended to read as follows: 58a-
16 111. (a) For purposes of this section, "interested persons" means persons
17 whose consent would be required in order to achieve a binding settlement
18 were the settlement to be approved by the court.

19 (b) Except as otherwise provided in subsection (c), interested persons
20 may enter into a binding nonjudicial settlement agreement with respect
21 to ~~any matter involving a trust~~ *the matters listed in subsection (d).*

22 (c) A nonjudicial settlement agreement is valid only to the extent it
23 does not violate a material purpose of the trust and includes terms and
24 conditions that could be properly approved by the court under this code
25 or other applicable law.

26 (d) Matters that may be resolved by a nonjudicial settlement agree-
27 ment are limited to:

28 (1) The approval of a trustee's report or accounting;

29 (2) the resignation or appointment of a trustee and the determination
30 of a trustee's compensation;

31 (3) transfer of a trust's principal place of administration; and

32 (4) liability of a trustee for an action relating to the trust.

33 (e) Any interested person may request the court to approve a non-
34 judicial settlement agreement, to determine whether the representation
35 as provided in article 3 of this code was adequate, and to determine
36 whether the agreement contains terms and conditions the court could
37 have properly approved.

38 Sec. 6. K.S.A. 58a-411 is hereby amended to read as follows: 58a-
39 411. (a) A noncharitable irrevocable trust may be modified or terminated
40 upon consent of the settlor and all qualified beneficiaries, even if the
41 modification or termination is inconsistent with a material purpose of the
42 trust. A settlor's power to consent to a trust's modification or termination
43 may be exercised by an attorney in fact under a power of attorney only

1 to the extent expressly authorized by the power of attorney or the terms
2 of the trust; by the settlor's conservator with the approval of the court
3 supervising the conservatorship if an agent is not so authorized; or by the
4 settlor's guardian with the approval of the court supervising the guardi-
5 anship if an agent is not so authorized and a conservator has not been
6 appointed. *This subsection does not apply to irrevocable trusts created*
7 *before, or to revocable trusts that became irrevocable before, January 1,*
8 *2003.*

9 (b) A noncharitable irrevocable trust may be terminated upon con-
10 sent of all of the qualified beneficiaries if the court concludes that con-
11 tinuance of the trust is not necessary to achieve any material purpose of
12 the trust. A noncharitable irrevocable trust may be modified upon consent
13 of all of the qualified beneficiaries if the court concludes that modification
14 is not inconsistent with a material purpose of the trust.

15 (c) A spendthrift provision in the terms of the trust is presumed to
16 constitute a material purpose of the trust.

17 (d) Upon termination of a trust under subsection (a) or (b), the trustee
18 shall distribute the trust property as agreed by the qualified
19 beneficiaries.

20 (e) If not all of the qualified beneficiaries consent to a proposed mod-
21 ification or termination of the trust under subsection (a) or (b), the mod-
22 ification or termination may be approved by the court if the court is
23 satisfied that:

24 (1) If all of the qualified beneficiaries had consented, the trust could
25 have been modified or terminated under this section; and

26 (2) the interests of a qualified beneficiary who does not consent will
27 be adequately protected.

28 Sec. 7. K.S.A. 58a-417 is hereby amended to read as follows: 58a-
29 417. (a) After notice to the qualified beneficiaries, a trustee may combine
30 two or more trusts into a single trust or divide a trust into two or more
31 separate trusts, if the result does not impair rights of any beneficiary or
32 adversely affect achievement of the purposes of the trust. *The terms of*
33 *each new trust created by a division under this section do not have to be*
34 *identical if the interest of each beneficiary is substantially the same under*
35 *the terms of the trust prior to its division and the combined terms of all*
36 *trusts after the division. Two or more trusts may be combined into a single*
37 *trust if the interests of each beneficiary in the trust resulting from the*
38 *combination are substantially the same as the combined interests of the*
39 *beneficiary in the trusts prior to the combination. The trustee shall de-*
40 *termine the terms controlling any trust after its combination as authorized*
41 *by this section. The trustee may make a division under this section by:*

42 (1) Giving written notice of the division, not later than the 30th day
43 before the date of a division under this subsection, to each qualified ben-

1 eficiary; and

2 (2) executing a written instrument, acknowledged before a notary
3 public or other person authorized to take acknowledgments of convey-
4 ances of real estate stating that the trust has been divided pursuant to
5 this section and that the notice requirements of this subsection have been
6 satisfied.

7 (b) A trustee, in the written instrument dividing a trust, shall allocate
8 trust property among the separate trusts on a fractional basis by identi-
9 fying the assets and liabilities passing to each separate trust, or on any
10 other reasonable basis. The trustee shall allocate undesignated trust prop-
11 erty received after the trustee has divided the trust into separate trusts
12 in the manner provided by the written instrument dividing the trust, or,
13 in the absence of a provision in the written instrument, in a manner
14 determined by the trustee.

15 (c) The trustee may combine two or more trusts under this section
16 by:

17 (1) Giving a written notice of the combination, not later than the 30th
18 day before the effective date of the combination, to each qualified ben-
19 eficiary; and

20 (2) executing a written instrument, acknowledged before a notary
21 public or other person authorized to take acknowledgments of convey-
22 ances of real estate stating that the trust has been combined pursuant to
23 this section and that the notice requirements of this subsection have been
24 satisfied.

25 (d) The trustee may divide or combine a testamentary trust after the
26 will establishing the trust has been admitted to probate, even if the trust
27 will not be funded until a later date. The trustee may divide or combine
28 any other trust before it is funded if the instrument establishing the trust
29 is not revocable at the time of the division or combination.

30 Sec. 8. K.S.A. 58a-501 is hereby amended to read as follows: 58a-
31 501. To the extent a beneficiary's interest is not ~~protected by~~ *subject to*
32 a spendthrift provision, the court may authorize a creditor or assignee of
33 the beneficiary to reach the beneficiary's interest by attachment of pres-
34 ent or future distributions to or for the benefit of the beneficiary or other
35 means. The court may limit the award to such relief as is appropriate
36 under the circumstances.

37 Sec. 9. K.S.A. 58a-506 is hereby amended to read as follows: 58a-
38 506. (a) *As used in this section, "mandatory distribution" means a distri-*
39 *bution of income or principal which the trustee is required to make to a*
40 *beneficiary under the terms of the trust, including a distribution upon*
41 *termination of the trust. The term excludes a distribution subject to the*
42 *exercise of the trustee's discretion whether or not the terms of the trust:*
43 (1) *Include a support or other standard to guide the trustee in making*

1 *distribution decisions; or (2) provide that the trustee "may" or "shall"*
2 *make discretionary distributions, including distributions pursuant to a*
3 *support or other standard.*

4 (b) Whether or not a trust contains a spendthrift provision, a creditor
5 or assignee of a beneficiary may reach a mandatory distribution of income
6 or principal, including a distribution upon termination of the trust, if the
7 trustee has not made the distribution to the beneficiary within a reason-
8 able time after the mandated distribution date.

9 Sec. 10. K.S.A. 58a-603 is hereby amended to read as follows: 58a-
10 603. (a) While a trust is revocable ~~and the settlor has capacity to revoke~~
11 ~~the trust, rights of the beneficiaries are subject to the control of, and, the~~
12 duties of the trustee are owed exclusively to; the settlor.

13 (b) During the period ~~the a power of withdrawal~~ may be exercised,
14 the holder of ~~a the power of withdrawal~~ has the rights of a settlor of a
15 revocable trust under this section to the extent of the property subject to
16 the power.

17 (c) (1) *If a settlor of a revocable trust is or becomes an incapacitated*
18 *person, on petition of the settlor's legal representative, an adult member*
19 *of the settlor's family or any interested person, including a person inter-*
20 *ested in the welfare of the settlor, for good cause shown, the court may:*
21 *Order the trustee to exercise or refrain from exercising the trustee's au-*
22 *thority in a manner inconsistent with the trustee's fiduciary responsibil-*
23 *ities under the provisions of the trust; remove the trustee; require the*
24 *trustee to account; and issue such other orders as the court finds will be*
25 *in the best interests of the settlor.*

26 (2) (A) *The court may require any person petitioning for any such*
27 *order to file a bond in such amount and with such sureties as required*
28 *by the court to indemnify either the trustee or the trust estate for the*
29 *expenses, including attorney fees, incurred with respect to such*
30 *proceeding.*

31 (B) *None of the actions described in this section shall be taken by the*
32 *court until after hearing upon reasonable notice to the trustee, the settlor,*
33 *and any legal representative of the settlor, such as a conservator or at-*
34 *torney-in-fact under a durable power of attorney authorizing the attor-*
35 *ney-in-fact to act on the behalf of the settlor in such matters.*

36 (C) *If there is no legal representative of the settlor, the court shall*
37 *appoint a guardian ad litem to represent the settlor in such proceeding.*

38 (D) *In the event of an emergency as determined by the court, the*
39 *court, without notice, may enter such temporary order as seems proper*
40 *to the court, but no such temporary order shall be effective for more than*
41 *30 days unless extended by the court after hearing on reasonable notice*
42 *to the persons identified as herein provided.*

43 Sec. 11. K.S.A. 58a-802 is hereby amended to read as follows: 58a-

1 802. (a) A trustee shall administer the trust consistent with the terms of
2 the trust and solely in the interests of the beneficiaries.

3 (b) Subject to the rights of persons dealing with or assisting the trust-
4 tee as provided in K.S.A. 58a-1012, and amendments thereto, a sale, en-
5 cumbrance, or other transaction involving the investment or management
6 of trust property entered into by the trustee for the trustee's own personal
7 account or which is otherwise affected by a conflict between the trustee's
8 fiduciary and personal interests is voidable by a beneficiary affected by
9 the transaction unless:

10 (1) The transaction was authorized by the terms of the trust;

11 (2) the transaction was approved by the court;

12 (3) the beneficiary did not commence a judicial proceeding within
13 the time allowed by K.S.A. 58a-1005, and amendments thereto;

14 (4) the beneficiary consented to the trustee's conduct, ratified the
15 transaction, or released the trustee in compliance with K.S.A. 58a-1009,
16 and amendments thereto; or

17 (5) the transaction involves a contract entered into or claim acquired
18 by the trustee before the person became or contemplated becoming
19 trustee.

20 (c) A sale, encumbrance, or other transaction involving the invest-
21 ment or management of trust property is presumed to be affected by a
22 conflict between personal and fiduciary interests if it is entered into by
23 the trustee with:

24 (1) The trustee's spouse;

25 (2) the trustee's descendants, siblings, parents, or their spouses;

26 (3) an agent or attorney of the trustee; or

27 (4) a corporation or other person or enterprise in which the trustee,
28 or a person that owns a significant interest in the trustee, has an interest
29 that might affect the trustee's best judgment.

30 (d) A transaction between a trustee and a beneficiary that does not
31 concern trust property but that occurs during the existence of the trust
32 or while the trustee retains significant influence over the beneficiary and
33 from which the trustee obtains an advantage is voidable by the beneficiary
34 unless the trustee establishes that the transaction was fair to the
35 beneficiary.

36 (e) A transaction not concerning trust property in which the trustee
37 engages in the trustee's individual capacity involves a conflict between
38 personal and fiduciary interests if the transaction concerns an opportunity
39 properly belonging to the trust.

40 (f) An investment by a trustee in securities of an investment company
41 or investment trust to which the trustee, or its affiliate, provides services
42 in a capacity other than as trustee is not presumed to be affected by a
43 conflict between personal and fiduciary interests if the investment *oth-*

1 *erwise* complies with the prudent investor rule of article 9 of this code.
 2 In addition to its compensation for acting as trustee, the trustee may be
 3 compensated by the investment company or investment trust for provid-
 4 ing those services out of fees charged to the trust. If the trustee receives
 5 compensation from the investment company or investment trust for provid-
 6 ing investment advisory or investment management services, the trustee
 7 must at least annually notify the persons entitled to receive a copy of
 8 the trustee's annual report, under K.S.A. 58a-813, and amendments
 9 thereto, of the rate, formula or method by which that compensation was
 10 determined.

" , or its affiliate, "

" , or its affiliate, "

"shall"

11 (g) In voting shares of stock or in exercising powers of control over
 12 similar interests in other forms of enterprise, the trustee shall act in the
 13 best interests of the beneficiaries and consistent with the terms of the
 14 trust. If the trust is the sole owner of a corporation or other form of
 15 enterprise, the trustee shall elect or appoint directors or other managers
 16 who will manage the corporation or enterprise in the best interests of the
 17 beneficiaries.

COMMENT

The insertion of the phrase "or its affiliate" makes the language consistent with language at page 9, line 41 of this subsection. Replacement of the word "must" with "shall" is consistent with the Revisor's efforts to use the term "shall".

18 (h) This section does not preclude the following transactions, if fair
 19 to the beneficiaries:

20 (1) An agreement between a trustee and a beneficiary relating to the
 21 appointment or compensation of the trustee;

22 (2) payment of reasonable compensation to the trustee;

23 (3) a transaction between a trust and another trust, decedent's estate,
 24 or conservatorship of which the trustee is a fiduciary or in which a ben-
 25 eficiary has an interest;

26 (4) a deposit of trust money in a regulated financial-service institution
 27 operated by the trustee; or

28 (5) an advance by the trustee of money for the protection of the trust.

29 (i) The court may appoint a special fiduciary to make a decision with
 30 respect to any proposed transaction that might violate this section if en-
 31 tered into by the trustee.

"As provided in this section, a"

32 Sec. 12. K.S.A. 58a-813 is hereby amended to read as follows: 58a-

COMMENT

This reference clarifies that by following the provisions of Section 813, a trustee will be deemed to have kept the beneficiary "reasonably informed about the administration of the trust." The Bankers were concerned that a beneficiary may claim that despite following the statute, the trustee still did not "reasonably inform" him or her and that the trustee should undertake further measures to satisfy the beneficiary.

33 813. (a) ~~A trustee shall keep the qualified beneficiaries and permissible~~
 34 ~~current distributees of the trust income or principal~~ reasonably informed
 35 about the administration of the trust and of the material facts necessary
 36 for them to protect their interests. Unless unreasonable under the cir-
 37 cumstances, a trustee shall promptly respond to a qualified beneficiary's
 38 ~~and a permissible current distributee's~~ request for information related to
 39 the administration of the trust.

40 (b) *Except as otherwise provided under the terms of the trust*, a trust-
 41 ee shall:

42 (1) Upon request of a qualified beneficiary ~~or a permissible current~~
 43 ~~distributee, shall~~, promptly furnish to the qualified beneficiary ~~or per-~~

1 ~~missible current distributee~~ a copy of the *portions of the* trust instrument
 2 *relating to the interest of the qualified beneficiary;*
 3 (2) within 60 days after accepting a trusteeship, shall notify the qual-
 4 ified beneficiaries ~~and permissible current distributees~~ of the acceptance
 5 and of the trustee's name, address, and telephone number;
 6 (3) within 60 days after the date the trustee acquires knowledge of
 7 the creation of an irrevocable trust, or the date the trustee acquires knowl-
 8 edge that a formerly revocable trust has become irrevocable, whether by
 9 the death of the settlor or otherwise, shall notify the qualified benefici-
 10 aries ~~and permissible current distributees~~ of the trust's existence, of the
 11 identity of the settlor or settlors, of the right to request a copy of the trust
 12 instrument and of the right to a trustee's report as provided in subsection
 13 (c); ~~and~~
 14 (4) shall notify the qualified beneficiaries ~~and permissible current dis-~~
 15 ~~tributees~~ in advance of any change in the method or rate of the trustee's
 16 compensation; *and*
 17 (5) *At least annually, send a trust report for the trust's most recent*
 18 *fiscal year to each qualified beneficiary who actually received a distri-*
 19 *bution during such fiscal year. The trustee shall also send a trust report*
 20 *to any additional qualified beneficiary who would have been entitled to*
 21 *receive a distribution during the fiscal year and who requests a copy of*
 22 *the trust report. The trust report shall include a list of the trust assets,*
 23 *and, if feasible, their market values; liabilities, receipts and disbursements;*
 24 *the source and amount of the trustee's compensation; and if requested,*
 25 *the trust's investment rate of return and whether the rate complies with*
 26 *standards established by the association of investment management and*
 27 *research (AIMR). Upon a vacancy in a trusteeship, unless a cotrustee*
 28 *remains in office, a trust report must be sent to the qualified beneficiaries*
 29 *by the former trustee. A personal representative, conservator, or guardian*
 30 *may send the qualified beneficiaries a trust report on behalf of a deceased*
 31 *or incapacitated trustee.*
 32 (c) ~~A trustee shall send to the distributees or permissible current~~
 33 ~~distributees of trust income or principal, and to other qualified benefi-~~
 34 ~~ciaries who request it, at least annually and at the termination of the trust,~~
 35 ~~a report of the trust property including liabilities, receipts and disburse-~~
 36 ~~ments, including the source and amount of the trustee's compensation, a~~
 37 ~~listing of the trust assets and, if feasible, their respective market values,~~
 38 ~~and if requested, the trust's association of investment management and~~
 39 ~~research compliant rate of return. Upon a vacancy in a trusteeship, unless~~
 40 ~~a cotrustee remains in office, a report must be sent to the qualified ben-~~
 41 ~~eficiaries by the former trustee. A personal representative, conservator,~~
 42 ~~or guardian may send the qualified beneficiaries and permissible current~~
 43 ~~distributees a report on behalf of a deceased or incapacitated trustee.~~

"relevant portions of "

COMMENT

This change makes the language consistent with language at lines 1 and 2 of this page.

"except a beneficiary who received a specific bequest"

"eligible"

"method for calculating the"

COMMENT

This change in line 19 prevents a beneficiary who received a distribution of a specific bequest from having access to information in the trust report that does not relate to his or her interest in the trust.

The word "eligible" is less susceptible to misinterpretation.

"Rates" don't comply with AMIR Standards, the standards relate to the methodology for calculating the rate.

1 —(d) A qualified beneficiary ~~or permissible current distributee~~ may
2 waive the right to a trustee's report or other information otherwise re-
3 quired to be furnished under this section. A qualified beneficiary ~~or per-~~
4 ~~missible current distributee~~, with respect to future reports and other in-
5 formation, may withdraw a waiver previously given.

6 (e) (d) The provisions of this section are inapplicable to ~~persons qual-~~
7 ~~ified beneficiaries~~ other than a surviving spouse so long as ~~a the~~ surviving
8 spouse is ~~or may be entitled to receive income or principal distributions~~
9 ~~from a qualified beneficiary of the trust~~, or holds any power of appoint-
10 ment ~~therein over the entire trust estate~~, and where ~~any or all other~~ qual-
11 ified beneficiaries are the issue of the surviving spouse.

12 (f) ~~As used in this section "permissible current distributee" means a~~
13 ~~person presently entitled to receive, subject to the discretion of the trust-~~
14 ~~ee, income or principal.~~

15 (e) *At the termination of a trust, the trustee shall send a trust report*
16 *to each qualified beneficiary who ~~will be~~ entitled to receive a distribution*
17 *from the trust. Such trust report shall include the information required*
18 *by subsection (b)(5), except information relating to receipts and disburse-*
19 *ments need only be prepared for the period from the date of the event*
20 *that caused the termination of the trust.*

"is"

", except a beneficiary who received a specific bequest"

COMMENT

These changes prevent a beneficiary who is entitled to receive a distribution of a specific bequest from having access to information in the trust report that does not relate to his or her interest in the trust.

21 Sec. 13. K.S.A. 58a-1008 is hereby amended to read as follows: 58a-
22 1008. (a) A term of a trust relieving a trustee of liability for breach of
23 trust is unenforceable to the extent that it:

24 (1) Relieves the trustee of liability for breach of trust committed in
25 bad faith or with reckless indifference to the purposes of the trust or the
26 interests of the beneficiaries; or

27 (2) was inserted as the result of an abuse by the trustee of a fiduciary
28 or confidential relationship to the settlor.

29 (b) ~~Unless the settlor was represented by an attorney not employed~~
30 ~~by the trustee with respect to the trust containing the exculpatory term,~~
31 ~~an~~ exculpatory term drafted or caused to be drafted by the trustee is

"An"

32 invalid as an abuse of a fiduciary or confidential relationship unless the:

33 (1) Trustee proves that the exculpatory term is fair under the circum-
34 stances and that its existence and contents were adequately communi-
35 cated to the settlor; or

36 (2) *the settlor was represented by an attorney not employed by the*
37 *trustee with respect to the trust.*

COMMENT

The stricken language in lines 29 and 30 is redundant when read in conjunction with new subsection (2).

38 Sec. 14. K.S.A. 58a-103, 58a-105, 58a-108, 58a-110, 58a-111, 58a-
39 411, 58a-417, 58a-501, 58a-506, 58a-603, 58a-802, 58a-813 and 58a-1008
40 are hereby repealed.

41 Sec. 15. This act shall take effect and be in force from and after its
42 publication in the statute book.

HOUSE BILL No. 2554

Proposed amendment
Representative Pat Colloton
February 14, 2006

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

12 AN ACT concerning criminal procedure; relating to the collection of
13 DNA specimens; creating the DNA database fund; amending K.S.A.
14 2005 Supp. 21-2511 and repealing the existing section.

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

17 Section 1. K.S.A. 2005 Supp. 21-2511 is hereby amended to read as
18 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as
19 a juvenile offender because of the commission of any felony; a violation
20 of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a
21 violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amend-
22 ments thereto when the victim is less than 18 years of age; a violation of
23 K.S.A. 21-3507, and amendments thereto, when one of the parties in-
24 volved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A.
25 21-3513, and amendments thereto, when one of the parties involved is
26 less than 18 years of age; a violation of K.S.A. 21-3515, and amendments
27 thereto, when one of the parties involved is less than 18 years of age; or
28 a violation of K.S.A. 21-3517, and amendments thereto; including an at-
29 tempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301,
30 21-3302 or 21-3303 and amendments thereto, of any such offenses pro-
31 vided in this subsection regardless of the sentence imposed, shall be re-
32 quired to submit specimens of blood ~~and saliva or oral sample~~ to the
33 Kansas bureau of investigation in accordance with the provisions of this
34 act, if such person is:

35 (1) Convicted as an adult or adjudicated as a juvenile offender be-
36 cause of the commission of a crime specified in subsection (a) on or after
37 the effective date of this act;

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

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

or an oral or other biological sample authorized by the Kansas bureau of
investigation

House Judiciary
Date 2-16-06
Attachment # 2

1 viction or adjudication in any state correctional facility or county jail or is
2 presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or
3 38-1663, and amendments thereto.

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

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

such specimen or

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

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

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

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

January 1, 2007

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

such specimen or sample

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

1 (3) Prior to taking such samples, the arresting or custodial law en-
 2 forcement agency shall search the Kansas criminal history files through
 3 the Kansas criminal justice information system to determine if such per-
 4 son's sample is currently ~~in the database~~. In the event that it cannot rea-
 5 sonably be established that a DNA sample for such person is on file at the
 6 ~~bureau~~, the arresting or custodial law enforcement agency shall cause a
 7 sample to be collected. If such person's sample is ~~in the database~~, the law
 8 enforcement agency is not required to take the sample.

on file with the Kansas bureau of investigation
 Kansas bureau of investigation

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

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

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.

31 ~~(g)~~ (g) The DNA (deoxyribonucleic acid) records and DNA samples
 32 shall be maintained by the Kansas bureau of investigation. The Kansas
 33 bureau of investigation shall establish, implement and maintain a state-
 34 wide automated DNA databank and DNA database capable of, but not
 35 limited to, searching, matching and storing DNA records. The DNA da-
 36 tabase as established by this act shall be compatible with the procedures
 37 specified by the federal bureau of investigation's combined DNA index
 38 system (CODIS). The Kansas bureau of investigation shall participate in
 39 the CODIS program by sharing data and utilizing compatible test pro-
 40 cedures, laboratory equipment, supplies and computer software.

[re-letter the remaining sections accordingly]

41 ~~(h)~~ (h) The DNA records obtained pursuant to this act shall be con-
 42 fidential and shall be released only to authorized criminal justice agencies.
 43 The DNA records shall be used only for law enforcement identification

1 purposes or to assist in the recovery or identification of human remains
 2 from disasters or for other humanitarian identification purposes, includ-
 3 ing identification of missing persons.

4 ~~(h)~~ (i) (1) The Kansas bureau of investigation shall be the state cen-
 5 tral repository for all DNA records and DNA samples obtained pursuant
 6 to this act. The Kansas bureau of investigation shall promulgate rules and
 7 regulations for: (A) The form and manner of the collection, and mainte-
 8 nance and expungement of DNA samples;

9 (B) a procedure which allows the defendant to request the DNA sam-
 10 ples be expunged and destroyed in the event of a dismissal of charges or
 11 acquittal at trial; and

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

13 (2) These rules and regulations also shall require compliance with
 14 national quality assurance standards to ensure that the DNA records sat-
 15 isfy standards of acceptance of such records into the national DNA iden-
 16 tification index.

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

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

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

29 ~~(l) Any person who is subject to the requirements of this section, and~~
 30 ~~who, after receiving notification of the requirement to provide a DNA~~
 31 ~~specimen, knowingly refuses to provide such DNA specimen, shall be~~
 32 ~~guilty of a [Class A nonperson misdemeanor].~~

severity level 10, nonperson felony

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

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

39 (c) Disbursements from the Kansas bureau of investigation DNA da-
 40 tabase fee deposited into the DNA database fee fund of the Kansas bu-
 41 reau of investigation shall be made for the following:

42 (1) Providing DNA laboratory services;

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

1 oratory in performing DNA analysis; and
2 (3) education, training and scientific development of Kansas bureau
3 of investigation personnel regarding DNA analysis.
4 (d) Expenditures from the DNA database fund shall be made upon
5 warrants of the director of accounts and reports issued pursuant to vouch-
6 ers approved by the attorney general or by a person or persons designated
7 by the attorney general.
8 (e) All fees shall be remitted to the state treasurer in accordance with
9 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
10 of each such remittance, the state treasurer shall deposit the entire
11 amount in the state treasury to the credit of the DNA database fund,
12 which is hereby established in the state treasury.
13 (f) Fees received into this fund shall be supplemental to regular ap-
14 propriations to the Kansas bureau of investigation.
15 Sec. 3. K.S.A. 2005 Supp. 21-2511 is hereby repealed.
16 Sec. 4. This act shall take effect and be in force from and after its
publication in the statute book.

HOUSE BILL No. 2554

Proposed amendme
Representative Kin
February 15, 2006

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

12 AN ACT concerning criminal procedure; relating to the collection of
13 DNA specimens; creating the DNA database fund; amending K.S.A.
14 2005 Supp. 21-2511 and repealing the existing section.
15

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

17 Section 1. K.S.A. 2005 Supp. 21-2511 is hereby amended to read as
18 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as
19 a juvenile offender because of the commission of any felony; a violation
20 of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a
21 violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amend-
22 ments thereto when the victim is less than 18 years of age; a violation of
23 K.S.A. 21-3507, and amendments thereto, when one of the parties in-
24 volved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A.
25 21-3513, and amendments thereto, when one of the parties involved is
26 less than 18 years of age; a violation of K.S.A. 21-3515, and amendments
27 thereto, when one of the parties involved is less than 18 years of age; or
28 a violation of K.S.A. 21-3517, and amendments thereto; including an at-
29 tempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301,
30 21-3302 or 21-3303 and amendments thereto, of any such offenses pro-
31 vided in this subsection regardless of the sentence imposed, shall be re-
32 quired to submit specimens of blood and ~~saliva~~ *an oral sample* to the
33 Kansas bureau of investigation in accordance with the provisions of this
34 act, if such person is:

35 (1) Convicted as an adult or adjudicated as a juvenile offender be-
36 cause of the commission of a crime specified in subsection (a) on or after
37 the effective date of this act;

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

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

House Judiciary
Date 2-16-06
Attachment # 3

1 viction or adjudication in any state correctional facility or county jail or is
2 presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or
3 38-1663, and amendments thereto.

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

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

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

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

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

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

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

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

1 (3) Prior to taking such samples, the arresting or custodial law en-
 2 forcement agency shall search the Kansas criminal history files through
 3 the Kansas criminal justice information system to determine if such per-
 4 son's sample is currently in the database. In the event that it cannot rea-
 5 sonably be established that a DNA sample for such person is on file at the
 6 bureau, the arresting or custodial law enforcement agency shall cause a
 7 sample to be collected. If such person's sample is in the database, the law
 8 enforcement agency is not required to take the sample.

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

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

31 ~~(f)~~ (g) The DNA (deoxyribonucleic acid) records and DNA samples
 32 shall be maintained by the Kansas bureau of investigation. The Kansas
 33 bureau of investigation shall establish, implement and maintain a state-
 34 wide automated DNA databank and DNA database capable of, but not
 35 limited to, searching, matching and storing DNA records. The DNA da-
 36 tabase as established by this act shall be compatible with the procedures
 37 specified by the federal bureau of investigation's combined DNA index
 38 system (CODIS). The Kansas bureau of investigation shall participate in
 39 the CODIS program by sharing data and utilizing compatible test pro-
 40 cedures, laboratory equipment, supplies and computer software.

41 ~~(g)~~ (h) The DNA records obtained pursuant to this act shall be con-
 42 fidential and shall be released only to authorized criminal justice agencies.
 43 The DNA records shall be used only for law enforcement identification

(5) The clerk of the district court shall notify the Kansas bureau of investigation of final disposition of the criminal proceedings. If the charge for which the specimen was taken is dismissed or the defendant is acquitted at trial, the Kansas bureau of investigation shall destroy the specimen and all records thereof, provided there is no other pending qualifying warrant for an arrest, charges or other conviction that would otherwise require the specimen remain in the database.

1 purposes or to assist in the recovery or identification of human remains
 2 from disasters or for other humanitarian identification purposes, includ-
 3 ing identification of missing persons.

4 ~~(h)~~ (i) (1) The Kansas bureau of investigation shall be the state cen-
 5 tral repository for all DNA records and DNA samples obtained pursuant
 6 to this act. The Kansas bureau of investigation shall promulgate rules and
 7 regulations for ~~(A) the form and manner of the collection, [and] mainte-~~
 8 ~~nance and expungement of DNA samples.~~ and expungement

9 ~~(B) a procedure which allows the defendant to request the DNA sam-~~
 10 ~~ples be expunged and destroyed in the event of a dismissal of charges or~~
 11 ~~acquittal at trial, and~~

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

13 (2) These rules and regulations also shall require compliance with
 14 national quality assurance standards to ensure that the DNA records sat-
 15 isfy standards of acceptance of such records into the national DNA iden-
 16 tification index.

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

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

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

29 (l) Any person who is subject to the requirements of this section, and
 30 who, after receiving notification of the requirement to provide a DNA
 31 specimen, knowingly refuses to provide such DNA specimen, shall be
 32 guilty of a class A nonperson misdemeanor.

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

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

39 (c) Disbursements from the Kansas bureau of investigation DNA da-
 40 tabase fee deposited into the DNA database fee fund of the Kansas bu-
 41 reau of investigation shall be made for the following:

- 42 (1) Providing DNA laboratory services;
- 43 (2) the purchase and maintenance of equipment for use by the lab-

1 oratory in performing DNA analysis; and
2 (3) education, training and scientific development of Kansas bureau
3 of investigation personnel regarding DNA analysis.

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

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

13 (f) Fees received into this fund shall be supplemental to regular ap-
14 propriations to the Kansas bureau of investigation.

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

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

HOUSE BILL No. 2576

By Representative Kilpatrick

1-5

Proposed amendment
Representative Watkins
February 17, 2006

House Judiciary

Date 2-16-06
Attachment # 4

9 AN ACT concerning crimes, punishment and criminal procedure; en-
10 acting a lifetime imprisonment sentence for persistent offenders; man-
11 datory penalties for certain sex offenses; duties of board of education,
12 department of corrections and criminal justice coordinating council;
13 relating to offender registration; amending K.S.A. 21-3504, 21-3506,
14 21-3513, 21-3812 ~~and 21-4625~~ and K.S.A. 2005 Supp. 21-3447, 21-
15 3502, 21-3516, 21-4611, 21-4635, 21-4638, 21-4704, 22-3717, 22-4903, and 22-3436
16 22-4904, 22-4906 and 74-9501 and repealing the existing sections.
17

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

19 New Section 1. (a) A persistent offender shall be sentenced to im-
20 prisonment for life without the possibility of parole. Such offender shall
21 spend the remainder of the offender's natural life incarcerated and in the
22 custody of the secretary of corrections. An offender who is sentenced to
23 imprisonment for life without the possibility of parole shall not be eligible
24 for parole, probation, assignment to a community correctional services
25 program, conditional release, postrelease supervision, or suspension,
26 modification or reduction of sentence.

27 (b) Upon sentencing a defendant to imprisonment for life without
28 the possibility of parole, the court shall commit the defendant to the
29 custody of the secretary of corrections and the court shall state in the
30 sentencing order of the judgment form or journal entry, whichever is
31 delivered with the defendant to the correctional institution, that the de-
32 fendant has been sentenced to imprisonment for life without the possi-
33 bility of parole.

34 (c) As used in this section:

35 (1) "Persistent offender" means a person who, on and after July 1,
36 2006: (A) Has been convicted in this state of a sexually violent crime; and
37 (B) prior to the conviction of the felony under subparagraph (A), has been
38 convicted on at least two prior conviction events of any sexually violent
39 crime.

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

1 force shall submit its findings in writing to the governor, the attorney
 2 general, the speaker of the house of representatives and the president of
 3 the senate. Such report shall include, but not be limited to: (A) An eval-
 4 uation of the effectiveness of such electronic monitoring devices regarding
 5 abilities to track and record the geographic location of a monitored in-
 6 dividual at any given point in time; (B) a cost-benefit analysis of the
 7 financial costs involved in obtaining, monitoring and providing on-going
 8 maintenance for various electronic monitoring devices or systems as com-
 9 pared to the potential benefit of increased ability to locate, track and
 10 supervise monitored individuals; (C) a cost-benefit analysis comparing the
 11 costs of purchase of electronic monitoring equipment and the equipment
 12 and software necessary for tracking monitored individuals by govern-
 13 mental agencies to operate independently versus contracting with vendors
 14 to provide the necessary equipment and services; and (D) an analysis by
 15 geographic region within the state of Kansas detailing areas where, due
 16 to geography or lack of necessary infrastructure such as radio transmis-
 17 sion towers, electronic monitoring may be more or less effective. Subject
 18 to appropriations therefore, the council may contract with other entities
 19 to provide evaluation and comparison studies or other resources necessary
 20 to aid in the development of the report mandated by this paragraph.

21 New Sec. 22. If any provisions of this act or the application thereof
 22 to any person or circumstances is held invalid, the invalidity shall not
 23 affect other provisions or applications of the act which can be given effect
 24 without the invalid provisions or application, and to this end the provisions
 25 of this act are severable.

26 Sec. 23. K.S.A. 21-3504, 21-3506, 21-3513, 21-3812, ~~and~~ 21-4625 and
 27 K.S.A. 2005 Supp. 21-3447, 21-3502, 21-3516, 21-4611, 21-4635, 21-
 28 4638, 21-4704, 22-3717, 22-4903, 22-4904, 22-4906 and 74-9501 are
 29 hereby repealed.

30 Sec. 24. This act shall take effect and be in force from and after its
 31 publication in the statute book.

Sec. 22. K.S.A. 22-3436 is hereby amended to read as follows: 22-3436.
~~On and after July 1, 1991,~~ If a defendant is charged with a crime pursuant to
 article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and
 amendments thereto; :

(a) The prosecuting attorney, as defined in K.S.A. 22-2202, and
 amendments thereto, shall : (1) inform the victim or the victim's family: ~~(a)~~
 before any dismissal or declining of prosecuting charges; and ~~(b)~~ (2) inform the
victim or the victim's family of the nature of any proposed plea agreement; and
 (3) inform and give notice to the victim or the victim's family of the rights
established in subsection (b);

(b) The victim of a crime or the victim's family have the right to be
present at any hearing where a plea agreement is reviewed or accepted and the
parties may submit written arguments to the court prior to the date of the hearing.

[Renumber remaining sections accordingly]

and 22-3436

House Judiciary
Date 2-16-06
Attachment # 5

Session of 2006

HOUSE BILL No. 2576

By Representative Kilpatrick

1-5

9 AN ACT concerning crimes, punishment and criminal procedure; en-
10 acting a lifetime imprisonment sentence for persistent offenders; man-
11 datory penalties for certain sex offenses; duties of board of education,
12 department of corrections and criminal justice coordinating council;
13 relating to offender registration; amending K.S.A. 21-3504, 21-3506,
14 21-3513, 21-3812 and 21-4625 and K.S.A. 2005 Supp. 21-3447, 21-
15 3502, 21-3516, 21-4611, 21-4635, 21-4638, 21-4704, 22-3717, 22-4903,
16 22-4904, 22-4906 and 74-9501 and repealing the existing sections.
17

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

19 New Section 1. (a) A persistent offender shall be sentenced to im-
20 prisonment for life without the possibility of parole. Such offender shall
21 spend the remainder of the offender's natural life incarcerated and in the
22 custody of the secretary of corrections. An offender who is sentenced to
23 imprisonment for life without the possibility of parole shall not be eligible
24 for parole, probation, assignment to a community correctional services
25 program, conditional release, postrelease supervision, or suspension,
26 modification or reduction of sentence.

27 (b) Upon sentencing a defendant to imprisonment for life without
28 the possibility of parole, the court shall commit the defendant to the
29 custody of the secretary of corrections and the court shall state in the
30 sentencing order of the judgment form or journal entry, whichever is
31 delivered with the defendant to the correctional institution, that the de-
32 fendant has been sentenced to imprisonment for life without the possi-
33 bility of parole.

34 (c) As used in this section:

35 (1) "Persistent offender" means a person who, on and after July 1,
36 2006: (A) Has been convicted in this state of a sexually violent crime; and
37 (B) prior to the conviction of the felony under subparagraph (A), has been
38 convicted on at least two prior conviction events of any sexually violent
39 crime.

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

1 who is adjudicated as a juvenile offender for an act which if committed
2 by an adult would constitute the commission of a sexually violent crime
3 set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto,
4 shall be required to register until such person reaches 18 years of age, at
5 the expiration of five years from the date of adjudication or, if confined,
6 from release from confinement, whichever date occurs later. The five-
7 year period shall not apply to any person while that person is incarcerated
8 in any jail, juvenile facility or correctional facility. The five-year registra-
9 tion requirement does not include any time period when any person who
10 is required to register under this act knowingly or willfully fails to comply
11 with the registration requirement. Liability for registration does not ter-
12minate if the adjudicated offender again becomes liable to register as
13 provided by this act during the required period.

14 *(i) Any person moving to the state of Kansas who has been convicted*
15 *in another state, and who was required to register under that state's laws,*
16 *shall register for the same length of time required by that state or Kansas,*
17 *whichever length of time is longer.*

18 Sec. 21. K.S.A. 2005 Supp. 74-9501 is hereby amended to read as
19 follows: 74-9501. (a) There is hereby established the Kansas criminal jus-
20 tice coordinating council.

21 (b) The council shall consist of the governor or designee, the chief
22 justice of the supreme court or designee, the attorney general or designee,
23 the secretary of corrections, the superintendent of the highway patrol,
24 the commissioner of juvenile justice and the director of the Kansas bureau
25 of investigation.

26 (c) The governor shall designate staff to the Kansas criminal justice
27 coordinating council. The staff shall attend all meetings of the council,
28 be responsible for keeping a record of council meetings, prepare reports
29 of the council and perform such other duties as directed by the council.

30 (d) The council shall elect a chairperson and vice-chairperson from
31 among the members of the council.

32 (e) The council shall:

33 (1) Appoint a standing local government advisory group to consult
34 and advise the council concerning local government criminal justice issues
35 and the impact of state criminal justice policy and decisions on local units
36 of government. The advisory group shall consist of a sheriff, chief of
37 police, county or district attorney, a member of a city governing body and
38 a county commissioner. Appointees to such advisory group shall serve
39 without compensation or reimbursement for travel and subsistence or any
40 other expenses;

41 (2) define and analyze issues and processes in the criminal justice
42 system, identify alternative solutions and make recommendations for
43 improvements;

1 (3) perform such criminal justice studies or tasks as requested by the
2 governor, the attorney general, the legislature or the chief justice, as
3 deemed appropriate or feasible by the council;

4 (4) oversee development and management of a criminal justice da-
5 tabase including assuming the designation and functions of the state sta-
6 tistical analysis center currently assigned to the Kansas bureau of inves-
7 tigation pursuant to K.S.A. 75-712a and amendments thereto. All criminal
8 justice agencies as defined in subsection (c) of K.S.A. 22-4701 and amend-
9 ments thereto and the juvenile justice authority shall provide any data or
10 information, including juvenile offender information which is requested
11 by the council, in a form and manner established by the council, in order
12 to facilitate the development and management of the criminal justice
13 council database;

14 (5) develop and oversee reporting of all criminal justice federal fund-
15 ing available to the state or local units of government including assuming
16 the designation and functions of administering the United States bureau
17 of justice assistance grants;

18 (6) form such task groups as necessary and appoint individuals who
19 appropriately represent law enforcement, the judiciary, legal profession,
20 state, local, or federal government, the public, or other professions or
21 groups as determined by the council, to represent the various aspects of
22 the issue being analyzed or studied, when analyzing criminal justice issues
23 and performing criminal justice studies. Members of the legislature may
24 be appointed ex officio members to such task groups. A member of the
25 council shall serve as the chairperson of each task group appointed by
26 the council. The council may appoint other members of the council to
27 any task group formed by the council; and

28 (7) review reports submitted by each task group named by the council
29 and shall submit the report with the council's recommendations pertain-
30 ing thereto to the governor, the attorney general, the chief justice of the
31 supreme court, the chief clerk of the house of representatives and the
32 secretary of the senate; and

33 ~~(8) form a task force composed of 11 members who are representatives
34 of law enforcement, prosecutors, the judiciary, court services, community
35 corrections, parole services and victims rights organization representa-
36 tives for the purpose of collecting information and research concerning
37 the potential utilization of electronic monitoring devices, specifically in-
38 cluding devices capable of utilizing global positioning satellite (GPS) tech-
39 nology, for the purposes of monitoring and tracking the locations of of-
40 fenders placed on bond, probation, parole, postrelease supervision and
41 individuals subject to civil commitment of sexually violent predators, pur-
42 suant to K.S.A. 59-29a01, and amendments thereto, who have been placed
43 on conditional or transitional release. On or before July 1, 2007, the task~~

1 ~~force shall submit its findings in writing to the governor, the attorney~~
 2 ~~general, the speaker of the house of representatives and the president of~~
 3 ~~the senate. Such report shall include, but not be limited to: (A) An eval-~~
 4 ~~uation of the effectiveness of such electronic monitoring devices regarding~~
 5 ~~abilities to track and record the geographic location of a monitored in-~~
 6 ~~dividual at any given point in time; (B) a cost-benefit analysis of the~~
 7 ~~financial costs involved in obtaining, monitoring and providing on-going~~
 8 ~~maintenance for various electronic monitoring devices or systems as com-~~
 9 ~~pared to the potential benefit of increased ability to locate, track and~~
 10 ~~supervise monitored individuals; (C) a cost-benefit analysis comparing the~~
 11 ~~costs of purchase of electronic monitoring equipment and the equipment~~
 12 ~~and software necessary for tracking monitored individuals by govern-~~
 13 ~~mental agencies to operate independently versus contracting with vendors~~
 14 ~~to provide the necessary equipment and services; and (D) an analysis by~~
 15 ~~geographic region within the state of Kansas detailing areas where, due~~
 16 ~~to geography or lack of necessary infrastructure such as radio transmis-~~
 17 ~~sion towers, electronic monitoring may be more or less effective. Subject~~
 18 ~~to appropriations therefore, the council may contract with other entities~~
 19 ~~to provide evaluation and comparison studies or other resources necessary~~
 20 ~~to aid in the development of the report mandated by this paragraph.]~~

[see attached language]

21 New Sec. 22. If any provisions of this act or the application thereof
 22 to any person or circumstances is held invalid, the invalidity shall not
 23 affect other provisions or applications of the act which can be given effect
 24 without the invalid provisions or application, and to this end the provisions
 25 of this act are severable.
 26 Sec. 23. K.S.A. 21-3504, 21-3506, 21-3513, 21-3812 and 21-4625 and
 27 K.S.A. 2005 Supp. 21-3447, 21-3502, 21-3516, 21-4611, 21-4635, 21-
 28 4638, 21-4704, 22-3717, 22-4903, 22-4904, 22-4906 and 74-9501 are
 29 hereby repealed.
 30 Sec. 24. This act shall take effect and be in force from and after its
 31 publication in the statute book.

(8)(A) Establish the sex offender policy board to consult and advise the council concerning issues and policies pertaining to the treatment, sentencing, rehabilitation, reintegration and supervision of sex offenders.

(B) The sex offender policy board shall consist of the secretary of corrections, the commissioner of juvenile justice, the secretary of social and rehabilitation services, the director of the Kansas bureau of investigation and the chief justice of the supreme court or the chief justice's designee and ~~two~~^{three} persons appointed by the criminal justice coordinating council. Of the persons appointed by the criminal justice coordinating council, one shall be a mental health service provider and the other shall be engaged in the provision of services involving child welfare or crime victims, *Domestic Violence group*

(C) Each member of the board shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the board shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on board activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees.

(D) The sex offender policy board shall elect a chairperson from its membership and shall meet upon the call of its chairperson as necessary to carry out its duties.

(E) Each appointed member of the sex offender policy board shall be appointed for a term of two years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is appointed and qualifies. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term.

(F) The sex offender policy board shall form a task force composed of 11 members who are representatives of law enforcement, prosecutors, the judiciary, court services, community corrections, parole services and victims rights organization representatives for the purpose of collecting information and research concerning the potential utilization of electronic monitoring devices, specifically including devices capable of utilizing global positioning satellite (GPS) technology, for the purposes of monitoring and tracking the locations of offenders placed on bond, probation, parole, postrelease supervision and individuals subject to civil commitment of sexually violent predators, pursuant to K.S.A. 59-29a01, and amendments thereto, who have been placed on conditional or transitional release. On or before July 1, 2007, the task force shall submit its findings in writing to the sex offender policy board. Such report shall include, but not be

limited to: (1) An evaluation of the effectiveness of such electronic monitoring devices regarding abilities to track and record the geographic location of a monitored individual at any given point in time; (2) a cost-benefit analysis of the financial costs involved in obtaining, monitoring and providing on-going maintenance for various electronic monitoring devices or systems as compared to the potential benefit of increased ability to locate, track and supervise monitored individuals; (3) a cost-benefit analysis comparing the costs of purchase of electronic monitoring equipment and the equipment and software necessary for tracking monitored individuals by governmental agencies to operate independently versus contracting with vendors to provide the necessary equipment and services; and (4) an analysis by geographic region within the state of Kansas detailing areas where, due to geography or lack of necessary infrastructure such as radio transmission towers, electronic monitoring may be more or less effective. Subject to appropriations therefore, the board may contract with other entities to provide evaluation and comparison studies or other resources necessary to aid in the development of the report mandated by this paragraph.

(G) The board shall submit its reports to the criminal justice coordinating council and to the governor, the attorney general, the chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate.

(i) The board shall submit a report regarding public notification pertaining to sex offenders, restrictions on the residence of released sex offenders, utilization of electronic monitoring, and the management of juvenile sex offenders by the first day of the 2007 legislative session.

(ii) The board shall submit a report regarding treatment and supervision standards for sex offenders, suitability of lifetime release supervision and safety education and prevention strategies for the public and the task force report submitted in paragraph (F) by the first day of the 2008 legislative session.

(iii) The board shall submit reports regarding any other studies, issues or policy recommendations as completed.

HOUSE BILL No. 2576

By Representative Kilpatrick

1-5

9 AN ACT concerning crimes, punishment and criminal procedure; en-
 10 acting a lifetime imprisonment sentence for persistent offenders; man-
 11 datory penalties for certain sex offenses; duties of board of education,
 12 department of corrections and criminal justice coordinating council;
 13 relating to offender registration; amending K.S.A. 21-3504, 21-3506,
 14 21-3513, 21-3812 ~~and 21-4625~~ and K.S.A. 2005 Supp. 21-3447, 21-
 15 3502, 21-3516, 21-4611, 21-4635, 21-4638, 21-4704, 22-3717, 22-4903,
 16 22-4904, 22-4906 and 74-9501 and repealing the existing sections.
 17

18 *Be it enacted by the Legislature of the State of Kansas:*
 19 New Section 1. (a) A persistent offender shall be sentenced to im-
 20 prisonment for life without the possibility of parole. Such offender shall
 21 spend the remainder of the offender's natural life incarcerated and in the
 22 custody of the secretary of corrections. An offender who is sentenced to
 23 imprisonment for life without the possibility of parole shall not be eligible
 24 for parole, probation, assignment to a community correctional services
 25 program, conditional release, postrelease supervision, or suspension,
 26 modification or reduction of sentence.
 27 (b) Upon sentencing a defendant to imprisonment for life without
 28 the possibility of parole, the court shall commit the defendant to the
 29 custody of the secretary of corrections and the court shall state in the
 30 sentencing order of the judgment form or journal entry, whichever is
 31 delivered with the defendant to the correctional institution, that the de-
 32 fendant has been sentenced to imprisonment for life without the possi-
 33 bility of parole.
 34 (c) As used in this section:
 35 (1) "Persistent offender" means a person who, on and after July 1,
 36 2006: (A) Has been convicted in this state of a sexually violent crime; and
 37 (B) prior to the conviction of the felony under subparagraph (A), has been
 38 convicted on at least two prior conviction events of any sexually violent
 39 crime.
 40 (2) "Prior conviction event" means one or more felony convictions of
 41 a sexually violent crime occurring on the same day and within a single
 42 count. These convictions may result from multiple counts within an in-
 43 formation or from more than one information. If a person crosses a county

House Judiciary
 Date 2-16-06
 Attachment # 16

1 force shall submit its findings in writing to the governor, the attorney
 2 general, the speaker of the house of representatives and the president of
 3 the senate. Such report shall include, but not be limited to: (A) An eval-
 4 uation of the effectiveness of such electronic monitoring devices regarding
 5 abilities to track and record the geographic location of a monitored in-
 6 dividual at any given point in time; (B) a cost-benefit analysis of the
 7 financial costs involved in obtaining, monitoring and providing on-going
 8 maintenance for various electronic monitoring devices or systems as com-
 9 pared to the potential benefit of increased ability to locate, track and
 10 supervise monitored individuals; (C) a cost-benefit analysis comparing the
 11 costs of purchase of electronic monitoring equipment and the equipment
 12 and software necessary for tracking monitored individuals by govern-
 13 mental agencies to operate independently versus contracting with vendors
 14 to provide the necessary equipment and services; and (D) an analysis by
 15 geographic region within the state of Kansas detailing areas where, due
 16 to geography or lack of necessary infrastructure such as radio transmis-
 17 sion towers, electronic monitoring may be more or less effective. Subject
 18 to appropriations therefore, the council may contract with other entities
 19 to provide evaluation and comparison studies or other resources necessary
 20 to aid in the development of the report mandated by this paragraph.

21 New Sec. 22. If any provisions of this act or the application thereof
 22 to any person or circumstances is held invalid, the invalidity shall not
 23 affect other provisions or applications of the act which can be given effect
 24 without the invalid provisions or application, and to this end the provisions
 25 of this act are severable.

26 Sec. 23. K.S.A. 21-3504, 21-3506, 21-3513, 21-3812, ~~and 21-4625~~ and
 27 K.S.A. 2005 Supp. 21-3447, 21-3502, 21-3516, 21-4611, 21-4635, 21-
 28 4638, 21-4704, 22-3717, 22-4903, 22-4904, 22-4906 and 74-9501 are
 29 hereby repealed.

30 Sec. 24. This act shall take effect and be in force from and after its
 31 publication in the statute book.

Sec. 22. K.S.A. 38-1663 is hereby amended to read as follows: see attached.

[Re-number remaining sections accordingly]

and 38-1663

Sec. 22. K.S.A. 38-1663 is hereby amended to read as follows: 38-1663. (a) When a respondent has been adjudicated to be a juvenile offender, the judge may select from the following alternatives:

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

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

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

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

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

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

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

(8) Commit the juvenile offender to a juvenile correctional facility as provided by the placement matrix established in K.S.A. 38-16,129, and amendments thereto.

The provisions of K.S.A. 38-1664, and amendments thereto, shall not apply to juvenile offenders committed directly to a juvenile correctional facility.

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

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

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

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

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

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

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

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

(c) (1) If a respondent has been adjudged to be a juvenile offender, the court, in addition to any other order authorized by this section, may suspend the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state. The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to

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

(2) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any respondent adjudicated to be a juvenile offender, as provided in subsection (c)(1), the court in which such juvenile offender was adjudicated to be a juvenile offender may enter an order which places conditions on such juvenile offender's privilege of operating a motor vehicle on the streets and highways of this state, a certified copy of which such juvenile offender shall be required to carry any time such juvenile offender is operating a motor vehicle on the streets and highways of this state. Any such order shall prescribe the duration of the conditions imposed and shall specify that such duration shall be for a definite time period to be determined by the court. Upon entering an order restricting a juvenile offender's license hereunder, the court shall require such juvenile offender to surrender such juvenile offender's driver's license to the court. The court shall transmit the license to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the juvenile offender for whom the license was issued any time such juvenile offender is operating a motor vehicle on the streets and highways of this state. If the juvenile offender is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of such juvenile offender's state of residence. Such court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license

until such time as the division shall issue the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such juvenile offender's privilege to operate a motor vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any juvenile offender shall violate any of the conditions imposed under this subsection, such juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be revoked for a period as determined by the court in which such juvenile offender is convicted of violating such conditions.

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

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

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

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

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

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

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

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

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

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

(h) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the respondent the court may order, and when custody is placed with the commissioner shall order, one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent already is subject to an order to pay support for the respondent. If the parent currently is not ordered to pay support for the respondent and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-16,117, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-16,119, and amendments thereto. The parent also shall be informed that,

after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

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

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

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

(l) If a respondent has been adjudged to be a juvenile offender for an offense if committed by an adult would constitute the commission of: (1) Aggravated trafficking, as defined in K.S.A. 2005 Supp. 21-3447, and amendments thereto, if the victim is less than 14 years of age; (2) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto; (3) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto; (4) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto; (5) promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the prostitute is less than 14 years of age; (6) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto; or (7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an offense defined in parts (1) through (6); the court shall issue an order prohibiting the respondent from attending the school that the victim of the offense attends.