

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on January 17, 2006, in Room 123-S of the Capitol.

All members were present.

Senator Haley arrived 10:13 a.m.

Committee staff present:

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

Conferees appearing before the committee:

Representative Patricia Kilpatrick
 Kyle G. Smith, Deputy Director, Kansas Bureau of Investigation
 Roger Werholtz, Secretary of the Department of Corrections
 Eric K. Rucker, Chief of Staff, Sr. Deputy Attorney General

Others attending:

See attached list.

Bill Introductions

Josh Bender a student at the University of Kansas, requested the introduction an amendments to the residential landlord and tenant acts, K.S.A. 58-2548, 58-2550, and 58-2548 regarding inventory of premises, security deposit, and automatic renewal clauses. Senator Betts moved, Senator Bruce seconded that the bill be introduced as a committee bill. Motion carried.

Don Moler, League of Kansas Municipalities, requested the introduction of a bill regarding economic development. Senator Donovan moved, Senator Betts seconded that the bill be introduced as a committee bill. Motion carried.

Roger Werholtz, Secretary, Department of Corrections, requested the introduction of two bills regarding sentences for rape and repeat sex offenders. Senator Goodwin moved, Senator Umbarger seconded that the bill be introduced as a committee bill. Motion carried.

The hearing on **SB 334--Life imprisonment or hard 25 and lifetime parole with electronic monitoring for rape and aggravated sodomy if victim under 14 and offender over 18; lifetime postrelease supervision for sexually violent crimes** was opened.

Representative Patricia Kilpatrick spoke in support of the bill (Attachment 1) and was concerned that **SB 334** did not account for first, second, and subsequent convictions and criminal history for crimes that took place prior to July 1, 2006. She also encouraged the committee to include language which does not have an age restriction of the offender and to include the offenses:

- aggravated trafficking
- aggravated indecent liberties with a child
- promoting prostitution with a child
- sexual exploitation of a child

Kyle Smith spoke as a proponent stating that **SB 334** is a way to prevent additional horrific crimes against children (Attachment 2). This bill will protect Kansas children and all Kansans from criminals that pose an immediate and long-term threat.

Roger Werholtz, appeared as a proponent and requested several language changes to **SB 334 (Attachment 3)** including:

- addition of incest to list of offenses
- change term persistent offender to aggravated habitual sex offender

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:34 A.M. on January 17, 2006, in Room 123-S of the Capitol.

- time restriction on prior crimes be deleted
- tailor factors for assessing aggravating circumstances pertaining to sex crimes
- electronic monitoring be dictated by the case manager of the offender

The Chairman requested that the requested changes be drafted into a balloon amendment to be ready for the committee to consider when it takes final action later in the week.

Eric Rucker spoke as a proponent of the bill (Attachment 4) and requested several amendments including:

- past criminal history of the offender
- expand the bill to include a wider range of sexual offenses
- strengthening the penalty for violation of the Kansas Offender Registration Act
- creation of a specific offense for individuals who knowingly aid an offender
- sentencing requirements
- permit convictions to be considered and weighted by juries in capital murder cases

Senator Vratil encouraged Mr. Rucker and other conferees to place any proposed amendments in balloon form, working with the Revisor, so the committee may consider them on Thursday when the bill is scheduled to be worked.

The following conferee requested that their written testimony in support of **SB 334** be distributed and placed in the committee minutes.

Sandy Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence (Attachment 5).

There being no others wishing to testify, the hearing on **SB 334** was closed.

The meeting was adjourned at 10:32 a.m. The next meeting is scheduled for January 18, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-17-06

NAME	REPRESENTING
Callie Hill Denton	KTLA
Don Moker	LKM
Sandy Jaquet	LKM
DAVID KLEPPER	KCSTAR
Aizabeth Phelps	SRS/HCP
Bob Keller	JCSO
STEVE KEARNEY	KCDAA
Heather Morgan	SSA
Jason Smartt	Smartt Post. Affairs
Cade Butler	KSAG
Ashley Heidrick	KSAG
Mark Gleeson	Judicial Branch
Kyle Smith	KBI
MARK BORANYAK	CAPITOL STRATEGISTS
Sandy Barnett	KCSOV
JOYCE GROVER	KCSOV
Brenda Harmon	KSC
Natalie Gibson	KSC

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-17-2006

NAME	REPRESENTING
Patti Biggs	KSC
Tim Madden	KDOC
Roger Werheltz	KDOC
JEREMY S BARCLAY	KDOC
Lisa Boschart	WTRSA
Eric Duke	

BEFORE THE SENATE JUDICIARY COMMITTEE
TESTIMONY OF REPRESENTATIVE PATRICIA KILPATRICK
STATE REPRESENTATIVE
RE: SENATE BILL 334
January 17, 2006

Chairman Vratil and members of the committee:

Thank you for allowing me to speak with you today. I am here to support SB334, which has been referred to as the Senate version of the Jessica Marie Lunsford Act – more commonly known as “Jessica’s Law”.

You will also hear from Eric Rucker, Chief of Staff and Senior Deputy Attorney General with the Attorney General’s office and Kyle Smith with the Kansas Bureau of Investigation. They will go into the details of SB 334 and HB 2576, their strengths and their differences.

Violent, sexual crimes against our innocent children are perhaps the most heinous imaginable. Kansas is poised to become the 5th state to enact a version of the Jessica Marie Lunsford Act. I commend the Kansas Legislature for addressing this issue in such a comprehensive and thorough manner. This legislation is an important element of a very strong set of laws and regulations we have implemented to address sexual predators and sexual offenders. I would strongly encourage you to look at the language in HB 2576 and adopt similar language into SB 334.

Let’s carefully examine the type of person we are talking about. Sexual predators. They commit the most heinous acts against the most defenseless members of our society – there are over 4000 registered offenders in the State of Kansas. Predators are everywhere and they can strike at any time – and they come in all shapes and sizes. The U.S. Department of Justice estimates that on average, there is one child molester per square mile in the United States. They often are disguised as harmless and caring people; they may interact with your children as their baby-sitters, youth group leaders, clergy, teachers, coaches, neighbors, medical professionals, and family members.

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

Even more alarming is the fact that fewer than five percent of sex offenders are ever apprehended - only 5%. The average child molester victimizes between 50 and 150 children before he is ever arrested – many more afterwards. SB 334 only looks at crimes that occurred on or after July 1, 2006. It does not account for first, second, and subsequent convictions and criminal history for crimes that took place prior to July 1, 2006. HB 2576 would apply to new convictions that take place on or after July 1, 2006, but would also look at the offender’s prior criminal history. One man that I read about during my research admitted to victimizing more than 1,000 children before he was ever incarcerated.

Contrary to popular belief, rape and molestation are rarely crimes of impulse. Predators act with careful premeditation and use sophisticated deception techniques to gain our trust, often playing double roles in the community. Most start their pattern of abuse in their early teens. The US

Senate Judiciary

1-17-06

Attachment 1

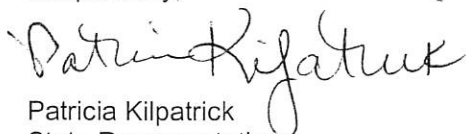
Department of Justice statistics reveal that 23% of all sexual offenders are under the age of 18 and that the largest numbers of sexual offenders in ANY AGE GROUP are 14-year-olds! SB 334 includes language that only applies to offenders who are 18 years or older and only includes rape and aggravated criminal sodomy. I propose adopting the language in HB 2576 which does not have an age restriction of the offender and includes, in addition to rape and aggravated criminal sodomy, aggravated trafficking, aggravated indecent liberties with a child, promoting prostitution with a child and sexual exploitation of a child.

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

That brings us to Sex Offender Registration. This was sanctioned federally, brought about by Megan's Law that was enacted in 1996. The goal of the Sex Offender Registry is to ensure that accurate and complete information about a released sex offender is made available to protect the public and prevent further victimization. Under HB 2576, offenders required to register under the Kansas Offender Registration Act (KORA) every year must re-register with the sheriff in person in the county where they reside every six months and must submit to the taking of a new photograph at every registration. Additionally, registered offenders under KORA must pay a \$20 fee to the sheriff every time they are required to register or re-register.

I thank the committee for joining the fight to strengthen and improve our laws dealing with offenders who would victimize children and I encourage the committee to carefully consider the aforementioned additions and make certain that the committee passes a bill that does everything possible to best protect the children of our state.

Respectfully,



Patricia Kilpatrick
State Representative



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Senate Judiciary Committee
Testimony in Support of SB 334

Kyle G. Smith
Deputy Director
Kansas Bureau of Investigation
January 17, 2006

I am pleased to appear on behalf of the Kansas Bureau of Investigation and the Kansas Peace Officers Association before this committee in support of SB 334, legislation that requires hard time for bad crimes.

We have often discussed in this chamber the need to spend our precious bed space on the 'worst of the worst'. This bill does just that. Essentially SB 334 defines a "persistent offender" as someone convicted of a sexually violent crime with two prior convictions for such crimes. It then prescribes 'life without possibility of parole' for such repeat criminals. By requiring two serious and similar prior convictions, the persistent offenders have demonstrated a recidivist threat that demands they be removed from society. Period.

The bill also sets up a 'hard 25' for rape and aggravated criminal sodomy convictions and life-long system of electronic monitoring for those that do make it to parole.

The existence of these repeat offenders in our system demonstrates that they do exist and they do offend again and again. SB 334 is a way to prevent more of these horrific crimes. While such incarceration isn't cheap, it is a bargain compared to letting these criminals out earlier. This bill will protect Kansas's kids and all Kansans from those criminals that pose an immediate and long-term threat. And that is why the KBI and the KPOA are proud to urge your support.

Thank you for your time and consideration. I'll be happy to answer any questions.

Senate Judiciary

1-17-06

Attachment 2



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 334
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

January 17, 2006

I am appearing to express the support of the Department of Corrections for SB 334. As you know, we today requested introduction of two bills intended to accomplish the same goal as SB 334, greater safety for Kansans. While there are some differences in detail regarding penalties and definitions of the target populations, the intent of all of these bills and the methods are similar. It is not important which bill serves as the vehicle to accomplish these goals, but that the job get done. We wish to work with you to see that this happens. We would request that you consider the ideas presented in our proposals and determine whether it is appropriate to incorporate them in SB 334 or vice versa.

Also we would like to make some technical suggestions regarding SB 334, should the committee determine that it prefers to proceed with the bill essentially in its current form.

SB 334 addresses sex offenders by providing sentencing changes for repeat offenders as well as those who victimize children. SB 334 provides for a life sentence without parole for those sex offenders who have two prior conviction events for sex offenses. Additionally, SB 334 provides for a life sentence with a mandatory minimum sentence for the rape or criminal sodomy of a child under the age of 14. A life sentence without the possibility for parole is also provided for the rape or sodomy of a child under 14 if the aggravating circumstances outweigh any mitigating factors.

In regard to the criminal procedures of SB 334, I would like to take this opportunity to raise the following issues for your consideration:

- Use of the term "persistent offender"

SB 334 uses the term "persistent offender" in defining the sex offender subject to an enhanced sentence for repeatedly committing sex offenses. The department notes that the term "persistent sex offender" is also used in K.S.A. 21-4704 to define those offenders subject to a doubling of

the otherwise presumptive guidelines sentence. The Committee may wish considering use of a different term such as “aggravated habitual sex offender”

- Limiting the utilization of prior criminal convictions as the prerequisite for an enhanced sentence.

In New Section 1 (c)(2), page 1 lines 41-42, the crimes that serve as the prior convictions triggering the treatment of an offender as a “persistent offender” must have been committed after July 1, 2006. Pursuant to this language, in order for a defendant to be sentenced for a 3rd rape conviction as a “persistent offender” the prior sex offenses must also have been committed after July 1, 2006. While, the *Ex Post Facto Clause* of both the United States and Kansas Constitutions would prohibit the imposition of an enhanced sentence for the 3rd conviction if that 3rd crime had been committed prior to the enactment of the statute, those Constitutional prohibitions do not prevent crimes committed prior to the enactment of the habitual offender statute to serve as the criminal history prerequisite for the imposition of an enhanced sentence if the crime for which the sentence is being imposed was committed after the statute’s enactment. It is therefore my recommendation that the time restriction on the prior crimes be deleted.

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

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

The department in its habitual offender proposal at “Insert ‘A’” has attempted to separately define those crimes for which an enhanced sentence may be imposed and those offenses which may serve as a criminal history prerequisite.

- Definition of Aggravating Circumstances.

SB 334 provides on page 5 lines 29-36 that if aggravating circumstances outweigh mitigating circumstances a sentence of life without parole shall be imposed. SB 334 uses K.S.A. 21-4636 to establish the aggravating circumstances. The circumstances enumerated in K.S.A. 21-4636 are currently employed for crimes involving murder. The department recommends that factors

for assessing aggravating circumstances pertaining to sex crimes be tailored to those offenses. The department has attempted to do this in its proposal regarding enhanced penalties for rapists.

- Electronic Monitoring

The department has experience in the use of electronic monitoring, particularly with global positioning satellite monitoring. The technology and its utility for offender supervision is diverse and changing. The department supports the provisions of SB 334 requiring the electronic monitoring of offenders who have raped or sodomized children under the age of 14. However, the department recommends that the specifications of such monitoring not be inflexibly set by statute. Therefore, the department recommends that the language on page 15, after the word "life" on line 32 through line 36 be deleted.

SB 334 also provides for the electronic monitoring of other sex offenders if they have violated a condition of their release supervision. The department's concern is that not all release supervision violations are related to or are effectively addressed by electronic monitoring. It is the department's recommendation that utilization of electronic monitoring of the offenders set out on page 9 (G) be dictated by the case management of the offender. Additionally, courts do not have jurisdiction in the imposition of postrelease supervision of offenders. Thus, the department recommends striking the language on page 9 line 23 after the word "life" through line 27.

The department urges favorable consideration of its recommendations and SB 334.

Insert "A" [Automatic Hard 40]

(j)(1) The sentence for any aggravated habitual sex offender shall be for an off-grid person felony with a term of imprisonment of life and who shall not be eligible for probation or suspension, modification or reduction of sentence. A person sentenced pursuant to this section shall not be eligible for parole prior to serving 40 years' imprisonment, and such 40 years' imprisonment shall not be reduced by the applications of good time credits.

(2) As used in this subsection, "aggravated habitual sex offender" means a person who (A) Has been convicted in this state of rape as defined in K.S.A. 21-3502 and amendments thereto; indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto; aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; aggravated sexual battery as defined in K.S.A. 21-3518 and amendments thereto; aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; or an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of any offense identified in this subsection; and (B) at the time of the conviction under paragraph (A) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government, or a foreign government.

End Insert "A"

New Section 2. Aggravating circumstances shall be limited to the following: (a) The victim suffered substantial bodily injury. (b) The defendant has an extensive prior history of such offenses. Extensive history could be dependent on number of victims, length of involvement, number of incidents, or continued involvement subsequent to arrest. (c) The offense was characterized by extreme cruelty or depravity. (d) The victim was unusually vulnerable. (e) There existed a relationship of special trust between the defendant and the victim or the defendant was in a position of authority over the victim. (f) The sex crime was committed upon one victim by two or more persons, acting in concert with the defendant. (g) The sex crime was committed by a person while serving a sentence for a sex crime conviction, or while subject to any provision of a deferred prosecution agreement, deferred judgment, suspended sentence, post imprisonment supervision, or parole for a sex crime. (h) The defendant has previously failed to complete treatment or has completed treatment and reoffended.

New Section 3. Mitigating circumstances shall include, but are not limited to, the following: (a) The defendant has no significant history of prior criminal activity. (b) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances. (c) The victim was a participant in or consented to the defendant's conduct. (d) The defendant was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor. (e) The defendant acted under extreme distress or under the substantial domination of another person. (f) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired. (g) The age of the defendant at the time of the crime.

BEFORE THE SENATE JUDICIARY COMMITTEE
TESTIMONY OF ERIC K. RUCKER
CHIEF OF STAFF, OFFICE OF THE ATTORNEY GENERAL
RE: SENATE BILL 334
January 17, 2006

Chairman Vratil and members of the committee:

Thank you for allowing me to appear before you today on behalf of Kansas Attorney General Phill Kline. I have come before the committee today to discuss the provisions of Senate Bill 334 and to provide information and suggestions on how this legislation may be made into an even more effective tool for the protection of Kansas children against sexual predators.

Attorney General Kline and I applaud the Senate leadership for recognizing the need to address the serious issue of dealing with sex offenders who prey upon our children. As I believe each of you is aware, since even before he was elected to the office of Attorney General Phill Kline has been highly concerned with finding ways to better to protect our children against those offenders who would victimize children in our state. Upon election to office Attorney General Kline immediately to action to strengthen criminal justice resources in our state to aid in the effort to locate, apprehend and prosecute sex offenders – particularly those offenders who would commit crimes against children. Attorney General Kline also immediately sought to strengthen Kansas laws for the punishment of offenders who commit sex crimes against children. Attorney General Kline has been encouraged to have support in recent years from the Kansas Senate on his efforts to strengthen penalties for sex offenders. In both the 2004 and 2005 legislative sessions important advances in the mission to protect our children were accomplished, including tougher sentences for those who would solicit children for sex and remedying a loophole in how we prosecute child pornographers. However, considerable work remains to be done.

The Senate leadership is to be commended for recognizing the need to strengthen penalties for offenders who commit the crimes of Rape or Aggravated Sodomy against a child in our state. S.B. 334 includes significant increases in the punishment levels for the crimes of Rape or Aggravated Sodomy against a child, and the bill creates a tough new “true life” penalty for offenders who commit a third or subsequent sexually violent crime. Perhaps just as importantly, the bill recognizes the need to keep track of sexually violent offenders and maintain some means of control over those offenders. The bill would place offenders committed of sexually violent crimes committed on or after July 1, 2006, on postrelease supervision for life and would require electronic monitoring for offenders who are released into the community. These are all worthwhile and appropriate measures and should be applauded. However, more needs to be done.

In the Fall of 2005, Attorney General Kline created the Attorney General’s Security and

Firm Enforcement for Kansans Task Force. The task force membership was made up of sheriffs and county prosecutors from across the state, as well as members of the Kansas House and Senate and representative of the victim's rights community. Known as the SAFE Task Force, this group was charged with the responsibilities of reviewing current Kansas laws on sentencing of sexual offenders and the Kansas Offender Registration Act, then developing recommendations on how to improve upon those laws.

While the task force heard testimony and suggestions from a variety of groups and individuals, perhaps the most compelling testimony presented to the SAFE Task Force came from Mark Lunsford, the father of Jessica Lunsford. Jessica Lunsford's abduction, rape and murder at the hands of a registered sex offender in the State of Florida made international headlines and sparked the adoption of "Jessica's Law" in Florida (and now in a number of other States.) The central tenets of Jessica's Law are very tough sentences for anyone who would rape or sexually abuse a child, much stronger sanctions for registered offenders who violate registration requirements, significant penalties for anyone who would aid an offender in evading the requirements of offender registration laws and lifetime parole and monitoring for any registered offenders released back into society.

The majority of the task force's recommendations have been assembled into House Bill 2576, sponsored by Representative Patricia Kilpatrick, who also served as a member of the SAFE Task Force. A number of the SAFE Task Force's recommendations will no doubt seem familiar to you, as they are very similar to provisions of S.B. 334. However, as you will see from the content of H. B. 2576, the SAFE Task Force recommends the Kansas Legislature make significant advances in our laws to protect our children from deviant offenders not only in regards to criminal penalties for child rape and child aggravated sodomy, but also in the area of strengthening the Kansas Offender Registration Act.

I will attempt to summarize provisions from H.B. 2576 that are recommended as enhancements to Kansas law, which go beyond those now contained in S. B. 334. This summary is intended as guidepost for recommendations for amendments to S. B. 334 that would make the bill stronger and better capable of providing for long-term protections for the children of our state:

1. Both bills impose a "true life" sentence for offenders who commit a third or subsequent sexually violent crime; however, H.B. 2576 would look at each offender's full criminal history to determine whether the offender's latest crime is a first, second or subsequent offense. As currently drafted, S.B. 334 would only look at an offender's criminal history that occurred on or after July 1, 2006. Unless this measure is amended, the S.B. 334 "true life" sentence would not apply to an offender who currently has multiple prior convictions for sexually violent crimes (3, 4, 5, etc.) This provision should be changed to look at every offender's true history of criminal offenses, consistent with how other offenders are sentenced under the Kansas Sentencing Guidelines Act, and not ignore those prior crimes. It is recommended that the language of S.B. 334 be

amended to match that of H. B. 2576.

2. S.B. 334 only applies its new "hard 25" sentence to offenders convicted of the rape of a child under 14 or a crime of aggravated sodomy committed against a child under 14. H. B. 2576 creates a similar new "hard 25" sentence, but expands the list of crimes that could be sentenced under this provision to include the crimes of Aggravated Trafficking, Aggravated Indecent Liberties with a Child, Promoting Prostitution and Sexual Exploitation of a Child in cases where the victim of the offenses is under the age 14. The Senate should consider expanding the impact of S.B. 334 to include a wider range of sexual offenses against children.

3. H.B. 2576 requires a variety of studies to be conducted by the Kansas Department of Corrections which are geared towards learning more about the crimes committed by offenders in the custody of the Secretary of Corrections (both in prison and when on parole/postrelease) and learning more about the levels of risk for re-offense by certain types of offenders.

4. H.B. 2576 calls for a study to be conducted by the State Board of Education to determine the feasibility of requiring a search of the Kansas Bureau of Investigation's sex offender registry before any non-instructional employee (contractors/subcontractors) may be on school property, unescorted during times when students are present.

5. Strengthens the penalty for an offense of violating the terms of the Kansas Offender Registration Act from a current severity level 10, nonperson felony (in most cases a presumptive probation offense) to a severity level 5, person felony. This severity level, 5, was selected as being comparable to the levels established in Florida and other states when they enacted their versions of Jessica's Law. Note: H.B. 2576 does contain language that would permit a sentencing judge to impose a lesser sentence in cases where the judge makes specific findings of fact on the record identical to the current "border box" provisions.

6. H.B. 2576 creates a specific new offense for individuals who would knowingly aid an offender who is required to register under the Kansas Offender Registration Act in evading the registration requirements or in evading punishment for violating the act. This new offense would be a severity level 5, person felony. Note: H.B. 2576 does contain language that would permit a sentencing judge to impose a lesser sentence in cases where the judge makes specific findings of fact on the record identical to the current "border box" provisions.

7. H.B. 2576 mandates that any time an individual convicted of a misdemeanor is released on probation, the office responsible for monitoring the probation must conduct a search through the K.B.I.'s records to find out whether the person is a registered offender.

8. H.B. 2576 contains a provision to impose a "hard 50" sentence on offenders who commit a second offense of rape, aggravated sodomy, aggravated trafficking, aggravated

indecent liberties, promoting prostitution or sexual exploitation of a child when the victim was under the age of 14. S.B. 334 provides for a "hard 25" for a first offense for rape or aggravated sodomy of a child under 14, but the punishment does not scale up to the "true life" sentence until a third offense. H.B. 2576 does provide for ratcheting up the penalty each time.

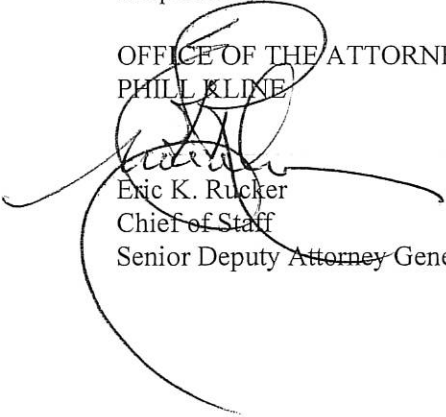
9. H.B. 2576 would permit the fact that an offender has previously been convicted two or more times of a sexually violent crime to be considered and weighted by the jury in a capital murder case when determining whether to impose a sentence of death or not.

AREA OF CONCERN: In the drafting of both S. B. 334 and H.B. 2576 there are provisions that would allow a judge to consider "aggravating circumstances" that would permit the judge to elevate a sentence from a "hard 25" sentence for an offender to a "true life" sentence if the judge determines that one or more of a statutory list of "aggravating factors" has been demonstrated in the case and that those aggravating factors outweigh any "mitigating factors" that might also exist. While the intent behind this language is right on target, it appears this language would be in violation to the precedent established by the U. S. Supreme Court in 2000 in the case of New Jersey v. Apprendi, which was subsequently applied in the State of Kansas by our Kansas Supreme Court in the case of State v. Gould. In light of this case precedent, which requires a jury, not the judge, to make any determinations on factual issues that might increase the duration of a sentence, the "aggravating factors" provisions of both bills will need to be either amended or removed.

On behalf of Attorney General Kline, I thank the committee for joining the fight to strengthen and improve our laws dealing with offenders who would victimize children and I encourage the committee to carefully consider each of the above ideas/suggestions and to make certain that the committee passes a bill that does everything possible to best protect the children of our state.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Eric K. Rucker
Chief of Staff
Senior Deputy Attorney General

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785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

SB 334
Proponent
January 17, 2006

Senator Vratil and Members of the Senate Judiciary Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) recognizes and supports the increased public pressure to keep communities and victims safe from sexually violent perpetrators. SB 334 is only a first step, but a step in the right direction nonetheless, in addressing the needs of community and victim safety.

SB 334 will help keep convicted perpetrators of rape and sexual violence against children under 14 in the custody and management of the Department of Corrections for substantially longer than is the current practice.

However, KCSDV also notes that SB 334 addresses only a minute number of sex offenders in Kansas—those who are convicted of rape and those who perpetrate against children under 14 years old and are caught, prosecuted, and convicted.

Available research about sex offender conviction rates relates to rape cases only and does not include all sex offense cases. This research indicates that only about 1 percent of rapists are convicted either through a plea-bargain or a trial disposition. There is little reason to believe that other sex offenses are reported or adjudicated through the criminal justice system at rates any higher than rape cases. Therefore, SB 334, if enacted, will do a good job of managing a small set of sex offenders.

KCSDV supports:

- 1) The new category of “persistent offender” for an adult convicted of a sexually violent crime for a third time, which carries a life time prison penalty
- 2) Enhanced penalties for rape and sexually violent crimes perpetrated by an adult against a child under 14 years old
- 3) Enhanced parole provisions and lifetime monitoring for parole violators.

A strong state response to keeping communities and victims safe from sex offenders would also:

- 1) Help increase reporting of sex offenses by enacting additional privacy protections for victims, increasing access to victim rape crisis services, and prohibiting the use of polygraph on victims of sexual assault and rape.
- 2) Increase conviction rates of identified offenders by increasing training and supports for law enforcement and prosecutors, and increasing support for Sexual Assault Nurse Examiner programs
- 3) Implement statewide awareness campaigns, and supporting community education and primary prevention programming.

SB 334 is one piece of a multi-faceted approach necessary to really address community and victims safety from sex offenders. KCSDV urges the Senate Judiciary Committee to pass favorably SB 334 and examine other ways the State of Kansas can address these critical issues.

Submitted by,

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