

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 31, 2007 in Room 313-S of the Capitol.

All members were present except:
Kevin Yoder- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Don Jordan, Chairman, Sex Offender Policy Board
Roger Werholtz, Secretary, Kansas Department of Corrections
Tim Madden, Kansas Department of Corrections
Representative Shirley Palmer
Rhonda Allen, Citizen

The committee received a briefing on the recommendations of the Sex Offender Policy Board from its chairman, Don Jordan. Some of the recommendations are listed below. (For a complete copy of the report contact the Kansas Criminal Justice Coordinating Council.)

- Utilization of Electronic Monitoring for Sex Offenders
 - Electronic monitoring, when used alone will not change the behavior or provide security of the communities.
 - While technology continues to improve, and the usage grows it will be important to continually have discussions and develop policy for using such devices.
 - Electronic monitoring can be used on selective population of sex offender.
- Public Notification Pertaining to Sex Offenders
 - Over the next three legislative sessions, Kansas should take steps to fulfill the requirements for compliance with the Adam Walsh Child Protection and Safety Act of 2006. States can be penalized a 10 percent reduction in Edward Byrne Memorial Justice Assistance Grant funds if they do not comply.
 - There should be community education as to what is on the registry and how to effectively use it.
- Management of Juvenile Sex Offenders
 - A standardized risk-assessment tool should be adopted and used at several stages.
 - Appropriate training for juvenile sex offender treatment providers is imperative and family participation is crucial to effective treatment.
 - Adolescent sexual offenders need to face appropriate legal consequences and be held responsible for their acts
- Restrictions on Residence of Released Sex Offenders
 - While resident restrictions have strong public support, the Board found no evidence to support its efficacy.
 - The legislature should make permanent the moratorium on residential restrictions, but should allow for local units of governments the ability to regulate through zoning the location of congregate dwellings for offenders such as group homes.

Roger Werholtz, Secretary, Kansas Department of Corrections, informed the committee that current prison population is below the Kansas Sentencing Commission projections for capacity levels. ([Attachment 1](#))

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 31, 2007 in Room 313-S of the Capitol.

Secretary Werholtz touched on four strategies that the Department is considering which will provide relief for prison population by changing sentencing options (Attachment 2):

1. Increase good time credits. (Currently an inmate can receive up to 15%, prior to receiving funds from VOI/TIS they could earn 20%, prior to the enactment of sentencing guidelines they could earn up to 50% good time credits.)
2. Give "awards" for completion of specific treatment and education programs
3. Review of sentencing system for proportionality
4. Lower revocations from probation and community corrections through additional community based resources and statutory changes.

The hearing on **HB 2190 - granting the secretary of corrections the discretion to dismiss conditional release violations**, was opened.

Tim Madden, Kansas Department of Corrections, appeared in support of the proposed bill which would provide clear statutory authority to the secretary or his designee to cancel the revocation proceedings initiated against a person on parole, conditional release, or post-release supervision. (Attachment 3)

The hearing on **HB 2190** was closed.

The hearing on **HB 2191 - unlawful sexual relations by volunteers in correctional institutions**, was opened.

Tim Madden, Kansas Department of Corrections, appeared as a proponent of the bill. It would expand current law to prohibit volunteers of the department and its contractors from engaging in unlawful sexual relation with inmates and those released under the volunteer's direct supervision and control. (Attachment 4)

Representative Shirley Palmer appeared before the committee to request an amendment to K.S.A. 21-3520 that would make it illegal for a teacher to enter into a relationship with any student who is enrolled in school(K-12) and is age 18 or younger. (Attachment 5)

Rhonda Allen, Citizen, appeared before the committee and relayed her family's story where her daughter was age 18, but still in high school, and became impregnated by a teacher. The district attorney would not file charges because she was 18 and it was consensual. (Attachment 6)

Tim Madden suggested that by striking the age of 16 there might not be the ability to charge an individual for statutory rape.

The hearing on **HB 2191** was closed.

The hearing on **HB 2193 - person committing new felony while on pretrial release for felony in another jurisdiction to be treated as the same as a person on release for a felony in Kansas**, was opened.

Tim Madden, Kansas Department of Corrections, explained that the proposed bill would permit a Kansas judge to sentence a defendant to prison if that defendant committed a new felony crime while out on bond for a felony charge pending in any other state. (Attachment 7)

The hearing on **HB 2193** was closed.

HB 2073 - fee increase authority for Sedgwick & Johnson county law libraries

Representative Ward made the motion to report HB 2073 favorably for passage. Representative Watkins seconded the motion.

Representative Ward made the substitute motion to amend the bill on page 1, line 43 (f) ... "such additional library fee shall be considered a docket fee for the purpose of K.S.A. 60-2001." and allow for revisors technical amendments in lines 23 & 26. Representative Watkins seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 31, 2007 in Room 313-S of the Capitol.

Representative Ward made the motion to report **HB 2073** favorably for passage, as amended. Representative Watkins seconded the motion. The motion carried.

HB 2161 - counties; enforcement of county codes and resolutions

Representative Roth made the motion to report **HB 2161** favorably for passage, and because of its non-controversial nature, be placed on the consent calendar. Representative Crow seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 a.m. The next meeting was scheduled for February 1, 2007.

Inmate Population Distributions by Gender and Custody Distributions and Updates the Inmate Custody Classification System

Current (January 29, 2007)

Inmate Capacity vs. Population by Gender				
1/29/2007 (CURRENT)				
	Males		Females	
Custody Level	Capacity	Population	Capacity	Population
Maximum	2322	1726 (21.1%)	69	97 (15.0%)
High Medium	2732	1237 (15.1%)	250	52 (8.0%)
Low Medium	1019	2540 (31.1%)	412	120 (18.6%)
Minimum	2576	2673 (32.7%)	17	378 (58.4%)
Total	8649	8170 (100.0%)	748	647 (100.0%)

Prior to the Implementation of the New Custody System (October 31, 2005)

Inmate Capacity vs. Population by Gender				
October 31, 2005				
	Males		Females	
Custody Level	Capacity	Population	Capacity	Population
Maximum	2247	2289 (27.0%)	54	108 (15.6%)
Medium	3801	3542 (42.0%)	662	153 (22.1%)
Minimum	2576	2617 (31.0%)	17	432 (62.3%)
Total	8624	8443 (100.0%)	733	693 (100.0%)

Key points:

1. The inmate population has decreased 319 since 10-31-2005. It has decreased by 434 since 02-19-2004 when it reached a high of 9251.
2. Under the new Inmate Custody Classification System, the percentage of male inmates classified maximum custody has decreased from 27 % to slightly over 21% of the total male inmate population. This equates to approximately 550 inmates that can be housed in multi-occupancy cells rather than single person cells.
3. Since the implementation of the new Inmate Custody Classification System, the number of minimum custody male inmates has increased. This is significant for the following reason. Under the new system, 65% of the condition violators were projected to classified minimum custody. This is the group which has been most impacted by reentry initiatives implemented by the KDOC.
4. The new system has had minimal impact on the custody distribution of female inmates.

Status of New Inmate Custody Classification System:

1. Clarifying language was inserted in Items 1, 2 and 3 to address inconsistencies in scoring.
2. An enhanced set of sentencing scenarios was added to the manual to serve as a reference for the assessor and as training tool for new staff.
3. Patricia Hardyman, PhD. who served as a consultant and assisted with data analysis on the initial project has indicated that she would be willing to assist in the analysis of data on the impact of various disciplinary convictions on custody levels.
4. We have made preliminary contact with NIC to see if technical assistance funds are available to cover the costs of the consultant identified in Item 3 above.

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Attachment # 1

Common Sentencing Revisions Used to Reduce Demand for Prison Capacity

1. Simple Good Time Increase
 - a. Current practice = 15% maximum earned
 - b. Practice prior to VOI/TIS incentives = 20% earned
 - c. Practice prior to implementation of sentencing guidelines = up to 50% earned
2. Awards for completion of specific treatment and education programs (concept advanced in HB 2142)
 - a. Additional options could include reductions for a certain term of good performance in correctional industries, private industries, or work release
3. Review of sentencing system for proportionality
 - a. When “new crimes” are codified, it typically comes with an enhanced penalty. Over time, this may have skewed the proportionate nature of sentences imposed for various crimes.
 - b. This issue has been discussed in both the 3R’s committee and the Sentencing Commission.
4. Lower revocations from probation and community corrections through additional community based resources and through statutory changes that require consideration of alternatives, supervision strategies, and case management with a goal of maintaining the offender in the community unless public safety risks warrant otherwise.

Advantages:

- Could help mitigate some of the pressure to expand prison capacity.
- Could be done at little fiscal expense. Most costs would be associated with computer programming, staff time to recalculate sentences based on new sentencing structure, and the potential need to increase community based staff and treatment resources for parole. However, in order for this to have sufficient impact on prison populations, programs would need to be available at a level sufficient to generate the desired impact. Those programs cannot be offered without expense, but should be available to offenders regardless of whether they are tied to sentence modification incentives. Good programs equate to improved public safety.
- Would likely have minimal or no impact on crime rates.

Disadvantages:

- Will make population projections more difficult.

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Date 1-31-07

Attachment # 2

- Political risk – while none of these measures are likely to appreciably impact overall crime rates, it is highly likely that some of the individuals, whose time in prison was altered, will victimize someone, and those supporting one or more of these policies will be accused of supporting a policy change that enabled a specific crime. The reality is that the offender(s) in question would likely have reoffended anyway at a different point in time, but that is little comfort to the victim of the specific crime that occurred.



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2190
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
January 31, 2007

The Department of Corrections sought introduction of HB 2190 and supports its passage. HB 2190 would amend K.S.A. 75-5217 to provide clear statutory authority to the secretary or the secretary's designee to cancel the revocation proceedings initiated against a person on parole, conditional release, or postrelease supervision even after a finding that probable cause exists to believe the offender has violated a condition of his or her release supervision. Currently, K.S.A. 75-5217 arguably requires that in every instance, once probable cause has been found that a releasee has violated a supervision condition, the releasee must be referred to the Kansas Parole Board for a final hearing.

HB 2190 would address situations in which parole officers may have ordered the arrest of a releasee when first becoming aware of a violation of a supervision condition so that the releasee is confined in a local jail while the seriousness of the violation and possible alternative sanctions or dispositions are reviewed. Additionally, placement into an inpatient substance abuse program or Community Residential Bed may not become available until after the offender is initially placed in jail. Thus, continued review of the circumstances of the supervision violation and available sanction or disposition options may lead the Department to conclude that revocation is not the most effective and efficient manner to address a supervision violation. However, due to the Constitutional requirement that persons confined for allegedly violating a supervision condition be granted a preliminary hearing shortly after being taken into custody, K.S.A. 75-5217 arguably restricts the Department from canceling the revocation proceeds after the preliminary hearing even if a more appropriate response becomes available.

The nondiscretionary language of K.S.A. 75-5217, that once a preliminary hearing has been conducted and probable cause found, the matter must be referred to the Parole Board is also inefficient in that while the Parole Board may impose a sanction or disposition other than revocation, the final hearing before the Parole Board may not occur for 30 to 45 days after the preliminary hearing. During that time period the person will remain in either a local jail at state

expense or at a correctional facility. Thus, opportunities for meaningful intervention placements might be lost or at the least delayed with the additional cost of jail and prison incarceration in the interim.

HB 2190 would vest the Secretary of Corrections with authority analogous to that of a prosecuting attorney in regard to the management of charges and pretrial diversion interventions.

HB 2190 also contains two non substantive changes to K.S.A. 75-5217. The first is a grammatical correction at page 2 line 27 changing “participating” to “participation”. The second deletes the subsection references at page 2, line 42 but retains the reference to warrants issued by the secretary. This change addresses the uncertainty raised by the Revisor in the Annotated version of that statute.

The Department urges the Committee’s favorable consideration of HB 2190.



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2191
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
January 31, 2007

The Department of Corrections supports HB 2191. HB 2191 would expand the definition of persons prohibited from engaging in sexual relations with Department of Corrections' inmates and offenders under release supervision in circumstances which would otherwise be consensual. K.S.A. 21-3520 would specifically prohibit volunteers of the department and its contractors from engaging in unlawful sexual relations with inmates and those released persons under the volunteer's direct supervision and control.

The criminalization of sexual relationships between the custodian and the person in custody is a recognition of the inherent disparity between the authority of those groups relative to consent and the potential for abuse. Additionally, such relationships, even if truly consensual are a serious breach of facility security and supervision obligations. The department's utilization of volunteers in both correctional facilities and in the community for parolees vests those persons with the same opportunity for abuse of persons in the department's custody or subversion of their supervision and reporting obligations as is presented by employees of the department or its contractors. The threat presented by volunteers to the secure operations of correctional facilities was recently demonstrated by a volunteer of a facility dog training program who aided in the escape of an inmate.

HB 2191 was proposed by the department out of a concern that unpaid volunteers might not fall within the definition of an "employee". The department urges favorable consideration of HB 2191.

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

Before the JUDICIARY COMMITTEE
TESTIMONY on HB 2191
January 31, 2007

Chairman O'Neal and Committee Members;

Thank you for the opportunity to discuss another important change my constituents and I believe should be made to the crime of unlawful sexual relations.

I believe the underlying bill is a good one, as volunteers working with the Department of Corrections should certainly be included in this crime.

However, the reason I am before this committee today, is that I have a proposed amendment that would cover a situation which occurred in my District. A 56 year old teacher entered into a sexual relationship with an 18 year old who was a senior. I believe the law should prevent a teacher from entering into a relationship with any student who is enrolled at school. While the student may be over 17, she is still in the same type of situation in which the student is being taken advantage of by an adult.

I've attached a copy of some information about the student as presented to me by the students parents.

I would request that when you work this bill that you consider adding in my amendment.

Thank you for the opportunity to testify, and I would be glad to stand for questions. My constituents are here to verify briefly what I have said and to testify.

Shirley Palmer
State Representative
4th District

House Judiciary
Date 1-31-07
Attachment # 5

HOUSE BILL No. 2191

By Committee on Judiciary

1-24

Representative Palmer
Proposed amendment
January 31, 2007

5-2

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to unlawful sexual relations; amending K.S.A. 2006 Supp. 21-3520
11 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2006 Supp. 21-3520 is hereby amended to read as
15 follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual
16 sexual intercourse, lewd fondling or touching, or sodomy with a person
17 who is not married to the offender if:

18 (1) The offender is an employee *or volunteer* of the department of
19 corrections, or the employee *or volunteer* of a contractor who is under
20 contract to provide services for a correctional institution, and the person
21 with whom the offender is engaging in consensual sexual intercourse,
22 lewd fondling or touching, or sodomy is a person 16 years of age or older
23 who is an inmate; or

24 (2) the offender is a parole officer, *volunteer for the department of*
25 *corrections* or the employee *or volunteer* of a contractor who is under
26 contract to provide supervision services for persons on parole, conditional
27 release or postrelease supervision and the person with whom the offender
28 is engaging in consensual sexual intercourse, lewd fondling or touching,
29 or sodomy is a person 16 years of age or older who is an inmate who has
30 been released on parole or conditional release or postrelease supervision
31 under the direct supervision and control of the offender; or

32 (3) the offender is a law enforcement officer, an employee of a jail,
33 or the employee of a contractor who is under contract to provide services
34 in a jail and the person with whom the offender is engaging in consensual
35 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
36 years of age or older who is confined by lawful custody to such jail; or

37 (4) the offender is a law enforcement officer, an employee of a ju-
38 venile detention facility or sanctions house, or the employee of a con-
39 tractor who is under contract to provide services in such facility or sanc-
40 tions house and the person with whom the offender is engaging in
41 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
42 person 16 years of age or older who is confined by lawful custody to such
43 facility or sanctions house; or

1 (10) the offender is a community correctional services officer or the
 2 employee of a contractor who is under contract to provide supervision
 3 services for persons under community corrections supervision and the
 4 person with whom the offender is engaging in consensual sexual inter-
 5 course, lewd fondling or touching, or sodomy is a person 16 years of age
 6 or older who has been assigned to a community correctional services
 7 program under the supervision and control of community corrections and
 8 the offender has knowledge that the person with whom the offender is
 9 engaging in consensual sexual intercourse, lewd fondling or touching, or
 10 sodomy is currently under supervision of community corrections.

11 (b) For purposes of this act:

12 (1) "Correctional institution" means the same as prescribed by K.S.A.
 13 75-5202, and amendments thereto;

14 (2) "inmate" means the same as prescribed by K.S.A. 75-5202, and
 15 amendments thereto;

16 (3) "parole officer" means the same as prescribed by K.S.A. 75-5202,
 17 and amendments thereto;

18 (4) "postrelease supervision" means the same as prescribed in the
 19 Kansas sentencing guidelines act in K.S.A. 21-4703, and amendments
 20 thereto;

21 (5) "juvenile detention facility" means the same as prescribed by
 22 K.S.A. 2006 Supp. 38-2302, and amendments thereto;

23 (6) "juvenile correctional facility" means the same as prescribed by
 24 K.S.A. 2006 Supp. 38-2302, and amendments thereto;

25 (7) "sanctions house" means the same as prescribed by K.S.A. 2006
 26 Supp. 38-2302, and amendments thereto;

27 (8) "institution" means the same as prescribed by K.S.A. 76-12a01,
 28 and amendments thereto; and

29 (9) "teacher" means and includes teachers, supervisors, principals,
 30 superintendents and any other professional employee in any public or
 31 private school;

32 (10) "community corrections" means the entity responsible for su-
 33 pervising adults and juvenile offenders for confinement, detention, care
 34 or treatment, subject to conditions imposed by the court pursuant to the
 35 community corrections act, K.S.A. 75-5290, and amendments thereto,
 36 and the Kansas juvenile justice code, K.S.A. 38-1601 et seq., and amend-
 37 ments thereto;

38 (11) "court services" means the entity appointed by the district court
 39 that is responsible for supervising adults and juveniles placed on probation
 40 and misdemeanants placed on parole by district courts of this state;

41 (12) "law enforcement officer" means the same as prescribed by
 42 K.S.A. 21-3110, and amendments thereto; and

43 (13) "juvenile community supervision agency" means an entity that

1 receives grants for the purpose of providing direct supervision to juveniles
2 in the custody of the juvenile justice authority.

3 (c) Unlawful sexual relations is a severity level 10, person felony.

4 Sec. 2. K.S.A. 2006 Supp. 21-3520 is hereby repealed.

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

TESTIMONY on HB 2191
From Rhonda allen

Chairman O'Neal and Committee Members;

My name is Rhonda Allen. I want to testify briefly about this situation as the students mother. My daughter, was seduced and impregnated by her teacher/coach. He ran off with her and married her (he was 56, she was 18). The only consequences for his behavior was the loss of his teaching license. We have watched with interest media coverage of MANY similar cases throughout our country - many of them resulting in criminal charges against the offending teacher. Why were no charges filed in our daughters case? There is no law in Kansas (we were told) that considers the teacher/student power dynamic. Our County Attorney told us that, because our daughter was 18 when she was impregnated (even though she WAS still a student at the time), she was of legal age and the case could not be considered statutory rape. This is Very, Very wrong!! Though it may be too late for our daughter, I would like to see legislation passed that would make any sexual, romantic relationship between a student and a teacher illegal, regardless of the age of the student.

My husband did a little research and found such a statute in Arkansas. It is Arkansas Code 5-14-103, Sexual assault First Degree: Section A-2. Perhaps this would be helpful in developing language for such a Code in Kansas.

Thank you for your consideration of such legislation. I would be glad to testify or help in any way possible to get such a bill passed.

Jim & Rhonda Allen
2033 Maple Road
Fort Scott, KS 66701
(620) 223-5410
jrallen@classicenet.net

House Judiciary
Date 1-31-07
Attachment # 6

Arkansas Statutory References to Sexual Assault

In Arkansas, the statutory references to sexual assault are as follows:

Arkansas Code 5-14-101 . Sexual Assault Definitions :

- (1) "Deviate sexual activity" means any act of sexual gratification involving:
 - (A) The penetration, however slight, of the anus or mouth of one person by the penis of another person; or
 - (B) The penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;
- (2) "Forcible compulsion" means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person;
- (3) "Mentally defective" means that a person suffers from a mental disease or defect which renders the person incapable of understanding the nature and consequences of sexual acts or unaware the sexual act is occurring. A determination that a person is mentally defective shall not be based solely on his intelligence quotient;
- (4) "Mentally incapacitated" means that a person is temporarily incapable of appreciating or controlling the person's conduct as a result of the influence of a controlled or intoxicating substance:
 - (A) Administered to the person without the person's consent; or
 - (B) Which renders the person unaware the sexual act is occurring;
- (5) "Physically helpless" means that a person is:
 - (A) Unconscious or is physically unable to communicate lack of consent; or
 - (B) Is rendered unaware the sexual act is occurring;
- (6) "Public place" means a publicly or privately owned place to which the public or substantial numbers of people have access;
- (7) "Public view" means observable or likely to be observed by a person in a public place;
- (8) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, or buttocks, or anus of a person or the breast of a female;
- (9) "Sexual intercourse" means penetration, however slight, of the labia majora by a penis; and
- (10) "Guardian" means a parent, stepparent, legal guardian, legal custodian, foster parent, or anyone who, by virtue of a living arrangement, is placed in an apparent position of power or authority over a minor.

Arkansas Code 5-14-103. Rape:

- (A) A person commits rape if he engages in sexual intercourse or deviate sexual activity with another person:
- (1) By forcible compulsion; or
 - (2) Who is incapable of consent because he is physically helpless, mentally defective or mentally incapacitated; or
 - (3) Who is less than fourteen (14) years of age; or
 - (4) Who is less than eighteen (18) years of age, and the actor:
 - (a) The victim's guardian;
 - (b) Uncle, aunt, grandparent or step-grandparent, grandparent by adoption;
 - (c) Brother, sister or the whole or half-blood or by adoption;
 - (d) Nephew, niece or first cousin.

(e) It is an affirmative defense to prosecution under this subdivision (D) that the actor was not more than three (3) years older than the victim.

(B) It is not a defense to prosecution under (3) or (4) of this section that the victim consented to the conduct.

(C) It is an affirmative defense to prosecution under (3) of this section that the actor was not more than three (3) years older than the victim.

(D) Rape is a Class Y felony.

(1) A court may issue a permanent no contact order when:

- (a) A defendant pleads guilty or nolo contendere; or
- (b) All the defendant's appeals have been exhausted and the defendant remains convicted.

(2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter such orders as are consistent with Arkansas Code 5-2-305.

Arkansas Code 5-14-103. Sexual Assault First Degree:

(A) A person commits sexual assault in the first degree if the actor engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, who is less than eighteen (18) years of age and the actor:

- (1) Is employed with the Department of Correction, Department of Community Punishment, Department of Human Services, any city or county jail or juvenile detention facility, and the victim is in the custody of the Department of Correction, Department of Community Punishment, Department of Human Services, any city or county jail, or juvenile detention facility, or their contractors or agents; or
- (2) Is a professional under Arkansas Code 12-12-5 07(b) and is in a position of trust or authority over the victim and uses the position to engage in sexual intercourse or deviate sexual activity; or
- (3) Is an employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim. It is an affirmative defense to prosecution under this subdivision that the actor was not more than three (3) years older than the victim.

(B) Is it no defense to prosecution that the victim consented to the conduct.

(C) Sexual assault in the first degree is a Class A felony.

Arkansas Code 5-14-103. Sexual Assault Second Degree:

(A) A person commits sexual assault in the second degree if the person:

- (1) Engages in sexual contact with another person by forcible compulsion; or
- (2) Engages in sexual contact with another person who is incapable of consent because the person is physically helpless, mentally defective, or mentally incapacitated; or
- (3) Being eighteen (18) years of age or older, engages in sexual contact with the sex organs of another person, not the person's spouse, who is less than fourteen (14) years of age.
- (4) Engages in sexual contact with another person who is less than eighteen (18) years of age and the person:
 - (a) Is employed with the Department of Correction, Department of Community Punishment, any city or county jail or any juvenile detention facility, and the minor is in custody at one of the facilities operated by the agency or contractor employing the person;

- (b) Is a professional under Arkansas Code 12-12-507(b) or is in a position of trust or authority over the minor; or
- (c) Is the minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust over the minor.

(B) It is not a defense to prosecution under (4) of this section that the minor consented.

(5) Is a teacher in a public school in grades kindergarten through twelve (K-12) and engages in sexual contact with another person who is a student enrolled in the school and who is less than twenty-one (21) years of age; or

(6) Being less than eighteen (18) years old, the person engages in sexual contact with a person not the person's spouse who is less than fourteen (14) years old.

(1) It is an affirmative defense to prosecution under this section that the person was not more than three (3) years older than the victim if the victim is less than twelve (12) years of age.

(2) It is an affirmative defense to prosecution under this section that the person was not more than four (4) years older than the victim if the victim is twelve (12) years of age or older.

(C) Sexual assault in the second degree is a Class B felony.

(D) Sexual assault in the second degree is a Class D felony if committed by a person less than eighteen (18) years of age with a person, not the person's spouse, who is less than fourteen (14) years of age.

Arkansas Code 5-14-103. Sexual Assault Third Degree :

(A) A person commits sexual assault in the third degree if the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, and the person:

(1) Is employed with the Department of Correction, Department of Community Punishment, Department of Human Services, any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Punishment, Department of Human Services, or any city or county jail; or

(2) Is a professional under Arkansas Code 12-12-507(b) or a member of the clergy, and is in a position of trust or authority over the victim and uses the position to engage in sexual intercourse or deviate sexual activity.

(B) Is it no defense to prosecution under (A) of this section that the victim consented to the conduct.

(C) A person commits sexual assault in the third degree if the person being under eighteen (18) years of age, engages in sexual intercourse or deviate sexual activity with another person not the person's spouse, who is less than fourteen (14) years of age.

(D) It is an affirmative defense under (C) of this section that the person was not more than three (3) years older than the victim.

(E) Sexual assault in the third degree is a Class C felony.

Arkansas Code 5-14-103. Section 5. Sexual Assault in the Fourth Degree :

(A) A person commits sexual assault in the fourth degree if, being twenty (20) years of age or older, the person engages in sexual intercourse, deviate sexual activity, or sexual contact with another person, not the person's spouse, who is less than sixteen (16) years of age; or

(B) The person engages in sexual contact with another person, not the person's spouse, who is less than sixteen (16) years of age.

(C) Sexual assault in the fourth degree under (A) of this section is a Class D felony.

(D) Sexual assault in the fourth degree under (B) of this section is a Class A misdemeanor.

Arkansas Code 5-14-110. Sexual Indecency With a Child:

(A) A person commits sexual indecency with a child if:

- (1) Being eighteen (18) years old or older, the person solicits another person who is less than fifteen (15) years of age, or who is represented to be less than fifteen (15) years of age to engage in sexual intercourse, deviate sexual activity, or sexual contact; or
- (2) With the purpose to arouse or gratify the sexual desires of himself or herself or those of any other person, the person purposefully exposes his or her sex organs to another person who is less than fifteen (15) years of age.

(B) It is an affirmative defense if the person is within three (3) years of age of the victim.

(C) Sexual indecency with a child is a Class D felony.

Act 509. An Act to Require Law Enforcement Officers to Complete Training Concerning Sexual Assaults; and for Other Purposes.

(A) The Commission on Law Enforcement Standards and Training shall require all law enforcement officers to complete a minimum of twenty (20) hours of training concerning sexual assaults as a part of Basic Police Training Course curriculum.

(B) Practicum training will be sufficient for this requirement.

(C) The training shall, at a minimum, cover the following topics:

- (1) The dynamics of sexual assault;
- (2) The laws concerning sexual assault;
- (3) Sexual assault victim interview techniques; and
- (4) Support services available to sexual assault victims.

Testimony on HB 2193
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
January 31, 2007

The Department of Corrections urges favorable consideration of HB 2193. HB 2193 would treat persons who commit a new felony crime in Kansas while on bond for felony charges pending in another state, the same as those persons who were out on a bond for felony charges pending in Kansas during the commission of the new felony offense. Currently, K.S.A. 21-4603d(f) allows for the imposition of a prison sentence for what would otherwise be a presumed nonprison sentence due to the offender having committed the new crime while out on bond only if the bond was for a Kansas felony charge. HB 2193 would permit a Kansas judge to sentence a defendant to prison if that defendant committed the new Kansas crime while out on bond for a felony charge pending in any state.

K.S.A. 21-4603d(f) permits a Kansas judge to sentence a defendant to prison for a new felony crime if at the time of the commission of the new crime, the defendant was on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated even if the sentence for the new crime otherwise presumes a nonprison disposition. A sentence of imprisonment would not constitute a departure. However, due to the specific reference in K.S.A. 21-4603d(f) to releases pursuant to article 28 of chapter 22 of Kansas law, the Kansas Court of Appeals in State v. Voss, case no. 94,089 (2006) 137 P.3d 1077; 2006 Kan. App. LEXIS 659 held that provision did not apply to a defendant who had been released on pending felony charges from another state. Article 28 of chapter 22 provides for the release of defendants prior to trial or while their case is on appeal.

HB 2193 would permit a Kansas sentencing judge to impose a prison sentence upon a defendant who is convicted of a Kansas felony irrespective of whether the defendant committed the new crime while on a release bond issued by a Kansas court or that of another jurisdiction.

The Department urges favorable consideration of HB 2193.

House Judiciary

Date 1-31-07

Attachment # 7