

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 19, 2007 in Room 313-S of the Capitol.

All members were present except:
Annie Kuether- excused

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

HB 2283 - perfection of security interests on certificates of title

Representative Colloton made the motion to report HB 2283 favorably for passage. Representative Whitham seconded the motion. The motion carried.

HB 2007, 2228 & 2262 - indemnification clauses

Chairman O'Neal announced that in view of time constrains, no action would be taken on these three bills. However, the committee has considered these types of bills the last two years and he stressed that there needs to be a resolution to the issue. He encouraged all parties interested to get together and come up with a compromise for the 2008 legislature to consider.

HB 2360 - arrest powers of federal law enforcement officers

Representative Owens made the motion to report HB 2360 favorably for passage. Representative Pauls seconded the motion. The motion carried.

HB 2363 - civil procedure; repealing statutes dealing with terms of the court

Staff suggested technical amendments on page 5, line 22 the written out word "thirty" should be "30" and on page 7 line 37 "such mater" should be "such master". Representative Pauls made the motion to adopt the technical changes. Representative Crow seconded the motion. The motion carried.

Representative Owens made the motion to report HB 2363 favorably for passage, as amended. Representative Pauls seconded the motion. The motion carried.

HB 2095 - repealing the prohibition on local residential restrictions on sex offenders

Chairman O'Neal provided the committee with a balloon which would keep current law in place with regards to the prohibition on residential restrictions on sex offenders but carve out an exception for correctional placement residences. (Attachment 1)

The committee discussed the need to strike in the balloon, "that maintains a" in (b) and to add "or zoning" after "residential licensing". Representative Ward made the motion to adopt the balloon with the proposed changes. Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to strike the expiration date, as recommendation by the Sex Offender Policy Board. Representative Crow seconded the motion. The motion carried.

Representative Pauls made the motion to report HB 2095 favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 19, 2007 in Room 313-S of the Capitol.

HB 2393 - municipal courts; fines; restitution, costs; collection agents; judgements enforcement in district court

The committee discussed the opposition from the district court to be the enforcer of judgements. A balloon was provided to address their concerns which would strike subsection (g) to the end of the bill, except for the effective date. (Attachment 2) Representative Ward made the motion to adopt the balloon. Representative Owens seconded the motion. The motion carried.

Representative Davis voiced his concern with the cost of collection be assessed to individuals. He made the motion to apply K.S.A. 75-719 (c)(5) (Caps costs of collection shall not exceed 33% of the amount collected, court costs and fines.) to the bill. Representative Watkins seconded the motion. The motion carried.

Representative Colloton made the motion to report HB 2393 favorably for passage, as amended. Representative Whitham seconded the motion. The motion carried.

HB 2186 - restrictions on advertising for adoption and child placement agencies

Representative Owens made the motion to add at the end of line 32, "or to an individual seeking to adopt a child." Representative Colloton seconded the motion. The motion carried.

Representative Owens made the motion to report HB 2186 favorably for passage as amended. Representative Colloton seconded the motion.

Some committee members had concerns with adoption agencies having to have dual licences in order to advertise in Kansas and also with limiting commercial speech.

Representative Crow made the substitute motion to change a(1) to read "...shall disclose such license information", also apply the change in lines 35, 42 & 42 and strike sections 2 & 3. Representative Wolf seconded the motion. The motion carried.

Representative Wolf made the motion to report HB 2186 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

HB 2191 - unlawful sexual relations by volunteers in correctional institutions

Staff provided the committee a balloon which would include teachers in the bill. So that it would be unlawful for teachers to have sexual relations with any student who is attending high school. (Attachment 3) Representative Crow made the motion to adopt the balloon. Representative Pauls seconded the motion. The motion carried.

Representative Garcia provided the committee with an amendment which would provide the same penalties for the mistreatment of a dependent adult as for theft. (Attachment 4) The committee was concerned with the severity level changes due to prison overcrowding. Representative Garcia made the motion to have the value amount of over \$100,000 be a severity level 6 and under would remain current law. Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to report HB 2191 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 20, 2007.

HOUSE BILL No. 2095

By Committee on Judiciary

1-18

House Judiciary
Date 2-19-07
Attachment # 1

9 AN ACT repealing K.S.A. 2006 Supp. 22-4913, concerning offender res-
10 idency restrictions; relating to the prohibition of local residential
11 restrictions.

; amending KSA 2006 Supp. 22-4913 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. 22-4913 is hereby repealed.

15 Sec. 2. This act shall take effect and be in force from and after its
16 publication in the statute book.

Section 1. KSA 2006 Supp. 22-4913 is hereby amended to read as follows: 22-4913. (a) Except as provided further, on and after the effective date of this act, cities and counties shall be prohibited from adopting or enforcing any ordinance, resolution or regulation establishing residential restrictions for offenders as defined by K.S.A. 22-4902, and amendments thereto. The provisions of this section ~~subsection~~ shall expire on June 30, 2008.

(b) The prohibition set forth in subsection (a) shall not apply to any city or county ~~that maintains a~~ residential licensing program for correctional placement residences that includes regulations for the housing of such offenders.

(c) As used in this section, "correctional placement residence" means a facility that provides residential services for individuals or offenders who reside or have been placed in such facility due to any one of the following situations:

- (1) Prior to, or instead of, being sentenced to prison;
- (2) received a conditional release prior to a hearing;
- (3) as a part of a sentence of confinement of not more than one year;
- (4) a privately operated facility housing parolees;
- (5) received a deferred sentence and placed in a facility operated by community corrections; or
- (6) required court-ordered treatment services for alcohol or drug abuse.

Correctional placement residence shall not include a single or multifamily dwelling or commercial residential building that provides a residence to staff and persons other than those described in paragraphs (1) through (6).

Renumber remaining sections accordingly.

HOUSE BILL No. 2393

By Committee on Judiciary

2-5

9 AN ACT concerning municipal courts; relating to collection of fines, res-
10 titution and other costs.

11

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

13 Section 1. (a) Cities are authorized to enter into contracts for collec-
14 tion services for debts owed to municipal courts or restitution owed under
15 an order of restitution. On and after July 1, 2007, the cost of collection
16 shall be paid by the defendant as an additional court cost in all cases
17 where the defendant fails to pay any amount ordered by the court and
18 the court utilizes the services of a contracting agent pursuant to this sec-
19 tion. The cost of collection shall be deemed an administrative fee to pay
20 the actual costs of collection made necessary by the defendant's failure
21 to pay court debt and restitution.

22 (b) The following terms shall mean:

23 (1) "Beneficiary under an order of restitution" means the victim or
24 victims of a crime to whom a municipal court has ordered restitution be
25 paid;

26 (2) "contracting agent" means a person, firm, agency or other entity
27 who contracts hereunder to provide collection services;

28 (3) "cost of collection" means the fee specified in contracts hereunder
29 to be paid to or retained by a contracting agent for collection services.
30 Cost of collection also includes any filing fee required under K.S.A. 60-
31 4303, and amendments thereto; and

32 (4) "debts owed to municipal courts" means any assessment of court
33 costs, fines, fees, moneys expended by the city in providing counsel and
34 other defense services to indigent defendants or other charges which a
35 municipal court judgment has ordered to be paid to the court, and which
36 remain unpaid in whole or in part, and includes any interest or penalties
37 on such unpaid amounts as provided for in the judgment or by law.
38 "Debts owed to municipal courts" also includes the cost of collection
39 when collection services of a contracting agent hereunder are utilized.

40 (c) Any beneficiary under an order of restitution entered by a mu-
41 nicipal court is authorized to utilize the collection services of contracting
42 agents pursuant to this section for the purpose of collecting all outstand-
43 ing amounts owed under such order of restitution.

House Judiciary
Date 2-19-07
Attachment # 2

2-2

1 (d) Contracts shall provide for the payment of any amounts collected
 2 to the clerk of the municipal court for the court in which the debt being
 3 collected originated, after first deducting the collection fee. In accounting
 4 for amounts collected from any person, the municipal court clerk shall
 5 credit the person's amount owed the amount of the net proceeds col-
 6 lected. The clerk shall not reduce the amount owed by any person that
 7 portion of any payment which constitutes the cost of collection pursuant
 8 to this section.

9 (e) When the appropriate cost of collection has been paid to the con-
 10 tracting agent as agreed upon in the contract, the municipal clerk shall
 11 then distribute amounts collected as follows:

12 (1) When collection services are utilized pursuant to subsection (c),
 13 all amounts shall be applied against the debts owed to the court as spec-
 14 ified in the original judgment creating the debt;

15 (2) when collection services are utilized pursuant to subsection (d),
 16 all amounts shall be paid to the beneficiary under the order of restitution
 17 designated to receive such restitution, except where that beneficiary has
 18 received recovery from the Kansas crime victims compensation board and
 19 such board has subrogation rights pursuant to K.S.A. 74-7312, and
 20 amendments thereto, in which case all amounts shall be paid to the board
 21 until its subrogation lien is satisfied.

22 (f) Whenever collection services are being utilized against the same
 23 debtor pursuant to both subsections (d) and (e), any amounts collected
 24 by a contracting agent shall be first applied to satisfy debts pursuant to
 25 an order of restitution. Upon satisfaction of all such debts, amounts re-
 26 ceived from the same debtor shall then be applied to satisfy, debts owed
 27 to courts.

28 ~~(g) For any defendant convicted in municipal court, all debts owed~~
 29 ~~to the municipal court shall be assessed against the defendant and shall~~
 30 ~~be a judgment against the defendant that may be enforced in the district~~
 31 ~~court serving the jurisdiction in which the city is located. This judgment~~
 32 ~~is enforceable in the district court as a chapter 61 civil judgment for~~
 33 ~~payment of money upon filing the municipal court judgment, affidavit~~
 34 ~~and certificate of mailing as provided in subsection (i).~~

35 ~~(h) Jury fees shall not be considered court costs and shall be paid by~~
 36 ~~the city in all municipal cases appealed for a trial de novo before the~~
 37 ~~district court.~~

38 ~~(i) A copy of any municipal judgment certified by the municipal court~~
 39 ~~in which the judgment was rendered, may be filed in the office of the~~
 40 ~~clerk of any district court of this state. Such copy must be filed by an~~
 41 ~~attorney licensed to practice law in the state of Kansas. The clerk of the~~
 42 ~~district court shall treat the municipal judgment so filed in the same~~
 43 ~~manner as a judgment of the district court of this state. A judgment filed~~

2-3

1 as provided by this section has the same effect and is subject to the same
2 procedures, defenses and proceedings as a judgment of a district court
3 of this state and may be enforced or satisfied in like manner.

4 At the time of the filing of the municipal judgment, the clerk of the
5 municipal court shall make and file with the clerk of the district court an
6 affidavit setting forth the name and last known post office address of the
7 judgment debtor who was assessed a debt owed to the municipal court.

8 Upon the filing of the municipal judgment and the affidavit, the clerk
9 of the municipal court or the contracting agent on behalf of that court
10 promptly shall mail notice of the filing of the municipal judgment to the
11 judgment debtor at the address given and shall file a certificate of the
12 mailing with the district court. The notice shall include the name and
13 post office address of the city's contracting agent and the attorney pros-
14 ecuting the judgment collection for the city. In addition, a judgment cred-
15 itor owed restitution under the municipal judgment may mail a notice of
16 the filing of the judgment to the judgment debtor and may file proof of
17 mailing with the clerk of the district court. Lack of mailing notice of filing
18 by the clerk of the municipal court shall not affect the enforcement pro-
19 ceedings if proof of mailing by the judgment creditor has been filed.

20 (j) If the judgment debtor shows the district court that an appeal from
21 the municipal judgment is pending or will be taken, or that a stay of
22 execution has been granted, the court shall stay enforcement of the mu-
23 nicipal judgment until the appeal is concluded, the time for appeal ex-
24 pires, or the stay of execution expires or is vacated, upon proof that the
25 judgment debtor has furnished the security for the satisfaction of the
26 judgment required by the city in which it was rendered.

27 The court shall stay enforcement of the municipal judgment for an
28 appropriate period, upon a finding that any ground exists upon which
29 enforcement of a judgment of any district court of this state would be
30 stayed and upon requiring the same security for satisfaction of the judg-
31 ment which is required subject to the provisions of subsection (d) of
32 K.S.A. 60-2103, and amendments thereto.

33 (k) The payment of court costs for the filing of municipal court judg-
34 ments shall be governed by K.S.A. 60-2001 and 60-2005, and amend-
35 ments thereto.

36 Sec. 2. This act shall take effect and be in force from and after its
37 publication in the statute book.

HOUSE BILL No. 2191

By Committee on Judiciary

1-24

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

Representative Palmer
Proposed amendment
February 8, 2007

House Judiciary
Date 2-19-07
Attachment # 3

1 (5) the offender is an employee of the juvenile justice authority or
2 the employee of a contractor who is under contract to provide services in
3 a juvenile correctional facility and the person with whom the offender is
4 engaging in consensual sexual intercourse, lewd fondling or touching, or
5 sodomy is a person 16 years of age or older who is confined by lawful
6 custody to such facility; or

7 (6) the offender is an employee of the juvenile justice authority or
8 the employee of a contractor who is under contract to provide direct
9 supervision and offender control services to the juvenile justice authority
10 and the person with whom the offender is engaging in consensual sexual
11 intercourse, lewd fondling or touching, or sodomy is 16 years of age or
12 older and (A) released on conditional release from a juvenile correctional
13 facility under the supervision and control of the juvenile justice authority
14 or juvenile community supervision agency or (B) placed in the custody of
15 the juvenile justice authority under the supervision and control of the
16 juvenile justice authority or juvenile community supervision agency and
17 the offender has knowledge that the person with whom the offender is
18 engaging in consensual sexual intercourse, lewd fondling or touching, or
19 sodomy is currently under supervision;

20 (7) the offender is an employee of the department of social and re-
21 habilitation services or the employee of a contractor who is under contract
22 to provide services in a social and rehabilitation services institution and
23 the person with whom the offender is engaging in consensual sexual in-
24 tercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502,
25 and amendments thereto, lewd fondling or touching, or sodomy, not oth-
26 erwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments
27 thereto, is a person 16 years of age or older who is a patient in such
28 institution;

29 (8) the offender is a teacher or a person in a position of authority and
30 the person with whom the offender is engaging in consensual sexual in-
31 tercourse, lewd fondling or touching or sodomy is 16 or 17 years of age
32 and a student enrolled at the school where the offender is employed. If
33 the offender is the parent of the student, the provisions of K.S.A. 21-
34 3603, and amendments thereto, shall apply, not this subsection;

35 (9) the offender is a court services officer or the employee of a con-
36 tractor who is under contract to provide supervision services for persons
37 under court services supervision and the person with whom the offender
38 is engaging in consensual sexual intercourse, lewd fondling or touching,
39 or sodomy is a person 16 years of age or older who has been placed on
40 probation under the supervision and control of court services and the
41 offender has knowledge that the person with whom the offender is en-
42 gaging in consensual sexual intercourse, lewd fondling or touching, or
43 sodomy is currently under the supervision of court services; or

not otherwise subject to subsection (a)(2) of KSA 21-3502 or subsection (a)(1) of KSA 21-3504, and amendments thereto,

, not otherwise subject to KSA 21-3503 or subsection (a)(2) or (a)(3) of KSA 21-3504, and amendments thereto,

, not otherwise subject to KSA 21-3505 or subsection (a)(1) or (a)(2) of KSA 21-3506, and amendments thereto,

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,

offering any of grades kindergarten through 12

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
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.

3-4

21-3502. Rape. (a) Rape is: (1) Sexual intercourse with a person who does not consent to the sexual intercourse, under any of the following circumstances:

(A) When the victim is overcome by force or fear;
(B) when the victim is unconscious or physically powerless; or
(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(2) **sexual intercourse** with a child who is under 14 years of age;
(3) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b) It shall be a defense to a prosecution of rape under subsection (a)(2) that the child was married to the accused at the time of the offense.

(c) Except as provided further, rape as described in subsection (a)(1) or (2) is a severity level 1, person felony. Rape as described in subsection (a)(2), when the offender is 18 years of age or older, is an off-grid person felony. Rape as described in subsection (a)(3) or (4) is a severity level 2, person felony.

21-3503. Indecent liberties with a child. (a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(1) Any **lewd fondling** or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(2) soliciting the child to engage in any **lewd fondling** or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of indecent liberties with a child as described in subsection (a)(1) that the child was married to the accused at the time of the offense.

(c) Indecent liberties with a child is a severity level 5, person felony.

21-3504. Aggravated indecent liberties with a child. (a) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any **lewd fondling** or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any **lewd fondling** or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any **lewd fondling** or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any **lewd fondling** or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of aggravated indecent liberties with a child as

provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A) that the child was married to the accused at the time of the offense.

(c) Except as provided further, aggravated indecent liberties with a child as described in subsections (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated indecent liberties with a child as described in subsection (a)(2) is a severity level 4, person felony. When the offender is 18 years of age or older, aggravated indecent liberties with a child as described in subsection (a)(3) is an off-grid person felony.

21-3505. Criminal sodomy. (a) Criminal sodomy is:

(1) **Sodomy** between persons who are 16 or more years of age and members of the same sex or between a person and an animal;

(2) **sodomy** with a child who is 14 or more years of age but less than 16 years of age; or

(3) causing a child 14 or more years of age but less than 16 years of age to engage in **sodomy** with any person or animal.

(b) It shall be a defense to a prosecution of criminal sodomy as provided in subsection (a)(2) that the child was married to the accused at the time of the offense.

(c) Criminal sodomy as provided in subsection (a)(1) is a class B nonperson misdemeanor. Criminal sodomy as provided in subsections (a)(2) and (a)(3) is a severity level 3, person felony.

21-3506. Aggravated criminal sodomy. (a) Aggravated criminal sodomy is:

(1) **Sodomy** with a child who is under 14 years of age;

(2) causing a child under 14 years of age to engage in **sodomy** with any person or an animal;

or

(3) sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with any person or an animal, under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender.

(b) It shall be a defense to a prosecution of aggravated criminal sodomy under subsection (a)(1) that the child was married to the accused at the time of the offense.

(c) Except as provided further, aggravated criminal sodomy is a severity level 1, person felony. Aggravated criminal sodomy as described in subsection (a)(1) or (a)(2), when the offender is 18 years of age or older, is an off-grid person felony.

21-3603. Aggravated incest. (a) Aggravated incest is: (1) Marriage to a person who is under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or

(2) engaging in: (A) Otherwise **lawful sexual intercourse or sodomy** as defined by K.S.A. 21-3501 and amendments thereto; or (B) any **lewd fondling**, as described in subsection (a)(1) of K.S.A. 21-3503 and amendments thereto, with a person who is 16 or more years of age but under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(b) Aggravated incest as described in subsection (a)(2)(A) is a severity level 5, person felony. Aggravated incest as described in subsections (a)(1) and (a)(2)(B) is a severity level 7, person felony.

Proposed amendment
Representative Garcia
February 19, 2007

Insert the following after the last amendatory section of the bill:

“ Sec. ____ . K.S.A. 2006 Supp. 21-3437 is hereby amended to read as follows: 21-3437. (a) Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person; or

(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

(b) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(c) For purposes of this section: "Dependent adult" means an individual 18 years of age or older who is unable to protect their own interest. Such term shall include:

(1) Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

(2) any adult cared for in a private residence;

(3) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;

(5) any individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(6) any individual kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(d) (1) Mistreatment of a dependent adult as defined in subsection (a)(1) is a severity level ~~6~~ 5, person felony.

(2) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 5, person felony if the aggregate amount of the value of the resources is \$100,000 or more.

(3) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is at least \$25,000 or more but less than \$100,000.

~~(3)~~ (4) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least \$1,000 but less than \$25,000.

~~(4)~~ (5) Mistreatment of a dependent adult as defined in subsection (a)(2) is a class A person misdemeanor if the aggregate amount of the value of the resources is less than \$1,000.

~~(5)~~ (6) Mistreatment of a dependent adult as defined in subsection (a)(3) is a class A person misdemeanor.

~~(6)~~ (7) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is less than \$1,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of a dependent adult two or more times. “

House Judiciary

Date 2-19-07

Attachment # 4

Amend title and repealer.

21-370. Theft. (a) Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

- (1) Obtaining or exerting unauthorized control over property;
- (2) obtaining by deception control over property;
- (3) obtaining by threat control over property; or
- (4) obtaining control over stolen property knowing the property to have been stolen by another.

(b) (1) Theft of property of the value of \$100,000 or more is a severity level 5, nonperson felony.

(2) Theft of property of the value of at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony.

(3) Theft of property of the value of at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony.

(4) Theft of property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony.

(5) Theft of property of the value of less than \$1,000 is a class A nonperson misdemeanor.

(6) Theft of property of the value of less than \$1,000 is a severity level 9, nonperson felony if committed by a person who has been convicted of theft two or more times.

(c) Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.