Approved: February 21, 2007
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on January 31, 2007, in Room 123-S of the Capitol.

All members were present except:
Greta Goodwin arrived, 9:40 A.M.
David Haley arrived, 9:42 A.M.
Terry Bruce arrived, 9:45 A.M.

Committee staff present:
Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Roger Werholtz, Secretary, Department of Corrections
Claudia Alexander
Helen Pedigo, Executive Director, Kansas Sentencing Commission

Others attending:
See attached list.

Bill Introductions

Senator Peggy Palmer introduced a bill regarding the crime of incest and associated penalties. Senator Schmidt moved, Senator Lynn seconded, to introduce the bill. Motion carried.

Jim Clark, Kansas Bar Association, requested the introduction of a bill concerning the collection of certain specimens as specified in K.S.A. 21-2511. Senator Donovan moved, Senator Umbarger seconded, to introduce the bill as a committee bill. Motion carried.

Dan Morin, Kansas Medical Society, requested the introduction of a bill to ban concealed weapons from hospitals and doctors' offices. Senator Allen moved, Senator Betts seconded, to introduce the bill as a committee bill. Motion carried.

Brad Smoot, Kansas Civil Law Forum, requested the introduction of a bill concerning recovery of damages in anti-trust cases. Senator Allen moved, Senator Betts seconded, to introduce the bill. Motion carried.

The hearing on **SB 87--Kansas offender registration act; prohibition from adopting or enforcing the residency restrictions** was opened.

Roger Werholtz appeared in support, relating findings of the Sex Offender Policy Board. The Board was created by the 2006 Legislature and directed to study the issue of residential restrictions for sex offenders. Secretary Werholtz reported the Board found no positive correlation between residency restrictions and preventing re-offending behavior. The research presented to the Board indicated that residential restriction zones were detrimental to the treatment and supervision of sex offenders and to law enforcement efforts (Attachment 1).

There being no further conferees, the hearing on **SB 87** was closed.

The hearing on **SB 88--Restoration of spouse's name after divorce is final** was opened.

Senator Barbara Allen testified in support, providing background on current law concerning reinstatement of a former name following a final divorce decree (Attachment 2). Enactment of this bill would provide a simple, economical way to achieve restoration of a former name. Senator Allen provided a balloon amendment to assure the court's jurisdiction of a case after divorce proceedings are closed (Attachment 3).

Claudia Alexander appeared in favor, relating her personal experience in attempting to restore her former name in an affordable manner (Attachment 4).

There being no further conferees, the hearing on **SB 88** was closed.

The hearing on **SB 97--Third or subsequent conviction for burglary, sentence** was opened.

Helen Pedigo provided neutral testimony indicating a redundancy found while conducting a bed impact statement for **SB 97**. Ms. Pedigo suggested striking the phrase "or 21-3716" on page 5, line 42 of the bill. The change will not alter the presumptive disposition for a third conviction of aggravated burglary (Attachment 5).

Written testimony in support of **SB 97** was submitted by:
Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 6)

There being no further conferees, the hearing on **SB 97** was closed.

Final action on **SB 37--Concerning the crime of smoking in indoor areas** continued.

Staff members provided information regarding questions pertaining to Senator Schmidt's amendment proposed January 30. Questions answered included:

- grandfather clause would make the law non-uniform across the state;
- the term "private automobile" is not defined; therefore, consider using motor vehicle; and
- cities need to be included in the amendment because there is no existing law which allows smoking; therefore, the cities do not have a way to "opt out".

Senator Schmidt distributed an addition to the amendment he proposed January 30 (Attachment 7). The amendment addresses the uniformity problem by allowing cities to adopt a more stringent ordinance.

Senator Schmidt moved, Senator Donovan seconded, to adopt the amendments proposed by Senator Schmidt. Motion carried.

Senator Schmidt moved, Senator Goodwin seconded, to recommend **SB 37** favorably for passage.

Senator Bruce made a substitute motion to pass **SB 37** as amended without recommendation. Senator Goodwin seconded the motion. Motion carried.

The meeting adjourned at 10:28 A.M. The next scheduled meeting is February 1, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-31-07

NAME	REPRESENTING
Victoria Loomis	ACS Phi Theta Kappa
Linda McFate	Coffeyville Community College Phi Theta Kappa
Michael Steen	CCC Phi Theta Kappa
Pam Lowe	CCC - PTK
Brad Waggoner	CCC - PTK
Chris Mechler	OJA
DAVID KLEPPER	KC STAR
Bob Keller	JCSO
Linda McCloskey	American Heart Assn.
Tom Whitaker	KS Motor Carriers Assn.
Marc Ball	KDOR-DMV
Chad Austin	KHA
Sandy Barnett	KCSDV
Josh Mosier	Governor's Grants Program
BRANDON BOHNING	KBA
Brenda Hamm	KSC
Helen Pedigo	KSC
Roger Werholtz	KDOC
Richard Samaniego	KCADA

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/31/07

NAME	REPRESENTING
Callie Denton Hartle	KTLA
Kathy Porter	Judicial Branch
Paula Marmet	KDHE
Mary Payne Kellehut	TFKC
Sarah Green	KHI News Service
STEVE KEARNEY	KCDAA

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 87
to
The Senate Judiciary Committee

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

SB 87 would extend the moratorium enacted by the 2006 Legislature on the adoption and enforcement by cities and counties of restrictions on the residence of registered offenders to June 30, 2009. The Department supports SB 87. K.S.A. 22-4913 (2006 Supp.) currently provides a moratorium on local establishment of residential restrictions until June 30, 2008. For the Committee's information, HB 2095, now before the House Judiciary Committee, would repeal the prohibition against cities and counties establishing and enforcing residential restrictions.

The 2006 Legislature also created the Sex Offender Policy Board under the auspices of the Kansas Criminal Justice Coordinating Council. K.S.A. 74-9501 (2006 Supp.). The Sex Offender Policy Board was directed to study the issue of residential restrictions for sex offenders. The membership of the Sex Offender Policy Board consists of Donald Jordan, Acting Secretary of Social and Rehabilitative Services serving as the Chair; Gary Daniels former Secretary of Social and Rehabilitative Services; Larry Welch, Director of the Kansas Bureau of Investigation; Retired Justice of the Supreme Court, Tyler Lockett; Scott Jackson, Executive Director of Family Life Center, Inc.; Sandra Barnett, Executive Director of the Kansas Coalition Against Sexual and Domestic Violence; and me. The Board's report was submitted to the Council, Governor, Attorney General, Chief Justice of the Supreme Court, Chief Clerk of the House of Representatives and Secretary of the Senate at the beginning of this legislative session. A copy of the Board's report pertaining to residential restrictions is attached to my testimony.

In addition to the public meetings conducted by the Board, a public meeting on residence restrictions was held with the Special Committee on Judiciary on November 15, 2006. The Board and the Special Committee on Judiciary had the privilege of hearing presentations from Dr. Jill Levenson of Lynn University (Florida), Dr. Jeffery Walker, University of Arkansas at Little Rock, Pamela Dettmann, of the Des Moines County (Iowa) Attorney's Office, Mary Richards of the Iowa Coalition Against Sexual Assault, Christopher Lobanov-Rostovsky of the Colorado Department of Public Safety/Division of Criminal Justice, Representative Nile Dillmore, Melissa Alley of Wichita, Kansas and Doug Vance of the Kansas Recreation and Parks Association.

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

Based upon the study conducted by the Sex Offender Policy Board, I support SB 87. The Board found that there is no positive correlation between residency restrictions and preventing re-offending behavior. Of greater concern was the detrimental effect of residential restrictions upon public safety. The research and expertise presented to the Board indicated that residential restriction zones were detrimental to the treatment and supervision of sex offenders and to law enforcement efforts. The Board found that the,

> "[r]esearch and best practices in the field of corrections, law enforcement, sex offender treatment and more particularly, victims' advocacy groups, equally discount residence restrictions as a useful means to manage, supervise and treat sex offenders."

Further,

> "[w]ith regard to enforcement, the overwhelming experience of states such as Iowa that have been vocal enough to share their experiences in attempting to enforce residence restrictions underscores the theory that normally compliant offenders will take desperate measures to either comply with or circumvent residence restrictions. This increases the time law enforcement must spend on locating offenders, decreases the time they are able to spend on protection the majority of potential child sexual abuse victims and subverts the usefulness of offender registries."

The value of focusing law enforcement resources in an effective manner is illustrated by the joint effort of the Department's parole services and the Wichita Police Department and Sedgwick County Sheriff's Department's Endangered and Missing Children Unit which provides forensic computer expertise in assisting parole officers in searching the computer hard drives of sex offenders. Arbitrarily imposed residency restrictions would be detrimental to such law enforcement efforts. Law enforcement resources would be diverted to merely locating those offenders who lost a stable residence or cease reporting, rather then being used to detect what those persons are actually doing. Most importantly, forcing relocation of released offenders from urban areas that have the resources to search computer information or where treatment programs are located to more rural areas where those resources are not available protects no one. Those relocated can easily travel back to the urban area.

Policies regarding the residence of released offenders should be based upon case management reflecting the individual characteristics of the offender, those persons co-habituating with the offender, stability of the residence, employment, and treatment as well as utilization of tailored supervision requirements and techniques. Policies that divert resources from the protection of the largest segment of sexually victimized children; the 80-90% who are victimized by people known to them do not serve public safety.

Finally, the moratorium on cities and counties regarding the adoption or enforcement of residential restrictions prevents localities from engaging in a competition of ever increasing residential barriers that do not serve public safety.

Acknowledgments

Kansas Sex Offender Policy Board Members

Donald Jordan, Chair
Acting Secretary of Social and Rehabilitation Services
Former Commissioner of Juvenile Justice Authority

Roger Werholtz
Secretary of Department of Corrections

Gary Daniels
Former Secretary of Social and Rehabilitation Services

Larry Welch
Director of the Kansas Bureau of Investigation

Justice Tyler Lockett, Retired
Designee for Chief Justice of the Supreme Court

Scott Jackson, Executive Director
Family Life Center, Inc.

Sandra Barnett, Executive Director
Kansas Coalition Against Sexual and Domestic Violence

The Kansas Sex Offender Policy Board would like to recognize the work of staff that assisted the Board in its work, Joshua Mosier and Haley DaVee who prepared the draft reports and Tiffany Fisher and Juliene Maska. The Board also expresses its appreciation to the many conferees who are experts on the topic and staff from the various state agencies that assisted the Board's work.

KANSAS SEX OFFENDER POLICY BOARD

Report on Residence Restrictions for Sex Offenders

Introduction

The Kansas Sex Offender Policy Board met with the Special Committee on Judiciary on November 15, 2006 to discuss the issue of residence restrictions for sex offenders. The Board heard testimony on the subject from two Kansas community representatives as well as five researchers and subject matter experts from across the country.

In its analysis of this topic, the Board chose to focus on available research and the experiences of other states. While available research on this topic is limited, that which is available is consistent.

Information presented to Sex Offender Policy Board members included research studies from Arkansas, Colorado, Minnesota and Florida, as well as statements and position papers to the Iowa legislature from the Iowa County Attorneys Association and the Iowa Coalition Against Sexual Abuse. The Board also received a variety of news items collected starting in January of 2006 which discussed the experiences of other states that have dealt with the issue of residence restrictions.

Sex offender residence restrictions, or buffer zones, typically mandate a legally determined barrier around places where children congregate, such as parks, playgrounds and schools. These barriers have been known to range from 500 to 2,500 feet and exclude sex offenders from living within these areas. Proponents of residence restrictions often argue that the further away sex offenders are from potential victims, the less likely they are to re-offend against those victims.

Testimony provided indicated that residency restrictions are extremely popular with the general public, thus making policy makers' decision on this issue a difficult one. In 2004, 14 states had residence restrictions, commonly from 500-1,000 feet. In 2006, a total of 21 states had residence restrictions. In addition, hundreds of local jurisdictions have passed zoning laws, restricting sex offenders from living near 2,500 feet (about ½ mile).

The appeal of residence restrictions is to protect public safety, and more specifically, the safety of children. The fundamental issues to consider are whether residence restrictions for sex offenders have been proven to protect public safety, whether the theory behind residence restrictions is consistent with research and best practices in the fields of corrections and law enforcement, the viability of enforcing the restrictions, and whether the resources utilized for such an effort would be best directed toward alternative measures that would protect a larger

segment of the population and/or one that is at a higher risk of victimization.

Research on Public Safety and Limitations

Residency restrictions are extremely popular and have received overwhelming public and political support. It is important to acknowledge that the public believes they are safer with residency restrictions, when in fact, they are not. Of the research studies available to the Sex Offender Policy Board on the issue of residence restrictions for sex offenders, none found a positive correlation between residence restrictions and preventing re-offending behavior.

One presenter noted during his presentation to legislators and the Board that governments cannot control the location of potential targets (day cares, schools, and parks) and there is no evidence that attempts to limit where sex offenders live have been successful. Meanwhile, a second presenter emphasized that research shows no correlation between residency restrictions and reducing sex offenses against children or improving the safety of children. A third conferee noted there is no evidence that proximity to schools increases recidivism, or, conversely, that housing restrictions reduces re-offending or increases community safety.

Dr. Jill Levenson provided the Board with an overview of the research on whether offender proximity to schools/child care centers, increased recidivism. Levenson referred to a 2004 study of 130 Colorado sex offenders on probation who were tracked for 15 months. Though 15 (12 percent) of the offenders were rearrested for new sex crimes, they were all "hands off" offenses, such as peeping, voyeurism, or indecent exposure. The 15 recidivists were scattered randomly throughout the study area and appeared to live no closer than non-recidivists to schools or child care centers. The study concluded that residence restrictions are unlikely to deter sex offenders from committing new sex crimes, further stating that such policies should not be considered viable strategies for protecting communities.

In a 2003 study, 329 sex offenders considered at highest risk to re-offend were tracked for three to six years. (Appendix C—Reference #14) Of the 13 cases of sexual re-offending (four percent of the study group), none of the offenses occurred in or near schools. While two of the offenses did take place near parks, those areas were several miles from the offenders' homes and were arrived at by car. Researchers concluded that sex offenders' residential proximity to schools or parks was not a factor in recidivism, nor did it enhance public safety. The study added that blanket policies restricting where sex offenders are allowed to live are unlikely to benefit community safety.

Another concern presented included the issue of available housing for sex offenders. A 2003 report to the Minnesota legislature observed that residency restrictions "would likely force level three sex offenders to move to more rural areas that would not contain nearby schools and parks but would pose other problems, such as a high concentration of offenders with no ties to the community; isolation; lack of work, education and treatment options; and an

increase in the distance traveled by agents who supervise offenders."

This was supported by Levenson's presentation, citing her 2005 report to the Florida legislature. In it she stated "such laws aggravate the scarcity of housing options for sex offenders, forcing them out of metropolitan areas and farther away from the social support, employment opportunities and social services that are known to aid offenders in successful community re-entry."

The Association for the Treatment of Sexual Abusers (ATSA) is well-recognized for its progress in the field of treating sex offenders. ATSA was "founded to foster research, facilitate information exchange, further professional education and provide for the advancement of professional standards and practices in the field of sex offender evaluation and treatment."

One of the presenters shared an ATSA position paper entitled *Facts About Adult Sex Offenders*. In it, ATSA makes recommendations for the effective treatment of sex offenders.* Those recommendations include:

1. *Lifestyle circumstances can affect the chances of new offenses. Stable housing and employment, healthy social and leisure activities, a vigilant and pro-social support system and ongoing treatment are all important to ensure success.*

2. *Despite its effectiveness, treatment is only one component of an effective strategy to protect the community from sex offenders. Monitoring and support by community corrections agents, other professionals, the offender's social support system and the entire community play a crucial role.*

The above ATSA precepts are broadly accepted by professionals who manage, supervise and treat sex offenders, and offer insight into a crucial drawback to the imposition of residence restrictions.

Enforcement of Residence Restrictions

The State of Iowa implemented a 2,000-foot residence restriction, prompting the Iowa County Attorneys Association to issue a statement in January 2006. In it, the Association specifically concluded that Iowa's residence restriction policy was, "contrary to well-established principles of treatment and rehabilitation of sex offenders" and that its goals are "severely impaired by the residency restriction, compromising the safety of children by obstructing the use of the best known corrections practice."

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*This and other ATSA position papers can be found on its website at http://www.atsa.com

Furthermore, the Iowa County Attorneys Association voiced concern with the observations of law enforcement that residency restrictions are causing offenders in Iowa to become homeless, to change residences without notifying authorities of their new locations, to register false addresses or to simply disappear.

Information presented by the Iowa Coalition Against Sexual Assault also addressed concern with residency restrictions' impact on homelessness and its impact on public safety. They stated Iowa sex offenders are absconding in large numbers for the first time, interfering with probation and parole supervisors' ability to effectively monitor and treat offenders who are living under bridges, in parking lots, in tents at parks, or at interstate truck stops.

Information from law enforcement has provided similar statements. The Iowa residence restriction law causes more sex offenders to be deceptive and lie about their whereabouts, making tracking them much more difficult. The result of this is damage to the reliability of the sex offender registry, along with a decrease in public safety.

Testimony from Pamela Dettmann with the Des Moines County Attorney's Office voiced concern about ever-changing mapping due to the opening of new schools or day cares and the closing of existing schools or day cares, the ability to verify and enforce the statute on individuals no longer required to be on sex offender supervision and the enactment of local ordinances which create issues of banishment and exodus to other communities.

Alternative Measures

Testimony to the Special Committee on Judiciary and the Board referenced Bureau of Justice Statistics research that found the, "vast majority (80 to 90 percent) of sex crimes against children are committed by a relative or acquaintance who has a prior relationship or access to the child." This research finding is accepted by all of the experts who testified, as well as victims' advocates, law enforcement officials and treatment providers nationwide.

The Iowa Coalition Against Sexual Assault, referenced a 2006 study where only 10.8 percent of female, and 15.7 percent of male adults sexually victimized before the age of 12 reported being sexually violated by a stranger, stated, "the sad reality is that most of the time children know, and often have trusted, the person who sexually abuses them."

Of the long-held theory of teaching children to stay away from strangers as a means to protect them from victimization, the Center for Missing and Exploited Children notes on its website, "The National Center for Missing & Exploited Children (NCMEC) has never supported the 'stranger-danger' message, especially because experience has shown that most children are actually taken by someone they know or are familiar with."

Given the fact that the vast majority of children are sexually victimized by people who are

known to them and have relationships to their families, residence restrictions do not address the major source of child sexual victimization. As a result, it is the Board's belief that broadly applied residency restrictions should not be considered and their usage should be defined strictly on an individualized basis.

The question then becomes how best to protect *all* children from victimization. On this, experts from every field are abundantly clear. The most viable alternative for protecting children is a wholesale comprehensive education program for children, their families and the community.

In its January 2006 statement on the issue, the Iowa County Attorneys Association supported the replacement of residence restrictions with more viable alternatives, such as educational programs for young children aimed at keeping them safe from *all* offenders. Both the Jacob Wetterling Foundation and the Center for Missing and Exploited Children underscore the need for widespread, comprehensive, community and family education, especially prior to the occurrence of a tragic event. The Jacob Wetterling Foundation has staff available to provide such training and the Center for Missing and Exploited Children provides a framework, guidance and support for communities to develop their own such training.

The theory of community education is consistent with Dr. Jeffery Walker's presentation. He stated in his 2001 study, that while the enforcement of residency restrictions is difficult, "what the police can do, however, is make as many people in the neighborhood (especially those who are the guardians of potential victims or may be potential victims themselves) aware of the presence of a potentially motivated offender."

This education program could be broadly applied through public education that would be intended to reach all victims and potential victims of child sexual abuse rather than just a select few. Such an education program could be augmented by community involvement in the already existing system of sex offender management, supervision and treatment. It is recommended that necessary resources be provided to an agency determined appropriate by the legislature to educate Kansas parents, children, and communities regarding effective ways to prevent the sexual abuse of children and to respond to it when it occurs.

In addition to community education, the Colorado Sex Offender Management Board has developed "Community Supervision Teams" for the management, supervision and treatment of sex offenders on probation, parole and community corrections programs. Though the protocols for the teams include many of the fundamentals of current Kansas sex offender supervision, they also formalize the element of multidisciplinary involvement in the supervision process.

Each Colorado community supervision team is charged with making many of the pivotal

decisions about the ongoing management and supervision of sex offenders. The teams consist of the supervising officer, the treatment provider, and a polygrapher. In the true spirit of community involvement, this team could be expanded in non-confidential settings to include, for instance, a member of local law enforcement and perhaps a volunteer from a local neighborhood watch organization. Similar groups, known as Community Accountability Panels, currently are being used in the supervision of other Kansas offenders.

Conclusion

A wealth of information is available to indicate that sex offender residence restrictions have not reduced the risk of re-offending behavior. In fact, research supports the likelihood that these types of restrictions often cause alienation, destabilization and isolation that lead to re-offending behavior.

Research and best practices in the field of corrections, law enforcement, sex offender treatment and more particularly, victims' advocacy groups, equally discount residence restrictions as a useful means to manage, supervise and treat sex offenders.

With regard to enforcement, the overwhelming experience of states such as Iowa that have been vocal enough to share their experiences in attempting to enforce residence restrictions underscores the theory that normally compliant offenders will take desperate measures to either comply with or circumvent residence restrictions. This increases the time law enforcement must spend on locating offenders, decreases the time they are able to spend on protecting the majority of potential child sexual abuse victims and subverts the usefulness of offender registries.

For these reasons, sex offender residence restrictions have no demonstrated efficacy as a means of protecting public safety.

Recommendations

- Although resident restrictions appear to have strong public support, the Board found no evidence to support its efficacy. It is imperative that policy makers enact laws that will actually make the public safe and not laws giving the public a false sense of security.

- It is recommended that the legislature make permanent the moratorium on residential restrictions. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes.

- Residency restrictions should be determined based on individually identified risk factors.

- The most effective alternative for protecting children is a comprehensive education program. It is recommended that the necessary resources be provided to an agency determined appropriate by the legislature to educate Kansas parents, children and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse.

- In order for an effective model policy to be developed, the issue of sex offender residence restrictions should be referred to the Council of State Governments, the National Governor's Association and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

List of Presenters

Electronic Monitoring
Bruce Thacher and Staff, Behavioral Interventions, Inc.,
John Wells, Alternatives Program, Wichita, Kansas
Chris Rieger, Kansas Department of Corrections
Lisa Fleming, Johnson County Court Services Officer
Phill Greer, Electronic Monitoring Coordinator for Johnson County Dept. of Corrections
Kerri Platt, Sedgwick County Criminal Justice Alternatives Coordinator
Joshua Mosier and Haley DaVee, Staff for the Board

Public Notification
Donald Burns, Shawnee County Undersheriff
Jane Nohr, KBI Assistant Attorney General
Sheryl Lidtke, Assistant District Attorney for Wyandotte County
Kathy Williams, Executive Director for Wichita Area Sexual Assault Center
Brad Totman, Mulberry, Kansas

Management of Juvenile Offenders
Cheryl Rathbun, LSCSW, St. Francis Academy, Salina, Kansas
Katrina Pollet, Superintendent at Beloit Juvenile Correctional Facility
Annie Grevas, Director of the 28th Judicial District Community Corrections, Saline County
Amber Mazzaferro, Johnson County Court Services Officer
Michael Boniello, Clinical Therapist in Private Practice, Prairie Village, Kansas

Residency Restrictions
Dr. Jill Levenson, Lynn University (Florida)
Dr. Jeffery Walker, University of Arkansas at Little Rock
Pamela Dettmann, Des Moines County (Iowa) Attorney's Office
Mary Richards, Iowa Coalition Against Sexual Assault
Christopher Lobanov-Rostovsky, Colorado Department of Public Safety/Division of Criminal Justice
Representative Nile Dillmore
Melissa Alley, Wichita, Kansas
Doug Vance, Kansas Recreation and Parks Association

STATE OF KANSAS

BARBARA P. ALLEN
SENATOR, EIGHTH DISTRICT
JOHNSON COUNTY
9851 ASH DRIVE
OVERLAND PARK, KANSAS 66207
(913) 648-2704
STATE CAPITOL, ROOM 122-E
TOPEKA, KANSAS 66612-1504
(785) 296-7353

TOPEKA
SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIR: ASSESSMENT AND TAXATION
MEMBER: EDUCATION
JUDICIARY

January 31, 2007

Testimony Presented to
The Senate Judiciary Committee
Senator Barbara P. Allen
SB 88

Good morning, Mr. Chairman, and members of the committee. Thank you for the opportunity to appear before the Senate Judiciary Committee to ask the Committee to favorably consider SB 88, which would establish a simplified procedure for name reinstatement following a final divorce decree.

SB 88 deals strictly with the reinstatement of a name formerly used by the applying party prior to the dissolution of a marriage. Its goal is to simplify and make affordable the name change process when a decision is made to reinstate the former name after a divorce case has been closed.

This legislation came about in response to a request from my constituent, Claudia Alexander, who is present today to give her story and explain her reasons for requesting introduction of this bill.

Under current law, name reinstatement following a final divorce decree must be made under the formal name change statutes used by any citizen desiring to change to a different name. This process can be lengthy, expensive and difficult to maneuver without legal assistance.

Some women, for varying reasons, do not wish to change their names at the time of divorce. Under current law, after the divorce proceedings are closed, if a woman decides to reclaim her former name, a change of name pursuant to KSA 60-1402 requires the following:

1. Petition - Filing a name change petition with the court
2. Notice – Service of notice of the hearing, either by mail or by publication, in the discretion of the court
3. Fees – A $147 docket fee, attorney's fees (if an attorney is retained), and fees associated with complying with the notice provision of the statute.
4. Order - The judge has discretion to order the name change, based on whether he/she determines there is "reasonable cause".

My research shows, even if an individual proceeds *pro se* (without an attorney), this process would cost at a minimum $200, much more if an attorney was involved.

In contrast, a name change after enactment of SB 88 would require filling out a simple form which could be downloaded off the Kansas Judicial Council website.

Senate Judiciary
1-31-07
Attachment 2

and paying a $33 docket fee. The restoration of a woman's former name would be mandatory, absent a finding of fraud.

I am also providing a suggested balloon amendment, to assure the court's jurisdiction of a case after the divorce proceedings are closed.

In closing, please consider that while Claudia's experience may seem unique, it raises the question about the possibility of other women across our state finding themselves in a similar situation. I ask for your support. Thank You!

Barbara P. Allen
District 8

Session of 2007

SENATE BILL No. 88

By Committee on Judiciary

1-16

AN ACT concerning civil procedure; relating to divorce; restoration of name; amending K.S.A. 2006 Supp. 60-1610 and 60-1621 and repealing the existing sections; also repealing K.S.A. 2006 Supp. 60-1621a.

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

Section 1. K.S.A. 2006 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202 and amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school

Proposed amendment
Senator Allen
January 29, 2007

Senate Judiciary
1-31-07
Attachment 3

tion parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) *Costs and fees.* Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name. *At any time after the decree of divorce becomes final, the court, upon motion of a party, shall restore the maiden or former name of that party. The motion shall not be denied on the basis that the party has custody of a minor child who bears a different name or for any other reason other than fraud. The motion shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.*

have jurisdiction to

(2) *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

Sec. 2. K.S.A. 2006 Supp. 60-1621 is hereby amended to read as follows: 60-1621. (a) No post-decree motion petitioning for a modification or termination of separate maintenance, for a change in legal custody, residency, visitation rights or parenting time, *for the restoration of name* or for a modification of child support shall be filed or docketed in the district court without payment of a docket fee in the amount of $33 on and after July 1, 2006 through June 30, 2010, and $31 on and after July 1, 2010, to the clerk of the district court.

(b) A poverty affidavit may be filed in lieu of a docket fee as established in K.S.A. 60-2001, and amendments thereto.

(c) The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with subsection (f) of K.S.A. 20-362, and amendments thereto.

(d) The docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such

3-2

Testimony Presented to
The Senate Judiciary Committee
by Claudia Alexander
January 31, 2007
SB 88

Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to appear before the Senate Judiciary Committee to express my interest in SB 88.

I am a divorced woman. My marriage to Randy Alexander ended in February, 2006. The time period of our divorce proceedings was a very traumatic time in my life, and I did not understand that it was necessary for me to make a final decision at that time about reinstating my former name. Two months later, in April 2006, I concluded that I would like to return to my former name in order to carry the same last name as my daughter by a previous marriage.

Currently, as I experienced personally, a divorced woman in the State of Kansas who wants to legally be restored to a former or maiden name is advised that she should contact an attorney who handles legal name changes. This procedure involves additional time to meet with an attorney at least once and time to make at least one court appearance. I was quoted by at least two law firms that had been referred to me, that the fees involved would be near or over one thousand dollars, which is several times the amount I paid for the fees incurred for the divorce itself.

When I found that my post divorce desire to be restored to a former name would be a complicated process, I researched the Kansas statutes. Kansas Statute 60-1610 includes a sentence on name restoration related to divorce proceedings. The opening paragraph of this statute is: "60-1610. Decree: authorized orders. A decree in an action under this article may include orders on the following matters". Item (c) in the second to last paragraph of the statute states, "*Miscellaneous matters. (1) Restoration of Name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name".

After reading this, I felt this statute was a pertinent and logical article to name in reference to my request to be restored to my former last name. I contacted the Johnson County Courthouse and was told to take it up with the judge who presided over the divorce proceedings. I contacted the judge's office and communicated with his assistant. I was asked to file the motion with the clerk and send a notarized registered copy of the motion to my ex-husband so he could appear at the hearing if he wanted to oppose the motion for some reason. I complied with these requests.

At my first court appearance I appeared Pro Se. I believed that I was there as a formality in obtaining the restoration of my former name. I did not know, going in, that the only way the judge would proceed with my request was if there was a typo or missing information on the actual divorce decree, or if my attorney had not asked me if I wanted to change my name when I met with him to file for the divorce.

I encountered a sometimes disrespectful interrogation by the judge, and by his request, found it necessary to schedule a second hearing at which my attorney was also asked to be present. In the end, the judge denied my request for name reinstatement due to the fact that I had not requested the name change during the divorce proceeding.

A woman's last name is part of her identity, and it is a personal decision that should not be called into question. A woman is not forced into taking her husband's name when marrying, so why should she be forced into keeping that last name by a court process that makes it too difficult or unaffordable to change once a divorce is final?

Name changing added to the list of much more important considerations during a divorce, is yet another change a woman may not be devoting much thought to or want to tackle at that particular time. The fact that the man will not be faced with this question and that there is currently no simple way for the woman to accomplish a name reinstatement following the final divorce decree, creates an unequal amount of pressure on the woman at a time that will be stressful for her, whether or not she is the one that files for the divorce.

In June of 2006 I contacted Senator Allen's office regarding the possibility of Kansas adopting an Ex Parte Name Restoration Order similar to the one I found for the State of California while conducting research on the Internet. I would like to see SB 88 approved by this committee and sent to the Senate for a vote in hopes that it will continue to receive the approval needed to provide the divorced women of Kansas with a simple and affordable means of name reinstatement after their divorce has become final.

Again, I thank you for giving me time to express my reasons for requesting this legislation. I am willing to receive questions if you would like me to do so.

KANSAS

KANSAS SENTENCING COMMISSION
Honorable Ernest L. Johnson, Chairman
Attorney General Paul Morrison, Vice Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

To: Senate Judiciary Committee
Senator John Vratil, Chairman

From: Helen Pedigo, Executive Director

Date: January 30, 2007

Re: Senate Bill 97, relating to sentencing for the crime of burglary

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We were requested to do a bed impact on Senate Bill 97, a bill that would change the presumptive disposition on burglary to prison for a third and subsequent offense. In the process of doing the fiscal note, we noticed an issue that the committee might want to take action on.

On page 5, line 42, I would suggest striking the phrase "or 21-3716". KSA 21-3716, aggravated burglary, is a severity level 5 person felony. At that level, the sentence is already presumptive prison, except for an offender who has a misdemeanor or no prior criminal history (those are border boxes). This subsection will not change the presumptive disposition for a third conviction of aggravated burglary. Therefore the reference to "or 21-3716" is unnecessary in that line.

(l) *(1)* The sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

(2) The sentence for a third or subsequent violation of K.S.A. 21-3715 ~~*or 21-3716,*~~ *and amendments thereto, when such person being sentenced has two or more prior convictions for violations of either K.S.A. 21-3715*

I've attached a copy of the nondrug sentencing grid for your information.

Senate Judiciary
1-31-07
Attachment 5

SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:
36 months recommended for felonies classified in Severity Levels 1-5
24 months recommended for felonies classified in Severity Levels 6-7
18 months (up to) for felonies classified in Severity Level 8
12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:
36 months for felonies classified in Severity Levels 1-4
24 months for felonies classified in Severity Level 5-6
12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:
24 months for felonies classified in Severity Levels 1-6
12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

WRITTEN TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 97 REFERENCE BURGLARY SENTENCING

On behalf of the

Kansas Association of Chiefs of Police

January 31, 2007

The Kansas Association of Chiefs of Police is supportive of any effort to strengthen the sentencing of convicted burglars. SB 97 will make a minor improvement on a major problem. In 2005 16% of all serious (Part 1) crimes reported to law enforcement in Kansas were burglary to a residence or business. This doesn't include the vehicle burglaries. In most cases burglars will commit hundreds of burglaries for every arrest or conviction. In many cases burglars are charged with multiple counts of burglary when they are arrested. If we understand the intent of this bill correctly, it would strengthen sentencing by making it more difficult for a judge to not sentence a burglar to jail upon the 3rd or subsequent conviction. We believe this to be a solid step forward in addressing the vast burglary problem Kansans are facing. But while it is a solid step, it is not a giant step. Burglars with three or more burglary convictions will have victimized many more Kansans than three. Such pressure for incarceration sentencing should be occurring sooner. Perhaps it would be helpful to consider clarifying for the courts that 2nd and 3rd conviction means convictions for 2 or 3 criminal acts of burglary and not 2 or 3 times appearing before a court for multiple burglary convictions. We have seen many times when multiple convictions for burglary are counted as just one conviction when they were dealt with at one hearing or trial.

We are also aware of HB2231 which would increase the severity level of burglaries taking them out of presumptive probation in most cases. We feel this approach is more aggressive and will have a larger impact on the burglary problem then SB97 by itself.

Thousands of Kansans are victimized by burglaries to businesses and homes every year in Kansas—over 18,000 in 2005. That does not mean there are 18,000 burglars out there, but it does mean that 18,000 Kansans suffered the financial loss from the damage and the related loss from stolen property. Not all of this loss was covered by insurance. Insurance companies also suffered a financial loss due to these crimes resulting in higher premiums. But worse, in many cases the victim's lives are forever changed from the emotional trauma of this crime when a residence is involved. We either pay through prison and rehabilitation costs or we pay through the victimization. We believe most Kansans would rather reduce the victimization even if there is additional prison costs associated with that choice. Especially as KDOC's rehabilitation efforts and successes move forward. Sadly, rehabilitation can't take place if we don't get them to the prison programs.

We urge you to recommend passage of this bill, but to also consider amending it to strengthen its provisions. This can be accomplished by 1) clarifying each burglary charge is counted as a conviction even if the cases are sentenced at the same time; 2) encouraging judges to sentencing burglars to serve jail time any time after the first conviction; 3) consider the provisions of HB2231 by making burglary a crime that is not presumptive probation and utilize longer sentences sooner for repeat offenders.

Ed Klumpp
Chief of Police-Retired
Topeka Police Department

Chair-Legislative Committee
Kansas Association of Chiefs of Police

Home: (785)235-5619
E-mail: eklumpp@cox.net

Senate Judiciary
1-31-07
Attachment 6

New Sec. 5. (a) The board of county commissioners of any county may, by resolution, exempt such county from the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto. The resolution shall be published once each week for two consecutive weeks in the official county newspaper.

No such resolution shall take effect until 30 days after its final publication, and if within 30 days of its final publication a petition signed by not less than 5% of the qualified electors of the county shall be filed with the county election officer demanding that such resolution be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.

(b) Any county election called under the provisions of this act shall be called within 30 days and held within 90 days after the filing of a petition demanding such election. The board of county commissioners shall pass a resolution calling the election and fixing the date, which resolution shall be published once in the official county newspaper. The sufficiency of the number of signers of any petition filed under this act shall be determined by the county election officer. Every election held under this act shall be conducted by the county election officer. The county election officer shall publish a notice of such election once each week for three consecutive weeks in the official county newspaper, the first publication to be not less than 21 days prior to such election. The notice shall state the time of the election and the proposition which shall appear on the ballot. The proposition shall be: "Shall the resolution No. ____ entitled (title of resolution) take effect?"