

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on February 8, 2007, in Room 123-S of the Capitol.

All members were present except:

Derek Schmidt arrived, 9:42 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:

Attorney General Paul Morrison

Kyle Smith, Deputy Director, KBI

Others attending:

See attached list.

The hearing on **SB 204--Requirements for persons required to register pursuant to Kansas offender registration act** was opened.

Attorney General Paul Morrison testified in support, indicating this legislation tightens the procedures involved with the sex offender registration process and brings Kansas into compliance with several provisions of the Adam Walsh Child Protection and Safety Act, passed by Congress in 2006. The bill will improve law enforcement's ability to track the activity of registered sex offenders without creating an increased burden (Attachment 1).

Kyle Smith appeared in favor, stating this bill will improve the offender registration system. He provided a brief overview of the bill. Mr. Smith proposed two amendments, one would include aggravated trafficking as defined in K.S.A. 2006 Supp. 21-3447 and the other would repeal K.S.A. 22-4912 as it is no longer a necessary statute (Attachment 2).

Written testimony in support of **SB 204** was submitted by:

Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 3)

The hearing on **SB 204** was closed.

The Chairman called for final action on **SB 86--Change of judge by application in civil cases.**

Chairman Vratil gave a brief overview of the bill. Following discussion, the committee indicated a desire to refer the topic to an interim committee. Senator Allen moved, Senator Journey seconded, to send **SB 86** to an Interim Judicial Committee. Motion carried.

Final action on **SB 87--Kansas offender registration act; prohibition from adopting or enforcing the residency restrictions.**

The Chairman provided a review of the bill heard on January 31. There were no proposed amendments. Senator Goodwin moved, Senator Umbarger seconded, to recommend **SB 87** favorably for passage. Motion carried.

Final action on **SB 97--Third or subsequent conviction for burglary, sentence.**

Senator Schmidt indicated there was a proposed amendment recommended by Helen Pedigo during her testimony (Attachment 4). Senator Schmidt moved, Senator Umbarger seconded, to amend **SB 97** on page

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on February 8, 2007, in Room 123-S of the Capitol.

5, line 41, to strike "third or subsequent" and on page 5, line 42, to strike "or 21-3716" and authorize the revisors to make any necessary conforming changes. Motion carried.

Senator Schmidt moved, Senator Umbarger seconded, to recommend **SB 97**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 103--Fingerprints and photos of juveniles in custody.**

Chairman Vratil reviewed the bill and the proposed amendments recommended by Kyle Smith, Kansas Bureau of Investigation (Attachment 5). Senator Schmidt moved, Senator Goodwin seconded, to amend the bill in the manner recommended by Kyle Smith. Motion carried.

The Chairman indicated there was an amendment recommended by Elizabeth Gillespie, Director, Shawnee County Corrections, to Section 1(b), subsection 5, adding to the last sentence "except after an escape and necessary to assist in apprehension".

Senator Donovan moved, Senator Schmidt seconded, to amend **SB 103** as recommended by Ms. Gillespie. Motion carried.

Senator Journey moved, Senator Lynn seconded, to recommend **SB 103**, as amended, favorably for passage. Motion carried.

Final action on **SB 54--Criminal procedure; signing of arrest warrant.**

Chairman Vratil reviewed the bill heard January 23. Senator Bruce moved, Senator Betts seconded, to remove the sentence beginning on line 31 and ending on line 32. Motion carried.

Senator Bruce moved, Senator Lynn seconded, to recommend **SB 54**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 41--Negligence; ordinary care required when gun possession at issue in personal injury or wrongful death action.**

Chairman Vratil reviewed the bill heard January 22 and indicated there were no proposed amendments at that time. Senator Journey moved, Senator Lynn seconded, to recommend **SB 41** favorably for passage. Motion carried.

Final action on **SB 74--Recovery of medical assistance, probate code.**

Chairman Vratil reviewed the bill heard January 30 and distributed a balloon amendment (Attachment 6). Senator Donovan moved, Senator Journey seconded, to amend **SB 74** as reflected in the balloon. Motion carried.

Senator Schmidt moved, Senator Donovan seconded, to recommend **SB 74**, as amended, favorably for passage. Motion carried.. Senator Haley voted no and requested his vote be recorded.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is February 9, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/8/07

NAME	REPRESENTING
DAVID HUTCHINGS	KBI
James Nohr	KBI
DAVE SIM	KBI
Bab Keller	JCSO
Josh Mosier	Governor's Grants Program
Erin Thompson	SNSO
AL DEATHE	DSSO
Ken McGovern	DSSO
Dick Kline	Shawnee Co. Dept. of Corrections
Helen Pedigo	Sentencing Commission
Brenda Harmon	Sentencing Commission
Roger Werhertz	KDOC
Tim Madden	KDOC
JIM CLARK	KBA
Clady M. Newberry	Ks. Judicial Council
Kyle Smith	KBI
Van Gibb	KSAB
Scott Heidner	KS Association of Defense Counsel

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-8-07

NAME	REPRESENTING
Katie Subamp	Kearney & Associates
Judy Mohr	KAC
Mark Kern	Judicial Branch
Neal Morgan	SJA



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PAUL MORRISON
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

Senate Judiciary Committee
SB 204
Attorney General Paul Morrison
February 8, 2007

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

I am here to testify in support of Senate Bill 204. SB 204 seeks to tighten the procedures involved with the sex offender registration process and bring Kansas into compliance with several provisions of the Adam Walsh Child Protection and Safety Act, passed by Congress in 2006. In short, SB 204 will improve law enforcement's ability to track the activity of registered sex offenders without creating an increased burden.

The Adam Walsh Act

The Adam Walsh Act requires state sex offender registration programs adopt certain standardized provisions by July 20, 2009. SB 204 includes several of the mandated provisions because they are sound public policy and can be efficiently implemented at this time.

Under current state law, sex offenders have 10 business days to register and update registration information. SB 204 would reduce that timeframe to allow only 3 business days.

SB 204 will require registrants to appear at their Sheriff's office to update their information at least three times a year, as opposed to the current requirement of two appearances. This is an affirmative obligation that would replace the current system of having the KBI send out letters to the offenders' last known address every 90 days. In addition to increasing the reliability of the process, the KBI saves money and resources that can be used for other law enforcement activities.

When registering in person, offenders must report the same information that is currently required by Kansas law, but in addition, report the license tag information for any vehicle normally operated by the offender.

While not mandated by the Adam Walsh Act, SB 204 requires offenders provide any email addresses and online identities used by them on the internet. This provision is a

Senate Judiciary
2-8-07
Attachment 1

recognition of the fact that it is especially important to track sex offenders activity, not only in the physical world, but online as well.

Finally, in accordance with the Adam Walsh Act, SB 204 requires the KBI to provide the public with sex offender safety and education resources on their website. This provision is good public policy that will be implemented regardless of a statutory mandate.

Clarifications

SB 204 requires that jurisdiction for prosecution of violations of the act under K.S.A. 22-4903 is in the county of residence of the offender or the county where a non-resident offender is required to register. This clarifies an issue that has arisen about whether the prosecutions should take place in the county where the registry is physically located (Shawnee County).

SB 204 clarifies that last year's amendment to K.S.A. 22-4906 requiring that people moving into Kansas have to comply with their original state's registration requirement, or Kansas law, whichever is longer, applies to anyone with a covered conviction, not just those convicted after the law went into effect. It also encompasses those adjudicated as juvenile offenders.

SB 204 amends K.S.A. 22-4902 to include the new crime of aggravated trafficking, K.S.A. 21-3447, to the list of criminal convictions requiring registration.

I have asked that Kyle Smith, the Deputy Director of the KBI, provide you with testimony that further details some of the provisions that I have spoken about today. Thank you for your time and I look forward to answering any questions.



Kansas Bureau of Investigation

Larry Welch
Director

Paul Morrison
Attorney General

Testimony in Support of SB 204
Before the Senate Judiciary Committee
Kyle Smith, Deputy Director
Kansas Bureau of Investigation
February 8, 2007

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation and as legislative chair of the Kansas Peace Officers' Association in support of SB 204. This legislation tightens up the procedures involved in tracking registered offenders in Kansas. The KBI has been charged with maintaining the offender registration system since its inception in 1993. We are always looking for better ways to maximize public safety and improve the system. The KBI believes strongly that SB 204 does just that.

We have been working with Attorney General Paul Morrison and his staff on ways to improve the offender registration system, based on problems we have encountered as well as federal mandates. Last year congress passed the Adam Walsh Act which sets out several standards that states are supposed to adopt by July of 2009. Some of the proposed standards may be problematic, but SB 204 incorporates those federal standards that seem to be solid public policy and fiscally feasible at this time. Changes include:

- Page 2, Sec.1, lines 14-15: Adds a new crime created last year aggravated trafficking, K.S.A. 21-3447, to the list of criminal convictions requiring registration. This crime was added to the list for life time registration under K.S.A 22-4906 last year in "Jessica's law", but was accidentally omitted from the list of crimes requiring registration. **A possible clean-up amendment might be necessary to reference this new section, (10), in the subsection preceding it (9), which covers, attempts, conspiracies and solicitations to commit the covered offenses. See below.**
- Page 4, Sec. 2, lines 31-35: Clarifies an issue that keeps coming up – does jurisdiction for prosecution under the act lie in the county where the registration is to be done or where the registry is physically located (Shawnee). Decision is to have it in the county of residence where the legal duty, acts and witnesses are located.
- Page 5, 6, 8, and 9 all have a simple change requiring registration and changes be done within 3 days, not the current 10 days. This is to keep tighter control and will be required under the Adam Walsh Act.

- Page 6, Sec. 3, line 24: Adds the KBI to the sheriff's office as agencies to be notified of a change of address. This is primarily to assist in tracking out of state transfers.
- Page 6, lines 25-43, Page 7, lines 1-37: Under the Adam Walsh Act, serious sex offenders will be required to report in person three times a year. Having an offender appear in person, verify their data and having a new photograph taken is a much better way of keeping track of offenders than the current system of sending letters to their last known address every 90 days, which procedure is stricken on page 6-7. The amendments set out this system, which will increase public safety and save the KBI resources that can better be used tracking down absconders. The language would also clarify the legislature's intent that the \$20 fee approved last year is supposed to go to the sheriff's office to offset their expenses in handling the registration.
- Page 12, Sec. 5, lines 14 to 20: These amendments are intended to clarify that registered offenders who have moved into Kansas, both adults or juveniles, shall have to register for the time frame required in Kansas or their state of offense, whichever is longer. This section was designed to make sure Kansas was not attracting offenders from other states by having lower registration periods.
- Page 12, sec. 6, lines 38-40: This amendment would require license plate numbers, not just make and model.
- Page 13, sec.6, lines 7-8: Knowing the identity of registered offenders may be even more important in cyberspace than in the real world. This amendment would require registrants to provide their e-mail addresses and any chat room identities they use while on the Internet.
- Page 14, Sec.7, lines 19-20: This is another Adam Walsh requirement, that state websites have links to sex offender safety and education resources.

Thank you for your prompt attention and consideration.

Balloon Amendments to SB 204

Amendment 1

Page 2, Line 13, amending K.S.A. 22-4902 (a)(9):

- 10 (9) any person who has been convicted of an attempt, conspiracy or
 11 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303
 12 and amendments thereto, of an offense defined in subsection (4), (5), ~~(7) or (7)~~.
 13 *or (10); or*
 14 (10) any person who has been convicted of aggravated trafficking as
 15 defined in K.S.A. 2006 Supp. 21-3447, and amendments thereto.

Amendment 2

K.S.A. 22- 4912 should be repealed as it was designed for a few 'Romeo and Juliet' cases during a certain period of time that has long passed and the statute is now mute.

**WRITTEN TESTIMONY TO THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SB 204
Presented by Ed Klumpp
On behalf of the
Kansas Association of Chiefs of Police**

February 8, 2007

This testimony is in support of SB 204 which will serve to strengthen and clarify several areas of offender registration. Offender registration has continued to evolve in the past few years and, through its use, ways to improve it have been identified. This bill deals with several of those improvements. We strongly support offender registration and support the provisions of this bill.

Two of the enhancements this bill offers are a reduction in the time to report status changes from ten to three days and a slightly more frequent reporting by the offender for registration and verification purposes. These two provisions will strengthen the registration process by more quickly identify offenders who are not reporting and therefore more probable to pose a higher risk to the public. It is our belief that these provisions are necessary to enhance the effectiveness of the system.

Several of the provisions are clarification and clean-up in nature. We support these provisions as well, including:

- Adding aggravated trafficking to KSA 22-4902 which should have been added previously when that crime was added to KSA 22-4906. (Page 2, lines 14 & 15 and page 10 lines 40 & 41.)
- The clarification for the location of prosecution (page 4, lines 31-35) will take care of a problem faced in some jurisdictions where arguments are made about where violations should be prosecuted. This provision will get the courts out of dealing with this objection so they can focus more quickly on the alleged violation.
- Likewise, the list of points to be included in the registration/verification process (page 7, lines 11-19 and page 12, lines 38-40) will also improve consistency in the collection of this critical information.

The provision for adding e-mail and internet identity information to the list of data to be collected (page 13, lines 7 & 8) is very important since the internet is becoming a frequent criminal tool used by sexual predators and other violent offenders.

All of these things will improve this valuable source of information for enhanced public safety and assist in holding offenders accountable.

Additionally, we support the provisions specifying how counties must handle the funds the Sheriff's Offices receive to cover the cost of collecting and handling this data collection process. (Page 7, lines 32-37) We are told some counties have attempted to utilize these funds other than the way they were intended. This provision will prevent that problem.



Ed Klumpp
Chief of Police-Retired
Topeka Police Department

Legislative Committee Chair
Kansas Association of Chiefs of Police
E-mail: eklumpp@cox.net; Phone: (785) 235-5619; Cell: (785) 640-1102

Senate Judiciary
2-8-07
Attachment 3



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

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.

37 (1) (1) The sentence for a violation of subsection (a) of K.S.A. 21-
38 3715 and amendments thereto when such person being sentenced has a
39 prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715
40 or 21-3716 and amendments thereto shall be presumed imprisonment.

41 (2) The sentence for a third or subsequent violation of K.S.A. 21-3715
42 ~~or 21-3716~~ and amendments thereto, when such person being sentenced
43 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
2-8-07
Attachment 4

SENTENCING RANGE - NONDRUG OFFENSES

4-2

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 31
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



Kansas Bureau of Investigation

Larry Welch
Director

Paul Morrison
Attorney General

Testimony in Support of SB 103
Before the Senate Judiciary Committee
Kyle G. Smith, Deputy Director
Kansas Bureau of Investigation
February 1, 2007

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation and as legislative chair of the Kansas Peace Officers' Association in support of immediate passage of SB 103. This legislation essentially returns the processing of juvenile offenders back to 'upon arrest' from the 'upon conviction' approach adopted last year in SB 261.

We recognize that juvenile offenders may need to be handled differently than adult criminals, in some ways, due to their younger age, limited maturity and the consequential reduced culpability. However, correct identification of the offender to the offense is just as important for juveniles as it is for adults, and in some ways, more important.

One could argue that the fingerprints and photographs of juvenile offenders are even more important to get than of adults because juveniles frequently do not have identification documents such as a drivers license. And that same lack of maturity that mitigates their culpability also leads them into lying about their identity more often than adults. The potential for a juvenile to be released and disappear is thus greater than for adults. By not having the necessary identifying information collected when the record is created, SB 261 created a dangerous disconnect that can have serious consequences.

The risk of wrongly identifying the offender to the record is greatly increased. This problem goes both ways – an offender's real record may be unknown to law enforcement and the courts, while an innocent child may be wrongly connected to crime or crimes that the child had no involvement in committing. Due to the serious nature of the criminal justice system's work, it has long relied upon the unique nature of fingerprints as the standard for identification.

It should also be noted that juvenile offender records are given exceptional confidentiality already under Kansas law. The records are sealed from the public and even within the criminal justice system they are required to be stored and marked separately from adult records, unless the offender is at least 16 years of age. There is little risk that the photographs and fingerprints will ever be seen by anyone again in a juvenile case, unless that offender commits a new crime.

However, the risks to society from waiting until incarceration are real:

- A juvenile gang member could be arrested for a serious, violent felony and once released pending hearing 'disappear' and assume another name. Even if caught for the failure to appear, how does the state prove beyond a reasonable doubt that this is the offender who failed to appear?
- An offender escapes from a juvenile detention center. How would we find or recognize an escapee without a photograph?
- What about a child that has the misfortune to look like an offender and is picked up by mistake? He may claim we have the wrong child but without fingerprints it may be much more difficult or even impossible to straighten out the misidentification.
- Automatic Fingerprint Identification System (AFIS) is a computerized system that can scan fingerprints of arrestees against crime scene fingerprints as well as the entire database of fingerprint cards. Every year in Kansas around 300 cases are solved by 'cold hits' – where fingerprints from booking identifies that person as a suspect in an unsolved crime. About 10% of these cases are juveniles.
 - By not taking fingerprints at arrest, those crimes, sometimes rapes and murders, will go unsolved.
 - AFIS also allows positive identification at processing. What if the juvenile arrested on a minor charge turns out to be someone else with an extensive record?
 - Maybe two prior serious felonies that transfers them to adult court?
 - An adult posing as a juvenile in an effort to increase his chance to escape or avoid identification?
- Without fingerprints to identify a juvenile offender to the record, the system would be unable to report a record that might give the judge a better understanding of the offender's problems and needs. While not as indicative as adjudication, two prior drug arrests might suggest a substance abuse evaluation is in order as part of sentencing.
- A couple priors of arrests for concealed weapons or aggravated battery of a Law Enforcement Officer is the kind of information that the officer on the street needs to know when handling a juvenile in a car full of friends.
- Last year's legislature also passed HB 2554, requiring DNA samples taken at arrest, even from some serious juvenile offenders, but section 13 doesn't allow the taking of fingerprints to properly tie the sample to a case or the juvenile.

- The Kansas Criminal Justice Information System, KCJIS, is an award-winning computerized system, but it, like any system, is dependant upon the information that it is given. The system assigns a 'transaction number' whenever an offender, adult or juvenile, is apprehended and 'booked' into a facility. While SB 261 contemplates reconnecting fingerprints to an offender after conviction, there is a substantial chance that will simply not happen in a substantial number of cases – without the transaction number to tie the case together from beginning to end, the system will break down. The sentencing grid is supposed to take into consideration a person's prior convictions, but without fingerprints to confirm identification to a transaction number, the reliability of the records suffer. Since January 1st of this year, when SB 261 went into effect, we have no reliable way of connecting a juvenile offender to a case. Remember we are being forced to rely on names and date of births from a population that may not have any documents proving either.

At last week's hearing on the house version addressing this problem, a concern was raised about the Judicial Council's original intent in last year's SB 261 regarding when juvenile offenders should be processed. Randy M. Hearrell, Executive Director of the Judicial Council, explained the council's original position and graciously invited me to attend the upcoming meeting of the council, last Friday, January 23rd.

I did attend that meeting, explained the concerns of law enforcement and we had a productive discussion. The Judicial Council, the drafters of last year's SB 261, agreed to reverse their position and not oppose the changes we are proposing in HB 2074. The house judiciary has not yet acted upon HB 2074.

We would like to recommend some minor amendments clarify two matters: that juveniles that are committed to juvenile correctional facilities would also be subject to fingerprinting and photographing and a technical amendment reflecting that there is only one state repository. The amendments would also basically make the bills identical in meaning if not wording. See attached balloon with our amendments in bold italics.

The longer that section 13 of SB 261 is allowed to be the law of Kansas, the worse our records will be and the greater danger of miss and wrong identification of juvenile offenders. While well-intentioned, the unintended consequences of this section of SB 261 are major problems with both local law enforcement and maintaining accurate records of arrests by the KBI.

Therefore we respectfully request prompt action on this bill, both by this committee and the entire chamber.

Thank you for your prompt attention and consideration.

SENATE BILL No. 103

By Senators V. Schmidt, Hensley and Kelly

1-17

AN ACT concerning juveniles; relating to fingerprints and photographs; amending K.S.A. 2006 Supp. 38-2313 and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 38-2313 is hereby amended to read as follows: 38-2313. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) after adjudication, fingerprints and photographs shall be taken of all juvenile offenders adjudicated because of commission of an offense which if committed by an adult would constitute the commission of a felony or any of the following misdemeanor violations: K.S.A. 21-3424, and amendments thereto, criminal restraint, when the victim is less than 18 years of age, subsection (a)(1) of K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3507, and amendments thereto, adultery, when one of the parties involved is less than 18 years of age, K.S.A. 21-3508, and amendments thereto, lewd and lascivious behavior, subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, promoting prostitution, when one of the parties involved is less than 18 years of age, K.S.A. 21-3517, and amendments thereto, sexual battery, and including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to commit a violation of any of the offenses specified in this subsection *a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by an adult, would constitute the commission of a felony, a class A or B misdemeanor or assault, as defined by K.S.A. 21-3408, and amendments thereto;*

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501, and amendments thereto, if the juvenile has been: (A) Prosecuted as an adult pursuant to K.S.A. 2006 Supp. 38-2347, and amendments thereto; and or (B) *taken into custody for an offense described in subsection (n)(1) or (n)(2) of K.S.A. 2006 Supp. 38-2302, and amendments thereto;*

(4) fingerprints or photographs may **shall** be taken of any juvenile admitted to a juvenile correctional facility.; and

(5) *photographs may be taken of any juvenile placed in a juvenile detention facility.*

(b) Fingerprints and photographs taken under subsection (a)(1) or (a)(2) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsections (a)(2), (a)(3) and (a)(4) may be kept in the same manner as those of

persons of the age of majority. *Photographs taken under subsection (5) shall be used solely by the juvenile detention facility for the purposes of identification, security and protection and shall not be disseminated to any other person or agency.*

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to ~~a~~ **the** state ~~or~~ **and** federal repository if authorized by a judge of the district court having jurisdiction; and

(2) *a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to a state or federal repository if taken under subsection (a)(2 or (a)(4));* and

(3) fingerprints or photographs taken under ~~subsections (a)(2),~~ **subsection (a)(3)** and ~~(a)(4)~~ shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 2006 Supp. 38-2325, and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of an alleged juvenile offender taken under the provisions of subsection (a)(2) of K.S.A. 38-1611, prior to its repeal, may be sent to a state or federal repository on or before December 31, 2006.

(f) Any law enforcement agency that willfully fails to submit any fingerprints or photographs required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

Sec. 2. K.S.A. 2006 Supp. 38-2313 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

SENATE BILL No. 74

By Committee on Judiciary

z74c1

1-11

9 AN ACT relating to the probate code; concerning the recovery of certain
10 medical assistance; amending K.S.A. 59-2222, 59-2247 and 59-3086
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 59-2222 is hereby amended to read as follows: 59-
15 2222. (a) When a petition is filed for the probate of a will, for the deter-
16 mination that the consent of a spouse to a will is a valid and binding
17 consent, for administration or for refusal to grant letters of administration,
18 the court shall fix the time and place for the hearing thereof. Notice of
19 the hearing shall be given pursuant to K.S.A. 59-2209, *and amendments*
20 *thereto*, unless the court makes an order to the contrary. If notice is by
21 order of the court not required to be given pursuant to K.S.A. 59-2209,
22 *and amendments thereto*, the court shall order notice of the hearing to
23 be given, unless waived, in such manner as the court directs.

24 (b) When the petition seeks simplified administration, the notice shall
25 advise all persons that under provisions for simplified administration the
26 court need not supervise administration of the estate, and no notice of
27 any action of the executor or administrator or other proceedings in the
28 administration will be given, except for notice of final settlement of de-
29 cedent's estate. The notice shall further advise all persons that if written
30 objections to simplified administration are filed with the court, the court
31 may order that supervised administration ensue.

32 (c) When a petition has been filed for the refusal of letters of admin-
33 istration, pursuant to K.S.A. 59-2287, *and amendments thereto*, the notice
34 given shall advise all persons that at such hearing exempt property and a
35 reasonable allowance will be set aside to the surviving spouse and minor
36 children, or both, and that no further notice of the proceeding will be
37 given.

38 (d) When the state is a ~~proper~~ party, the notice shall be served upon
39 the attorney general and the county or district attorney of the county.

40 (e) *If the decedent or a predeceased spouse of the decedent received*
41 *medical assistance payment under subsection (e) of K.S.A. 39-709, and*
2 *amendments thereto, or the laws of any other state, the state or states*
3 *providing such payment or payments shall be considered a party. Notice*

shall be given to the agency or department responsible for the recovery of medical assistance in Kansas or, if a state other than Kansas, to the attorney general of such state or states, ~~and the notice required by subsection (d) shall not be given.~~

Sec. 2. K.S.A. 59-2247 is hereby amended to read as follows: 59-2247. (a) The petition of an executor or an administrator for a final settlement and accounting, and a determination of the persons entitled to the estate of a decedent, shall, in addition to other requirements, contain:

- (1) A statement of the account;
- (2) the names, residences, and addresses of the heirs, devisees, and legatees;
- (3) a description of the real estate and the interest of the decedent therein at the time of the decedent's death; ~~and~~
- (4) the nature and character of the respective claims of the heirs, devisees, and legatees of the decedent; ~~and~~
- (5) *a statement that neither the decedent nor a predeceased spouse of the decedent were paid medical assistance under subsection (e) of K.S.A. 39-709, and amendments thereto, or the laws of any other state, or, in the event that such assistance was paid for or to the decedent or a predeceased spouse of the decedent under subsection (e) of K.S.A. 39-709, and amendments thereto, or the laws of any other state, that the state making such payments was duly notified of the filing of the petition as required by K.S.A. 59-2222, and amendments thereto.*

Notice of the hearing on a petition of an executor or administrator for a final settlement and accounting in which title to real estate is to be assigned by the court shall be given pursuant to K.S.A. 59-2209, and amendments thereto. In all other cases, notice shall be given or waived as provided in K.S.A. 59-2208, and amendments thereto.

Sec. 3. K.S.A. 59-3086 is hereby amended to read as follows: 59-3086. (a) At the time of or at any time after the filing of an accounting by the conservator, the conservator may file with the court a verified petition requesting a hearing on that accounting for the purposes of allowance and settlement. The petition shall include:

- (1) The conservator's name and address, and if the conservator is also the guardian, that fact;
- (2) the conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the conservatee's permanent residence;
- (3) the name and address of the court appointed guardian, if different from the conservator;
- (4) the names and addresses of any spouse, adult children and adult grandchildren of the conservatee, and those of any parent and adult siblings of the conservatee, or if no such names or addresses are known to

1 the petitioner, the name and address of at least one adult who is nearest
2 in kinship to the conservatee, or if none, that fact. If no such names or
3 addresses are known to the conservator, but the conservator has reason
4 to believe that such persons exist, then the petition shall state that fact
5 and that the conservator has made diligent inquiry to learn those names
6 and addresses;

7 (5) the names and addresses of other persons, if any, whom the con-
8 servator knows to have an interest in the matter, or a statement that the
9 petitioner knows of no other persons having an interest in the matter;

10 (6) designation of the accounting period for which allowance and set-
11 tlement is sought; and

12 (7) a request that this accounting be accepted and that the court issue
13 an order providing that all matters related thereto are finally allowed and
14 settled.

15 (b) Upon the filing of such a petition, the court shall issue an order
16 fixing the date, time and place of a hearing on the petition, which hearing
17 may be held forthwith and without further notice if those persons named
18 within the petition pursuant to the requirement of subsections (a)(3),
19 (a)(4) and (a)(5), as applicable, have entered their appearances, waived
20 notice, and agreed to the court's accepting the accounting and issuing an
21 order of final allowance and settlement. Otherwise, the court shall require
22 the conservator to give notice of this hearing to such persons in such
23 manner as the court may specify, including therewith a copy of the con-
24 servator's petition and a copy or copies of the accounting or accountings
25 for which the conservator requests an order of final allowance and settle-
26 ment. This notice shall advise such persons that if they have any objections
27 to the accounting or accountings for which final allowance and settlement
28 is sought that they must file their written objections with the court prior
29 to the scheduled hearing or that they must appear at the hearing to pres-
30 ent those objections. The court may appoint an attorney to represent the
31 conservatee in this matter similarly as provided for in subsection (a)(3) of
32 K.S.A. 59-3063, and amendments thereto, and in such event, the court
33 shall require the conservator to also give this notice to that attorney.

34 (c) In the absence of a petition having been filed by the conservator
35 pursuant to this section, the court may set a hearing to determine whether
36 an order of final allowance and settlement should be issued with regard
37 to any accounting which has been previously filed by the conservator, and
38 may require the conservator or some other person to give notice thereof
39 as provided for herein.

40 (d) The hearing shall be conducted in as informal a manner as may
41 be consistent with orderly procedure. The court shall have the authority
42 to receive all relevant and material evidence which may be offered, in-
43 cluding the testimony or written report, findings or recommendations of

any professional or other person who has familiarity with the conservatee or the conservatee's estate. The court may review the court's prior orders, any conservatorship plan which has been filed pursuant to K.S.A. 59-3079, and amendments thereto, and any reports and accountings which have been filed by the guardian or conservator, or both, even if previously approved or allowed, to determine whether the current accounting seems reasonable in light of the past reports or accountings, and to determine whether any further proceedings under this act may be appropriate. The court shall give to the conservator, to the conservatee, and to other interested persons, the opportunity to present evidence to the court concerning the actions of the conservator, the conservatee's estate and the recommendations of such persons.

(e) At the conclusion of the hearing, if the court finds, by a preponderance of the evidence, that the accounting accurately accounts for the conservatee's estate, shows appropriate administration on the part of the conservator, that any fees of the conservator are reasonable, and that due notice and an opportunity to be heard has been provided to any interested parties, the court shall approve the accounting and order that it is allowed and settled. Such allowance and settlement shall relieve the conservator and the conservator's sureties from liability for all acts and omissions which are fully and accurately described in the accounting, including the investments of the assets of the conservatee's estate.

(f) If the court finds by a preponderance of the evidence that the conservator has innocently misused any funds or assets of the conservatee's estate, the court shall order the conservator to repay such funds or return such assets to the conservatee's estate. If the court finds that the conservator has embezzled or converted for the conservator's own personal use any funds or assets of the conservatee's estate, the court shall find the conservator liable for double the value of those funds or assets, as provided for in K.S.A. 59-1704, and amendments thereto. In either case, the court may order the forfeiture of the conservator's bond, or such portion thereof as equals the value of such funds or assets, including any lost earnings and the costs of recovering those funds or assets, including reasonable attorney fees, as the court may allow, and may require of the surety satisfaction thereof. Neither the conservator, nor the conservator's estate or surety, shall be finally released from such bond until the satisfaction thereof.

(g) At no time shall the conservator, or the conservator's estate or surety, be finally released from the bond required by the court pursuant to K.S.A. 59-3069, and amendments thereto until a final accounting has been filed, allowed and settled as provided for herein.

(h) ~~Upon the filing of a final accounting, reimbursement to the appropriate agency for medical assistance payments, if any, received under~~

~~Subsection (e) of K.S.A. 39-709, and amendments thereto, or similar laws of any other state for or on behalf of conservatee or a predeceased spouse of the conservatee, but only to the extent allowed by law, delivery of any remaining funds and assets of the conservatee's estate to the person or persons entitled thereto, and presentation to the court of a receipt for such, the court may issue a final order of allowance and settlement as provided for herein, and only thereby finally shall release the conservator, the conservator's estate and the conservator's surety.]~~

9 Sec. 4. K.S.A. 59-2222, 59-2247 and 59-3086 are hereby repealed.
 10 Sec. 5. This act shall take effect and be in force from and after its
 11 publication in the statute book.

The court may issue a final order of allowance and settlement upon the filing of a final accounting and a finding by the court that the following have occurred:

- (1) Reimbursement to the appropriate agency for any medical assistance payments, if any, received under subsection (e) of K.S.A. 39-709, and amendments thereto, or any similar laws of any other state for or on behalf of a conservatee or a predeceased spouse of the conservatee, but only to the extent allowed by law;
- (2) delivery of any remaining funds and assets of the conservatee's estate to the person or persons entitled to such funds or assets; and
- (3) presentation to the court of receipts for subsections (1) and (2).

The conservator, the conservator's estate and the conservator's surety shall be released upon the issuance of the court's final order of allowance and settlement.