

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 6, 2007, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived, 9:33 A.M.  
Barbara Allen- excused  
Julia Lynn arrived, 9:40 A.M.  
Derek Schmidt arrived, 9:34 A.M.  
Greta Goodwin arrived, 9:39 A.M.  
David Haley arrived, 9:38 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:

Darrell Holaday, Advanced market Concepts  
Willa DeCastro, American Adoption  
Austin Vincent, Attorney  
Tim Madden, Senior Counsel, Department of Corrections  
Representative Shirley Palmer  
Rhonda Allen

Others attending:

See attached list.

The Chairman opened the hearing on **SB 351–Office of administrative hearings; exception to use of by the office of state bank commissioner.**

Darrell Holaday appeared in support, providing personal experience of an appeal process with the Kansas Department of Health and Environment (Attachment 1). Mr. Holaday feels the current process provides an unfair advantage to the agency and has the potential for biased or unjust decisions.

Written testimony in support of **SB 351** was submitted by:

J. Thomas Thull, Bank Commissioner, Office of the State Bank Commissioner (Attachment 2)

There being no further conferees, the hearing on **SB 351** was closed.

The hearing on **HB 2186–Restrictions on advertising for adoption and child placement agencies** was opened.

Willa DeCastro testified in support, describing concerns regarding unlicensed “Adoption Facilitators” offering adoption services to pregnant women and prospective adoptive families (Attachment 3). Often these facilitators are from outside of Kansas with no local office and often do not know or follow Kansas law. Frequently, time deficiencies on the facilitators part legally put Kansas attorney’s, judges and agencies in the position of trying to clean up or approve adoptions that are not legal in Kansas. Ms. DeCastro proposed returning the bill to the original proposed language which would require state licensing and the license number displayed in all advertisements.

Austin Vincent spoke in opposition, indicating he was not opposed to the intent of the bill, but was concerned with subsection (a)(3) which would prohibit the free exchange of information among those who most need to communicate in order to accomplish the goal of adoption (Attachment 4).

There being no further conferees, the hearing on **HB 2186** was closed.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 6, 2007, in Room 123-S of the Capitol.

The Chairman opened the hearing on **HB 2190–Granting the secretary of corrections the discretion to dismiss conditional release violations.**

Tim Madden testified in support, reviewing the bill which would vest the Secretary of Corrections with authority analogous to that of a prosecuting attorney in regard to the management of charges and pretrial diversion interventions (Attachment 5). Enactment of the bill would allow opportunities for meaningful intervention placements that might otherwise be lost or delayed.

There being no further conferees, the hearing on **HB 2190** was closed.

The hearing on **HB 2191–Unlawful sexual relations by volunteers in correctional institutions** was opened.

The Chairman indicated the bill has been amended extensively and requested Bruce Kinzie, staff revisor, to provide a brief summary of the bill in its current form.

Representative Shirley Palmer appeared as a proponent, indicating she had proposed the amendment to prevent teachers from entering into a relationship with a student enrolled in school (K-12) regardless of the students age (Attachment 6). Representative Palmer stated that students are within the responsibility and protection of the school until graduation.

Rhonda Allen spoke in favor, presenting her personal experience with a relationship between her daughter and a teacher (Attachment 7).

Tim Madden appeared in support, indicating **HB 2191** was originally proposed by the Department of Corrections out of a concern that unpaid volunteers might not fall within the definition of an “employee” (Attachment 8). The Department of Corrections expresses no opinion regarding the provisions of **HB 2191** relating to leaving the scene of a motor vehicle accident, the mistreatment of a dependent adult, or unlawful sexual relations between a teacher and student.

There being no further conferees, the hearing on **HB 2191** was closed.

The Chairman called for final action on **HB 2010–Uniform anatomical gift act.**

Senator Vratil reviewed the bill and an amendment prepared by staff revisor, Bruce Kinzie. The proposed balloon amendment was distributed reflecting the addition of a non-driver identification card where references to a drivers license are made (Attachment 9).

Senator Journey moved, Senator Lynn seconded, to adopt the proposed balloon amendment. Motion carried.

Senator Goodwin moved, Senator Donovan seconded, to recommend **HB 2010**, as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:23 A.M. The next scheduled meeting is March 7, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-6-07

NAME	REPRESENTING
Sandy Jacquot	CKM
ERIK SARTORIUS	City of Overland Park
Lindsey Douglas	Hein Law Firm
Michael Snodgrass	Greater Kansas City LISE
Ashley Jones	Greater Kansas City LISE
Shane Kelly	AMC
Micah White	
Juni Rose	KCSL
R.S. McKenna	SRS
Staci Henry	CHWC
DONNY SMITH	Community Housing of Wy Co. (CHWC)
JEREMY S BARCLAY	KDOC
TIM MADDEN	KDOC
Helen Podigo	KSC
Brenda Harmon	KSC
Dr. Deborah	Public
LARRY BOENING	Bo of HEALING ARTS
Angie Vincent	Attorney

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-6-07

NAME	REPRESENTING
Mary Jane Stankiewicz	KARA
<del>Shawn</del> Shawn Franc	American Adoptions
Willa DeCastro	S S
Adam Courtney	
Lana White	OJA
Gail Bright	Office of Kansas Securities Commission

March 6, 2007

TO: Senate Judiciary Committee

From: Darrell Holaday, Advanced Market Concepts

Subj: Proponent of Appeal Amendment in SB 351

In the mid 1990's, the State Legislature worked to develop a comprehensive water plan and waste management plan for the State of Kansas. In the development of the regulations for waste management, there was substantial concern about the "setback" regulations that were going to be put in place in regard to smaller livestock producers who at some point wanted to expand their livestock operations.

Therefore, as part of the plan, special provisions were put in place that allowed smaller livestock operations to expand to larger operations without the requirements of the setback provisions for new permits.

This basic statement is made as a preamble to the story of Taury Creek Dairy in Franklin County Kansas.

In 2001, John Coen of Franklin County Kansas operated a 150 cow dairy 5 miles north of the Ottawa Kansas. It was a long time family dairy operation that operated with a Waste Management Permit from the State of Kansas. At that time, John decided that in order to achieve the long-term financial success and to compete in the dairy industry he needed to expand his dairy operation to a 1500-2000 cow dairy operation.

Therefore, he contacted our company to help coordinate this expansion which included obtaining financing, attracting potential investors, obtaining a water permit and a waste management permit. All of these activities progressed smoothly, including obtaining a permit to pump water from Taury Creek, except for obtaining the Waste Management Permit.

John George, who is a Professional Engineer from Southeast Kansas was contracted to complete the engineering and permit applications for the water permit and the Waste Management Permit. It is important to note that the entire area has very limited ground water supplies. Rural water services the area because there is not enough ground water to support a household well in most instances.

Therefore, a decision was made to apply for a water permit that would allow for pumping water out of Taury Creek and into a fresh water pond for use by the dairy. This permit was applied for and obtained in less than six months.

John Coen's dairy set on property that he owned but it was not large enough for the larger dairy. The current dairy facilities would become the new calving facility and special needs facility for the larger dairy operation. The plan was to build the new dairy on land adjacent (just west) to the current facility that was owned/operated by John Coen.

From the beginning of the application process for the Waste Management Permit, John had a neighbor, who ironically was a retired dairyman that operated for many years with no permit, that was against the new dairy. The neighbors organized a group of people to fight the waste management permit. They wrote large numbers of letters to KDHE and to the press for publication. The letters were at times slanderous and constantly misleading regarding the facts of a large dairy operation.

This obviously concerned all of us that worked on the project and there were many attempts to discuss the situation with the neighbor, but they were unsuccessful. There was even an attempt to purchase the property, but that was also not successful.

Senate Judiciary  
3-6-07  
Attachment 1

Despite the concern for the neighbor, the law was on the side of John Coen. As stated before, there were provisions in the law that allowed John to expand on his own land without the setback provisions that would apply for a new permit. Therefore, the application was originally submitted for a design that put the dairy on the south end of the adjacent land controlled by John.

It should be noted that throughout the application process, KDHE never met the time lines for response that are spelled out in regulation. I was personally embarrassed as a citizen of this State as to how slow the response was on any application process. Most of the time, responses from KDHE took 4-6 months.

In the initial application, KDHE had concerns about locating the facility on the south end of the adjacent property. They felt that in order to comply with the setback provisions of a facility expansion, the new facility needed to be closer to the current facility. The reason we had selected the southern part of the site was that it provided the largest distance between the neighbor, who was upset, and the new dairy facility. Our feeling was one of compromise. If KDHE felt that it needed to be closer to the current facility, then we were willing to make that change. Our concern was that it was a misapplication of the regulation, but in the spirit of compromise with KDHE, we agreed to submit an application for that north site as long as they provided a letter that it would meet the provisions of setback for expansion. KDHE did provide that letter (a letter in which they later disapproved) and we agreed to submit the new application for new site (north).

Of course, to do this was another round of engineering costs. Despite this fact, a new application was submitted for the north site. At this time we felt the process was on track. Despite the fact it had taken way too long for the KDHE to respond, the feeling now was that we were on track for a successful conclusion. Of course, the pressure from the neighbor group became more intense. They were regularly visiting the KDHE office to examine all documents that were on file that had been provided. They had hired an attorney and were actively working to persuade KDHE to disallow this permit.

After another six months of KDHE evaluation, the permit was denied and there was a request for ground water test holes. This was done despite two very important facts. The first is that all geologic and hydrologic data indicated there was no usable ground water within a 5 mile radius of the site. The second was the fact that KDHE had no clear definition of ground water within the regulations.

Despite these facts, in order to move toward the permit, we agreed to contract with John George to complete the ground water test wells. Mr. George completed those and provided the data to the KDHE. Once again, it took several months to get a response from the KDHE. We found out later that the neighbors were now accusing John Coen of tampering with the test wells during the tests. They brought those accusations to the KDHE and the KDHE asked for a response for John Coen.

The results of the first test showed no water at all in two of the holes and a small seepage in the third. The KDHE had concerns about the small amount of water in the third hole and referred to it as ground water. This became a huge issue in this application. It became very obvious that the KDHE felt they had found something they could use to reject this permit application. Despite the fact they had no definition of ground water and you could find no reasonable Professional Engineer to agree with their assessment of the data.

There was an agreement to complete three additional test holes and those were completed. The results were virtually the same as the original three holes.

In the end, John had no choice but to appeal the decisions of the KDHE, which was a waste of time. The appeal process simply was made to the attorney for the KDHE. The staff at the KDHE said many times "if you don't like, just appeal it", but they also knew they would not lose in this appeal process. They made it clear that we would likely have to go to court to win this case. That would take a large amount of time and money.

It should be noted that the KDHE in their final response also made it clear they would not approve the set provisions for the dairy expansion, despite agreeing to do this two years earlier. Their response was that they "had the right to change their minds".

It was very clear in this process that the KDHE did not want to issue this permit and would work to make sure it was not permitted. We actually had another engineer in Kansas review the permit application and file a report. His report indicated that he was "taken back" by the fact that the permit had not been issued and was appalled at all of the "hoops" that KDHE had made us jump through to attempt to get the permit. There was a description that indicated the KDHE just simply was attempting to "wear us out" and hoping this dairy expansion project would simply go away.

We participated in the appeal process, but it was very obvious that we had no chance in the appeal. The current appeal process is simply an affirmation of the findings of the agency. Therefore, we were faced with taking this process into the court system, which would be very costly and time consuming. The KDHE knew this and used that fact to their advantage.

This is not written with belief that agencies within State government always operate in the manner that the KDHE did with this situation. It is also not written with the belief that all applications going through state agencies should be approved. This process enlightened me to understand that the current process is flawed. In order to provide a check and balance on a State agency, the appeal process should allow the citizen of the State of Kansas to appeal to a third party outside of the agency that made the original determination. It is critical that this step be provide prior to the last step, which must be pursued through our legal system.

The Tauy Creek dairy expansion issues outlined in this writing bring to light two major issues. The first deals with the KDHE waste management regulations that are many times applied in an arbitrary and capricious manner. But that is not the issue you are dealing with at this time.

The second issue, which is much more critical, is the fact that with a reasonable appeal process to a third party (not affiliated with the agency), the facts could have been presented in a reasonable manner and a decision reached. I know all involved in this process were very frustrated with the fact that the laws as written by those who represent our society by our choice were followed. But in the end, an agency that refused to follow those laws and regulations was able to deny the permit with the full knowledge that the applicant could not survive the appeal process and did not have the financial ability to move it into the legal system.

Therefore, I strongly support this amendment and thank you for letting me tell my story that illustrates the importance of this change.

Thank you!

# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER  
*J. Thomas Thull, Bank Commissioner*

## SENATE JUDICIARY COMMITTEE

March 6, 2007

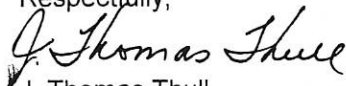
Chairman Vratil and Members of the Committee:

The Office of the State Bank Commissioner submits this written testimony in support of SB 351. Our agency originally requested introduction of SB 197, which contained the same provisions as SB 351. SB 197 was recommended for passage by the Senate Financial Institutions and Insurance committee, but the bill was referred back to the committee during General Orders in the Senate. Subsequently, SB 351 was introduced and referred to this committee for review.

As background, several years ago, the Legislature created a central administrative hearing body within the Department of Administration called the Office of Administrative Hearings. The law phases in required use of the Office of Administrative Hearings by many state agencies over a number of years, and in 2009, the last group of agencies is added. That 2009 language currently provides an exemption for a majority of the fee funded agencies from using the Office of Administrative Hearings. With regard to our agency, which is fee funded, the current language in the statute includes an exemption for hearings conducted by the "State Banking Board". The State Banking Board is the entity that hears appeals from decisions of the Commissioner on a number of application and licensing issues. However, for some other laws that the agency enforces, the appeal is to the Commissioner or the Administrator of the Kansas Uniform Consumer Credit Code (UCCC), rather than the Banking Board. So, on July 1, 2009, one portion of our agency will be required to use the Office of Administrative Hearings, while another portion will be exempt. SB 351, as currently drafted, would include an amendment to add the appropriate full name of our agency, the "Office of the State Bank Commissioner", in addition to the existing reference to the "State Banking Board", to the list of exempt entities. We believe this amendment reflects the original intent of the law when it was drafted; i.e., to exempt our agency, along with other fee-funded agencies, from being required to use the Office of Administrative Hearings. This amendment would result in our agency being treated the same as the other fee-funded agencies under the law, and would allow us to continue with our existing hearing process. Our current process provides timeliness of hearings to individuals seeking review of the agency's decisions, consistency in interpretation of the law, and important protections for Kansas consumers seeking timely resolution of matters affecting their financial well-being.

With the approval of the Kansas Association of Mortgage Brokers, I have attached the testimony they presented in support of the original bill, SB 197. They are also supportive of SB 351 in its current form. The Office of the State Bank Commissioner would respectfully request your favorable consideration of SB 351.

Respectfully,



J. Thomas Thull  
Bank Commissioner

Attachment: KAMB testimony, SB 197





Kansas Association of Mortgage Brokers  
14904 W 87<sup>th</sup> Parkway #234  
Lenexa, KS 66215

To: Senate Financial Institutions and Insurance Committee

February 6, 2007

RE: Testimony in support of SB 197

Madam Chairman and Members of the Committee:

On behalf of the Kansas Association of Mortgage Brokers (KAMB), I would like to express our Association's support for SB 197. KAMB believes appropriate, consistent regulation and oversight is a necessary and important step to insure consumer confidence and high standards of professionalism in the mortgage industry. Our association has worked closely with the Office of the State Bank Commissioner to promote consumer protection and weed out bad players who do not support the high standards of conduct to which our members subscribe. KAMB believes it is appropriate for the Bank Commissioner's office to retain the ability to conduct administrative hearings. The current process facilitates consistent and reasonable application of the laws, and timely disposition of hearings. Removing that process from the Bank Commissioner's office would only create another layer of bureaucracy that would slow the process and limit the expertise to make informed rulings often involving complex financial issues. This could create situations that would not benefit consumers or our industry. For these reasons, we urge the committee to act favorably on SB 197. Thank you in advance for your support.

Randy Anderson  
Randy Anderson  
Director of Legislative Affairs  
Kansas Association of Mortgage Brokers



HB 2186  
March 6, 2007

Senator Vratil  
Members of Judiciary committee

HB 2186 passed the House with 117 votes and I thank you for hearing it in such a timely manner.

We have brought this issue to the legislature to address a concern we have for pregnant mothers and prospective adoptive families.

In the state of Kansas adoption professional must be licensed. Agencies receive their licensure through KDHE and attorneys receive theirs from the state bar. Both KDHE and the bar can review files to verify that proper and legal protocols have been followed. This provides for a check and balance system that reduces fraudulent activity.

By definition an Adoption Facilitator is an unlicensed organization or individual offering adoption services. The concern is that many of these facilitators are from the coast regions with no offices or staff in Kansas and provide no "face to face" services. They often do not know or do not follow Kansas law.

We see the ads, advertising for both pregnant mother and prospective families to call an 800 number. The facilitator can connect the two parties. At that point, by law a Kansas attorney or agency has to be consulted. The facilitator collects a fee, often very high, and exits the arrangement. Often times these clients feel a lack of services were provided and legally put Kansas attorney's, judges and agencies in positions of trying to clean up or approve adoptions that are not legal in the state.

Seventeen (17) other states have adopted statutes restricting or banning facilitator from advertising for adoption services in their state. We pattern the proposed changes after Oklahoma and Florida. Since this bill was heard in the House, it has come to our attention that Indiana is also looking at this issue.

We accept most of the amendments made by the House except in line 19-21. We would ask you to consider returning the bill to the original proposed change---shall be licensed by the state of Kansas in such person's profession and in any such advertisement shall place such person's license number. This is the language used by Oklahoma and Florida and we believe it is clearer to the public. We would question without that language, will the public realize which advertisers are not licensed or will they just think it was omitted? Most people think if it is in print it must be legal, that someone is regulating when in fact that is not the case.

Thank you.

Willa DeCastro for American Adoptions

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(Continued Next Page)

Notes:

**AUSTIN K. VINCENT**  
**Attorney at Law**  
**2222 Pennsylvania Ave.**  
**Topeka, KS 66605-1255**

**(785) 234-0022**  
**(800) 945-6170**

**E-Mail: akvlaw@cox.net**  
**Fax: (785) 234-2927**

**TESTIMONY IN OPPOSITION TO HB 2186**  
**BEFORE THE SENATE JUDICIARY COMMITTEE ON MARCH 6, 2007**

HB 2186 is an attempt to resurrect some limitations on advertising for adoptions.

Attorney General Opinion 93-70 stated that, “**assuming the advertisement is not misleading, the complete prohibition of all advertising (except for certain entities) is too broad to accomplish the state’s purpose**” and, therefore, opined that KSA 59-2123 was an unconstitutional abridgement of free speech.

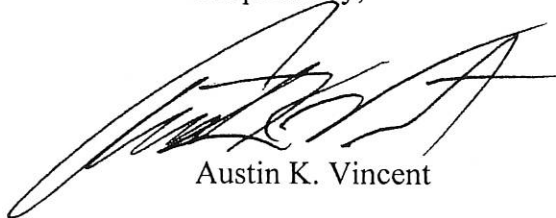
The House Judiciary Committee amendments to HB 2186 seem to remedy that problem as to advertising. However, that committee did not address a problem with the original statute.

**PLEASE READ SUBSECTION (a)(3) “no person shall offer to adopt, find a home for or otherwise place a child as an inducement to any parent, guardian or custodian of a child to place such child in such person's home, institution or establishment.”**

The original statute and the current bill prohibit the free exchange of information among those who most need to communicate in order to accomplish the goal of adoption.

I simply ask that you delete subsection (a)(3) before passing this bill out of committee.

Respectfully,



Austin K. Vincent

Senate Judiciary

3-6-07

Attachment 4



# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2190  
to  
The Senate Judiciary Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections  
March 6, 2007

The Department of Corrections sought introduction of HB 2190 and supports its passage. HB 2190 passed the House by a vote of 102 to 22.

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

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

The nondiscretionary language of K.S.A. 75-5217, that once a preliminary hearing has been conducted and probable cause found, the matter must be referred to the Parole Board is also inefficient in that while the Parole Board may impose a sanction or disposition other than

revocation, the final hearing before the Parole Board may not occur for 30 to 45 days after the preliminary hearing. During that time period the person will remain in either a local jail at state expense or at a correctional facility. Thus, opportunities for meaningful intervention placements might be lost or at the least delayed with the additional cost of jail and prison incarceration in the interim.

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

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

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

STATE OF KANSAS



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To: Senate Judiciary Committee

Testimony on HB 2191

Unlawful sexual relations by volunteers in correctional institutions

From: Shirley Palmer, State Representative, 4<sup>th</sup> District

Committee Members:

Thank you for the opportunity to discuss HB 2191 which involves unlawful sexual relations. I believe HOUSE Bill 2191 is a good one, as volunteers working with the Department of Corrections should certainly be included in this crime.

However, the reason I am before you today is the fact that I proposed an amendment to this bill in the House at the request of some constituents and it passed with no negative votes to my knowledge.

I support this bill, including the amendment, 100% because it would cover a situation which occurred in my district.

A 56-year old teacher/coach entered into a sexual relationship with an 18 year old student who was a senior in high school. This student was an honor student, active in sports, and from a very strong Christian family. I believe there should be a law that would prevent a teacher from entering into a relationship with any student who is enrolled in school (K-12) regardless of the age, (not just those under age 18).

Many students, including those with disabilities, are enrolled in schools beyond the age of 17. Sometimes they are actually in school through the age of 21. Several students are 18 before graduation.

While a student may be over 17, I believe he or she is still within the responsibility and protection of the school until graduation. While the student may be over 17 they are in the same type of situation in which the student is being taken advantage of by an adult. The value of trust and professionalism is broken.

I would request that when you work this bill you consider my admendment.

Thank you for the opportunity to testify. My constituents (the student's parents) are present and her mother would also like to testify.

Sincerely,

A handwritten signature in cursive script that reads "Shirley Palmer".

Shirley Palmer, State Rep. 4<sup>th</sup> Dist.

Senate Judiciary

3-6-07

Attachment 6

**TESTIMONY ON HB 2191**  
**From Rhonda Allen**

Committee Members;

My name is Rhonda Allen. I want to testify briefly in favor of House Bill 2191. My daughter, was seduced and impregnated by her teacher/coach. He ran off with her and married her (he was 56, she was 18). The only consequences for his behavior was the loss of his teaching license. We have watched with interest media coverage of MANY similar cases throughout our country - many of them resulting in criminal charges against the offending teacher. Why were no charges filed in our daughters case? There is no law in Kansas (we were told) that considers the teacher/student power dynamic. Our County Attorney told us that, because our daughter was 18 when she was impregnated (even though she WAS still a student at the time), she was of legal age and the case could not be considered statutory rape. This is Very, Very wrong!! Though it may be too late for our daughter, I would like to see legislation passed that would make any sexual, romantic relationship between a student and a teacher illegal, regardless of the age of the student.

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

Thank you for your consideration of such legislation and for listening to a very concerned parent.

Sincerely,

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

Senate Judiciary

3-6-07

Attachment 7



### Arkansas Statutory References to Sexual Assault

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

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

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

#### Arkansas Code 5-14-103. Rape:

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

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

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

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

(D) Rape is a Class Y felony.

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

(a) A defendant pleads guilty or nolo contendere; or

(b) All the defendant's appeals have been exhausted and the defendant remains convicted.

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

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

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

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

(2) Is a professional under Arkansas Code 12-12-5 07(b) and is in a position of trust or authority over the victim and uses the position to engage in sexual intercourse or deviate sexual activity; or

(3) Is an employee in the victim's school or school district, a temporary care taker, or a person in a position of trust or authority over the victim. It is an affirmative defense to prosecution under this subdivision that the actor was not more than three (3) years older than the victim.

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

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

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

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

(1) Engages in sexual contact with another person by forcible compulsion; or

(2) Engages in sexual contact with another person who is incapable of consent because the person is physically helpless, mentally defective, or mentally incapacitated; or

(3) ~~Being eighteen (18) years of age or older, engages in sexual contact with the sex organs of another person, not the person's spouse, who is less than fourteen (14) years of age.~~

(4) Engages in sexual contact with another person who is less than eighteen (18) years of age and the person:

(a) Is employed with the Department of Correction, Department of Community Punishment, any city or county jail or any juvenile detention facility, and the minor is in custody at one of the facilities operated by the agency or contractor employing the person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*trusted him as a teacher and as a friend.*

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

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

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

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

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

(1) Being eighteen (18) years old or older, the person solicits another person who is less than fifteen (15) years of age, or who is represented to be less than fifteen (15) years of age to engage in sexual intercourse, deviate sexual activity, or sexual contact; or

(2) With the purpose to arouse or gratify the sexual desires of himself or herself or those of any other person, the person purposefully exposes his or her sex organs to another person who is less than fifteen (15) years of age.

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

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

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

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

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

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

(1) The dynamics of sexual assault;

(2) The laws concerning sexual assault;

(3) Sexual assault victim interview techniques; and

(4) Support services available to sexual assault victims.



# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2191  
to  
The Senate Judiciary Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections  
March 6, 2007

The Department of Corrections supports HB 2191 as it pertains to sexual relations between volunteers of the Department and offenders in the Department's custody. This provision is found at page 3 beginning at line 26 of the bill as amended by the House. This provision of HB 2191 would expand the definition of persons prohibited from engaging in sexual relations with Department of Corrections' inmates and offenders under release supervision in circumstances which would otherwise be consensual. K.S.A. 21-3520 would specifically prohibit volunteers of the department and its contractors from engaging in unlawful sexual relations with inmates and those released persons under the volunteer's direct supervision and control.

The Department expresses no opinion regarding the provisions of HB 2191 relating to leaving the scene of a motor vehicle accident, the mistreatment of a dependent adult, or unlawful sexual relations between a teacher and student.

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

HB 2191 was proposed by the department out of a concern that unpaid volunteers might not fall within the definition of an "employee". The department urges favorable consideration of the provisions of HB 2191 pertaining to sexual relations between department volunteers and offenders in the Department's custody.

**HOUSE BILL No. 2010**

By Special Committee on Judiciary

12-5

Senate Judiciary  
3-6-07  
Attachment 9

10 AN ACT enacting the revised uniform anatomical gift act; amending  
11 K.S.A. 58-654, 59-3075 and 65-3219 and K.S.A. 2006 Supp. 8-243, 8-  
12 247, 8-1325 and 65-1728 and repealing the existing sections; also re-  
13 pealing K.S.A. 65-3209, 65-3210, 65-3211, 65-3212, 65-3213, 65-3214,  
14 65-3215, 65-3216, 65-3217 and 65-3218.

8-1328,

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. This act may be cited as the revised uniform anatom-  
18 ical gift act.

19 New Sec. 2. In this act:

20 (1) "Adult" means an individual who is at least 18 years of age.

21 (2) "Agent" means an individual:

22 (A) authorized to make health-care decisions on the principal's behalf  
23 by a power of attorney for health care; or

24 (B) expressly authorized to make an anatomical gift on the principal's  
25 behalf by any other record signed by the principal.

26 (3) "Anatomical gift" means a donation of all or part of a human body  
27 to take effect after the donor's death for the purpose of transplantation,  
28 therapy, research, or education.

29 (4) "Decedent" means a deceased individual whose body or part is  
30 or may be the source of an anatomical gift. The term includes a stillborn  
31 infant and, subject to restrictions imposed by law other than this act, a  
32 fetus.

33 (5) "Disinterested witness" means a witness other than the spouse,  
34 child, parent, sibling, grandchild, grandparent, or guardian of the individ-  
35 ual who makes, amends, revokes, or refuses to make an anatomical gift,  
36 or another adult who exhibited special care and concern for the individual.  
37 The term does not include a person to which an anatomical gift could  
38 pass under section 11, and amendments thereto.

39 (6) "Document of gift" means a donor card or other record used to  
40 make an anatomical gift. The term includes a statement or symbol on a  
41 driver's license, identification card, or donor registry.

42 (7) "Donor" means an individual whose body or part is the subject  
43 of an anatomical gift.

9-2

1 the making of an anatomical gift.

2 (24) "Recipient" means an individual into whose body a decedent's  
3 part has been or is intended to be transplanted.

4 (25) "Record" means information that is inscribed on a tangible me-  
5 dium or that is stored in an electronic or other medium and is retrievable  
6 in perceivable form.

7 (26) "Refusal" means a record created under section 7, and amend-  
8 ments thereto, that expressly states an intent to bar other persons from  
9 making an anatomical gift of an individual's body or part.

10 (27) "Sign" means with the present intent to authenticate or adopt a  
11 record:

12 (A) To execute or adopt a tangible symbol; or

13 (B) to attach to or logically associate with the record an electronic  
14 symbol, sound, or process.

15 (28) "State" means a state of the United States, the District of Co-  
16 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or  
17 insular possession subject to the jurisdiction of the United States.

18 (29) "Technician" means an individual determined to be qualified to  
19 remove or process parts by an appropriate organization that is licensed,  
20 accredited, or regulated under federal or state law. The term includes an  
21 enucleator.

22 (30) "Tissue" means a portion of the human body other than an organ  
23 or an eye. The term does not include blood unless the blood is donated  
24 for the purpose of research or education.

25 (31) "Tissue bank" means a person that is licensed, accredited, or  
26 regulated under federal or state law to engage in the recovery, screening,  
27 testing, processing, storage, or distribution of tissue.

28 (32) "Transplant hospital" means a hospital that furnishes organ  
29 transplants and other medical and surgical specialty services required for  
30 the care of transplant patients.

31 New Sec. 3. This act applies to an anatomical gift or amendment to,  
32 revocation of, or refusal to make an anatomical gift, whenever made.

33 New Sec. 4. Subject to section 8, and amendments thereto, an ana-  
34 tomical gift of a donor's body or part may be made during the life of the  
35 donor for the purpose of transplantation, therapy, research or education  
36 in the manner provided in section 5, and amendments thereto, by:

37 (1) The donor, if the donor is an adult or if the donor is a minor and  
38 is:

39 (A) Emancipated; or

40 (B) authorized under state law to apply for a driver's license because  
41 the donor is at least 16 years of age;

42 (2) an agent of the donor, unless the power of attorney for health  
43 care or other record prohibits the agent from making an anatomical gift;

or nondriver identification card

1 such applicant's name placed on the organ donor registry described, the  
 2 division shall within 10 days forward the applicant's name, gender, date  
 3 of birth and address to the organ donor registry maintained by the Kansas  
 4 federally designated organ procurement organization. The division may  
 5 forward information under this subsection by mail or by electronic means.  
 6 The division shall not maintain a record of the name or address of an  
 7 individual who indicates a willingness to have such person's name placed  
 8 on the organ donor registry after forwarding that information to the organ  
 9 donor registry under this subsection. Information about an applicant's  
 10 indication of a willingness to have such applicant's name placed on the  
 11 organ donor registry that is obtained by the division and forwarded under  
 12 this paragraph shall be confidential and not disclosed.

See attached

13 Sec. 28. K.S.A. 58-654 is hereby amended to read as follows: 58-654.

14 (a) A principal may delegate to an attorney in fact in a power of attorney  
 15 general powers to act in a fiduciary capacity on the principal's behalf with  
 16 respect to all lawful subjects and purposes or with respect to one or more  
 17 express subjects or purposes. A power of attorney with general powers  
 18 may be durable or nondurable.

Renumber remaining sections accordingly

19 (b) If the power of attorney states that general powers are granted to  
 20 the attorney in fact and further states in substance that it grants power  
 21 to the attorney in fact to act with respect to all lawful subjects and pur-  
 22 poses or that it grants general powers for general purposes or does not  
 23 by its terms limit the power to the specific subject or purposes set out in  
 24 the instrument, then the authority of the attorney in fact acting under  
 25 the power of attorney shall extend to and include each and every action  
 26 or power which an adult who is not disabled may carry out through an  
 27 agent specifically authorized in the premises, with respect to any and all  
 28 matters whatsoever, except as provided in subsection (f) and (g). When  
 29 a power of attorney grants general powers to an attorney in fact to act  
 30 with respect to all lawful subjects and purposes, the enumeration of one  
 31 or more specific subjects or purposes does not limit the general authority  
 32 granted by that power of attorney, unless otherwise provided in the power  
 33 of attorney. An attorney in fact vested with general powers shall be au-  
 34 thorized to execute a power of attorney required by any governmental  
 35 agency or other legal entity on behalf of the principal, naming such at-  
 36 torney in fact as the attorney in fact authorized to enter into any trans-  
 37 action with such agency or legal entity.

38 (c) If the power of attorney states that general powers are granted to  
 39 an attorney in fact with respect to one or more express subjects or pur-  
 40 poses for which general powers are conferred, then the authority of the  
 41 attorney in fact acting under the power of attorney shall extend to and  
 42 include each and every action or power, but only with respect to the  
 43 specific subjects or purposes expressed in the power of attorney that an



4-6

1 designated organ procurement organization shall be used for the purpose  
 2 of establishing a statewide organ and tissue donor registry accessible to  
 3 in-state recognized cadaveric organ and cadaveric tissue agencies for the  
 4 recovery or placement of organs and tissue and to procurement agencies  
 5 in another state when a Kansas resident is a donor of an anatomical gift  
 6 and is not located in Kansas at the time of death or immediately before  
 7 the death of the donor. No organ or tissue donation organization may  
 8 obtain information from the organ and tissue donor registry for the pur-  
 9 poses of fund-raising. Organ and tissue donor registry information shall  
 10 not be further disseminated unless authorized in this section or by federal  
 11 law. Dissemination of organ and tissue donor registry information may  
 12 be made by the Kansas federally designated organ procurement organi-  
 13 zation to a recognized in-state procurement agency for other tissue re-  
 14 covery, or an out-of-state federally designated organ procurement agency.

15 (b) The Kansas federally designated organ procurement organization  
 16 may acquire donor information from sources other than the division of  
 17 vehicles.

18 (c) All costs associated with the creation and maintenance of the or-  
 19 gan and tissue donor registry shall be paid by the Kansas federally des-  
 20 ignated organ procurement organization. Such organization shall also pay  
 21 the costs of providing and maintaining the written information and edu-  
 22 cational materials required to be distributed under subsection (g) of  
 23 K.S.A. 8-247, and amendments thereto, and under subsection (b) of  
 24 K.S.A. 8-1325, and amendments thereto.

25 (d) An individual does not need to participate in the organ and tissue  
 26 donor registry to be a donor of organs or tissue. The registry is to facilitate  
 27 organ and tissue donations and not inhibit Kansans from being donors  
 28 upon death.

29 (e) *This section shall be a part of and supplemental to the revised*  
 30 *uniform anatomical gift act.*

31 Sec. 32. ~~K.S.A. 58-654, 59-3075, 65-3209, 65-3210, 65-3211, 65-~~  
 32 ~~3212, 65-3213, 65-3214, 65-3215, 65-3216, 65-3217, 65-3218 and 65-3219~~  
 33 ~~and K.S.A. 2006 Supp. 8-243, 8-247, 8-1325 and 65-1728 are hereby~~  
 34 ~~repealed.~~

8-1328,

35 Sec. 33. This act shall take effect and be in force from and after its  
 36 publication in the statute book.

Sec. 28. K.S.A. 8-1328 is hereby amended to read as follows: (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued in accordance with K.S.A. 8-243 and amendments thereto and shall adequately describe the registrant. The identification card shall be sealed in transparent plastic or similar substance.

(b) All Kansas identification cards issued to any person 16 years of age or older shall contain a form which provides a statement for making a gift of all or any part of the body in accordance with the revised uniform anatomical gift act, sections 1 through 24 and K.S.A. 65-3219, and amendments thereto, except as otherwise provided by this subsection. The statement to be effective shall be signed by the applicant in the presence of two witnesses who shall sign the statement in the presence of the donor. The gift becomes effective upon the death of the donor. Delivery of the identification card during the donor's lifetime is not necessary to make a valid gift. Any valid gift statement executed prior to July 1, 2007, shall remain effective until invalidated. The word "Donor" shall be placed on the front of an applicant's identification card, indicating that the statement for making an anatomical gift under this subsection has been executed by such applicant.