

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 25, 2008 in Room 313-S of the Capitol.

All members were present except:

Kay Wolf- excused  
Ben Hodge - excused  
Tim Owens - excused  
Marti Crow - excused  
Annie Kuether - excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

John Campbell, Kansas Insurance Department  
Larry Magill, Kansas Association of Insurance Agents

The hearing on **HB 2715 - Kansas insurance code, rules and regulations**, was opened.

John Campbell, Kansas Insurance Department, appeared as the sponsor of the bill. He explained that since 1879 the insurance commissioner has had the authority to supervise, control and regulate insurance companies doing business in Kansas. In 1990, the Kansas Court of Appeals ruled in the case of *Durrett v. Bryan* that the statute was too broad. Now the department has had trouble getting rules and regulations approved by the Attorney General. He suggested that the legislature either do a rewrite of the Insurance Code or pass the proposed bill. (Attachment #1)

Larry Magill, Kansas Association of Insurance Agents, appeared before the committee as an opponent of the proposed bill. He was concerned that if the bill was enacted, it would be an unconstitutional delegation of legislative authority. He did not believe that it was administrative in nature. (Attachment #2)

Written testimony, in support of the bill, was provided by the Kansas Insurance Associations (Attachment #3)

The hearing on **HB 2715** was closed.

**HB 2850 - stalking; protection orders**

Representative Watkins made the motion to report HB 2850 favorably for passage. Representative Goyle second the motion.

A balloon amendment was provided by the Kansas Judicial Council (Attachment #4):

- page 2, line 18 "(d)(1) should be stricken and (e)(1) inserted in its place
- the language on page 2, lines 1 & 2 should be reinserted at the end of line 20
- subsection (d) on page 2 & 3 should be amended to read as follows:

"In a criminal proceeding under this section, a person claiming an exception, excuse or exemption has the burden of going forward with the evidence of the claim. It shall not be necessary to negate any exception, excuse or exemption in any complaint, information or indictment brought for the enforcement of any provision of this section."

Representative Kinzer made the substitute motion to adopt the balloon. Representative Watkins seconded the motion. The motion carried.

Representative Kinzer made the motion to report HB 2850 favorably for passage, as amended. Representative

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 25, 2008 in Room 313-S of the Capitol.

Watkins seconded the motion. The motion carried.

**HB 2732 - sentencing, mitigating factors, departure limitations on crime of extreme sexual violence**

Representative Patton made the motion to report HB 2732 favorably for passage. Representative Kinzer seconded the motion.

Representative Patton made the substitute motion to adopt balloon A (Attachment #5) which deals with crimes of extreme sexual violence. The amendment would not allow judges to do downward dispositional departure sentence or downward durational departure less than 50%. Representative Kinzer seconded the motion. The motion carried.

Representative Patton explained that balloon C (Attachment #6) would restrict all level 4 felonies and above or if they are convicted of a felony and have an A or B history. The effect would be an additional 265 beds in 2009 and 836 beds in 2018. Balloon amendment B (Attachment #7) would apply just to person felony levels 4 and above would require an additional 60 beds in 2009 and 447 in 2018. The bill as currently drafted would increase beds by 8 in 2009 and 120 beds by 2018. The difference between the two balloons and the bill as it currently is would be bed impact.

Committee members expressed that the proposed balloons have serious impact on bed space and were not sure that they wanted to, in essence, redo sentencing guidelines.

Representative Patton made the motion to adopt balloon B. Representative Kinzer seconded the motion. The motion failed 4-8. Representatives Kinzer, Watkins and Patton requested they be recorded as voting in support of the proposed motion.

Representative Patton made the motion to report HB 2732 favorably for passage. Representative Kinzer seconded the motion. The motion to report carried.

**HB 2873 - revoking the authorization of the issuance of bonds for capital improvement projects to expand prison capacity**

Kansas Development Finance Authority suggested the following balloon (Attachment #8). It was the understanding of the committee that they were suppose to propose a procedure to follow for the backing out the bonds. Committee was concerned that there might be a fiscal note, and if so, it could be addressed in the appropriations process and decided not to offer the balloon.

Representative Kinzer made the motion to report HB 2873 favorably for passage. Representative Watkins seconded the motion.

Committee members expressed their respect for Secretary Werholtz, but felt the request for bonds made no sense especially when the prison will not be needed at least for 10 years.

The motion carried.

**HB 2845 - increasing the penalties for theft and aiding escape when such crimes concern employees or volunteers of the department of corrections**

Representative Pauls made the motion to report HB 2845 favorably for passage. Representative Watkins seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for February 26, 2008.



# Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

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House Judiciary Committee

Testimony in Support of House Bill 2715  
February 25, 2008

Mr. Chairman, members of the Committee, my name is John Campbell. I am the General Counsel for the Kansas Insurance Department. I am here today in support of House Bill 2715.

Since 1879, the Kansas Legislature has given the Commissioner of Insurance general supervision, control and regulation of insurance companies. The most recent version of the grant of power was given in 1923 with the enactment of K.S.A 40-103. That statute, still on the books, provides that:

The commissioner of insurance shall have general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or surety ship in this state **and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto.** K.S.A. 40-103 (emphasis supplied).

In 1990 the Kansas Court of Appeals "amended" that statute. In the case of *Durrett v. Bryan*, 14 Kan.App.2d 273, 799 P.2d 110 (1990) judges found that:

The *amicus curiae* argues that this statute somehow provides such a broad grant of authority as to warrant the regulation in question. The statute expressly provides, however, only the power to make regulations necessary to enforce the laws relating to supervision of insurance, *i.e.*, some other statute must first provide more specific basis for authority before this statute comes into play.

We have had problems getting regulations approved by the Attorney General's office because of the *Durrett* case. Twelve proposed regulations have been denied on *Durrett* grounds. In addition, numerous regulations have not been proposed because of *Durrett*. The Attorney General's Office, since the Kline administration, has insisted that we provide specific authority contained in each act in which the implementing statute of the proposed regulation is included.

The rule and regulation authority in K.S.A. 40-103 has become a dead letter. To cure this situation the Legislature either needs to do a rewrite of the Insurance Code (K.S.A. Chapter 40) or pass HB 2715.

House Judiciary

Date 2-25-08

Attachment # 1

The Kansas Insurance Department, along with the other states, regulates an international insurance industry. We need to provide that industry with rules and regulations. Rules and regulations are defined as a, "standard, statement of policy or general order, including amendments or revocations thereof, of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency or to govern the organization or procedure of such state agency." K.S.A. 77-415(4).

The reason the Legislature should enact HB 2715 is not to increase the power of the Insurance Department, but to better provide for a means to inform the world as to how the Department interprets Kansas statutes. That notice provides certainty, lessens the need for litigation and provides a quick and less expensive manner to challenge that interpretation. HB 2715 would provide the same type of rule and regulation authority enjoyed by the Bank Commissioner and the Securities Commissioner. K.S.A. 9-542 & 17-12a605

A major emphasis in insurance law today is uniformity and the abolishment of "desk drawer rules." The lack of rules and regulations only serves to increase uncertainty. The Department's interpretation of statutes will occur in both its review of rates and forms, as well as in the administrative actions which occur as a consumer complaints, merger and acquisition review, and in insolvency actions. Ad hoc rulings do not provide the best insurance environment for the companies, agents or consumers.

We ask the Committee to report HB 2715 favorably to the House.



# Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

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## MEMORANDUM

TO: John W. Campbell  
General Counsel

FROM: Deletria L. Nash  
Assistant General Counsel

DATE: February 22, 2008

RE: House Bill 2715

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### *Regulatory Process*

Step 1: The Commissioner writes a proposed regulation that implements a statute. She must also include an authorizing statute.

Step 2: A proposed regulation or revision is submitted to the Secretary of Administration, who, pursuant to K.S.A. 77-420(c)(1) approves it for organization, style, orthography and grammar

Step 3: Upon approval by the Department of Administration, pursuant to K.S.A. 77-420(c)(2) the Attorney General approves the regulation as to legality. K.S.A. 77-420(c)(3) requires the Attorney General to make a finding that the making of such rule and regulation is within the authority conferred by law on the state agency.

Step 4: Upon approval of the proposed regulation, the Department sets a date for a public hearing with 60 days' notice for public comment period, pursuant to K.S.A. 77-421(a)(1)(E) and (F).

Step 5: During the public comment period, the Joint Committee on administrative rules and regulations reviews regulation pursuant to K.S.A. 77-436(c).

### *Why Do We Need This Bill?*

We need this bill because the Kansas Court of Appeals ruled in *Durrett v. Bryan*, 14 Kan.App.2d 723, 728, 799 P.2d 110 (1990), that "[K.S.A. 40-103] expressly provides, however, only the power to make regulations necessary to enforce the laws relating to supervision of insurance, *i.e.*, some other statute must first provide more specific basis for authority before this statute comes into play." This case, plus the requirement in K.S.A. 77-420(c)(3), requires the Department to find a statute with more specific basis of authority when proposing a regulation.

*What Problems Have We Had?*

We have had problems getting regulations approved by the Attorney General's office because the Insurance Department lacks specific authority contained in the act in which the implementing statute of the proposed regulation is included.

*Examples:*

40-3-51 attempted to prevent insurance companies from canceling or non-renewing drivers who perform volunteer work using their personal automobiles. The ideal implementing statute was K.S.A. 40-276a(d), which addresses unfavorable underwriting factors. However, when reviewing the regulation, the Attorney General reviews the legislative history to ascertain whether the Act in which the statute was enacted contains a statute that specifically authorizes a regulation. The act containing K.S.A. 40-276a does have any specific authorizing language. Therefore, this statute could not be used to implement the regulation.

40-1-9 defines premiums. When the regulation was last approved in 1986, the only authorizing statute was 40-103. Implementing statutes included K.S.A. 40-252, 40-283, 40-928, and 40-1113 of which 40-928, 40-1113 were repealed. When the Department attempted to revise it, 40-2513 was included as an authorizing statute and 40-2511 was included as an implementing statute because neither 40-252 nor 40-283 have authorizing statutes included in its act. Unfortunately, Article 25 relates only to automobile clubs while the regulation pertains to all insurance premiums. Therefore, the regulation could not be revised.

*What other agencies do.*

Based on the Banking Commissioner's website there are approximately forty-four regulations implementing statutes contained in Articles 5 through 18 of the Banking Code. Of those 44, 43 of the regulations use K.S.A. 9-1713 as the only implementing statute. The exception is K.A.R. 17-14-1.

K.S.A. 9-1713 gives the state bank commissioner authority to adopt such rules and regulations necessary to implement the provisions of K.S.A. 9-542, and amendments thereto, commonly known as the state banking code.

9-1713 states, in relevant part: Except as otherwise provided by law, in order to promote safe and sound practices for entities regulated by the state bank commissioner, the commissioner shall adopt such rules and regulations as shall be necessary to implement the provisions of K.S.A. 9-542, and amendments thereto, commonly known as the state banking code. K.S.A. 9-542. Citation of code; statutes comprising. Articles 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Chapter 9 of the Kansas Statutes Annotated, K.S.A. 74-3004, 74-3005, 74-3006, 75-1304, 75-1305 and 75-1306, and 75-1308, and amendments thereto shall constitute and may be cited as the state banking code.

K.S.A. 9-1713 the Banking Commissioner gives the commissioner specific authority to adopt such rules and regulations as shall be necessary to implement the provisions of the banking code while 40-103 gives the Insurance Commissioner general authority only.

**Kansas Administrative Regulations  
Agency 40. Insurance Department  
Article 1. General**

**40-1-3 Foreign insurance companies; deposit requirements.**

Each insurance company organized under the laws of a country other than the United States shall be treated as a United States domestic company of the state in which the principal office of the company in this country is located.

(Authorized by K.S.A. 40-103; implementing K.S.A. 40-209, 40-210; effective Jan. 1, 1966; amended May 1, 1986.)



**Kansas Administrative Regulations  
Agency 40. Insurance Department  
Article 1. General**

**40-1-22 Insurance policies; change of name or merger of an insurance company; assumption of risk endorsements; requirements.**

(a) The assuming company shall attach to each policy an "assumption of risk" endorsement that displays the name and address of the assuming company when any outstanding policy of insurance issued to a resident of Kansas is affected by:

- (1) a change in the name of the issuing company;
- (2) a merger, consolidation or similar transaction involving the issuing company;
- (3) a change of domicile in which policy liability is assumed by another company; or
- (4) an assumption reinsurance agreement.

(b) The "assumption of risk" endorsement shall be approved by the commissioner of insurance before issuance to residents of the state of Kansas.

(c) An "assumption of risk" endorsement originating from an assumption reinsurance agreement shall not:

- (1) require the insured to take affirmative action to reject the substitution of one insurer for another; or
- (2) state that failure to reject such substitution or the continued payment of premium will constitute acceptance of the substitution.

(Authorized by K.S.A. 40-103; implementing K.S.A. 40-221(a), 40-309, 40-510, 40-1220, 40-1221, 40-1222; effective Jan. 1, 1967; amended May 1, 1979; amended May 1, 1986; amended March 28, 1994.)



Testimony on House Bill 2715  
Before the House Judiciary Committee  
By Larry Magill  
February 25, 2008

Thank you mister Chairman and members of the Committee for the opportunity to appear in opposition to House Bill 2715 introduced at the request of the Kansas Insurance Department. My name is Larry Magill and I'm representing the Kansas Association of Insurance Agents. We have approximately 520 member agencies and branches throughout the state and our members employ approximately 2,500 Kansans. Most of our agencies have a staff member who is licensed for life and health insurance and provide the coverage for their clients.

**Important Check and Balance**

I've always assumed that the long-standing policy of the Kansas legislature is to be judicious in when it delegates to a state bureaucracy the authority to promulgate rules and regulations. Having worked with every Commissioner since Fletcher Bell, we agree. And while we are confident that the current administration would use the authority wisely, we have no way of knowing who will be commissioner in the future.

**Desk Drawer Rules**

The Department has done a good job in recent years to either discontinue using its many "unofficial" or what we commonly refer to as "desk drawer rules" or attempt to pass legislation authorizing them. We are concerned that this carte blanche authority to promulgate regulations could lead to a host of unofficial rules becoming law without any legislative oversight.

We are quite confident that if the Department needs certain authority to effectively regulate, the Legislature will give it to them.

**Unconstitutional Delegation of Legislative Authority**

Currently, K.S.A. § 40-103 states the following:

"The commissioner of insurance shall have general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto."

The Department of Insurance is an administrative agency. As such, it is created by statute and all power it has comes from statutes. We feel that to grant blanket rule and

regulation authority to the KID would allow it to make law and be an unconstitutional delegation of legislative power to an administrative agency.

If we assume that the amendment is not simply a restatement of the power of the Commissioner to promulgate rules and regulations for the enforcement of the Insurance Code and that it in fact expands on the Commissioner's power to promulgate rules and regulations, then the power granted by the proposed amendment is no longer administrative in nature. If its not administrative in nature, then it must be an unconstitutional delegation of legislative authority.

We urge the Committee to not act favorably on the bill. We would be happy to provide additional information or respond to questions.



# KANSAS INSURANCE ASSOCIATIONS

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## Kansas Association of Property & Casualty Ins. Cos.

Member Companies:

Armed Forces Insurance  
Exchange  
Ft. Leavenworth

Bremen Farmers Mutual  
Insurance Co.  
Bremen

Columbia Insurance Group  
Salina

Farm Bureau Mutual  
Insurance Company  
Manhattan

Farmers Alliance Mutual  
Insurance Company  
McPherson

Farmers Mutual Insurance Co.  
Ellinwood

Federated Rural Electric  
Insurance Exchange  
Lenexa

Kansas Mutual Insurance Co.  
Topeka

Marysville Mutual Insurance Co.  
Marysville

Mutual Aid Association of the  
Church of the Brethren  
Abilene

Mutual Aid eXchange  
Overland Park

Upland Mutual Insurance Co.  
Chapman

## **House Judiciary Committee Testimony on House Bill 2715**

February 25, 2008

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas and also on behalf of the Property Casualty Insurers Association of America, a national trade association with over 1,000 companies that write 40.7 percent of the nation's automobile, homeowners, business and worker's compensation insurance.

We are concerned about the statutory changes being proposed in HB 2715 and would request your careful consideration of these changes. Current law allows the Insurance Commissioner to adopt rules and regulations necessary to enforce the laws relating to her authority to have general supervision, control and regulation of the insurance industry in Kansas under K.S.A. 40-103. The proposed legislation would expand that beyond her general authority in K.S.A. 40-103 to instead allow adoption of rules and regulations necessary to implement the provisions of the entire "insurance code of the state of Kansas."

The Legislature in adopting the various statutes that make the insurance code, has the ability currently to determine which statutes or acts to grant rule and regulation authority for and to state the purpose and intent thereof. We are concerned that passage of this Bill may override that ability and in effect delegate public policy making authority to the Insurance Commissioner, which would be an improper delegation. A good explanation of this is found in the Kansas Supreme Court's decision in Gumbhir v. Kansas Board of Pharmacy, 228 Kan. 579, 582-583 (1980), saying:

Article 2, Section 1 of the Constitution of the State of Kansas provides:

House Judiciary  
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Attachment # 3

## Kansas Life Insurance Association

Member Companies:

The American Home Life  
Insurance Company  
Topeka

American Investors Life  
Insurance Company  
Topeka

Blue Cross/Blue Shield  
of Kansas  
Topeka

Employers Reassurance  
Corporation  
Overland Park

First Life America Corporation  
Topeka

Preferred Health Systems  
Wichita

The Pyramid Life Insurance  
Company  
Shawnee Mission

Security Benefit Life Insurance  
Company  
Topeka

“The legislative power of this state shall be vested in a house of representatives and senate.”

This constitutional provision prevents usurpation of legislative authority by other departments of government as well as by a nongovernmental agency or a private individual. The authority to make obligatory rules and provide penalties for breach of said rules belongs to the legislature. An unlawful delegation of legislative power is contrary to the public policy expressed in the Constitution. *State v. Crawford*, 104 Kan. 141, 177 Pac. 360, 2 A.L.R. 880 (1919).

The *Crawford* case dealt with a statute which provided that all electrical wiring shall be in accordance with the national electric code. The court found the code could be changed sporadically by the National Fire Protective Association which met only occasionally, and even then might meet anywhere in North America. It was held the statute was constitutionally impermissible as amounting to an unlawful delegation of legislative power to the National Fire Protective Association, a nongovernmental association. The *Crawford* court stated:

“If the legislature desires to adopt a rule of the national electrical code as a law of this state, it should copy that rule and give it a title and an enacting clause and pass it through the senate and the house of representatives by a constitutional majority and give the governor a chance to approve or veto it, and then hand it over to the secretary of state for publication.” 104 Kan. at 144.

...

In *State, ex rel., v. Mermis*, 187 Kan. 611, 358 P.2d 939 (1961), it is pointed out that legislative authority in limited cases may be delegated to *governmental agencies* if, and only if, adequate guidelines are set out in the statute to clearly limit and define the conditions and the nature of the authority to be exercised. In *Mermis* a statute which delegated to the director of alcoholic beverage control the authority and discretion to set minimum prices of intoxicating liquors to be sold in Kansas, without providing guidelines, was held to be an unlawful delegation of legislative authority. The decision was based upon *Crawford* and *Quality Oil*.

For these reasons, we would appreciate your careful consideration of this proposed legislation. If there are specific

statutes where rule and regulation authority is needed, it may be better to address them specifically. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "David A. Hanson". The signature is written in a cursive, flowing style.

DAVID A. HANSON

# HOUSE BILL No. 2850

By Representative Kelley

2-12

Proposed amendment  
February 25, 2008

9 AN ACT concerning stalking; relating to protective orders; amending  
10 K.S.A. 21-3438, 21-3843 and 60-31a06 and repealing the existing  
11 sections.  
12

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

14 Section 1. K.S.A. 21-3438 is hereby amended to read as follows: 21-  
15 3438. (a) Stalking is ~~an intentional, malicious and repeated following or~~  
16 ~~harassment of another person and making a credible threat with the intent~~  
17 ~~to place such person in reasonable fear for such person's safety.~~

18 ~~— Stalking is a severity level 10, person felony.~~

19 ~~— (b) Any person who violates subsection (a) when there is an order~~  
20 ~~issued pursuant to the protection from stalking act, K.S.A. 60-31a01~~  
21 ~~through 60-31a09, and amendments thereto, a temporary restraining or-~~  
22 ~~der or an injunction in effect prohibiting the behavior described in sub-~~  
23 ~~section (a) against the same person, is guilty of a severity level 9, person~~  
24 ~~felony.~~

25 ~~— (c) Any person who has a second or subsequent conviction occurring~~  
26 ~~against such person, within seven years of a prior conviction under sub-~~  
27 ~~section (a) involving the same victim, is guilty of a severity level 8, person~~  
28 ~~felony.~~

29 ~~— (d) For the purposes of this section: (1) "Course of conduct" means~~  
30 ~~a pattern of conduct composed of a series of acts over a period of time;~~  
31 ~~however short, evidencing a continuity of purpose and which would cause~~  
32 ~~a reasonable person to suffer substantial emotional distress, and must~~  
33 ~~actually cause substantial emotional distress to the person. Constitution-~~  
34 ~~ally protected activity is not included within the meaning of "course of~~  
35 ~~conduct."~~

36 ~~— (2) "Harassment" means a knowing and intentional course of conduct~~  
37 ~~directed at a specific person that seriously alarms, annoys, torments or~~  
38 ~~terrorizes the person, and that serves no legitimate purpose.~~

39 ~~— (3) "Credible threat" means a verbal or written threat, including that~~  
40 ~~which is communicated via electronic means, or a threat implied by a~~  
41 ~~pattern of conduct or a combination of verbal or written statements and~~  
42 ~~conduct made with the intent and the apparent ability to carry out the~~  
43 ~~threat so as to cause the person who is the target of the threat to reason-~~

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4-2

1- ably fear for such person's safety. The present incarceration of a person  
2 making the threat shall not be a bar to prosecution under this section.

3 — (4) "Electronic means" includes, but is not limited to, telephones,  
4 cellular phones, computers, video recorders, fax machines, pagers and  
5 computer networks;

6 (1) Intentionally or recklessly engaging in a course of conduct tar-  
7 geted at a specific person which would cause a reasonable person in the  
8 circumstances of the targeted person to fear for such person's safety, or  
9 the safety of a member of such person's immediate family and the targeted  
10 person is actually placed in such fear;

11 (2) intentionally engaging in a course of conduct targeted at a specific  
12 person which the individual knows will place the targeted person in fear  
13 for such person's safety or the safety of a member of such person's im-  
14 mediate family; or

15 (3) after being served with, or otherwise provided notice of, any pro-  
16 tective order included in K.S.A. 21-3843, and amendments thereto, that  
17 prohibits contact with a targeted person, intentionally or recklessly en-  
18 gaging in at least one act listed in subsection (a)(1) that violates the pro-  
19 visions of the order and would cause a reasonable person to fear for such  
20 person's safety, or the safety of a member of such person's immediate  
21 family and the targeted person is actually placed in such fear.

(f)(1)

22 (b) (1) Upon a first conviction, stalking as described in subsection  
23 (a)(1) is a class A person misdemeanor. Upon a second or subsequent  
24 conviction, stalking as described in subsection (a)(1) is a severity level 7,  
25 person felony.

26 (2) Upon a first conviction, stalking as described in subsection (a)(2)  
27 is a class A person misdemeanor. Upon a second or subsequent conviction,  
28 stalking as described in subsection (a)(2) is a severity level 5, person  
29 felony.

30 (3) Upon a first conviction, stalking as described in subsection (a)(3)  
31 is a severity level 9, person felony. Upon a second or subsequent convic-  
32 tion, stalking as described in subsection (a)(3) is a severity level 5, person  
33 felony.

34 (c) For the purposes of this section, a person served with a protective  
35 order as defined by K.S.A. 21-3843, and amendments thereto, or a person  
36 who engaged in acts which would constitute stalking, after having been  
37 advised by a uniformed law enforcement officer, that such person's actions  
38 were in violation of this section, shall be presumed to have acted inten-  
39 tionally as to any like future act targeted at the specific person or persons  
40 named in the order or as advised by the officer.

41 (d) ~~In any complaint, information or indictment brought for the on-~~  
42 ~~forcement of any provision of this section, it shall not be necessary to~~  
43 ~~negate any exception, excuse or exemption contained herein and the bur-~~



1 ~~den of proof for any exception, excuse or exemption shall be upon the~~  
2 ~~defendant.~~

3 (e) ~~As used in this section:~~

4 (1) "Course of conduct" means two or more acts over a period of time,  
5 however short, which evidence a continuity of purpose. A course of con-  
6 duct shall not include constitutionally protected activity nor conduct that  
7 was necessary to accomplish a legitimate purpose independent of making  
8 contact with the targeted person. A course of conduct shall include, but  
9 not be limited to, any of the following acts or a combination thereof:

10 (A) Threatening the safety of the targeted person or a member of such  
11 person's immediate family.

12 (B) Following, approaching or confronting the targeted person or a  
13 member of such person's immediate family.

14 (C) Appearing in close proximity to, or entering the targeted person's  
15 residence, place of employment, school or other place where such person  
16 can be found, or the residence, place of employment or school of a member  
17 of such person's immediate family.

18 (D) Causing damage to the targeted person's residence or property  
19 or that of a member of such person's immediate family.

20 (E) Placing an object on the targeted person's property or the prop-  
21 erty of a member of such person's immediate family, either directly or  
22 through a third person.

23 (F) Causing injury to the targeted person's pet or a pet belonging to  
24 a member of such person's immediate family.

25 (G) Any act of communication.

26 (2) "Communication" means to impart a message by any method of  
27 transmission, including, but not limited to: Telephoning, personally deliv-  
28 ering, sending or having delivered, any information or material by written  
29 or printed note or letter, package, mail, courier service or electronic trans-  
30 mission, including electronic transmissions generated or communicated  
31 via a computer.

32 (3) "Computer" means a programmable, electronic device capable of  
33 accepting and processing data.

34 (4) "Conviction" includes being convicted of a violation of this section  
35 or being convicted of a law of another state which prohibits the acts that  
36 this section prohibits.

37 (5) "Immediate family" means father, mother, stepparent, child, step-  
38 child, sibling, spouse or grandparent of the targeted person; any person  
39 residing in the household of the targeted person; or any person involved  
40 in an intimate relationship with the targeted person.

41 ~~(f)~~ If any provision or application of this section is held invalid for  
42 any reason, the invalidity of such provision or application is severable  
43 and does not affect other provisions or applications of this section which

In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

4.3

The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.  
(f)

(g)

1-1

1 can be given effect without the invalid provisions or applications.

2 Sec. 2. K.S.A. 21-3843 is hereby amended to read as follows: 21-  
3 3843. (a) Violation of a protective order is knowingly or intentionally  
4 violating:

5 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,  
6 60-3106 and 60-3107, and amendments thereto;

7 (2) a protective order issued by a court or tribunal of any state or  
8 Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and  
9 amendments thereto;

10 (3) a restraining order issued pursuant to K.S.A. 2007 Supp. 38-2243,  
11 38-2244 and 38-2255 and K.S.A. 60-1607, and amendments thereto;

12 (4) an order issued in this or any other state as a condition of pretrial  
13 release, diversion, probation, suspended sentence, postrelease supervi-  
14 sion or at any other time during the criminal case that orders the person  
15 to refrain from having any direct or indirect contact with another person;

16 (5) an order issued in this or any other state as a condition of release  
17 after conviction or as a condition of a supersedeas bond pending dispo-  
18 sition of an appeal, that orders the person to refrain from having any  
19 direct or indirect contact with another person; or

20 (6) a protection from stalking order issued pursuant to K.S.A. 60-  
21 31a05 or 60-31a06, and amendments thereto.

22 (b) As used in this section, "order" includes any order issued by a  
23 municipal or district court.

24 (c) *No protective order, as set forth in this section, shall be construed*  
25 *to prohibit an attorney, or any person acting on the attorney's behalf,*  
26 *who is representing the defendant in any civil or criminal proceeding,*  
27 *from contacting the protected party for a legitimate purpose within the*  
28 *scope of the civil or criminal proceeding. The attorney, or person acting*  
29 *on the attorney's behalf, shall be identified in any such contact.*

30 ~~(e)~~ (d) Violation of a protective order is a class A person  
31 misdemeanor.

32 ~~(e)~~ (e) This section shall be part of and supplemental to the Kansas  
33 criminal code.

34 Sec. 3. K.S.A. 60-31a06 is hereby amended to read as follows: 60-  
35 31a06. (a) The court may issue a protection from stalking order granting  
36 any of the following orders:

37 (1) Restraining the defendant from following, harassing, telephoning,  
38 contacting or otherwise communicating with the victim. Such order shall  
39 contain a statement that if such order is violated such violation may con-  
40 stitute stalking as provided in K.S.A. 21-3438, and amendments thereto,  
41 and violation of a protective order as provided in K.S.A. 21-3843, and  
42 amendments thereto.

43 (2) Restraining the defendant from abusing, molesting or interfering

1 with the privacy rights of the victim. Such order shall contain a statement  
2 that if such order is violated, such violation may constitute stalking as  
3 provided in K.S.A. 21-3438, and amendments thereto, assault as provided  
4 in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A.  
5 21-3412, and amendments thereto, and violation of a protective order as  
6 provided in K.S.A. 21-3843, and amendments thereto.

7 (3) Restraining the defendant from entering upon or in the victim's  
8 residence or the immediate vicinity thereof. Such order shall contain a  
9 statement that if such order is violated, such violation shall constitute  
10 criminal trespass as provided in subsection (a)(1)(C) of K.S.A. 21-3721,  
11 and amendments thereto, and violation of a protective order as provided  
12 in K.S.A. 21-3843, and amendments thereto.

13 (4) Any other order deemed necessary by the court to carry out the  
14 provisions of this act.

15 (b) A protection from stalking order shall remain in effect until mod-  
16 ified or dismissed by the court and shall be for a fixed period of time not  
17 to exceed one year, except that, on motion of the plaintiff, such period  
18 may be extended for one additional year. Before the expiration of an order  
19 for protection from stalking, a victim, or a parent on behalf of the victim,  
20 may request an extension of the protection from stalking order for up to  
21 one additional year on showing of continuing threat of stalking.

22 (c) The court may amend its order at any time upon motion filed by  
23 either party.

24 (d) The court shall assess costs against the defendant and may award  
25 attorney fees to the victim in any case in which the court issues a protec-  
26 tion from stalking order pursuant to this act. The court may award attor-  
27 ney fees to the defendant in any case where the court finds that the  
28 petition to seek relief pursuant to this act is without merit.

29 (e) *A no contact or restraining provision in a protective order issued*  
30 *pursuant to this section shall not be construed to prevent:*

31 (1) *Contact between the attorneys representing the parties;*

32 (2) *a party from appearing at a scheduled court or administrative*  
33 *hearing; or*

34 (3) *a defendant or defendant's attorney from sending the plaintiff cop-*  
35 *ies of any legal pleadings filed in court relating to civil or criminal matters*  
36 *presently relevant to the plaintiff.*

37 Sec. 4. K.S.A. 21-3438, 21-3843 and 60-31a06 are hereby repealed.

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

4-5

## HOUSE BILL No. 2732

By Representatives Patton, Beamer, Bowers, Carlson, Dahl, Fund, Kelley,  
Kelsey, Kinzer, Mast, Judy Morrison, Olson, Rhoades and Watkins

Balloon Amendment - 02/21/08 - Rep. Patton

RS - Patton3-2732.pdf (JThompson)



1-31

10 AN ACT concerning crimes, criminal procedure and punishment; relat-  
11 ing to sentencing; amending K.S.A. 21-4716 and 21-4719 and K.S.A.  
12 2007 Supp. 38-2371 and repealing the existing sections.

13

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

15 Section 1. K.S.A. 21-4716 is hereby amended to read as follows: 21-  
16 4716. (a) Except as provided in subsection (b), the sentencing judge shall  
17 impose the presumptive sentence provided by the sentencing guidelines  
18 for crimes committed on or after July 1, 1993, unless the judge finds  
19 substantial and compelling reasons to impose a departure. If the sen-  
20 tencing judge departs from the presumptive sentence, the judge shall  
21 state on the record at the time of sentencing the substantial and com-  
22 pelling reasons for the departure.

23 (b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and  
24 amendments thereto, any fact that would increase the penalty for a crime  
25 beyond the statutory maximum, other than a prior conviction, shall be  
26 submitted to a jury and proved beyond a reasonable doubt.

27 (c) (1) Subject to the provisions of subsections ~~(e)(3)~~ (c)(2), (c)(4)  
28 and (e), the following nonexclusive list of mitigating factors may be con-  
29 sidered in determining whether substantial and compelling reasons for a  
30 departure exist:

31 (A) The victim was an aggressor or participant in the criminal conduct  
32 associated with the crime of conviction.

33 (B) The offender played a minor or passive role in the crime or par-  
34 ticipated under circumstances of duress or compulsion. This factor is not  
35 sufficient as a complete defense.

36 (C) The offender, because of physical or mental impairment, lacked  
37 substantial capacity for judgment when the offense was committed. The  
38 voluntary use of intoxicants, drugs or alcohol does not fall within the  
39 purview of this factor.

40 (D) The defendant, or the defendant's children, suffered a continuing  
41 pattern of physical or sexual abuse by the victim of the offense and the  
42 offense is a response to that abuse.

43 (E) The degree of harm or loss attributed to the current crime of

House Judiciary  
Date 2-25-08  
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5-2

1 (d) In determining aggravating or mitigating circumstances, the court  
2 shall consider:

- 3 (1) Any evidence received during the proceeding;
- 4 (2) the presentence report;
- 5 (3) written briefs and oral arguments of either the state or counsel  
6 for the defendant; and
- 7 (4) any other evidence relevant to such aggravating or mitigating cir-  
8 cumstances that the court finds trustworthy and reliable.

9 (e) Upon motion of the prosecutor stating that the defendant has  
10 provided substantial assistance in the investigation or prosecution of an-  
11 other person who is alleged to have committed an offense, the court may  
12 consider such mitigation in determining whether substantial and com-  
13 pelling reasons for a departure exist. In considering this mitigating factor,  
14 the court may consider the following:

- 15 (i) The court's evaluation of the significance and usefulness of the  
16 defendant's assistance, taking into consideration the prosecutor's evalu-  
17 ation of the assistance rendered;
- 18 (ii) the truthfulness, completeness and reliability of any information  
19 or testimony provided by the defendant;
- 20 (iii) the nature and extent of the defendant's assistance;
- 21 (iv) any injury suffered, or any danger or risk of injury to the defend-  
22 ant or the defendant's family resulting from such assistance; and
- 23 (v) the timeliness of the defendant's assistance.

24 Sec. 2. K.S.A. 21-4719 is hereby amended to read as follows: 21-  
25 4719. (a) When a departure sentence is appropriate, the sentencing judge  
26 may depart from the sentencing guidelines as provided in this section.

27 ~~The sentencing judge shall not impose a downward dispositional or dur-~~  
28 ~~ational departure sentence without a signed written agreement by the~~  
29 ~~prosecutor for any crime of extreme sexual violence, as defined in K.S.A.~~  
30 ~~21-4716, and amendments thereto. Such downward durational departure~~  
31 ~~sentence shall be no less than 50% of the center of the range of the sentence~~  
32 ~~for such crime.~~

The sentencing judge shall not impose a downward dispositional departure sentence for any crime of extreme sexual violence, as defined in K.S.A. 21-4716, and amendments thereto.

, to

33 (b) When a sentencing judge departs in setting the duration of a pre-  
34 sumptive term of imprisonment: (1) The judge shall consider and apply  
35 the enacted purposes and principles of sentencing guidelines to impose  
36 a sentence which is proportionate to the severity of the crime of convic-  
37 tion and the offender's criminal history; and

38 (2) the presumptive term of imprisonment set in such departure shall  
39 not total more than double the maximum duration of the presumptive  
40 imprisonment term.

41 (c) When a sentencing judge imposes a prison term as a dispositional  
42 departure: (1) The judge shall consider and apply the enacted purposes  
43 and principles of sentencing guidelines to impose a sentence which is

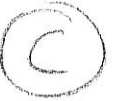
## HOUSE BILL No. 2732

By Representatives Patton, Beamer, Bowers, Carlson, Dahl, Fund, Kelley, Kelsey, Kinzer, Mast, Judy Morrison, Olson, Rhoades and Watkins

1-31

Balloon Amendment - 02/25/08 - Rep. Patton

RS - Patton5-2732.pdf (JThompson)



10 AN ACT concerning crimes, criminal procedure and punishment; relat-  
11 ing to sentencing; amending K.S.A. 21-4716 and 21-4719 and K.S.A.  
12 2007 Supp. 38-2371 and repealing the existing sections.

13

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

15 Section 1. K.S.A. 21-4716 is hereby amended to read as follows: 21-  
16 4716. (a) Except as provided in subsection (b), the sentencing judge shall  
17 impose the presumptive sentence provided by the sentencing guidelines  
18 for crimes committed on or after July 1, 1993, unless the judge finds  
19 substantial and compelling reasons to impose a departure. If the sen-  
20 tencing judge departs from the presumptive sentence, the judge shall  
21 state on the record at the time of sentencing the substantial and com-  
22 pelling reasons for the departure.

23 (b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and  
24 amendments thereto, any fact that would increase the penalty for a crime  
25 beyond the statutory maximum, other than a prior conviction, shall be  
26 submitted to a jury and proved beyond a reasonable doubt.

27 (c) (1) Subject to the provisions of subsections ~~(e)(3)~~ (c)(2), (c)(4)  
28 and (e), the following nonexclusive list of mitigating factors may be con-  
29 sidered in determining whether substantial and compelling reasons for a  
30 departure exist:

31 (A) The victim was an aggressor or participant in the criminal conduct  
32 associated with the crime of conviction.

33 (B) The offender played a minor or passive role in the crime or par-  
34 ticipated under circumstances of duress or compulsion. This factor is not  
35 sufficient as a complete defense.

36 (C) The offender, because of physical or mental impairment, lacked  
37 substantial capacity for judgment when the offense was committed. The  
38 voluntary use of intoxicants, drugs or alcohol does not fall within the  
39 purview of this factor.

40 (D) The defendant, or the defendant's children, suffered a continuing  
41 pattern of physical or sexual abuse by the victim of the offense and the  
42 offense is a response to that abuse.

43 (E) The degree of harm or loss attributed to the current crime of

House Judiciary  
Date 2-25-08  
Attachment # 6

le-2

1 conviction was significantly less than typical for such an offense.

2 (2) Subject to the provisions of subsections (c)(4) and (e), for any  
3 person felony ranked in severity levels 1 through 4 of the nondrug grid  
4 as provided in K.S.A. 21-4704, and amendments thereto, ~~and~~ for any  
5 offender who has a criminal history score category of A or B, the following  
6 exclusive list of mitigating factors may be considered in determining  
7 whether substantial and compelling reasons for a departure exists:

OR

8 (A) The victim was an aggressor or participant in the criminal con-  
9 duct associated with the crime of conviction.

10 (B) The offender played a minor or passive role in the crime or par-  
11 ticipated under circumstances of duress or compulsion. This factor is not  
12 sufficient as a complete defense.

13 (C) The offender, because of physical or mental impairment, lacked  
14 substantial capacity for judgment when the offense was committed. The  
15 voluntary use of intoxicants, drugs or alcohol does not fall within the  
16 purview of this factor.

17 (D) The defendant, or the defendant's children, suffered a continuing  
18 pattern of physical or sexual abuse by the victim of the offense and the  
19 offense is a response to that abuse.

20 (E) The degree of harm or loss attributed to the current crime of  
21 conviction was significantly less than typical for such an offense.

22 (3) Subject to the provisions of subsection ~~(e)(3)~~ (c)(4), the following  
23 nonexclusive list of aggravating factors may be considered in determining  
24 whether substantial and compelling reasons for departure exist:

25 (A) The victim was particularly vulnerable due to age, infirmity, or  
26 reduced physical or mental capacity which was known or should have  
27 been known to the offender.

28 (B) The defendant's conduct during the commission of the current  
29 offense manifested excessive brutality to the victim in a manner not nor-  
30 mally present in that offense.

31 (C) The offense was motivated entirely or in part by the race, color,  
32 religion, ethnicity, national origin or sexual orientation of the victim or  
33 the offense was motivated by the defendant's belief or perception, entirely  
34 or in part, of the race, color, religion, ethnicity, national origin or sexual  
35 orientation of the victim whether or not the defendant's belief or per-  
36 ception was correct.

37 (D) The offense involved a fiduciary relationship which existed be-  
38 tween the defendant and the victim.

39 (E) The defendant, 18 or more years of age, employed, hired, used,  
40 persuaded, induced, enticed or coerced any individual under 16 years of  
41 age to commit or assist in avoiding detection or apprehension for com-  
42 mission of any person felony or any attempt, conspiracy or solicitation as  
43 defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto

**HOUSE BILL No. 2732**

By Representatives Patton, Beamer, Bowers, Carlson, Dahl, Fund, Kelley,  
Kelsey, Kinzer, Mast, Judy Morrison, Olson, Rhoades and Watkins

Balloon Amendment - 02/21/08 - Rep. Patton  
RS - Patton4-2732.pdf (JThompson)

ⓑ

1-31

10 AN ACT concerning crimes, criminal procedure and punishment; relat-  
11 ing to sentencing; amending K.S.A. 21-4716 and 21-4719 and K.S.A.  
12 2007 Supp. 38-2371 and repealing the existing sections.

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

15 Section 1. K.S.A. 21-4716 is hereby amended to read as follows: 21-  
16 4716. (a) Except as provided in subsection (b), the sentencing judge shall  
17 impose the presumptive sentence provided by the sentencing guidelines  
18 for crimes committed on or after July 1, 1993, unless the judge finds  
19 substantial and compelling reasons to impose a departure. If the sen-  
20 tencing judge departs from the presumptive sentence, the judge shall  
21 state on the record at the time of sentencing the substantial and com-  
22 pelling reasons for the departure.

23 (b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and  
24 amendments thereto, any fact that would increase the penalty for a crime  
25 beyond the statutory maximum, other than a prior conviction, shall be  
26 submitted to a jury and proved beyond a reasonable doubt.

27 (c) (1) Subject to the provisions of subsections ~~(c)(3)~~ (c)(2), ~~(c)(4)~~  
28 and (e), the following nonexclusive list of mitigating factors may be con-  
29 sidered in determining whether substantial and compelling reasons for a  
30 departure exist:

31 (A) The victim was an aggressor or participant in the criminal conduct  
32 associated with the crime of conviction.

33 (B) The offender played a minor or passive role in the crime or par-  
34 ticipated under circumstances of duress or compulsion. This factor is not  
35 sufficient as a complete defense.

36 (C) The offender, because of physical or mental impairment, lacked  
37 substantial capacity for judgment when the offense was committed. The  
38 voluntary use of intoxicants, drugs or alcohol does not fall within the  
39 purview of this factor.

40 (D) The defendant, or the defendant's children, suffered a continuing  
41 pattern of physical or sexual abuse by the victim of the offense and the  
42 offense is a response to that abuse.

43 (E) The degree of harm or loss attributed to the current crime of

House Judiciary  
Date 2-25-08  
Attachment # 7



7-2

1 conviction was significantly less than typical for such an offense.

2 (2) Subject to the provisions of subsections (c)(4) and (e), for any  
3 person felony ranked in severity levels 1 through 4 of the nondrug grid  
4 as provided in K.S.A. 21-4704, and amendments thereto, ~~and for any~~  
5 ~~offender who has a criminal history score category of A or B,~~ the following  
6 exclusive list of mitigating factors may be considered in determining  
7 whether substantial and compelling reasons for a departure exists:

8 (A) The victim was an aggressor or participant in the criminal con-  
9 duct associated with the crime of conviction.

10 (B) The offender played a minor or passive role in the crime or par-  
11 ticipated under circumstances of duress or compulsion. This factor is not  
12 sufficient as a complete defense.

13 (C) The offender, because of physical or mental impairment, lacked  
14 substantial capacity for judgment when the offense was committed. The  
15 voluntary use of intoxicants, drugs or alcohol does not fall within the  
16 purview of this factor.

17 (D) The defendant, or the defendant's children, suffered a continuing  
18 pattern of physical or sexual abuse by the victim of the offense and the  
19 offense is a response to that abuse.

20 (E) The degree of harm or loss attributed to the current crime of  
21 conviction was significantly less than typical for such an offense.

22 (3) Subject to the provisions of subsection ~~(e)(3)~~ (c)(4), the following  
23 nonexclusive list of aggravating factors may be considered in determining  
24 whether substantial and compelling reasons for departure exist:

25 (A) The victim was particularly vulnerable due to age, infirmity, or  
26 reduced physical or mental capacity which was known or should have  
27 been known to the offender.

28 (B) The defendant's conduct during the commission of the current  
29 offense manifested excessive brutality to the victim in a manner not nor-  
30 mally present in that offense.

31 (C) The offense was motivated entirely or in part by the race, color,  
32 religion, ethnicity, national origin or sexual orientation of the victim or  
33 the offense was motivated by the defendant's belief or perception, entirely  
34 or in part, of the race, color, religion, ethnicity, national origin or sexual  
35 orientation of the victim whether or not the defendant's belief or per-  
36 ception was correct.

37 (D) The offense involved a fiduciary relationship which existed be-  
38 tween the defendant and the victim.

39 (E) The defendant, 18 or more years of age, employed, hired, used,  
40 persuaded, induced, enticed or coerced any individual under 16 years of  
41 age to commit or assist in avoiding detection or apprehension for com-  
42 mission of any person felony or any attempt, conspiracy or solicitation as  
43 defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto

← Delete

# HOUSE BILL No. 2873

By Representative O'Neal

2-13

Proposed amendment  
February 25, 2008

House Judiciary  
Date 2-25-08  
Attachment # 8

9 AN ACT relating to the department of corrections; concerning appro-  
10 priations for the fiscal years ending June 30, 2008, June 30, 2009, and  
11 June 30, 2010, for the department of corrections; certain capital im-  
12 provement projects and issuance of bonds therefor.  
13

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

15 Section 1. (a) No moneys appropriated to the department of correc-  
16 tions or any other state agency, as defined in K.S.A. 75-3701, and amend-  
17 ments thereto, from moneys appropriated from the state general fund or  
18 from any special revenue fund shall be expended for the issuance of bonds  
19 by the Kansas development finance authority in accordance with K.S.A.  
20 74-8905, and amendments thereto, for capital improvement projects to  
21 expand prison capacity as authorized by state finance council resolution  
22 no. 07-572 pursuant to subsection (d) of section 185 of chapter 167 of  
23 the 2007 Session Laws of Kansas. The Kansas development finance au-  
24 thority shall not issue any bonds in accordance with K.S.A. 74-8905, and  
25 amendments thereto, or any other statute, for capital improvement pro-  
26 jects to expand prison capacity as authorized by state finance council  
27 resolution no. 07-572 pursuant to subsection (d) of section 185 of chapter  
28 167 of the 2007 Session Laws of Kansas.

29 (b) No moneys appropriated for the department of corrections or any  
30 other state agency, as defined in K.S.A. 75-3701, and amendments  
31 thereto, from moneys appropriated from the state general fund or from  
32 any special revenue fund shall be expended for the planning and design  
33 for capital improvement projects to expand prison capacity as authorized  
34 by state finance council resolution no. 07-572 pursuant to subsection (d)  
35 of section 185 of chapter 167 of the 2007 Session Laws of Kansas. The  
36 Kansas development finance authority shall not issue any bonds in ac-  
37 cordance with K.S.A. 74-8905, and amendments thereto, or any other  
38 statute, for the planning and design for capital improvement projects to  
39 expand prison capacity as authorized by state finance council resolution  
40 no. 07-572 pursuant to the authorization granted to the state finance  
41 council by subsection (d) of section 185 of chapter 167 of the 2007 Session  
42 Laws of Kansas.

43 (c) / It is the intent of this section to revoke the approval of the issuance

The Kansas development finance authority and the department of corrections are hereby authorized and directed to redeem and pay any outstanding notes heretofore issued for the purpose of planning and designing for capital improvement projects to expand prison capacity or to implement any such expansion project; provided, however, notwithstanding anything herein contained to the contrary, the department of corrections is hereby authorized and directed to expend funds to pay the principal and interest payable on any such outstanding notes and costs associated with the issuance thereof from available proceeds of such notes, interest earned thereon and from moneys appropriated from the general fund or any special revenue fund and available for such purpose.  
(d)  
[Reletter remaining subsection accordingly.]