

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 17, 2008 in Room 313-S of the Capitol.

All members were present expect:

Representative Jim Ward - 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:

Tom Stanton, Kansas County & District Attorneys Association
Ed Klumpp, Kansas Association Chiefs of Police and Kansas Peace Officer's Association
Patricia Biggs, Kansas Parole Board
Representative Peggy Mast

The hearing on **SB 476 - arrest for violating condition of probation or conditions of release**, was opened.

Tom Stanton, Kansas County & District Attorneys Association, appeared before the committee as a proponent of the bill. This bill will allow for an officer to arrest an individual, by verbal authorization of a probation or parole officer, if the individual has violated a condition's of their release. (Attachment #1)

Written testimony, in support of the bill, was provided by the Kansas Association Chiefs of Police, Kansas Peace Officers Association, and Kansas Department of Corrections. (Attachments #2, 3, & 4)

The hearing on **SB 476** was closed.

The hearing on **SB 477 - offender registration, electronic solicitation**, was opened.

Tom Stanton, Kansas County & District Attorneys Association, would simply add the crime of electronic solicitation to the list of crimes and, if found convicted, must register pursuant to the Kansas Offender Registration Act. Electronic solicitation of children is a growing crime across the nation. (Attachment #5)

Ed Klumpp, Kansas Association Chiefs of Police and Kansas Peace Officer's Association, commented that while there are concerns about adding to the registry, this is what the registry was developed for. (Attachments #6 & 7)

The hearing on **SB 477** was closed.

The hearing on **SB 479 - post release supervision for certain offenders**, was opened.

Tom Stanton, Kansas County & District Attorneys Association, explained that the proposed bill attempts to address an anomaly in the law that currently acts to free individuals who have been convicted of crimes for which the sentence is life from post-release supervision. (Attachment #8)

Patricia Biggs, Kansas Parole Board, concurred with the testimony presented by Mr. Stanton. They proposed a technical amendment to clean up the bill. (Attachment #9)

The hearing on **SB 479** was closed.

The hearing on **SB 481 - controlled substance, schedule I salvia & gypsum weed**, was opened.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 17, 2008 in Room 313-S of the Capitol.

Tom Stanton, Kansas County & District Attorneys Association, appeared before the committee as a proponent of the bill. These two drugs are beginning to cause problems. Salvia divinorum is a psychoactive herb grown primarily in South America. "Trips" on this drug result in depressing hallucinations and has been linked to suicide of a Delaware teenager. With the number of states that are adding this drug into their controlled substances act, there will be a lab test developed shortly.

The other drug, gypsum weed, is sold over the internet. Its high can last for days but the amount needed to reach the high can result in death. (Attachment #10)

Representative Peggy Mast appeared before the committee in support of the bill. She introduced a similar bill in the House that dealt with Salvia. (Attachment #11)

The Kansas Bureau of Investigations has contacted several states but have found no forensic examination at this time. There will be a test developed sometime next year that will have meet standards.

Written testimony, in support of the bill, was provided by Kansas Family Partnership and Prevention and Recovery Services. (Attachments #12 & 13)

The hearing on SB 481 was closed.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for March 18, 2008.

Tom Stalow



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Seth Meyer
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Sheena Gingerich

House Judiciary Committee
March 17, 2008

Testimony in support of Senate Bill 476

Chairman O'Neal and Honorable Members of the House Judiciary Committee:

My name is Travis Harrod and I currently serve as First Assistant Ford County Attorney. I come here today as a proponent of Senate Bill 476 on behalf of Ford County and the Kansas County and District Attorneys Association.

SB 476 corrects what I and others in law enforcement believe to be an unintentional consequence of the statutory language of Kansas Statutes 22-3716(a) and 75-5217(a), which deal with arrest of probationers and parolees respectively for violations of their conditions of release. SB 476 corrects the statutory language to allow probation and parole officers to issue verbal arrest orders to law enforcement personnel.

To illustrate the current problem I'll share with you an incident from Ford County, though for sake of brevity and narrative I've cut out a lot of extraneous details so we can focus on the issue at hand.

In November of 2006 Officer Hornback of the Dodge City Police Department responded to a fight in progress call at a Dodge City bar. When Officer Hornback arrived he observed a young man he knew to be Jason leaving the bar. Officer Hornback knew Jason to be a member of a criminal street gang, and further he knew that Jason was currently on parole from the Dept. of Corrections for sale of drugs. Officer Hornback approached Jason in the parking lot and observed Jason to be visibly intoxicated. Officer Hornback believed that Jason's drinking at the bar was a violation of Jason's parole conditions. Officer Hornback detained Jason while Hornback called Jason's parole officer at home. Though it was 2:00 in morning, Jason's parole officer answered Officer Hornback's call and informed him that Jason was on parole, and that drinking alcohol was a violation of Jason's parole. The parole officer asked Officer Hornback to have Jason submit to a Preliminary Breath Test, at which time Jason blew a .105 Blood Alcohol Content. The parole officer over the phone, instructed Officer Hornback to arrest Jason for violating the conditions of his parole, namely drinking at a bar, and violation of his house arrest. In a search incident to arrest Officer Hornback found a baggie of cocaine in Jason's pants pocket. Jason was transported to jail by Officer Hornback, at which time Jason threw up several times in Hornback's police cruiser due to his drunkenness. At the jail, Officer Hornback and Jason were met a short time later by Jason's parole officer, at which time Jason was formally served with his arrest and detain order for his parole violation.

Jason was subsequently charged with Possession of Cocaine, which with his criminal history score of A, would result in a presumptive standard prison sentence of 40 months consecutive to his time remaining in his Sale of Narcotics case.

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Attachment # 1

From the point of view of the police and prosecutors this story does not have a happy ending. Jason's attorney, citing *State of Kansas vs. Anderson*, 34 Kan.App.2d 375 (2005), caused the District Court to suppress the cocaine evidence found when Jason was searched after being arrested for his parole violation. Without the cocaine evidence, the State was forced to drop its case against Jason.

The long and the short of *State vs. Anderson* is that a plain reading of our statutes says that a law enforcement officer may not arrest a probationer or parolee based solely on a violation of condition of probation/parole unless the policeman has the written order to arrest and detain in his possession when the arrest is made. The Court went on to state that authorization to arrest cannot be given by a probation or parole officer over the phone to police even if the probation/parole officer is writing out the arrest and detain order at that moment and will meet the police at the scene, jail etc. Thus any evidence seized during such an arrest would be inadmissible.

Without the power to receive a verbal arrest and detain order from a probation/parole officer over the phone, Police, Sheriff's Deputies and other street level law enforcement agents are seriously handicapped in enforcing the conditions of probation or parole. The best case scenario at present is the violation happens while the police are accompanied by a probation or parole officer whom has the power to arrest a probationer/parolee without a warrant. Otherwise, police can only observe the violation, report the violation to the probation/parole officer during business hours, and then police may attempt to relocate and arrest the violator when a written arrest and detain order is in hand. By giving probation and parole officers the power to issue verbal arrest orders, law enforcement personnel gain the ability to arrest probationers/parolees at the time of violation and further encourages compliance with the conditions of probation and parole.

Thank you for the opportunity to present testimony. I urge your full support of SB 476 and would be happy to answer any questions.

Sincerely,

Travis Harrod



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Testimony to the Senate Judiciary Committee In Support of SB476

March 17, 2008

The Kansas Association of Chiefs of Police supports the provisions of SB476. The proposed statutory changes provide a process consistent with how law enforcement and parole/probation officers frequently must work together in cases of probation or parole violation. In many cases law enforcement has a person detained in a different matter, but the officer also has identified a violation of the person's probation or parole conditions. Typically, the law enforcement officer contacts the parole, probation officer by phone to discuss the violation. This can occur any time of the day or night and any day of the week. Some times the ultimate decision is not to arrest on the violation and in other cases the decision is that the parolee/probationer should be arrested. In those cases where the probation or parole officer directs an arrest, it is sometimes impractical to have the written order in hand to affect an arrest under the current law.

The proposed law will allow the law enforcement officer to act based on the verbal order of the probation/parole officer. The law will still require a written order to be provided at the detention center where the person will be held.

We encourage you to recommend this bill favorably for passage.

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House Judiciary

Date 3-17-08

Attachment # 2

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Kansas Peace Officers' Association

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Testimony to the Senate Judiciary Committee In Support of SB476

March 17, 2008

The Kansas Peace Officers Association supports the passage of SB476. There are different paths to the decision to order the arrest of a person for a probation or parole violation. The current statute is not designed to appropriately deal with the situations where the person is first contacted by law enforcement, usually for some other matter, and it is discovered the person is violating the conditions of his or her probation or parole.

In those cases where a law enforcement officer has made contact with a parolee or probationer and notifies the probation or parole officer of the violation while the violator is still being detained. In such cases, it is difficult for the officer to continue to detain the person while the probation or parole officer writes the arrest order and then have the order delivered to the detaining officer.

The proposed law will allow the law enforcement officer to act based on the verbal order of the probation/parole officer. The law will still require a written order to be provided at the detention center where the person will be held. This method will fit all of the scenarios in which a parolee or probationer is ordered detained.

We encourage you to recommend this bill favorably for passage.

A handwritten signature in black ink, appearing to read "Ed Klumpp".

Ed Klumpp
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Legislative Committee Chair
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House Judiciary

Date 3-17-08

Attachment # 3

In Unity There Is Strength



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 476
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 17, 2008

The Department of Corrections supports SB 476. SB 476 amends the provisions of K.S.A. 22-3716 and 75-5217 to allow court services officers, community correctional services officers, and parole officers to authorize other law enforcement officers to arrest a probationer or parolee through a verbal order. Current law, authorizes probation and parole officers to arrest an offender under their supervision without a warrant, however, when those officers authorize other law enforcement officers to make the arrest, the authorization must be in writing. SB 476 also deletes the requirement that when an offender who allegedly violated a condition of release supervision is placed in jail, a written order for the detention must simultaneously be delivered.

The due process rights of persons under release supervision would not be negated by SB 476 since those persons would still be provided with a timely statement of charges and their detention justified in writing. SB 476 would address the Kansas Supreme Court's observation in State v. Anderson, 281 Kan. 896; 136 P.3d 406 (2006) that if the Legislature had intended to allow for oral authorization from parole officers to other law enforcement personnel to arrest parole violators, it could have amended the law that requires such authorization be in writing. The Supreme Court further noted that Kansas has not amended its laws to echo provisions in other jurisdictions allowing oral arrest and detain orders.

The Senate passed SB 476 unanimously.

Tom Stalen



Monday, March 17, 2008

**TESTIMONY IN SUPPORT OF SB 477
SUBMITTED BY JUSTIN EDWARDS, ASSISTANT DISTRICT ATTORNEY
ON BEHALF OF NOLA TEDESCO FOULSTON, DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT
AND
ON BEHALF OF THE KANSAS COUNTY AND DISTRICT
ATTORNEYS ASSOCIATION**

Chairman O'Neal and Members of the House Committee on Judiciary:

Senate Bill 477 seeks to amend a statute, K.S.A. 22-4902, related to offenders required to register with the Kansas Bureau of Investigation. Senate Bill 477 would amend the statute to add electronic solicitation to the list of "sexually violent crimes".

Prior to July 2006, persons who traveled to meet what they believed to be minor children for the purpose of engaging in sexual intercourse or other sexual acts were charged with attempted rape and/or attempted aggravated indecent liberties.

In 2006, House Bill 2576 created the new crime of electronic solicitation. This crime is now listed in K.S.A. 21-3523.

In Sedgwick County, a very dedicated group of law enforcement officers from multiple agencies comprise the Exploited Missing Child Unit (EMCU). Within the EMCU is the specialized Internet Crimes Against Children (ICAC) Task Force. The goal of ICAC is to proactively and reactively investigate internet crimes against children. To this end, ICAC detectives routinely engage in undercover internet operations designed to catch internet predators before they find real children.

House Judiciary
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Attachment # 5

Since 2006, 31 proactive investigations have been opened by ICAC, which has resulted in 11 defendants being charged with electronic solicitation, attempted rape or attempted aggravated indecent liberties in the Eighteenth Judicial District of Kansas.

K.S.A. 22-4902 requires persons convicted of several crimes, including rape and aggravated indecent liberties with a child (or any attempt thereof) to register as a sex offender.

When the crime of electronic solicitation was created, it was not included in the list of “sexually violent crimes” set forth in K.S.A. 22-4902(c).

Currently, over 70 million children under the age of 18 access the internet each year. According to some studies, 1 in 5 teenagers report having received an unwanted sexual solicitation via the internet. One in 33 reported having received an aggressive sexual solicitation via the internet in the year preceding the survey. Finally, approximately 34% of children report having been exposed to unwanted sexual material on the internet

Perhaps most shockingly, according to a study conducted by Cox Communications and the National Center for Missing and Exploited Children (NCMEC), 14% of teens surveyed indicated they had met face-to-face with a person with whom they had only previously spoken via the internet.

It is critical the people of the State of Kansas be provided with registry information which includes offenders convicted of electronic solicitation.

We urge you to adopt Senate Bill 477 to add the crime of electronic solicitation to the list of “sexually violent crimes” in K.S.A. 22-4902(c).

Respectfully submitted,

Justin R. Edwards
Assistant District Attorney
Eighteenth Judicial District

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TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF SB 477 Presented by Ed Klumpp

March 17, 2008

This testimony is in support of SB 477. The crime of electronic solicitation is the prelude to much worse criminal activity aimed at our youth. It is a crime committed as a step toward satisfying perpetrator's uncontrolled desire to take sexual advantage of children. The ultimate goal of these solicitations is to commit the most heinous of crimes with long lasting impacts on the victims.

Although it has grown to include other criminal offenders, the offender registry was started for just this type of offender with the goal of protecting our citizens from sexual predators. This proposal fits with the original intent of the registry and fulfills a current need in society. These offenders are clearly likely to re-offend and typically are using methods other than just electronic means to search for potential victims for their nefarious acts.

The offense of electronic solicitation only includes child victims. The seriousness placed on these crimes is clearly reflected in the severity level assigned to the violation of this statute: Level 3 or level 1 person felony.

We strongly encourage you to recommend this bill favorably to pass.

Handwritten signature of Ed Klumpp.

Ed Klumpp
Chief of Police-Retired, Topeka Police Department

Legislative Committee Chair

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House Judiciary

Date 3-17-08

Attachment # 4

In Unity There Is Strength



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St. John Police Dept.

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF SB 477 Presented by Ed Klumpp

March 17, 2008

This testimony is in support of SB 477. The offense of electronic solicitation continues to plague our youth. The solicitation is a tool and a symptom of a deeper issue involving the perpetrator's uncontrolled desire to take sexual advantage of children.

It is important to remember that sex crimes and the protection of our citizens from sexual predators was the reason the registry was started. This proposal fits with the original intent of the registry and fulfills a current need in society.

The offense of electronic solicitation only includes child victims. The seriousness placed on these crimes is clearly reflected in the severity level assigned to the violation of this statute: Level 3 or level 1 person felony.

We strongly encourage you to recommend this bill favorably to pass.

Ed Klumpp
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House Judiciary

Date 3-17-08

Attachment # 7



Kansas County & District Attorneys Association

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To: Representative Mike O'Neal, Chairman
Members of the House Judiciary Committee

From: Thomas R. Stanton
Deputy Reno County District Attorney
President, Kansas County and District Attorneys Association

Date: March 17, 2008

Re: Testimony in support of Senate Bill 479

Thank you for consideration of Senate Bill 479, and for giving me the opportunity to testify regarding this legislation. This legislation is intended to correct an anomaly in the law which currently acts to free persons who have been convicted of crimes for which the sentence is life from post-release supervision.

The current language of K.S.A. 21-4608 fails to take into consideration the effect of a prisoner who has been sentenced to life in prison and who commits another crime while incarcerated. For example, John Doe has been convicted of first degree murder, and is sentenced pursuant to the law to life in prison. After serving the mandatory twenty-five years in the system, he is eligible for parole subject to supervision for life. However, if Mr. Doe commits a felony while in prison, he completes the twenty-five year sentence and begins serving the sentence for that felony as mandated by the Kansas Sentencing Guidelines Act (hereinafter referred to as "KSGA"). Under the current law, the defendant would serve that sentence, then be released on the term of post-release supervision commensurate with the sentence for the new crime. The post-release supervision would never be more than thirty-six months. Upon completion of the term of post-release supervision mandated by the KSGA for the new crime, Mr. Doe would then be released from supervision, with the prior term of parole supervision being null and void. In other words, a prisoner serving a life term can shorten his or her parole/post-release supervision term by committing a felony while in prison. This legislation would correct this problem and require the prisoner to serve the original term of parole supervision for life.

This legislation is designed to protect the community from those who have no regard for human life. We urge your full support and favorable recommendation of SB 479.

House Judiciary
Date 3-17-08
Attachment # 8

Paul Feleciano, Chairperson
Robert Sanders, Member
Patricia Biggs, Member

MEMORANDUM

TO: HOUSE JUDICIARY COMMITTEE, REPRESENTATIVE O'NEAL, CHAIRMAN
FROM: KANSAS PAROLE BOARD
DATE: MARCH 17, 2008
RE: 2008-SB 479

INTRODUCTION

2008-SB 479 relates to the term of post-incarceration supervision required of certain offenders. The Kansas Parole Board strongly supports this proposed policy change.

ANALYSIS AND CONSIDERATION

Presently, incarcerated offenders with a life sentence imposed by the Court who are convicted subsequently of a guidelines-level crime for an offense committed during his/her incarceration, upon achieving parole suitability on the non-guidelines crime, the term of post-incarceration supervision for that offender is tied to the guidelines-level crime and the life sentence is completed.

An example would be an offender serving a 20 to life sentence for kidnapping and aggravated robbery who, while incarcerated, is convicted of introduction of contraband to a correctional facility (K.S.A. 21-3826(a)). This severity level 5 crime carries with it a term of post release supervision of 24 months which, with the application of earnable goodtime credits while on supervision may be reduced to 12 months. Under current law, this post-release supervision term is the duration for which the offender must be supervised in the community. Absent the subsequent conviction for trafficking in contraband, the offender would serve a term of post incarceration supervision of life. In essence, current law rewards additional anti-social criminal behavior within the confines of our correctional facilities.

SB 479 remedies this situation and allows retention of the life term of post incarceration supervision for an offender in this scenario.

ANTICIPATED IMPACT

When considering the parole suitability of offenders who present with cases such as that described in the example above, the current Parole Board has been reluctant to issue a positive finding in terms of parole suitability knowing that the severity of the initial offense, the degree of victim harm, and the truncated term of post incarceration supervision would apply. The enactment of SB 479 is viewed as remedying the disparity imposed by additional bad acts and felony convictions within the confines of correctional facilities. Anecdotally, there have been some offenders who have admitted during a parole hearing that they committed additional offenses **while incarcerated** to "get out from under" the life sentence.

ADDITIONAL CONSIDERATION: TECHNICAL AMENDMENT REQUEST

Attached is a technical amendment requested by the Parole Board. Such amendment simplifies the language and, while maintaining intent, extends the provisions to other indeterminate sentences not limited to "life" or "hard" sentences for offenses committed while incarcerated in a Department of Corrections facility.

Under current statute or SB 479 without this technical amendment, if an offender is sentenced to an indeterminate term of incarceration less than "life" (e.g., 20-80 years) and s/he is convicted of a new sentence determinate sentence while incarcerated, this offender is still "rewarded" by the elimination of

the indeterminate maximum sentence date in lieu of the new guidelines sentence with its term of post incarceration supervision.

An example, similar to the above, an offender is serving a 20 – 80 year sentence for kidnapping and aggravated robbery. During incarceration, this offender is convicted of introduction of contraband to a correctional facility (K.S.A. 21-3826(a)) and is to serve 36 additional months incarceration with a new post-incarceration term of 24 months earnable down to 12 months through application of goodtime credits. This determinate term of post-incarceration supervision will continue to be the applicable term of post incarceration supervision without the requested technical amendment.

Application of this logic parallels the logic employed in K.S.A. 22-3717(d)(1)(F) wherein it is stated, albeit for determinate sentenced cases only, "In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate."

CONCLUSIONS

1. We see the provisions of SB 479 as a positive step toward introducing greater parity in sentencing and perhaps even as a means of increasing the safety and security of our prison facilities. The Kansas Parole Board strongly supports these provisions.
2. A balloon for a technical amendment to SB 479 is attached allowing for offenders to serve the longest term of post incarceration supervision carried by any of their offenses – determinate or indeterminate -- for which they have been convicted and sentenced.

Example Case: Under current law, Mr. Trumbly will serve as few as 6 months under parole supervision when released from prison because of his behavior while incarcerated. Had he not committed a new crime, he would have been on parole supervision for life.

KASPER - OFFENDER POPULATION SEARCH
Kansas Adult Supervised Population Electronic Repository
Kansas Criminal Justice Information System

OFFENDERS SHALL NOT BE ARRESTED SOLELY ON THE BASIS OF INFORMATION DISPLAYED ON THIS SITE



TRUMBLY, MIKEL . (KDOC # 0035662) This Information is Current as of: Feb 1 2008 3:58AM

Name(s)	
Name Type	Name
Conviction	TRUMBLY, MIKEL
True	TRUMBLY, MIKEL ERIC

Identification		
KDOC#	SIDNum	FBI Num
0035662	309653	0589358V9

Birthdate(s)		
Birthdate Type	Birthdate	Age
True	Sep 18, 1961	46

Demographics					
Eye Color	Hair Color	Height	Weight	Gender	Race
Hazel	Brown	6'0"	240	Male	White

TRUMBLY, MIKEL TRUMBLY, MIKEL

Current Status reported by Dept. of Corrections

Earliest Possible Release Date (1)	Current Status	Admission Date	Current Location (2)	Custody Level
	Incarcerated	Jul 21, 1980	El Dorado CF-Central	Low Medium

(1) This date could be affected by a parole board decision.
(2) Click on Location for the Facility web site.

Convictions(s)								
County	Case Number	Offense Date	Sentencing Date	ACS	Criminal Conviction Description	Counts	Crime Severity Level	Case Status
Pratt	79CR333	Oct 22, 1979	Jul 09, 1980	N/A	Kidnapping	1	Class B Felony	Active
Pratt	79CR333	Oct 22, 1979	Jul 09, 1980	N/A	Murder, 1st degree	1	Class A Felony	Active
Reno	98CR1161	Nov 29, 1998	Apr 14, 1999	Attempted	Aggravated Battery - Intentional, Bodily Harm	1	Non Drug-Grid Severity Level 9	Active

* - Denotes Active for Post Release Supervision Only.

Life15: would have been Life time supervision upon release

13 months incar +
12 months post incar. supv. earnable to 6 months

9-2

SENATE BILL No. 479

By Committee on Judiciary

1-28

Proposed Amendment

Prepared by Revisor of Statutes Office
Bruce Kinzie
March 13, 2008

10 AN ACT relating to crimes and punishment; providing for postrelease
11 supervision for certain offenders; amending K.S.A. 21-4608 and re-
12 pealing the existing section.

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

15 Section 1. K.S.A. 21-4608 is hereby amended to read as follows: 21-
16 4608. (a) When separate sentences of imprisonment for different crimes
17 are imposed on a defendant on the same date, including sentences for
18 crimes for which suspended sentences, probation or assignment to a com-
19 munity correctional services program have been revoked, such sentences
20 shall run concurrently or consecutively as the court directs. Whenever
21 the record is silent as to the manner in which two or more sentences
22 imposed at the same time shall be served, they shall be served concu-
23 rrently, except as provided in subsections (c), (d) and (e).

24 (b) Any person who is convicted and sentenced for a crime commit-
25 ted while on probation, assignment to a community correctional services
26 program, parole or conditional release for a misdemeanor shall serve the
27 sentence concurrently with or consecutively to the term or terms under
28 which the person was on probation, assigned to a community correctional
29 services program or on parole or conditional release, as the court directs.

30 (c) Any person who is convicted and sentenced for a crime committed
31 while on probation, assigned to a community correctional services pro-
32 gram, on parole, on conditional release or on postrelease supervision for
33 a felony shall serve the sentence consecutively to the term or terms under
34 which the person was on probation, assigned to a community correctional
35 services program or on parole or conditional release.

36 (d) Any person who is convicted and sentenced for a crime commit-
37 ted while on release for a felony pursuant to article 23 of chapter 22 of
38 the Kansas Statutes Annotated shall serve the sentence consecutively to
39 the term or terms under which the person was released.

40 (e) (1) Any person who is convicted and sentenced for a crime com-
41 mitted while such person is incarcerated and serving a sentence for a
42 felony in any place of incarceration shall serve the sentence consecutively
43 to the term or terms under which the person was incarcerated.

1 (2) If a person is sentenced to prison for a crime committed on or
 2 after July 1, 1993, while the person was imprisoned for an offense com-
 3 mitted prior to July 1, 1993, and the person is not eligible for the retro-
 4 active application of the sentencing guidelines act, the new sentence shall
 5 not be aggregated with the old sentence but shall begin when the person
 6 is paroled or reaches the conditional release date on the old sentence,
 7 whichever is earlier. If the offender was past the offender's conditional
 8 release date at the time the new offense was committed, the new sentence
 9 shall not be aggregated with the old sentence but shall begin when the
 10 person is ordered released by the Kansas parole board or reaches the
 11 maximum sentence date on the old sentence, whichever is earlier. The
 12 new sentence shall then be served as otherwise provided by law. The
 13 period of ~~postrelease~~ supervision shall be based on the ~~new sentence,~~
 14 ~~except that those offenders whose old sentence is a term of imprisonment~~
 15 ~~for life, imposed pursuant to K.S.A. 21-4628, and amendments thereto,~~
 16 ~~prior to its repeal, or an indeterminate sentence with a maximum term of~~
 17 ~~life imprisonment, for which there is no conditional release or maximum~~
 18 ~~sentence expiration date, shall remain on postrelease supervision for life~~
 19 ~~or the longest term of post incarceration supervision imposed for~~
 20 ~~all crimes upon which sentence was imposed or until discharged from~~
 21 ~~supervision by the Kansas parole board. The term of post incarceration~~
 22 ~~supervision imposed by this paragraph shall apply retroactively to~~
 23 ~~crimes committed prior to the effective date of this act.~~

post incarceration

24 (f) The provisions of this subsection relating to parole eligibility shall
 25 be applicable to persons convicted of crimes committed prior to January
 26 1, 1979, but shall be applicable to persons convicted of crimes committed
 27 on or after that date only to the extent that the terms of this subsection
 28 are not in conflict with the provisions of K.S.A. 22-3717 and amendments
 29 thereto. In calculating the time to be served on concurrent and consec-
 30 utive sentences, the following rules shall apply:

31 (1) When indeterminate terms run concurrently, the shorter mini-
 32 mum terms merge in and are satisfied by serving the longest minimum
 33 term and the shorter maximum terms merge in and are satisfied by con-
 34 ditional release or discharge on the longest maximum term if the terms
 35 are imposed on the same date.

36 (2) When concurrent terms are imposed on different dates, compu-
 37 tation will be made to determine which term or terms require the longest
 38 period of imprisonment to reach parole eligibility, conditional release and
 39 maximum dates, and that sentence will be considered the controlling
 40 sentence. The parole eligibility date may be computed and projected on
 41 one sentence and the conditional release date and maximum may be com-
 42 puted and projected from another to determine the controlling sentence.

43 (3) When indeterminate terms imposed on the same date are to be



Kansas County & District Attorneys Association

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Topeka, KS 66604
(78.5) 232-5822 Fax: (78.5) 234-2433
www.kcdaa.org

To: Representative Mike O'Neal, Chairman
Members of the House Judiciary Committee

From: Thomas R. Stanton
Deputy Reno County District Attorney
President, Kansas County and District Attorneys Association

Date: March 17, 2008

Re: Testimony in support of Senate Bill 481

Thank you for consideration of Senate Bill 481, and for giving me the opportunity to testify regarding this legislation. Two insidious hallucinogenic drugs have appeared in communities across this nation. Those drugs are salvia divinorum, also known as salvinorum A, and datura stramonium, also known as gypsum weed or jimson weed. This bill would criminalize the possession, use and sale of these drugs by listing them as controlled substances pursuant to K.S.A. 65-4105(d).

Salvia divinorum is a powerful psychoactive herb grown primarily in South America. Videos of teenagers using the drug have appeared on You Tube. These videos show children using the drug and entering a state in which neither the body nor the emotions can be controlled. According to the information I have gathered, many of these "trips" result in horrifying, depressing hallucinations. Use of the drug has been linked to the suicide of one Delaware teenager, Brett Chidester. Brett was a well adjusted, bright, high school student who began purchasing the drug over the internet. He ultimately committed suicide when the "insight" he received during the use of this drug resulted in his conclusion that his life was not worth living. The tragedy led to the Delaware legislature taking the action I am asking you to take today.

The DEA reports that the drug has been added to the schedule I list of controlled substances in Delaware and Missouri. Controls on the drug were passed in Tennessee, Oklahoma, Maine and North Dakota in 2006. As of July 2007, the following states have proposed legislation to control the drug: Alabama, Alaska, California, Florida, Illinois, Iowa, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, and Kansas. While there have been no salvia-related deaths reported in Kansas, the fact that this substance is not controlled makes it difficult to track its current effects in our State.

House Judiciary

Date 3-17-08

Attachment # 10

Datura stramonium is a weed found in many parts of this country. Its use has been promoted in the recent past by, again, videos available by internet which depict teenagers "getting high" using the drug. The high has been described as a "living dream," with hallucinogenic effects that can last for days. A major concern with this drug is the fact that dosages which result in the desired "high" and dosages that can result in death are extremely close. If a person uses this drug and does not experience the expected result, a second dose can then kill the user.

There are times in life when the prudent action to be taken is to wait until a particular situation occurs before taking action. This type of reactive response is sometimes preferable to alternative courses of action. There are other times when the prudent course to follow is a proactive course of action. When it comes to these substances, the prudent action is to pass this legislation now. We should not wait for the death of a child in Kansas to take steps to control these drugs. We urge your full support and favorable recommendation of SB 481.

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

PEGGY MAST
REPRESENTATIVE, 76TH DISTRICT
765 ROAD 110
EMPORIA, KANSAS 66801
(620) 343-2465

ROOM 446-N CAPITOL BLDG.
TOPEKA, KS 66612
(785) 296-7685

COMMITTEE ASSIGNMENTS
VICE-CHAIR: HEALTH & HUMAN SERVICES
UTILITIES
SOCIAL SERVICES BUDGET

Testimony for SB481
March 17, 2008
House Judiciary Committee

Members of the Committee, I would like to thank you for the opportunity of speaking a few words about the merit of this piece of legislation. We all desire to protect our young people from unnecessary harm. This bill is important to help move toward that goal. The active chemical - Salvinorin A that is found in Salvia is the strongest naturally occurring psychoactive drug known to date. There are several ways of ingesting it and the youth culture has caught on to the hallucinogenic effects of its use.

Salvia is an extremely potent drug and the effects of taking it become stronger with each use. For this reason, I join with law enforcement, parents, and organizations across Kansas and ask you to pass this legislation to help keep our children safer.

Respectfully,

A handwritten signature in cursive script that reads "Peggy Mast". The ink is dark and the signature is fluid and legible.

Peggy Mast
76th District State Representative

House Judiciary
Date 3-17-08
Attachment # 11

Member
Community Anti-Drug
Coalitions of America
(CADCA)



Kansas Partner
National Family Partnership

....building partnerships to raise drug-free successful youth

March 14, 2007

To The Honorable Chair and Members of the House-Judiciary Committee:

On behalf of the Board of Directors of the Kansas Family Partnership, I write to support SB 481. This bill will add salvia divinorum and salvinorin A to the current list of illegal drugs in the state of Kansas. While there is little research on the extent of use in Kansas, a quick internet search produced over 54,036 sites, the majority of which advertised selling of salvia divinorum, its seeds, plants and/or extract. Because the public generally knows little about these drugs, a brief description that might be helpful in your deliberations follows.

Currently salvia divinorum and salvinorin A are not currently controlled under the Controlled Substances Act, but it is a drug of concern by the Drug Enforcement Administration. A number of states however, have either made it illegal to purchase or distribute or have added these drugs into schedule I of their state regulations. As of August 2007, legislative bills proposing regulatory controls are pending in Alabama, Alaska, California, Illinois, Iowa, New Jersey, New York, Ohio, Oregon, Pennsylvania, and Texas. Belgium, Denmark, Estonia, Finland, Italy, Spain and Sweden have placed salvia divinorum and/or salvinorin are under regulatory controls.

As currently legal drugs, many parents are unaware of their effects. Users ingest saliva for the purpose of obtaining its hallucinogenic effects which may last from one to two hours. The duration of the effects depend on the method of injection through smoking the leaves, chewing and extracting the juices through oral mucosa, mixing the extract with water, or through inhalation.

Given that salvia divinorum or its active constituent salvinorin A has no approved medical use in the United States, it makes sense to add it to the list of illicit drugs as suggested in SB 481. Given its hallucinogenic properties, the Kansas Family Partnership supports efforts to reduce access to these drugs. If we are to promote healthy, drug free youth, allowing salvia divinorum and salvinorin A to be legal drugs is not consistent with prevention messages or efforts.

Sincerely,

Michelle M. Voth
Executive Director
Kansas Family Partnership



March 17, 2008

House Judiciary Committee
Kansas House of Representatives

Dear Honorable Chairman and Members:

Shawnee Regional Prevention and Recovery Services supports SB 481 to include the hallucinogenic herb, salvia divinorum, as an illegal drug in Kansas.

Our agency provides substance abuse prevention and intervention services to children, youth, and their families in Shawnee and Osage Counties.

Each year we see more than 350 youth who are either in the experimental or addiction stages of substance abuse. Many of these youth first experiment with drugs such as alcohol, tobacco, and marijuana which can soon lead them to full-blown addictions.

Anytime we can keep new drugs such as salvia divinorum from entering the drug market, the fewer opportunities there are for our children and teens to become addicted to drugs which ultimately leads to other problem behaviors and crime.

Thank you for your support of SB 482.

A handwritten signature in cursive script that reads "Max Wilson".

Max Wilson, Executive Director
Shawnee Regional Prevention and Recovery Services, Inc.
2209 SW 29th Street
Topeka, KS 66611
785.266.8666
mwilson@parstopeka.com