

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairperson Pat Colloton at 1:30 p.m. on February 2, 2009, in Room 535-N of the Capitol.

All members were present except:

Representative Stan Frownfelter- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Marc Goodman, Lyon County Attorney and Chairman of Kansas County & District Attorney Assoc.
Christine Ladner, Assistant District Attorney, Shawnee County
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence

Others attending:

See attached list.

HB 2096 - Electronic solicitation, child 14 to 16 years of age.

Chairperson Colloton opened by stating that she has asked Athena Andaya, Legislative Research, along with Dr. Pealer, Juvenile Justice Authority, to take a look at the Romeo Juliet Laws and see if something about the statute could be redefined to eliminate those cases that are just purely boyfriend girlfriend.

Chairperson Colloton called on Jason Thompson, Revisors Office, to explain **HB 2096**. He stated the bill is a clean up bill to correct a drafting error when the bill was drafted.

Chairperson Colloton opened the hearing on **HB 2096** and recognized Marc Goodman, Lyon County Attorney, to give his testimony as a proponent of the bill. Mr. Goodman provided a written copy of his testimony. (Attachment 1) He stated that the bill is a technical amendment to clarify the intent and application of the crime of electronic solicitation. Currently electronic solicitation is defined as “enticing or soliciting a person whom the offender believes to be under the age of 16 to commit or submit to an unlawful sexual act” or “enticing or soliciting a person whom the offender believes to be a child under the age of 14 to commit or submit to an unlawful sexual act”. The definition of electronic solicitations was intended to provide two different age groups to apply a stricter penalty for soliciting children under 14 years of age.

In closing he stated the passage of this technical amendment will clarify the intent of the original legislation to ensure that these offenders are receiving the appropriate penalty for the crime.

Upon the completion of Mr. Goodman’s testimony a question and answer session followed.

When the question and answer session was concluded, and there being no opponents to testify on the bill, the chairperson closed the hearing on **HB 2096**.

HB 2098 - Kansas rape shield law, adding aggravated trafficking and electronic solicitation.

Next, the chairperson called on Jason Thompson, Revisors Office, to explain **HB 2098**. He stated that under current law, the sexual conduct of victims of certain sexual offenses is not admissible evidence in court proceedings. This provision in state statute is commonly referred to as the Kansas Rape Shield Law. This bill would add “aggravated trafficking” and “electronic solicitation” to the current list of sexual offenses for which this shield is applied.

A short question and answer session followed.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on February 2, 2009, in Room 535-N of the Capitol.

Upon the completion of the explanation of the bill and the questions and answers, Chairperson Colloton opened the hearing on **HB 2098** and introduced Christine Ladner, Assistant District Attorney, Shawnee County, to give her testimony as a proponent of the bill. Ms. Ladner provided a written copy of her testimony (Attachment 2) She stated the age of the internet requires consideration of electronic solicitation for protection under the Rape Shield Law. The advent of human trafficking, specifically the sexual gratification aspects of human trafficking, also requires consideration of adding this offense as well to the list of crimes protected under the Rape Shield Law. In closing, she urged the Committee to pass **HB 2098** out favorable for passage.

Upon the conclusion of Ms. Ladner's testimony, Chairperson Colloton recognized Marc Goodman, Lyon County Attorney and Chairman of the Kansas County and District Attorneys Association, to give his testimony as a proponent of the bill. Mr. Goodman provided a written copy of his testimony. (Attachment 3) Mr. Goodman stated the Kansas County and District Attorneys Association supports the bill in order to fully protect the victim if the statute is complied with by all parties. He urged the Committee to support **HB 2098**.

Next, Chairperson Colloton introduced Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence to give her testimony as a proponent of the bill. Ms. Barnett provided a written copy of her testimony. (Attachment 4) Ms. Barnett stated **HB 2098** will help protect victims of two recently enacted sex crimes from the same defense strategies already protected by the current Rape Shield Law Act. In closing, she stated the Kansas Coalition Against Sexual and Domestic Violence supports the additions of these two crimes to the coverage of K.S.A. 21-3525 and strongly urges the Committee to pass the bill out favorably.

Upon the conclusion of Ms. Barnett's testimony, the proponents for **HB 2098** stood for questions.

When the question and answer session was completed, Chairperson Colloton called for any opponents to testify on **HB 2098**. There being none, the Chairperson closed the hearing on **HB 2098** and adjourned the meeting at 2:00 p.m. with the next meeting scheduled for February 3, 2009 at 1:30 p.m. in room 535N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 02-02-09

NAME	REPRESENTING
Brian Dempsey	SRS
John C. BOTTENBERG	SHERIFFS ASSOC
Chris Meckler	OJA
Jeff Brand	KBI



Kansas County & District Attorneys Association

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To: Representative Pat Colloton, Chair
Members of the House Corrections and Juvenile Justice Committee

From: Marc Goodman
Lyon County Attorney
Legislative Chair, KCDA

Date: February 2, 2009

Re: Testimony in support of House Bill 2096

Good afternoon Chairperson Colloton and members of the House Corrections and Juvenile Justice Committee. Thank you for the opportunity to present testimony in support of HB 2096.

House Bill 2096 is a technical amendment to clarify the intent and application of the crime of electronic solicitation. Currently electronic solicitation is defined as "enticing or soliciting a person whom the offender believes to be a child under the age of 16 to commit or submit to an unlawful sexual act" or "enticing or soliciting a person whom the offender believes to be a child under the age of 14 to commit or submit to an unlawful sexual act".

The definition of electronic solicitation was intended to provide two different age groups to apply a stricter penalty for soliciting children under 14 years of age. There has been ambiguity in the application of the statute as drafted since a person that believes a child is under the age of 14 must also believe that the child is under 16 years of age. Subsequently, only the lesser crime can be charged since any ambiguity in a statute must be construed in favor of the defendant.

The passage of this technical amendment will clarify the intent of the original legislation to ensure that these offenders are receiving the appropriate penalty for the crime.

I respectfully urge the committee to recommend HB 2096 favorable for passage. I would be happy to answer any questions.

Corrections and Juvenile Justice
Date: 2-2-09
Attachment # 1



Kansas County & District Attorneys Association

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To: Representative Pat Colloton, Chair
Members of the House Corrections and Juvenile Justice Committee

From: Christine Ladner
Chief Deputy, Major Felonies for
District Attorney Chadwick J. Taylor, 3rd Judicial District

Date: February 2, 2009

Re: Testimony in support of House Bill 2098

Good afternoon Chairperson Colloton and members of the House Corrections and Juvenile Justice Committee. My name is Christine Ladner. Thank you for the opportunity to present testimony in support of HB 2098.

It is difficult for any victim to navigate his or her way through the criminal justice system. For victims of sex crimes, it is a particularly tortuous experience. In many cases, the defense attacks the credibility of the victim by trying to discredit her. In addition to having to testify to the details of the sexual experience of the crime charged, victims often want to know, "What else are they going to bring up?"

K.S.A. 21-3525, commonly known as our "Rape Shield" statute, was intended to offer victims of sex crimes protection from the introduction of evidence of their sexual past. It provides that such prior sexual conduct shall not be admissible, unless the defense provides notice by written motion. The motion must be accompanied by a proffer of the evidence in affidavit form, filed under seal, so that it is not a part of the court file available to public view.

House Bill 2098 adds two crimes to the list of sex crimes protected by Rape Shield: aggravated trafficking and electronic solicitation. Electronic solicitation is a sex offense classified under Chapter 35, and so should clearly be protected by Rape Shield. Aggravated trafficking is classified as a crime against persons in Chapter 34, not readily an apparent sex offense. However, the subsections of aggravated trafficking added in the proposed amendment refer specifically to the "sexual gratification of the defendant or another."

The sexually motivated provision of aggravated trafficking is recruiting, harboring, transporting, providing or obtaining, by any means, another person knowing that force, fraud,

Corrections and Juvenile Justice

Date: 2-2-09

Attachment # 2-1

threat or coercion will be used to cause the person to engage in forced labor or involuntary servitude committed in whole or in part for the sexual gratification of the defendant or another. Where a victim under 18 is involved, it doesn't matter whether the act is done with or without force, fraud, threat or coercion. The point is that the act is done "in whole or in part for sexual gratification of the defendant or another."

If a defendant recruits a child in Kansas to prostitute for him in another location, even another state, she should be protected by our Rape Shield statute. If such a victim has been a prostitute in the past or has a My Space or Facebook page with provocative postings that might make her look promiscuous, the defense should follow the provisions of K.S.A. 21-3525 before he can mention these things to a jury.

If a child under 16 is solicited over the internet to perform an unlawful sex act, and she has been provocative with someone online previously, she should be protected by our Rape Shield statute. The fact that she used promiscuous language online with someone before should likewise be brought up under the advance notice and proffer under seal requirements of our Rape Shield statute.

Any previous sexual conduct of victims of these two crimes is precisely what is contemplated by the Rape Shield statute. The age of the internet requires us to consider electronic solicitation for protection under Rape Shield. The advent of human trafficking, specifically the sexual gratification aspects of human trafficking, requires us to consider adding this offense as well to the list of crimes protected by K.S.A. 21-3525.

I respectfully urge the committee to recommend HB 2098 favorable for passage. I would be happy to answer any questions.

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LYON COUNTY ATTORNEY
LYON COUNTY

MARC GOODMAN

County Attorney

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Nicholas J. Heiman
Meghan K. Frisch
Robert J. Novak
Assistant County Attorney

To: Representative Pat Colloton, Chair
Members of the House Corrections and Juvenile Justice Committee

From: Marc Goodman
Lyon County Attorney
Legislative Chair, Kansas County and District Attorneys Association

Date: February 2, 2009

Re: Testimony in support of House Bill 2098

Good afternoon Madame Chair and committee members. My name is Marc Goodman, on behalf of the Kansas County and District Attorneys Association. Thank you for the opportunity to present testimony in support of HB 2098.

House Bill 2098 involves an amendment to K.S.A. 21-3525, commonly referred to as the rape shield statute.

The amendment is offered to include the crime of aggravated trafficking and electronic solicitation in the offenses listed under the statute. The amendment is offered to correct an unfortunate occurrence where evidence of the victims' previous sexual conduct was admitted in full due to these crimes not being contained in the statute.

The KCDAAs support the amendment in order to fully protect the victim if the statute is
complied with by all parties.

We urge your full support and favorable recommendations of HB 2098. I am happy to answer any questions you may have.



Marc Goodman
Lyon County Attorney

Corrections and Juvenile Justice
Date: 2-2-09
Attachment # 3

kcsdv Kansas Coalition Against Sexual and Domestic Violence



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Corrections and Juvenile Justice Committee
House Bill 2098
February 2, 2009
Proponent

Chairwoman Colloton and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is a statewide non-profit organization whose membership is the 30 sexual and domestic violence programs serving victims across Kansas.

The Kansas rape shield Law, K.S.A. 21-3525, prohibits evidence of previous sexual conduct from being disclosed in any proceeding before the court except under specific circumstances that are detailed in the statute. The Rape Shield law applies to 15 specific crimes and HB 2098 seeks to expand this prohibition to include two recently enacted crimes: aggravated trafficking and electronic solicitation.

The purpose of the Kansas rape shield law is to prevent the defendant from focusing on the previous sexual conduct of the victim in an effort to play on the bias of the judge or jury. Kansas courts have described the purpose of the rape shield law as being "...aimed at eliminating a common defense strategy of trying complaining witnesses rather than the defendant. The result of the strategy was harassment, and further humiliation of the victim as well as discouraging victims of rape from reporting the crimes to law enforcement authorities." *State v. Williams*, 224 Kan. 468, 470, 580 P.2d 1341 (1978). A brief history and commonly asked questions about the Kansas rape shield law is attached. Although the rape shield law is cannot fully protect a rape victim, it can, and does, provide some measure of protection and can make all the difference in a victim's willingness to report the crime or participate in criminal proceedings.

HB 2098 will help protect victims of two recently enacted sex crimes from the same defense strategies covered by the current rape shield law. KCSDV fully supports these additions to those crimes covered by K.S.A. 21-3525 and strongly urges the Corrections and Juvenile Justice Committee to pass HB 2098 favorably.

Respectfully Submitted,
Sandy Barnett
Executive Director

Historical Background

Rape shield laws were passed in almost every state beginning in the 1970's. The purpose of these laws was to protect victims of rape by attempting to change the thinking about chastity and rape, i.e., a woman who was sexually active and who was raped was neither promiscuous, asking for it, consented to it or otherwise contributed to her own victimization. In those rape cases that went to trial before the rape shield laws were passed, defendants could focus on the previous sexual conduct of the victim in an effort to play on the biases, prejudices, and sexism of the judges and jurors. Kansas courts have described the purpose of the rape shield law this way: "[It] is aimed at eliminating a common defense strategy of trying the complaining witness rather than the defendant. The result of the strategy was harassment and further humiliation of the victim as well as discouraging victims of rape from reporting the crimes to law enforcement authorities." *State v. Williams*, 224 Kan. 468, 470, 580 P.2d 1341 (1978).

The Kansas Law

K.S.A. 21-3525 is known as the Kansas Rape Shield law. In Kansas, the rape shield law only applies to prosecutions for the following crimes: Rape, Indecent liberties with a child, Aggravated indecent liberties with a child, Criminal sodomy, Aggravated criminal sodomy, Aggravated indecent solicitation of a child, Sexual exploitation of a child, Aggravated sexual battery, Incest, Aggravated incest, Indecent solicitation of a child, Aggravated assault with intent to commit any of the crimes above, Sexual battery, Attempt or conspiracy to commit any of the crimes above.

The Rule: The rape shield law prohibits admission of any evidence of the complaining witness' (victim's) previous sexual conduct with any person including the defendant. It also prohibits any mention of this conduct in the presence of the jury.

The Exceptions: Here is how this type of evidence might come in: The defendant would submit a written motion at least 7 days before trial (unless the court waives this time requirement), requesting that the court admit evidence or testimony concerning the previous sexual conduct of the victim. The motion must state the nature of the evidence and its relevancy to the case, and must have an affidavit attached offering proof of this previous sexual conduct by the victim. The court would then hold a hearing in chambers. If the court decides the evidence is relevant and not otherwise inadmissible, the court may allow the evidence to be introduced. The court's order will detail what proposed evidence is admissible and the nature of the questions permitted.

Apart from this procedure, the statute also provides that the prosecutor may introduce evidence concerning the victim's previous sexual conduct and the victim may testify about her previous sexual conduct. If this evidence is introduced by the prosecutor or victim, the defendant may cross-examine the witness who gave the testimony and may offer relevant rebuttal evidence.

It is important to note that the rape shield law applies only to the victim's previous sexual conduct. There may be other evidence concerning the victim that could be introduced

concerning her reputation for truthfulness or lack thereof, her credibility, her character, her spontaneous statements, her mental health, and a continuing course of conduct between the parties, to name a few . The admissibility of these other types of evidence would be considered under separate rules of evidence.

Many people believe that rape shield laws act as a sieve rather than a shield. Evidence that may be just as destructive to the victim could be allowed into the trial on one of these other grounds. Additionally, the court could determine that certain previous sexual conduct is admissible due to its relevance. For example, the judge may determine that the prior sexual act with the defendant or someone else was so identical to the defendant's version of how the current rape occurred that it becomes relevant and the victim can be questioned about it. Recently, the statute was amended to make these rules applicable to pre-trial hearings as well as the trial.

Some frequently asked questions:

What can a judge do if the defense violates the court's order concerning this evidence?

The judge can impose sanctions. Some options the court might have: Declare a mistrial based on defense misconduct and start over (double jeopardy would not attach); find the defense attorney in contempt and fine him or her; tell the jurors that they should ignore this information and should not consider it when they deliberate. The problem often is this: Once the cat is out of the bag or the insinuation is made, it is nearly impossible to put it back or take it out of the minds of the jurors. If the insinuation has been made, it may hang there throughout the trial and carry over into the deliberations.

Do rape shield laws really protect victims?

In some cases, yes. However, each case is decided individually on its facts and on the arguments of the parties. As noted above, the exceptions may swallow the rule, making it very difficult for the next victim to believe her privacy will be protected. Additionally, every time a rape victim is vilified and questioned publicly and unfairly, it potentially causes many, many victims to decide they will never come forward.

Does the Kansas rape shield law keep the victim's name from being disclosed at trial?

No. The rape shield statute is an evidentiary law and only addresses the admissibility of evidence of the victim's previous sexual conduct. It says nothing about the privacy of the victim's name or address. However, the prosecutor's office may have a policy of only referring to the victim by initials. Additionally, when a case is appealed, Kansas Supreme Court rules require that sexual assault victims be referred to by initials only.

Does the rape shield law prohibit the media from printing or otherwise announcing the victim's name?

No. Keeping the victim's name out of the newspaper and other news reports is voluntary on the part of the media. Each media outlet decides what its policy will be on this point. There are no sanctions in Kansas for releasing the name of the victim. The victim's name

and address are in the public record at the court house. If it's in the public record, it can be printed by the media.

Does the rape shield law require that rape trials be closed to the public or the media?

No. Public trials are guaranteed by the U.S. Constitution. Occasionally, a judge will impose a "gag order" on the parties to keep the jury pool from becoming tainted by news reports. Additionally, it is not uncommon for witnesses to be barred from the trial until after they have testified in order to keep them from being tainted by the other testimony they might hear. And, a court may disallow cameras in the court room as disruptive. Finally, a judge may prohibit photographs being taken of the victim or other witnesses or may require that sketches of the victim not reveal her identity. In making these decisions, the court has to weigh the constitutional right to freedom of the press and public trials with the rights of the victim and the defendant.

Is the Kansas rape shield law the same as the rape shield laws in other states?

Not necessarily. Each state's rape shield law is different. What is happening in a case in another state will be based on that state's statute and the case law that has interpreted it. While there may be some common characteristics between states' laws, one has to look at the statute in each state to see how it applies to a set of facts.

Prepared by
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