

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 March 18, 2009, in Room 535-N of the Capitol.

All members were present except:

Representative Bob Brookens- excused
Representative Stan Frownfelter- excused
Representative Melody McCray-Miller

Committee staff present:

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

Others attending:

See attached list.

SB 248 - Electronic logging system for sale of methamphetamine precursor.

Explanation of SB 248:

The bill as amended, would enact new law to be cited as the Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act and would amend existing law concerning the sale of "methamphetamine precursor" to be any compound, mixture or preparation containing pseudoephedrine, ephedrine or phenylpropanolamine. The sales of methamphetamine precursors which are prescribed would be excluded from the requirement of any logging system.

Chairperson Colloton opened the hearing on **SB 248** and introduced Kansas State Senator Vicki Schmidt to give her testimony as a proponent of the bill. Senator Schmidt provided written copy of her testimony. (Attachment 1) She stated the Legislature has been dealing with the issue of methamphetamine precursors since at least 2005. This bill would enable the state to maintain a statewide electronic logging system that will document the sale of methamphetamine precursors in real time transmission with the Board of Pharmacy permitted to issue a waiver when necessary. In closing, she urged the Committee to pass this bill out favorably.

A short question and answer session followed.

Chairperson Colloton introduced Sandy Horton, Sheriff, Crawford County, to give his testimony as a proponent of **SB 248**. Sheriff Horton provided written copy of his testimony. (Attachment 2) Sheriff Horton stated after a decrease in Meth labs in the state of Kansas, they are on the rise with 153 reported in 2008 compared to 97 in 2007. The bill would benefit Kansas greatly and be a deterrent for Meth labs. He urged the Committee to pass **SB 248**.

A short question and answer session followed.

Chairperson Colloton introduced Doug Mays, former Speaker of the House of Representatives, representing Methshield, to give his testimony as a proponent of the bill. Mr. Mays provided written copy of his testimony. (Attachment 3) He stated Meth is cheap, potent and available everywhere. The written logbook system to track pseudoephedrine sales that is now in place in Kansas initially worked well as a deterrent. The low tech paper system has, however, proved cumbersome for law enforcement and prevents meaningful sharing of real time information between pharmacists, retailers, and authorities. A real time based tool will enable pharmacists, retailers, and law enforcement to track sales of products containing Pseudoephedrine. It will be up to the Board to go real time or decide when to dump the information. The online system will allow law enforcement to catch the potential meth "cook" or his runners in the act. He urged the Committee to support the bill.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 18, 2009, in Room 535-N of the Capitol.

A short discussion followed.

Chairperson Colloton introduced Steven Wilhoft, Attorney General's Office, to give his testimony as a proponent of **SB 248**. Mr. Wilhoft provided written copy of his testimony. (Attachment 4) Mr. Wilhoft stated the bill would provide that the electronic precursor recording log would have the technical capability to receive electronic log data from pharmacies and to send real time notification to law enforcement agencies. In closing, he stated the Attorney General believes that this bill should be passed because it will have the effect of reducing the number of Meth lab sites in Kansas.

A short question and answer session followed.

Chairperson Colloton introduced Debbie Billingsley, Kansas Board of Pharmacy, to give her testimony as a proponent of the bill. Ms. Billingsley provided written copy of her testimony. (Attachment 5) Ms. Billingsley stated the annual cost of an electronic logging system would be \$300,000 to \$350,000 a year. The costs associated with health care, environmental cleanup, criminal activity, and harm to families and children greatly out weigh the costs of an electronic tracking system. Further, the Board of Pharmacy would be able to apply for funding through federal grants if legislation is in place.

A short question and answer session followed.

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of:

Ron Gaches, Kansas Independent Pharmacy Service Corporation (Attachment 6)

Ed Klumpp, Kansas Association of Police Chiefs and Kansas Police Officers Assoc. (Attachment 7)

Ron Hein, Kansas Pharmacy Coalition (Attachment 8)

Chairperson Colloton introduced Bill Sneed, Express Scripts, to give his testimony as a neutral party of **SB 248**. Mr. Sneed provided written copy of his testimony. (Attachment 9) Mr. Sneed stated they have concerns with the bill and asked the Committee to amend the bill at the beginning of Line 41 as follows: "Except in instances where a valid prescription is present for the product".

Chairperson Colloton asked if there was any one else wishing to testify on **SB 248**. Julie Hein was recognized by the Chair. Ms. Hein stated that Ron Hein had submitted written only testimony and she explained that he represented the Kansas Pharmacy Coalition. She stated they support the amendment that Mr. Sneed is offering.

With no others wishing to testify on **HB 248**, Chairperson Colloton closed the hearing.

HB 2340 - Sub. For H 2340 by Committee on Corrections and Juvenile Justice - Legislative review of parole board factors and rationale for granting or denying parole.

Chairperson Colloton moved the Committee's attention to **HB 2340**.

Representative Bethel moved to report the bill out favorably. Representative Roth seconded.

Chairperson Colloton offered an amendment (Attachment 10) making a substitute bill and explained it would require the Parole Board to provide an annual report in confidence regarding the granting of parole when proportionality is considered. This requirement would be for one year only.

A discussion followed.

Chairperson Colloton moved the amendment with the change of the year from 2010 to 2009. Representative Roth seconded.

A lengthy discussion followed with Patti Biggs, Parole Board, joining in.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 18, 2009, in Room 535-N of the Capitol.

Representative Pauls suggested a conceptual amendment which would make it clear the Committee members would view any confidential information in the annual report while in the Committee meeting only and the staff would collect all copies and they would be kept in the Committee room and changing some of language talking about members' official functions in regard to the annual report.

A discussion followed regarding the annual report and the intent of the bill. Jill Wolters, Revisors Office, will do a redraft of the substitute bill to have before the Committee tomorrow.

Chairperson Colloton turned the Committee's attention to **SB 248** asking the Committee if they wished to work the bill today.

Representative Dillmore moved SB 248 favorable for passage. Representative Bethel seconded.

Chairperson Colloton recognized Representative Roth and he moved an amendment he had to offer on the bill. It was determined that Representative Roth's amendment should be added to HB 2340 instead of SB 248 and Representative Roth withdrew his amendment.

Representative Pauls moved an amendment to change time for Rules and Regs to 6 months on SB 248. Representative Bethel seconded. Motion carried.

Representative Bethel made a motion to add the language to the bill that Mr. Sneed requested in his testimony regarding the PBM being excluded and add it to the beginning of Section 2. Representative Dillmore seconded. Motion carried.

A discussion followed.

Representative Kinzer moved an amendment on Page 4, Lines 3 to strike language starting with the word "providing" going to the end of the sentence and adding in its place "complying with the provisions of this act". Representative Spaulding seconded. Motion carried.

Representative Kinzer moved an amendment to strike on Page 4, Lines 7 through 9. Representative Dillmore seconded. Motion carried.

Representative Dillmore moved to pass SB 248 out favorably as amended. Representative Bethel seconded. Motion carried.

Chairperson Colloton adjourned the meeting at 3:00 p.m. with the next meeting scheduled for March 19, 2009 at 1:30 p.m. in room 535 N.

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SENATOR VICKI SCHMIDT
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COMMITTEE ASSIGNMENTS

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VICE-CHAIR: PUBLIC HEALTH AND WELFARE
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SB 248
STATEWIDE ELECTRONIC LOGGIN SYSTEM FOR SALE OF METHAMPHETAMINE
PRECURSOR ACT
CORRECTIONS AND JUEVENILE JUSTICE
Hearing – March 18, 2009

Chairman Colloton and Members of the Committee:

Thank you for the opportunity to provide testimony today on SB 248. You will be receiving information today about the specifics of the bill. I am here today to offer my support.

As you know, the Legislature has been dealing with the issue of methamphetamine precursors since at least 2005. We led many of the states in our original legislation, the Sheriff Matt Samuels Chemical Control Act in 2005. This act made salts or optical isomers of ephedrine and pseudoephedrine a Schedule V drug. Shortly after our legislation, the federal government saw fit to enact very similar legislation for all states in the Patriot Act.

Since this time, my pharmacist colleagues have become very familiar with the problem and have adhered to the law regarding the recording of sales. This, however, has not solved all of the issues with regard to the precursors. At least one "chain" pharmacy has the capability of sharing information with regard to sales with their other pharmacies. Even this, however, has had a work around solution for those desiring to purchase abnormally high amounts of the precursors. As it stands now, a visit to a different pharmacy will yield a sale of additional product.

Last summer/fall, two pilot projects were undertaken with the cooperation of law enforcement. Several pharmacies participate and the methamphetamine precursor task force legislated in 2008 reported their outcomes. Their findings were remarkable. The task force has now recommended SB 248 for introduction and passage. I would be remiss if I did not acknowledge the tremendous amount of effort and time that was spent, even after introduction of the bill. I am pleased to report that all interested parties worked extremely well together to arrive at the bill you have before you today.

This bill will enable the state to maintain a statewide electronic logging system that will document the sale of methamphetamine precursors in real time transmission, with the Board of Pharmacy permitted to issue a waiver when necessary.

Once again I would like to extend my sincere appreciation to the task force and all who have worked on this bill for their excellent job and diligence. I hope you will consider moving SB 248 out favorably for passage. I would be happy to stand for questions at the appropriate time.

Corrections and Juvenile Justice

Date: 3-18-09

Attachment # 1-1

House Corrections and Juvenile Justice Committee

Testimony of
Crawford County Sheriff Sandy Horton
on
Senate Bill 248

March 18, 2009

I am Crawford County Sheriff Sandy Horton and today I represent myself, the Kansas Sheriff's Association, and the Southeast Kansas Drug Enforcement Task Force (SEKDTF) as its Chairman. I am testifying in **SUPPORT** of Senate Bill 248.

Although Meth labs have dramatically decreased in Kansas they are now on the rise with 153 reported in 2008 compared to 97 in 2007. The SEKDTF represents six counties in southeast Kansas. Of the labs reported in 2007, 22% were located in the Task Force region and in 2008 that percentage was 30%.

Since July of 2008 our six county region has participated in a pilot project with Appriss/MethCheck. Twenty five pharmacies signed on to participate, however Wal-Mart and Walgreens would not. Therefore their data must be retrieved manually. Page two of my testimony will demonstrate how important an investigative tool a system such as this could be for law enforcement in identifying suspected "smurfers" (persons traveling from pharmacy to pharmacy to purchase methamphetamine precursors).

In the six county region for 2008 we conducted six pseudo stings at area Wal-Mart and Walgreen stores. The stings consisted of officers monitoring the pharmacies then targeting suspected smurfers. Five (5) arrests were made as a result of the stings. Additionally four (4) meth labs were seized.

Additionally Seven (7) arrest warrants were issued for persons in possession of over the legal limit of 9 grams of pseudo products as a result of research from both MethCheck and manual pharmacy logs.

So far in 2009 Sixteen (16) warrants have been requested for persons over the legal limit of 9 grams as a result of research from both MethCheck and manual logs. One search warrant has been issued from MethCheck data and one meth lab seized linking five people to the operation.

Respectfully submitted, Sheriff Sandy Horton.

Corrections and Juvenile Justice


Date: 3-18-09

Attachment # 2-1

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Person Detail

 QUINCY STREET [+ Add Watch](#)
07/27/1973 PITTSBURG, KS 66762

For a one year transaction history for this person, please click on the person's name (underlined) at the top of this report.

One Year Purchase History - Total Row(s): 19

Transaction Date	Product(s)	Grams	Box(es)	Exceedance Type	Pharmacy
02/04/2009 09:15:00 CST	SUDAFED 24HR	2.4	1		CVS08608
01/11/2009 17:15:00 CST	CVS DECON TAB	1.44	1		CVS08586
01/11/2009 00:00:01 CST	EQ SUPHED 12-HOUR (20 CNT)	2.4	1	FED: 3.6g per day	Wal-Mart Store #72
01/09/2009 00:00:01 CST	EQ SUPHED 12-HOUR (20 CNT)	2.4	1		Wal-Mart Store #72
12/23/2008 15:39:00 CST	CVS DECON 12 HR (20S)	2.4	1	KS: 9g Per 30 Days FED: 9g in 30 days	CVS05272
12/19/2008 16:20:00 CST	CVS DECON 12 HR (20S)	2.4	1	FED: 9g in 30 days	CVS05272
12/05/2008 16:10:00 CST	CVS DECON 12 HR (20S)	2.4	1		CVS05272
12/04/2008 07:33:00 CST	CVS DECON 12 HR (20S)	2.4	1		CVS08592
11/29/2008 14:07:00 CST	CVS DECON 12 HR (20S)	2.4	1		CVS08599
11/26/2008 00:00:01 CST	EQ SUPHED 12-HOUR (20 CNT)	2.4	1		Wal-Mart Store #72
10/11/2008 11:53:00 CDT	CVS DECON 12 HR (20S)	2.4	1		CVS05272
10/09/2008 00:00:01 CDT	EQ SUPHED 12-HOUR (20 CNT)	2.4	1		Wal-Mart Store #72
10/04/2008 00:00:01 CDT	EQ SUPHED 12-HOUR (20 CNT)	2.4	1		Wal-Mart Store #72
09/09/2008 17:59:00 CDT	CVS DECON 12 HR (20S)	2.4	1	FED: 9g in 30 days	CVS05272
09/08/2008 19:02:00 CDT	SUDAFED 12 HR 20CT	2.4	1		CVS08602
09/03/2008 10:14:00 CDT	SUDAFED 12 HR 20CT	2.4	1		CVS05663
08/29/2008 21:10:00 CDT	CVS DECON 12 HR (20S)	2.4	1		CVS08599
07/31/2008 10:53:00 CDT	CVS DECON 12 HR (20S)	2.4	1		CVS08602
07/04/2008 17:15:00 CDT	CVS DECON 12 HR (20S)	2.4	1		CVS08602

CVS08608
4645 Shawnee Dr.
Kansas City, KS 66106

CVS08586
7100 W 151st St
Overland Park, KS
66223

Wal-Mart Store #72
2710 N Broadway St
Pittsburg, KS 66762

CVS05272
6300 Johnson Dr
Mission, KS 66202

CVS08592
921 Main St
Kansas City, MO 64105

CVS08599
5170 Roe Blvd
Roeland Park, KS
66205

CVS08602
7501 Metcalf Ave
Overland Park, KS
66204

CVS05663
6244 Brookside Blvd
Kansas City, MO 64113

2-2

[New Search](#) [Back](#)

Person Detail					
<u>██████████</u> TROOST + Add Watch		05/31/1970 OLATHE, KS 66061			
For a one year transaction history for this person, please click on the person's name (underlined) at the top of this report.					
One Year Purchase History - Total Rows: 230					
Transaction Date	Product(s)	Grams	Box(es)	Exceedance Type	Pharmacy
02/04/2009 02:22:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08602
02/03/2009 17:38:00 CST	TYL COLD SEV CONG	0.72	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08561
02/03/2009 11:31:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08580
02/02/2009 17:49:00 CST	PRIMATENE ASTHMA (24CT)	0.3	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08582
02/02/2009 13:23:00 CST	PRIMATENE TABLET (60 CNT)	0.75	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08602
02/02/2009 09:10:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08580
02/01/2009 16:44:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days	CVS08583
02/01/2009 12:14:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days	CVS08598
01/31/2009 16:53:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08580
01/31/2009 11:46:00 CST	PRIMATENE ASTHMA (24CT)	0.3	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08582
01/31/2009 04:22:00 CST	PRIMATENE TABLET (60 CNT)	0.75	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08602
01/30/2009 18:04:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08582
01/30/2009 04:28:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08602
01/29/2009 14:15:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08580
01/29/2009 09:23:00 CST	BRONKAID CAPLET (24'S)	0.6	1	FED: 9g In 30 days KS: 9g Per 30 Days	CVS08582

CVS 08602
7501 Metcalf Ave.
Overland Park, KS 66204

CVS 08561
14950 W. 87 St. Parkway
Lenexa, KS 66215

CVS 08580
6510 Nieman Road
Shawnee, KS 66203

CVS 08583
4531 Troost Avenue
Kansas City, MO 64110

CVS08582
8800 W. 95 Street
Overland park, KS 66212

CVS 08598
9005 E. State Route 350
Raytown, MO 64133

LAST NAME	FIRST NAME	DOB	POSTAL CODE	ID NBR	ID TYPE CD	ID STATE CD	TOTAL ACTIVITY	SOLD	SOLD W/ EXCEEDANCE	BLOCKED	INQUIRY
OBRIEN	COLLIN	5/31/1970	66061	K02506879	DL_ID	KS	243	52	178	0	13
OBRIEN	COLLIN	5/31/1970	66215	K02506879	DL_ID	KS	2	0	2	0	0
		5/31/1970		K02506879	DL_ID	KS	1	0	0	0	1

Testimony before the
House Committee on Corrections and Juvenile Justice
on
SB 248
by
Doug Mays
Representing Methshield

Meth is cheap, potent and available everywhere. During the past decade, meth use across America has increased by as much as 300 percent. Kansas is no exception.

Federal, and state laws regulate the sale of pseudoephedrine, a chemical commonly found in cold medicines, which is a necessary ingredient in the production of meth. Kansas law requires that these products be placed behind the pharmacy counter, and individuals purchasing these products must present a photo ID and sign a logbook. The intent is to allow legitimate consumers access to the medicine their family needs, while keeping pseudoephedrine out of the hands of meth “cooks.”

The written logbook system to track pseudoephedrine sales that is now in place in Kansas initially worked well as a deterrent. The low-tech paper system has, however, proved cumbersome for law enforcement, and prevents meaningful sharing of real time information between pharmacists, retailers, and authorities. The written logs do nothing to catch meth “cooks” in the act of purchasing illegal quantities of pseudoephedrine – allowing them to continue selling their drugs in our communities. The bad guys have adapted their methods to take advantage of the present log book system by simply going from pharmacy to pharmacy making small PSE purchases that individually would not constitute a violation of Kansas law.

In order to correct this problem, several states have adopted, or are considering adopting electronic logbooks to provide law enforcement real time reporting of illegal pseudoephedrine purchases.

A real time, web based tool will enable pharmacists, retailers, and law enforcement to track the sales of products containing pseudoephedrine. The online system instantly alerts law enforcement if an individual is attempting to make an illegal purchase, allowing them to catch the potential meth “cook” or his runners in the act. In addition, such a system will allow cross-border cooperation between jurisdictions. Electronic logging of pseudoephedrine sales has been highly effective where deployed.

I urge the Committee to pass SB 248.

Corrections and Juvenile Justice
Date: 3-18-09
Attachment # 3-1

Testimony in Support
Of
SENATE BILL No. 248
House Corrections and Juvenile Justice
Presented by Steven Wilhoft
On behalf of
Kansas Attorney General Stephen N. Six and
The Kansas Bureau of Investigation

March 18, 2009

Madam Chairperson and Members of the Committee:

My name is Steven Wilhoft and I am an Assistant Kansas Attorney General with the Southeast Kansas Drug Enforcement Task located in Pittsburg, Kansas. Thank you for the opportunity to submit information for your consideration regarding electronic tracking of methamphetamine precursors.

I work for the Kansas Bureau of Investigation and the Kansas Attorney General's Office and prosecute felony drug cases for the Southeast Kansas Drug Enforcement Task Force, the majority of which involve the manufacture of methamphetamine.

The Southeast Kansas Drug Enforcement Task Force is comprised of four K.B.I. Special Agents and two other Task Force Agents provided by the Crawford County Sheriff's Department and the Pittsburg Police Department. The Southeast Kansas Drug Enforcement Task Force provides drug enforcement services for Allen, Bourbon, Cherokee, Crawford, Labette and Neosho Counties.

As you are aware, there has been an increase in the number of clandestine methamphetamine laboratories across the State of Kansas. The essential precursor ingredient that is required for the manufacture of methamphetamine is ephedrine and/or pseudoephedrine.

The Kansas Legislature made great strides in attempting to limit the purchase of products containing pseudoephedrine and ephedrine when it passed legislation placing products containing pseudoephedrine and ephedrine behind the pharmacy counter. That legislation also required the purchaser of those products to provide photo identification to the seller showing their date of birth and further requiring the purchaser to sign a log. The log required by statute also contained the purchaser's address, the date and time of sale, the name of the controlled substance and the quantity sold.

The Kansas Legislature again did a good job in attempting to curtail the manufacture of methamphetamine when it passed the Sheriff Matt Samuels Chemical Control Act which

Corrections and Juvenile Justice

Date: 3-18-09

Attachment # 4-1

limited the amount of pseudoephedrine and ephedrine that a person could purchase in any single transaction or within any 30-day period.

At first glance, it appeared that these two legislative strategies were very effective in reducing the number of methamphetamine laboratories that were operating in the State of Kansas. It appeared that the overall meth lab numbers were down from prior years. However, this, in reality, was not the case as meth cooks found their way around these laws by going from pharmacy to pharmacy, often in different cities to obtain the pseudoephedrine that they needed for their meth lab operations.

These meth cooks would often have their associates go from pharmacy to pharmacy, again often in different cities, to purchase the pseudoephedrine that they needed to complete their meth cooks. The meth cook would pay these associates for each box of pseudoephedrine that they could purchase either in cash (sometimes as high as \$50.00 a box) or in product (up to 1/4 gram of methamphetamine). This practice became known as "smurfing" and some smurfers would travel from Pittsburg to Kansas City to Lawrence to Wichita purchasing pseudoephedrine at pharmacies in each town to trade to the meth cook for either cash or product. Some of these smurfers ran a regular weekly route to predetermined cities to purchase pseudoephedrine for use in cooking meth.

Law enforcement officers were unable to determine the identity of individuals who were violating the Matt Samuels law because pseudoephedrine was being purchased outside of their individual jurisdictions. There was no statewide centralized source of data that could be checked by law enforcement officers to determine who had been purchasing pseudoephedrine for use in manufacturing meth because each pharmacy maintained its own individual logbook. There was no way for law enforcement officers to know which individuals had been purchasing pseudoephedrine over the limits imposed by the Matt Samuels Law.

The only way that law enforcement officers were able to determine individual violations of the Matt Samuels law was either from tips they received, or after making an arrest and obtaining information about pseudoephedrine purchases from those suspects that they had arrested. After receiving information in that way, law enforcement officers would go to the pharmacies that had been identified by tipsters or suspects and they would manually check the pseudoephedrine purchase logs at those pharmacies for violations of the Matt Samuels Law and to determine which of those individuals might be purchasing large quantities of pseudoephedrine for use in the manufacture of meth.

Going from pharmacy to pharmacy in a city or county and manually checking the pseudoephedrine purchase logs became the only method that law enforcement officers could use to verify whether an individual had purchased large quantities of pseudoephedrine to use in the manufacture of methamphetamine. This method is very time consuming and is a very labor intensive and takes time away from other investigations that need to be conducted by local law enforcement agencies. At one point the Southeast Kansas Drug Enforcement Task Force assigned one Task Force Agent the additional duty of going to the pharmacies in Pittsburg, Kansas to collect

those purchase logs. That Task Force Agent would then manually input the data obtained from those logs into the Task Force's computer system so that smurfing activities could be detected and investigated.

The trouble with this system was that, by the time that the data had been manually input into the Task Force computer, the pseudoephedrine had already been traded to a meth cook and the meth had been manufactured.

The key to stopping the manufacture of methamphetamine is to cut off the supply of pseudoephedrine and ephedrine before it gets into the hands of the meth cook.

That is why the Kansas Bureau of Investigation and the Kansas Attorney General support Senate Bill 248 because a statewide electronic real time pseudoephedrine purchase log system would compile data from pharmacies across the State of Kansas which in turn would allow law enforcement agencies to identify those individuals who are going from city to city from pharmacy to pharmacy to purchase pseudoephedrine for use in the manufacture of meth.

Senate Bill 248 provides that the electronic precursor recording log would have the technological capability to receive electronic log data from pharmacies and to send real time notification to law enforcement officials. Law enforcement officers would then be able to use that real time data to investigate those individuals who are purchasing large quantities of methamphetamine precursors for use in the manufacture of methamphetamine before those precursors get into the hands of meth cooks. The time lapse that formerly existed between manually collecting the data contained in the logs and conducting an investigation would be greatly reduced by the use of an electronic monitoring system. This would free up more manpower hours for investigations rather than using those same manpower hours going from pharmacy to pharmacy to look at the pseudoephedrine purchase logs at each pharmacy.

Further, it is in the interest of the legislature to reduce spending statewide because of budget constraints and reducing the number of meth labs in the State of Kansas will help promote that goal.

If Senate Bill 248 is passed, it will reduce the number of meth labs in Kansas, including the costs to taxpayers for the legal defense of those individuals accused of manufacturing methamphetamine. Last year the Board of Indigents Defense spent approximately \$680,000.00 defending level 1 and 2 drug felonies. Much of this money is being used to defend meth manufacturers (however, some of that figure is attributable to second time drug sellers which is a level 2 drug felony).

Further, because the Kansas Department of Health and Environment has announced that it will no longer clean up meth lab sites across the State of Kansas, the burden and expense of cleaning up those lab sites has to fall on someone. Most likely it will be local and county governments who are also under severe budget constraints. Reducing the number of meth labs across the State of Kansas will also reduce the financial burden on

those city and county governments because the fewer meth labs there are, the fewer tax dollars they will have to expend to clean up those meth lab sites.

The K.B.I and the Kansas Attorney General believe that this bill should be passed because it will have the effect of reducing the number of meth labs in the State of Kansas.

Thank you for permitting me to testify and I will be happy to yield to questions of the Committee.

KANSAS

BOARD OF PHARMACY
DEBRA L. BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony in Support
Of
SENATE BILL No 248
House Corrections and Juvenile Justice
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
March 18, 2009

Madam Chairperson and Members of the Committee:

My name is Debra Billingsley and I am the Executive Secretary of the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom is appointed by the Governor. Of the six, five are licensed pharmacists and one is a member of the general public. They are charged with protecting the health, safety and welfare of the citizens of Kansas and to educate and promote an understanding of pharmacy practices in Kansas.

Thank you for the opportunity to submit information for your consideration regarding electronic tracking of products containing ephedrine and pseudoephedrine. The Board of Pharmacy supports this bill as well as the partnership we will have with law enforcement in combating the use of methamphetamine.

Last year the Legislature passed SB 491 establishing a Methamphetamine Precursor Scheduling Task Force. The legislation created a multi-stakeholder committee that would study the possibility and practicality of making ephedrine and pseudoephedrine products a schedule III or IV drug. The study included the impact such a change would have on the cost to the consumer and on consumer access. I have attached a copy of the Task Force's Legislative Report for your review.

The Task Force also studied the practicality of implementing an electronic log book related to purchases of pseudoephedrine products. The Task Force implemented two separate pilot programs in the state that would record PSE and ephedrine sales transactions electronically. Currently, under federal and state law each pharmacy must keep either a bound hard copy or an electronic logbook which contains the name of the person purchasing, receiving, or acquiring the ephedrine or pseudoephedrine; the address

of the person; the date and time of sale; the name and quantity of the drug sold; and a signature of the customer. This method does not impede the sale of these commonly used products. There is no cost to the consumer and no inconvenience. The problem with the hard bound copy is that it is labor intensive for the pharmacy to fill out and labor intensive for law enforcement to track abusers. It is not cost effective for each local law enforcement agency to copy the logbook and to manually search for abusers. The electronic system was used by at least 64 percent of the pharmacists in the state and they found it easy to maintain. Law enforcement also found the electronic logbook to be less labor intensive and cost effective in tracking those individuals who purchased over the legal limit. They felt that it was a useful tool in combating methamphetamine abuse.

The annual cost of such a program would be \$300,000 to \$350,000 a year. It was the Task Force's recommendation that the state invest in an electronic logbook program rather than scheduling this drug. The costs associated with health care, environmental cleanup, criminal activity, and harm to families and children greatly outweigh the costs of an electronic tracking system. Further, the Board of Pharmacy would be able to apply for funding through federal grants if legislation is in place.

Thank you for permitting me to testify and I will be happy to yield to questions of the Committee.

KANSAS METHAMPHETAMINE
PRECURSOR SCHEDULING
TASK FORCE
LEGISLATIVE REPORT



Prepared by the
Kansas Methamphetamine Precursor
Scheduling Task Force Committee
Michael Coast, R.Ph., Chairman
January 2009

Executive Summary

The 2008 Legislature passed legislation (SB 491) that established a Methamphetamine Precursor Scheduling Task Force. The legislation created a multi-stakeholder committee that would study the possibility and practicality of making methamphetamine precursors a schedule III or IV drug. The study was to include the impact such a change would have on consumer access and cost.

The task force members are Michael Coast, R.Ph., Board of Pharmacy; Brian Caswell, R.Ph., Kansas Pharmacists Association; Dr. John Whitehead, Kansas Medical Society; Jeff Brandau, Kansas Bureau of Investigation; Mandy Hagan, Consumer Health Product Association; Dr. Margaret Smith, Kansas Health Policy Authority; Dr. Mary Franz, Kansas Association of Osteopathic Medicine; Dr. Michael Beezley, Kansas Board of Healing Arts; Steve Wilhoft, Kansas Attorney General's Office.

The task force opened the meeting and there were many stakeholders who attended the meetings and provided input.

I. Background

In 2005 the Kansas Legislature passed the Sheriff Matt Samuels Chemical Control Act (SB 27) scheduling all single and combination products that contained any amount of ephedrine or pseudoephedrine (PSE) that were in starch tablet form or gel coated as a Schedule V drug. Single active ingredient PSE or combination ephedrine and combination PSE products that were in liquid, capsule or gel-filled capsules were exempt and could continue to be sold over the counter at retail stores. The Combat Epidemic Act of 2005 further required that the sale of PSE or ephedrine be limited to 3.6 grams/day or 9 grams/month. A consumer purchasing a Schedule V drug was required to have the sale recorded in a logbook.

In 2007 the Kansas Legislature passed HB 2062 in order to reconcile provisions of the Sheriff Matt Samuels Chemical Control Act of 2005 to provisions of the federal Combat Methamphetamine Epidemic Act of 2005. Effective July 1, 2007 any compound, mixture, or preparation containing any detectable quantity of ephedrine or PSE were scheduled as a Schedule V and required to be sold at a pharmacy.

In 2008 the Kansas Legislature passed SB 491 establishing the Methamphetamine Precursor Scheduling Task Force. This report has been prepared for the Senate President and the Speaker of the House as required in the statute. The purpose of this report is to provide a detailed and comprehensive review of the Kansas Methamphetamine Precursor requirements and to provide any recommendations to the Legislature regarding the continued battle against illicit methamphetamine use.

II. Problem Defined

Alcohol and drug problems are among the most significant social issues this nation faces. Methamphetamine is a highly addictive central nervous system stimulant that can be injected, snorted, smoked or ingested orally. Methamphetamine users feel a short yet intense "rush" when the drug is initially administered. Long term use of methamphetamine can cause addiction, anxiety, insomnia, mood disturbances, and violent behavior. Additionally, psychotic symptoms such as paranoia, hallucinations, and delusions can occur.

Most methamphetamine is imported from other countries, but some of it is still produced in clandestine laboratories and distributed on the black market. These small toxic laboratories are still found throughout the state. Most of these laboratories operate using the "birch" method and can be found in many different locations, including residences, hotels, vehicles, and remote farm areas. The laboratory operators continue to purchase the necessary ingredients by going from store to store purchasing the maximum allowable amounts (a process known as "smurfing") and stealing other ingredients such as anhydrous ammonia. The ease of clandestine synthesis, combined with tremendous profits, has resulted in significant availability of illicit methamphetamine. Kansas has seen a 51 percent increase in methamphetamine labs just in the last year. Methamphetamine is manufactured using common household ingredients (precursor chemicals). Producers usually use cold medications containing ephedrine or pseudoephedrine as the main component. Other items used to cook methamphetamine include chemicals derived from drain cleaners, lithium batteries, lantern fuel, starter fluid, acetone, and anhydrous ammonia.

According to the 2007 National Survey on Drug Use and Health approximately 1.3 million Americans aged 12 or older reported using methamphetamine at least once during their lifetimes. This represents 5.3 percent of the population aged 12 or older. More than 1.3 million (0.5%) reported in the past year methamphetamine use and 529,000 (0.2%) reported past month methamphetamine use.

Clandestine labs present numerous hazards to people and the environment. There is an extreme potential for fires, explosions and exposure to hazardous chemicals and fumes. For every pound of methamphetamine produced about six pounds of hazardous wastes are left behind. The average cost of a clean up is about \$5000 but can climb as high as \$150,000 for a large scale lab.

The Drug Abuse Warning Network (DAWN) has estimated that of the 108 million emergency department visits in the United States during 2005 1,449,154 visits were associated with drug misuse or abuse. DAWN data also indicated that methamphetamine was involved in 108,905 of the drug related visits to the hospital.

Illicit methamphetamine use takes a toll on the state related to health care costs, environmental costs, criminal activity, and harm to families and children. The task force

also determined that approximately \$680,000 (not counting the public defender's office) was spent on the indigent defense fund to defend methamphetamine and cocaine cases that are higher level felonies. These are level 1 and level 2 drug felonies. Much of this money is being used to defend meth manufacturers as well as the other drug crimes.

The Task Force agreed that the state has several choices. The state could do nothing, implement electronic tracking, schedule PSE and ephedrine as a schedule III or IV drug, or make PSE products a 3rd Class Drug. Each of these choices were reviewed and discussed in-depth.

III. Electronic Tracking Pilot Programs

The Task Force implemented two separate pilot programs in the state that would record PSE and ephedrine sales transactions electronically. The MethShield program was in the Southwest part of the state and at least 64 percent of the community pharmacies voluntarily participated in the pilot. The MethCheck program was conducted in the Southeast section of the state. Both projects were provided to the state at no cost.

One of the programs provided point of sale scanners and signature pads, but both were Internet based and the consumer sales were recorded electronically. Both systems will also block sales, or stop the sale, if the amount of PSE being purchased is in violation of the Combat Meth Act, so that a transaction cannot be completed. The Kentucky Office of Drug Control Policy did a presentation for the task force and they recommended that a stop sale system be implemented because it is difficult for law enforcement to investigate all illegal transactions. The transactions could then be submitted to required State interfaces such as law enforcement. The programs could provide real-time link analysis of individuals, mapping transactions, and email alerts for purchases. The pilot program indicated that there were still many illegal purchases occurring within the borders of Kansas. A small percentage of buyers were purchasing excessive quantities. The annual cost for such a program would be \$300,000 to \$350,000 a year.

Tracking easily enforces the legal limits and the states that have implemented electronic tracking have shown a dramatic reduction in meth labs. Most of the police departments involved with the study indicated that it was difficult to deal with the logbooks unless they were electronically maintained. It continues to allow access for the law abiding citizens and it eliminates smurfing. It also provided the tools necessary for a prosecutor to build a case against an individual who is gaining access for illegal purposes.

Both pilot projects showed that the local pharmacies were eager to participate to ensure that PSE was not sold in excess of the Combat Meth Act limits. The major chain stores in both pilot areas, i.e. Wal-Mart, Walgreens, etc., did not participate and statutory requirements would be needed to mandate their participation. With chain stores selling the bulk of the PSE products in the state statutory language would be required to ensure success of an electronic tracking program.

IV. Scheduling PSE and Ephedrine as Schedule III or IV

Oregon is the only state that has scheduled PSE and Ephedrine products as a Schedule III. A prescription is required for any consumer that would want to purchase a cold product that contains PSE or Ephedrine. Oregon has shown a reduction in meth labs but they did not have any statistical information to share regarding a reduction in costs to the consumer or the state.

There would be a reduction in sales tax if PSE were made a prescription drug. PSE sales in Kansas for the year ending December 31, 2008 (not including Wal-Mart) were:

Boxes: 483,543

Dollars: \$4,926,334

Sales Tax: \$261,095

The task force felt that while prescriptions would deter "smurfing" that it would be detrimental to the consumer. There would probably be an increase in "doctor shopping" or a violator would simply go to multiple doctors for a prescription. Scheduling PSE would decrease the current sales tax collected or additional taxes on products. Further, the physicians who were polled indicated that it would be a burden on prescribers to see each patient in order to write a prescription for cold medications. It would burden the consumer who could have additional co-pays for the physician visit and it was considered that many consumers may not even have a physician/patient relationship. The overall cost associated with the increase in insurance and obtaining health care is not the most effective use of state resources. Requiring a prescription would also burden the state's Medicaid and Medicare systems if a patient had to see a physician in order to obtain a cold medication. The task force did not view this option as one that would be a cost saving mechanism.

V. Third Class Drugs

The task force discussed the option of making all PSE and ephedrine products a third class drug. This would allow the pharmacist to write prescriptions and negate the necessity for a doctor's visit. There would be no additional cost to the consumer because there would be no co-pay and there would be no additional time taken from the physician. The Kansas Pharmacist Association and Kansas Independent Pharmacy Service Corporation surveyed their members about whether PSE and ephedrine products should be treated as a third class drug. About 1/3 of the members felt that there should be no change in the law related to making PSE a 3rd class drug. Another 1/3 supported making PSE a third class drug because this would not impede a law abiding patient from obtaining cold medication. The other 1/3 supported either a third class of drug or scheduling the PSE as a prescription only drug. Having a third class of drugs may be a viable option in the future for similar type drugs but it would probably not be the best way to solve the PSE problem at this time.

VI. Recommendation

The Kansas Methamphetamine Precursor Scheduling Task Force would respectfully submit their recommendation to the Kansas Legislature. After much discussion and study the Task Force would recommend that the state not maintain the status quo and the state should invest in an electronic real-time logbook system. The task force would emphasize that an electronic logbook would allow law abiding citizens the ability to have drugs that are used for common cold symptoms. The task force did not want to impede consumers from having the ability to treat themselves for the common cold. The cost associated with illicit methamphetamine activity is greater than the small amount needed to implement electronic tracking and this has proven to be effective. The current manual tracking that is now in place is labor intensive and not cost effective. The task force realized that the best use of state resources would be to require mandatory use of a real-time electronic tracking system by any pharmacy that is selling PSE or ephedrine products.



GACHES, BRADEN & ASSOCIATES

Government Relations & Association Management

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**Testimony of Kansas Independent Pharmacy Service Corporation
Regarding SB 248 – Electronic Logging System for Meth Precursors
Presented to House Corrections and Juvenile Justice
By Ron Gaches
Wednesday, March 18, 2009**

The Kansas Independent Pharmacy Service Corporation supports passage of Senate Bill 248. KIPSC members have been active participants in the two electronic lobbying systems pilots over the past year with good results. KIPSC members have confidence in the systems and agree with law enforcement officials that this step is an important component of a comprehensive program to discourage illegal methamphetamine production in Kansas.

We have two concerns for your consideration as you discuss the bill.

First, we strongly believe the financial burden for this program should fall on the State of Kansas and not retail pharmacists. We believe this issue is adequately addressed in the bill, but would have concerns about any language that put the burden for financing the program on the Board of Pharmacy. Pharmacy Board revenues currently come only from licensees fees.

Second, there have been significant discussions outside of committee about the relative merits and difficulty of implementing the logging program and the practicality of “real time” submission of records into the system. Whatever the outcome of that discussion, we believe it is important that independent community pharmacies and chain pharmacies be held to the same standard. KIPSC will oppose a two-tier system that places different levels of compliance on independent pharmacies as compared to chain pharmacies. KIPSC has confidence that the rule and regulation process within the Kansas Board of Pharmacy will properly address this issue.

Thank you for your consideration of our concerns. Please don't hesitate to contact Ron Gaches with any questions or comments you may have about this issue or other issues of concern to community pharmacies.

Corrections and Juvenile Justice
Date: 3-18-09
Attachment # 6-1



Kansas Association of Chiefs of Police
PO Box 780603, Wichita, KS 67278 (316)733-7301

Kansas Peace Officers Association
PO Box 2592, Wichita, KS 67201 (316)722-8433



March 18, 2009

**Testimony to the House Corrections and Juvenile Justice Committee
In Support of SB248
Electronic Logging Sale of Meth Precursor-Pseudoephedrine**

Madam chair and committee members,

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association strongly support the provisions of SB248 establishing a system for the electronic logging of the sale of pseudoephedrine, a precursor for the manufacture of methamphetamine. Our associations view the enactment of this step in the reduction of methamphetamine production in Kansas as very important. In fact, at our joint legislative conference in early February, the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriff's Association identified the passage of this bill as one of our six priorities for this legislative session. Those priorities are selected on their impact on improving public safety and support of law enforcement efforts in Kansas.

The system is based on a very successful pilot program in southeast Kansas. It is also known that several other major pharmacies operating in Kansas are ready to join this effort, but their policies require a state mandate before they will do so. This electronic log will save valuable officer time and resources currently necessary to follow up when persons buy excessive amounts of pseudoephedrine, the primary ingredient in the methamphetamine manufacturing process. It will also allow law enforcement to more quickly identify persons buying excessive amounts of these precursors. Armed with that information we will have a better opportunity to intervene prior to the harmful manufacturing process taking place.

The production of methamphetamine poses an extreme danger to anyone near the manufacturing process or exposed to the manufacturing residue. The persons manufacturing this illegal drug are totally indifferent to the dangers they create. They leave the dangerous chemical residue left over from the manufacturing process abandoned in open areas, motel rooms, and other places where children and others can unwittingly become exposed to the resulting health risk exposure. They conduct their manufacturing process in populated areas where others can be exposed to the chemical fumes and the dangers of fire and explosion associated with the manufacturing process.

We strongly encourage you to help us to become more efficient and effective in investigating this dangerous criminal activity by recommending this bill favorably for passage.

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

Ed Klumpp
Legislative Committee Chair-KACP
Legislative Committee Chair-KPOA
eklumpp@cox.net
Phone: (785) 640-1102

Corrections and Juvenile Justice
Date: 3-18-09
Attachment # 7-1

HEIN LAW FIRM, CHARTERED

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Ronald R. Hein
Attorney-at-Law

Email: rhein@heinlaw.com

Testimony re: SB 248
House Corrections and Juvenile Justice Committee
Presented by Ronald R. Hein
on behalf of
Kansas Pharmacy Coalition
March 18, 2009

Madam Chair, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores.

The KPC supports SB 248 as it has been amended by the Senate Public Health and Welfare Committee. The KPC had serious concerns about the bill as it was originally introduced, but through extensive negotiations, the concerns of pharmacy were addressed, and the KPC now supports the legislation and its intent to benefit law enforcement in their efforts to stem methamphetamine production in this state. With the amendments placed on the bill, pharmacy is protected from the problems that could have resulted if our concerns about real-time, stop sales requirements, costs being borne by pharmacy for the electronic tracking system had not been resolved.

With the changes we requested in the Senate having been made, the KPC has withdrawn the opposition to SB 248 that they expressed in the Senate hearing, and now stand in support of the amended version of SB 248.

Thank you very much for permitting me to submit written testimony, and I will be available for questions from the committee.

Corrections and Juvenile Justice

Date: 3-18-09

Attachment # 8-1

TO: THE HONORABLE PAT COLLOTON, CHAIR
HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
EXPRESS SCRIPTS

RE: S.B. 248

DATE: MARCH 18, 2009

Madam Chair, Members of the Committee: My name is Bill Sneed and I represent Express Scripts, one of America's largest pharmacy benefit managers, providing the pharmacy benefit for millions of people nationwide through employers, managed care plans, unions and governmental entities. Express Scripts is a company dedicated to making the use of prescription drugs safer and more affordable for plan sponsors and over fifty million members and their families. We appreciate the opportunity to present testimony on S.B. 248.

S.B. 248 requires pharmacies to maintain an electronic precursor recording log documenting the sale of methamphetamine precursors. It also requires pharmacies to submit to the State Board of Pharmacy the electronic precursor recording log and provides for penalties for pharmacies that fail to submit logs to the Board.

Express Scripts supports the general concept of the bill; however, they have several concerns with the contents and requirements included in S.B. 248. As a PBM, there are currently several checks and balances in place to help monitor abuse of methamphetamine precursors. Most importantly, Express Scripts only dispenses these products with a valid prescription. They

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Attachment # 9-1

do not dispense these substances “over the counter.” This limitation enables a PBM to monitor usage through the health plan, the plan’s formulary and the basic requirement of a prescription before the order is filled by the PBM. Creating an electronic log would be repetitive, extremely burdensome and expensive to administer. In addition, PBMs have no way of tracking or communicating an electronic signature from a consumer.

At the Senate hearings, our industry raised these issues and requested a specific exclusion that would cover PBMs. The response back from the Kansas Board of Pharmacy was that since K.S.A. 2008 Supp. 65-1643 was being cross-referenced in the bill, the exception found at K.S.A. 2008 Supp. 65-1643(k)(2) would exclude PBMs from S.B. 248’s requirements. After we reviewed this point we agreed with the Kansas Board of Pharmacy and withdrew our request.

The Senate Committee and the Senate Committee of the Whole made several amendments to the bill, one of which would include a cross-reference to K.S.A. 65-1657, which authorizes the regulation of nonresident pharmacies. This statute would cover PBMs and does not carry the exemption found in K.S.A. 2008 Supp. 65-1643(k)(2).

Thus, we would respectfully renew our request that the Committee amend the bill at the beginning of line 41 as follows:

“Except in instances where a valid prescription is present for the product.”

Thank you, and we would be happy to respond to questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "WWS", written in a cursive style.

William W. Sneed

WWS:kjb

048290 / 099671
WWSNE 1737025.2

PROPOSED Substitute for HOUSE BILL No. 2340
By Committee on Corrections and Juvenile Justice

AN ACT concerning the parole board; relating to factors and rationale used to determine parole;
amending K.S.A. 2008 Supp. 22-3717 and 75-4319 and repealing the existing sections.

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

Section 1. KSA 2008 Supp. 22-3717 is hereby amended to read as follows: 22-3717.

(a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638, and amendments thereto; K.S.A. 8-1567, and amendments thereto; K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624, and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, and amendments thereto, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

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(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 1 through 4 crimes and drug severity levels 1 and 2 crimes must serve 36 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(D) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant

to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of postrelease supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) 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.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section.

"Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or

conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the

inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a, and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear ~~before~~ either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would

be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the

amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to the effective date of this act who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the Kansas parole board or the court orders a person to be electronically monitored, the board or court shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(w) On and after July 1, 2008 through June 30, 2010, information, records and reports from the parole board concerning factors and rationale used to determine the granting or denial of parole, shall be available to members of the standing senate committee on judiciary, house committee on corrections and juvenile justice and the joint committee on corrections and juvenile justice, when carrying out such committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Information, records and reports received by the committee are confidential and shall not be further disclosed. Such information, records and reports received shall not be subject to K.S.A. 45-221, and amendments thereto. All copies of such information, records and reports shall be returned to the parole board prior to the open meeting resuming. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. The parole board shall provide to such legislative members a summary statement of the factors and rationale used to determine such grant or denial. Such information shall include such summary statement and any correspondence received by the parole board relating to such grant or denial.

Sec. 2. K.S.A. 2008 Supp. **75-4319** is hereby amended to read as follows: **75-4319.(a)** Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

- (1) Personnel matters of nonelected personnel;
- (2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- (3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;
- (4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- (5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- (6) preliminary discussions relating to the acquisition of real property;
- (7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;
- (8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection (e) of K.S.A. 38-1508 and amendments thereto;
- (9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;
- (10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e)

of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119 and amendments thereto;

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or

(D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto; ~~and~~

(15) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2008 Supp. 75-7427, and amendments thereto; and

(16) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (w) of K.S.A. 22-3717, and amendments thereto .

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action. Any confidential records or information relating to the parole board provided or received under the provisions of subsection (b)(16), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 3. K.S.A. 2008 Supp. **22-3717 and 75-4319** are hereby repealed.

Sec. 4. Statute book.