

Approved: March 18, 2010

Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:37 a.m. on February 24, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Judge Phil Journey

Others attending:

See attached list.

The Chairman opened the hearing on **SB 520 - Employment of county and city prisoners, credit on fines and costs earned.** Jason Thompson, staff revisor, reviewed the bill.

Judge Phil Journey appeared as a proponent and sponsor of the bill. Judge Journey indicated the initially was an attempt to equalize labor provided as a jail trustee or in community service in lieu of paying fines or costs for those indigent and unable to satisfy obligations imposed by the court. The intent of this bill is to bring provisions similar to K.S.A. 8-1567(j) and recommended a proposed amendment to further clarify the bill. (Attachment 1)

There being no further conferees, the hearing on **SB 520** was closed.

The Chairman opened the hearing on **SB 521 - Amending qualifications for secretary of corrections.**

Judge Phil Journey appeared as a proponent and sponsor of the bill. Judge Journey indicated in his experience as a former Legislator there are many individuals with the insight and understanding to qualify to serve as the Secretary of Corrections. This would provide the Governor increased flexibility in filling the position as it comes open. Judge Journey proposed adding the degree of juris doctorate to the list of acceptable college degrees in section (b)(3)(B) of the bill. (Attachment 2)

There being no further conferees, the hearing on **SB 521** was closed.

The Chairman called for final action on **SB 399 - Controlled substances; aggravated endangering a child; enhanced penalties for distributing on park property and distributing to a child or pregnant person.**

Senator Schmidt reviewed the various amendments recommended previously and distributed a balloon amendment. Jason Thompson, staff revisor, reviewed the proposed balloon. (Attachment 3)

The Chairman recommended the Committee review the balloon and continued final action on **SB 399** to the next meeting of the Committee.

The next meeting is scheduled for February 25, 2010.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 24, 2010

NAME	REPRESENTING
Alan Pedigo	Ks Sentencing Commission
Mark Gibson	Judicial Branch
Phil Young	Wichita Self
Loretta Severin	KS Alliance for Drug Endangered Children
DAVID HUTCHINGS	KBI
Braydon Niles	Terry Bruce - Sen
Kalen Hiest	Sen Terry Bruce
Rachael Lyralte	Mary Pilcher - Cook
Catherine Hernandez	Mary Pilcher Cook
Ashley Roberts	Mary Pilcher Cook
Shana Pedro	Sen. Mary Pilcher Cook
Ed Kump	KACP/KPWA/KSA
Cody Knight	Sen. Derek Schmidt
Ryan War	Senator Derek Schmidt
Ann Kelly	JJA
JEREMY S BARCLAY	KDOC
Sarah Gulliooly	PPKM
Mark Stock	KDWP

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 24, 2010

NAME	REPRESENTING
Levi Henry	Sandstone Group LLC
Jackson Lindsey	Hein Law
Flatta Pringle	TFI
Sean Miller	CAPITOL STRATEGIES
Joseph Molina	KS BART ASSN
Barbara Hollingsworth	Capital-Journal

Phillip B. Journey
7079 S. Meridian
Haysville, Kansas 67060
316-529-0554, 316-660-5601

TESTIMONY BEFORE THE KANSAS STATE SENATE JUDICIARY COMMITTEE IN
SUPPORT OF SB-520

Presented on Wednesday, February 24, 2010

Mr. Chairman, Members of the Committee thank you very much for approving this bill request, and the opportunity to have a hearing and to testify before the committee in support of Senate Bill 520. When I originally made the request for SB 520, I intended to rectify what I perceived to be an inequity regarding labor provided either as a jail trustee or in community service in lieu of paying court assessed fines or costs for those indigent and unable to satisfy the obligation imposed by the court as a result of their convictions for various crimes. Currently, K.S.A. 22-4603 only provides for a credit of \$5 per day in programs utilizing individuals in custody by a county sheriff, town marshal, chief of police, under the direction of county commissioners or the governing body of a city. The intent of the request was to bring provisions similar to K.S.A. 8-1567(j) into the statute proposed to be amended. I appreciate the committee's approval of the bill request and the reviser's efforts in accomplishing that request.

To bring the original intent of the request to realization, I would propose the following amendment to SB 520 subject to the reviser's drafting and would seek the committee's permission to work with the reviser's office in ensuring the original intent of the bill request. The following language should be inserted in the bill:

"In lieu of payment of fines imposed pursuant to conviction and sentencing for felony or misdemeanor crimes, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine or costs imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date. In the event remittance of any fine is rescinded by the court for any reason, then pursuant to the courts' order the defendant may be ordered to perform community service one year from that date of rescission of the fines reduction through remittance. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fines shall become due on that date." All credits for community service or employment while in custody shall be subject to "review and approval" of the court.

Senate Judiciary

2-24-10

Attachment 1

This modification of current Kansas statute brings consistency to these similar provisions. Many of the defendants I see through my service to the state as a District Court Judge run afoul of the law, are indigent, and are unable to have the means to satisfy their obligations to the court for fines and court costs. Many of the individuals who appear before me suffer with some type of disability and do not have the earnings capacity necessary to satisfy minimum fines mandated by statute. Their service to the community has the potential to provide value to our state far in excess of the \$5 per hour rate granted by this statutory modification. It is important that individuals that are indigent have the ability to resolve these obligations to close these cases, and this is an equitable modification of statute bringing inconsistent statutory provisions into a congruent public policy dealing with various defendants' guilty of various crimes, and giving them all the same opportunities to resolve these matters that come before the court and satisfy their probationary or other obligations, as those convicted of driving under the influence. It is of course the committee's and legislative body's prerogative whether court costs should be included in these provisions. K.S.A. 8-1567(j) does not allow for community service to be credited against assessments such as probationary fees or court costs, only fines. Once again, let me thank the committee and the chairman for the opportunity to testify in support of SB 520. I hope that the proposed modifications and amendment to the statute are accepted by the committee as these are an expression of the original intent of the request.

Respectfully submitted,

PHILLIP B. JOURNEY

Phillip B. Journey
7079 S. Meridian
Haysville, Kansas 67060
316-529-0554, 316-660-5601

TESTIMONY BEFORE THE KANSAS STATE SENATE JUDICIARY
COMMITTEE IN SUPPORT OF SB 521
Presented on Wednesday, February 24, 2010

Mr. Chairman, Members of the Committee, thank you very much for the opportunity to have SB 521 drafted, to have a hearing and the opportunity to testify before the committee in support of SB 521. SB 521 amends K.S.A. 2009 Supp. 75-5203. Section (b) of the current statute requires that the individual appointed to become Secretary of Corrections by the Governor:

- has had at least five years' experience in the field of corrections or as an executive officer in the administration of federal or state penal or correctional institutions;
- or has had at least three years' experience in the field of corrections or as an executive officer in the field of corrections, and has a degree from an accredited college in penology or related field of study;
- or has had five years' experience as a federal or state judge or prosecutor, or five years' experience in military administration or of criminal justice administration or five years' experience treating offenders while in custody or on parole or probation; has a degree from an accredited college in social science, penology, corrections, criminal justice, police science, criminology, public administration or a related field; and has demonstrated administrative ability and leadership.

Section (c) of the current law provides the mechanism for the appointment of an individual who does not fulfill the current qualification requirements as an acting secretary subject to Senate approval through confirmation process.

The proposed bill adds to section (b) the additional qualification of five years' experience as a member of the either the House or Senate Judiciary Committees, House Standing Committee on Corrections and Juvenile Justice or the Joint Committee on Corrections and Juvenile Justice Oversight.

My experience in the legislature while serving as a Kansas State Senator with four years' on the Senate Judiciary Committee has provided me with the insight that the experience was a positive and informative assignment, and it surely would qualify such individuals to serve as Secretary of Corrections.

I believe the Governor should have this modicum of increased flexibility in filling the position as it comes open. It is important to note that whoever the Governor appoints as Secretary of Corrections will serve at the Governor's pleasure, and even though the confirmation process would be available for those who are not able to satisfy the current statutory requirements; I believe, and, I hope the committee agrees along with the body, that this experience by members of the appropriate committees would qualify them for service in the executive branch of our state government.

Upon careful review of section (b)(3)(B), I would request, subject to the reviser's drafting, the committee's approval to add an additional degree to the list, that of juris doctorate. As the degrees' listed seem to correlate with the experience in military administration, criminal justice administration, or treating offenders while in custody or on parole or probation, the degree of juris doctorate would correlate with the experience as a federal or state judge or prosecutor.

I note that in the letter dated February 16, 2010, prepared by the Kansas Division of the Budget and signed by Mr. Duane Goossen, that there is no fiscal effect in the adoption of this proposed bill.

Respectfully submitted,

PHILLIP B. JOURNEY

SENATE BILL No. 399

By Committee on Judiciary

SB399-Balloon2.pdf
RS - JThompson - 02/24/10

1-20

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to aggravated endangering a child; controlled substances; amend-
11 ing K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10 and
12 21-36a13 and repealing the existing sections.

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

15 Section 1. K.S.A. 2009 Supp. 21-3608a is hereby amended to read
16 as follows: 21-3608a. (a) Aggravated endangering a child is:

17 (1) Intentionally causing or permitting a child under the age of 18
18 years to be placed in a situation in which the child's life, body or health
19 is injured or endangered;

20 (2) recklessly causing or permitting a child under the age of 18 years
21 to be placed in a situation in which the child's life, body or health is
22 injured or endangered;

23 ~~(3) causing or permitting a child under the age of 18 years to be in~~
24 ~~an environment where such child has access to: (A) Any illegally possessed~~
25 ~~controlled substance, as defined in this section; or (B) any hypodermic~~
26 ~~syringes, needles or other objects used or intended for use in parenterally~~
27 ~~injecting any illegally possessed controlled substance into the human body;~~

← Strike

28 ~~(3) (4) causing or permitting such child to be in an environment~~
29 ~~where a person is selling, offering for sale or having in such person's~~
30 ~~possession with intent to sell, deliver, distribute, prescribe, administer,~~
31 ~~dispense, cultivate, attempt to cultivate, manufacture or attempt to man-~~
32 ~~ufacture any methamphetamine as defined by subsection (d)(3) or (f)(1)~~
33 ~~of K.S.A. 65-4107 controlled substance in violation of K.S.A. 2009 Supp.~~
34 ~~21-36a03 or subsection (a) of 21-36a05, and amendments thereto; or~~

(3)

35 ~~(4) (5) causing or permitting such child to be in an environment~~
36 ~~where drug paraphernalia or volatile, toxic or flammable chemicals, prod-~~
37 ~~ucts, chemicals, compounds, mixtures or preparations are stored for the~~
38 ~~purpose of manufacturing or attempting to manufacture any metham-~~
39 ~~phetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107~~
40 ~~controlled substance in violation of K.S.A. 2009 Supp. 21-36a09, and~~
41 ~~amendments thereto.~~

(4)

42 (b) Aggravated endangering a child is a severity level 9, person felony.
43 *The sentence for a violation of this section shall be served consecutively*

3-2

1 *to any other term or terms of imprisonment imposed. Such sentence shall*
2 *not be considered a departure and shall not be subject to appeal.*

3 (c) As used in this section:

4 (1) "Manufacture" shall have the meaning ascribed to that term in
5 K.S.A. 2009 Supp. 21-36a01, and amendments thereto; ~~and~~

6 (2) "drug paraphernalia" shall have the meaning ascribed to that term
7 in K.S.A. 2009 Supp. 21-36a01, and amendments thereto; *and*

8 (3) "controlled substance" means: (A) *Any drug, substance, or im-*
9 *mediate precursor included in any of the schedules designated in K.S.A.*
10 *65-4105, 65-4107, 65-4109 and 65-4111, and amendments thereto; and*
11 *(B) any controlled substance analog, as defined in K.S.A. 2009 Supp. 21-*
12 *36a01, and amendments thereto.*

13 (d) This section shall be part of and supplemental to the Kansas crim-
14 inal code.

15 Sec. 2. K.S.A. 2009 Supp. 21-36a01 is hereby amended to read as
16 follows: 21-36a01. As used in K.S.A. 2009 Supp. 21-36a01 through 21-
17 36a17, and amendments thereto:

18 (a) "Controlled substance" means any drug, substance or immediate
19 precursor included in any of the schedules designated in K.S.A. 65-4105,
20 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

21 (b) (1) "Controlled substance analog" means a substance that is in-
22 tended for human consumption, and:

23 (A) The chemical structure of which is substantially similar to the
24 chemical structure of a controlled substance listed in or added to the
25 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
26 thereto;

27 (B) which has a stimulant, depressant or hallucinogenic effect on the
28 central nervous system substantially similar to the stimulant, depressant
29 or hallucinogenic effect on the central nervous system of a controlled
30 substance included in the schedules designated in K.S.A. 65-4105 or 65-
31 4107, and amendments thereto; or

32 (C) with respect to a particular individual, which the individual rep-
33 represents or intends to have a stimulant, depressant or hallucinogenic effect
34 on the central nervous system substantially similar to the stimulant, de-
35 pressant or hallucinogenic effect on the central nervous system of a con-
36 trolled substance included in the schedules designated in K.S.A. 65-4105
37 or 65-4107, and amendments thereto.

38 (2) "Controlled substance analog" does not include:

39 (A) A controlled substance;

40 (B) a substance for which there is an approved new drug application;

41 or

42 (C) a substance with respect to which an exemption is in effect for
43 investigational use by a particular person under section 505 of the federal

1 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with
2 respect to the substance is permitted by the exemption.

3 (c) "Cultivate" means the planting or promotion of growth of five or
4 more plants which contain or can produce controlled substances.

5 (d) "Distribute" means the actual, constructive or attempted transfer
6 from one person to another of some item whether or not there is an
7 agency relationship. "Distribute" includes, but is not limited to, sale, offer
8 for sale or any act that causes some item to be transferred from one person
9 to another. "Distribute" does not include acts of administering, dispensing
10 or prescribing a controlled substance as authorized by the pharmacy
11 act of the state of Kansas, the uniform controlled substances act, or oth-
12 erwise authorized by law.

13 (e) "Drug" means:

14 (1) Substances recognized as drugs in the official United States phar-
15 macopoeia, official homeopathic pharmacopoeia of the United States or
16 official national formulary or any supplement to any of them;

17 (2) substances intended for use in the diagnosis, cure, mitigation,
18 treatment or prevention of disease in man or animals;

19 (3) substances, other than food, intended to affect the structure or
20 any function of the body of man or animals; and

21 (4) substances intended for use as a component of any article speci-
22 fied in paragraph (1), (2) or (3). It does not include devices or their
23 components, parts or accessories.

24 (f) "Drug paraphernalia" means all equipment and materials of any
25 kind which are used, or primarily intended or designed for use in planting,
26 propagating, cultivating, growing, harvesting, manufacturing, compound-
27 ing, converting, producing, processing, preparing, testing, analyzing,
28 packaging, repackaging, storing, containing, concealing, injecting, ingest-
29 ing, inhaling or otherwise introducing into the human body a controlled
30 substance and in violation of this act. "Drug paraphernalia" shall include,
31 but is not limited to:

32 (1) Kits used or intended for use in planting, propagating, cultivating,
33 growing or harvesting any species of plant which is a controlled substance
34 or from which a controlled substance can be derived;

35 (2) kits used or intended for use in manufacturing, compounding,
36 converting, producing, processing or preparing controlled substances;

37 (3) isomerization devices used or intended for use in increasing the
38 potency of any species of plant which is a controlled substance;

39 (4) testing equipment used or intended for use in identifying or in
40 analyzing the strength, effectiveness or purity of controlled substances;

41 (5) scales and balances used or intended for use in weighing or meas-
42 uring controlled substances;

43 (6) diluents and adulterants, including, but not limited to, quinine

- 1 hydrochloride, mannitol, mannite, dextrose and lactose, which are used
2 or intended for use in cutting controlled substances;
- 3 (7) separation gins and sifters used or intended for use in removing
4 twigs and seeds from or otherwise cleaning or refining marijuana;
- 5 (8) blenders, bowls, containers, spoons and mixing devices used or
6 intended for use in compounding controlled substances;
- 7 (9) capsules, balloons, envelopes, bags and other containers used or
8 intended for use in packaging small quantities of controlled substances;
- 9 (10) containers and other objects used or intended for use in storing
10 or concealing controlled substances;
- 11 (11) hypodermic syringes, needles and other objects used or intended
12 for use in parenterally injecting controlled substances into the human
13 body;
- 14 (12) objects used or primarily intended or designed for use in in-
15 gesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
16 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine
17 into the human body, such as:
- 18 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
19 or without screens, permanent screens, hashish heads or punctured metal
20 bowls;
- 21 (B) water pipes, bongs or smoking pipes designed to draw smoke
22 through water or another cooling device;
- 23 (C) carburetion pipes, glass or other heat resistant tubes or any other
24 device used or intended to be used, designed to be used to cause vapor-
25 ization of a controlled substance for inhalation;
- 26 (D) smoking and carburetion masks;
- 27 (E) roach clips, objects used to hold burning material, such as a ma-
28 rijuana cigarette, that has become too small or too short to be held in the
29 hand;
- 30 (F) miniature cocaine spoons and cocaine vials;
- 31 (G) chamber smoking pipes;
- 32 (H) carburetor smoking pipes;
- 33 (I) electric smoking pipes;
- 34 (J) air-driven smoking pipes;
- 35 (K) chillums;
- 36 (L) bongs;
- 37 (M) ice pipes or chillers;
- 38 (N) any smoking pipe manufactured to disguise its intended purpose;
- 39 (O) wired cigarette papers; or
- 40 (P) cocaine freebase kits.
- 41 (g) "Immediate precursor" means a substance which the board of
42 pharmacy has found to be and by rules and regulations designates as being
43 the principal compound commonly used or produced primarily for use

2-5

1 and which is an immediate chemical intermediary used or likely to be
2 used in the manufacture of a controlled substance, the control of which
3 is necessary to prevent, curtail or limit manufacture.

4 (h) "Isomer" means all enantiomers and diastereomers.

5 (i) "Manufacture" means the production, preparation, propagation,
6 compounding, conversion or processing of a controlled substance either
7 directly or indirectly or by extraction from substances of natural origin or
8 independently by means of chemical synthesis or by a combination of
9 extraction and chemical synthesis and includes any packaging or repack-
10 aging of the substance or labeling or relabeling of its container. "Manu-
11 facture" does not include the preparation or compounding of a controlled
12 substance by an individual for the individual's own lawful use or the prep-
13 aration, compounding, packaging or labeling of a controlled substance:

14 (1) By a practitioner or the practitioner's agent pursuant to a lawful
15 order of a practitioner as an incident to the practitioner's administering
16 or dispensing of a controlled substance in the course of the practitioner's
17 professional practice; or

18 (2) by a practitioner or by the practitioner's authorized agent under
19 such practitioner's supervision for the purpose of or as an incident to
20 research, teaching or chemical analysis or by a pharmacist or medical care
21 facility as an incident to dispensing of a controlled substance.

22 (j) "Marijuana" means all parts of all varieties of the plant Cannabis
23 whether growing or not, the seeds thereof, the resin extracted from any
24 part of the plant and every compound, manufacture, salt, derivative, mix-
25 ture or preparation of the plant, its seeds or resin. "Marijuana" does not
26 include the mature stalks of the plant, fiber produced from the stalks, oil
27 or cake made from the seeds of the plant, any other compound, manu-
28 facture, salt, derivative, mixture or preparation of the mature stalks, ex-
29 cept the resin extracted therefrom, fiber, oil or cake or the sterilized seed
30 of the plant which is incapable of germination.

31 (k) "*Minor*" means a person under 18 years of age.

32 (l) "Narcotic drug" means any of the following whether produced
33 directly or indirectly by extraction from substances of vegetable origin or
34 independently by means of chemical synthesis or by a combination of
35 extraction and chemical synthesis:

36 (1) Opium and opiate and any salt, compound, derivative or prepa-
37 ration of opium or opiate;

38 (2) any salt, compound, isomer, derivative or preparation thereof
39 which is chemically equivalent or identical with any of the substances
40 referred to in paragraph (1) but not including the isoquinoline alkaloids
41 of opium;

42 (3) opium poppy and poppy straw;

43 (4) coca leaves and any salt, compound, derivative or preparation of

3-6

1 coca leaves and any salt, compound, isomer, derivative or preparation
2 thereof which is chemically equivalent or identical with any of these sub-
3 stances, but not including decocainized coca leaves or extractions of coca
4 leaves which do not contain cocaine or ecgonine.

5 (†)(m) "Opiate" means any substance having an addiction-forming or
6 addiction-sustaining liability similar to morphine or being capable of con-
7 version into a drug having addiction-forming or addiction-sustaining lia-
8 bility. "Opiate" does not include, unless specifically designated as con-
9 trolled under K.S.A. 65-4102, and amendments thereto, the
10 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
11 (dextromethorphan). "Opiate" does include its racemic and levorotatory
12 forms.

13 (†)(n) "Opium poppy" means the plant of the species *Papaver som-*
14 *niferum* L. except its seeds.

15 (†)(o) "Park property" means any publicly owned playground, swim-
16 ming pool or community center and any other publicly owned property
17 set aside for any recreational use. If the property meets the above defi-
18 nition at the time of any alleged criminal act, the actual use of that prop-
19 erty at the time alleged shall not be a defense to the crime charged or the
20 sentence imposed.

21 (p) "Person" means individual, corporation, government or govern-
22 mental subdivision or agency, business trust, estate, trust, partnership,
23 association or any other legal entity.

24 (†)(q) "Poppy straw" means all parts, except the seeds, of the opium
25 poppy, after mowing.

26 (†)(r) "Possession" means having joint or exclusive control over an
27 item with knowledge of and intent to have such control or knowingly
28 keeping some item in a place where the person has some measure of
29 access and right of control.

30 (†)(s) "~~Presence of a minor~~" means:
31 ~~(1) A minor is within close proximity to the illegal activity;~~
32 ~~(2) the illegal activity is conducted in a place where minors can rea-~~
33 ~~sonably be expected to be present; or~~
34 ~~(3) in the minor's dwelling.~~

35 ~~This definition shall not be construed as requiring that a defendant~~
36 ~~actually be aware of the presence of a minor or a minor actually be aware~~
37 ~~of the illegal activity.~~

38 (†) "School property" means property upon which is located a struc-
39 ture used by a unified school district or an accredited nonpublic school
40 for student instruction or attendance or extracurricular activities of pupils
41 enrolled in kindergarten or any of the grades one through 12. This defi-
42 nition shall not be construed as requiring that school be in session or that
43 classes are actually being held at the time of the offense or that children

← Strike

→ (s)

3-7

1 must be present within the structure or on the property during the time
2 of any alleged criminal act. If the structure or property meets the above
3 definition, the actual use of that structure or property at the time alleged
4 shall not be a defense to the crime charged or the sentence imposed.

(t)

5 ~~(+)~~ ~~(#)~~ [✓]“Simulated controlled substance” means any product which
6 identifies itself by a common name or slang term associated with a controlled
7 substance and which indicates on its label or accompanying promotional
8 material that the product simulates the effect of a controlled
9 substance.

10 Sec. 3. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as
11 follows: 21-36a05. (a) It shall be unlawful for any person to cultivate,
12 distribute or possess with the intent to distribute any of the following
13 controlled substances or controlled substance analogs thereof:

14 (1) Opiates, opium or narcotic drugs, or any stimulant designated in
15 subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments
16 thereto;

17 (2) any depressant designated in subsection (e) of K.S.A. 65-4105,
18 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
19 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

20 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
21 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
22 65-4109, and amendments thereto;

23 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
24 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
25 4109, and amendments thereto;

26 (5) any substance designated in subsection (g) of K.S.A. 65-4105 and
27 subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
28 thereto; or

29 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
30 4109, and amendments thereto.

31 (b) It shall be unlawful for any person to distribute or possess with
32 the intent to distribute a controlled substance or a controlled substance
33 analog designated in K.S.A. 65-4113, and amendments thereto.

34 (c) (1) Violation of subsection (a) is a drug severity level 3 felony,
35 except that:

36 ~~(A) Violation of subsection (a) on or within 1,000 feet of any school~~
37 ~~property is a drug severity level 2 felony; Violation of subsection (a) is a~~
38 ~~drug severity level 1 felony if the substance was distributed to or possessed~~
39 ~~with intent to distribute to a child under 18 years of age or to a person~~
40 ~~whom the offender knew or reasonably should have known to be pregnant;~~

minor

2 felony if the trier of fact makes a finding that the offender is 18 or more years of age and

41 ~~(B) violation of subsection (a) is a drug severity level 2 felony if that~~
42 ~~person is 18 or more years of age and the violation occurs in the presence~~
43 ~~of a minor, on any park property or on or within 1,000 feet of any school~~

occurred

the trier of fact makes a finding that the offender

1 *property;*

2 ~~(B)~~ (C) violation of subsection (a)(1) is a drug severity level 2 felony
3 if that person has one prior conviction under subsection (a)(1), under
4 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
5 from another jurisdiction; and

6 ~~(C)~~ (D) violation of subsection (a)(1) is a drug severity level 1 felony
7 if that person has two prior convictions under subsection (a)(1), under
8 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
9 from another jurisdiction.

10 (2) Violation of subsection (b) is a class A nonperson misdemeanor,
11 except that, violation of subsection (b) is a drug severity level 4 felony if
12 the substance was distributed to or possessed with the intent to distribute
13 to a child under 18 years of age.

14 (d) It shall not be a defense to charges arising under this section that
15 the defendant was acting in an agency relationship on behalf of any other
16 party in a transaction involving a controlled substance.

17 Sec. 4. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as
18 follows: 21-36a10. (a) It shall be unlawful for any person to advertise,
19 market, label, distribute or possess with the intent to distribute:

20 (1) Any product containing ephedrine, pseudoephedrine, red phos-
21 phorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pres-
22 surized ammonia or phenylpropanolamine or their salts, isomers or salts
23 of isomers if the person knows or reasonably should know that the pur-
24 chaser will use the product to manufacture a controlled substance; or

25 (2) any product containing ephedrine, pseudoephedrine or phenyl-
26 propanolamine, or their salts, isomers or salts of isomers for indication of
27 stimulation, mental alertness, weight loss, appetite control, energy or
28 other indications not approved pursuant to the pertinent federal over-
29 the-counter drug final monograph or tentative final monograph or ap-
30 proved new drug application.

31 (b) It shall be unlawful for any person to market, distribute or man-
32 ufacture with intent to distribute any drug paraphernalia, knowing or
33 under circumstances where one reasonably should know that it will be
34 used to manufacture or distribute a controlled substance in violation of
35 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.

36 (c) It shall be unlawful for any person to distribute, possess with in-
37 tent to distribute or manufacture with intent to distribute any drug par-
38 aphernalia, knowing or under circumstances where one reasonably should
39 know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-
40 36a01 through 21-36a17, and amendments thereto, except subsection (b)
41 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

42 (d) It shall be unlawful for any person to distribute, possess with
43 intent to distribute or manufacture with intent to distribute any drug

6-9
3-9

1 paraphernalia, knowing, or under circumstances where one reasonably
2 should know, that it will be used as such in violation of subsection (b) of
3 K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

4 (e) (1) Violation of subsection (a) is a drug severity level 2 felony;
5 (2) violation of subsection (b) is a drug severity level 4 felony;
6 (3) violation of subsection (c) is a *severity* level 9, nonperson felony,
7 except that violation of subsection (c) is a drug severity level 4 felony if
8 that person:

the trier of fact makes a finding
that the offender is 18 or more
years of age and that the offender

9 (A) ~~Distributes or causes~~ drug paraphernalia to be distributed to a
10 person ~~child~~ under 18 years of age or within 1,000 feet or to a person
11 whom the offender knew or reasonably should have known to be pregnant;
12 or

minor

Distributed or caused

13 (B) ~~is 18 or more years of age and distributes or causes~~ drug para-
14 phernalia to be distributed ~~in the presence of a minor, on any park prop-~~
15 erty or on or within 1,000 feet of any school property;

Strike

distributed or caused

16 (4) violation of subsection (d) is a class A nonperson misdemeanor,
17 except that violation of subsection (d) is a ~~non~~drug severity level 9, non-
18 person felony if that person:

the trier of fact makes a finding
that the offender is 18 or more
years of age and that the offender

19 (A) ~~Distributes or causes~~ drug paraphernalia to be distributed to a
20 person ~~child~~ under 18 years of age or within 1,000 feet or to a person
21 whom the offender knew or reasonably should have known to be pregnant;
22 or

minor

Distributed or caused

23 (B) ~~is 18 or more years of age and distributes or causes~~ drug para-
24 phernalia to be distributed ~~in the presence of a minor, on any park prop-~~
25 erty or on or within 1,000 feet of any school property.

Strike

distributed or caused

26 (f) For persons arrested and charged under subsection (a), bail shall
27 be at least \$50,000 cash or surety, unless the court determines, on the
28 record, that the defendant is not likely to re-offend, the court imposes
29 pretrial supervision or the defendant agrees to participate in a licensed
30 or certified drug treatment program.

31 (g) As used in this section, "or under circumstances where one rea-
32 sonably should know" that an item will be used in violation of this section,
33 shall include, but not be limited to, the following:

34 (1) Actual knowledge from prior experience or statements by
35 customers;

36 (2) inappropriate or impractical design for alleged legitimate use;

37 (3) receipt of packaging material, advertising information or other
38 manufacturer supplied information regarding the item's use as drug par-
39 aphernalia; or

40 (4) receipt of a written warning from a law enforcement or prose-
41 cutorial agency having jurisdiction that the item has been previously de-
42 termined to have been designed specifically for use as drug paraphernalia.

43 Sec. 5. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as

3-10

1 follows: 21-36a13. (a) It shall be unlawful for any person to distribute,
2 possess with the intent to distribute, or manufacture with the intent to
3 distribute any simulated controlled substance.

4 (b) It shall be unlawful for any person to use or possess with intent
5 to use any simulated controlled substance.

6 (c) (1) Violation of subsection (a) is a nondrug severity level 9, non-
7 person felony, except that violation of subsection (a) is a nondrug severity
8 level 7, nonperson felony if ~~that person~~ is 18 or more years of age and
9 the violation ~~occurs in the presence of a minor, on any park property or~~
10 on or within 1,000 feet of any school property;

11 (2) violation of subsection (b) is a class A nonperson misdemeanor.

12 Sec. 6. K.S.A. 2009 Supp. 21-3608a, 21-36a01, 21-36a05, 21-36a10
13 and 21-36a13 are hereby repealed.

14 Sec. 7. This act shall take effect and be in force from and after its
15 publication in the statute book.

the trier of fact makes a
finding that the offender

occurred