

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:35 a.m. on March 12, 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:

Jessica Hosman, Topeka Rescue Mission  
Dorothy Stuckey Halley, Victim Services Director, Office of Attorney General  
David Hutchings, Special Agent in Charge, Kansas Bureau of Investigation

Others attending:

See attached list.

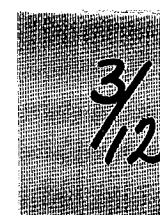
The Chairman reopened the hearing on **HB 2585 - Concerning marriage license fees and poverty.**

Jessica Hosman appeared in support, stating a couple not able to afford the marriage license fee may choose to remain together on the streets, in their car, or in another unsafe living arrangement as an alternative to being apart while staying in separate shelters. This includes unmarried couples with children. Studies have shown that the number one factor in determining a child's inability to learn is safety and security. The cost of a marriage license is cost prohibitive to individuals who only earn \$100 per month, nearly 68% of their monthly income. (Attachment 1)

Dorothy Stuckey Halley provided neutral testimony regarding the potential impact on victim service agencies in Kansas. Many of these programs have already experienced cuts to their funding and the further reduction could impact several agencies. The Attorney General's Office suggested a reduced marriage license fee for qualified applicants in the amount of \$33.00, the portion of the fee normally credited to the respective funds of the Attorney General. (Attachment 2)

Written testimony in opposition to **HB 2585** was submitted by:

Connie Sanchez, Safe Visit Administrator, YMCA (Attachment 3)  
Eileen Doran, Program Director, Center for Empowerment and Safety, YWCA (Attachment 4)  
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence (Attachment 5)  
Kari Ann Rinker, National Organization for Women of Kansas (Attachment 6)



There being no further conferees, the hearing on **HB 2585** was closed.

The Chairman opened the hearing on **HB 2637 - Requiring the court to charge a \$100 fee for collection of defendant's DNA information for storage in the KBI DNA database.**

David Hutchings, testified in support, stating the bill provides stronger language to the courts requiring that the court costs be ordered and that any finding of indigence be placed on the record with a basis for the finding. It also relieves the court of responsibility to determine if the fees have already been paid on a prior offense and requires convicted persons to pay the fee each time they appear before the court with a new conviction. This bill will result in a more equitable receipt of revenue to the KBI as intended by the Legislature. (Attachment 7)

There being no further conferees, the hearing on **HB 2637** was closed.

The Chairman called for final action on **HB 2585 - Concerning marriage license fees and poverty.** Jason Thompson, staff revisor, reviewed the bill.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on March 12, 2010, in Room 548-S of the Capitol.

Senator Vratil moved, Senator Kelly seconded, to table the bill. Motion carried.

The Chairman called for final action on **HB 2440 - Requiring the secretary of corrections to receive and give victim notification upon certain events while inmate is in the custody of the secretary of social and rehabilitation services.** Jason Thompson, staff revisor, reviewed the bill.

Senator Vratil moved, Senator Kelly seconded, to amend HB 2440 as reflected in the balloon provided by the Department of Corrections. Motion carried. (Attachment 8)

Senator Schmidt moved, Senator Donovan seconded, to recommend HB 2440, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2668 - Recodification of the criminal code.**

Senator Bruce distributed a proposed balloon amendment and reviewed the changes. (Attachment 9)

Following discussion the Committee expressed their desire to keep the recodification bill "clean" without any substantive changes. Senator Bruce agreed.

The revisor distributed a proposed balloon amendment containing technical corrections requested by the Revisor's Office. (Attachment 10)

Senator Vratil moved, Senator Donovan seconded, to amend HB 2668 as reflected in the balloon amendment. Motion carried.

Senator Vratil moved, Senator Donovan seconded, to recommend HB 2668, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2412 - Functional incapacitation release; procedures; notice; conditions; supervision upon release.** Jason Thompson, staff revisor, reviewed the bill and distributed a balloon amendment containing a technical correction requested by the Kansas Parole Board. (Attachment 11)

Senator Donovan moved, Senator Bruce seconded, to amend HB 2412 as reflected in the balloon amendment. Motion carried.

Senator Donovan moved, Senator Lynn seconded, to recommend HB 2412, as amended, favorably for passage. Senator Bruce voiced concerns regarding portions of the bill. The motion was withdrawn.

Senator Bruce moved, Senator Pilcher-Cook seconded, to table HB 2412. Motion carried.

The Chairman called for final action on **HB 2432 - Criminal law; justified threat or use of force.** Jason Thompson, staff revisor, reviewed the bill.

Senator Schmidt moved, Senator Vratil seconded, to remove the contents of HB 2432 and insert the contents of SB 381 as amended by the Committee. Motion carried.

Senator Schmidt moved, Senator Umbarger seconded, to recommend S Sub for HB 2432, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2469 - Use of prior convictions in determining criminal history.** Jason Thompson, staff revisor, reviewed the bill.

Senator Bruce moved, Senator Schmidt seconded, to change the effective date to upon publication in the Kansas Register. Motion carried.

Senator Schmidt moved, Senator Donovan seconded, to recommend HB 2469, as amended, favorably for

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on March 12, 2010, in Room 548-S of the Capitol.

passage. Motion carried.

The meeting was recessed at 10:30 a.m. and will reconvene at 12:30 p.m. in Room 152-S.

The meeting was reconvened at 12:33 p.m. in Room 152-S.

Senator Bruce moved, Senator Vratil seconded, to remove **HB 2412 - Functional incapacitation release; procedures; notice; conditions; supervision upon release** from the table. Motion carried.

A balloon amendment was distributed and Senator Bruce discussed the changes. (Attachment 12)

Senator Bruce moved, Senator Lynn seconded, to amend **HB 2412** as reflected in the distributed balloon. Motion carried.

Senator Vratil moved, Senator Lynn seconded, to recommend **HB 2412**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2506 - Requiring the parole board to weigh the proportionality of a crime committed prior to July 1, 1993, to the sentence for the same crime under the new guidelines.** Jason Thompson, staff revisor, reviewed the bill and distributed a proposed substitute bill which includes the language of **HB 2505 - Release procedures and discharge of paroled inmates** and **HB 2507 - Parole and post-release conditions established by parole board.** (Attachment 13)

Senator Schmidt moved, Senator Vratil seconded, to adopt the distributed draft as a substitute for **HB 2506.** Motion carried.

Senator Vratil moved, Senator Schodorf seconded, to recommend **S Sub for HB 2506** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2503 - Authorizing and requiring the secretary of corrections to supervise parole offices and other release mechanisms and entities.** Jason Thompson, staff revisor, reviewed the bill and distributed a proposed substitute bill which adds the provisions of **HB 2509 - Providing the procedure by which the secretary of corrections refers a potential sexually violent predator to the multidisciplinary team for analysis and a determination of placement.** (Attachment 14)

Senator Vratil moved, Senator Schodorf seconded, to amend **HB 2503** as reflected in the draft substitute. Motion carried.

Following discussion, Senator Vratil moved, Senator Schmidt seconded, to table **S Sub for HB 2503.** Motion carried.

The Chairman called for final action on **HB 2503 - Authorizing and requiring the secretary of corrections to supervise parole offices and other release mechanisms and entities.** Jason Thompson, staff revisor, reviewed the bill.

Senator Vratil moved, Senator Umbarger seconded, recommend **HB 2503** favorably and place it on the consent calendar. Motion carried.

The Chairman called for final action on **HB 2509 - Providing the procedure by which the secretary of corrections refers a potential sexually violent predator to the multidisciplinary team for analysis and a determination of placement.**

Senator Vratil moved, Senator Umbarger seconded, to table **HB 2509.** Motion carried.

The Chairman called for final action on **HB 2508 - Shortening the length of deferral time for certain**

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on March 12, 2010, in Room 548-S of the Capitol.

The Chairman called for final action on **HB 2508 - Shortening the length of deferral time for certain inmates' parole hearings to five years and requiring review of inmates on a 10 year deferral**. Jason Thompson, staff revisor, reviewed the bill.

Senator Bruce moved, Senator Lynn seconded, to table **HB 2508**. Motion carried. Senator Haley voted no and requested his vote recorded.

The Chairman called for final action on **HB 2605 - Clarifying the investigation fees for services rendered by the KBI and other regional forensic and scientific laboratories**. Jason Thompson, staff revisor, reviewed the bill and distributed a balloon containing a technical correction requested by the Revisor's Office. (Attachment 15)

Senator Vratil moved, Senator Schmidt seconded, to amend **HB 2605** as reflected in the balloon provided by the KBI. Motion carried.

Senator Vratil distributed a proposed balloon amendment and reviewed the changes. Senator Vratil moved, Senator Haley seconded, to amend **HB 2605** as reflected in the proposed balloon. Motion carried. (Attachment 16)

Senator Schmidt moved, Senator Kelly seconded, to add the contents of **HB 2637 - Requiring the court to charge a \$100 fee for collection of defendant's DNA information for storage in the KBI DNA database to HB 2605**. Motion carried.

Senator Schmidt moved, Senator Kelly seconded, to remove the House amendment in the provisions of **HB 2637**, page 1, lines 27-29, so that offenders pay for each conviction. Motion carried.

Senator Schmidt moved, Senator Kelly seconded, to recommend **HB 2605**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2557 - Removing references to the inheritance tax and limiting the applicability of its provisions**. Jason Thompson, staff revisor, reviewed the bill.

Senator Vratil moved, Senator Schodorf seconded, to recommend **HB 2557** favorably for passage and place it on the consent calendar. Motion carried.

The Chairman called for final action on **HB 2656 - Amendments to the Kansas code of civil procedure**. Jason Thompson, staff revisor, reviewed the bill.

Senator Vratil moved, Senator Schmidt seconded, to amend **HB 2556** as reflected in the balloon recommended during testimony by the Judicial Council. Motion carried. (Attachment 17)

Senator Schmidt moved, Senator Umbarger seconded, to recommend **HB 2656**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2604 - Allowing the court to sentence a defendant to serve time in a work release program**. Jason Thompson, staff revisor, reviewed the bill.

Senator Schmidt moved, Senator Schodorf seconded, to recommend **HB 2604** favorably for passage and place it on the consent calendar. Motion carried.

The next meeting is scheduled for March 15, 2010.

The meeting was adjourned at 1:30 p.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 12, 2010

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
PATRICIA SCALIA	BIDS
JOSEPH MOLINA	KS BAR ASSN.
Phyllis Fast	of KS - DFM
Nancy Strouse	Judicial Council
Lane WUSH	Jud. Branch
MARC BLEESZ	-
Levi Henry	
Jackson Lindley	Devil Law
Bunny Feaker	Topeka Rescue Mission
JESSICA S. HASMAN	TOPEKA RESCUE MISSION
Jennifer L. Jones	
Joyce Gravel	KCS DV
Helel Redigo	Sentencing Commission

March 11, 2010

Senate Judiciary Committee  
Capitol Building  
Topeka, KS 66612

Re: House Bill 2585



**TOPEKA RESCUE MISSION**  
**600 N KANSAS AVE**  
FAITH WITH ITS SLEEVES ROLLED UP  
**PO BOX 8350**  
**TOPEKA KS 66608-0350**  
(785) 354-1744

Dear Committee Members:

There are countless impoverished men, women and children who pass through the doors of the Topeka Rescue Mission every day. Each one comes with a different story and a different set of circumstances which have led to their present states of homelessness. There is, however, one common trait that threads the majority together. That universal tie that binds is poverty.

In 2009, the Topeka Rescue Mission provided shelter for 1,922 unduplicated individuals, including 336 children. At the Mission, we support, encourage and attempt to assist our guests in stabilizing their financial situations and lives. However, we realize that for many this can be a daunting task. Take for instance a person who is only receiving General Assistance which is equal to \$100 per month. While we support the institution of marriage and encourage guests who are in long-term committed relationship to take this step for further stability, we understand that purchasing a marriage license which makes up 69% of this person's monthly income is not often an option. As a Mission policy, couples who are not married are not able to stay together at the Mission. If a couple is not able to afford the marriage license fee they may choose to remain together on the streets, in their car, or in another unsafe living arrangement as an alternative to being apart while staying in separate shelters. This includes unmarried couples with children.


The impact of this marriage fee on a person living in poverty not only has the potential of increasing the instances of unsheltered homelessness, but also has a negative impact on children in today's society which is even more universal. Studies from the Department of Education show that the number one factor in determining a child's inability to learn is safety and security. That safety and security can be defined in the confines of their home, in school, in route between home and school, or a combination of all three. Having parents who are not married, whether they live in the same home or not, decreases the level of safety and security that a child feels and receives. As the feeling of safety and security decreases in a child's life, so does the ability to learn. Similarly, as a child's ability to learn decreases, so does their overall success rate as a student and later as an adult. This contributes to a heightened degree of premature drop-out from school and therefore causes an increased dependence upon the welfare systems of our society due to their inability to learn as an adult which has carried over from childhood. By defending the institution of marriage and making it more achievable for individuals in poverty to commit to marriage, we are essentially increasing the likelihood of success for the children of our society.

Commitment and constancy starts at home and we recognize that the stability that a person experiences in childhood will greatly impact how they later respond to society as a whole. At the Topeka Rescue Mission, we want to do our part in ensuring that the 336 plus children who we annually shelter are experiencing the highest degree of safety and stability possible in their present and future living situations. We are committed to doing what we can to encourage and develop this heightened stability which will lead to a higher probability of permanency in the lives of the adults and children who pass through our doors. It is for this reason that we support House Bill 2585.

In closing, I ask you to ponder again those individuals who are only capable of earning \$100 per month and the impact that these marriage license fees have on their lives, and the lives of their children. What if we were to consider the impact this fee would have on our lives if we were asked to contribute 69% of our monthly income in order to obtain a marriage license? If we earned \$70,000 per year, or approximately \$5,800 per month, this fee would cost us upwards of \$4,025. While this number may seem extreme, this is equivalent to the expectation in which we are placing on many individuals in poverty.

We cannot decrease homelessness and increase family stability alone. We need your support and it is my firm belief that by endorsing House Bill 2585 we will be moving in the right direction for the sake of our children, our society and our State. I know that we are a State who is interested in encouraging marriage to both those who can afford it and those who cannot as well as investing in the lives of our future generation, our children, across our State. Thank you for all that you do to make those objectives possible.

Sincerely,

  
Jessica S. Hosman  
Director of Special Projects

Senate Judiciary

3-12-10

Attachment 1



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**STEVE SIX**  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

**Senate Judiciary Committee**  
House Bill 2585  
Dorthy Stucky Halley, Victim Services Director  
Office of Attorney General Steve Six  
March 11, 2010

Chairman Owens and Members of the Committee:

Thank you for allowing me to testify today. The Office of the Attorney General is interested in HB 2585 and its potential impact on victim service agencies across the state. Of the current \$59 filing fee, approximately \$33 is deposited to the funds of the Attorney General and another \$9 is deposited to family and children trust accounts of the family and children investment fund of SRS. The remaining \$17 is deposited to the state general fund and the judicial branch.

The AG's Victim's Services Division receives funding from the marriage filing fee per K.S.A. 23-108a. The Protection From Abuse –Domestic Violence Fund receives more than 45% of annual revenue from the marriage filing fee. The Crime Victims Assistance-Child Exchange & Visitation Center Fund receives more than 57% of annual revenue from the marriage filing fee.

Domestic violence and sexual assault programs are already experiencing a more than \$600,000 reduction to FY2011 and FY2012 funding available for grants awarded by the Office of the Governor at the same time that the economic downturn is creating an increase in service demands. Some of our grantees have both a domestic violence program and a child exchange and visitation center. In those cases, any reduction in marriage license fees could impact several grants to the same agency.

The Office of the Attorney General recognizes the need to provide relief to indigent citizens, however, funding for victims of crime is also a priority. Our office would support an amendment to HB 2585 whereby qualified applicants receive a reduced marriage license filing fee in the amount of \$33.00. This full amount would be credited to the respective funds of the Attorney General and would maintain the necessary revenue to these funds.

Protection From Abuse Fund	\$23.00
Crime Victims Assistance Fund	\$10.00

Senate Judiciary

3-12-10  
Attachment 2



## Kuehne Family YMCA — YMCA Safe Visit Satellite Office

2036 NW Taylor Topeka, Kansas 66608 (785) 234-4677 Fax (785) 234-5466  
website [projectappleseed.org/safevisit.html](http://projectappleseed.org/safevisit.html) email [safevisit@kansas.net](mailto:safevisit@kansas.net)

### TESTIMONY

On House Bill No. 2585

Senate Judiciary Committee

Presented by Connie Sanchez, Safe Visit Administrator

March 11, 2010

Chairman Owens and members of the Committee:

I appreciate the opportunity to speak in opposition of HB 2585.

As a provider of community services to families in need for over 25 years, I want to applaud the efforts of this bill to assist low income individuals. As a center Administrator, we also take into account the financial status of families when fees are assessed.

However, my concern is establishing a process that allows zero financial commitment. All individuals should feel some level of financial accountability for obtaining a legal document that is asking to be recognized as a couple. The marriage license fee is only \$59; comparative to a couple eating 3 meals at McDonalds. It seems a very small price to pay a one time fee for a lifetime contract. The partnership of marriage should not be entered into lightly because it will require commitment, many compromises and ongoing fiscal management. By charging a small fee to get married, it seems to set the tone for the real world; it requires newlyweds to make an investment in their relationship and begin to set priorities for obtaining needs and wants. My experience personally and as a professional has proven true; getting something for free reduces the value and relevance of it.

In addition, if indeed this bill is passed it will have a negative impact on community service providers who are recipients of grant funding that is based on marriage license fees. As a service provider, I understand the importance of grant funding to subsidize program operations. However, if individuals are offered a total out on paying fees, this will lead to more work by the clerk in processing the request for poverty and less funding for service providers. When people are in crisis and in need of assistance, community service programs are the safety net.

Please help maintain the current fee status for obtaining a marriage license and do not report this legislation favorably for passage.



Senate Judiciary Committee

HB 2585

March 11, 2010

Oppose

Chairman Owens and Members of the Committee:

My name is Eileen Doran and I am the Director of the YWCA Center for Safety and Empowerment, the program formerly known as the Battered Women Task Force. I am here today on behalf of the thousands of women and children who receive our services every year. The YWCA Center for Safety and Empowerment Violence opposes HB 2585 because of the unknown impact on the Protection from Abuse and the Crime Victims Assistance funds that are partially funded by the marriage license fees. Additional losses of resources to these services will cut into the most critical core services: those of hotline and shelter.

Our program utilizes our Protection From Abuse Funds and Crime Victims' Assistance Funds to meet the most basic needs of survivors of domestic and sexual violence. These funds provide oversight of the entire program, partially funding our Shelter Director, our Night Shelter Staff, shelter utilities and food, and emergency assistance for survivors who are attempting to begin a life free from abuse. State PFA and CVAF funds are critical for our program because they enable us to meet our commitment to victims to provide them with a safe, secure shelter with access to staff 24 hours each day. Last year, our shelter provided **over 5,000** bed nights for women and children, an increase of 1,000 bed nights from 2006. We **cannot**, in good conscience, operate a shelter without providing staff coverage to ensure the safety of all of our residents. Survivors come to us in crisis, sometimes still recovering from serious physical injuries, always grappling with the emotional consequences of having lived in an abuse relationship.

Our night staff meets women at the hospital emergency room or law enforcement center, helping them to assess their options and bringing them to our shelter. Once there, victims have someone who will help them feel comfortable, learn about their safety needs, and assist their children in getting settled. Of the women who left our shelter last year, 100% reported that they had their needs met while at shelter and 97% reported that they felt safe while staying there. We know we cannot meet their needs without essential resources. These funds do not pay for any extras at our shelter; they pay for utilities and groceries.

We have already felt the impact of the loss of 20% of our City Funding, the loss of \$100,000 from the Department of Corrections for our Batterer's Intervention Program due to state budget cuts, and we may be facing a 10% reduction in our United Way allocation this year. We have lost State General Funds due to revenue shortfalls, including a recent additional cut of 3.1%. Our funding from the Protection From Abuse Fund has decreased by nearly \$20,000 since 2006. Any additional losses in revenue will result in a reduction in staff and a corresponding reduction in services to survivors. Last year, we provided counseling to **2,846** survivors of domestic violence and **98** survivors of sexual assault. We were full in our shelter for the months of January and most of February this year. We know the demand for all services is already higher this year than at the same point last year. We have made great strides in the past several years, but there is much more work to be done.

The YWCA Center for Safety and Empowerment requests you oppose HB 2585.

Submitted: Eileen Doran

Senate Judiciary

3-12-10

Attachment 4

# Kansas Coalition Against Sexual and Domestic Violence



634 SW Harrison Topeka, Kansas 66603  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

Senate Judiciary Committee  
**HB 2585**  
March 11, 2010  
**Oppose**

Chairman Owens and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence opposes HB 2585 because of the unknown impact on the protection from abuse and the crime victims assistance funds that are resourced through a portion of the marriage license fees. These funds allow for the provision of domestic violence, sexual assault, and other crime victim services. During the previous several years gains made in helping to ensure domestic and sexual violence services are available across the state have been already been reduced significantly with losses in local community funds and, since 2008, a 21% reduction in state general revenue funds. Additional losses of resources to these services will cut into the most critical core services: those of hotline and shelter. The protection from abuse fund collects approximately a million dollars per year and is granted to domestic and sexual violence programs across the state. This fund has been in place since 1984.

The cost of a marriage license is currently \$59.00 plus the special court assessment of \$10.00. The fees are distributed in the following ways:

Protection From Abuse Fund	38.98%	\$23.00
Crime Victims' Assistance Fund	16.95%	\$10.00
Children's Trust Fund	15.90%	\$ 8.96
Non-judicial Salary Fund	15.25%	\$ 9.00
General Fund	remainder	\$ 8.04
Sub Total		\$59.00
Special court fee	\$10.00	
Total		\$69.00

HB 2585 allows a marriage license applicant to complete a poverty affidavit that will allow a no-fee license. Although two parties are getting married, only one party has to apply for the license and may submit a poverty affidavit regardless of the available assets of the other party. Unlike other kinds of filing fees that allow petitioners to file a poverty affidavit, marriage license applications have no court appearances that allow a judge to ascertain the appropriateness of such an affidavit. If a judge wishes to challenge a poverty affidavit filed with a marriage license application a special hearing will have to be set; that is most unlikely to occur since courts are already stretched for time. Therefore, it is likely that all poverty affidavits will be accepted.

The impact of HB 2585 is unknown because no predictions are available on the anticipated number of poverty affidavit applications. KCSVDV requests you oppose HB 2585.

Submitted: Sandy Barnett



**KANSAS NOW**

PO Box 860  
Wichita, KS 67201-1860

T 620 245 4904

coordinator@ksnow.org

[www.ksnow.org](http://www.ksnow.org)

March 09, 2010

**To: Members of the Senate Judiciary Committee**  
**FR: Kari Ann Rinker, State Coordinator & Lobbyist**  
**Kansas NOW**  
**RE: HB 2585 Opponent**

Today, I respectfully submit to you testimony in opposition to House Bill 2585. HB 2585 waives the state fee for marriage licenses for low income couples. While Kansas NOW generally supports social equity programs and legislation, this legislation presents unintended consequences that will have negative effects on programs that help crime victims, women and children. It is on these grounds that Kansas NOW must oppose HB 2585.

The fiscal note presented with 2585 indicates programs that would be adversely affected by a loss of marriage license funds in the state. These programs include:

- *The Protection from Abuse Fund, which provides emergency shelter for battered women and their children*
- *The Children and Family Investment Fund, which is part of SRS funding*
- *The Crime Victims Assistance Fund, which provides assistance to crime victims*

The marriage license fee provides vital funding for these programs that women and children of Kansas depend upon. In a legislative session where funding for many social programs are being subject to significant budgetary cuts, is it wise to enact a new law that unnecessarily cuts funding for such a disadvantaged segment of our state? Are we simply helping one group at the expense of another? My respect for and belief in, the Kansas Legislature leads me to believe that it can do better than this. I encourage the body to find ways to help the needy of our state without harming at-risk women and children.

Sincerely,

Kari Ann Rinker  
State Coordinator & Lobbyist

Senate Judiciary

3-12-10  
Attachment 6



## Kansas Bureau of Investigation

Robert E. Blecha  
*Director*

Steve Six  
*Attorney General*

Testimony in Support of HB 2637  
Before the Senate Judiciary Committee  
David Hutchings, Special Agent in Charge  
Kansas Bureau of Investigation  
March 12, 2010

Chairman Owens and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in support of immediate passage of HB 2637. This bill would amend KSA 2009 Supp. 75-724.

Present language requires those persons convicted or adjudicated of certain offenses, as outlined in KSA 21-2511, pay a separate court cost of \$100. This is presently a one time payment and a burden is functionally placed upon the court to research whether the payment has ever been made on a prior case.

In determining the amount of funds that should have been received by the KBI in 2009, some statistics must be considered and some assumptions made.

- The number of felony convictions reported to the KBI central repository averages about 10,000 annually. Based upon anecdotal information from the Criminal Records Section of the KBI's Information Services Division, only about half of dispositions (including felony convictions) are reported.
- According to anecdotal information from prosecutors, approximately 30% of persons convicted are not required to pay court costs due to indigence. The assumption is that the other 70% would pay the court costs.

With these statistics and assumptions in mind, revenue from present legislation arguably should have been approximately \$1,400,000. Revenue in 2009 pursuant to KSA 2009 Supp. 75-724 was \$94,219. This was \$1,305,781 less than what could arguably have been expected.

The KBI hopes that, by strengthening the language of the present law with HB 2637, revenues may be brought more closely to those projected. This bill provides stronger language to the courts requiring that the court costs be ordered and that any finding of indigence be placed on the record with a basis for the finding. It also relieves the court of the responsibility to determine if the fees have already been paid on a prior offense and requires convicted persons addressed in KSA 21-2511 to pay the fee each time they appear before the court with a new conviction.

Senate Judiciary

3-12-10

Attachment 7

The KBI sincerely hopes that your efforts to pass this legislation will result in a more equitable receipt of revenue to the KBI Forensic Laboratory's DNA efforts as intended by the legislature when this law was originally passed.

Thank you for your time and consideration. I would be happy to answer your questions.

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2440

By Committee on Corrections and Juvenile Justice

1-13

10 AN ACT concerning crimes, criminal procedure and punishment; relat-  
11 ing to the notification of **family and** victims of persons committed to  
12 the custody of the secretary of social and rehabilitation services;  
13 amending K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-  
14 3431 and 22-3727 and repealing the existing sections.

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

16 New Section 1. (a) The secretary of corrections shall, as soon as  
17 **practicable**, provide notification as provided in K.S.A. 22-3303, 22-3305,  
18 22-3428 and, 22-3428a, 22-3430, 22-3431 and 22-3727, and amend-  
19 ments thereto, and upon the escape or death of a committed defendant  
20 or inmate while in the custody of the secretary of social and rehabilitation  
21 services, to any victim of the defendant or inmate's crime ~~who is alive~~  
22 ~~and whose address is known to the secretary of corrections or, if the victim~~  
23 ~~is deceased, to the victim's family if, and the victim's family, if so re-~~  
24 ~~quested and the family's address is~~ addresses are known to the sec-  
25 retary of corrections. ~~The secretary shall also provide such notice to~~  
26 ~~the family of the defendant if requested and such addresses are~~  
27 ~~known to the secretary.~~ Such notice shall be required to be given to  
28 ~~the victim or the victim's family only if the defendant was charged with,~~ Delete  
29 or the inmate was convicted of, any crime in article 33, 34, 35 or 36 of  
30 chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

31 (b) As used in this section, "victim's family" means a spouse, surviving  
32 spouse, children, parents, legal guardian, siblings, stepparent or  
33 grandparents.

34 Sec. 2. K.S.A. 22-3303 is hereby amended to read as follows: 22-  
35 3303. (1) A defendant who is charged with a felony and is found to be  
36 incompetent to stand trial shall be committed for evaluation and treat-  
37 ment to the state security hospital or any appropriate county or private  
38 institution. A defendant who is charged with a misdemeanor and is found  
39 to be incompetent to stand trial shall be committed for evaluation and  
40 treatment to any appropriate state, county or private institution. *At the*  
41 *time of such commitment the institution of commitment shall notify the*  
42 *secretary of corrections for the purpose of providing victim and family*  
43 Delete

[Reinsert] victim's

Senate Judiciary

3-12-10

Attachment 8

1 *notification.* Any such commitment shall be for a period of not to exceed  
2 90 days. Within 90 days after the defendant's commitment to such insti-  
3 tution, the chief medical officer of such institution shall certify to the  
4 court whether the defendant has a substantial probability of attaining  
5 competency to stand trial in the foreseeable future. If such probability  
6 does exist, the court shall order the defendant to remain in an appropriate  
7 state, county or private institution until the defendant attains competency  
8 to stand trial or for a period of six months from the date of the original  
9 commitment, whichever occurs first. If such probability does not exist,  
10 the court shall order the secretary of social and rehabilitation services to  
11 commence involuntary commitment proceedings pursuant to article 29  
12 of chapter 59 of the Kansas Statutes Annotated, and any amendments  
13 thereto. When a defendant is charged with any off-grid felony, any non-  
14 drug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504,  
15 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and  
16 commitment proceedings have commenced, for such proceeding, "men-  
17 tally ill person subject to involuntary commitment for care and treatment"  
18 means a mentally ill person, as defined in subsection (e) of K.S.A. 59-  
19 2946, and amendments thereto, who is likely to cause harm to self and  
20 others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments  
21 thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and  
22 amendments thereto, shall not apply.

23 (2) If a defendant who was found to have had a substantial probability  
24 of attaining competency to stand trial, as provided in subsection (1), has  
25 not attained competency to stand trial within six months from the date  
26 of the original commitment, the court shall order the secretary of social  
27 and rehabilitation services to commence involuntary commitment pro-  
28 ceedings pursuant to article 29 of chapter 59 of the Kansas Statutes An-  
29 notated, and any amendments thereto. When a defendant is charged with  
30 any off-grid felony, any nondrug severity level 1 through 3 felony, or a  
31 violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and  
32 amendments thereto, and commitment proceedings have commenced,  
33 for such proceeding, "mentally ill person subject to involuntary commit-  
34 ment for care and treatment" means a mentally ill person, as defined in  
35 subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely  
36 to cause harm to self and others, as defined in subsection (f)(3) of K.S.A.  
37 59-2946, and amendments thereto. The other provisions of subsection (f)  
38 of K.S.A. 59-2946, and amendments thereto, shall not apply.

39 (3) When reasonable grounds exist to believe that a defendant who  
40 has been adjudged incompetent to stand trial is competent, the court in  
41 which the criminal case is pending shall conduct a hearing in accordance  
42 with K.S.A. 22-3302, and amendments thereto, to determine the person's  
43 present mental condition. *Such court shall give* reasonable notice of such

1 hearings shall be given to the prosecuting attorney, the defendant and  
2 the defendant's attorney of record, if any, ~~and the secretary of corrections~~  
3 ~~for the purpose of providing victim and family notification.~~ If the court,  
4 following such hearing, finds the defendant to be competent, the pro-  
5 ceedings pending against the defendant shall be resumed.

6 (4) A defendant committed to a public institution under the provi-  
7 sions of this section who is thereafter sentenced for the crime charged at  
8 the time of commitment may be credited with all or any part of the time  
9 during which the defendant was committed and confined in such public  
10 institution.

11 Sec. 3. K.S.A. 22-3305 is hereby amended to read as follows: 22-  
12 3305. (1) Whenever involuntary commitment proceedings have been  
13 commenced by the secretary of social and rehabilitation services as re-  
14 quired by K.S.A. 22-3303, and amendments thereto, and the defendant  
15 is not committed to a treatment facility as a patient, the defendant shall  
16 remain in the institution where committed pursuant to K.S.A. 22-3303,  
17 and amendments thereto, ~~and~~ The secretary of social and rehabilitation  
18 services shall promptly notify the court ~~and~~ the county or district attorney  
19 of the county in which the criminal proceedings are pending ~~and the~~  
20 ~~secretary of corrections for the purpose of providing victim and family~~  
21 ~~notification,~~ of the result of the involuntary commitment proceeding.

22 (2) Whenever involuntary commitment proceedings have been com-  
23 menced by the secretary of social and rehabilitation services as required  
24 by K.S.A. 22-3303, and amendments thereto, and the defendant is com-  
25 mitted to a treatment facility as a patient but thereafter is to be discharged  
26 pursuant to the care and treatment act for mentally ill persons, the de-  
27 fendant shall remain in the institution where committed pursuant to  
28 K.S.A. 22-3303, and amendments thereto, and the head of the treatment  
29 facility shall promptly notify the court ~~and~~ the county or district attorney  
30 of the county in which the criminal proceedings are pending ~~and the~~  
31 ~~secretary of corrections for the purpose of providing victim and family~~  
32 ~~notification,~~ that the defendant is to be discharged.

33 When giving notification to the court ~~and~~ the county or district attor-  
34 ney ~~and the secretary of corrections~~ pursuant to subsection (1) or (2), the  
35 treatment facility shall include in such notification an opinion from the  
36 head of the treatment facility as to whether or not the defendant is now  
37 competent to stand trial. Upon request of the county or district attorney,  
38 the court may set a hearing on the issue of whether or not the defendant  
39 has been restored to competency. ~~If such hearing request is granted, the~~  
40 ~~court shall notify the secretary of corrections of the hearing date for the~~  
41 ~~purpose of victim and family notification.~~ If no such request is made  
42 within 10 days after receipt of notice pursuant to subsection (1) or (2),  
43 the court shall order the defendant to be discharged from commitment

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1 and shall dismiss without prejudice the charges against the defendant,  
2 and the period of limitation for the prosecution for the crime charged  
3 shall not continue to run until the defendant has been determined to have  
4 attained competency in accordance with K.S.A. 22-3302, and amend-  
5 ments thereto. *The court shall notify the secretary of corrections of the*  
6 *discharge order for the purpose of providing victim notification.*

7 Sec. 4. K.S.A. 22-3428 is hereby amended to read as follows: 22-  
8 3428. (1) (a) When a defendant is acquitted and the jury answers in the  
9 affirmative to the special question asked pursuant to K.S.A. 22-3221, and  
10 amendments thereto; the defendant shall be committed to the state se-  
11 curity hospital for safekeeping and treatment *and the court shall notify*  
12 *the secretary of corrections for the purpose of providing victim and fam-*  
13 *ily notification.* A finding of not guilty and the jury answering in the  
14 affirmative to the special question asked pursuant to K.S.A. 22-3221, and  
15 amendments thereto, shall be prima facie evidence that the acquitted  
16 defendant is presently likely to cause harm to self or others.

17 (b) Within 90 days of the defendant's admission, the chief medical  
18 officer of the state security hospital shall send to the court a written  
19 evaluation report. Upon receipt of the report, the court shall set a hearing  
20 to determine whether or not the defendant is currently a mentally ill  
21 person. The hearing shall be held within 30 days after the receipt by the  
22 court of the chief medical officer's report.

23 (c) The court shall give notice of the hearing to the chief medical  
24 officer of the state security hospital, the district or county attorney, the  
25 defendant ~~and~~, the defendant's attorney *and the secretary of corrections*  
26 *for the purpose of providing victim and family notification.* The court  
27 shall inform the defendant that such defendant is entitled to counsel and  
28 that counsel will be appointed to represent the defendant if the defendant  
29 is not financially able to employ an attorney as provided in K.S.A. 22-  
30 4503 et seq., and amendments thereto. The defendant shall remain at the  
31 state security hospital pending the hearing.

32 (d) At the hearing, the defendant shall have the right to present ev-  
33 idence and cross-examine witnesses. At the conclusion of the hearing, if  
34 the court finds by clear and convincing evidence that the defendant is  
35 not currently a mentally ill person, the court shall dismiss the criminal  
36 proceeding and discharge the defendant, otherwise the court may commit  
37 the defendant to the state security hospital for treatment or may place  
38 the defendant on conditional release pursuant to subsection (4). *The court*  
39 *shall notify the secretary of corrections of the outcome of the hearing for*  
40 *the purpose of providing victim and family notification.*

41 (2) Subject to the provisions of subsection (3):

42 (a) Whenever it appears to the chief medical officer of the state se-  
43 curity hospital that a person committed under subsection (1)(d) is not

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1 likely to cause harm to other persons in a less restrictive hospital envi-  
2 ronment, the officer may transfer the person to any state hospital, subject  
3 to the provisions of subsection (3). At any time subsequent thereto during  
4 which such person is still committed to a state hospital, if the chief med-  
5 ical officer of that hospital finds that the person may be likely to cause  
6 harm or has caused harm, to others, such officer may transfer the person  
7 back to the state security hospital.

8 (b) Any person committed under subsection (1)(d) may be granted  
9 conditional release or discharge as an involuntary patient.

10 (3) Before transfer of a person from the state security hospital pur-  
11 suant to subsection (2)(a) or conditional release or discharge of a person  
12 pursuant to subsection (2)(b), the chief medical officer of the state se-  
13 curity hospital or the state hospital where the patient is under commit-  
14 ment shall give notice to the district court of the county from which the  
15 person was committed that transfer of the patient is proposed or that the  
16 patient is ready for proposed conditional release or discharge. Such notice  
17 shall include, but not be limited to: (a) Identification of the patient; (b)  
18 the course of treatment; (c) a current assessment of the defendant's men-  
19 tal illness; (d) recommendations for future treatment, if any; and (e) rec-  
20 ommendations regarding conditional release or discharge, if any. Upon  
21 receiving notice, the district court shall order that a hearing be held on  
22 the proposed transfer, conditional release or discharge. The court shall  
23 give notice of the hearing to the state hospital or state security hospital  
24 where the patient is under commitment and, to the district or county  
25 attorney of the county from which the person was originally ordered com-  
26 mitted and *the secretary of corrections for the purpose of providing victim*  
27 ~~and family notification. The court shall order the involuntary patient to~~  
28 undergo a mental evaluation by a person designated by the court. A copy  
29 of all orders of the court shall be sent to the involuntary patient and the  
30 patient's attorney. The report of the court ordered mental evaluation shall  
31 be given to the district or county attorney, the involuntary patient and  
32 the patient's attorney at least five days prior to the hearing. The hearing  
33 shall be held within 30 days after the receipt by the court of the chief  
34 medical officer's notice. The involuntary patient shall remain in the state  
35 hospital or state security hospital where the patient is under commitment  
36 until the hearing on the proposed transfer, conditional release or dis-  
37 charge is to be held. At the hearing, the court shall receive all relevant  
38 evidence, including the written findings and recommendations of the  
39 chief medical officer of the state security hospital or the state hospital  
40 where the patient is under commitment, and shall determine whether  
41 the patient shall be transferred to a less restrictive hospital environment  
42 or whether the patient shall be conditionally released or discharged. The  
43 patient shall have the right to present evidence at such hearing and to

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1 cross-examine any witnesses called by the district or county attorney. At  
2 the conclusion of the hearing, if the court finds by clear and convincing  
3 evidence that the patient will not be likely to cause harm to self or others  
4 if transferred to a less restrictive hospital environment, the court shall  
5 order the patient transferred. If the court finds by clear and convincing  
6 evidence that the patient is not currently a mentally ill person, the court  
7 shall order the patient discharged or conditionally released; otherwise,  
8 the court shall order the patient to remain in the state security hospital  
9 or state hospital where the patient is under commitment. If the court  
10 orders the conditional release of the patient in accordance with subsection  
11 (4), the court may order as an additional condition to the release that the  
12 patient continue to take prescribed medication and report as directed to  
13 a person licensed to practice medicine and surgery to determine whether  
14 or not the patient is taking the medication or that the patient continue to  
15 receive periodic psychiatric or psychological treatment. *The court shall*  
16 *notify the secretary of corrections of the outcome of the hearing for the*  
17 *purpose of providing victim ~~and family~~ notification.*

18 (4). In order to ensure the safety and welfare of a patient who is to  
19 be conditionally released and the citizenry of the state, the court may  
20 allow the patient to remain in custody at a facility under the supervision  
21 of the secretary of social and rehabilitation services for a period of time  
22 not to exceed ~~30~~ 45 days in order to permit sufficient time for the sec-  
23 retary to prepare recommendations to the court for a suitable reentry  
24 program for the patient *and allow adequate time for the secretary of*  
25 *corrections to provide victim ~~and family~~ notification.* The reentry pro-  
26 gram shall be specifically designed to facilitate the return of the patient  
27 to the community as a functioning, self-supporting citizen, and may in-  
28 clude appropriate supportive provisions for assistance in establishing res-  
29 idency, securing gainful employment, undergoing needed vocational re-  
30 habilitation, receiving marital and family counseling, and such other  
31 outpatient services that appear beneficial. If a patient who is to be con-  
32 ditionally released will be residing in a county other than the county  
33 where the district court that ordered the conditional release is located,  
34 the court shall transfer venue of the case to the district court of the other  
35 county and send a copy of all of the court's records of the proceedings to  
36 the other court. In all cases of conditional release the court shall: (a) Order  
37 that the patient be placed under the temporary supervision of district  
38 court probation and parole services, community treatment facility or any  
39 appropriate private agency; and (b) require as a condition precedent to  
40 the release that the patient agree in writing to waive extradition in the  
41 event a warrant is issued pursuant to K.S.A. 22-3428b, and amendments  
42 thereto.

43 (5) At any time during the conditional release period, a conditionally

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1 released patient, through the patient's attorney, or the county or district  
2 attorney of the county in which the district court having venue is located  
3 may file a motion for modification of the conditions of release, and the  
4 court shall hold an evidentiary hearing on the motion within 15 days of  
5 its filing. The court shall give notice of the time for the hearing to the  
6 patient and the county or district attorney. If the court finds from the  
7 evidence at the hearing that the conditional provisions of release should  
8 be modified or vacated, it shall so order. If at any time during the tran-  
9 sitional period the designated medical officer or supervisory personnel or  
10 the treatment facility informs the court that the patient is not satisfactorily  
11 complying with the provisions of the conditional release, the court, after  
12 a hearing for which notice has been given to the county or district attorney  
13 and the patient, may make orders: (a) For additional conditions of release  
14 designed to effect the ends of the reentry program, (b) requiring the  
15 county or district attorney to file a petition to determine whether the  
16 patient is a mentally ill person as provided in K.S.A. 59-2957, and amend-  
17 ments thereto, or (c) requiring that the patient be committed to the state  
18 security hospital or any state hospital. In cases where an application a  
19 petition is ordered to be filed, the court shall proceed to hear and deter-  
20 mine the application petition pursuant to the care and treatment act for  
21 mentally ill persons and that act shall apply to all subsequent proceedings.  
22 *If a patient is committed to any state hospital pursuant to this act the*  
23 *secretary of social and rehabilitation services shall notify the secretary of*  
24 *corrections for the purpose of providing victim and family notification.*  
25 The costs of all proceedings, the mental evaluation and the reentry pro-  
26 gram authorized by this section shall be paid by the county from which  
27 the person was committed.

28 (6) In any case in which the defense that the defendant lacked the  
29 required mental state pursuant to K.S.A. 22-3220, and amendments  
30 thereto, is relied on, the court shall instruct the jury on the substance of  
31 this section.

32 (7) As used in this section and K.S.A. 22-3428a, and amendments  
33 thereto:

34 (a) "Likely to cause harm to self or others" means that the person is  
35 likely, in the reasonably foreseeable future, to cause substantial physical  
36 injury or physical abuse to self or others or substantial damage to another's  
37 property, or evidenced by behavior causing, attempting or threatening  
38 such injury, abuse or neglect.

39 (b) "Mentally ill person" means any person who:

40 (A) Is suffering from a severe mental disorder to the extent that such  
41 person is in need of treatment; and

42 (B) is likely to cause harm to self or others.

43 (c) "Treatment facility" means any mental health center or clinic,

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1 psychiatric unit of a medical care facility, psychologist, physician or other  
2 institution or individual authorized or licensed by law to provide either  
3 inpatient or outpatient treatment to any patient.

4 Sec. 5. K.S.A. 22-3428a is hereby amended to read as follows: 22-

5 3428a. (1) Any person found not guilty, pursuant to K.S.A. 22-3220 and

6 22-3221, *and amendments thereto*, who remains in the state security hos-

7 pital or a state hospital for over one year pursuant to a commitment under

8 K.S.A. 22-3428, and amendments thereto, shall be entitled annually to

9 request a hearing to determine whether or not the person continues to

10 be a mentally ill person. The request shall be made in writing to the

11 district court of the county where the person is hospitalized and shall be

12 signed by the committed person or the person's counsel. When the re-

13 quest is filed, the court shall give notice of the request to: (a) The county

14 or district attorney of the county in which the person was originally or-

15 dered committed, and (b) the chief medical officer of the state security

16 hospital or state hospital where the person is committed. The chief med-

17 ical officer receiving the notice, or the officer's designee, shall conduct a

18 mental examination of the person and shall send to the district court of

19 the county where the person is hospitalized, and to the county or district

20 attorney of the county in which the person was originally ordered com-

21 mitted a report of the examination within 20 days from the date when

22 notice from the court was received. Within 10 days after receiving the

23 report of the examination, the county or district attorney receiving it may

24 file a motion with the district court that gave the notice, requesting the

25 court to change the venue of the hearing to the district court of the county

26 in which the person was originally committed, or the court that gave the

27 notice on its own motion may change the venue of the hearing to the

28 district court of the county in which the person was originally committed.

29 Upon receipt of that motion and the report of the mental examination or

30 upon the court's own motion, the court shall transfer the hearing to the

31 district court specified in the motion and send a copy of the court's re-

32 cords of the proceedings to that court.

33 (2) After the time in which a change of venue may be requested has

34 elapsed, the court having venue shall set a date for the hearing, giving

35 notice thereof to the county or district attorney of the county, the com-

36 mitted person and the person's counsel *and the secretary of corrections*

37 *for the purpose of providing victim and family notification.* If there is

38 no counsel of record, the court shall appoint a counsel for the committed

39 person. The committed person shall have the right to procure, at the

40 person's own expense, a mental examination by a physician or licensed

41 psychologist of the person's own choosing. If a committed person is fi-

42 nancially unable to procure such an examination, the aid to indigent de-

43 fendants provisions of article 45 of chapter 22 of the Kansas Statutes

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1 Annotated shall be applicable to that person. A committed person re-  
2 questing a mental examination pursuant to K.S.A. 22-4508, and amend-  
3 ments thereto, may request a physician or licensed psychologist of the  
4 person's own choosing and the court shall request the physician or li-  
5 censed psychologist to provide an estimate of the cost of the examination.  
6 If the physician or licensed psychologist agrees to accept compensation  
7 in an amount in accordance with the compensation standards set by the  
8 board of supervisors of panels to aid indigent defendants, the judge shall  
9 appoint the requested physician or licensed psychologist; otherwise, the  
10 court shall designate a physician or licensed psychologist to conduct the  
11 examination. Copies of each mental examination of the committed person  
12 shall be filed with the court at least five days prior to the hearing and  
13 shall be supplied to the county or district attorney receiving notice pur-  
14 suant to this section and the committed person's counsel.

15 (3) At the hearing the committed person shall have the right to pres-  
16 ent evidence and cross-examine the witnesses. The court shall receive all  
17 relevant evidence, including the written findings and recommendations  
18 of the chief medical officer of the state security hospital or state hospital  
19 where the person is under commitment, and shall determine whether the  
20 committed person continues to be a mentally ill person. At the hearing  
21 the court may make any order that a court is empowered to make pur-  
22 suant to subsections (3), (4) and (5) of K.S.A. 22-3428, and amendments  
23 thereto. If the court finds by clear and convincing evidence the committed  
24 person is not a mentally ill person, the court shall order the person dis-  
25 charged; otherwise, the person shall remain committed or be condition-  
26 ally released. *The court shall notify the secretary of corrections of the*  
27 *outcome of the hearing for the purpose of providing victim ~~and family~~*  
28 *notification.*

29 (4) Costs of a hearing held pursuant to this section shall be assessed  
30 against and paid by the county in which the person was originally ordered  
31 committed.

32 Sec. 6. K.S.A. 22-3430 is hereby amended to read as follows: 22-  
33 3430. (a) If the report of the examination authorized by K.S.A. 22-3429  
34 and amendments thereto shows that the defendant is in need of psychi-  
35 atric care and treatment, that such treatment may materially aid in the  
36 defendant's rehabilitation and that the defendant and society are not likely  
37 to be endangered by permitting the defendant to receive such psychiatric  
38 care and treatment, in lieu of confinement or imprisonment, the trial  
39 judge shall have power to commit such defendant to: (1) The state se-  
40 curity hospital or any county institution provided for the reception, care,  
41 treatment and maintenance of mentally ill persons, if the defendant is  
42 convicted of a felony; or (2) any state or county institution provided for  
43 the reception, care, treatment and maintenance of mentally ill persons,

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1 if the defendant is convicted of a misdemeanor. The court may direct  
2 that the defendant be detained in such hospital or institution until further  
3 order of the court or until the defendant is discharged under K.S.A. 22-  
4 3431, and amendments thereto. *The court shall notify the secretary of*  
5 *corrections of the outcome of the hearing for the purpose of providing*  
6 *victim and family notification.* No period of detention under this section  
7 shall exceed the maximum term provided by law for the crime of which  
8 the defendant has been convicted. The cost of care and treatment pro-  
9 vided by a state institution shall be assessed in accordance with K.S.A.  
10 59-2006, and amendments thereto.

11 (b) No defendant committed to the state security hospital pursuant  
12 to this section upon conviction of a felony shall be transferred or released  
13 from such hospital except on recommendation of the staff of such  
14 hospital.

15 (c) The defendant may appeal from any order of commitment made  
16 pursuant to this section in the same manner and with like effect as if  
17 sentence to a jail, or to the custody of the secretary of corrections had  
18 been imposed.

19 Sec. 7. K.S.A. 22-3431 is hereby amended to read as follows: 22-  
20 3431. (a) Whenever it appears to the chief medical officer of the insti-  
21 tution to which a defendant has been committed under K.S.A. 22-3430  
22 and amendments thereto, that the defendant will not be improved by  
23 further detention in such institution, the chief medical officer shall give  
24 written notice thereof to the district court where the defendant was con-  
25 victed. Such notice shall include, but not be limited to: (1) Identification  
26 of the patient; (2) the course of treatment; (3) a current assessment of  
27 the defendant's psychiatric condition; (4) recommendations for future  
28 treatment, if any; and (5) recommendations regarding discharge, if any.

29 (b) Upon receiving such notice, the district court shall order that a  
30 hearing be held. The court shall give notice of the hearing to: (1) The  
31 state hospital or state security hospital where the defendant is under com-  
32 mitment; (2) the district or county attorney of the county from which the  
33 defendant was originally committed; (3) the defendant; and (4) the de-  
34 fendant's attorney; and (5) *the secretary of corrections for the purpose of*  
35 *providing victim and family notification.* The court shall inform the de-  
36 fendant that such defendant is entitled to counsel and that counsel will  
37 be appointed to represent the defendant if the defendant is not financially  
38 able to employ an attorney as provided in K.S.A. 22-4503 et seq., and  
39 amendments thereto. The hearing shall be held within 30 days after the  
40 receipt by the court of the chief medical officer's notice.

41 (c) At the hearing, the defendant shall be sentenced, committed,  
42 granted probation, assigned to a community correctional services pro-  
43 gram, as provided by K.S.A. 75-5291, and amendments thereto, or dis-

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1 charged as the court deems best under the circumstance. *The court shall*  
2 *notify the secretary of corrections of the outcome of the hearing for the*  
3 *purpose of providing victim ~~and family~~ notification.* The time spent in  
4 a state or local institution pursuant to a commitment under K.S.A. 22-  
5 3430, and amendments thereto shall be credited against any sentence,  
6 confinement or imprisonment imposed on the defendant.

7 Sec. 8. K.S.A. 22-3727 is hereby amended to read as follows: 22-  
8 3727. (a) Prior to the release of any inmate on parole, conditional release,  
9 expiration of sentence or postrelease supervision, if an inmate is released  
10 into the community under a program under the supervision of the sec-  
11 retary of corrections, or after the escape of an inmate or death of an  
12 inmate while in the secretary of corrections' custody, the secretary of  
13 corrections shall give written notice of such release, escape or death to  
14 any victim of the inmate's crime who is alive and whose address is known  
15 to the secretary or, if the victim is deceased, to the victim's family if the  
16 family's address is known to the secretary. Such notice shall be required  
17 to be given to the victim or the victim's family only if the inmate was  
18 convicted of any crime in article 33, 34, 35 or 36 of chapter 21 of the  
19 Kansas Statutes Annotated, *and amendments thereto*. Failure to notify  
20 the victim or the victim's family as provided in this section shall not be a  
21 reason for postponement of parole, conditional release or other forms of  
22 release.

23 (b) *As used in this section, "victim's family" means a spouse, surviving*  
24 *spouse, children, parents, legal guardian, siblings, stepparent or grand-*  
25 *parents.*

26 Sec. 9. K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-  
27 3431 and 22-3727 are hereby repealed.

28 Sec. 10. This act shall take effect and be in force from and after its  
29 publication in the statute book.

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[As Amended by House Committee of the Whole]

Session of 2010

## HOUSE BILL No. 2668

By Committee on Judiciary

2-5

HB2668-Balloon-B1.pdf  
RS - JThompson - 03/12/10

10 AN ACT concerning crimes, punishment and criminal procedure; recod-  
11 ification; amending K.S.A. 22-3427 and repealing the existing section;  
12 also repealing K.S.A. 21-3101, 21-3102, 21-3103, 21-3104, 21-3105,  
13 21-3106, 21-3107, 21-3108, 21-3109, 21-3110a, 21-3111, 21-3112, 21-  
14 3201, 21-3202, 21-3203, 21-3204, 21-3205, 21-3206, 21-3207, 21-3208,  
15 21-3209, 21-3210, 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-  
16 3216, 21-3217, 21-3218, 21-3219, 21-3301, 21-3302, 21-3303, 21-3401,  
17 21-3402, 21-3403, 21-3404, 21-3405, 21-3406, 21-3408, 21-3409, 21-  
18 3410, 21-3411, 21-3412, 21-3413, 21-3414, 21-3415, 21-3416, 21-3418,  
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20 3426, 21-3427, 21-3428, 21-3430, 21-3434, 21-3435, 21-3437, 21-3439,  
21 21-3442, 21-3443, 21-3444, 21-3445, 21-3446, 21-3447, 21-3448, 21-  
22 3449, 21-3450, 21-3451, 21-3452, 21-3501, 21-3502, 21-3503, 21-3504,  
23 21-3505, 21-3506, 21-3507, 21-3508, 21-3510, 21-3511, 21-3512, 21-  
24 3513, 21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3521, 21-3522,  
25 21-3601, 21-3602, 21-3603, 21-3604, 21-3604a, 21-3605, 21-3608, 21-  
26 3609, 21-3610b, 21-3612, 21-3701, 21-3703, 21-3704, 21-3707, 21-  
27 3709, 21-3710, 21-3711, 21-3712, 21-3713, 21-3715, 21-3716, 21-3719,  
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29 3728, 21-3729, 21-3730, 21-3731, 21-3734, 21-3738, 21-3739, 21-3742,  
30 21-3743, 21-3744, 21-3748, 21-3749, 21-3750, 21-3751, 21-3755, 21-  
31 3756, 21-3757, 21-3758, 21-3759, 21-3760, 21-3761, 21-3762, 21-3763,  
32 21-3764, 21-3765, 21-3766, 21-3801, 21-3802, 21-3805, 21-3807, 21-  
33 3808, 21-3809, 21-3810, 21-3812, 21-3813, 21-3814, 21-3815, 21-3816,  
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39 3856, 21-3901, 21-3902, 21-3903, 21-3904, 21-3905, 21-3910, 21-3911,  
40 21-3912, 21-4001, 21-4002, 21-4003, 21-4004, 21-4005, 21-4006, 21-  
41 4009, 21-4010, 21-4011, 21-4012, 21-4013, 21-4014, 21-4016, 21-4017,  
42 21-4018, 21-4019, 21-4101, 21-4102, 21-4103, 21-4104, 21-4105, 21-  
43 4106, 21-4106a, 21-4107, 21-4110, 21-4111, 21-4113, 21-4202, 21-

Senate Judiciary

3-12-10

Attachment 9

1 without an intent to restore the same;

2 (2) retain property without intent to restore the same or with intent  
3 to restore it to the owner only if the owner purchases or leases it back,  
4 or pays a reward or other compensation for its return; or

5 (3) sell, give, pledge or otherwise dispose of any interest in property  
6 or subject it to the claim of a person other than the owner.

7 (g) "Distribute" means the actual or constructive transfer from one  
8 person to another of some item whether or not there is an agency rela-  
9 tionship. "Distribute" includes, but is not limited to, sale, offer for sale,  
10 furnishing, buying for, delivering, giving, or any act that causes or is in-  
11 tended to cause some item to be transferred from one person to another.  
12 "Distribute" does not include acts of administering, dispensing or pre-  
13 scribing a controlled substance as authorized by the pharmacy act of the  
14 state of Kansas, the uniform controlled substances act, or otherwise au-  
15 thorized by law.

16 (h) "DNA" means deoxyribonucleic acid.

17 (i) "Dwelling" means a building or portion thereof, a tent, a vehicle  
18 or other enclosed space which is used or intended for use as a human  
19 habitation, home or residence.

20 (j) "Expungement" means the sealing of records such that the records  
21 are unavailable except to the petitioner and criminal justice agencies as  
22 provided by K.S.A. 22-4701 et seq., and amendments thereto, and except  
23 as provided in this act.

24 (k) "Firearm" means any weapon ~~designed or having the capacity to~~  
25 ~~propel a projectile by force of an explosion or combustion.~~

26 (l) "Forcible felony" includes any treason, murder, voluntary man-  
27 slaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery,  
28 aggravated sodomy and any other felony which involves the use or threat  
29 of physical force or violence against any person.

30 (m) "Intent to defraud" means an intention to deceive another per-  
31 son, and to induce such other person, in reliance upon such deception,  
32 to assume, create, transfer, alter or terminate a right, obligation or power  
33 with reference to property.

34 (n) "Law enforcement officer" means:

35 (1) Any person who by virtue of such person's office or public em-  
36 ployment is vested by law with a duty to maintain public order or to make  
37 arrests for crimes, whether that duty extends to all crimes or is limited to  
38 specific crimes;

39 (2) any officer of the Kansas department of corrections or, for the  
40 purposes of sections 47 and subsection (d) of section 48, and amendments  
41 thereto, any employee of the Kansas department of corrections; or

42 (3) any university police officer or campus police officer, as defined  
43 in K.S.A. 22-2401a, and amendments thereto.

9-2  
 , including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive. "Firearm" does not include an antique firearm. "Antique firearm" means:

(A) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898;

(B) any replica of any firearm described in subparagraph (A) if such replica: (i) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock or any combination thereof.

[As Amended by House Committee of the Whole]

Session of 2010

## HOUSE BILL No. 2668

By Committee on Judiciary

2-5

HB2668-Balloon-Revisor.pdf  
RS - JThompson - 03/12/10

Senate Judiciary  
3-12-10  
Attachment 10

10 AN ACT concerning crimes, punishment and criminal procedure; recod-  
11 ification; amending K.S.A. 22-3427 and repealing the existing section;  
12 also repealing K.S.A. 21-3101, 21-3102, 21-3103, 21-3104, 21-3105,  
13 21-3106, 21-3107, 21-3108, 21-3109, 21-3110a, 21-3111, 21-3112, 21-  
14 3201, 21-3202, 21-3203, 21-3204, 21-3205, 21-3206, 21-3207, 21-3208,  
15 21-3209, 21-3210, 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-  
16 3216, 21-3217, 21-3218, 21-3219, 21-3301, 21-3302, 21-3303, 21-3401,  
17 21-3402, 21-3403, 21-3404, 21-3405, 21-3406, 21-3408, 21-3409, 21-  
18 3410, 21-3411, 21-3412, 21-3413, 21-3414, 21-3415, 21-3416, 21-3418,  
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22 3449, 21-3450, 21-3451, 21-3452, 21-3501, 21-3502, 21-3503, 21-3504,  
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24 3513, 21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3521, 21-3522,  
25 21-3601, 21-3602, 21-3603, 21-3604, 21-3604a, 21-3605, 21-3608, 21-  
26 3609, 21-3610b, 21-3612, 21-3701, 21-3703, 21-3704, 21-3707, 21-  
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29 3728, 21-3729, 21-3730, 21-3731, 21-3734, 21-3738, 21-3739, 21-3742,  
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31 3756, 21-3757, 21-3758, 21-3759, 21-3760, 21-3761, 21-3762, 21-3763,  
32 21-3764, 21-3765, 21-3766, 21-3801, 21-3802, 21-3805, 21-3807, 21-  
33 3808, 21-3809, 21-3810, 21-3812, 21-3813, 21-3814, 21-3815, 21-3816,  
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35 3824, 21-3825, 21-3827, 21-3828, 21-3829, 21-3830, 21-3831, 21-3832,  
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37 3840, 21-3841, 21-3842, 21-3844, 21-3845, 21-3846, 21-3847, 21-3848,  
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39 3856, 21-3901, 21-3902, 21-3903, 21-3904, 21-3905, 21-3910, 21-3911,  
40 21-3912, 21-4001, 21-4002, 21-4003, 21-4004, 21-4005, 21-4006, 21-  
41 4009, 21-4010, 21-4011, 21-4012, 21-4013, 21-4014, 21-4016, 21-4017,  
42 21-4018, 21-4019, 21-4101, 21-4102, 21-4103, 21-4104, 21-4105, 21-  
43 4106, 21-4106a, 21-4107, 21-4110, 21-4111, 21-4113, 21-4202, 21-

← Strike

1 New Sec. 177. As used in this sections 178 and 179, and amendments  
2 thereto:

3 (a) "Medical care facility" means a general hospital, special hospital,  
4 ambulatory surgery center or recuperation center, as defined in K.S.A.  
5 65-425, and amendments thereto, and any psychiatric hospital licensed  
6 under K.S.A. 75-3307b, and amendments thereto;

7 (b) "public place" means enclosed indoor areas open to the public or  
8 used by the general public including, but not limited to:

9 (1) Restaurants;

10 (2) retail stores;

11 (3) public means of mass transportation;

12 (4) passenger elevators;

13 (5) health care institutions or any other place where health care serv-  
14 ices are provided to the public;

15 (6) educational facilities;

16 (7) libraries;

17 (8) courtrooms;

18 (9) state, county or municipal buildings;

19 (10) restrooms;

20 (11) grocery stores;

21 (12) school buses;

22 (13) museums;

23 (14) theaters;

24 (15) auditoriums;

25 (16) arenas; and

26 (17) recreational facilities.

27 (c) "Public meeting" includes all meetings open to the public.

28 (d) "Smoking" means possession of a lighted cigarette, cigar, pipe,  
29 lighted smoking equipment or burning tobacco in any other form or de-  
30 vice designed for the use of tobacco.

31 (e) "Smoking area" or "designated smoking area" means a place  
32 within a public building where smoking is allowed as designated by pro-  
33 prietors or other persons in charge of public places, except that no such  
34 areas may be designated in passenger elevators, school buses, public  
35 means of mass transportation or any other place in which smoking is  
36 prohibited by the fire marshal or by other law, ordinance or regulation.  
37 No area of the state capitol shall be established as a designated smoking  
38 area. The proprietors or persons in charge of the public place shall have  
39 the authority to establish the percentage of area in the public place which  
40 shall be posted and designated as a smoking area. Where smoking areas  
41 are designated, existing physical barriers and ventilation systems shall be  
42 used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

43 New Sec. 178. (a) Unlawful smoking in a prohibited place is smoking

← Strike Sections 177, 178 and 179

Renumber remaining sections

10-2

1 in:

2 ~~(1) A public place or at a public meeting except in designated smoking~~  
3 ~~areas;~~

4 ~~(2) a medical care facility except that a smoking area may be estab-~~  
5 ~~lished within a licensed long term care unit of a medical care facility if~~  
6 ~~such smoking area is well ventilated; or~~

7 ~~(3) any place in the state capitol.~~

8 ~~(b) Unlawful smoking in a prohibited place is a misdemeanor pun-~~  
9 ~~ishable by a fine of not more than \$20 for each violation.~~

10 ~~(c) Nothing in this section shall prevent any city or county from reg-~~  
11 ~~ulating smoking within its boundaries, so long as such regulation is at least~~  
12 ~~as stringent as that imposed by this section. In such cases the more strin-~~  
13 ~~gent local regulation shall control to the extent of any inconsistency be-~~  
14 ~~tween such regulation and this section.~~

15 ~~New Sec. 179. (a) Failure to post smoking related signs is failure by:~~

16 ~~(1) The proprietor, or other person in charge of the premises of a~~  
17 ~~public place, to post or cause to be posted in:~~

18 ~~(A) A conspicuous place, signs clearly stating that smoking is prohib-~~  
19 ~~ited by state law; or~~

20 ~~(B) any designated smoking area, signs stating that smoking is per-~~  
21 ~~mitted in such room or area.~~

22 ~~(2) The chief administrative officer of each medical care facility to~~  
23 ~~post or cause to be posted, in conspicuous places, signs stating that smok-~~  
24 ~~ing in the medical care facility is prohibited by state law.~~

25 ~~(c) Failure to post smoking related signs is a misdemeanor punishable~~  
26 ~~by a fine of not more than \$50.~~

27 ~~(d) The department of health and environment, or local department~~  
28 ~~of health, may institute an action in any court of competent jurisdiction~~  
29 ~~to enjoin repeated violations of this section.~~

30 ~~New Sec. 180. (a) Identity theft is obtaining, possessing, transferring,~~  
31 ~~using, selling or purchasing any personal identifying information, or doc-~~  
32 ~~ument containing the same, belonging to or issued to another person,~~  
33 ~~with the intent to defraud that person, or any one else, in order to receive~~  
34 ~~any benefit.~~

35 ~~(b) Identity fraud is:~~

36 ~~(1) Using or supplying information the person knows to be false in~~  
37 ~~order to obtain a document containing any personal identifying infor-~~  
38 ~~mation; or~~

39 ~~(2) altering, amending, counterfeiting, making, manufacturing or oth-~~  
40 ~~erwise replicating any document containing personal identifying infor-~~  
41 ~~mation with the intent to deceive;~~

42 ~~(c) (1) Identity theft is a:~~

43 ~~(A) Severity level 8, nonperson felony, except as provided in subsec-~~

1 3705, prior to its repeal, or of criminal deprivation of property, as defined  
2 in section 89, and amendments thereto, when such property is a motor  
3 vehicle, shall be presumptive imprisonment. Such sentence shall not be  
4 considered a departure and shall not be subject to appeal.

5 (o) The sentence for a felony violation of theft of property as defined  
6 in section 87, and amendments thereto, or burglary as defined in subsection  
7 (a) of section 93, and amendments thereto, when such person being  
8 sentenced has no prior convictions for a violation of K.S.A. 21-3701 or  
9 21-3715, prior to their repeal, or theft of property as defined in section  
10 87, and amendments thereto, or burglary as defined in subsection (a) of  
11 section 93, and amendments thereto; or the sentence for a felony violation  
12 of theft of property as defined in section 87, and amendments thereto,  
13 when such person being sentenced has one or two prior felony convictions  
14 for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal,  
15 or theft of property as defined in section 87, and amendments thereto,  
16 or burglary as defined in section 93, and amendments thereto; or the  
17 sentence for a felony violation of burglary as defined in subsection (a) of  
18 section 93, and amendments thereto, when such person being sentenced  
19 has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715  
20 or 21-3716, prior to their repeal, or theft of property as defined in section  
21 87, and amendments thereto, or burglary as defined in section 93, and  
22 amendments thereto, shall be the sentence as provided by this section,  
23 except that the court may order an optional nonprison sentence for a  
24 defendant to participate in a drug treatment program, including, but not  
25 limited to, an approved after-care plan, if the court makes the following  
26 findings on the record:

27 (1) Substance abuse was an underlying factor in the commission of  
28 the crime;

29 (2) substance abuse treatment in the community is likely to be more  
30 effective than a prison term in reducing the risk of offender recidivism;  
31 and

32 (3) participation in an intensive substance abuse treatment program  
33 will serve community safety interests.

34 A defendant sentenced to an optional nonprison sentence under this  
35 subsection shall be supervised by community correctional services. The  
36 provisions of subsection (f)(1) of section \_\_\_\_\_, and amendments thereto,  
37 shall apply to a defendant sentenced under this subsection. The sentence  
38 under this subsection shall not be considered a departure and shall not  
39 be subject to appeal.

40 (p) The sentence for a felony violation of theft of property as defined  
41 in section 87, and amendments thereto, when such person being sen-  
42 tenced has any combination of three or more prior felony convictions for  
43 violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or

provisions of subsection (f)(1) of  
section 308, and amendments thereto,

1 21-3610b, 21-3612, 21-3701, 21-3703, 21-3704, 21-3707, 21-3709, 21-  
2 3710, 21-3711, 21-3712, 21-3713, 21-3715, 21-3716, 21-3719, 21-3720,  
3 21-3721, 21-3722, 21-3724, 21-3725, 21-3726, 21-3727, 21-3728, 21-  
4 3729, 21-3730, 21-3731, 21-3734, 21-3738, 21-3739, 21-3742, 21-3743,  
5 21-3744, 21-3748, 21-3749, 21-3750, 21-3751, 21-3755, 21-3756, 21-  
6 3757, 21-3758, 21-3759, 21-3760, 21-3761, 21-3762, 21-3763, 21-3764,  
7 21-3765, 21-3766, 21-3801, 21-3802, 21-3805, 21-3807, 21-3808, 21-  
8 3809, 21-3810, 21-3812, 21-3813, 21-3814, 21-3815, 21-3816, 21-3817,  
9 21-3818, 21-3819, 21-3820, 21-3821, 21-3822, 21-3823, 21-3824, 21-  
10 3825, 21-3827, 21-3828, 21-3829, 21-3830, 21-3831, 21-3832, 21-3833,  
11 21-3834, 21-3835, 21-3836, 21-3837, 21-3838, 21-3839, 21-3840, 21-  
12 3841, 21-3842, 21-3844, 21-3845, 21-3846, 21-3847, 21-3848, 21-3849,  
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14 3901, 21-3902, 21-3903, 21-3904, 21-3905, 21-3910, 21-3911, 21-3912,  
15 21-4001, 21-4002, 21-4003, 21-4004, 21-4005, 21-4006, ~~21-4009, 21-~~  
16 ~~4010, 21-4011, 21-4012, 21-4013, 21-4014, 21-4016, 21-4017, 21-4018,~~  
17 21-4019, 21-4101, 21-4102, 21-4103, 21-4104, 21-4105, 21-4106, 21-  
18 4106a, 21-4107, 21-4110, 21-4111, 21-4113, 21-4202, 21-4204a, 21-4206,  
19 21-4207, 21-4208, 21-4209, 21-4209a, 21-4209b, 21-4210, 21-4211, 21-  
20 4212, 21-4213, 21-4216, 21-4219, 21-4220, 21-4221, 21-4222, 21-4223,  
21 21-4224, 21-4225, 21-4227, 21-4228, 21-4229, 21-4230, 21-4231, 21-  
22 4232, 21-4301, 21-4301a, 21-4301b, 21-4301c, 21-4302, 21-4303, 21-  
23 4303a, 21-4304, 21-4305, 21-4306, 21-4307, 21-4308, 21-4309, 21-4311,  
24 21-4312, 21-4313, 21-4314, 21-4317, 21-4318, 21-4401, 21-4402, 21-  
25 4403, 21-4404, 21-4405, 21-4406, 21-4407, 21-4408, 21-4409, 21-4410,  
26 21-4501, 21-4501a, 21-4503, 21-4503a, 21-4504, 21-4601, 21-4602, 21-  
27 4603, 21-4603b, 21-4604, 21-4605, 21-4606, 21-4606a, 21-4606b, 21-  
28 4607, 21-4609, 21-4610, 21-4610a, 21-4612, 21-4613, 21-4614, 21-4614a,  
29 21-4615, 21-4618, 21-4620, 21-4621, 21-4622, 21-4623, 21-4624, 21-  
30 4625, 21-4626, 21-4627, 21-4629, 21-4630, 21-4631, 21-4632, 21-4633,  
31 21-4634, 21-4635, 21-4636, 21-4637, 21-4638, 21-4639, 21-4640, 21-  
32 4641, 21-4643, 21-4644, 21-4645, 21-4701, 21-4702, 21-4703, 21-4706,  
33 21-4707, 21-4709, 21-4710, 21-4711, 21-4716, 21-4718, 21-4720, 21-  
34 4721, 21-4722, 21-4723, 21-4724, 21-4725, 21-4726, 21-4727, 21-4728,  
35 21-4801 and 22-3427 and K.S.A. 2009 Supp. 21-3110, 21-3412a, 21-3419,  
36 21-3419a, 21-3436, 21-3438, 21-3523, 21-3525, 21-3608a, 21-3610, 21-  
37 3610c, 21-3702, 21-3705, 21-3718, 21-3736, 21-3737, 21-3811, 21-3826,  
38 21-3843, 21-4015a, 21-4201, 21-4203 21-4204, 21-4205, 21-4217, 21-  
39 4218, 21-4226 21-4310, 21-4315, 21-4316, 21-4319, 21-4502, 21-4603d,  
40 21-4608, 21-4611, 21-4619, 21-4642 21-4704, 21-4705, 21-4708, 21-4713,  
41 21-4714, 21-4715, 21-4717, 21-4719 and 21-4729 are hereby repealed.  
42 Sec. 311. This act shall take effect and be in force on and after July  
43 1, 2011, and its publication in the statute book.

← Strike

10-5

As Amended by House Committee

Session of 2010

**HOUSE BILL No. 2412**

By Joint Committee on Corrections and Juvenile Justice Oversight

1-8

10 AN ACT concerning crimes, criminal procedure and punishment; relat-  
11 ing to persons in the custody of the secretary of corrections; early  
12 release of the functionally incapacitated; early release of persons with  
13 terminal medical conditions; amending K.S.A. 22-3728 and repealing  
14 the existing section.

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

16 Section 1. K.S.A. 22-3728 is hereby amended to read as follows: 22-  
17 3728. (a) (1) Upon application of the secretary of corrections, the Kansas  
18 parole board may grant release to any person deemed to be functionally  
19 incapacitated, upon such terms and conditions as prescribed in the order  
20 granting such release.

21 (2) The Kansas parole board shall adopt rules and regulations gov-  
22 erning the procedure for initiating, processing, reviewing and establishing  
23 criteria for review of applications filed on behalf of persons deemed to  
24 be functionally incapacitated. Such rules and regulations shall include  
25 criteria and guidelines for determining whether the functional incapaci-  
26 tation precludes the person from posing a threat to the public.

27 (3) Subject to the provisions of subsections (a)(4) and (a)(5), a func-  
28 tional incapacitation release shall not be granted until at least 30 days  
29 after written notice of the application has been given to: (A) The prose-  
30 cuting attorney and the judge of the court in which the person was con-  
31 victed; and (B) any victim of the person's crime or the victim's family.  
32 Notice of such application shall be given by the secretary of corrections  
33 to the victim who is alive and whose address is known to the secretary,  
34 or if the victim is deceased, to the victim's family if the family's address  
35 is known to the secretary. Subject to the provisions of subsection (a)(4),  
36 if there is no known address for the victim, if alive, or the victim's family,  
37 if deceased, the board shall not grant or deny such application until at  
38 least 30 days after notification is given by publication in the county of  
39 conviction. Publication costs shall be paid by the department of  
40 corrections.

41 (4) All applications for functional incapacitation release shall be re-  
42 ferred to the board. The board shall examine each case and may approve  
43

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RS - JThompson - 03/12/10

Senate Judiciary

3-12-10

Attachment //



1 a member of the Kansas parole board may grant release to any person  
2 deemed by a doctor licensed to practice medicine and surgery in Kansas  
3 to have a terminal medical condition likely to cause death within 30 days  
4 upon such terms and conditions as prescribed in the order granting such  
5 release.

6 (2) The Kansas parole board shall adopt rules and regulations gov-  
7 erning the procedure for initiating, processing, reviewing and establishing  
8 criteria for review of applications filed on behalf of persons deemed to  
9 have a terminal medical condition likely to cause death within 30 days.  
10 Such rules and regulations shall include criteria and guidelines for deter-  
11 mining whether the terminal medical condition precludes the person  
12 from posing a threat to the public.

13 (3) All applications for a terminal medical condition release shall be  
14 referred to a member of the board. The board member shall examine  
15 each case and may approve such application and grant a release. An ap-  
16 plication for release shall not be approved unless the board member de-  
17 termines that the person has a terminal illness or condition likely to cause  
18 death within 30 days and does not represent a future risk to public safety.  
19 The board member may request additional information or evidence the  
20 member deems necessary from a doctor licensed to practice medicine  
21 and surgery in Kansas.

22 (4) The board member shall establish any conditions related to the  
23 release of the person. The release shall be conditional, and be subject to  
24 revocation pursuant to K.S.A. 75-5217, and amendments thereto, if the  
25 person's illness or condition significantly improves, the person does not  
26 die within 30 days of release, if the person fails to comply with any con-  
27 dition of release, or if the board otherwise concludes that the person  
28 presents a threat or risk to public safety. The person shall remain on  
29 release supervision until the release is revoked, expiration of the maxi-  
30 mum sentence or discharged by the board. Subject to the provisions of  
31 subsection (f) of K.S.A. 75-5217, and amendments thereto, the person  
32 shall receive credit for the time during which the person is on terminal  
33 medical condition release supervision towards service of the prison and  
34 postrelease supervision obligations of determinate sentences or indeter-  
35 minate and off-grid sentences.

36 (5) The secretary of corrections shall cause the person to be super-  
37 vised upon release, and shall have the authority to initiate revocation of  
38 the person at any time for the reasons indicated in subsection (a)(4).

39 (6) The decision of the board member on the application and the  
40 decision of the board regarding any revocation shall be final and not  
41 subject to review by any administrative agency or court.

42 (7) In determining whether a person ~~has a terminal medical condition~~  
43 ~~likely to cause death within 30 days~~ **meets the criteria to be released**

been deemed by a doctor  
licensed to practice medicine  
and surgery in Kansas to have  
a terminal medical condition

As Amended by House Committee

Session of 2010

**HOUSE BILL No. 2412**

By Joint Committee on Corrections and Juvenile Justice Oversight

1-8

10 AN ACT concerning crimes, criminal procedure and punishment; relat-  
11 ing to persons in the custody of the secretary of corrections; early  
12 release of the functionally incapacitated; early release of persons with  
13 terminal medical conditions; amending K.S.A. 22-3728 and repealing  
14 the existing section.

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

16 Section 1. K.S.A. 22-3728 is hereby amended to read as follows: 22-  
17 3728. (a) (1) Upon application of the secretary of corrections, the Kansas  
18 parole board may grant release to any person deemed to be functionally  
19 incapacitated, upon such terms and conditions as prescribed in the order  
20 granting such release.

21 (2) The Kansas parole board shall adopt rules and regulations gov-  
22 erning the procedure for initiating, processing, reviewing and establishing  
23 criteria for review of applications filed on behalf of persons deemed to  
24 be functionally incapacitated. Such rules and regulations shall include  
25 criteria and guidelines for determining whether the functional incapaci-  
26 tation precludes the person from posing a threat to the public.

27 (3) Subject to the provisions of subsections (a)(4) and (a)(5), a func-  
28 tional incapacitation release shall not be granted until at least 30 days  
29 after written notice of the application has been given to: (A) The prose-  
30 cuting attorney and the judge of the court in which the person was con-  
31 victed; and (B) any victim of the person's crime or the victim's family.  
32 Notice of such application shall be given by the secretary of corrections  
33 to the victim who is alive and whose address is known to the secretary,  
34 or if the victim is deceased, to the victim's family if the family's address  
35 is known to the secretary. Subject to the provisions of subsection (a)(4),  
36 if there is no known address for the victim, if alive, or the victim's family,  
37 if deceased, the board shall not grant or deny such application until at  
38 least 30 days after notification is given by publication in the county of  
39 conviction. Publication costs shall be paid by the department of  
40 corrections.

41 (4) All applications for functional incapacitation release shall be re-  
42 ferred to the board. The board shall examine each case and may approve  
43

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Attachment 12

1 such application and grant a release. An application for release shall not  
 2 be approved unless the board determines that the person is functionally  
 3 incapacitated and does not represent a future risk to public safety. The  
 4 board shall determine whether a hearing is necessary on the application.  
 5 The board may request additional information or evidence it deems nec-  
 6 essary from a medical or mental health practitioner.

7 (5) The board shall establish any conditions related to the release of  
 8 the person. The release shall be conditional, and be subject to revocation  
 9 pursuant to K.S.A. 75-5217, and amendments thereto, if the person's  
 10 functional incapacity significantly diminishes, if the person fails to comply  
 11 with any condition of release, or if the board otherwise concludes that  
 12 the person presents a threat or risk to public safety. The person shall  
 13 remain on release supervision until the release is revoked, expiration of  
 14 the maximum sentence, or discharged by the board. Subject to the provi-  
 15 sions of subsection (f) of K.S.A. 75-5217, and amendments thereto, the  
 16 person shall receive credit for the time during which the person is on  
 17 functional incapacitation release supervision towards service of the prison  
 18 and postrelease supervision obligations of determinate sentences or in-  
 19 determinate ~~and off-grid~~ sentences.

20 (6) The secretary of corrections shall cause the person to be super-  
 21 vised upon release, and shall have the authority to initiate revocation of  
 22 the person at any time for the reasons indicated in subsection (a)(5).

23 (7) The decision of the board on the application or any revocation  
 24 shall be final and not subject to review by any administrative agency or  
 25 court.

26 (8) In determining whether a person is functionally incapacitated, the  
 27 board shall consider the following: (A) The person's current condition as  
 28 confirmed by medical or mental health care providers, including whether  
 29 the condition is terminal;

30 (B) the person's age and personal history;

31 (C) the person's criminal history;

32 (D) the person's length of sentence and time the person has served;

33 (E) the nature and circumstances of the current offense;

34 (F) the risk or threat to the community if released;

35 (G) whether an appropriate release plan has been established; and

36 (H) any other factors deemed relevant by the board.

37 (b) Nothing in this section shall be construed to limit or preclude  
 38 submission of an application for pardon or commutation of sentence pur-  
 39 suant to K.S.A. 22-3701, and amendments thereto.

40 (c) *Nothing in this section shall apply to the release of people with*  
 41 *terminal medical conditions as described in section 2, and amendments*  
 42 *thereto.*

43 New Sec. 2. (a) (1) Upon application of the secretary of corrections,

← Strike

(d) This section does not apply to any person sentenced to imprisonment for an off-grid offense.

12-3

1 ~~a member~~ of the Kansas parole board may grant release to any person  
 2 deemed by a doctor licensed to practice medicine and surgery in Kansas  
 3 to have a terminal medical condition likely to cause death within 30 days  
 4 upon such terms and conditions as prescribed in the order granting such  
 5 release.

6 (2) The Kansas parole board shall adopt rules and regulations gov-  
 7 erning the procedure for initiating, processing, reviewing and establishing  
 8 criteria for review of applications filed on behalf of persons deemed to  
 9 have a terminal medical condition likely to cause death within 30 days.  
 10 Such rules and regulations shall include criteria and guidelines for deter-  
 11 mining whether the terminal medical condition precludes the person  
 12 from posing a threat to the public.

13 (3) All applications for a terminal medical condition release shall be  
 14 referred to ~~a member~~ of the board. The board ~~member~~ shall examine  
 15 each case and may approve such application and grant a release. An ap-  
 16 plication for release shall not be approved unless the board ~~member~~ de-  
 17 termines that the person has a terminal illness or condition likely to cause  
 18 death within 30 days and does not represent a future risk to public safety.  
 19 The board ~~member~~ may request additional information or evidence the  
 20 ~~member~~ deems necessary from a doctor licensed to practice medicine  
 21 and surgery in Kansas.

22 (4) The board ~~member~~ shall establish any conditions related to the  
 23 release of the person. The release shall be conditional, and be subject to  
 24 revocation pursuant to K.S.A. 75-5217, and amendments thereto, if the  
 25 person's illness or condition significantly improves, the person does not  
 26 die within 30 days of release, if the person fails to comply with any con-  
 27 dition of release, or if the board otherwise concludes that the person  
 28 presents a threat or risk to public safety. The person shall remain on  
 29 release supervision until the release is revoked, expiration of the maxi-  
 30 mum sentence or discharged by the board. Subject to the provisions of  
 31 subsection (f) of K.S.A. 75-5217, and amendments thereto, the person  
 32 shall receive credit for the time during which the person is on terminal  
 33 medical condition release supervision towards service of the prison and  
 34 postrelease supervision obligations of determinate sentences or indeter-  
 35 minate ~~and off grid~~ sentences.

36 (5) The secretary of corrections shall cause the person to be super-  
 37 vised upon release, and shall have the authority to initiate revocation of  
 38 the person at any time for the reasons indicated in subsection (a)(4).

39 (6) The decision of the board ~~member~~ on the application and the  
 40 decision of the board regarding any revocation shall be final and not  
 41 subject to review by any administrative agency or court.

42 (7) In determining whether a person ~~has a terminal medical condition~~  
 43 ~~likely to cause death within 30 days~~ **meets the criteria to be released**

Strike

board

Strike

Strike

Strike

1 **under this section**, the board ~~member~~ shall consider the following: (A)  
2 The person's current condition as confirmed by a doctor licensed to prac-  
3 tice medicine and surgery in Kansas, including whether the condition is  
4 terminal and likely to cause death within 30 days;  
5 (B) the person's age and personal history;  
6 (C) the person's criminal history;  
7 (D) the person's length of sentence and time the person has served;  
8 (E) the nature and circumstances of the current offense;  
9 (F) the risk or threat to the community if released;  
10 (G) whether an appropriate release plan has been established; and  
11 (H) any other factors deemed relevant by the board member.  
12 (b) Nothing in this section shall be construed to limit or preclude  
13 submission of an application for pardon or commutation of sentence pur-  
14 suant to K.S.A. 22-3701, and amendments thereto.  
15 (c) The secretary shall give notice of the granting of a terminal med-  
16 ical condition release to: (1) The prosecuting attorney and the judge of  
17 the court in which the person was convicted; and (2) any victim of the  
18 person's crime if alive or the victim's family if the victim is deceased,  
19 whose address is known by the secretary.  
20 Sec. 3. K.S.A. 22-3728 is hereby repealed.  
21 Sec. 4. This act shall take effect and be in force from and after its  
22 publication in the statute book.

Strike

(d) This section does not apply to any person sentenced to imprisonment for an off-grid offense.

12-4

## Proposed SENATE Substitute for HOUSE BILL NO. 2506

By Committee on Judiciary

AN ACT concerning crimes, criminal procedure and punishment; relating to the Kansas parole board; considerations of the parole board when determining eligibility; conditions of parole and postrelease supervision; discharge of an inmate by the parole board; amending K.S.A. 22-3722 and K.S.A. 2009 Supp. 22-3717 and repealing the existing sections.

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

Section 1. K.S.A. 2009 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.

(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; capacity of state correctional institutions; and in those cases involving inmates sentenced for a crime committed prior to July 1, 1993, the proportionality of the time the inmate has served to the sentence a person would receive under the current 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~~ may 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; and

(6) may impose any other condition of postrelease

supervision in accordance with evidence-based principles of offender case management.

(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) Except as provided in subsection (u), when an inmate on parole or conditional release has performed the obligations of the release for such time as shall satisfy the Kansas parole board that final release is not incompatible with the best interest of society and the welfare of the individual, the parole board may make a final order of discharge and issue a certificate of discharge to the inmate. When an inmate has reached the end of the postrelease supervision period, the parole board shall issue a certificate of discharge to the releasee. Such discharge, and the discharge of an inmate who has served the inmate's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case.

Sec. 2. K.S.A. 22-3722 is hereby amended to read as follows:  
22-3722. The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in K.S.A. 75-5217 and amendments thereto relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. The period served on postrelease supervision shall vest in and be subject to the provisions contained in K.S.A. 75-5217 and amendments thereto relating to an inmate who is a fugitive from or has fled from justice. The total time served shall not exceed the postrelease supervision period established at sentencing.

~~When an inmate on parole or conditional release has performed the obligations of the release for such time as shall satisfy the Kansas parole board that final release is not incompatible with the best interest of society and the welfare of the individual, the parole board may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. When an inmate has reached the end of the postrelease supervision period, the parole board shall issue a certificate of discharge to the releasee. Such discharge and the discharge of an inmate who has served the inmate's term of imprisonment shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification~~



~~of--discharge--shall--so--state--Nothing--herein--contained--shall--be  
held--to--impair--the--power--of--the--governor--to--grant--a--pardon--or  
commutation--of--sentence--in--any--case--~~

Sec. 3. K.S.A. 22-3722 and K.S.A. 2009 Supp. 22-3717 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

## Proposed SENATE Substitute for HOUSE BILL NO. 2503

By Committee on Judiciary

AN ACT concerning the secretary of corrections; relating to the inspection of department of corrections entities and facilities; work release; referral of sexually violent predators to the multidisciplinary team; amending K.S.A. 75-5251 and 75-5267 and repealing the existing sections.

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

Section 1. K.S.A. 75-5251 is hereby amended to read as follows: 75-5251. The secretary shall have power, and it shall be the secretary's duty from time to time, to examine and inquire into all matters connected with the government and discipline of the correctional institutions and release supervision services under the secretary's supervision and control; the punishment and employment of the inmates ~~confined-therein~~, and releasees under the secretary's supervision and the purchases and sales of the articles provided for such correctional institutions and parole offices or sold on account thereof; and the secretary may from time to time require reports from the warden, parole director or other officers of any such correctional institution or parole office in relation to any or all of such matters. It shall be the secretary's duty to inquire into any improper conduct which may be alleged to have been committed by the warden, parole director or any other officer of any such correctional institution or parole office; and for that purpose the secretary shall have power to issue subpoenas to compel the attendance of witnesses, and the production of papers and writings in the same manner and with like effect as in cases of arbitration. The secretary may

administer oaths to any such witnesses before examination thereof.

The secretary shall have free access to the correctional institutions and parole offices at all times, and it shall be the duty of the warden, parole director and other officers of any such correctional institution or parole office, whenever requested, to exhibit to the secretary, on demand, all the books, papers, accounts and writings pertaining to the correctional institution or parole office, or to the business, government, discipline or management thereof, and to render to the secretary every other facility in their power to enable the secretary to discharge the secretary's duties under this act.

The secretary shall adopt rules and regulations or policies for the direction and government of such correctional institutions and the officers thereof, and may change the same from time to time.

Sec. 2. K.S.A. 75-5267 is hereby amended to read as follows: 75-5267. (a) The secretary of corrections is hereby authorized to establish a work release program under which inmates committed to the custody of the secretary may be granted the privilege of leaving actual confinement for the following purposes:

(1) To travel to and from and visit at a specified place or places for a period of not to exceed ~~thirty-(30)~~ 30 days for the following purposes:

(A) To visit a member of the inmate's immediate family who is in danger of death;

(B) to attend the funeral services or other last rites of a member of the inmate's immediate family;

(C) to obtain health services otherwise not available to the inmate at an institution operated by the state;

(D) to interview prospective employers; or

(E) any other purpose consistent with the public interest.

(2) To work at paid employment or participate in a program of job training if:

(A) The rates of pay, hours and other conditions of employment will be substantially comparable to those afforded others in the community for the performance of work of a similar nature;

(B) such paid employment or job training will not result in the significant displacement of employed workers in the community.

(b) The secretary of corrections is hereby authorized to establish educational release programs under which inmates committed to the custody of the secretary may be granted the privilege of leaving actual confinement for the purposes of education or training.

(c) The placement of any inmate in a community pursuant to the provisions of subsection (a) or subsection (b) shall be in accordance with any applicable federal rules or regulations.

(d) In areas where facilities, programs and services suitable for these purposes are not available within the state correctional system when needed, the secretary shall contract

with the proper authorities of political subdivisions of the state, with any agency of the state, with the federal government, with available community corrections centers or facilities funded by private sources, or with qualified private corporations or organizations for quartering inmates with such privileges in suitable confinement facilities and for programs and services for inmates in such facilities.

(e) Nothing in this act shall be construed to prevent inmates from working for and the products of their labor being disposed of by any state agency, local agency, federal government, or any other state or political subdivision thereof. Merchandise made by prisoners when said merchandise is for personal benefit of inmates, may be sold or exchanged within the confines of the institution subject to rules and regulations of the secretary.

(f) The secretary of corrections shall refer any inmates who may meet the definition of a sexually violent predator as defined in K.S.A. 59-29a02, and amendments thereto, and who are under consideration for authorization to leave actual confinement, to the multidisciplinary team established under K.S.A. 59-29a03, and amendments thereto.

(1) Within 30 days of the referral the multidisciplinary team shall assess whether the inmate meets the definition of a sexually violent predator as defined in K.S.A. 59-29a02, and amendments thereto, and notify the secretary of such assessment.

(2) The secretary shall inform the multidisciplinary team of

the inmate's name, identifying factors and offense history and provide documentation of institutional adjustment and any treatment received.

(3) The secretary of corrections and all employees and officials of the department of corrections, members of the multidisciplinary team and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of this section, except that nothing in this section shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(4) Nothing in this section shall be construed to supplant or otherwise affect the notification requirements provided in K.S.A. 59-29a03, and amendments thereto, or otherwise cause the initiation of commitment proceedings pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.

Sec. 3. K.S.A. 75-5251 and 75-5267 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2605

By Committee on Corrections and Juvenile Justice

2-2

10 AN ACT concerning court fees; relating to fees for investigations con-  
11 ducted by the Kansas bureau of investigation and other forensic and  
12 scientific laboratories; amending K.S.A. 2009 Supp. 28-176 and re-  
13 pealing the existing section.

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

15 Section 1. K.S.A. 2009 Supp. 28-176 is hereby amended to read as  
16 follows: 28-176. ~~(a) Any person convicted or diverted, or adjudicated or~~  
17 ~~diverted under a preadjudication program, pursuant to K.S.A. 22-2006 et~~  
18 ~~seq., K.S.A. 2009 Supp. 38-2346 et seq., or 12-4414 et seq., and amend-~~  
19 ~~ments thereto, of a misdemeanor or felony contained in chapters 21, 41~~  
20 ~~or 65 of the Kansas Statutes Annotated, or a violation of K.S.A. 8-1567~~  
21 ~~and amendments thereto, shall pay a separate court cost of: (1) \$400 as~~  
22 ~~a Kansas bureau of investigation laboratory analysis fee for each offense~~  
23 ~~if forensic science or laboratory services are rendered or administered by~~  
24 ~~the Kansas bureau of investigation in connection with the case; and (2)~~  
25 ~~\$400 for each offense if forensic science or laboratory services are ren-~~  
26 ~~dered or administered by the Sedgwick county regional forensic science~~  
27 ~~center, the Johnson county sheriff's laboratory or the heart of America~~  
28 ~~regional computer forensics laboratory.~~

29 ~~(b) Such fees shall be in addition to and not in substitution for any~~  
30 ~~and all fines and penalties otherwise provided for by law for such offense.~~

31 ~~(c) Disbursements from the Kansas bureau of investigation laboratory~~  
32 ~~analysis fee deposited into the forensic laboratory and materials fee fund~~  
33 ~~of the Kansas bureau of investigation shall be made for the following:~~

34 ~~(1) Providing criminalistic laboratory services;~~

35 ~~(2) the purchase and maintenance of equipment for use by the lab-~~  
36 ~~oratory in performing analysis;~~

37 ~~(3) education, training and scientific development of Kansas bureau~~  
38 ~~of investigation personnel; and~~

39 ~~(4) the destruction of seized property and chemicals as prescribed in~~  
40 ~~K.S.A. 22-2512 and 60-4117, and amendments thereto.~~

41 ~~(d) Fees received into this fund shall be supplemental to regular ap-~~  
42 ~~propriations to the Kansas bureau of investigation.~~

HB2605-Balloon-Revisor.pdf  
RS - JThompson - 03/12/10

Senate Judiciary

3-12-10

Attachment 15

1 ~~—(c) The fee for services rendered or administered by the Sedgwick~~  
2 ~~county regional forensic science center shall be deposited in the Sedgwick~~  
3 ~~county general fund, the fee for services rendered or administered by the~~  
4 ~~Johnson county sheriff's laboratory shall be deposited in the Johnson~~  
5 ~~county general fund and the fee for services rendered or administered by~~  
6 ~~the heart of America regional computer forensics laboratory shall be de-~~  
7 ~~posited in the general treasury account maintained by the heart of Amer-~~  
8 ~~ica regional computer forensics laboratory and disbursed for the~~  
9 ~~following:~~

10 ~~—(1) Providing criminalistic laboratory services;~~

11 ~~—(2) the purchase and maintenance of equipment for use by the center~~  
12 ~~or laboratory in performing analysis; and~~

13 ~~—(3) education, training and scientific development of the center's or~~  
14 ~~laboratory's personnel: (a) The court shall order any person convicted or~~  
15 ~~diverted, or adjudicated or diverted under a preadjudication program~~  
16 ~~pursuant to K.S.A. 22-2906 et seq., K.S.A. 2009 Supp. 38-2346 et seq., or~~  
17 ~~12-4414, and amendments thereto, of a misdemeanor or felony **contained**~~  
18 ~~in chapters 21, 41 or 65 of the Kansas Statutes Annotated, and~~  
19 ~~amendments thereto, or a violation of K.S.A. 8-1567, and amend-~~  
20 ~~ments thereto, to pay a separate court cost of \$400 for every individual~~  
21 ~~offense if forensic science or laboratory services or forensic computer ex-~~  
22 ~~amination services are rendered or administered **provided** in connection~~  
23 ~~with the investigation by:~~

24 (1) The Kansas bureau of investigation;

25 (2) the Sedgwick county regional forensic science center;

26 (3) the Johnson county sheriff's laboratory;

27 (4) the heart of America regional computer forensics laboratory; or

28 (5) the Wichita-Sedgwick county computer forensics crimes unit.

29 (b) Such fees shall be ordered if the services rendered or administered  
30 **provided** support an investigation leading to the filing of charges, re-  
31 **provided** regardless of whether the person is ultimately convicted, adjudicated or  
32 **provided** diverted of such specific charged offense.

33 (c) Such fees shall be in addition to and not in substitution for any  
34 and all fines and penalties otherwise provided for by law for such offense.

35 (d) The court shall not lessen or waive such fees unless the court has  
36 determined such person is indigent and the basis for the court's deter-  
37 mination is reflected in the court's order.

38 (e) ~~The fees for services rendered or administered by:~~ **Such fees shall**  
39 **be deposited into the designated fund of the laboratory or forensic**  
40 **science or computer center that provided such services. Fees for**  
41 **services provided by:**

42 (1) The Kansas bureau of investigation shall be deposited in the Kan-  
43 sas bureau of investigation ~~laboratory analysis~~ **forensic laboratory and**



1 **materials fee fund;**

2 (2) *the Sedgwick county regional forensic science center shall be de-*  
3 *posited in the Sedgwick county general fund;*

4 (3) *the Johnson county sheriff's laboratory shall be deposited in the*  
5 *Johnson county ~~general~~ sheriff's laboratory analysis fee fund;*

6 (4) *the heart of America regional computer forensics laboratory shall*  
7 *be deposited in the general treasury account maintained by such labo-*  
8 *ratory; and*

9 (5) *the Wichita-Sedgwick county computer forensic crimes unit shall*  
10 *be deposited in the Sedgwick county general fund. **retained by the***  
11 **Sedgwick county sheriff. All funds retained by the sheriff pursuant**  
12 **to the provisions of this section shall be credited to a special fund**  
13 **of the sheriff's office.**

14 (f) *Disbursements from the funds and accounts described in subsec-*  
15 *tion (e) shall be made for the following:*

16 (1) *Forensic science or laboratory services;*

17 (2) *forensic computer examination services;*

18 (3) *purchase and maintenance of laboratory equipment and supplies;*

19 (4) *education, training and scientific development of personnel; and*

20 (5) *from the Kansas bureau of investigation ~~lab analysis~~ fee fund, the*  
21 *destruction of seized property and chemicals as described in K.S.A. 22-*  
22 *2512 and 60-4117, and amendments thereto.*

23 Sec. 2. K.S.A. 2009 Supp. 28-176 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its  
25 publication in the statute book.

forensic laboratory and materials

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2605

By Committee on Corrections and Juvenile Justice

2-2

10 AN ACT concerning court fees; relating to fees for investigations con-  
11 ducted by the Kansas bureau of investigation and other forensic and  
12 scientific laboratories; amending K.S.A. 2009 Supp. 28-176 and re-  
13 pealing the existing section.

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

16 Section 1. K.S.A. 2009 Supp. 28-176 is hereby amended to read as  
17 follows: 28-176. ~~(a) Any person convicted or diverted, or adjudicated or~~  
18 ~~diverted under a preadjudication program, pursuant to K.S.A. 22-2906 et~~  
19 ~~seq., K.S.A. 2009 Supp. 38-2346 et seq., or 12-4414 et seq., and amend-~~  
20 ~~ments thereto, of a misdemeanor or felony contained in chapters 21, 41~~  
21 ~~or 65 of the Kansas Statutes Annotated, or a violation of K.S.A. 8-1567~~  
22 ~~and amendments thereto, shall pay a separate court cost of: (1) \$400 as~~  
23 ~~a Kansas bureau of investigation laboratory analysis fee for each offense~~  
24 ~~if forensic science or laboratory services are rendered or administered by~~  
25 ~~the Kansas bureau of investigation in connection with the case, and (2)~~  
26 ~~\$400 for each offense if forensic science or laboratory services are ren-~~  
27 ~~dered or administered by the Sedgwick county regional forensic science~~  
28 ~~center, the Johnson county sheriff's laboratory or the heart of America~~  
29 ~~regional computer forensics laboratory.~~

30 ~~(b) Such fees shall be in addition to and not in substitution for any~~  
31 ~~and all fines and penalties otherwise provided for by law for such offense.~~

32 ~~(c) Disbursements from the Kansas bureau of investigation laboratory~~  
33 ~~analysis fee deposited into the forensic laboratory and materials fee fund~~  
34 ~~of the Kansas bureau of investigation shall be made for the following:~~

35 ~~(1) Providing criminalistic laboratory services;~~

36 ~~(2) the purchase and maintenance of equipment for use by the lab-~~  
37 ~~oratory in performing analysis;~~

38 ~~(3) education, training and scientific development of Kansas bureau~~  
39 ~~of investigation personnel; and~~

40 ~~(4) the destruction of seized property and chemicals as prescribed in~~  
41 ~~K.S.A. 22-2512 and 60-4117, and amendments thereto.~~

42 ~~(d) Fees received into this fund shall be supplemental to regular ap-~~  
43 ~~propriations to the Kansas bureau of investigation.~~

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RS - JThompson - 03/12/10

Senate Judiciary

3-12-10

Attachment 16

16-2

1 ~~—(c) The fee for services rendered or administered by the Sedgwick~~  
 2 ~~county regional forensic science center shall be deposited in the Sedgwick~~  
 3 ~~county general fund, the fee for services rendered or administered by the~~  
 4 ~~Johnson county sheriff's laboratory shall be deposited in the Johnson~~  
 5 ~~county general fund and the fee for services rendered or administered by~~  
 6 ~~the heart of America regional computer forensics laboratory shall be de-~~  
 7 ~~posited in the general treasury account maintained by the heart of Amer-~~  
 8 ~~ica regional computer forensics laboratory and disbursed for the~~  
 9 ~~following:~~

10 ~~—(1) Providing criminalistic laboratory services;~~

11 ~~—(2) the purchase and maintenance of equipment for use by the center~~  
 12 ~~or laboratory in performing analysis; and~~

13 ~~—(3) education, training and scientific development of the center's or~~  
 14 ~~laboratory's personnel: (a) The court shall order any person convicted or~~  
 15 ~~diverted, or adjudicated or diverted under a preadjudication program~~  
 16 ~~pursuant to K.S.A. 22-2906 et seq., K.S.A. 2009 Supp. 38-2346 et seq., or~~  
 17 ~~12-4414, and amendments thereto, of a misdemeanor or felony contained~~  
 18 ~~in chapters 21, 41 or 65 of the Kansas Statutes Annotated, and amend-~~  
 19 ~~ments thereto, or a violation of K.S.A. 8-1567, and amend-~~  
 20 ~~ments thereto, to pay a separate court cost of \$400 for every individual~~  
 21 ~~offense if forensic science or laboratory services or forensic computer ex-~~  
 22 ~~amination services are rendered or administered **provided** in connection~~  
 23 ~~with the investigation by:~~

24 (1) *The Kansas bureau of investigation;*

25 (2) *the Sedgwick county regional forensic science center;*

26 (3) *the Johnson county sheriff's laboratory;*

27 (4) *the heart of America regional computer forensics laboratory; or*

28 (5) *the Wichita-Sedgwick county computer forensics crimes unit.*

29 ~~(b) Such fees shall be ordered if the services rendered or administered~~  
 30 ~~**provided** support an investigation leading to the filing of charges, re-~~  
 31 ~~gardless of whether the person is ultimately convicted, adjudicated or~~  
 32 ~~diverted of such specific charged offense.~~

(b) 33 (c) *Such fees shall be in addition to and not in substitution for any*  
 34 *and all fines and penalties otherwise provided for by law for such offense.*

(c) 35 (d) *The court shall not lessen or waive such fees unless the court has*  
 36 *determined such person is indigent and the basis for the court's deter-*  
 37 *mination is reflected in the court's order.*

(d) 38 (e) ~~The fees for services rendered or administered by:~~ **Such fees shall**  
 39 **be deposited into the designated fund of the laboratory or forensic**  
 40 **science or computer center that provided such services. Fees for**  
 41 **services provided by:**

42 (1) *The Kansas bureau of investigation shall be deposited in the Kan-*  
 43 *sas bureau of investigation laboratory analysis forensic laboratory and*

Strike  
and re-letter  
remaining  
subsections

16-3

1 **materials fee fund;**

2 (2) *the Sedgwick county regional forensic science center shall be de-*  
 3 *posited in the Sedgwick county general fund;*

4 (3) *the Johnson county sheriff's laboratory shall be deposited in the*  
 5 *Johnson county ~~general~~ sheriff's laboratory analysis fee fund;*

6 (4) *the heart of America regional computer forensics laboratory shall*  
 7 *be deposited in the general treasury account maintained by such labo-*  
 8 *ratory; and*

9 (5) *the Wichita-Sedgwick county computer forensic crimes unit shall*  
 10 *be deposited in the ~~Sedgwick county general fund.~~ retained by the*  
 11 **Sedgwick county sheriff. All funds retained by the sheriff pursuant**  
 12 **to the provisions of this section shall be credited to a special fund**  
 13 **of the sheriff's office.**

14 (e) (f) *Disbursements from the funds and accounts described in subsec-*  
 15 *tion (e) shall be made for the following:*

16 (1) *Forensic science or laboratory services;*

17 (2) *forensic computer examination services;*

18 (3) *purchase and maintenance of laboratory equipment and supplies;*

19 (4) *education, training and scientific development of personnel; and*

20 (5) *from the Kansas bureau of investigation lab analysis fee fund, the*  
 21 *destruction of seized property and chemicals as described in K.S.A. 22-*  
 22 *2512 and 60-4117, and amendments thereto.*

23 Sec. 2. K.S.A. 2009 Supp. 28-176 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its  
 25 publication in the statute book.

(d)

1 (f) K.S.A. 60-241, and amendments thereto, providing for dismissal  
2 of actions;

3 (g) K.S.A. 60-244, and amendments thereto, providing for proof of  
4 records;

5 ~~(h) K.S.A. 60-256, and amendments thereto, relating to summary~~  
6 judgment;

7 ~~(i) K.S.A. 60-259 and 60-260, and amendments thereto, concerning~~  
8 new trial and relief from judgment or order, respectively;

9 ~~(j) K.S.A. 60-261 and 60-263, and amendments thereto, relating re-~~  
10 spectively to harmless error and disability of a judge; and

11 ~~(k) K.S.A. 60-264, and amendments thereto, relating to process in~~  
12 behalf of and against persons not parties.

13 Sec. 200. K.S.A. 61-3002 is hereby amended to read as follows: 61-  
14 3002. (a) The summons shall be issued by the clerk and dated the day it  
15 is issued. The summons shall state the time when the law requires the  
16 defendant to appear or file an answer in response to the petition, and  
17 shall notify such defendant that in case of such defendant's failure to  
18 appear or file an answer, judgment by default will be rendered against  
19 such defendant for the relief demanded in the petition.

20 (b) The time stated in the summons requiring the defendant to ap-  
21 pear in response to the petition shall be determined by the court. Such  
22 time shall be not less than ~~14~~ 14 nor more than 50 days after the date  
23 the summons is issued.

24 Sec. 201. K.S.A. 61-3006 is hereby amended to read as follows: 61-  
25 3006. (a) (1) Service of process may be made upon any party outside the  
26 state. If upon a person domiciled in this state or upon a person who has  
27 submitted to the jurisdiction of the courts of this state, it shall have the  
28 force and effect of service of process within this state; otherwise it shall  
29 have the force and effect of service by publication.

30 (2) The service of process shall be made in the same manner as serv-  
31 ice within this state, by any officer authorized to make service of process  
32 in this state or in the state where the defendant is served. No order of a  
33 court is required. An affidavit, or any other competent proofs, of the  
34 server shall be filed stating the time, manner and place of service. The  
35 court may consider the affidavit, or any other competent proofs, in de-  
36 termining whether service has been properly made.

37 (3) The time stated in the summons requiring the defendant to ap-  
38 pear in response to the petition shall be determined by the court. Such  
39 time shall be not less than ~~14~~ 14 nor more than 50 days after the date  
40 the summons is issued, except as provided in subsection (a)(3) of K.S.A.  
41 60-308, and amendments thereto.

42 (b) The provisions of subsection (b) of K.S.A. 60-308, and amend-  
43 ments thereto, shall be used to determine whether a person has submitted

(h) K.S.A. 60-252, and amendments thereto, concerning findings and conclusions by the court, except that when the findings and conclusions are made by a district magistrate judge, the time to file a motion for amended or additional findings is 14 instead of 28 days;

(i)

(j)

, except that the time to file a motion for new trial or to alter or amend judgment when a judgment is rendered by a district magistrate judge is 14 instead of 28 days;  
(k) K.S.A. 60-260, and amendments thereto, concerning relief from judgment or order;

(l)

(m)

***Insert new section to read as follows:***

**61-3304. Modification of judgment.** Except as modified by subsections (h) and (i) of K.S.A. 61-2912, and amendments thereto, the provisions of K.S.A. 60-252, 60-259 and 60-260, and amendments thereto, shall apply to judgments entered under the code of civil procedure for limited actions where such provisions are not inconsistent with other provisions of the code.