

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:30 a.m. on February 15, 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
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Senator Tom Holland
Christine Ladner, Assistant Attorney General
Donna Calabrese, Director, Office of Vital Statistics, KDHE
Kathy Porter, Office of Judicial Administration
Ed Klumpp, Kansas Association of Chiefs of Police

Others attending:

See attached list.

The hearing on **SB 471 - Changing crime of harassment by telephone to harassment by telecommunications** was opened. Jason Thompson, staff revisor, reviewed the bill.

Senator Tom Holland appeared as a sponsor stating this bill will change the current definition of harassment by telephone to include harassment by telecommunications. Harassing text messages is a growing problem that leaves law enforcement little recourse under current statutes. (Attachment 1)

Christine Ladner spoke in support indicating **SB 471** would allow prosecutors to bring criminal charges of harassment when the texting behavior rises to such a level that charges are appropriate. The modification does not create a new crime but simply broadens the definition of how the offensive conduct is communicated. (Attachment 2)

Written testimony in support of **SB 471** was submitted by:

Adam Doran, Bonner Springs Police Officer (Attachment 3)

There being no further conferees, the hearing on **SB 471** was closed.

The Chairman opened the hearing on **SB 488 - Office of vital statistics; fingerprinting and criminal history records check required for new employees.** Jason Thompson, staff revisor, reviewed the bill.

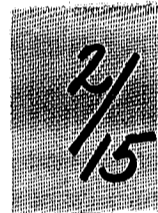
Donna Calabrese testified in support stating the Office of Vital Statistics employees have access to highly confidential information. The public demands a high degree of trust and KDHE focuses significant resources on securing documents from external access such as breaches and hacking. The use of fingerprinting and background checks for new employees are needed to provide reasonable security for internal access of documents. (Attachment 4)

There being no further conferees, the hearing on **SB 488** was closed.

The Chairman opened the hearing on **SB 519 - Allowing for the use of electronic communication and electronic filing in certain instances.** Jason Thompson, staff revisor, reviewed the bill.

Kathy Porter appeared in support stating **SB 519** would help make some of the changes needed to accomplish electronic filing, commonly referred to as e-filing. The bill would amend current law to provide courts that choose to do so, may implement electronic filing. (Attachment 5)

There being no further conferees, the hearing on **SB 519** was closed.



CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on February 15, 2010, in Room 548-S of the Capitol.

The Chairman opened the hearing on **SB 533 - Electronic citations, complaints and notices to appear.** Jason Thompson, staff revisor, reviewed the bill.

Ed Klumpp appeared in support stating the bill addresses the statewide standards established for electronic citations. Electronic citations include:

- improved accuracy,
- eliminates handwriting legibility issues,
- eliminated data entry errors,
- timely transmittal of citation data to the courts,
- eliminates lost paperwork, and
- reduces incomplete paperwork.

Mr. Klumpp stressed the bill does not require any law enforcement agency, prosecutor, or court to utilize electronic citations. It merely provided the mechanism for maximizing the efficiency of those systems for jurisdictions that choose to use it. There is no change to the existing paper process and passage of this bill does not create a requirement for any expense for anyone. (Attachment 6)

The Chairman called for final action on **SB 399 - Controlled substances; aggravated endangering a child; enhanced penalties for distributing on park property and distributing to a child or pregnant person.** Jason Thompson, staff revisor, reviewed the bill and distributed a proposed balloon amendment based on testimony by Jennifer Roth and agreed to by the Kansas Criminal Defense Attorneys Association. (Attachment 7)

Senator Bruce moved, Senator Haley seconded, to table the bill and get it blessed. Motion carried.

The Chairman called for final action on **SB 346 - No transfer of offenders with 10 or less days remaining on sentence to department of corrections custody.** Jason Thompson, staff revisor, reviewed the bill and distributed copies of the balloon amendment provided by the Department of Corrections on February 14. Senator Owens suggested the Committee may want to amend the bill by splitting the difference between what is current statute and the proposed balloon. (Attachment 8)

Senator Vratil moved, Senator Lynn seconded, to amend the proposed balloon on SB 346 on page 1, line 16, by striking the number "3" and inserting the number "4". Motion carried.

Senator Kelly moved, Senator Haley seconded, to adopt the proposed balloon as amended. Motion carried. Senator Schmidt voted no and requested his vote recorded.

Senator Bruce moved, Senator Kelly seconded, to recommend SB 346, as amended, favorably for passage. Motion carried. Senator Schmidt voted no and requested his vote recorded.

The next meeting is scheduled for February 16, 2010.

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

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 15, 2010

| NAME | REPRESENTING |
|-----------------------|--------------------|
| Paige Schultz | KU |
| Jessica Schmitt | |
| MATT LEWIS | |
| Marianne Weibert | |
| Caleb Winters | |
| Stephen Laird | |
| Jason Torres | |
| Colby Cormack | Joe |
| Sarah DuPree | |
| Scott Peavery | |
| Deah Jardine | |
| Samantha Erickson | |
| Christine Ladner | AG'S OFFICE |
| Jean Milicec | CAPITOL STRATEGIES |
| | |
| | |
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| | |

State of Kansas
Senate Chamber

TOM HOLLAND
STATE SENATOR, 3RD DISTRICT
DOUGLAS, JEFFERSON AND LEAVENWORTH COUNTIES

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BALDWIN CITY, KS 66006
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COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: ASSESSMENT AND TAXATION
COMMERCE
MEMBER: FINANCIAL INSTITUTIONS AND INSURANCE
INTERSTATE COOPERATION
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON INFORMATION TECHNOLOGY

February 15th, 2010

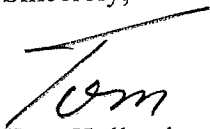
Chairman Owens and Committee Members:

Good morning! My name is Tom Holland and I am the State Senator for the 3rd District serving portions of Douglas and Leavenworth counties and all of Jefferson County. I am here today to ask for your support of Senate Bill 471, an act concerning harassment by telecommunications.

This bill would expand the current definition of harassment by telephone as defined under K.S.A. 21-4113 to include telecommunications devices such as cell phones and any other electronic device which makes use of telephone lines or services. This bill request was brought to me by a constituent, Adam Doran, a police officer with the Bonner Springs Police Department. Officer Doran could not be here today as he is at home providing child care for his family, but he has sent in written testimony regarding the need for expansion of the existing statute.

I very much appreciate the committee's consideration of this bill.

Sincerely,



Tom Holland
State Senator – 3rd District

Senate Judiciary

2-15-10
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
SB 471
Assistant Attorney General Christine Ladner
February 15, 2010

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Steve Six in support of Senate Bill 471. I am an Assistant Attorney General responsible for criminal prosecution in the office of Attorney General Six.

Senate Bill 471 would allow for the prosecution of harassing text messages in addition to telephone calls and telefacsimiles. The current statute specifically refers to "making a telephone call" and defines "telephone communication" as including telefacsimiles, but does not include the transmission of text or images, commonly known as "texting." The legislation would bring K.S.A. 21-4113 up to date with technological advances.

Sending communication by text or by image from cellular telephones is an increasingly common way for people to communicate. If texting rises to the level of offensive conduct formerly covered by harassment by telephone, such conduct should be included in the statute. In Subsection (2), "telephone call" no longer adequately describes the offensive conduct.

SB 471 would allow prosecutors to bring criminal charges of harassment when the texting behavior rises to such a level that charges are appropriate. The modification does not create a new crime. The offensive conduct remains the same. SB 471 would simply broaden the definition of how the offensive conduct is communicated.

Senate Judiciary

2-15-10
Attachment 2

February 11, 2010

162 S. Whilshire Dr.
Tonganoxie, KS 66086
doran50014@yahoo.com

Kansas Senate
State Capitol
300 SW 10th Street
Topeka, KS 66612

Members of the Senate,

First, let me say thank you for the work you do on a daily basis to represent your district constituents and the rest of the State of Kansas. I understand you stay very busy, so I will make this brief.

I am a Tonganoxie resident and a Bonner Springs police officer. I have been in Kansas law enforcement for more than seven years. Serving the citizens of this State by upholding the laws and protecting their rights granted under the Constitution is a responsibility that I enjoy and take very seriously. I have the great privilege of saying that my life's work is my passion. To that end, I seek out every opportunity to advance my knowledge and experience in the field. My areas of specialization are training, grant proposal development, and policy development/revision. I am a certified Police Training Officer, with instructor certifications in several areas, and considerable experience writing grant proposals and developing policies. In addition to these experiential qualifications, I am pursuing a Master's Degree in Public Administration at the University of Kansas. My goal is to be a leader in my profession, as a positive influential force that contributes to making law enforcement in Kansas the best it can be.

I'm writing you today because one of our Kansas criminal statutes needs revision. The current language of KSA 21-4113, regarding telephone harassment, only identifies two methods of telecommunication: telephone calls and facsimiles. The statute fails to mention cellular telephones or text messages, arguably the two most predominant modern methods of communication. It also fails to acknowledge telecommunications can be made through wireless

Senate Judiciary

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Attachment 3

networks and other services aside from just telephone lines. Broadening the language of the statute to include today's telecommunication devices and methods, and specifically addressing harassing text messages to reflect modern times would be beneficial.

On the job, I am taking more and more reports of harassing text messages, particularly with the younger generation who relies heavily on texting as a primary mode of communication. With the popularity of texting still on the rise, I only see this problem continuing.

I have taken reports where the victim was receiving text messages threatening to kill them or "beat their face in," messages certainly sent with the intent to harass the person on the receiving end. I have also taken reports when the messages were more along the lines of sexual harassment, when someone was making unwanted sexual advances towards the victim. Another example would be the ex-girlfriend or boyfriend who was told to stop calling the victim, so instead they resorted to repetitive text messages, in an effort to get the victim to respond simply by the sheer volume of messages sent. If done by text messaging or any other wireless telecommunication method, rather than by conventional voice telephone conversations or fax, these activities are not prohibited by the phone harassment statute (KSA 21-4113).

Currently, my jurisdiction charges harassing text messages under the 21-4113 statute, because nothing else fits. However, appeals by intelligent defense attorneys will render these cases dismissed. The language of the current telephone harassment statute only addresses actual phone calls and fax messages made by telephone lines. I am attempting to be forward-thinking on this, since the language of the statute does not reflect modern telecommunications trends; and I believe it's only a matter of time before defense attorneys get smart and start challenging this, much as they have with other loopholes in the law.

Senate Bill 471 has been proposed as a solution to this issue. You will notice in subsection (a) on page 1, lines 15 and 16, the terms "telephone" and "telephone communication" have been changed to "telecommunications." In section (a)(1) on page 1, line 19, the term "text" has been added. Several other revisions bring the language of the statute up-to-date including the definition of a "telecommunications device" on page 2, lines 1-4.

I urge you to support this bill as a beneficial step towards modernization that will be of great assistance to prosecutors and the rest of the Kansas law enforcement community as we do our job. This bill is essential to ensuring the successful charging and conviction of those who violate the law. Thank you for your time and consideration.

Respectfully,



Adam Doran
Tonganoxie, KS

Enclosures: Senate Bill 471



Mark Parkinson, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

**Testimony on SB 488
FBI Background Checks for Office of Vital Statistics Selected Applicants**

**Presented To
Senate Judiciary Committee**

**By
Donna Calabrese, Director, Office of Vital Statistics
Kansas Department of Health and Environment**

February 15, 2010

Chairman Owens and members of the committee, I am Donna Calabrese, Director of the Office of Vital Statistics for the Kansas Department of Health and Environment. Thank you for the opportunity to appear before you today in support of SB 488 which would provide the Kansas Department of Health and Environment (KDHE) authority to conduct FBI criminal background checks on all selected applicants for employment with the Office of Vital Statistics (OVS).

Identity theft and fraud continue to occur at an alarming rate. Vital record information can be used to commit identity theft for the purpose of financial gain, to conceal true identity for eluding detection and apprehension by law enforcement, to create fictitious records for the gain of benefits from government programs and insurance companies, and to elude detection by creditors. Vital record data and certificates can be sold to individuals who conduct operations for creating and selling fraudulent identification documents. According to an El Paso Intelligence Center agent, the current rate for vital record data and/or certificates varies from \$100 to several thousand dollars per record. Therefore, employee access to data and security paper used for certificate issuance is a significant concern. Internal theft of this paper in U.S. vital records offices has increased in occurrence over the past several years.

For a non-criminal justice agency to have access to the FBI's national criminal history data, state law must clearly specify that the criminal history check is authorized and is based on a fingerprint search. Therefore, OVS is submitting proposed language that will allow all selected applicants for OVS positions to be fingerprinted and the fingerprints will be submitted to the Kansas Bureau of Investigation (KBI) and FBI for a criminal history record check. Currently, 23 state agencies have legislation in place for FBI background checks. Of the 23 agencies, Kansas Lottery, Gaming and Racing, Department of Revenue Division of Motor Vehicles, DISC and the Commission on Veterans Affairs utilize these checks on employees working with confidential information.

KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT
BUREAU OF PUBLIC HEALTH INFORMATICS
OFFICE OF VITAL STATISTICS
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 110, TOPEKA, KS 666.

Voice 785-296-1423 Fax 785-296-8869

Senate Judiciary

2-15-10
Attachment 4

Office of Vital Statistics employees have access to birth, stillbirth, death, marriage, and divorce certificates and data for vital events occurring in the state of Kansas. This is highly confidential, containing names, immediate family members, addresses, and sensitive information (i.e., adoption information, cause of death, marital status, etc.). Research and studies on the national level have led to the repeated conclusion that vital record staff have responsibilities that demand a high degree of public trust.

- The National Association for Public Health and Information Systems recommends "...that all state and local vital records and health statistics offices conduct background investigations and criminal record checks (dependent on level of sensitive position) and determine which convictions or offenses determines the individual unsuitable for a Vital Records/Health Statistics position designated as sensitive."
- The Department of Health and Human Services, Office of Inspector General reported in a September 2000 report on Birth Certificate Fraud, OEI-07-99-0050, "As we previously reported in 1988, 1991, and 1996, birth certificates continue to be used as 'breeder documents' from which other supporting documents can be secured to alter identities and fraudulently obtain services and benefits. Virtually all Federal and State agencies agree that fraudulent birth certificates are used to obtain genuine documents, and in concert with other fraudulent documents, to create new identities."

KDHE focuses significant resources on securing our documents from external access such as breaches and hacking. We believe tools, including background checks, need to also be available for our use to provide reasonable security for internal access of documents. This bill would allow us to take the necessary steps to protect vital records.

Thank you for the opportunity to appear before the Senate Judiciary Committee today. I will now stand for questions.



State of Kansas
Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Senate Judiciary Committee

Monday, February 15, 2010

Testimony in Support of SB 519

Kathy Porter

2010 SB 519 would help to make some of the changes needed to accomplish electronic filing, or e-filing, of court cases and documents in Kansas. The Supreme Court Electronic Filing Committee has been appointed to study electronic filing issues. The Committee is being chaired by Justice Marla J. Luckert, with Justice Dan Biles serving as vice chair. In addition to judges, court administrators, clerks, attorneys specializing in collection matters, and other members of the legal community, the committee includes the chairs of both the House and Senate Judiciary Committees.

The committee is to make recommendations to the Supreme Court regarding policy decisions that would be necessitated should a statewide electronic filing system be implemented in Kansas. The committee has been divided into three subcommittees to address policy and procedure, finance, and technology.

SB 519 would amend current law to provide that payments may be made "in any manner accepted by the court," rather than by check (Section 1); that the appearance, waiver, plea, and payment may be made by "any means accepted by the court" (Section 2); that an electronic signature of the clerk may be authorized and has the same legal effect as a manual signature (Section 3); to replace the term "telefacsimile" communications with the term "electronic" communications (Sections 4, 5, and 7); and to delete current references to "whether by mail or in person" (Section 6).

Additional amendments to Chapter 60 (the Code of Civil Procedure) that would be needed to carry out electronic filing are made in 2010 HB 2656, which was heard by the House Judiciary Committee on Thursday, February 10.

I would like to request an additional amendment that is shown in the attached balloon amendment. On page 10, in line 12 of the bill, I request that the phrase "via telephone lines" be deleted from current law. Again, this would allow for more current means of transmission.

Thank you for your consideration of SB 519 and of the requested amendment. Senate Judiciary

2-15-10
Attachment 5

1 the affiant and any witnesses that the affiant may produce. Such
 2 proceeding shall be taken down by a certified shorthand reporter or
 3 recording equipment and made part of the application for a search
 4 warrant.

5 (c) Affidavits or sworn testimony in support of the probable cause
 6 requirement of this section shall not be made available for examination
 7 without a written order of the court, except that such affidavits or
 8 testimony when requested shall be made available to the defendant or
 9 the defendant's counsel for such disposition as either may desire.

10 (d) As used in this section, ~~telefacsimile~~ *electronic* communication
 11 means the use of electronic equipment to send or transfer a copy of an
 12 original document ~~via telephone lines~~.

13 Sec. 5. K.S.A. 22-2504 is hereby amended to read as follows: 22-
 14 2504. All search warrants shall show the time and date of issuance and
 15 shall be the warrants of the magistrate issuing the same and not the
 16 warrants of the court in which he is then sitting and such warrants need
 17 not bear the seal of the court or clerk thereof. Such warrants may be
 18 transmitted by ~~telefacsimile~~ *electronic* communication, as defined in
 19 K.S.A. 22-2502, and amendments thereto. The statement on which the
 20 warrant is issued need not be filed with the clerk of the court nor with
 21 the court if there is no clerk until the warrant has been executed or has
 22 been returned "not executed."

23 Sec. 6. K.S.A. 2009 Supp. 28-172a is hereby amended to read as
 24 follows: 28-172a. (a) Except as otherwise provided in this section,
 25 whenever the prosecuting witness or defendant is adjudged to pay the
 26 costs in a criminal proceeding in any county, a docket fee shall be taxed
 27 as follows:

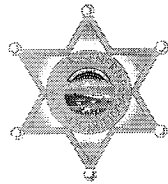
| | |
|---|----------|
| 28 (1) On and after July 1, 2009 through June 30, 2013: | |
| 29 Murder or manslaughter..... | \$182.50 |
| 30 Other felony..... | 173.00 |
| 31 Misdemeanor..... | 138.00 |
| 32 Forfeited recognizance | 74.50 |
| 33 Appeals from other courts..... | 74.50 |
| 34 (2) On and after July 1, 2013: | |
| 35 Murder or manslaughter..... | \$180.50 |
| 36 Other felony..... | 171.00 |
| 37 Misdemeanor..... | 136.00 |
| 38 Forfeited recognizance | 72.50 |
| 39 Appeals from other courts..... | 72.50 |

40 (b) (1) Except as provided in paragraph (2), in actions involving the
 41 violation of any of the laws of this state regulating traffic on highways
 42 (including those listed in subsection (c) of K.S.A. 8-2118, and
 43 amendments thereto), a cigarette or tobacco infraction, any act declared



**Kansas Association of
Chiefs of Police**

PO Box 780603
Wichita, KS 67278
(316)733-7301



**Kansas Sheriffs
Association**

PO Box 1853
Salina, KS 67402
(785)827-2222



**Kansas Peace Officers
Association**

PO Box 2592
Wichita, KS 67201
(316)722-8433

February 15, 2010

**Testimony to the Senate Judiciary Committee
In Support of SB533**

The Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association support the provisions of SB533. We requested this bill on behalf of the Kansas Criminal Justice Information Systems and the Kansas Department of Transportation's Traffic Records Coordinating Committee. Those organizations have been working on statewide standards for electronic citations for more than a year and have now progressed to a point of understanding the statutory needs to make an e-citation system functional and efficient. This bill represents those needs.

Electronic citations are citations issued by law enforcement officers by using an electronic medium instead of the traditional handwritten paper process. There are currently 4-5 Kansas municipal agencies using electronic citations and there are several other city and county agencies exploring their use.

The advantages of electronic citations include:

- Improved accuracy.
- Elimination of handwriting legibility issues.
- Elimination of data entry by courts or prosecutors.
- More timely transmittal of citation data to the courts.
- Eliminates lost paperwork.
- Reduces incomplete paperwork.

In an electronic citation process the officer enters the offender and vehicle information into the computer device. This can be accomplished by auto-entry of computer data from the license tag and/or driver's license query, or by swiping or scanning the data strip on a driver's license or vehicle registration. The violation is entered by selecting the applicable statute or ordinance. Other required data is entered into the device such as location, date and time. The software can then apply the appropriate court name and appearance times. A paper copy of the citation is then printed out to provide to the accused.

With existing law, a second printout is required for the officer to sign which must then travel the traditional routing to the prosecutor or courts and be matched up to the case. There are currently no provisions for a promise to appear other than also using this second printed hardcopy of the citation. In an electronic system these are not necessary and create an obstacle to the efficiency of electronic citations.

This bill includes provisions to allow for electronic signature by the officer, verbal promise to appear, and clarifies other conflicts between the paper process and an electronic citation process. It does this by adding a statute providing the legal basis for achieving the requirement in the existing law when using an electronic citation system. The bill does not require any law enforcement agency, prosecutor, or court to utilize electronic citations. It merely provides the mechanism for maximizing the efficiency of those systems for those jurisdictions that choose to use it. The provisions of the bill does not make any change in the existing paper process. As a result, while there may be costs to implement electronic citations by the jurisdictions choosing to do so, passing this bill does not create a requirement for any expense for anyone. That fiscal feasibility can be examined by each jurisdiction as they explore implementation of an e-citation system.

Senate Judiciary

2-15-10

Attachment 6

Section 1 of the bill addresses the needs for e-citations in KSA chapter 8 governing citations in district courts. Section 2 of the bill addresses the needs for e-citations in KSA chapter 12 governing citations in municipal courts. Section 3 of the bill addresses the needs for e-citations in KSA chapter 19 governing citations for county resolution violations. Section 4 addresses the provision in KSA chapter 40 which requires attaching an insurance verification form to a citation for motor vehicle liability insurance violations and allows for that information to be submitted either on paper or electronically in conjunction with an e-citation.

In developing this bill, we conferred with the Kansas Highway Patrol, courts, prosecutors, court clerks, and others. We also considered the pros and cons of an electronic signature versus a digital signature. The focus was to not change the existing paper process statutes to avoid unintended consequences to the use of the existing paper citations.

Our associations urge you to recommend SB533 favorably to the full Senate. Passing this bill supports local law enforcement, government efficiency, and accuracy in the criminal justice system.

Ed Klumpp
Legislative Liaison
Kansas Association of Chiefs of Police
Kansas Sheriffs Association
Kansas Peace Officers Association
eklumpp@cox.net
(785)640-1102

SENATE BILL No. 399

By Committee on Judiciary

1-20

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

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

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

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

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

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

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

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

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

KCDAA
SB399-Balloon1.pdf
RS - JThompson - 02/15/10

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

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

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

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

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

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

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

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

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

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

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

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

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

the trier of fact finds beyond a
reasonable doubt that

minor

the trier of fact finds beyond a
reasonable doubt that the offender

occurred

1 *property;*

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

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

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

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

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

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

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

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

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

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

7-4

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

4 (e) (1) Violation of subsection (a) is a drug severity level 2 felony;

5 (2) violation of subsection (b) is a drug severity level 4 felony;

6 (3) violation of subsection (c) is a *severity* level 9, nonperson felony,
7 except that violation of subsection (c) is a drug severity level 4 felony if
8 that person:

the trier of fact finds beyond a reasonable doubt that the offender

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

Distributed or caused

minor

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

distributed or caused

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

the trier of fact finds beyond a reasonable doubt that the offender

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

Distributed or caused

minor

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

distributed or caused

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

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

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

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

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

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

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

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

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

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

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

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

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

the trier of fact finds beyond a
reasonable doubt that the offender

occurred

SENATE BILL No. 346

By Joint Committee on Corrections and Juvenile Justice Oversight

1-8

9 AN ACT concerning the department of corrections; relating to the trans-
10 fer of certain offenders; amending K.S.A. 2009 Supp. 75-5220 and
11 repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 Supp. 75-5220 is hereby amended to read as
15 follows: 75-5220. (a) Except as provided in subsection (d),
16 (e) and (f), within ~~three~~ business days of receipt of the notice provided
17 for in K.S.A. 75-5218, and amendments thereto, the secretary of correc-
18 tions shall notify the sheriff having such offender in custody to convey
19 such offender immediately to the department of corrections reception
20 and diagnostic unit or if space is not available at such facility, then to
21 some other state correctional institution until space at the facility is avail-
22 able, except that, in the case of first offenders who are conveyed to a state
23 correctional institution other than the reception and diagnostic unit, such
24 offenders shall be segregated from the inmates of such correctional in-
25 stitution who are not being held in custody at such institution pending
26 transfer to the reception and diagnostic unit when space is available
27 therein. The expenses of any such conveyance shall be charged against
28 and paid out of the general fund of the county whose sheriff conveys the
29 offender to the institution as provided in this subsection.

30 (b) Any female offender sentenced according to the provisions of
31 K.S.A. 75-5229, and amendments thereto, shall be conveyed by the sheriff
32 having such offender in custody directly to a correctional institution des-
33 ignated by the secretary of corrections, subject to the provisions of K.S.A.
34 75-52,134, and amendments thereto. The expenses of such conveyance
35 to the designated institution shall be charged against and paid out of the
36 general fund of the county whose sheriff conveys such female offender
37 to such institution.

38 (c) Each offender conveyed to a state correctional institution pursu-
39 ant to this section shall be accompanied by the record of the offender's
40 trial and conviction as prepared by the clerk of the district court in ac-
41 cordance with K.S.A. 75-5218, and amendments thereto.

42 (d) If the offender in the custody of the secretary is a juvenile, as
43 described in K.S.A. 2009 Supp. 38-2366, and amendments thereto, such

five

1 juvenile shall not be transferred to the state reception and diagnostic
 2 center until such time as such juvenile is to be transferred from a juvenile
 3 correctional facility to a department of corrections institution or facility.

4 (e) Any offender sentenced to a facility designated by the secretary
 5 of corrections to participate in an intensive substance abuse treatment
 6 program shall not be transferred to the state reception and diagnostic
 7 center but directly to such facility, unless otherwise directed by the sec-
 8 retary. The secretary may transfer the housing and confinement of any
 9 offender sentenced to a facility to participate in an intensive substance
 10 abuse treatment program to any institution or facility pursuant to K.S.A.
 11 75-5206, and amendments thereto.

12 (f) ~~If the offender has 10 or less days remaining to be served on the~~
 13 ~~prison portion of the sentence at the time the notice provided for in K.S.A.~~
 14 ~~75-5218, and amendments thereto, is received by the secretary of correc-~~
 15 ~~tions, the offender shall remain in the custody of the sheriff until the~~
 16 ~~completion of the prison portion of the sentence. The secretary shall in-~~
 17 ~~form the sheriff of the date of the expiration of the prison portion of the~~
 18 ~~offender's sentence if 10 or less days remain to be served.~~

19 Sec. 2. ~~K.S.A. 2009 Supp. 75-5220 is hereby repealed.~~

20 Sec. 8. This act shall take effect and be in force from and after its
 21 publication in the statute book.

secretary may order the
 offender discharged from the
 prison portion of the
 sentence.

Sec. 2. [see insert amending
 K.S.A. 21-4632]

3

and 21-4632 are

4

21-4632. Defendants sentenced to custody of secretary of corrections; judgment form, content; presentence investigation and other diagnostic reports to accompany defendant; crimes committed on or after July 1, 1993. (a) If the defendant is to be sentenced to the custody of the secretary of corrections, the court may prepare a judgment form which shall be signed by the court and filed with the clerk. If prepared, the judgment form shall reflect the conviction, the sentence and the commitment, and shall contain the following:

(1) The pronouncement of guilt including:

- (A) The title of the crime;
- (B) the statute violated; and
- (C) the date the offense occurred.

(2) The sentence imposed including:

(A) The severity level of the crime of conviction, criminal history designation and grid block or departure sentence;

(B) if applicable, a description of any increase in sentence because of departure criteria;

(C) if applicable, a statement that this defendant has been convicted of severity levels 1 through 5 by reason of aiding, abetting, advising or counselling another to commit a crime, or by reason of the principle provided in subsection (2) of K.S.A. 21-3205 and amendments thereto;

(D) a statement of the effective date of the sentence indicating whether it is the date of imposition or some date earlier to give credit for time confined pending disposition of the case pursuant to K.S.A. 21-4614 and amendments thereto or credit for time on probation or assignment to community corrections pursuant to K.S.A. 21-4614a and amendments thereto.

(3) The order of commitment to the custody of the secretary, if not issued as a separate order.

(b) The court may attach to or include in the judgment form any of the following:

(1) A statement of reasons for imposing a departure sentence;

(2) a description of aggravating or mitigating circumstances the court took into

consideration when ordering the commitment;

(3) the copy of the evidence from trial or part thereof transmitted pursuant to K.S.A. 75-5219 and amendments thereto.

(c) The court shall forward a copy of all presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the ~~Topeka correctional facility east~~ or the state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

complaints, supporting affidavits, county and district attorney reports,

Delete