

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice Chairperson Tim Emert at 10:05 a.m. on February 2, 1993 in Room 514-S of the Capitol.

All members were present except: Senator Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Paul Shelby, Office of Judicial Administration
Jim Clark, Kansas County and District Attorneys Association

Others attending: See attached list

INTRODUCTION OF BILLS

Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration, requested introduction of three bills: (1) a cleanup measure for statutes missed in legislation passed in the 1992 Session on procedures for filing appointments of process service agents and the transfer of approval of bonds and sureties; (2) a bill pertaining to Chapters 60 and 61 addressing venue costs when cases are transferred from one county to another; and (3) a bill amending K.S.A. 22-3424 (5) by striking the language that upon request the Clerk of the District Court should prepare and file forthwith a notice of appeal on behalf of the defendant (Attachment 1). Senator Martin moved introduction of the three bills as proposed by the Kansas Association of District Court Clerks and Administrators. Senator Feleciano seconded. Motion carried.

Jim Clark, Kansas County and District Attorneys Association, requested introduction of five bills providing balloons in each case as follows:

- (1) Amending unlawful use of a financial card to be consistent with the worthless check statute, including the dollar amounts and habitual use (requested by the Wyandotte County DA) (Attachment 2).
- (2) Amending the forgery statute by adding "or induce official action," similar to the making a false writing statute (Attachment 3).
- (3) Amending the traffic statutes to allow juveniles to be charged in traffic court for all traffic-related offenses (Attachment 4).
- (4) Allowing a stipulation of facts in diversion agreements (Attachment 5).
- (5) Remove the language "who is not married to the offender" from four offenses involving crimes against children (K.S.A. 21-3503, 21-3504, 21-3505 and 21-3506) (Attachment 6).

Senator Bond moved that the five proposals outlined above be introduced. Senator Rock seconded. Motion carried. Mr. Clark also requested an amendment to the DUI statute to make multiple offenses similar to the driving while suspended statute and Senator Ranson stated this request could be amended into a bill she will be introducing dealing with the DUI statute.

Senator Petty requested introduction of a bill creating a juvenile public defender program. Judge Daniel Mitchell, Shawnee County District Court, explained that there is currently a problem in having adequate representation of juveniles from a financial standpoint, as well as from a quality representation standpoint. He feels a public defender system would add consistency in the level of representation of young people. Senator Petty moved introduction of a bill providing for a statewide juvenile public defender program. Senator Bond seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on February 2, 1993.

Senator Oleen moved introduction of a bill to mandate release of an offender after conviction and before sentencing who is on appeal, unless a danger to the community is determined. Senator Martin seconded. Motion carried.

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for February 3, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-2-93

[illegible]

Request for Legislation
Senate Judiciary Committee
February 1, 1993

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee, the Kansas Association of District Court Clerks and Administrators are requesting three legislative proposals they would appreciate being introduced by this committee.

Proposal Number 1

This proposal is a cleanup measure from approved legislation of the 1992 session. Last year the procedures for filing appointments of Process Service Agents were transferred from the Clerks of the District Court to the Secretary of State. We missed one statute, K.S.A. 16-113 and this amendment would take care of our error.

Also last year the approval of bonds and sureties was transferred from the Clerks of the District Court to judges. We missed two statutes, K.S.A. 60-705 and 60-905 and these amendments would take care of our error.

Proposal Number 2

This proposal addresses some problems in Chapters 60 and 61 and specifically with venue costs when cases are transferred from one county to another. Presently, the judge of the county from which the transfer is made is to fix the costs. If the judge does not fix the cost, and this happens, then the clerk of the receiving county is unsure what to charge and this language should make it clear the movant should pay the appropriate docket fee in the new county.

Proposal Number 3

This proposal is an amendment to K.S.A. 22-3424 (5) by striking the language that upon request the Clerk of the District Court should prepare and file forthwith a notice of appeal on behalf of the defendant. This is in direct conflict with K.S.A. 20-3133 which states that it is unlawful for Clerks of the District Court or any of their deputies to write any petition or answer or other pleadings in any proceedings, or perform any service as an attorney or counselor at law in any case or cases pending in the court in which they are either clerk or deputy.

We support these recommendations and urge positive approval from the committee.

SJ
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Attachment 1

Section 1. K. S. A. 16-113 is hereby amended to read as follows: 16-113.

(a) Whenever the state or any political subdivision of the state, or any agency or instrumentality thereof, enters into a contract with any person who is not a resident of this state for the construction of any public improvement to be paid for by public funds, such person shall appoint in writing, as such person's agent, a resident of the county where the public improvement is to be constructed. Process for such person may be served on such agent in any civil action which arises out of the contract and in which the state, political subdivision, agency or instrumentality is a plaintiff. The appointment of such agent shall be filed with the ~~clerk of the district court in the county where the public improvement is to be constructed.~~ No person required to appoint such an agent shall receive public moneys pursuant to such person's contract until the appointment has been made and filed as required by this section.

secretary of state in accordance with 1992 Supp. 60-306

(b) As used in this section, "person" means any individual, partnership or unincorporated association.

Section 2. K.S.A. 60-705 is hereby amended to read as follows: 60-705.

(a) *Form and contents.* When a bond is required, the bond shall be executed by the plaintiff and one or more sufficient sureties in a sum double the amount of the plaintiff's claim, or such lesser amount as shall be approved by an order of the judge, to the effect that the plaintiff shall pay to the defendant all damages which the defendant may sustain by reason of the attachment if wrongfully obtained, or from a wrongful levy thereof if such levy was directed by the plaintiff or plaintiff's attorney. The bond shall be examined by the ~~clerk as to its sufficiency and, if approved by the clerk, such approval shall be noted thereon.~~

judge

judge

(b) *Insufficiency.* If at any time it shall be made to appear to the judge that the bond given by the plaintiff is insufficient in amount, or that any surety therein has died, or has removed from the state, or has become or is likely to become insolvent, the judge on reasonable notice to the plaintiff may order another bond and such further security to be given as shall seem necessary. If the plaintiff shall fail to comply with such order, within the time prescribed by the judge, the attachment shall be dissolved at the plaintiff's cost.

Section 3. K.S.A. 1992 Supp. 60-905 is hereby amended to read as follows: 60-905

(a) *Notice and hearing.* No temporary injunction shall be granted until after reasonable notice to the party to be enjoined and an opportunity to be heard.

(b) *Bond.* Unless otherwise provided by statute or this section, no temporary injunction shall operate unless the party obtaining the same shall give an undertaking with one or more sufficient sureties in an amount fixed by the judge and approved by the clerk of the court, securing to the party injured the damages such injured party may sustain including attorney fees if it be finally determined that the injunction should not have been granted. Neither the state nor any of its agencies shall be required to give an undertaking with one or more sufficient sureties in order to be granted a temporary injunction. For any other party, at the discretion of the judge, the undertaking required by this subsection may be waived.

judge

Section 4. K.S.A. 16-113, 60-705, and 1992 Supp. 60-905 are hereby repealed.

Section 5. This act shall take effect and be in force from and after its publication in the statute book.

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

Section 1. K. S. A. 60-611 is hereby amended to read as follows:
60-611.

If an action is commenced in good faith and a subsequent timely objection to the venue is sustained, or if before trial on the merit commences, it is found that no cause of action exists in favor of or against a party upon whom venue was dependent, the action shall be transferred to any county of proper venue ~~upon such terms as to costs as shall be fixed by the judge of the county from which the transfer is made.~~ If there is more than one such county, the transfer shall be to a county selected by the plaintiff.

In accordance with 1992 Supp. K.S.A. 60-2001, the receiving district court shall require the payment of an appropriate docket fee from the movant.

Section 2. K.S.A. 61-1909 is hereby amended to read as follows:
61-1909.

If an action is commenced in good faith and a subsequent timely objection to the venue is sustained, or if before trial on the merit commences, it is found that no cause of action exists in favor of or against a party upon whom venue was dependent, the action shall be transferred to a court of proper jurisdiction of any county of proper venue ~~upon such terms as to costs as shall be fixed by the judge of the court from which the transfer is made.~~ If there is more than one such county, the transfer shall be to the court of a county selected by the plaintiff.

In accordance with 1992 Supp. K.S.A. 61-2501, the receiving district court shall require the payment of an appropriate docket fee from the movant.

Section 3. K.S.A. 60-611 and 61-1909 are hereby repealed.

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

BILL DRAFT--Clerks Legislative Committee

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

Section 1. K. S. A. 22-3424 is hereby amended to read as follows:
22-3424.

The judgment shall be rendered and sentence imposed in open court.

(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody and the obligation of his appearance bond.

(3) If the verdict or finding is guilty, judgment shall be rendered and sentence pronounced without unreasonable delay, allowing adequate time for the filing and disposition of post-trial motions and for completion of such pre-sentence investigation as the court may require.

(4) Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement on his own behalf and to present any evidence in mitigation of punishment.

(5) After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the costs of an appeal to appeal in *forma pauperis*. ~~If the defendant so requests the clerk of the court should prepare and file forthwith a notice of appeal on behalf of the defendant.~~

Section 2. K.S.A. 22-3424 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Joni Clark

Sec. 49. K.S.A. 1991 Supp. 21-3729 is hereby amended to read as follows: 21-3729. (1) ~~Unlawful Criminal~~ use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, services or communication services, other than telecommunication services as defined by K.S.A. 21-3745 and amendments thereto.

(a) Using a financial card without the consent of the cardholder, or

(b) knowingly using a financial card, or the number or description thereof, which has been revoked or canceled, or

(c) using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(2) For the purposes of this section:

(a) "Financial card" means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.

(b) "Cardholder" means the person or entity to whom or for whose benefit a financial card is issued.

(3) For the purposes of subsection (1)(b) ~~hereof~~, a financial card shall be deemed canceled or revoked when notice in writing thereof

has been received by the named holder thereof as shown on such financial card or by the records of the company.

(4) ~~Unlawful Criminal~~ use of a financial card is a class D felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of \$50,000 or more. ~~Unlawful Criminal~~ use of a financial card is a class E felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of at least \$500 but less than \$50,000. ~~Unlawful Criminal~~ use of a financial card is a class A misdemeanor if the money, goods, property, services or communication services obtained within a seven-day period are of the value of less than \$500.

OR THE PERSON HAS WITHIN TWO YEARS IMMEDIATELY PRECEDING THE CRIMINAL USE OF A FINANCIAL CARD IF THE MONEY, GOODS, PROPERTY, SERVICES OR COMMUNICATION SERVICES ARE LESS THAN \$500 HAS BEEN TWICE CONVICTED OF CRIMINAL USE OF A FINANCIAL CARD. A COMPLAINT, INFORMATION OR INDICTMENT SHALL ALLEGE THE DATES AND PLACES OF SUCH CONVICTIONS AND THAT BOTH OF THEM OCCURRED WITHIN A PERIOD OF TWO YEARS IMMEDIATELY PRECEDING THE CRIME CHARGED.

ST
2-2-93
Attachment 2

21-3710. Forgery. (1) Forgery is knowingly and with intent to defraud _____ or induce official action;

(a) Making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed by another person, either real or fictitious, and if a real person without the authority of such real person, or altering any written instrument in such manner that it purports to have been made at another time or with different provisions without the authority of the maker thereof, or making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed with the authority of one who did not give such authority; or

(b) Issuing or delivering such written instrument knowing it to have been thus made, altered or endorsed; or

(c) Possessing, with intent to issue or deliver, any such written instrument knowing it to have been thus made, altered or endorsed.

(2) Forgery is a class E felony.

(3) In any prosecution under this section, it may be alleged in the complaint or information that it is not known whether a purported person is real or fictitious, and in such case there shall be a rebuttable presumption that such purported person is fictitious.

Jim Clark

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Attachment 3

21-3711. Making a false writing. Making a false writing is making or drawing or causing to be made or drawn any written instrument or entry in a book of account with knowledge that such writing falsely states or represents some material matter or is not what it purports to be, and with intent to defraud or induce official action.

Making a false writing is a class D felony.

2-2-93
ST
Attachment 4

AN ACT concerning traffic offenses; relating to juveniles prosecuted as adults; amending K.S.A. 8-262 and 8-2204 and repealing the existing sections.

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

Section 1. K.S.A. 8-262 is hereby amended to read as follows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked shall be guilty of a class B misdemeanor on the first conviction, a class A misdemeanor on the second conviction and for third and subsequent convictions shall be guilty of a class E felony.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license or was, at the time of arrest, eligible under K.S.A. 8-256, and amendments thereto, to apply for a new license to operate a motor vehicle.

(3) Except as otherwise provided by ~~subsection~~ subsections (a)(4) and (a)(5), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second or subsequent conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) If a person (A) is convicted of a violation of this section, committed while the person's privilege to drive was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or a law of another state, which ordinance or law prohibits the acts prohibited by that statute, and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment *and if such person is under the age of 18 years,*

the mandatory 90 days' imprisonment sentence shall not apply but, the court may commit such person to a juvenile detention facility for not more than 90 days, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(5) If the person convicted of a violation of this section is under the age of 18 years, the mandatory five days' imprisonment sentence shall not apply but, the court may commit such person to a juvenile detention facility for not more than five days.

(b) The division upon receiving a record of the conviction of any person under this section or any ordinance of any city or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or a law of another state which is in substantial conformity with this section.

Sec. 2. K.S.A. 8-2204 is hereby amended to read as follows: 8-2204. This act shall be known and may be cited as the uniform act regulating traffic on highways. The uniform act regulating traffic on highways includes K.S.A. 8-1334 to 8-1341, inclusive, and all sections located in articles 2, 10 and 14 to 22, inclusive, of chapter 8 of Kansas Statutes Annotated and K.S.A. ~~1988 Supp.~~ 8-1,129, 8-1,130a, 8-1428a, 8-1742a and 8-2118, and amendments to these sections.

Sec. 3. K.S.A. 8-262 and 8-2204 are hereby repealed.

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

Am. Clarke

AN ACT concerning crimes and criminal procedure; relating to diversion agreements; stipulation of facts; amending K.S.A. 1991 Supp. 22-2909 and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 22-2909 is hereby amended to read as follows: 22-2909. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the county or district attorney, the county or district attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100. Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A.

8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant and the county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

(d) *If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567 and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant and the county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.*

(e) If the person entering into a diversion agreement is a non-resident, the county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

~~(e)~~ (f) If the county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

~~(f)~~ (g) Except as provided in subsection ~~(g)~~ (h), if a diversion agreement is entered into in lieu of further criminal proceedings,

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Attachment 5

Jim Clark

1 alleging commission of a misdemeanor by the defendant, while under
2 21 years of age, under the uniform controlled substances act (K.S.A.
3 65-4101 *et seq.*, and amendments thereto) or K.S.A. 41-719, 41-727,
4 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and
5 amendments thereto, the agreement shall require the defendant to
6 submit to and complete an alcohol and drug evaluation by a com-
7 munity-based alcohol and drug safety action program certified pur-
8 suant to K.S.A. 8-1008, and amendments thereto, and to pay a fee
9 not to exceed the fee established by that statute for such evaluation.
10 If the county or district attorney finds that the defendant is indigent,
11 the fee may be waived.

12 ~~(g)~~ (h) If the defendant is 18 or more years of age but less than
13 21 years of age and allegedly committed a violation of K.S.A. 41-
14 727, and amendments thereto, involving cereal malt beverage, the
15 provisions of subsection ~~(f)~~ (g) are permissive and not mandatory.

16 ~~(h)~~ (i) Except diversion agreements reported under subsection
17 ~~(i)~~ (j), the county or district attorney shall forward to the Kansas
18 bureau of investigation a copy of the diversion agreement at the
19 time such agreement is filed with the district court. The copy of the
20 agreement shall be made available upon request to any county,
21 district or city attorney or court.

22 ~~(i)~~ (j) At the time of filing the diversion agreement with the
23 district court, the county or district attorney shall forward to the
24 division of vehicles of the state department of revenue a copy of
25 any diversion agreement entered into in lieu of further criminal
26 proceedings on a complaint alleging a violation of K.S.A. 8-1567,
27 and amendments thereto. The copy of the agreement shall be made
28 available upon request to any county, district or city attorney or
29 court.

30 Sec. 2. K.S.A. 1991 Supp. 22-2909 is hereby repealed.

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

12
21. K.S.A. 1991 Supp. 21-3503 is hereby amended to read as follows: 21-3503. (1) Indecent liberties with a child is engaging in the following acts with a child who is under ~~not married~~ to the offender and who is 14 or more years of age but less than 16 years of age.

(a) Sexual intercourse; or

(b) (a) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both, or

(c) (b) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(2) It shall be a defense to a prosecution of indecent liberties with a child that the child was married to the accused at the time of the offense.

(3) (2) Indecent liberties with a child is a class G D felony.

Sec. 22. K.S.A. 21-3504 is hereby amended to read as follows: 21-3504. (1) Aggravated indecent liberties with a child is the commission of indecent liberties with a child, as defined in K.S.A. 21-3503 and amendments thereto, by any guardian, proprietor or employee of any foster home, orphanage or other public or private institution for the care and custody of minor children, to whose charge the child has been committed or entrusted by any court, court services officer, department of social and rehabilitation services or other agency acting under color of law.

(a) Sexual intercourse with a child who is not married to the offender and who is 14 or more years of age but less than 16 years of age;

(b) engaging in any of the following acts with a child who is not married to the offender, who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(i) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender, or both, or

(ii) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another, or

(c) engaging in any of the following acts with a child who is not married to the offender and who is under 14 years of age:

(i) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both, or

(ii) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(2) Aggravated indecent liberties with a child is a class B C felony.

Sec. 23. K.S.A. 21-3505 is hereby amended to read as follows: 21-3505. (1) Criminal sodomy is:

(a) Sodomy between persons who are 16 or more years of age and members of the same sex or between a person and an animal;

(b) sodomy with a child who is not married to the offender and who is 14 or more years of age but less than 16 years of age; or

(c) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.

(2) Criminal sodomy as provided in subsection (1)(a) is a class B misdemeanor. Criminal sodomy as provided in subsections (1)(b) and (1)(c) is a class C felony.

Sec. 24. K.S.A. 21-3506 is hereby amended to read as follows: 21-3506. Aggravated criminal sodomy is:

(a) Sodomy with a child who is not married to the offender and who is under 16 14 years of age;

(b) causing a child under 16 14 years of age to engage in sodomy with any person or an animal; or

(c) sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with any person or an animal, under any of the following circumstances:

(i) When the victim is overcome by force or fear,

(ii) when the victim is unconscious or physically powerless,

(iii) when the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender or was reasonably apparent to the offender, or

(iv) when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance administered to the victim by the offender, or by another person with the offender's knowledge, unless the victim voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Consent of the victim shall not be presumed based solely on the victim's voluntary intoxication.

(3) Aggravated criminal sodomy is a class B felony.

It shall be a defense to a prosecution of indecent liberties with a child that the child was married to the accused at the time of the offense.

It shall be a defense to a prosecution of aggravated indecent liberties with a child that the child was married to the accused at the time of the offense.

It shall be a defense to a prosecution of criminal sodomy that the child was married to the accused at the time of the offense.

It shall be a defense to a prosecution of aggravated criminal sodomy that the child was married to the accused at the time of the offense.

SJ

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Attachment 56