

Approved: 5-17-11  
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 10, 2011 in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Lauren Douglass, Legislative Research  
Robert Allison- Gallimore, Legislative Research  
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

State Representative Jeff King  
Professor Richard Levy, Kansas Judicial Council  
Ed Klumpp, KACP, Kansas Sheriffs Assoc., KPOA  
John Rasmussen, KS association of School Boards

Others attending:

See attached.

Chairperson Colloton called the meeting to order and opened the hearing on **SB 176-Concerning criminal procedure; relating to conditions of release and bond; relating to house arrest; relating to employment of county and municipal prisoners.** The following testified before the Committee as proponents of the bill. Their written testimony can be found in its entirety in the offices of Legislative Administrative Services:

- State Senator Jeff King ([Attachment 1](#))
- Chris Joseph, General Counsel, Kansas Professional Bail Bond Assn., written only ([Attachment 2](#))

A short question and answer session followed. With no others to testify or speak to the bill Chairperson Colloton, closed the hearing on **SB 176** and opened the hearing on **SB 23-Children and minors; relating to jury trials; high school diplomas.** The following testified as proponents of the bill. His written testimony can be found in its entirety in the offices of Legislative Administrative Services:

- Professor Richard Levy, Kansas Judicial Council ([Attachment 3](#))

A short question and answer session followed. With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **SB 176** and opened the hearing on **SB 55-Crimes, criminal procedure and punishment; relating to electronic communications; relating to harassment by telecommunications device; relating to warrants for interception and information.** The following testified before the Committee as proponents of the bill. Their written testimony can be found in its entirety in the offices of Legislative Administrative Services:

- Ed Klumpp, Ed Klumpp, KACP, Kansas Sheriffs Assoc., KPOA ([Attachment 4](#))
- John Rasmussen, Kansas Association of School Boards ([Attachment 5](#))
- Colin Thomasset, Association of Community Mental Health Centers, Inc. ([Attachment 6](#))
- Kansas County and District Attorneys Association ([Attachment 7](#))

A short question and answer session followed. Chairperson Colloton closed the hearing on SB 55 and opened the floor for further consideration of **HB 2322-Amendments to the Kansas offender registration act.** Jason Thompson, Office of the Revisor of Statutes, explained balloons on the bill ([Attachment 8](#)) A discussion followed with the following motions being made concerning the Juvenile balloon.

- **Representative Wolf moved the balloon-Juvenile. Representative McCray-Miller seconded.**

## CONTINUATION SHEET

The minutes of the Corrections and Juvenile Justice Committee at 1:30 p.m. on March 10, 2011, in Room 144-S of the Capitol.

- Representative Kinzer moved a substitute motion on the Juvenile balloon to vote on accepting the entire balloon except for E2 and F2 and to change shall to may Representative Smith seconded. Motion carried.
- Representative Kinzer moved to insert 2 E and F back into the bill. Representative Smith seconded. Motion carried.

The following motions were made on the fourth time reporting balloon.

- Representative McCray-Miller moved to accept to balloon for the bill adding to be able to report by mail upon the discretion of the court. Representative Kelly seconded. Motion carried.

Lengthy discussions occurred for each motion.

Chairperson Colloton continued the consideration on **HB 2322** until tomorrow and adjourned the meeting at 3:15 pm with the next scheduled meeting for March 11, 2011, upon adjournment of the House of Representative in room 144-S.

# CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 3-10-11

NAME	REPRESENTING
Go Kuntz	KACP/KPOA/KSA
Kyle Smith	KSAG
Patrick Vogelberg	KCDAA
MEGAN PINEBAR	KSAG
Sarah Fertig	KSC
Shacy Mann	WA
Britt Nichols	Juvenile Justice
Berend Koops	Hein Law Firm
Kevin Berone	KPBBA
<del>Justin Rose</del>	KCSL
<del>Ken McGovern</del>	KSA
ERIK SARTORIUS	City of Overland Park
<del>John Hammer</del>	KASB
Matalie Gibson	Ks Judicial Council
Adea PIRDENI	KU AFFILIATE
JEHU NNAJI	KU AFFILIATE
Richard Levy	Ks. Judicial Council/KU
Brandon Maus	Gov. Policy
Nicole Dekat	KBT

DATE: \_\_\_\_\_

[illegible]

# State of Kansas

## Senate Chamber

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P.O. BOX 1211  
INDEPENDENCE, KANSAS 67301  
(620) 714-1881

ROOM 237-E, STATE CAPITOL  
TOPEKA, KANSAS 66612  
(785) 296-7398  
E-Mail: jeff.king@senate.ks.gov



JEFF KING

SENATOR, FIFTEENTH DISTRICT

MONTGOMERY, ELK, CHAUTAUQUA, WILSON, WOODSON, ALLEN, COFFEY, ANDERSON AND FRANKLIN

March 10, 2011

Chairwoman Colloton & Members of the House Corrections Committee,

Thank you for the opportunity to testify in support of Senate Bill 176. Under current Kansas law, judges must consider numerous factors when determining bail for accused criminals awaiting trial. Unfortunately, none of these factors include the legal residency status of the alleged offender.

Senate Bill 176 would remedy this omission by adding an additional factor to this list. It would require Kansas judges to consider whether a defendant is a lawful United States resident when determining whether (or at what level) to set his bail.

Senate Bill 176 was the brainchild of Jeff Richards, an Overland Park Detective and Franklin County resident. Before proposing this legislation, Detective Richards encountered numerous instances in his job where illegal immigrants would be arrested, released on little bail, and avoid justice by immediately fleeing the area. By forcing judges to consider "whether the defendant is lawfully present in the United States," Senate Bill 176 would inhibit the ability of illegal immigrants to flee once arrested.

Criminals who are not lawfully in our country are far more likely to flee if released on bail than United States citizens and legal residents. Our judges must have the clear authority to deny or greatly restrict bail for these offenders. I appreciate your time and urge your support of Senate Bill 176.

Senator Jeff King

A large, stylized handwritten signature in black ink, likely belonging to Senator Jeff King, written over the typed name and the committee information.

House Corrections and Juvenile Justice  
Committee

2011 Session

Date 3-10-11

Attachment # 1

**KPBBA**

1508 SW  
Topeka  
Boulevard  
Topeka,  
Kansas 66612

President  
Dennis Berndt

Vice-President  
Shane Rolf

Treasurer  
Tommy  
Hendrickson

General  
Counsel  
Christopher  
Joseph,  
Joseph &  
Hollander LLC

## Kansas Professional Bail Bond Association, Inc.

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TO: House Committee on Corrections and Juvenile Justice

FROM: Christopher M. Joseph, General Counsel

DATE: March 10, 2011

RE: Support for SB 176

Good afternoon Madam Chair and members of the Committee, my name is Chris Joseph and I am the General Counsel for the Kansas Professional Bail Bond Association. The KPBBA is an association of professional sureties in the State of Kansas. I am here to testify today in support of SB 176.

Bondsmen know well that defendants who are not lawfully present in the United States rarely show up to court. If they are able to get out of jail, they do not want to risk deportation if they go back to court. Such defendants should have bonds that reflect this extremely high flight risk.

Finally, I would note that this bill dovetails nicely with HB2259. Far too many such defendants are released on OR bonds and fail to appear in court. Consideration of a defendant's immigration status and restrictions on OR bonds are both appropriate and will further public safety and efficient administration of justice.



## KANSAS JUDICIAL COUNCIL

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TO: Representative Pat Colloton, Chair, House Corrections and Juvenile Justice Committee

From: Kansas Judicial Council Juvenile Offender and Child in Need of Care Committee

Re: Testimony in support of 2011 Senate Bill 23

Date: March 8, 2011

### TESTIMONY OF THE JUDICIAL COUNCIL JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE ON 2011 SENATE BILL 23

**General Background:** This proposed legislation addresses the procedure for conducting jury trials in cases under the Kansas Juvenile Offender Code. The proposed legislation responds to *In re L.M.* 186 P.3d 164 (Kan. 2008), a Kansas Supreme Court decision which held that juveniles have a right to jury trials. The court reasoned that the juvenile justice system had taken on many of the attributes of the adult criminal justice system, such that the denial of the right to a jury trial could no longer be justified by the *parens patriae* character of the proceedings. In the 2010 legislative session, the Juvenile Offender / Child in Need of Care Advisory Committee (JO/CINC committee or committee) proposed legislation, SB 459, to address various issues that had arisen under the Code. Sections 1 and 2 of SB 459 addressed the issue of jury trials.

Because of concerns expressed in the Kansas County District Attorney Association's written testimony opposing those sections of the bill, in June, 2010, the JO/CINC committee was formally asked to study the issue.

**Advisory Committee Approach:** In its initial discussion of the issue, the committee considered the scope of its charge. There was some support on the committee to consider a more fundamental change to the structure of the juvenile offender process so as to restore the *parens patriae* elements of the juvenile justice system, perhaps creating a bifurcated structure in which some cases could proceed under a *parens patriae* model in which the rationale of *In re L.M.* would not apply. But the committee determined that its charge was a more limited one—to develop provisions implementing the right to a jury in adjudications under the Code. Given its understanding of its charge, the committee did not consider a fundamental restructuring of the code. For similar reasons, the committee did not address other aspects of the juvenile offender process that implicate other constitutional rights that might apply in juvenile offender adjudications under the logic of *In re L.M.*

The committee then assigned several members to develop a draft that would address the concerns expressed during the legislative process. Those concerns were twofold. First, the proposed legislation had included language indicating that trial was to the court, and required the juvenile to request a jury trial, which the KCDA considered to be inconsistent with *In re L.M.* Second, the proposed legislation did not address the procedures for conducting jury trials, giving judges insufficient guidance as to how to conduct a jury trial when one was requested in a juvenile offender proceeding.

The subcommittee debated on the best method to address these concerns. It considered that, in view of *In re L.M.*, the procedures for jury trials in juvenile offender cases should



generally parallel the procedures for adult jury trials, except where the special character of the juvenile justice system warranted a difference in treatment. The subcommittee then discussed the best way to implement that principle. It considered various means of incorporating the relevant provisions of the adult criminal procedure code by reference, but determined that such an approach would not work. In order to avoid uncertainty about what provisions were incorporated (and prevent the wholesale adoption of the adult criminal procedure code), it would be necessary to specify those provisions that were incorporated (or those that were not). Such a series of statutory cross-references would be unwieldy and difficult to work with, in part because many provisions of the adult code reference both matters relevant to jury trials and other issues, which would need to be sorted out. In addition, many of the relevant provisions would require changes to adapt them to the Juvenile Offender Code.

Thus, the subcommittee determined that the better approach would be to identify the relevant provisions from the adult criminal code, incorporate them into the Juvenile Offender Code, and then work with the full committee to modify them as appropriate to the juvenile justice system. Using this approach, the subcommittee produced a working draft that combined the relevant provisions from the adult code into a new version of K.S.A. 38-2357 (which currently is a short provision giving the court discretion to order a jury trial upon motion). The subcommittee organized the provisions into subsections, removed language addressing matters relating to other procedural issues, and adjusted the terminology to conform the terminology of the Juvenile Offender Code.

This draft provided the basis for further discussion by the committee as a whole. To obtain input for this discussion, the draft was sent to the KCDA and all District Court Judges for comment. A few comments were received from district court judges but no response was

received from the KCDAA. The comments from judges expressed concern that juvenile jury trials were undesirable because they (further) undermined the *parens patriae* elements of the juvenile justice system. Some comments objected to the working draft's retention of the rule from the adult criminal procedure code under which jury trials would be automatically provided in felony cases unless it was waived. The comments encouraged the committee to look at the issue more fundamentally in order to minimize the formalization of the juvenile offender process. The committee was sympathetic to these views, but constrained by both *In re L.M.* and the nature of its charge. Nonetheless, in reviewing the working draft, the committee was especially cognizant of the differences between the adult criminal justice system and the juvenile justice system, and made some modifications to the adult procedures accordingly.

**Overview of the Bill:** The legislation proposes amendments to two provisions affected by *In re L.M.*, K.S.A. 38-2344(b) and K.S.A. 38-2357, and attempts to provide procedural direction for handling juvenile jury trials. The proposed amendments to K.S.A. 38-2344(b) are minor and simply include the right to a jury among those rights of which the juvenile is informed. The proposed amendments to K.S.A. 38-2357 are the core of the committee's proposals, and include provisions addressing (1) the scope and invocation of the right to a jury trial; (2) the size, composition, and selection of a jury panel; (3) the conduct of jurors and their opportunity to view the scene; and (4) the jury's decision, including submission of the case to the jury, deliberations, and the jury verdict.

The legislation does not address many issues related to other constitutional rights that the holding *In re L.M.* case raises, such as the right to speedy trial or preliminary hearings. The committee considered these issues to be beyond the scope of its charge and also concluded that it was premature to address these issues without further direction or clarification from the Kansas

Supreme Court or further direction or assignment from the Judicial Council. Thus, in drafting the proposed legislation, the committee endeavored to avoid taking any action that would have implications beyond the right to a jury trial.

Most of the provisions in the bill are straightforward and follow the model of the adult criminal procedure code concerning empaneling a jury, the conduct of the jury, and jury deliberations and verdicts. Some minor adjustments were made in light of the fact that the alleged offender is a juvenile. For example, while the adult code allows the defendant to pose questions during voir dire of prospective jurors, the advisory committee did not consider such a right to be appropriate for juveniles. The most difficult issue is the scope of the right to a jury trial and, in particular, whether a juvenile must request a jury in felony cases.

**Scope of the Right:** The committee's original recommendation in SB 459 was to provide for a right to a jury trial *on request* in both felony and misdemeanor cases, departing from the rule in adult criminal cases (in which a jury must be requested in misdemeanor cases, but is provided automatically in felony cases unless waived). One objection raised by the KCDA was that requiring a juvenile to request a jury trial in felony cases is not in line with the holding in *In re L.M.* In the initial draft of the current bill circulated for comment, the advisory committee followed the adult rule (providing for a jury in felony cases unless it is waived). This provision produced negative comments from some judges who preferred an approach like the one in SB 459. After careful consideration of this issue, the committee renewed its recommendation that juveniles be required to request a jury in all cases. The committee does not believe that requiring a juvenile to request a jury impairs the right to a jury trial if the jury is provided as a matter of right when it is requested. *In re L.M.* requires the state to comply with

the juvenile's constitutional right to a jury trial; it does not require the state to apply identical rules in adult and juvenile cases.

After SB 23 was passed by the Senate, however, it came to the advisory committee's attention that some case law involving adults might present a problem for the bill as drafted. In *State v. Irving*, 216 Kan. 588, 590, 533 P.2d 1225, 1228 (Kan. 1975), the Kansas Supreme Court held that "in order for a criminal defendant to effectively waive his right to a trial by jury, the defendant must first be advised by the court of his right to a jury trial, and he must personally waive this right in writing or in open court for the record." Accord *State v. Bowers*, 42 Kan.App.2d 739, 216 P.3d 715 (Kan. App. 2009); *State v. Larraco*, 32 Kan.App.2d 996, 93 P.3d 725 (Kan. App. 2004). Although SB 23 provides for the court to advise the juvenile of his or her right to a jury trial, it does not require the waiver to be made in writing or on the record in open court; to the contrary, the failure to request a jury trial would constitute a waiver.

If the Kansas courts apply the rule from *Irving* in juvenile cases, then a juvenile's failure to request a jury would not constitute an effective waiver of the constitutional right. In *State v. Sykes*, 35 Kan.App.2d 517, 132 P.3d 485 (Kan. App. 2006), for example, the court held that the defendant's failure to request a jury in a misdemeanor case in which incarceration could exceed 6 months did not constitute an effective waiver:

Although Sykes did not timely exercise his statutory right to request a jury trial on the misdemeanor theft charge, this did not abrogate his constitutional right to a jury trial since he was facing imprisonment for more than 6 months. . . . The district court should have obtained a knowing waiver from Sykes, either in writing or in open court, of his constitutional right to a jury trial. The State concedes the record does not indicate Sykes waived his right to a jury trial. In fact, Sykes informed the district court he wanted a jury trial immediately before the bench trial commenced. Sykes is therefore entitled to a new trial on the misdemeanor theft charge where he may exercise or waive his right to a jury trial.

If *Sykes* did apply, then some juveniles might be able to appeal from a bench trial on the ground that they did not waive the right to a jury, and some juvenile conviction might be unavailable for consideration in sentencing for a later offense.

When the advisory committee learned of the waiver issue, an e-mail exchange involving a number of committee members ensued. As a result of this exchange, it was determined that the House Committee on Corrections and Juvenile Justice should be informed of the waiver issue, but that no change to the bill would be recommended at this time. The committee strongly believes that it is in keeping with the nature of juvenile offender adjudications that jury trials should be the exception and not the rule, in order to retain the traditional *parens patriae* dimension of juvenile offender proceedings when that is possible. Furthermore, providing that a jury trial is the default rule unless it is expressly waived would likely result in more jury trials, further undermining the *parens patriae* character of the juvenile justice system, and placing an unnecessary burden on the courts, since jury trials are much more costly than bench trials.

Given the remaining differences between adult and juvenile cases, it is by no means clear that the courts would apply *Irving* and *Sykes* in juvenile cases. There is a plausible argument that the rule of *Irving* is not appropriate for juveniles insofar as they are (usually) minors at the time of trial. For example, *Irving* requires that the defendant “personally” waive the right, but is unclear whether alleged juvenile offenders have the capacity to make such a waiver or whether it would be appropriate to give someone else (such as a parent or other person with legal custody) to do so on their behalf. Similarly, a jury in a juvenile offender trial is not, in any realistic sense, comprised of the juvenile’s peers—since minors cannot serve on a jury. More broadly, given the nature of the juvenile justice system, the right to a jury is less central to the assurance of fairness and the strict rule of *Irving* is less justified. So long as the right to a jury trial is clear and can be

easily asserted, it would not seem to be an unreasonable burden on that right to require that the juvenile request a jury in felony cases. Nonetheless, it is entirely possible that the Kansas courts would read the logic of *In re LM* as requiring application of *Irving's* requirements for waiver. That possibility creates some risk that convictions without juries would be constitutionally infirm.

The advisory did not have time to meet to discuss the waiver issue or to agree on an appropriate response, other than to recognize the importance of letting the Legislature know about the waiver problem so that it could make an informed judgment about the costs and benefits of the competing approaches.



## **Kansas Association of Chiefs of Police**

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

## **Kansas Peace Officers Association**

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



# **Testimony to the House Corrections and Juvenile Justice Committee In Support of SB55 Harassment by Telecommunications Devices March 10, 2011**

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association support passage of SB55. This bill modernizes the statute currently titled Harassment by Telephone. That statute, KSA 21-4113 has not been amended since 1993. Since that time, the proliferation of a multitude of electronic devices has broadened the opportunities for devious people to use other more modern electronic devices to harass others. This proposal will include the use of cell phones and so called smart phones. It also adds the transmission of images or text. These amendments are critical for law enforcement to be able to respond appropriately to the needs of victim's of this harmful behavior.

This activity often times precedes or is completed in conjunction with stalking and domestic violence. It is frustrating when such acts take place using technology that did not exist in 1993 and not included in the statute. The amendments to this bill do not make changes to the unlawful actions but merely updates the technology that can be used in the abusive communications.

We fully supported the amendments made by the Senate Committee and we urge you to recommend this bill favorably for passage.

Ed Klumpp  
Ks Association of Chiefs of Police - Legislative Committee Chair  
Ks Peace Officers Association - Legislative Liaison  
eklumpp@cox.net  
Phone: (785)640-1102

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 3-10-11  
Attachment # 4

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS



1420 SW Arrowhead Road • Topeka, Kansas 66604-4024  
785-273-3600

Testimony before the  
**House Committee on Corrections and Juvenile Justice**  
on  
**SB 55 – Amending the harassment by telecommunication law to include texting**

by  
**John Rasmussen, Attorney**  
Kansas Association of School Boards

**March 10, 2011**

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to comment on **SB 55**. The bill would amend the law on harassment by telecommunication device to include an image or text which is obscene, lewd, lascivious, or indecent. Harassment by telecommunication device is a class A nonperson misdemeanor.

KASB appears in support of this measure. Kansas schools are facing increasing challenges involving students using technology to send sexually explicit images. This includes sending such images via texts, now commonly referred to as “sexting.” Sexting legislation was one of five legislative resolutions adopted by KASB’s Delegate Assembly this past December. Under current law, the practice of sexting may result in teens being prosecuted under child pornography laws, requiring the teens to register as sex offenders. By adding texting to the law on harassment by telecommunication device, prosecutors have the option to bring charges but only at a misdemeanor level. This would allow for the prosecution of teen offenders without the requirement that they register as sex offenders.

Other states have recently passed legislation addressing the issue of sexting. As many as eleven states now have some type of law on the books that distinguishes “sexting” from other more serious crimes involving child pornography. **SB 55** is a good start in Kansas on developing a wider range of options to address this problem.

Thank you for your consideration.

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 3-10-11  
Attachment # 5





***Association of Community Mental Health Centers of Kansas, Inc***  
***534 S. Kansas Ave., Suite 330, Topeka, Kansas 66603***  
***Telephone: 785-234-4773 / Fax: 785-234-3189***  
***Web Site: [www.acmhck.org](http://www.acmhck.org)***

## **House Corrections and Juvenile Justice Committee**

### **Testimony on Senate Bill 55**

March 10, 2011

Presented by:

Colin Thomasset, Policy and Research Analyst  
Association of CMHCs of Kansas, Inc.

(written only)

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 3-10-11  
Attachment # 6-1

Madame Chairman and members of the Committee, thank you for the opportunity to testify on Senate Bill 55. My name is Colin Thomasset, and I am the Policy and Research Analyst for the Association of Community Mental Health Centers (CMHCs) of Kansas, Inc.

The Association represents the 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Each CMHC has a defined and discrete geographical service area. With a collective staff of over 4,500 professionals, the CMHCs provide services to Kansans of all ages with a diverse range of presenting problems.

Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 115,000 Kansans with mental illness.

We support Senate Bill 55, which would amend language and further clarify the statute dealing with harassing or threatening text messages. With technology advancing, this change will allow for law enforcement to more accurately charge offenders. We feel this change is warranted, and is necessary in today's environment.

Thank you for your support of mental health care and treatment for all Kansas, and the adoption of Senate Bill 55, which would amend the crime of harassment by telecommunications device.



**Kansas County & District Attorneys Association**

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March 10, 2010

**Testimony in support of SB 55  
Provided by Patrick Vogelsberg  
On Behalf of the Kansas County and District Attorneys Association**

Honorable Chairwoman Colloton and Members of the House Corrections and Juvenile Justice Committee:

On behalf of the Kansas County and District Attorneys Association (KCDAA), I would like to offer support for SB 55. This bill will modernize the law regarding harassment by telecommunications device to include the full range of telecommunications currently available. As our technology has evolved, so has the individual's ability to inappropriately and maliciously use our technology. The laws of Kansas should adapt themselves to the advances of technology. SB 55 attempts to do just that.

The KCDAA supports SB 55 and respectfully request that the committee pass this bill favorably.

Respectfully submitted,

Patrick Vogelsberg  
KCDAA

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 3-10-11  
Attachment # 7

1 pursuant to K.S.A. 2010 Supp. 8-1325a, and amendments thereto;  
2 (m) if maintaining primary residence in this state and not presently  
3 serving and maintaining active duty in any branch of the United States  
4 military, surrender all driver's licenses and identification cards from  
5 other states, territories and the District of Columbia;

6 (n) read and sign the registration form noting whether the  
7 requirements provided in this section have been explained to the  
8 offender; and

9 (o) notify the registering law enforcement agency in the jurisdiction  
10 of the offender's residence and the Kansas bureau of investigation 21  
11 days prior to any travel outside of the United States, or if under  
12 emergency circumstances, within three days of making travel  
13 arrangements.

14 Sec. 6. K.S.A. 2010 Supp. 22-4906 is hereby amended to read as  
15 follows: 22-4906. (a) ~~Except as provided in subsection (d), any person~~  
16 ~~required to register as provided in this act shall be required to register: (1)~~  
17 ~~Upon the first conviction of a sexually violent crime as defined in~~  
18 ~~subsection (c) of K.S.A. 22-4902, and amendments thereto, any offense~~  
19 ~~as defined in subsection (a) of K.S.A. 22-4902, and amendments thereto,~~  
20 ~~or any offense as defined in subsection (d) of K.S.A. 22-4902, and~~  
21 ~~amendments thereto, if not confined, for a period of 10 years after~~  
22 ~~conviction, or, if confined, for a period of 10 years after paroled,~~  
23 ~~discharged or released, whichever date is most recent. The ten-year~~  
24 ~~period shall not apply to any person while the person is incarcerated in~~  
25 ~~any jail or correctional facility. The ten-year registration requirement does~~  
26 ~~not include any time period when any person who is required to register~~  
27 ~~under this act knowingly or willfully fails to comply with the registration~~  
28 ~~requirement; or (2) upon a second or subsequent conviction for such~~  
29 ~~person's lifetime.~~

30 (b) ~~Upon the first conviction, liability for registration terminates, if~~  
31 ~~not confined, at the expiration of 10 years from the date of conviction, o~~  
32 ~~if confined, at the expiration of 10 years from the date of parole~~  
33 ~~discharge or release, whichever date is most recent. The ten-year perioe~~  
34 ~~shall not apply to any person while the person is incarcerated in any jail~~  
35 ~~or correctional facility. The ten-year registration requirement does not~~  
36 ~~include any time period when any person who is required to register~~  
37 ~~under this act knowingly or willfully fails to comply with the registration~~  
38 ~~requirement. Liability for registration does not terminate if the convicted~~  
39 ~~offender again becomes liable to register as provided by this act during~~  
40 ~~that period.~~

41 (c) ~~Any person who has been convicted of an aggravated offense~~  
42 ~~shall be required to register for such person's lifetime.~~

43 (d) ~~Any person who has been convicted of any of the following~~

hb2322\_22-4906\_balloon.pdf  
RS - JThompson - 03/10/11

House Corrections &  
Juvenile Justice  
3-10-11  
Attachment 8-1

1 offenses shall be required to register for such person's lifetime;  
2 ~~(1) Aggravated human trafficking, as defined in K.S.A. 21-3447,~~  
3 ~~and amendments thereto, if the victim is less than 14 years of age;~~  
4 ~~(2) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and~~  
5 ~~amendments thereto;~~  
6 ~~(3) aggravated indecent liberties with a child, as defined in~~  
7 ~~subsection (a)(3) of K.S.A. 21-3504, and amendments thereto;~~  
8 ~~(4) aggravated criminal sodomy, as defined in subsection (a)(1) or~~  
9 ~~(a)(2) of K.S.A. 21-3506, and amendments thereto;~~  
10 ~~(5) promoting prostitution, as defined in K.S.A. 21-3513, and~~  
11 ~~amendments thereto, if the prostitute is less than 14 years of age;~~  
12 ~~(6) sexual exploitation of a child, as defined in subsection (a)(5) or~~  
13 ~~(a)(6) of K.S.A. 21-3516, and amendments thereto; or~~  
14 ~~(7) any attempt, conspiracy or criminal solicitation, as defined in~~  
15 ~~K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an~~  
16 ~~offense defined in this subsection.~~  
17 ~~(c) Any person who has been declared a sexually violent predator~~  
18 ~~pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall~~  
19 ~~register for such person's lifetime.~~  
20 ~~(f) Any nonresident worker shall register for the duration of such~~  
21 ~~person's employment. The provisions of this subsection are in addition to~~  
22 ~~subsections (a) and (b).~~  
23 ~~(g) Any nonresident student shall register for the duration of such~~  
24 ~~person's attendance at a school or educational institution as provided in~~  
25 ~~this act. The provisions of this subsection are in addition to subsections~~  
26 ~~(a) and (b).~~  
27 ~~(h) (1) Notwithstanding any other provisions of this section, a~~  
28 ~~person who is adjudicated as a juvenile offender for an act which if~~  
29 ~~committed by an adult would constitute the commission of a sexually~~  
30 ~~violent crime set forth in subsection (c) of K.S.A. 22-4902, and~~  
31 ~~amendments thereto, and such crime is an off-grid felony or a felony~~  
32 ~~ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-~~  
33 ~~4704, and amendments thereto, shall be required to register until such~~  
34 ~~person reaches 18 years of age, at the expiration of five years from the~~  
35 ~~date of adjudication or, if confined, from release from confinement,~~  
36 ~~whichever date occurs later. The five-year period shall not apply to any~~  
37 ~~person while that person is incarcerated in any jail, juvenile facility or~~  
38 ~~correctional facility. The five-year registration requirement does not~~  
39 ~~include any time period when any person who is required to register~~  
40 ~~under this act knowingly or willfully fails to comply with the registration~~  
41 ~~requirement.~~  
42 ~~(2) (A) A person who is adjudicated as a juvenile offender for an act~~  
43 ~~which if committed by an adult would constitute the commission of a~~

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1 sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and  
2 amendments thereto, and such crime is not an off-grid felony or a felony  
3 ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-  
4 4704, and amendments thereto, may, by the court:

5 (i) ~~Be required to register pursuant to the provisions of paragraph~~  
6 ~~(1);~~

7 (ii) ~~not be required to register if the judge, on the record, finds~~  
8 ~~substantial and compelling reasons therefor; or~~

9 (iii) ~~be required to register with the sheriff pursuant to K.S.A. 22-~~  
10 ~~4904, and amendments thereto, but such registration information shall not~~  
11 ~~be open to inspection by the public or posted on any internet website, as~~  
12 ~~provided in K.S.A. 22-4909, and amendments thereto. If the court~~  
13 ~~requires the juvenile to register but such registration is not open to the~~  
14 ~~public, the juvenile shall provide a copy of such court order to the sheriff~~  
15 ~~at the time of registration. The sheriff shall forward a copy of such court~~  
16 ~~order to the Kansas bureau of investigation.~~

17 (B) ~~If such juvenile offender violates a condition of release during~~  
18 ~~the term of the conditional release, the judge may require the juvenile~~  
19 ~~offender to register pursuant to paragraph (1).~~

20 (3) ~~Liability for registration does not terminate if the adjudicated~~  
21 ~~offender again becomes liable to register as provided by this act during~~  
22 ~~the required period.~~

23 (4) ~~The provisions of paragraph (2)(A)(ii) shall apply to~~  
24 ~~adjudications on and after July 1, 2007, and retroactively to adjudications~~  
25 ~~prior to July 1, 2007.~~

26 (i) ~~Any person moving to the state of Kansas who has been~~  
27 ~~convicted in another state, and who was required to register under that~~  
28 ~~state's laws, shall register for the same length of time required by that~~  
29 ~~state or Kansas, whichever length of time is longer. The provisions of this~~  
30 ~~subsection shall apply to convictions prior to June 1, 2006, and to persons~~  
31 ~~who moved to Kansas prior to June 1, 2006.~~

32 (a) *Except as otherwise provided in this section, an offender's*  
33 *duration of registration is:*

34 (1) *If confined, 15 years after the date of parole, discharge or*  
35 *release, whichever date is most recent. The 15-year duration of*  
36 *registration shall not apply to any offender while the offender is*  
37 *incarcerated in any jail or correctional facility. The 15-year duration of*  
38 *registration does not include any time period when any offender fails to*  
39 *comply with the registration requirement; and*

40 (2) *upon a second or subsequent conviction of an offense requiring*  
41 *registration, for such offender's lifetime.*

42 (b) *Except as otherwise provided by the Kansas offender*  
43 *registration act, the duration of registration terminates, if not confined, at*

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1 the expiration of 15 years from the date of conviction. Any period of time  
 2 during which any offender is incarcerated in any jail or correctional  
 3 facility or during which the offender does not comply with any and all  
 4 requirements of the Kansas offender registration act shall not count  
 5 toward the duration of registration.

6 (c) The duration of registration for any offender who has been  
 7 convicted of any of the following offenses shall be for such offender's  
 8 lifetime:

9 (1) Any sexually violent crime, as defined in subsection (c) of K.S.A.  
 10 22-4902, and amendments thereto;

11 (2) aggravated human trafficking, as defined in K.S.A. 21-3447,  
 12 prior to its repeal, or subsection (b) of section 61 of chapter 136 of the  
 13 2010 Session Laws of Kansas, and amendments thereto;

14 (3) promoting prostitution, as defined in K.S.A. 21-3513, prior to its  
 15 repeal, or section 230 of chapter 136 of the 2010 Session Laws of  
 16 Kansas, and amendments thereto;

17 (4) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or  
 18 subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of  
 19 Kansas, and amendments thereto;

20 (5) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its  
 21 repeal, or subsection (b) of section 43 of chapter 136 of the 2010 Session  
 22 Laws of Kansas, and amendments thereto; or

23 (6) any attempt, conspiracy or criminal solicitation, as defined in  
 24 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33,  
 25 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and  
 26 amendments thereto, of an offense defined in this subsection.

27 (d) Any person who has been declared a sexually violent predator  
 28 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall  
 29 register for such person's lifetime.

30 (e) Notwithstanding any other provisions of this section, for an  
 31 offender less than 14 years of age who is adjudicated as a juvenile  
 32 offender for an act which if committed by an adult would constitute a  
 33 sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and  
 34 amendments thereto, ~~the duration of registration shall be until such~~  
 35 ~~offender reaches 18 years of age, at the expiration of five years from the~~  
 36 ~~date of adjudication or, if confined, at the expiration of five years from~~  
 37 ~~the date of release from confinement, whichever date occurs later. Any~~  
 38 ~~period of time during which the offender is incarcerated in any jail or~~  
 39 ~~correctional facility or during which the offender does not comply with~~  
 40 ~~any and all requirements of the Kansas offender registration act shall not~~  
 41 ~~count toward the duration of registration.~~ ←

42 (f) Notwithstanding any other provisions of this section, for an  
 43 offender 14 years of age or more who is adjudicated as a juvenile

if the victim is less than 18 years of age

if the prostitute is less than 18 years of age

the court may:

(1) Require registration until such offender reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

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offender for an act which if committed by an adult would constitute a sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto, and such crime is not an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior to its repeal, or section 285 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, ~~the duration of registration shall be 15 years from the date of adjudication or, if confined, at the expiration of five years from the date of release from confinement, whichever date occurs later. Any period of time during which the offender is incarcerated in any jail or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration.~~ ←

(g) Notwithstanding any other provisions of this section, an offender 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto, and such crime is an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior to its repeal, or section 285 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be required to register for such offender's lifetime.

(h) Notwithstanding any other provision of law, if a diversionary agreement or probation order; either adult or juvenile, or a juvenile offender sentencing order, requires registration under the Kansas offender registration act for an offense that would not otherwise require registration as provided in subsection (a)(5) of K.S.A. 22-4902, and amendments thereto, then all provisions of the Kansas offender registration act shall apply, except that the duration of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.

(i) The duration of registration does not terminate if the convicted or adjudicated offender again becomes liable to register as provided by the Kansas offender registration act during the required period of registration.

(j) The provisions of subsection (e), (f) and (g) shall apply to adjudications on and after July 1, 2007, and retroactively to adjudications prior to July 1, 2007.

(k) For any person moving to Kansas who has been convicted or adjudicated in an out of state court, and who was required to register under an out of state law, the duration of registration shall be the length of time required by the out of state jurisdiction or by the Kansas offender registration act, whichever length of time is longer. The provisions of this

the court may:

(1) Require registration until such offender reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

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1 subsection shall apply to convictions prior to June 1, 2006, and to  
2 persons who moved to Kansas prior to June 1, 2006, and to convictions  
3 on or after June 1, 2006, and to persons who moved to Kansas on or  
4 after June 1, 2006.

5 (l) For any person residing, maintaining employment or attending  
6 school in this state who has been convicted or adjudicated by an out of  
7 state court of an offense that is comparable to any crime requiring  
8 registration pursuant to the Kansas offender registration act, but who  
9 was not required to register in the jurisdiction of conviction, the duration  
10 of registration shall be the duration required for the comparable offense  
11 pursuant to the Kansas offender registration act. The duration of  
12 registration shall begin upon establishing residency, beginning  
13 employment or beginning school.

14 Sec. 7. K.S.A. 2010 Supp. 22-4907 is hereby amended to read as  
15 follows: 22-4907. (a) Registration as required by ~~this~~ the Kansas offender  
16 registration act shall consist of a form ~~prepared~~ approved by the Kansas  
17 bureau of investigation, which shall include a statement that the  
18 requirements provided in this section have been reviewed and explained  
19 to the ~~person~~ offender, and shall be signed by the ~~person~~ offender and  
20 witnessed by the person registering the offender. Such registration form  
21 shall include the following offender information:

- 22 (1) Name and all alias names;  
23 (2) date and ~~place of birth~~ city, state and country of birth, and any  
24 alias dates or places of birth;  
25 (3) title and statute number of each offense or offenses committed,  
26 date of each conviction or ~~convictions obtained~~ adjudication and court  
27 case numbers for each conviction or adjudication;  
28 (4) city, county, state or ~~county~~ country of conviction or ~~convictions~~  
29 ~~obtained~~ adjudication;  
30 (5) sex and ~~age~~ date of birth or purported age of each victim of all  
31 offenses requiring registration;  
32 (6) current residential address, any anticipated future residence and  
33 any temporary lodging information including, but not limited to, address,  
34 telephone number and dates of travel for any place in which the offender  
35 is staying for seven or more days; and, if transient, the locations where  
36 the offender has stayed and frequented since last reporting for  
37 registration;  
38 (7) all telephone numbers at which the offender may be contacted  
39 including, but not limited to, all mobile telephone numbers;  
40 (7) (8) social security number, and all alias social security numbers;  
41 (8) (9) identifying characteristics such as race, ethnicity, skin tone,  
42 sex, age, height, weight, hair and eye color, scars, tattoos and blood type;  
43 (9) (10) occupation and name, address or addresses and telephone

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