Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on March 10, 2011, in Room 548-S of the Capitol.

All members were present, except Senators Donovan and Kelly, who were excused

Committee staff present:
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:
John Settle, Pawnee County Attorney
John C. Haas, Pawnee County Commissioner
Randall Allen, Executive Director Kansas Association of Counties
Phillip Cosby, State Director American Family Assn. of Kansas and Missouri
Ed Klumpp, Kansas Assn. of Chiefs of Police and Kansas Peace Officers Assn.
Jeffry D. Curry, Sheriff Franklin County and Kansas Sheriffs Assn.
Christine Ladner, Office of Attorney General

Others attending:
See attached list.

The Chairman opened the hearings on **SB 217 -- Civil commitment of sexually violent predators; reimbursement for costs related to habeas corpus actions to the county from the sexually violent predator expense fund**.

Jason Thompson, Staff Revisor, reviewed the bill.

John Settle testified in support of **SB 217** (Attachment 1). He explained that the bill is intended to help the taxpayers of Pawnee County. In a recent Attorney General Opinion (Attachment 2), the Attorney General concluded that K.S.A. 20-348 authorizes the court to tax Pawnee County for the fees of an attorney appointed to represent an indigent person confined pursuant to the SVPA in a habeas corpus proceeding under K.S.A. 60-1501. Mr. Settle does not believe that the Legislature would intend that Pawnee County should be responsible for those costs. He stated he was in support of amendments to the bill suggested by the Attorney General (Attachment 3).

John C. Haas testified in support of **SB 217** (Attachment 4). He stated that the bill is necessary to avoid imposing a very large and unfair tax burden on the taxpayers of Pawnee County.

Randall Allen testified in opposition to the solution suggested in **SB 217** (Attachment 5). He stated that the Attorney General should pay the costs of enforcing the SVPA and any litigation relating thereto; that would ensure that all taxpayers of the state share in the cost.

The Chairman called the committee's attention to the fiscal note for **SB 217**.

The Chairman closed the hearings on **SB 217**.

The Chairman opened the hearings on **HB 2042**.

Jason Thompson, Staff Revisor, reviewed the bill.

Phillip Cosby testified in support of HB 2042 (Attachment 6). He stated that the bill would provide for collection of data to quantify and connect the dots between pornographic materials and criminal behavior.

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on March 10, 2011, in Room 548-S of the Capitol.

Written testimony in support of **HB 2042** was submitted by Mary Anne Layden, Ph. D. (Attachment 7) and Judy Smith, Concerned Women for America (Attachment 8).

Ed Klumpp testified in opposition to **HB 2042** (Attachment 9). He stated that the bill imposes an unfunded mandate upon the KBI and local law enforcement agencies throughout the state. He stated that the fiscal note does not reflect the significant costs of implementing the bill as it was amended. He expressed concern with the precedent set by the bill; the bill requires collection of statistical data that does not help deter crime or help law enforcement officers to do their jobs.

Jeffry Curry testified in opposition to **HB 2042** (Attachment 10). He stated that the bill does not help in the investigation or prosecution of sex crimes. He expressed concern with the costs of implementing the bill.

The Chairman called the committee's attention to the fiscal note for **HB 2042** and noted that it reflects only the cost to the state and that it does not reflect the costs of the House amendments.

Senator Vratil requested that a revised fiscal note be prepared for **HB 2042**.

Senator Bruce expressed concern that **HB 2042** appears to assume that the same law enforcement officer will be the same person handling all aspects of the crime such as the search, arrest and investigation.

Senator Bruce also expressed concern that **HB 2042** authorizes the KBI to adopt rules and regulations relating to training of law enforcement officers, and asked whether that was in the purview of the Kansas Law Enforcement Training Center.
No response was provided.

Senator Lynn asked, "Who would have access to the data once it was collected? Would it be subject to disclosure under the open records act?
No response was provided.

Senator Bruce stated there may be value in having the information, but wondered if there was a less intrusive way to collect the date.
Ed Klummp stated he thought it would have to be collected electronically and centrally stored to be accessible. He added that if the pornographic material has evidentiary value, it would be collected without the bill.

The Chairman closed the hearings on **HB 2042**.

The Chairman opened the hearings on **HB 2196 -- Amending the rules of evidence regarding expert testimony in sexually violent predator commitment cases**.

Jason Thompson, Staff Revisor, reviewed the bill.

Christine Ladner testified in support of **HB 2196** (Attachment 11). She stated that evidence in sexually violent predator (SVP) cases is composed of almost all expert testimony. She stated the bill would save money and streamline presentation of evidence. The bill mirrors the Federal Rule that allows the admissibility of an expert opinion based upon hearsay, but only in SVP cases.

Senator King asked, "Why limit the bill to SVP cases?"
Ms. Lardner responded, "She would be concerned that the bill would not pass if it was as broad as the Federal Rule."

Senator Vratil asked, "Why are sex offenders treated differently than other offenders? Doesn't the bill create an equal protection issue?"

Ms. Lardner responded, "Persons subject to the SVP Act already have been singled-out and currently are treated differently than other offenders." She stated that she does not believe the bill violates the SVP constitutional rights.

The Chairman called the committee's attention to the fiscal note for **HB 2196**.

The Chairman closed the hearings on **HB 2196**.

Committee Action:
The Chairman called the committee's attention to **SB 39 -- Creating the classification of "aggravated sex offender;" creating additional penalties and restrictions for sex offenders**.

The Chairman called the committee's attention to additional written testimony submitted by Ray Roberts, Secretary of the Kansas Department of Corrections (Attachments 12 and 13).

The Chairman renewed his concern with the provisions of **SB 39** that would prevent juvenile offenders from attending school or living in a home with other children.

Balloon amendments to **SB 39**, prepared at the request of Senator Olson, were distributed to the committee (Attachment 14). Mr. Thompson stated that the amendments address some of the concerns raised by members of the committee.

The Chairman postponed further action on the bill in order to allow the committee to review the proposed amendments in the balloon.

The Chairman called the committee's attention to **SB 159 -- Parole and postrelease supervision for violent offenders and sex offenders**.

Balloon amendments to **SB 159**, prepared at the request of Senator Pilcher-Cook, were distributed to the committee (Attachment 15). Mr. Thompson stated that balloon is different than the balloon that previously had been distributed.

The Chairman announced that discussion and possible action on **SB 39** would continue tomorrow.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 11, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 10, 2011

NAME	REPRESENTING
Whitney Damron	KS Bar Assn.
Nicole Dekat	KBI
MEGAN PINEGAR	AG
Randall Allen	Ks. Association of Counties
Phillip Cosby	AFA
Kyle Smith	KSA6
Lt. Curtis Hall	FRCO Sheriff's Office
Ed Klumpp	ICACP/KSA/KPOA
Sheriff Jeff Curry	KS. Sheriff's Association
Britt Nichols	Juvenile Justice
Diane Morris	Washburn University Student
Amy Higgins	Washburn University Student
Helen Pedigo	Court
~~JOHNPOZOR~~	KCWS
Caleb Reid	Sen. Biz
STEVE KEARNEY	PAWNEE CO.
Kim Barnes	Pawnee Co
John C. Haas	Pawnee Co

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/10/11

NAME	REPRESENTING
Christine Ladner	Attorney General
Sean Miller	Capitol Strategies
Amanda Buisman	Washburn School of Nursing
Stephanie Kimbrel	" " "
Zac Kohl	Federico Consulting

JOHN M. SETTLE PAWNEE COUNTY ATTORNEY
PAWNEE COUNTY COURTHOUSE – LARNED, KANSAS 67550 – 620-285-2139

TESTIMONY OF JOHN M. SETTLE, PAWNEE COUNTY ATTORNEY
IN SUPPORT OF SENATE BILL 217
House Corrections & Juvenile Justice Committee Hearing February 14, 2010

Honorable Chairman Owens and Members of the Committee:

I have served as the Pawnee County Attorney since my appointment by Governor Graves in 1995. I am a Past President of the Kansas County and District Attorneys Association and I served on the KCDAA's Board of Directors from 1996 through 2004. I presently serve on the Criminal Law Advisory Committee of the Kansas Judicial Council. I also serve on the Board of Editors of ***The Kansas Prosecutor,*** a publication of the KCDAA. In addition to my legal career, I own a newspaper publishing business which publishes five Kansas publications covering the Kansas communities of Larned, Lyons, Hoisington and Ellinwood. Those publications reach over 30,000 readers in the Central Kansas counties of Pawnee, Edwards, Barton, Rice and Stafford.

I appear today on behalf of myself as a Pawnee County taxpayer, as the Pawnee County Attorney and for the Pawnee County Commissioners and the citizens of Pawnee County, to ask for your support of Senate Bill 217.

Recently Kansas Attorney General Derek Schmidt's Office issued Attorney General Opinion No. 2011-3 in response to a request by Patricia A. Scalia, Executive Director of the State Board of Indigents' Defense Services. Executive Director Scalia had questioned the State Board of Indigents' Defense Services (BIDS) responsibility to pay the attorney fees of an indigent person confined pursuant to the Sexually Violent Predator Act (SVPA) who challenges the conditions of such confinement by filing a habeas corpus petition pursuant to K.S.A. 60-1501. I have attached a copy of Attorney General Opinion No. 2011-3 (the Opinion) to this testimony for your review.

Ultimately, after an analysis of the cases and Kansas statutes that apply to the question presented, the Opinion adopts a statement of the Kansas Supreme Court in *In re Care & Treatment of Rayborn*, 259 Kan. 813, at 821 (1996), that:

> "K.S.A. 20-348 makes each county responsible for all expenses incurred for the operation of its district court except expenses which the law requires the State to pay.... We conclude that the fees incurred in representing respondents in sexual predator proceedings are expenses incurred for the operation of the district court and, as such, are to be paid by the County."

The ultimate conclusion of the Opinion follows the rationale of *Rayborn* concluding that:

> "The rationale of *Rayborn* applies to the taxation of attorney fees in a habeas corpus proceeding filed by a person confined pursuant to the SVPA.
>
> Based upon the above analysis, we conclude that K.S.A. 20-348 authorizes the court to tax the county for the fees of an attorney appointed to represent an indigent person confined pursuant to the SVPA in a habeas corpus proceeding under K.S.A. 60-1501."

Each of you is aware that Kansas' Sexual Predator Treatment Program is located on the Larned State Hospital campus in Pawnee County. There are currently approximately 300 sexual predator patients housed in the program.

In 2009 and 2010 a total of twenty-five (25) K.S.A. 60-1501 habeas corpus cases were appealed from the Pawnee County District Court to Kansas appellate courts after having been determined at the trial court level. I believe the bill that prompted the request for this Opinion was for approximately $6500 relating to a patient's 2007 case that had not yet even gone to trial. Obviously the potential costs of these type actions could total thousands of dollars annually. According to Attorney General Opinion 2011-3 these costs must be taxed against Pawnee County.

The Kansas legislature intended the State to be responsible for the costs of the prosecution of SVPA cases when it passed K.S.A 59-29a04a to create the Sexually Violent Predator Expense Fund. However, at the time the statute was passed the potential for collateral litigation from the SVPA patients was unknown. It is unreasonable to believe the legislature would intend that Pawnee County should be responsible for the potential cost of that litigation.

It is my understanding that the Kansas Attorney General's Office will also support SB 217 with a few amendments. I have also attached a copy of the bill with their mark-ups . Pawnee County has no objection to the Attorney General's proposed amendments to SB 217.

Senate Bill 217 will relieve Pawnee County of an unfair burden to pay for all of the collateral litigation which has resulted from the SVPA and I ask that you support the bill.

Sincerely,

John M. Settle
Pawnee County Attorney

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

February 9, 2011

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

ATTORNEY GENERAL OPINION NO. 2011-3

Patricia A. Scalia
Executive Director
State Board of Indigents' Defense Services
714 SW Jackson, Suite 200
Topeka, Kansas 66603-3714

Re: Courts—District Courts—County Commissioners Responsible for Certain Expenses of District Court Operations; Costs of Fees for Counsel Appointed in a Habeas Corpus Proceeding under K.S.A. 60-1501 to Represent Indigent Persons Confined Pursuant to the Sexually Violent Predator Act.

Synopsis: K.S.A. 20-348 authorizes the court to tax the county for the attorney fees of an indigent person confined pursuant to the Sexually Violent Predator Act (SVPA) in a habeas corpus proceeding under K.S.A. 60-1501. Cited herein: K.S.A. 20-348; 22-4503; 22-4506; K.S.A. 2009 Supp. 59-29a07; K.S.A. 59-29a06; K.S.A. 2009 Supp. 60-2001; K.S.A. 60-2002; 60-2003; 60-1501.

Dear Ms. Scalia:

As Executive Director of the State Board of Indigents' Defense Services (BIDS), you request an opinion regarding BIDS's responsibility to pay the attorney fees to represent an indigent person who is confined pursuant to the Sexually Violent Predator Act (SVPA) and challenges the conditions of such confinement by filing a habeas corpus petition pursuant to K.S.A. 60-1501.

The SVPA requires that a person adjudged to be a sexually violent predator "be committed to the custody of the secretary of social and rehabilitation services [SRS] for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large."[1] K.S.A. 60-1501(a) states in pertinent part that "any person in this state who is detained, confined, or restrained of liberty on any pretense whatsoever . . . may prosecute a writ of habeas corpus in the supreme court, court of appeals or the district court of the county in which such restraint is taking place."

[1] K.S.A. 2009 Supp. 59-29a07(a).

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The broad language in K.S.A. 60-1501 encompasses a person confined pursuant to the SVPA "and, as a result, the person may bring a habeas corpus petition alleging due process violations."[2] The habeas corpus petition must allege either (1) shocking or intolerable conduct or (2) continuing mistreatment of a constitutional nature. The court may summarily dismiss the petition if such allegations are not made or if it appears as a matter of law, based upon undisputed or incontrovertible fact, that no cause for granting a writ exists.[3] If the petition is not subject to summary dismissal, the petitioner confined pursuant to the SVPA has "a constitutional right to counsel."[4]

K.S.A. 60-1501, however, does not address the liability for the payment of attorney fees for an indigent habeas corpus petitioner. Because the Code for Civil Procedure governs a habeas corpus petition,[5] we look to those statutes for guidance.

K.S.A. 60-2003 lists the items that may be included in the taxation of costs; it does not include attorney fees. Rather, it has a general provision allowing "[s]uch other charges as are by statute authorized to be taxed as costs."[6] K.S.A. 2009 Supp. 60-2001(d) provides that "[o]ther fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include . . . attorney fees . . . and any other fees and expenses required by statute."

In determining that a habeas corpus petitioner confined pursuant to the SVPA had a constitutional right to appointed counsel, the court also found that there was no right to appointed counsel under the BIDS statutes.[7] Unlike habeas corpus petitioners confined pursuant to a felony sentence, the statutes governing BIDS do not require BIDS to provide appointed counsel to habeas corpus petitioners confined pursuant to the SVPA. Thus, there is no statutory authority to tax BIDS with the costs of attorney fees for an indigent habeas corpus petitioner confined pursuant to the SVPA.[8] Our next focus is upon K.S.A. 20-348 to determine if the county is responsible for such costs.

K.S.A. 20-348 states: "Except for expenses required by law to be paid by the state, the board of county commissioners of each county have an obligation to adequately fund the operation of the district court in the county and shall be responsible for all expenses incurred for the operation of the district court in the county." The Kansas Supreme Court interpreted K.S.A. 20-348 in *In re Care & Treatment of Rayborn*.[9] In *Rayborn*, the SVPA required the appointment of counsel to represent indigent persons at all

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[2] *Johnson v. State*, 289 Kan. 642, 648 (2009).
[3] *Id.* at 648-49.
[4] *Merryfield v. State*, ___ Kan. App. 2d ___, 241 P.3d 573, 579 (2010).
[5] *Holt v. Saiya*, 28 Kan. App. 2d 356, 362 (2000).
[6] K.S.A. 60-2003(8).
[7] 241 P.3d at 578-79.
[8] Your letter refers us to Kansas Attorney General Opinion No. 97-71. That opinion is not applicable as it interpreted the statutes governing BIDS, K.S.A. 22-4503 and 22-4506, to determine BIDS is responsible for the payment of appointed counsel for a habeas corpus petitioner serving a felony sentence.
[9] 259 Kan. 813, 821 (1996).

proceedings under the SVPA[10] but did not identify the entity responsible for the payment of appointed counsel's fees.[11] After rejecting the county's arguments, the court held:

> "K.S.A. 20-348 makes each county responsible for all expenses incurred for the operation of its district court except expenses which the law requires the State to pay. . . . We conclude that the fees incurred in representing respondents in sexual predator proceedings are expenses incurred for the operation of the district court and, as such, are to be paid by the County."[12]

The rationale of *Rayborn* applies to the taxation of attorney fees in a habeas corpus proceeding filed by a person confined pursuant to the SVPA.

Based upon the above analysis, we conclude that K.S.A. 20-348 authorizes the court to tax the county for the fees of an attorney appointed to represent an indigent person confined pursuant to the SVPA in a habeas corpus proceeding under K.S.A. 60-1501.

Sincerely,

Derek Schmidt
Attorney General

Camille Nohe
Assistant Attorney General

Janet L. Arndt
Assistant Attorney General

DS:AA:CN:JLA:ke

[10] K.S.A. 59-29a06(b).
[11] 259 Kan. at 819. The legislature subsequently amended the SVPA to specify that the county is responsible for the payment of defense costs, *e.g.*, appointed counsel's fees, but "shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund." See L. 2007, Ch. 170, § 4; now codified in K.S.A. 2009 Supp. 59-29a04(c).
[12] *Id.* at 821.

Session of 2011

SENATE BILL No. 217

By Committee on Ways and Means

2-21

AN ACT concerning the civil commitment of sexually violent predators; relating to reimbursement for costs related to habeas corpus actions; amending K.S.A. 2010 Supp. 59-29a04a and repealing the existing section.

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

New Section 1. (a) Whenever a person civilly committed pursuant to K.S.A. 59-29a01, et. seq., and amendments thereto, files a petition pursuant to K.S.A. 60-1501, et. seq., and amendments thereto, relating to such commitment, the costs incurred, including, but not limited to costs of appointed counsel fees and expenses, witness fees and expenses, expert fees and expenses, and other expenses related to the prosecution and defense of such petition shall be taxed to the county responsible for the costs. Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county except that it may refuse to approve the same for payment only on the ground that it is not the county responsible for the costs. ~~In such case it shall transmit the statement of costs to the attorney general who shall determine the question of the responsible county and certify the attorney general's findings to each district court. Whenever a district court has sent a statement of costs to the district court of another county and such costs have not been paid within 90 days after the statement was sent, the district court that sent the statement may transmit such statement of costs to the attorney general as provided in this section.~~ If the claim for costs is not paid within ~~30~~ days ~~after such certification~~, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county. ~~The findings made by the attorney general as to the responsible county shall be applicable only to the assessment of costs.~~

amend to 120

(b) The county responsible for the costs incurred pursuant to subsection (a) shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and

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amendments thereto.

(c) As used in this section, "county responsible for the costs" means the county where the person was determined to be a sexually violent predator pursuant to K.S.A. 59-29a01, et. seq., and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 59-29a04a is hereby amended to read as follows: 59-29a04a. (a) There is hereby created in the state treasury the sexually violent predator expense fund which shall be administered by the attorney general. All moneys credited to such fund shall be used to reimburse counties under:

(1) K.S.A. 59-29a04, and amendments thereto, responsible for the costs related to determining whether a person may be a sexually violent predator; *and*

(2) section 1, and amendments thereto, for the costs related to person filing a petition pursuant to K.S.A. 60-1501, et. seq., and amendments thereto, relating to the civil committment pursuant to K.S.A. 59-29a01, et. seq., and amendments thereto.

(b) All expenditures from the sexually violent predator expense fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.

Sec. 3. K.S.A. 2010 Supp. 59-29a04a is hereby repealed.

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

Testimony of John C. Haas, Pawnee County Commissioner
Before the Judiciary Committee of the Kansas State Senate
March 10, 2011

Mr. Chairman and members of the committee:

My name is John Haas and I serve as a County Commissioner Representing the 1st District of Pawnee County. I am here today to testify on Senate Bill 217. Pawnee County is the site of the Kansas Sexual Treatment Program located at the Larned State Hospital Complex. This bill deals with a problem which affects the entire population of Pawnee County.

That problem is the payment of court appointed attorney fees and other legal expenses which result from any K.S.A 60-1501 habeas corpus actions filed by patients of the Sexual Predator Program. At present Pawnee County must pay these fees because of recent Kansas Appellate Court decisions and an Attorney General's Opinion.

This creates a very large unfair tax burden on the taxpayers of Pawnee County. These habeas corpus actions are filed fairly often and could create a sizable unfair financial obligation on the citizens of Pawnee County. I therefore ask this committee to approve this bill.

I thank you Senator Owens for this opportunity to testify before your committee on behalf of the citizens of Pawnee County.

John C. Haas
Commissioner,
1st District Pawnee County

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KANSAS ASSOCIATION OF COUNTIES

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE
ON SB 217
MARCH 10, 2011

Chairman Owens and Members of the Committee:

I appreciate the opportunity to offer testimony in opposition to SB 217.

The Kansas Association of Counties opposes SB 217 because it continues the trend of assigning costs associated with committed sexually violent predators to Kansas counties. Kansas counties are responsible for the costs of the commitment proceedings for sexually violent predators, and SB 217 adds the costs of habeas corpus appeals to the list.

KAC recognizes the importance of enforcing the Sexually Violent Predator Act; however, we do not believe counties should pay the costs. The State, via the Attorney General, initiates the procedure to legally determine whether a person is a sexually violent predator. Current statute assigns all costs associated with these proceedings to the county where the criminal conviction occurred, which includes costs of investigation, prosecution, defense, juries, witness and expert fees.

Legislation in 2007 creates a Sexually Violent Predator Expense Fund, which is intended to reimburse counties for the costs associated with these type cases. The Attorney General administers the fund. However, there is no incentive for the Attorney General to seek an appropriation for this fund; it increases his budget yet provides no money to the operations of his office. The statute directs counties to seek reimbursement by filing a special claim if there are no monies in the fund. This is not a workable solution.

County resources are scarce at the moment, making it difficult to cover an unforeseen and unpredictable bill that arises when a sexually violent predator is convicted in a county. We believe the better policy is that all Kansas taxpayers share the cost of enforcing this state law. The State budget should cover all costs associated with enforcing this Act, and we have attached an amendment to that effect.

We appreciate your listening to our comments on SB 217, and ask that you consider adoption of our amendment.

Randall Allen
Executive Director

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
785•272•2585
Fax 785•272•3585

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K.S.A. 59-29a04. Same; petition, time, contents; provisions of section are not jurisdictional; county reimbursed for costs. (a) When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection (e) of K.S.A. 59-29a03, and amendments thereto, has determined that the person meets the definition of a sexually violent predator, the attorney general, within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03, and amendments thereto, may file a petition in the county where the person was convicted of or charged with a sexually violent offense alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

(b) The provisions of this section are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 et seq., and amendments thereto.

(c) ~~Whenever a determination is made regarding whether a person may be a sexually violent predator, the county responsible for the costs incurred, including, but not limited to costs of investigation, prosecution, defense, juries, witness fees and expenses, expert fees and expenses and other expenses related to determining whether a person may be a sexually violent predator shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.~~

— **REPLACE** (c)

(c) All costs incurred, including but not limited to the costs of the investigation, litigation, attorney fees, jury fees, fees and mileage for the attendance of witnesses, qualified experts and professional persons, appeals, annual examinations, and any other services, to determine whether a person is a sexually violent predator shall be the responsibility of and paid by the Attorney General.

and **REPEAL** K.S.A. 59-29a04a creating the Sexually Violent Predator Expense Fund to reimburse counties.

TESTIMONY OF PHILLIP COSBY
AMERICAN FAMILY ASOOCIATION OF KANSAS AND MISSOURI
KANSAS SENATE JUDICIARY COMMITTEE
HB 2042 March 2011

Chairman Owens and honorable members of the Judiciary Committee, my name is Phillip Cosby. I am a native of Kansas and currently the American Family Association State Director for Kansas and Missouri. I am honored to have the privilege to speak to you in support of **HB 2042** regarding the reporting of pornographic materials during investigations of sexual crimes.

HB 2042 to my knowledge, for the first time, will provide for collection of data to quantify and connect the dots between pornographic materials and criminal behavior. Such data will either affirm or refute the anecdotal observations, debates and speculations that range from "pornography is just harmless fun" to "pornography is the fuel that acts as a catalyst for fantasy driven criminal behavior".

These past eight years I have spoken to thousands of Kansans citizens and civic officials concerning the negative effects of Sexually Oriented Businesses (SOBs) in communities. The evidence of harm is not anecdotal; the lawful regulation of the sex industry is based on measurable toxic effects on communities. The right of communities to regulate SOBs has been constitutionally upheld for over thirty years. The documented effects are primarily increased crime, increased STD's, blight, property devaluation, prostitution, human trafficking and drug trafficking. One judge recently commented "it is not just the evidence of negative effects, it is common sense."

The KC Star story put forth a piercing question asking how Kelsey Smiths killer went from juvenile delinquent to rapist and murderer. *Motive May Never Be Known, Questions Remain" KC Star Sep.15th* The article turned a blind eye to the obvious. Not one time in this story and question was the elephant in the room of cause and effect of an addiction to sexualized materials weighted.

I asked the Johnson County prosecutor, during their investigations, as to what they found in the way of sexualized materials that could have contributed to fuel the impulse to act out such a criminal fantasy. The prosecutor was genuinely interested in the question but stated that it was not in their rubric to look for and document such corroborative evidence. In my conversations with most experienced law enforcement personnel and convicted sex offenders they generally agree that the influence of pornography is a major factor in deviant behavior.

"Pornography is the fuel that acts as a catalyst for fantasy-driven criminal behavior." *Vernon J. Geberth, retired Lt. Commander of the NYPD*

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Attachment 6

The abduction, sexual assault and murder of Kelsey Smith of Johnson County , Jodi Sanderhold of Arkansas City, Alicia DeBolt of Great Bend...motives unknown? The toxic effects of highly sexualized materials is striking in it comparisons with the tobacco debates in denial and effects. According to the KBI sexual crimes increased 40% from 2003 (553) to 2009 (912).

It is cause and effect: garbage in, garbage out. We can't afford to be indifferent, in denial or dismiss as harmless fun the pervasive flood of highly sexualized materials now exacerbated by emerging handheld communication technologies. The pornification of America has changed everything.

We all sense it. Every day the news relays the latest heartbreaking story of abductions, child molestations, human trafficking, solicitations, and sexual misconduct at the highest levels of sacred and secular trust, urban blight, rising STD rates, fantasy driven sexual assaults, rape and murder. Our sense of safety, wholesomeness and innocence is evaporating. When you and I were in grade school we played freely with our friends on Saturdays in our neighborhoods and beyond. Our parents did not have to be unduly fraught with concerns for our personal safety. For us, the general rule was, when those street lights flicker on you better be home. Those days of experiencing such freedom and safety are long since gone for today's children. Outside of organized and supervised sports, where are those groups of playful youngsters today?

Legislative bodies on many levels are behind the curve in recognizing and reacting to the cause and effect relationship of the sex industry on individual lives. The ease of accessibility to highly sexualized images by emerging technologies is exacerbating this growing public safety and health crisis.

This is a real pocketbook issue. In Kansas prisons one third of the inmates are incarcerated for sexual crimes at a cost of $30,000 annually per prisoner. As a matter of good common sense KDOC policy inmates are not allowed access to pornographic materials. You can't raise enough taxes, build enough prisons and buy enough ankle bracelets for this toxic tsunami. Ladies and gentlemen what we have is an epidemic and we must act. At the very least we can quantify the question. **HB 2042** is a compelling governmental interest.

Phillip Cosby
Executive Director, Kansas City Office, NCPC&F
11936 W. 119th St. # 193
Overland Park, Kansas 66213 Cell# 913-787-0075 pcosby@nationalcoalition.org

Supporting Documents:

CD of the 214 page report *"Adult Pornography and Child Sexual Exploitation"* Robert Peters
Booklet. *"Social Costs of Pornography"* Witherspoon Institute

☐ INITIAL ☐ DELETE
☐ MODIFY ☐ ADD

KANSAS STANDARD OFFENSE REPORT

PAGE OF

FRONT PAGE OPEN PUBLIC RECORD

☐ ON VIEW ☐ DISPATCHED
☐ CITIZEN

NAME OF AGENCY	KS AGENCY ORI NUMBER	CASE NUMBER

INCIDENT

DATE OFFENSE STARTED (MMDDCCYY	TIME	DATE OFFENSE ENDED (MMDDCCYY	TIME	DATE OF REPORT (MMDDCCYY)

EXCEPTIONAL CLEARANCE DATE (MMDDCCYY)	EXCEPTIONAL CLEARANCE	A ☐ DEATH OF OFFENDER D ☐ VICTIM REFUSES TO TESTIFY	B ☐ PROSECUTION DENIED E ☐ JUVENILE-NO CUSTODY	C ☐ EXTRADITION DENIED N ☐ NOT APPLICABLE

LOCATION OF OFFENSE	REPORT AREA	TIME REPORTED	TIME ARRIVED	TIME CLEARED

OFFENSE # ____

CHAPTER	SECTION	SUB1	SUB2	☐ ATTEMPTED ☐ COMPLETED	☐ AID/ABET ☐ CONSPIRACY ☐ SOLICITATION

DESCRIPTION

PREMISE	# OF PREM	HATE/BIAS	CAMPUS CODE	METHOD OF ENTRY F ☐ FORCE N ☐ NO FORCE

TYPE OF THEFT
M ☐ COIN MACHINE
B ☐ FROM BUILDING
A ☐ M V PARTS & ACC.
L ☐ SHOPLIFTING
P ☐ POCKET-PICKING
S. ☐ PURSE SNATCHING
E. ☐ EMBEZZLEMENT
T ☐ POSS. STOLEN PROP
V ☐ MOTOR VEHICLE
F ☐ THEFT FROM M V
O ☐ ALL OTHER
N. ☐ NOT APPLICABLE

TYPE OF FORCE / WEAPON
11. ☐ FIREARM ☐ AUTO
12. ☐ HANDGUN ☐ AUTO
13. ☐ RIFLE ☐ AUTO
14. ☐ SHOTGUN ☐ AUTO
15. ☐ OTHER FIREARM ☐ AUTO
20 ☐ KNIFE / CUT INSTR.
30 ☐ BLUNT OBJECT
35 ☐ MOTOR VEHICLE
40 ☐ PERSONAL WEAPON
50 ☐ POISON
60 ☐ EXPLOSIVE
65 ☐ FIRE / INCID / DEVICE
70 ☐ DRUGS/ NARCOTICS
85 ☐ ASPHYXIATION
90 ☐ OTHER
95 ☐ UNKNOWN
99 ☐ NONE

OFFENDER SUSPECTED OF USING (SELECT UP TO 3)
A ☐ ALCOHOL
C. ☐ COMPUTER EQUIP.
D. ☐ DRUGS / NARC.
N. ☐ NOT APPLICABLE

TYPE OF CRIMINAL ACTIVITY (SELECT UP TO 3)
B ☐ BUYING / RECEIVING
C. ☐ CULT / MANU / PUBL
D ☐ DIST/ SELLING
E ☐ EXPLOIT. CHILDREN
O ☐ OPER/PROMOTE/ ASSIST
T. ☐ TRANS/ TRANSMIT/ IMPORT
J. ☐ JUVENILE GANG
G. ☐ OTHER GANG
P. ☐ POSSESS/ CONCEAL.
U. ☐ USING/CONSUM
N. ☐ NO GANG

LOCAL CODE

OFFENSE # ____

CHAPTER	SECTION	SUB1	SUB2	☐ ATTEMPTED ☐ COMPLETED	☐ AID / ABET ☐ CONSPIRACY ☐ SOLICITATION

DESCRIPTION

PREMISE	# OF PREM	HATE/BIAS	CAMPUS CODE	METHOD OF ENTRY F ☐ FORCE N ☐ NO FORCE

TYPE OF THEFT
M ☐ COIN MACHINE
B ☐ FROM BUILDING
A ☐ M V PARTS & ACC.
L ☐ SHOPLIFTING
P ☐ POCKET-PICKING
S. ☐ PURSE SNATCHING
E. ☐ EMBEZZLEMENT
T ☐ POSS. STOLEN PROP
V ☐ MOTOR VEHICLE
F ☐ THEFT FROM M V
O ☐ ALL OTHER
N. ☐ NOT APPLICABLE

TYPE OF FORCE / WEAPON
11. ☐ FIREARM ☐ AUTO
12. ☐ HANDGUN ☐ AUTO
13. ☐ RIFLE ☐ AUTO
14. ☐ SHOTGUN ☐ AUTO
15. ☐ OTHER FIREARM ☐ AUTO
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90 ☐ OTHER
95 ☐ UNKNOWN
99 ☐ NONE

OFFENDER SUSPECTED OF USING (SELECT UP TO 3)
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C ☐ COMPUTER EQUIP.
D ☐ DRUGS / NARC.
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TYPE OF CRIMINAL ACTIVITY (SELECT UP TO 3)
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C. ☐ CULT / MANU / PUBL
D ☐ DIST/ SELLING
E ☐ EXPLOIT. CHILDREN
O ☐ OPER/PROMOTE/ ASSIST
T. ☐ TRANS/ TRANSMIT/ IMPORT
J. ☐ JUVENILE GANG
G. ☐ OTHER GANG
P. ☐ POSSESS/ CONCEAL.
U. ☐ USING/CONSUM
N. ☐ NO GANG

LOCAL CODE

VICTIM # ____

TYPE OF VICTIM
I. ☐ INDIVIDUAL
B. ☐ BUSINESS
S. ☐ SOCIETY/ PUBUC
F. ☐ FINANCIAL INSTITUTION
R. ☐ RELIGIOUS ORGANIZATION
G. ☐ GOVERNMENT
O. ☐ OTHER
U. ☐ UNKNOWN

VICTIM OF OFFENSE NUMBER (CIRCLE)
1. ☐ 2. ☐ 3. ☐ 4. ☐ 5. ☐ 6. ☐ 7. ☐ 8. ☐ 9. ☐ 10. ☐

NAME LAST FIRST MIDDLE

ADDRESS STREET CITY STATE ZIP

TELEPHONE NUMBER (HOME	RACE	SEX	ETHNICITY	RES./N-RES	AGE	DATE OF BIRTH (MMDDCCYY)	HEIGHT	WEIGHT	HAIR	EYES

DRIVERS LICENSE NUMBER	D.L. STATE	EMPLOYER/SCHOOL

TELEPHONE NUMBER (WORK/SCHOOL)	ADDRESS STREET CITY STATE ZIP

CIRCUM. AGG ASLT/BATTERY (MAX 2)	VICTIMS RELATIONSHIP TO CORRESPONDING SUSPECT NUMBER (INDICATE ALL SUSPECTS) 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.	TYPE OF INJURY (MAX 5) 1. 2. 3. 4. 5.

RP

NAME LAST FIRST MIDDLE

ADDRESS: STREET CITY STATE ZIP

TELEPHONE NUMBER (HOME)	RACE	SEX	ETHNICITY	RES/N-RES.	AGE	DATE OF BIRTH (MMDDCCYY)	HEIGHT	WEIGHT	HAIR	EYES

EMPLOYER/SCHOOL	ADDRESS STREET CITY STATE ZIP	TELEPHONE NUMBER (WORK/SCHOOL)

PROP

TYPE PROPERTY LOSS 1 NONE 2=BURNED 3=COUNTERFEITED/FORGERY 4-DESTROYED / DAMAGED VANDAUTED 5 = RECOVERED 6 = SEIZED 7STOLEN 6 - UNKNOWN

TYPE LOSS	PROPERTY/ DRUG CODE	DESCRIPTION / SUSPECTED DRUG TYPE	ESTIMATED QUANTITY	FRACTION	TYPE DRUG MEASURE	VALUE	DATE RECOVERED

REPORTING OFFICER	BADGE / ID	DATE	COPIES TO	PROPERTY TOTAL

6-3

CRIMINAL INVESTIGATION RECORD / NOT AN OPEN PUBLIC RECORD

AGENCY ORI NUMBER	CASE NUMBER	DATE OF REPORT (MMDDCCYY)	PAGE OF

METHOD OF OPERATION

INSTRUMENT USED FOR ENTRY
1. ☐ KEY 5. ☐ BOLT CUTTER 9. ☐ THROWN OBJECT
2. ☐ PRY TOOL 6. ☐ CHOPPING TOOL 10. ☐ OTHER
3. ☐ SAW/ DRILL 7. ☐ VISE GRIPS 11. ☐ NOT APPLICABLE
4. ☐ HAMMER 8. ☐ PHYSICAL FORCE

POINT OF ENTRY
9. ☐ NOT APPLICABLE
1. ☐ FRONT 2. ☐ REAR
3. ☐ SIDE 4. ☐ ROOF

POINT OF EXIT
9. ☐ NOT APPLICABLE
1. ☐ FRONT 2. ☐ REAR
3. ☐ SIDE 4. ☐ ROOF

PREMISE NEIGHBORHOOD
R. ☐ RURAL / FARM / AGRICULTURE
S. ☐ SUBURBAN / RESIDENCE
B. ☐ URBAN / BUSINESS / COMMERCIAL
U. ☐ UNINHABITED
N. ☐ NOT APPLICABLE

SAFE ENTERED
1. ☐ YES 3. ☐ ATTEMPTED 5. ☐ PEELED 7. ☐ COMBINATION KNOWN
2. ☐ NO 4. ☐ REMOVED 6. ☐ EXPLODED 9. ☐ NOT APPLICABLE

INCIDENT ACTIVITY
C. ☐ DOMESTIC VIOLENCE CHILDREN PRESENT J. ☐ CAR JACKING
D. ☐ DOMESTIC VIOLENCE N. ☐ NOT APPLICABLE

SUSPECT #

NAME LAST	FIRST	MIDDLE

ADDRESS STREET	CITY	STATE	ZIP

TELEPHONE NUMBER (HOME)	RACE	SEX	ETHNICITY	RES / N-RES	AGE	DATE OF BIRTH (MMDDCCYY)	HEIGHT	WEIGHT	HAIR	EYES

EMPLOYER/SCHOOL	ADDRESS	TELEPHONE NUMBER (WORK/SCHOOL

MONIKERS / ALIAS

ADDITIONAL SUSPECT DESCRIPTORS

SUSPECT VEHICLE MAKE	YEAR	MODEL	COLOR	VEHICLE STYLE

LICENSE NUMBER	YEAR	STATE	VEHICLE IDENTIFICATION NUMBER	OTHER

SUSPECT #

NAME LAST	FIRST	MIDDLE

ADDRESS STREET	CITY	STATE	ZIP

TELEPHONE NUMBER (HOME)	RACE	SEX	ETHNICITY	RES / N-RES	AGE	DATE OF BIRTH (MMDDCCYY)	HEIGHT	WEIGHT	HAIR	EYES

EMPLOYER/SCHOOL	ADDRESS	TELEPHONE NUMBER (WORK/SCHOOL

MONIKERS / ALIAS

ADDITIONAL SUSPECT DESCRIPTORS

SUSPECT VEHICLE MAKE	YEAR	MODEL	COLOR	VEHICLE STYLE

LICENSE NUMBER	YEAR	STATE	VEHICLE IDENTIFICATION NUMBER	OTHER

EVIDENCE INFORMATION
☐ NONE ☐ SUBMITTED ☐ RETAINED BY VICTIM ☐ RETAINED BY OFFICER ☐ RETAINED BY INVESTIGATIVE AGENCY ☐ TRANSFER TO OTHER AGENCY
☐ OTHER _See narrative attached.

EVIDENCE OBTAINED
☐ LATENT PRINTS ☐ WEAPONS / TOOLS ☐ SEXUAL ASSAULT KIT ☐ STAINS ☐ SEMEN ☐ DRUGS
☐ OTHER PRINTS ☐ PHOTO-S ☐ HAIR ☐ BLOOD ☐ DOCUMENTS ☐ ALCOHOL
☐ OTHER See narrative attached

EVIDENCE COLLECTOR	LOCATION STORED

DESCRIBE BRIEFLY HOW OFFENSE WAS COMMITTED

6-4

How Adult Pornography Contributes To Sexual Exploitation of Children

By Robert Peters,
President of Morality in Media
September 2009

Table of Contents:

Introduction

Federal and state law enforcement agencies and prosecutors, Internet service providers, credit card companies, banks, and nonprofits are finally working together to curb sexual exploitation of children on the Internet. They are to be commended for doing so.

For the most part, however, these same government and private entities have turned a blind eye towards the explosion of hardcore adult pornography on the Internet and elsewhere. The latter does not depict actual children but does include hardcore depictions of sex with persons who look like children and with "teens." Hardcore adult pornography also encompasses depictions of sex with animals, other family members, multiple partners ("gangbangs"), and prostitutes. It also depicts excretory activities and sexual violence against women, including rape and torture.

The explosion of hardcore adult pornography on the Internet and elsewhere is contributing to sexual exploitation of children in a variety of ways, including the following:

- Perpetrators use adult pornography to groom their victims.
- For many perpetrators there is a progression from viewing adult pornography to viewing child pornography.
- Johns act out what they view in adult pornography with child prostitutes and pimps
- use adult pornography to instruct child prostitutes.
- Children imitate behavior they view in adult pornography with other children.
- Perpetrators use adult pornography to sexually arouse themselves.
- Addiction to adult pornography destroys marriages, and children raised in one-parent
- households are more likely to be sexually exploited.
- Furthermore, while protecting children from sexual exploitation (abuse) should be top priority, itis by no means the only concern. In *Paris Adult Theater I v. Slaton*, 413 U.S. 49, at 57 (1973),the Supreme Court recognized that there are several "legitimate state interests at stake in stemming the tide of commercialized obscenity." These include:
- Protecting children from *exposure to* pornography (at 57)
- Protecting the quality of life and total community environment (at 58)
- Protecting public safety (at 58)
- Maintaining a decent society (at 59-60)
- Protecting the social interest in order and morality (at 61)
- Protecting family life (at 63)

The display of pornography is also a frequent component in workplace sexual harassment cases, and the time wasted viewing Internet pornography reduces worker productivity. See, e.g., "Increased Visits to Porn Sites At Work," *Industry News*, Wavecrest Computing, 2/24/09, available at http://www.wavecrest.net/editorial/issues.html#pr27, where we read:

According to a study by Nielson Online in October 2008, visits to porn sites at work is up 23 percent from the previous year. This means that almost one quarter of employees are visiting porn sites during the workday. "Hits to porn sites are highest during office hours than at any other time of day," according to M.J. McMahon, publisher of *AVN Online* magazine, which tracks the adult video industry...Regardless, porn surfing at work poses a major legal liability risk for businesses. This type of activity puts the employer at serious risk of being sued by *other* workers who are offended or upset by being exposed to pornographic images. Such suits usually take the form of 'sexual harassment' or 'hostile workplace' litigation and can be very costly...In addition to the legal costs, businesses also have to be concerned about costs due to loss of productivity... According to Salary.com, the average employee wastes 2.09 hours a day on the Internet...Furthermore, as Roger Young, Special Agent, FBI retired, points out: It was my own experience from working obscenity cases as a Special Agent of the FBI

(1975 - 2001), as well as my understanding from speaking to other Agents who investigated these cases, that there is no such thing as *just* an obscenity case. Crimes associated with obscenity crimes include arson, bribery, conspiracy, domestic terrorism, drugs, extortion, involuntary servitude, jury tampering, kidnapping, mail fraud, money laundering, murder, obstruction of justice, prostitution, public corruption, racketeering, rape, robbery, sexual assault, sexual exploitation of children, tax evasion, and witness intimidation. In addition to these governmental interests, our nation's role in polluting the world with adult pornography is also making the war against religiously based terrorism more difficult [See, e.g.,3R. Burkholder, "Iraq and the West: How Wide is the Morality Gap," *GALLUP*, 11/25/03 ("Gallup's Poll of Baghdad asked a representative sample of adults to describe -- in their own words -- what, if anything, they most resent about the West... More than a third (36%) of Baghdad residents said they believe Western culture has undermined moral standards by spreading sexually indecent influences ['pornography' and 'fornication']." Available at http://www.gallup.com/poll/9763/Iraq-West-How-Wide-Morality-Gap.aspx)

But, some will say, unlike individuals that sexually abuse children or that view, possess or distribute child pornography, businesses that distribute adult pornography online are not breaking any laws. Perhaps ignorance of the law does explain why some who fight sexual exploitation of children turn a blind eye to the problem of hardcore adult pornography.

The truth of the matter is, however, that in 1996 Congress amended two sections of the federal criminal obscenity laws (18 USC 1462 & 1465) to clarify that distribution of obscene matter is prohibited on the Internet. In *Miller v. California*, 413 U.S. 15, 23 (1973), the U.S. Supreme Court has also stated: "This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment." The *Miller* Court (413 U.S. at 29) went on to define the term "obscene" in a manner intended to restrict the reach of federal and state obscenity laws to "'hard-core' pornography." Today, most adult pornography distributed commercially, whether online or off line, is "hardcore." Typical "hardcore pornography" (e.g., a Web site, DVD or magazine) consists of little if anything more than one depiction of hardcore sex after the other (i.e., it's "wall-to-wall" hardcore sex). But, some will say, the porn business is thriving, which is an indication either that "everyone" is viewing it or that the average American no longer deems hardcore pornography unacceptable.

Pornography defenders overlook at least three factors. First, much if not most hardcore adult pornography is consumed by a relatively small percentage of individuals who are addicted to it. Second, just because a person experiments with hardcore adult pornography for a period of time or on occasion succumbs to the temptation to view it does not mean he or she approves of what is viewed, especially when hardcore adult pornographers promote their products aggressively and often deceptively. Third, many visitors to "adult websites" are minors. In recent years, Morality in Media has commissioned Harris Interactive to ask questions about pornography in three different national opinion polls. The results of those polls are as follows:

- In 2005, more than three out of four (77%) adult Americans said they supported the
- Justice Department's then new effort to enforce federal obscenity laws,
- In 2006, almost three in four (73%) adult Americans said they did *not* consider it morally acceptable to view pornographic websites and videos.
- In 2008, three out of four (75%) adult Americans said they would support the next
- President were he to do all in his or constitutional power to ensure that federal obscenity laws are enforced vigorously.

According to a survey conducted by Pew Research Center ("Trends in Political Values and Core Attitudes: 1987-2007"), 70% of adult Americans *disagreed with* the statement, "nude pictures and X-rated videos on the Internet provide harmless entertainment for those who enjoy it." But, some will say, because of limited resources federal and state law prosecutors and law enforcement agencies are right to focus their energies almost exclusively on child molesters and child pornography. There are a number of problems with this particular "justification" for doing next to nothing to curb distribution of hardcore adult pornography.

In the first place, as elaborated on in this report, the explosion of hardcore adult pornography is contributing to sexual exploitation of children in various ways.

In the second place, children are not just harmed by predators; they are also harmed by exposure to hardcore adult pornography.

In the third place, a frequent result of a successful federal obscenity prosecution is a significant fine or forfeiture of property, which can offset in whole or part the cost of these cases.

In the fourth place, it isn't just children who are harmed by hardcore adult pornography. The remainder of this report explores six ways that the explosion of adult pornography on the Internet and elsewhere is contributing to sexual exploitation of children.

I researched and wrote the report because I am convinced that those who fight sexual exploitation of children but who turn their backs to the adult pornography problem are making a tragic mistake.

Mary Anne Layden, Ph D
Director
Sexual Trauma and Psychopathology Program
Center for Cognitive Therapy
Department of Psychiatry
University of Pennsylvania

Dr. Layden is the director of the Sexual Trauma and Psychopathology Program at the Center for Cognitive Therapy, Department of Psychiatry, University of Pennsylvania. For 25 years she has specialized in the treatment of sexual violence victims. In the last 8 years she has also worked with sexual violence perpetrators and sex addicts. She has testified before the US Congress on five occasions and has spoken at one Congressional Briefing.

Dr Mary Anne Layden,
Sexual Trauma and Psychopathology
Center, University of Pennsylvania

"I have not found one case of violent sex crimes in over ten years of practice as a psychotherapist that did not involve pornography."

Turning a blind eye to the obvious.

"Motive May Never Be Known"
In the abduction, sexual assault and murder of Kelsey Smith Age 18 KC STAR 17 Sep 08:

Police May Never Know Motive
in Abduction, Rape & Murder of Arkansas City , KS. Student Jodi Sanderholm Age 19

Alicia DeBolt, Age 14 Great Bend KS. Abducted and burned Aug 2010

***Reporting* The Obvious**

A law enforcement officer responding to a crime scene for an adult arrested for the commission or attempted commission of a sexually violent crime would report any pornographic material found at the scene of the crime, the residence of the adult arrested, or the vehicle of the adult arrested.

=

"Pornography is the fuel that acts as a catalyst for fantasy-driven criminal behavior."

Vernon J. Geberth, retired
Lt. Commander of the NYPD

Senate Judiciary
3-10-11
Attachment 7

Pornography and Crime:
Reporting the presence of pornography connected to crime

Mary Anne Layden, Ph D
Director
Sexual Trauma and Psychopathology Program
Center for Cognitive Therapy
Department of Psychiatry
University of Pennsylvania

Thank you for allowing me to address you today.

I am speaking today in support of the passage of HB 2042, The reporting of pornographic materials during the investigation of sexual crimes. There are many reasons why this is an important bill and why this bill can help solve the kinds of psychological and criminal problems that I deal with everyday.

I had been doing this work for more than 10 years before I realized that I had not treated one case of sexual violence that did not include pornography. The types of cases that I treat are varied and differ in many important ways. Sexual harassment cases are different from rape cases which are different from incest cases. However, they all involved pornography.

Most people understand intuitively or from looking at research or clinical experience that there is a connection between using child pornography and the behavior of child rape. The images in child pornography are Permission-Giving for sexual behavior between adults and children. Child rapists tell me they know that kids like to have sex with adults because they have seen their smiling faces in the child pornography they access on the Internet.

These same people who understand this connection may forget that adult pornography is Permission-Giving as well: for adult rape, for combining sex with violence, for the message that when women say no they mean yes, for male sexual entitlement to have sex with whomever they want, whenever they want, however they want, for the message that male sexuality is viciously narcissistic, predatory and out of control and that female sexuality is insatiable and indiscriminant. Pornography is hate speech against men and women and is mis-education about sexuality. It is also Permission-Giving for psychological psychopathology and crime.

The crimes that are connected to these Permission-Giving Beliefs which are spread in pornography are not just incest and child rape. They are adult rape, sexual harassment, adult and child prostitution, adult and child sex trafficking and domestic violence

combined with sexual assault. All of these connections have been found in both clinical experience and in research.

Research also indicates that there three factors that predict sexual violence. (1) Hostility toward women (2) The belief that sex is a non-intimate, recreational, adversarial behavior (3) The use of pornography. In fact, all of these factors are connected to the use of pornography.

My own research indicates that the earlier young males are exposed to pornography the more likely they are to engage in non-consensual sex and the more pornography females use the more likely they are to be victims of non-consensual sex. Pornography is an equal opportunity toxin for both males and females.

You can find these research results in the research summary I have provided with a listing of 29 findings showing the connection between pornography and crime.

While today we are focusing on the crimes connected to pornography, the research indicates that the social, psychological, physical, developmental, financial and spiritual consequences of pornography are enormous as well. Due to universal availability of pornography on the Internet the world is facing a sexual tsunami unprecedented in history. We know that sexual abuse is the most effective way to produce psychiatric problems in adults and it shows up in the histories of adult patients more than any other factor.

To help stem the tide of this criminal and psychological catastrophe, we need laws, we need enforcement, we need education, we need research, we need treatment. A good first step would be to have police report the presence of pornography connected to crimes. They may find what I have found that there is no case of sexual violence that does not involve pornography. Knowledge is power but once you know the truth silence is complicity. I urge you not to be silent. I urge you to pass this bill.

Thank you.

Pornography and Criminal Behavior and Attitudes Research Results

Compiled by
Mary Anne Layden, Ph D
Director
Sexual Trauma and Psychopathology Program
Center for Cognitive Therapy
University of Pennsylvania

Adult (>18 years old) exposure to pornographic media is connected with:

1. Believing a rape victim enjoyed rape
2. Believing women suffer less from rape
3. Believing women in general enjoy rape
4. Believing a rape victim experienced pleasure and "got what she wanted"
5. Believing women make false accusations of rape
6. Believing rapist deserve less jail time
7. More acceptance of the rape myth
8. More acceptance of violence against women
9. More likely to go to a prostitute and to go more frequently
10. Increasing their estimates of how often people engage in sex with violence
11. More self-reported likelihood of forcing a women sexually
12. More self-reported likelihood of rape
13. Creating more sexually violent fantasies to get aroused
14. Engaging in more sexual harassment behaviors
15. More likelihood of forcing a woman sexually
16. More likelihood of future rape
17. Using physical coercion to have sex
18. Using verbal coercion to have sex
19. Using drugs and alcohol to sexually coerce women
20. Having engaged in rape
21. Having engaged in date rape
22. Having engaged in marital rape
23. Being an adult sex offender
24. Being a child molester
25. Being an incest offender
26. Engaging in sexual abuse of a battered spouse
27. More willingness to have sex with 13-14 year olds
28. More sexual attraction to children
29. Having sexually abused children

Studies

Alexy, E., Burgess, A. & Prentky, R. (2009). Pornography use as a risk marker for an aggressive pattern of behavior among sexually reactive children and adolescents. Journal of the American Psychiatric Nurses Association, 14, 442-453.

Finding: 20

Allen, M., Emmers, T. M., Gebhardt, L., & Giery, M. (1995). Pornography and rape myth acceptance. Journal of Communication, 45, 5-26.

Finding: 8

Barak, A., Fisher, W.A., Belfry, S., & Lashambe, D. R. (1999). Sex, guys, and cyberspace: Effects of internet pornography and individual differences on men's attitudes toward women. Journal of Psychological and Human Sexuality, 11, 63-92.

Finding: 14

Boeringer, S.B. (1994). Pornography and sexual aggression: Associations of violent and nonviolent depictions with rape and rape proclivity. Deviant Behavior, 15, 289-304.

Findings: 15, 18, 19, 20

Baron, L. & Straus, M. (1984). Sexual stratification, pornography, and rape in the United States. In N. Malamuth and E. Donnerstein (Eds) Pornography and Sexual Aggression. New York: Academic Press.

Finding: 20

Bonino, S., Ciairano, S. Rabaglietti, E. & Cattelino, E. (2006). Use of pornography and self-reported engagement in sexual violence among adolescents. European Journal of Developmental Psychology, 3, 3, 265-288.

Findings: 14, 20

Bourke, M. & Hernandez, A. (2009). The Butner study redux: A report of the incidence of hands-on child victimization by child pornography offenders. Journal of Family Violence, 24, 183-191.

Finding: 29

Briere, J. & Runtz, M. (1989). University males sexual interest in children: Predicting potential indices of "pedophilia" in a nonforensic sample. Child Abuse and Neglect, 13, 65-75.

Finding: 28

Brown, J. & L'Engle, K. (2009). X-Rated: Sexual attitudes and behaviors associated with U.S. early adolescents' exposure to sexually explicit media. Communication Research, 36, 129-151.

Finding: 14

Carr, J. & VanDeusen, K. (2004). Risk factors for male sexual aggression on college campuses. Journal of Family Violence, 19, 279-289.

Findings: 17, 20

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Finding: 29

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CONCERNED WOMEN FOR AMERICA

TESTIMONY IN FAVOR OF HB 2042

The discovery of pornography at a crime scene is a possible clue to other crimes

Chairman Owens and Members of the Senate Judiciary Committee:

Concerned Women for America of Kansas supports HB 2042. Pornography hurts women, children and families so we support this bill.

The discovery of drug paraphernalia at a crime scene instantly alerts police that drug use and the crimes associated with the drug use/ trafficking are an investigative avenue to explore. When pornography is found, it too should alert police to the possibility that other crimes may be involved. This legislation would document such findings and provide law enforcement with the links to other criminal activities such as sex trafficking, drugs, child molestation, and many others according to Roger Young, Special Agent FBI retired (1975-2001). He states there is no such thing as just an obscenity case...there almost always are other crimes involved.

Pornography addiction is as addictive as cocaine; the only difference is the chemical response in the brain is elicited through the eyes rather than being ingested. Viewing pornography produces a jolt of dopamine, a powerful brain hormone that affects the pleasure centers of the brain. As with other addictions, the dosage has to be continually increased to elicit the same response. The pornography addict needs more stimulation through more shocking material, eventually escalating to actualization...finding a live victim. Discovering pornography in the possession of an offender is like finding a blood trail...at the end there is almost always a victim.

Dr. Victor Cline, a clinical psychologist, in his treatment of over 350 sex addicts and offenders states that "with several exceptions, pornography has been a major or minor contributor or facilitator in the acquisition of their deviation or sexual addiction... He describes the steps involved: Addiction, Escalation; Desensitization and Acting out Sexually. According to the United States Postal Inspection Service, at least 80% of purchasers of child pornography are active abusers and nearly 40% of the child pornographers investigated over the past several years have sexually molested children in the past. [From a statement before the U.S. Senate on the Judiciary by Ernie Allen, Director of the National Center for Missing and exploited Children in 2002] A study by the Pennsylvania Internet Crimes against Children task force reported that 51% of individuals arrested for pornography-related offenses were also determined to be actively molesting children or to have molested in the past.

Predators often use child pornography to break down a child's resistance to molestation, using material that depicts children who are smiling, laughing and seemingly having fun, thus legitimizing the behavior in the child's eyes. Of 1,400 cases of reported child molestation in Louisville, Kentucky, between 1980 and 1984, pornography was connected with every incident and child pornography was connected in a majority of cases. [American Prosecutors Research Institute; "From Fantasy to Reality: The Link between Viewing Child Pornography and Molesting Children"; Candice Kim Volume 1, Number 2, 2004]

Predators use pornography routinely to groom young victims; to desensitize them to perverse sex acts. In a study by the Los Angeles Police Department's Sexually Exploited Child (SEC) Unit, officers have found that of the 320 adults arrested, 199 cases (62.2%) involved pornography. Pornography played a big part in sex trafficking of teenage girls in Wichita, Kansas May 2009, prompting the passage of Kansas' first sex trafficking bill. The pimps used pornography to train the young girls for prostitution.

Since pornography is clearly linked to the victimization of children, the increase of rape and domestic abuse as well as other crimes a notation that such material had been found in a person's possession could be a "red flag" to search for other possible crimes. We urge you to pass this bill.

Judy Smith, State Director
Concerned Women for America of Kansas

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Kansas Association of Chiefs of Police
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Kansas Peace Officers Association
PO Box 2592, Wichita, KS 67201 (316)722-8433

Testimony to the Senate Judiciary Committee
In Opposition to HB2042
Collection of Data on Pornographic Material
March 10, 2011

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association oppose HB2042. The mandate to collect this information as provided in this bill creates an unfunded mandate for law enforcement agencies throughout the state and comes with a high price tag to the KBI. The data to be collected does not appear to add anything to the law enforcement ability to identify or prosecute offenders. It is clearly a statistical gathering of information that cannot be used for any other purpose. This is confirmed on lines 24-25 of the bill.

When this type of material is found in the course of an investigation and it is relevant evidence to a criminal act it is currently seized and documented on the property section of the reports. If child pornography is found it is seized as evidence of a separate crime. So the only data this proposal gathers is for the presence of pornography that has no evidentiary value.

To date, the offense report has been kept relatively clear of pure statistical data gathering with no investigatory or prosecution purpose. This proposal is an unnecessary burden on law enforcement resources. This is a slippery slope to start down. Once we open the door to this kind of statistical data collection there will be plenty of other advocacy groups that will be knocking on the legislative door asking you to add even more data collection elements to the offense report. Law enforcement should not be tasked with yet another statistical data collection requirement that has nothing to do with the investigation and prosecution of a criminal act.

The estimated cost to the state for this bill is in excess of $700,000 over two years. The cost to local agencies will be from no cost to generally around $5,000 with a few large agencies possibly as high as $15,000 to $20,000 dollars. These costs are due to the proposed changes to the offense report data bases at both the state and local levels. That change requires changes to the state offense report database, local records management systems, state and local electronic reporting gateways, field reporting software, data entry screens, and to paper reports. Both the local agencies and the KBI are currently struggling with budgets. If the dollars for this bill can be located, they can clearly be better used to enhance gaps in laboratory and other investigatory law enforcement needs. For example, addressing KBI laboratory backlogs and other support to local law enforcement and prosecutors.

This bill is also in conflict with KSA 21-2501a which provides the Attorney General is responsible for the approval of offense report forms, and therefore the content of those forms. We could find no existing statute dictating what data is to be collected on the offense report. This is an area the legislature has not entered into before.

We urge you to not recommend this bill favorably for passage.

Ed Klumpp
Kansas Association of Chiefs of Police, Legislative Committee Chair
Kansas Sheriffs Association. Legislative Liaison
Kansas Peace Officers Association, Legislative Liaison
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Senate Judiciary
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Attachment 9

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Tim Owens
Chair, Senate Judiciary Committee

RE: HB2042

Dear Senator Owens,

HB2042 will have a significant impact on local law enforcement both fiscally and as a matter of principal.

Data collection is a crucial part of the investigation and prevention of crime. It is, however, imperative that Law Enforcement focus on the collection of data that will assist in the investigation of crime or the allocation of resources to deter crime. Law Enforcement already collects pornographic material when it has evidentiary value, specifically child pornography or materials which may relate directly to the crime that is being investigated. Collecting this material as 'data' leads to assumptions that can not be used to investigate or deter future crimes. What is the benefit to Law Enforcement of this requirement? How does this requirement help ensure the successful prosecution of the suspect?

The second issue facing law enforcement with this bill is cost. Many agencies in Kansas such as my own have worked very hard and struggled to be as technologically proficient as possible. This comes at a high price. Creating a change in the Kansas Standard Offence Report means creating a change in our Records Management System and our Field Reporting modules in order to comply with State standards to electronically submit reports to the KBI. Agencies from across the State utilize different vendors for their records management and have estimated costs from $0.00 to $20,000.00. My agency alone can expect to spend approximately $2500.00 to make the necessary changes. This is money that is not budgeted, and based on future projections; we do not see an increase in our budgets for some time.

I offer this information and respectfully ask that you not require Law Enforcement to collect data that can not be used to solve and prosecute crime.

Jeffry D. Curry, Sheriff
Franklin County Kansas

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STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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Senate Judiciary Committee
HB 2196
Assistant Attorney General Christine Ladner
March 10, 2011

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Derek Schmidt in support of House Bill 2196. I am one of the Assistant Attorneys General responsible for prosecution of sexually violent predators (SVPs).

HGB 2196 would save costs and streamline presentation of evidence cases by amending the rules of evidence for expert testimony only in SVP cases to mirror the Federal Rules of Evidence (FRE).

SVP cases are based upon criminal records of sexually violent offenses and expert testimony by forensic psychologists. In litigating SVP cases, the State relies heavily upon psychological experts. Before an inmate is released from custody for a sexually violent offense, the inmate is interviewed and evaluated by a psychologist employed by the Department of Corrections (DOC). The psychologist prepares a Clinical Services Report (CSR). The CSR includes the diagnosis, progress in Sex Offender Treatment while in DOC and risk assessment. These psychologists rely on DOC records and other treatment records of the inmate in making their assessments.

Next, if the State files a Petition pursuant to the KSVPA and a court finds probable cause that the inmate meets the criteria for a Sexually Violent Predator, the inmate is further evaluated by psychologists at Larned State Hospital (LSH). If the LSH evaluation determines that the respondent meets the criteria for SVP status, we proceed to trial. These psychologists rely on volumes of prior treatment records.

At trial, if the Respondent objects to a psychologist's testimony on the basis that his opinion is based upon hearsay, presentation of the expert's opinion soon becomes unwieldy depending upon the source of the information in the prior records. In Kansas, "experts' opinions based upon hearsay are not admissible in any court proceedings." *In re Care & Treatment of Foster*, 280 Kan. 845, Syl. ¶ 9 (2006).

K.S.A. 60-456(b) currently controls the admission of testimony of expert opinion in SVP cases. The testimony must be: (1) based on facts or data perceived by or personally known or made known to the witness at the hearing and (2) within the scope of special knowledge, skill, experience or training possessed by the witness. Reliance upon information from someone else or data obtained from someplace else is an opinion based on hearsay, and absent an agreement of the parties, inadmissible.

Therefore, existing law regarding the admissibility of expert opinion in SVP cases is a problem because a hearsay objection makes foundation requirements for the opinion extraordinary foundation.

Cost, travel and efficiency become issues where the records are from the Department of Corrections, Larned State Hospital and each individual treatment provider that previously provided sex offender treatment or counseling. Even more problematic, if we have to subpoena prior victims (particularly those who were children at the time of the prior molestations) or law enforcement officials who may no longer be available, the burden of having these declarants available is enormous. It seems a disservice to victims of

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violent sexual assaults, whose cases were long ago disposed of, to have to testify about the same facts again to establish SVP status on the same perpetrator. For those predators who have lengthy criminal histories, it surely is not the legislative intent behind the SVPA for predators to avoid commitment because they have outlived their victims.

This proposal does not change K.S.A. 60-456(b), but amends the rule only in SVP cases to conform with the Federal Rules of Evidence on the admission of expert opinion. Evidence of the report is not admitted as substantive proof of the report's truth but for the limited purpose of showing the basis of the expert's opinion. FRE 703 is more in line with the "real life" practice of experts. If it is the customary practice in the expert's specialty to consider reports from nontestifying third parties in formulating an opinion, the expert's testimony may be based on such reports. The rationale of the Federal Rule is that judicial practice should be brought in line with the practice of experts themselves when not in court, who, in the case of physicians, may make life and death decisions on the basis of hearsay statements.

The Kansas Sexually Violent Predator Act is ready for this amendment. Recent appellate treatment of SVP cases indicates that codifying FRE 703 would help trial judges and practitioners avoid trial error.

Twenty states and the federal system have sexually violent predator laws. Fourteen of them: Alabama, Arizona, Florida, Iowa, Illinois, Massachusetts, North Dakota, New Jersey, Pennsylvania, South Carolina, Texas, Virginia, Wisconsin and of course, the federal system apply a form of the proposed rule of evidence within their sexually violent predator laws. Kansas should join this list of states. This proposal would be a service to victims so that they would not have to potentially testify twice. The proposal would also cut costs in the presentation of evidence by both sides.

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Ray Roberts, Secretary of Corrections

Sam Brownback, Governor

Testimony on SB 39
to
The Senate Judiciary Committee

By Ray Roberts
Secretary
Kansas Department of Corrections
February 8, 2011

The Department of Corrections believes that SB 39 has many unintended negative consequences due to its broad scope and its impediment to meaningful release supervision and therefore opposes SB 39. The department believes the supervision of sex offenders should be conducted in a manner that is based upon focused case management. A Legislative interim committee, the Sex Offender Policy Board, and the Legislature in 2006 concluded that residential restrictions as proposed by SB 39 do not enhance public safety and are detrimental to public safety.

Sex offenses, even those requiring registration, vary significantly relative to the characteristics of the offender and the circumstances of the offense. The misdemeanor crime of adultery requires the offender to register as a sex offender if either party was under the age of 18 even if both parties were of lawful age and consented to the relationship, in contrast, certain sex offenders should never be allowed into the community and should be confined even after the expiration of their criminal sentence due to their mental condition and risk they pose to continue their threatening behavior determined on a case by case basis. While the misdemeanor crime of adultery is not one of the crimes proposed by SB 39 to be defined as an "Aggravated Sex Crime", it must be noted that the scope of the crimes that would be classified as an "aggravated sex crime" is nonetheless extremely broad encompassing any "sexually violent crime" if one of the parties, either the offender or the victim was under the age of 16, and irrespective of whether the offender was prosecuted as a juvenile or adult. This would encompass situations where a person 15 years of age had sexual intercourse with a person under the age of 14 without any force or coercion resulting in a juvenile adjudication. Additionally, the term "sexually violent crime" as defined by K.S.A. 22-4902 and SB 39 includes "any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. "Sexually motivated' means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification". This could include crimes involving the shoplifting of an erotic magazine.

The heart of the department's concern is the impact of SB 39 on the release supervision and treatment of sex offenders. In 2006, Kansas reviewed the issue of imposing residential restrictions on sex offenders by statute or ordinance and concluded that any such restriction should be based upon the individual characteristics of the offender based upon the case management of that offender. The residential restrictions proposed by SB 39 are not only ineffective but are detrimental to public safety.

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The department testified in 2006 that several studies indicate that residential restrictions do not serve public safety. Additionally, these studies and statements of law enforcement officials in states that have such restrictions indicate that the burdens and consequences of residential restrictions are detrimental to public safety.

The department is committed to the protection of public safety through correctional practices that are based upon research. The Kansas Department of Corrections was a national leader in the development of sex offender treatment using polygraph and plethysmograph technology which resulted in litigation before the United States Supreme Court. The department continues to provide sex offender treatment in its correctional facilities as well as to offenders under supervision in the community.

The department also employs the use of specialized case loads whereby high risk offenders are assigned to certain parole officers. The department's management of the supervision and treatment of released sex offenders is based upon their individual risks and deviant cycle behaviors. The case management of those offenders includes their employment and residential plans.

SB 39 provides that despite the existence of a supervision plan for an offender to reside in a home where he or she has support, that plan is prohibited if located within a restricted zone. Due to the size of the restricted zones virtually all of most communities are rendered prohibited. This restriction would also apply to overnight stays in motels, homeless shelters, halfway houses, hospitals, and visits with relatives. The department is unaware of any data that supports the proposition that such restrictions enhance public safety. In contrast, research from 3 states (Florida, Minnesota, and Colorado) indicates that public safety is not related to such blanket restrictions and that wholesale residence restrictions are counterproductive.

- In Minnesota, sex offenders' proximity to schools or parks was not a factor in recidivism, nor did it impact community safety. (Minnesota Department of Corrections, 2003). In fact, the opposite was found to be true, sex offenders were more likely to travel to another neighborhood to seek victims to avoid being recognized.

- Up to 90 percent of sex offenses against children are perpetrated by people already in the home or that have legitimate access to children. Their residency has nothing to do with access to children." (Des Moines Register, January 24, 2006).

- While residence restrictions are based upon a threat by strangers by removing them from neighborhoods, 93% of child abuse victims knew their abuser; 34% were family members, and 58.7% acquaintances. (Bureau of Justice Statistics, 2000 cited by Levenson, Ph.D. Report to Florida Legislature, 2005).

- The listing of day care facilities maintained by the Department of Health and Environment has restrictions regarding its' dissemination to protect the locations of those facilities but which render it impossible for a person who is required to register but not under postrelease supervision from knowing whether his/her residence is within a prohibited zone. K.S.A. 65-525.

- Residency restrictions aggravate the scarcity of housing options for sex offenders, forcing them out of metropolitan areas and farther away from the social support, employment opportunities, and social services that are known to aid offenders in successful community re-entry. (Minnesota Department of Corrections, 2003).

- Having such restrictions in the cities of Minneapolis and St. Paul would likely force level three offenders to move to more rural areas that would not contain nearby schools and parks but would pose other problems, such as a high concentration of offenders without ties to the community; isolation; lack of work, education, and treatment options; and an increase in the distance traveled by agents who supervise offenders. (Minnesota Department of Corrections, 2003).

- Proximity restrictions will have the effect of restricting level three offenders to less populated areas, with fewer supervising agents and fewer services for offenders (i.e., employment, education, and treatment). The result of proximity restrictions would be to limit most level three offenders to rural, suburban, or industrial areas. (Minnesota Department of Corrections, 2003).

- Residency restrictions result in greater difficulty in tracking and monitoring sex offenders since they move more frequently or claim homelessness in order to avoid or circumvent the zoning restrictions. (Des Moines Register January 23, 2006)

- A stable residence environment is critical to successful community re-integration. (Colorado Department of Public Safety, 2004)

- In a study of the Denver metropolitan area, the data indicated that sex offenders who have committed a criminal offense (both sexual and non-sexual) while under judicial supervision appear to be randomly scattered throughout the study area—there does not seem to be a greater number of these offenders living within proximity to schools and childcare centers than other types of offenders. (Colorado Department of Public Safety, 2004).

- While such ordinances are designed to limit options available to sexual offenders, in many cases, it is nearly impossible for these offenders to find appropriate housing away from schools, parks, and/or childcare centers throughout metropolitan areas. Ironically, this situation may increase their risk of re-offending by forcing them to live in communities where safe support systems may not exist or in remote areas providing them with high degrees of anonymity. (Colorado Department of Public Safety, 2004)

SB 39 places a restriction on the residence of offenders irrespective of the specific nature of the crime, without consideration of the risk posed by the offender or the nature of the residence relative to it being supportive and suitable for the offender's reentry into the community. In contrast, individual case management of released offenders in a timely and comprehensive manner, including an ongoing assessment of their deviant cycles and treatment, is the most critical element of the successful management of sex offenders in the community. The experience of other states as shown in the research shows that residential barriers that are not related to the case management of an individual offender do not enhance public safety and increase the probability of re-offending behavior.

The department urges that SB 39 not be passed out of Committee.

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Ray Roberts, Secretary of Corrections

Sam Brownback, Governor

Testimony on SB 39
to
The Senate Judiciary Committee

By Ray Roberts
Secretary
Kansas Department of Corrections
February 15, 2011

The issue raised by SB 39 that is of greatest concern to the Department of Corrections is the provision regarding the restrictions of where aggravated sex offenders may live. The Legislature, a Legislative Interim Committee and the Sex Offender Policy Board have previously addressed residential restrictions and the impact of such restrictions on the prevention of sex offenses as well as unintended consequences that are detrimental to public safety such as the disruption of a stable residence, access to treatment resources and the supervision of the offender. The result of which is that a statutory residential restriction has not been adopted at the state level; and cities and counties are prohibited from establishing residential restrictions by ordinance or resolution. Restrictions on the residence of sex offenders are addressed on an individual basis by the case management of the offender by the supervising parole officer.

SB 39 provides for a prohibition of those sex offenders residing within 2,000 feet of a licensed child care facility, registered family day care home or the real property of a kindergarten through 12th grade school. The department has been afforded the opportunity to discuss with Senator Olson, the issues that are raised by residential restrictions on the supervision and treatment of sex offenders and the department believes that a prohibition of 500 feet from the covered entities would lessen the unintended consequences detrimental to public safety. The department stands ready to execute any amended legislation that may be enacted that addresses both the prevention of future incidents of sexual offenses as well as the meaningful treatment and supervision of those released offenders based upon best evidence based practices.

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SENATE BILL No. 39

By Senator Olson

1-20

AN ACT concerning criminal procedure; relating to sex offenders; amending K.S.A. 22-4903 and K.S.A. 2010 Supp. 8-243, 8-255, 22-4902, 22-4904 and 22-4913 and sections 285 and 299 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 8-243 is hereby amended to read as follows: 8-243. (a) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act the driver's license as applied for by the applicant. Such license shall bear the class or classes of motor vehicles which the licensee is entitled to drive, a distinguishing number assigned to the licensee, the full legal name, date of birth, gender, address of principal residence and a brief description of the licensee, a colored digital photograph of the licensee, a facsimile of the signature of the licensee and the statement provided for in subsection (b). No driver's license shall be valid until it has been signed by the licensee. All drivers' licenses issued to persons under the age of 21 years shall be readily distinguishable from licenses issued to persons age 21 years or older. In addition, all drivers' licenses issued to persons under the age of 18 years shall also be readily distinguishable from licenses issued to persons age 18 years or older. The secretary of revenue shall implement a vertical format to make drivers' licenses issued to persons under the age of 21 more readily distinguishable. Except as otherwise provided, no driver's license issued by the division shall be valid until a colored digital photograph of such licensee has been taken and verified before being placed on the driver's license. The secretary of revenue shall prescribe a fee of not more than $8 and upon the payment of such fee, the division shall cause a colored digital photograph of such applicant to be placed on the driver's license. Upon payment of such fee prescribed by the secretary of revenue, plus payment of the fee required by K.S.A. 8-246, and amendments thereto, for issuance of a new license, the division shall issue to such licensee a new license containing a colored digital photograph of such licensee. A driver's license which does not contain the principal address as required may be issued to persons who are program participants pursuant to K.S.A. 2010 Supp. 75-455, and amendments

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(f) The division, in the interest of traffic and safety, may establish or contract with a private individual, corporation, partnership or association for the services of driver improvement clinics throughout the state and, upon reviewing the driving record of a person whose driving privileges are subject to suspension under subsection (a)(2), may permit the person to retain such person's driving privileges by attending a driver improvement clinic. Any person other than a person issued a commercial driver's license under K.S.A. 8-2,125 et seq., and amendments thereto, desiring to attend a driver improvement clinic shall make application to the division and such application shall be accompanied by the required fee. The secretary of revenue shall adopt rules and regulations prescribing a driver's improvement clinic fee which shall not exceed $500 and such rules and regulations deemed necessary for carrying out the provisions of this section, including the development of standards and criteria to be utilized by such driver improvement clinics. Amounts received under this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the same in the state treasury as prescribed by subsection (f) of K.S.A. 8-267, and amendments thereto.

(g) When the action by the division restricting a person's driving privileges is based upon certification by the secretary of social and rehabilitation services pursuant to K.S.A. 2010 Supp. 39-7,155, and amendments thereto, the person may not request a hearing but, within 30 days after notice of restriction is mailed, may submit a written request for administrative review and provide evidence to the division to show the person whose driving privileges have been restricted by the division is not the person certified by the secretary of social and rehabilitation services, did not receive timely notice of the proposed restriction from the secretary of social and rehabilitation services or has been decertified by the secretary of social and rehabilitation services. Within 30 days of its receipt of the request for administrative review, the division shall notify the person whether the restriction has been affirmed or set aside. The request for administrative review shall not stay any action taken by the division.

New Sec. 3. (a) On October 31 of each year, any person required to register as a sex offender pursuant to the Kansas offender registration act shall:

Except as provided by a court order,

(1) Avoid all Halloween-related contact with children;

(2) remain inside the person's residence between the hours of 5:00 p.m. and 11:00 p.m.;

(3) post a sign at the person's residence stating "No candy at this residence"; and

(4) turn off all outdoor residential lighting after 5:00 p.m.

~~(b) Violation of this section is a class A nonperson misdemeanor.~~ ← Strike

Sec. 4. K.S.A. 2010 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in the Kansas offender registration act, unless the context otherwise requires:

(a) "Offender" means: (1) A sex offender as defined in subsection (b);

(2) a violent offender as defined in subsection (d);

(3) a sexually violent predator as defined in subsection (f);

(4) any person who, on and after May 29, 1997, is convicted of any of the following crimes when the victim is less than 18 years of age:

(A) Kidnapping as defined in K.S.A. 21-3420, *prior to its repeal, or subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto, except by a parent;

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

(C) criminal restraint as defined in K.S.A. 21-3424, *prior to its repeal, or section 46 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto, except by a parent;

(5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

(A) Adultery as defined by K.S.A. 21-3507, *prior to its repeal, or section 75 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, *prior to its repeal, or subsection (a) of section 68 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

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

(D) patronizing a prostitute as defined by K.S.A. 21-3515, *prior to its repeal, or section 231 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto; or

(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(6) any person who has been required to register under any federal, military or other state's law or is otherwise required to be registered;

(7) any person who, on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;

(8) any person who has been convicted of an offense in effect at any

onvicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c);-

~~(B)~~ on or after July 1, 2011, is convicted of any sexually violent crime set forth in subsection (c), ~~or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c), if none of the parties involved is less than 16 years of age.~~

(2) "Aggravated sex offender" includes any person who, on or after July 1, 2011, is convicted of any sexually violent crime set forth in subsection (c), ~~or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c), if one of the parties involved is less than 16 years of age.~~

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502, *prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503, *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505, *prior to its repeal, or subsection (a) of section 68 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(6) indecent solicitation of a child as defined by K.S.A. 21-3510, *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(8) sexual exploitation of a child as defined by K.S.A. 21-3516, *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto;

(9) sexual battery as defined by K.S.A. 21-3517, *prior to its repeal, or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws*

(C)

(B) on or after July 1, 2011, is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c); or

if the victim is 16 years of age or older

if the victim is less than 16 years of age

(7) 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 then all provisions of that act shall apply, except that the term of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.

(b) *(1) Except as provided in paragraph (2), if* any person required to register as provided in this act changes the address of the person's residence, the offender, within 14 days, shall inform in writing the law enforcement agency where such offender last registered and the Kansas bureau of investigation of the new address.

(2) If an aggravated sex offender, as defined by subsection (b) of K.S.A. 22-4902, and amendments thereto, required to register as provided in this act, changes the address of the person's residence, the offender, within ~~24 hours~~, shall inform in writing the law enforcement agency where such offender last registered and the Kansas bureau of investigation of the new address.

three days

(c) Any person who is required to register under this act shall report in person three times each year to the sheriff's office in the county in which the person resides or is otherwise located. The person shall be required to report once during the month of the person's birthday and every four months thereafter. The sheriff's office may determine the appropriate times and days for reporting by the person, consistent with this subsection. The person shall verify:

(1) Whether the person still resides at the address last reported;

(2) whether the person still attends the school or educational institution last reported;

(3) whether the person is still employed at the place of employment last reported; and

(4) whether the person's vehicle registration information is the same as last reported.

Nothing contained in this subsection shall be construed to alleviate any person required to register as provided in this act from meeting the requirements prescribed in subsections (a)(1), (a)(2) and (b).

The sheriff's office shall forward any updated information and current photograph required under subsection (d), to the Kansas bureau of investigation.

(d) Every person who is required to register under this act shall submit to the taking of an updated photograph by the sheriff's office on each occasion when the person reports to the sheriff's office in the county in which the person resides or is otherwise located.

(e) Every person who is required to register under this act shall remit payment to the sheriff in the amount of $20 on each occasion when the

person reports to the sheriff's office in the county in which the person resides or is otherwise located. All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff's office which shall be used solely for law enforcement and criminal prosecution purposes and which shall not be used as a source of revenue to reduce the amount of funding otherwise made available to the sheriff's office.

Sec. 7. K.S.A. 2010 Supp. 22-4913 is hereby amended to read as follows: 22-4913. *(a) On and after July 1, 2011, aggravated sex offenders, as defined by subsection (b) of K.S.A 22-4902, and amendments thereto, shall not reside within* ~~2,000~~ 500 *feet of any licensed child care facility, registered family day care home or the real property of any school upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any grades one through 12. This subsection shall not apply to any state institution or facility.*

~~(a)~~*(b)* Except as provided in subsection ~~(b)~~*(c)*, on and after ~~the effective date of this act~~*June 1, 2006*, cities and counties shall be prohibited from adopting or enforcing any ordinance, resolution or regulation establishing residential restrictions for offenders as defined by K.S.A. 22-4902, and amendments thereto.

~~(b)~~*(c)* The prohibition in subsection ~~(a)~~*(b)*, shall not apply to any city or county residential licensing or zoning program for correctional placement residences that includes regulations for the housing of such offenders.

~~(c)~~*(d)* As used in this section, "correctional placement residence" means a facility that provides residential services for individuals or offenders who reside or have been placed in such facility due to any one of the following situations:

(1) Prior to, or instead of, being sentenced to prison;
(2) received a conditional release prior to a hearing;
(3) as a part of a sentence of confinement of not more than one year;
(4) a privately operated facility housing parolees;
(5) received a deferred sentence and placed in a facility operated by community corrections;
(6) required court-ordered treatment services for alcohol or drug abuse; or
(7) voluntary treatment services for alcohol or drug abuse.

Correctional placement residence shall not include a single or multi-family dwelling or commercial residential building that provides a residence to staff and persons other than those described in paragraphs (1) through (7).

SENATE BILL No. 159

By Senator Pilcher-Cook

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AN ACT concerning crimes, punishment and criminal procedure; relating to parole and postrelease supervision for violent offenders and sex offenders; conditions; amending K.S.A. 2010 Supp. 22-3717 and repealing the existing section; also repealing K.S.A. 2010 Supp. 22-3717c.

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

Section 1. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638, *prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642, prior to its repeal; sections 260, 263, 264 and 265 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; K.S.A. 8-1567, and amendments thereto; ~~K.S.A. 21-4642~~ *section 266 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; and ~~K.S.A 21-4624~~ *section 257 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to its repeal, or section 276 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, *prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628, prior to its repeal, ~~and~~ K.S.A. 21-4635 through 21-4638, *prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time

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and section 247 of chapter 136 of the 2010 Session Laws of Kansas

sections

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credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to its repeal, or section 276 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a) of section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, *prior to its repeal, or section 246 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) *(A)* If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, ~~and amendments thereto~~ *prior to its repeal*, for crimes committed on or after July 1, 2006, *but prior to July 1, 2011,* the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(B) If an inmate is sentenced to imprisonment pursuant to section 267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, for crimes committed on or after July 1, 2011, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory

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10 years but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the parole board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the parole board determines that such resources are insufficient. If the parole board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to

Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer, special enforcement officer or other law enforcement officer at any time of the day or night, with or without a search warrant and with or without cause.

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pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; ~~and~~

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services.

; and

(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by a parole officer, special enforcement officer or other law enforcement officer at any time of the day or night, with or without a search warrant and with or without cause.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within ~~10~~ *14* days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and

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)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to the effective date of this act who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session Laws of Kansas,* and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the Kansas parole board or the court orders a person to be electronically monitored, the board or court shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

~~*(w) (1) On and after July 1, 2011, for any inmate who is a violent offender or sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the Kansas parole board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to be subject to search or seizure by a parole officer, community correctional services officer or other law enforcement officer at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize parole officers, community correctional services officers or other law enforcement officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment.*~~

~~*(2) The provisions of this subsection shall be applied retroactively to every violent offender or sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2011. The parole board shall obtain the written*~~

strike

~~agreement required by this subsection from such offenders as soon as practicable.~~

~~(x)~~ *(1) On and after July 1, 2011, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the Kansas parole board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials. As used in this subsection, "pornographic materials" means:*

(A) Any obscene material or performance depicting sexual conduct, sexual contact or a sexual performance; and

(B) any visual depiction, including any photograph, film, video, picture or computer or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct.

(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2011. The parole board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.

Sec. 2. K.S.A. 2010 Supp. 22-3717 and 22-3717c are hereby repealed.

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

(w)

Sec. 2. Amend section 247 of chapter 136 of the 2010 Session Laws of Kansas (attached).
Renumber sections accordingly

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and section 247 of chapter 136 of the 2010 Session Laws of Kansas

Sec. 2. Section 247 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 247. (a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section.

(b) The court may impose any conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including, but not limited to, requiring that the defendant:

(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;

(3) report to the court services officer or community correctional services officer as directed;

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(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) participate in a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(13) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or

(14) in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.

(c) In addition to any other conditions of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of

the following conditions:

(1) The defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;

(2) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefore;

(3) (A) pay a ~~probation or community correctional services~~correctional supervision fee of ~~$25~~$60 if the person was convicted of a misdemeanor or a fee of ~~$50~~$120 if the person was convicted of a felony. In any case the amount of the ~~probation or community correctional services~~correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;

(B) the ~~probation or community correctional services~~correctional supervision fee imposed by this paragraph shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph from ~~probation or community correctional services~~correctional supervision fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, a sum equal to 41.67% of such remittance, and to the correctional supervision fund, a sum equal to 58.33% of such remittance;

(C) this paragraph shall apply to persons placed on felony or misdemeanor probation or released on misdemeanor parole to reside in Kansas and supervised by Kansas court services officers under the interstate compact for offender supervision; and

~~(C)~~(D) this paragraph shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision; ~~and~~

(4) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less~~.~~;

(4) be subject to searches of the defendant's person, effects, vehicle, residence and property by court service officers, community correctional services officers and other law enforcement officers based on reasonable suspicion of the defendant violating conditions of probation or criminal activity; and

(5) be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.

(d) There is hereby established in the state treasury the correctional supervision fund. All moneys credited to the correctional supervision fund shall be used for the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument as specified

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by the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and amendments thereto, and for evidence-based offender supervision programs by judicial branch personnel. If all expenditures for the program have been paid and moneys remain in the correctional supervision fund for a fiscal year, remaining moneys may be expended from the correctional supervision fund to support offender supervision by court services officers. All expenditures from the correctional supervision fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the Kansas supreme court or by a person or persons designated by the chief justice.