

## MINUTES

### SPECIAL COMMITTEE ON JUDICIARY

November 15-16, 2006  
Room 313-S—Statehouse

#### Members Present

Representative Lance Kinzer, Chairman  
Senator Terry Bruce  
Senator Greta Goodwin  
Senator Vicki Schmidt  
Senator Ruth Teichman  
Senator John Vratil  
Representative Tom Burroughs  
Representative Kasha Kelley  
Representative Harold Lane  
Representative Charlie Roth  
Representative Jason Watkins  
Representative Kevin Yoder

#### Member Absent

Representative Delia Garcia

#### Staff Present

Jerry Ann Donaldson, Kansas Legislative Research Department  
Athena Andaya, Kansas Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Cindy O'Neal, Committee Secretary

#### Sex Offender Policy Board

Roger Werholtz, Secretary, Department of Corrections  
Tyler Lockett, Retired Justice  
Don Jordan, Commissioner, Juvenile Justice Authority  
Scott Jackson, Executive Director, Family Life Center, Inc.  
Gary Daniels, Secretary, Department of Social and Rehabilitation Services  
Larry Welch, Director, Kansas Bureau of Investigation  
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence

## Conferees

Jeffrey T. Walker, Professor, University of Arkansas  
Pamela Dettmann, County Attorney's Office, Des Moines County, Iowa  
Mary Richards, Iowa Coalition Against Sexual Assault  
Christopher Lobanov-Rostovsky, Program Director, Office of Domestic Violence and  
Sex Offender Management, Colorado Department of Public Safety  
Dr. Jill Levenson, Lynn University, Boca Raton, Florida  
Representative Nile Dillmore  
Melissa Alley  
Doug Vance, Executive Director, Kansas Recreation and Parks Association  
Michelle Clayton, National Conference of Commissioners on Uniform State Laws  
Professor Linda Elrod, Washburn University School of Law  
Dean Gail Agrawal, Kansas University School of Law  
Ron Hein, National Kidney Foundation and Midwest Transplant Network  
Rob Linderer, Midwest Transplant Network  
Alicia Lange, Grants Administrator, Attorney General's Office  
Randy Hearrell, Kansas Judicial Council  
Rick Hayse, Kansas Bar Association  
Don Jordan, Commissioner, Juvenile Justice Authority  
Lee Woodard, Sedgwick County Law Library  
John Pickett, Johnson County Law Library  
Dick Morrissey, Deputy Director, Kansas Department of Health and Environment  
Joyce Grover, Kansas Coalition Against Sexual and Domestic Violence  
Marilyn Harp, Kansas Legal Services  
Karen Wittman, Shawnee County District Attorney's Office

### **Wednesday, November 15 Morning Session**

#### **Topic No. 2—Residency and Proximity Restrictions for Sex Offenders**

Professor Jeffrey T. Walker, University of Arkansas, did a study in 1997-1998 to determine if there is a relationship between where a child sex offender lives and the proximity of targets ([Attachment 1](#)). It identified 170 sex offenders and 36 areas where a number of child sex offenders were living within 1,000 feet to one or more of schools, daycare centers, and parks.

The study found:

- 48 percent of child sex offenders lived within the one buffer zone and over one-third lived within multiple buffer zones;
- Sex offenders acquire their victims from their family or close friends;
- Governments cannot control the locations for potential targets;
- There is a definite convergence of potentially motivated child sex offenders living in close proximity to concentrations of potential victims;

- There is no evidence that attempts to limit where sex offenders live has been successful;
- Government and police must work together to increase the effectiveness of sex offender registration and notification;
- Efforts must be made to increase the successful registration and tracking of sex offenders so that their living arrangements are always known;
- Residency requirements are not effective;
- Cities need to look for capable guardians to prevent child sex crimes from happening; and
- The study did uncover that sex offenders who offend against children are more likely to offend children again and only 2 percent of those who offend against adults will offend against a child.

Pamela Dettmann, County Attorney's Office, Des Moines County, Iowa, informed the Committee about concerns with the Iowa Sex Offender Residency Law that went into effect in July 2002 (Attachment 2). A few of the concerns were:

- The statute uses the word "committed" rather than "convicted";
- There are no guidelines as to how 2,000 feet would be measured; and
- If the offender has already established residency before a school, daycare center, or park is built or opened, does that offender have to move?

The number one priority of the Iowa County Attorney's Association is to have the statute repealed. Their research shows that there is no direct correlation between residency restrictions and reducing sex offenses against children. They believe it creates a false sense of security because 80-90 percent of sex crimes against children are committed by a relative or acquaintance.

She proposed the following solutions:

- Create safety zones patterned after Illinois statutes;
- Do more complete risk assessments;
- Narrow the scope of application to offenses against children not minors;
- Preempt local ordinances; and
- Create programs that focus on dangers that lie within a child's family.

Mary Richards, Iowa Coalition Against Sexual Assault, provided the Committee with a statement sheet from the Iowa County Attorney's Association reiterating the above testimony (Attachment 3).

Ms. Richards also provided a report entitled National Trends in Sex Offender Legislation (Attachment 4) and written testimony from Elizabeth Barnhill, Executive Director of Iowa Coalition Against Sexual Assault (Attachment 5).

## Afternoon Session

Christopher Lobanov-Rostovsky, Program Director, Colorado Department of Public Safety, provided the Committee with a report on safety issues raised by living arrangements and for location of sex offenders in the community (Attachment 6). In Colorado, a concerned citizen identified two residences in her neighborhood where multiple sex offenders were living in a "shared living arrangement" (SLA). In a SLA, two or three sex offenders live together in one residence with no supervision on the premises; however, they still have supervision with home visits, tracking, schedule monitoring, and phone call check-in. The idea is that the sex offenders will hold each other accountable. There is a major push to limit/outlaw SLAs. Currently, there are three major metropolitan areas and 20 local municipalities that have redone their zoning ordinances to limit one sex offender per household.

The study found that high-risk sex offenders had more total and criminal violations than moderate or low-risk sex offenders; that high-risk sex offenders with positive support had fewer total, technical, and criminal violations than offenders with no support or negative support; and high-risk sex offenders living with family or friends but without positive support had the highest number of total, technical, and criminal violations.

The conferee stated that he found that residential proximity to a park or school was not a contributing factor in any of the sexual re-offenses they examined. Two sex offenders did re-offend near a park, but they did not live near the park themselves.

The study recommended:

- All living arrangements need appropriate supervision;
- Court service officers should make individualized case decisions on the offenders' living arrangements;
- Positive, informed support is a key aspect of offenders' living arrangements;
- Shared living arrangements can be a beneficial sex offender management strategy for high risk sex offenders; and
- Residency restrictions may not deter sex offender recidivism.

Dr. Jill Levenson, Lynn University, provided testimony via conference call. She indicated that legislatures need to look at what is the most feasible way to protect citizens. There are 90,000 cases of child sexual abuse confirmed each year. Many sexual offenders admit to committing many more sexual assaults than those for which they have been caught (Attachment 7).

Recidivism rates are actually much lower than commonly believed. One report sites 5.3 percent over a three-year period and another states 14 percent over a four to six-year period. Sex offenders do have lower re-offense rates than other criminals.

Currently, there is no research data indicating that sex offenders' proximity to schools increases the likelihood of recidivism, or that residence restrictions are successful in preventing sexual abuse or protecting children.

Dr. Levenson suggested alternative ways to restrict sex offenders instead of residency restrictions:

- Create a risk assessment tool that allows screening of offenders into relative risk categories and applies the most restrictive and intensive interventions to the most dangerous sex offenders;
- Approach and evaluate individual offender's risks and needs, reinforce their strengths, and facilitate support systems;
- Adapt GPS monitoring that can be a useful tracking tool for high-risk or predatory offenders, even though it is able to detect where someone is, not what he is doing;
- Educate parents, teachers, and child care workers so they are aware of the signs and symptoms of child sexual abuse, and the common types of grooming patterns used by perpetrators who gain access to victims via their positions of trust or authority; and
- Reallocate money spent on residency requirements which takes money away from funding for victim services. Investing in treatment and social services for abused children is the best strategy for preventing potential victims in the future.

Representative Nile Dillmore informed the Committee that the City of Wichita will be asking the Legislature to allow supervisors of places where kids gather to ban convicted child sex offenders from the property by simply giving them a written notice to leave. The bill will be patterned after a Washington State law, which was approved early this year. If the offender returns after receiving notice, they could be charged with criminal trespass against a child, sentenced to up to one year in jail, and fined \$10,000 ([Attachment 8](#)).

Melissa Alley, Citizen, relayed her story about a convicted sex offender living across the street from her five-year-old's school. She encouraged the Committee to pass legislation regarding residency restrictions to keep children safe ([Attachment 9](#)).

Doug Vance, Executive Director, Kansas Recreation and Parks Association, supported the City of Wichita's proposed legislation that would allow notice to be given to child sex offenders to leave certain property when children are there. He believes this would be a good compromise ([Attachment 10](#)).

### **Topic No. 3—Uniform Child Abduction Prevention Act**

Michelle Clayton, National Conference of Commissioners on Uniform State Laws, stated that the Office of Juvenile Justice and Delinquency Prevention estimates that 262,100 children were abducted in 1999 with a majority (78 percent) of the abductions being perpetrated by family members. Most states have laws that address custody issues and criminal repercussion of child abductions, not prevention mechanisms. The proposed uniform law would allow courts to determine if there is a credible risk and order measures to prevent an abduction ([Attachment 11](#)).

Professor Linda Elrod, Washburn University School of Law, explained that the Uniform Act would enact the following steps for courts to use when determining whether a parent is high risk:

- Threats of abduction;
- Unemployed parent;
- Parent with no emotional or financial ties to the area;

- Parent with liquidated assets;
- History of domestic violence; and
- Parent with close ties to another country whose laws may be prejudiced against a parent of your gender or a non-citizen.

If the court determines the parent to be "high risk" they can impose many different restrictions on parenting time, such as restricting travel (Attachment 12).

Committee minutes from the September 20, 2006 meeting were distributed.

### **Thursday, November 16 Morning Session**

*Senator Teichman made the motion to approve the Committee minutes from September 20, 2006. Senator V. Schmidt seconded the motion. The motion carried.*

#### **Topic No. 4 – Revised Uniform Anatomical Gift Act**

Dean Gail Agrawal, Kansas University School of Law, provided an overview of the Uniform Anatomical Gift Act (UAGA). The original Uniform Act was adopted in 1968, to provide standard methods to make organ, eye, and tissue donations after death for the purposes of transplantation, therapy, research, or education. In 1987, some 26 states adopted a new version of UAGA; however, because the other states did not adopt the changes, the Act was no longer considered uniform (Attachment 13). The National Conference of Commissioners on Uniform State Laws developed the proposed UAGA in an effort to resolve any inconsistencies between the states, thereby making the system more effective.

Dean Agrawal proceeded to explain some of the key provision of the UAGA:

- Insures that individual choice regarding organ donation will be respected by barring persons from amending or revoking the anatomical gift;
- Allows for an individual to refuse to make an anatomical gift;
- Facilitates cooperation between the coroners and medical examiners;
- Permits emancipated minors and minors eligible to apply for driver's licenses to make an anatomical gift. If an unemancipated minor dies before the age of 18, the parent or guardian would be permitted to revoke the gift;
- Expands those who are permitted to make an anatomical gift on behalf of others; and
- Expands methods for making an anatomical gift, *i.e.*, donor registries, state identification cards, donor cards, and driver's licenses, and also allows for oral gifts.

Michelle Clayton, National Conference of Commissioners on Uniform State Laws, informed Committee members that the UAGA encourages donor registries and provides standards for its operation but that currently half of the states do not have an organ donor registry. The Act also gives priority to the transplant of organs over research or education (Attachment 14).

Ron Hein, National Kidney Foundation and Midwest Transplant Network, relayed the story of his kidney transplant ten years ago and the need for another one within the next few years. There are approximately 1,000 Kansans waiting for an organ to be donated. Nationwide, there are over 83,000 awaiting transplants. On the average, 17 people per day and 6,205 people per year die due to a lack of available organs ([Attachment 15](#)).

Rob Linderer, Midwest Transplant Network, stated that there is a compelling need to update the existing state law to make it consistent with changes that have occurred with national transplant procurement and allocation polices and to achieve uniformity across the states in order to facilitate and support the frequent interactions between transplant and procurement organizations. The revision will accomplish these goals and also help advocate and promote the donation of organs.

## **Topic No. 1 – Court Docket Fees**

Carolyn Rampey, Legislative Research Department, provided an overview of the disposition of district court docket fees along with the distribution breakdown of which funds receive docket fees, the percentage they receive, and dollar amount they will receive in FY2007 ([Attachment 16](#)).

Currently, there are 14 funds receiving money from docket fees. It is estimated that \$21,949,439 will be credited to these funds in FY 2007, with the State General Fund receiving more than half of all docket fee revenues.

Alicia Lange, Grants Administrator, Attorney General's Office, commented that the Attorney General's Office oversees five of the Funds, and each of the Funds is held accountable for the funds it receives. Each of the Funds has to reapply every year for its "grant." The Attorney General's Office does not distribute all the docket fee funds it receives each month, but instead holds out a percentage each month to make sure that there are enough funds to last throughout the year ([Attachment 17](#)).

Randy Hearrell, Kansas Judicial Council, explained that in conjunction with receiving docket fees, part of the Judicial Council's operating expenses come from the selling of its publications. He agreed that it is easier to be a Fund that receives a portion of a docket fee because an agency will never receive what it asks for, nor any more than is in the Governor's budget. The conferee believes the Kansas Judicial Council is accountable to the Legislature. The Judicial Council also provides a financial report to the budget committees, because it does receive State General Fund funding ([Attachment 18](#)).

Rick Hayse, Kansas Bar Association, supported uniform docket fees, but believes that those who receive funds should only be for court-related activities. He suggested that the following funds not receive any portion of docket fees: Crime Victims Assistance Fund, Protection from Abuse Fund, Kansas Juvenile Delinquency Prevention Trust Fund, Trauma Fund, Prosecuting Attorneys' Training Fund, Child Exchange and Visitation Center Fund, and the Law Enforcement Training Center Fund ([Attachment 19](#)).

Don Jordan, Commissioner, Juvenile Justice Authority, commented that he did not really care where the funding comes from for the programs, as long as the programs are funded adequately ([Attachment 20](#)).

Lee Woodard, Sedgwick County Law Library, stated that the funding of Sedgwick County Law Library through the docket fee is necessary for the continued performance of its mission of providing quality services to legal professionals, the courts, and the public. It currently charges a \$95 registration fee to attorneys ([Attachment 21](#)).

John Pickett, Johnson County Law Library, commented that it charges a \$75 registration fee for attorneys. It receives 60 percent of its funding from docket fees and 40 percent through registration fees (Attachment 22).

### **Afternoon Session**

Dick Morrissey, Deputy Director, Kansas Department of Health and Environment (KDHE), explained that KDHE includes in its budget request the amount of fees it receives from docket fees. The Trauma Fee Fund has enabled Kansas to establish the infrastructure necessary to support a statewide trauma system (Attachment 23).

Joyce Grover, Kansas Coalition Against Sexual and Domestic Violence, stated that each year sexual and domestic violence programs apply for the docket fee funds they receive through the Attorney General's Office. The Attorney General's Office monitors these funds throughout the year. Those programs that have been approved to receive grant monies are required to submit quarterly financial and statistical reports. They also are required to have independent annual audits of their programs (Attachment 24).

Marilyn Harp, Kansas Legal Services, supported the continuation of docket fees earmarked for the Access to Justice Fund. The Fund makes legal counsel, mediation, and *pro se* services available in all Kansas counties to those earning 150 percent or below the federal poverty level. These are individuals who clearly cannot earn enough money to make ends meet and pay for any legal needs that arise (Attachment 25).

Written testimony was provided by the Kansas Trial Lawyers Association encouraging the Legislature to require the programs that receive docket fees to have to go through the budget process (Attachment 26).

Written testimony also was provided by J. Russell Jennings, Director, Southwest Kansas Regional Juvenile Detention Center, which reminded the Committee that the Juvenile Detention Facilities Fund was established to provide a means to fund a state partnership with counties to provide an incentive for the construction and operation of regional juvenile detention centers. The money from the Fund is to reduce the burden upon counties for the operational costs of such facilities (Attachment 27).

### **Committee Discussion and Recommendations**

#### **Topic No. 7—Enhanced Penalties for Driving Under the Influence of Alcohol or Drugs as Proposed in SB 341**

Chairman Kinzer reminded the Committee that he asked the conferees from the hearing on Topic No. 7—Enhanced Penalties for Driving Under the Influence, to form a Subcommittee and put together their recommendations and present it to the Committee for consideration.

Karen Wittman, Shawnee County District Attorney's Office, served on that Subcommittee and reported the following recommendations (Attachment 28):

- Strike New Section 1 of 2006 SB 341. The Subcommittee felt that this issue was already addressed by the involuntary manslaughter statute;
- Adopt the changes in KSA 8-1567 and include language that would require that the courts follow the alcohol and drug evaluation as it pertains to alcohol and drug safety education programs or treatment programs on first, second, and third offenses;
- Allow for the doubling of sentences for those who refuse to take the BAC test or have a BAC of 0.15 or greater;
- Amend KSA 8-1567(h) by allowing the court to impose one month of imprisonment for each child in the vehicle at the time the offense occurred;
- Allow evidence, in KSA 8-1005, of assessment performed by a Drug Recognition Evaluator to be admissible in court to indicate that a person may have been under the influence of something other than alcohol;
- Provide for a one-year suspension of driving privileges, followed by a one-year restriction to driving a vehicle with an ignition interlock device on first occurrence test refusal. The same procedure would follow on a second offense (two-year suspension, two-year ignition interlock), and on a third violation (three-year suspension, three-year ignition interlock);
- Subject a person under the age of 21 to be subject to the same sanctions on a second or subsequent test failure or DUI conviction as a person over the age of 21;
- Allow administrative hearings to be held by telephone conference;
- Provides for explanation, oral and written, of enhanced sanctions for a 0.15 BAC or greater and new interlock restrictions;
- Allow a search warrant not to be required if there is any person injured or a death occurs to another person;
- Establish additional funding provided to KDHE and KDR to address the anticipated increase in litigation;
- Establish a funding source for County Sheriffs to address anticipated increased incarceration in county correctional facilities; and
- Encourage the Legislature to be aware that the numbers of those who are driving while suspended are increasing, and suggest they look at possible changes to deal with this.

*Senator Bruce made the motion for the introduction of a bill for the 2007 Legislature that would implement all the suggested changes by the Subcommittee. Representative Roth seconded the motion. The motion carried.*

Chairman Kinzer directed staff to include in the report that the Committee believes that there is a problem with the statute addressing those individuals driving while suspended due to the increasing numbers of those who are convicted of that offense and encourages the Legislature to consider changes.

## **Topic No. 6 – Establishment of the Crime Stoppers Council**

*Representative Watkins made the motion to have the Committee report reflect that there is no recommendation due to the belief that there was not an overwhelming need for a statewide council and that the Committee had concerns with the funding of such council. Representative Yoder seconded the motion. The motion carried with Senator Bruce being recorded as voting no.*

## **Topic No. 2 – Residency and Proximity Restrictions for Sex Offenders**

After extensive testimony and discussion on the issues surrounding residency requirements for sex offenders, the Committee was reminded by Chairman Kinzer that the Sex Offender Policy Board, which was created during the 2006 Legislative Session, was charged with taking up this type of issue and reporting back to the Legislature in 2008.

*Representative Roth made the motion to have the Committee recommendations be for a bill to be introduced that would allow supervisors of places where kids gather to ban convicted child sex offenders from their property by simply giving them a written notice to leave. The bill will be patterned after a Washington State law, which was approved early this year. If the offender returns after receiving notice, they could be charged with criminal trespass against a child and sentenced to up to one year in jail and fined \$10,000. It also would include preemption and waivers for those individuals who have children participating in activities in safe zones. Representative Watkins seconded the motion. With permission of the second, Representative Roth withdrew his motion.*

*Representative Roth made the motion that the Committee recommendation be to do the following:*

- *Encourage the Legislature to wait and receive the report from the Sex Offender Policy Board before they take any action on residency requirements;*
- *Have the 2007 Legislature consider the following for discussion during the 2007 Legislative session:*
  - *Create safety zones patterned after Illinois statute;*
  - *Develop a more complete risk assessment tool(s);*
  - *Narrow the scope of application to offenses against children not minors;*
  - *Preempt local ordinances from establishing residency restrictions; and*
  - *Create programs that focus on dangers that lie within a child's family.*

*Representative Watkins seconded the motion. The motion carried.*

*Representative Watkins made the motion to include in the report and encourage the Sex Offender Policy Board to look at classifications of sex offenders by risk levels, reclassification of the registry, and to research whether sex offenders would be able to go into safe zones if such a statute as the Washington Law was enacted. Senator V. Schmidt seconded the motion. The motion carried.*

Prepared by Cindy O'Neal  
Edited by Jerry Ann Donaldson

Approved by Committee on:

December 13, 2006  
(Date)