

Approved: 12-18-2010

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on February 15, 2010, in Room 144-S of the Capitol.

All members were present except:  
Representative Bob Bethell- excused

Committee staff present:  
Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Others attending:  
See attached list.

**HB 2604 - Allowing the court to sentence a defendant to serve time in a work release program.**

Chairperson Colloton Called the meeting to order and announced to the Committee they would be working bills today. She opened the floor for consideration of **HB 2604**.

**Representative Moxley made a motion to move HB 2604 out favorably for passage. Representative Brookens seconded.**

Chairperson Colloton called on Sean Ostrow, Office of the Revisor of Statutes, to explain the balloon on **HB 2604**. (Attachment 1) Mr. Ostrow stated **HB 2604** is the work release bill for County Jails and since the Kansas Department of Corrections has a work release program in place they felt this bill was too open. The amendment is to distinguish between the Kansas Department of Corrections work release program and the County Jail work release program. He also stated that the work release program would only be for defendants who had committed misdemeanors. (things that you cannot go to prison for)

A discussion followed.

**Representative McCray-Miller made a motion to accept the amendment on HB 2604. Representative Moxley seconded. Motion carried.**

**Representative Moxley made a motion to move HB 2604 out favorably as amended for passage. Representative Brookens seconded.**

**HB 2605 - Clarifying the investigation fees for services rendered by the KBI and other regional forensic and scientific laboratories.**

Chairperson Colloton opened the floor for the consideration of **HB2605** stating the bill was for the clarification of investigation fees for services rendered by the KBI and other regional forensic and scientific labs. She then called on Sean Ostrow, Office of the Revisor of Statutes, to explain the amendments to the bill. Mr. Ostrow called the Committee's attention to the copies of two amendments. (Attachment 2) (Attachment 3) He stated the amendments would require a charge of \$400 to the KBI for lab services. It also changed the word "rendered" to "*provided*" and changed the names of some of the fees so they would go to the appropriate place.

A lengthy discussion followed.

**Representative Frownfelter made a motion to sunset for 3 years. Representative Spalding seconded.**

The discussion continued.



CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on February 15, 2010, in Room 144-S of the Capitol.

**Representative Frownfelter withdrew his motion to sunset and Representative Spalding withdrew her second.**

Chairperson Colloton announced she would hold **HB 2605** for another day because of the many concerns of the Committee.

**HB 2637 - Requiring the court to charge a \$100 fee for collection of defendant's DNA information for storage in the KBI DNA database.**

Chairperson Colloton opened the floor for the consideration of **HB 2637** and called on Sean Ostrow, Office of the Revisor of Statutes, to explain the balloon. (Attachment 4) He stated the amendment adds language stating "*unless the defendant can prove to the court that he has paid such fees in connection with a previous conviction or adjudication after the word* " after the word *custody* ( Page 2-3, line 26).

A discussion followed.

**Representative Roth made a motion to adopt the balloon. Representative Brown seconded. Motion carried.**

A discussion followed with the Committee having some concerns and Chairperson Colloton announced she would hold the bill for tomorrow and instructed the Revisor to bring as balloon for tomorrow that would address the Committee's concerns.

**HB 2661 - Further amendments to the recodification of the criminal controlled substances provisions.**

Chairperson Colloton called the Committee's attention to **HB 2661** and opened the floor for consideration. She called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill. Mr. Thompson stated it was technically a clean-up bill.

**Representative Brookens moved to pass HB 2661 out favorably for passage. Representative Pauls seconded. Motion carried.**

**HB 2505 - Release procedures and discharge of paroled inmates.**

Chairperson Colloton called the Committee's attention to **HB 2505** and opened the floor for consideration. She called on Sean Ostrow, Office of the Revisor of Statutes, to give an overview of the bill. He stated that currently there is a provision that states parole from prison must be for a minimum of one year. The bill would change that one year minimum and make it at the discretion of the Parole Board.

**Representative Brown made a motion to report HB 2505 out favorably for passage. Representative Spalding seconded.**

A lengthy discussion followed with several of the Committee members expressing their concerns with the bill.

**Chairperson Colloton called for a vote on the motion on the floor. Motion carried.**

**HB 2582 - Adding conspiracy and attempt to special sentencing requirement of presumptive imprisonment for second burglary offense.**

Chairperson Colloton moved the Committee's attention to **HB 2582** and opened the floor for consideration.

She called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill to the Committee. Mr. Thompson stated under current law if convicted of a second burglary you get presumptive imprisonment. The bill would add "conspiracy or attempt to commit burglary", also.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on February 15, 2010, in Room 144-S of the Capitol.

A lengthy discussion followed. It was noted that this bill would have some prison bed impact but it would not be too high.

**Representative Patton moved to pass HB 2582 out favorably for passage. Representative Brookens seconded. Motion carried.**

**HB 2453 - Enhanced penalties for certain drug crimes on or within 1,000 feet of a child care facility.**

Chairperson Colloton moved the Committee's attention to **HB 2453** and opened the floor for consideration.

Chairperson Colloton stated the Revisor has prepared a balloon that takes out daycare and adds in the presence of a child. She called on Sean Ostrow, Office of the Revisor of Statutes, to explain the balloon. (Attachment 5) Mr. Ostrow stated it would eliminate "Child care facility" (Page 5, lines 36 through 43), and add "Presence of a minor" means: (21) A minor is within close proximity to the illegal activity; (2) the illegal activity is conducted in a place where minors can reasonably be expected to be present; or (3) in the minor's dwelling. This definition shall not be construed as requiring that a defendant actually be aware of the presence of a minor or a minor actually be aware of illegal activity. And lastly, striking, on Page 6, line 27, part of line 28 and all of line 29 and line 30 and adding the following language "if the offender is 18 or more years of age and the controlled substance or controlled substance analog is distributed to a minor, in the presence of a minor or on or within 1,000 feet of any school property".

A discussion followed.

**Representative Kinzer made a motion to pass HB 2453 out favorable as a substitute bill. Representative Frownfelter seconded.**

The discussion continued.

**Representing Brookens move the amendment on HB 2453, Page 5, line 21 and 22, to add language after the word dwelling, "whether minor is present in the dwelling or near. Representative Patton seconded.**

A discussion followed.

**Chairperson Colloton called for a vote on the Brookens amendment. Motion carried.**

Chairperson Colloton announced to the Committee she would hold **HB 2453** until tomorrow when they can get the bed impact of the bill.

**HB 2502 - Child witness protection act.**

Chairperson Colloton moved the Committee's attention to **HB 2502**. She recognized Representative Patton to speak on the bill. Representative Patton suggested the bill be recommended to the Judicial Council.

A discussion followed.

Chairperson Colloton stated she would refer **HB 2502** to the Judicial Council for help. She adjourned the meeting at 3:10 p.m. with the next meeting scheduled for 12:30 p.m. on February 16, 2010, in room 144S.



## HOUSE BILL No. 2604

By Committee on Corrections and Juvenile Justice

2-2

9 AN ACT concerning crimes, criminal procedure and punishment; relat-  
10 ing to sentencing upon the conviction of a crime; relating to work  
11 release programs; amending K.S.A. 2009 Supp. 21-4603d and repeal-  
12 ing the existing section.

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

15 Section 1. K.S.A. 2009 Supp. 21-4603d is hereby amended to read  
16 as follows: 21-4603d. (a) Whenever any person has been found guilty of  
17 a crime, the court may adjudge any of the following:

18 (1) Commit the defendant to the custody of the secretary of correc-  
19 tions if the current crime of conviction is a felony and the sentence pre-  
20 sumes imprisonment, or the sentence imposed is a dispositional departure  
21 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
22 term provided by law;

23 (2) impose the fine applicable to the offense;

24 (3) release the defendant on probation if the current crime of con-  
25 viction and criminal history fall within a presumptive nonprison category  
26 or through a departure for substantial and compelling reasons subject to  
27 such conditions as the court may deem appropriate. In felony cases except  
28 for violations of K.S.A. 8-1567, and amendments thereto, the court may  
29 include confinement in a county jail not to exceed 60 days, which need  
30 not be served consecutively, as a condition of an original probation sen-  
31 tence and up to 60 days in a county jail upon each revocation of the  
32 probation sentence, or community corrections placement;

33 (4) assign the defendant to a community correctional services pro-  
34 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
35 a departure for substantial and compelling reasons subject to such con-  
36 ditions as the court may deem appropriate, including orders requiring full  
37 or partial restitution;

38 (5) assign the defendant to a conservation camp for a period not to  
39 exceed six months as a condition of probation followed by a six-month  
40 period of follow-up through adult intensive supervision by a community  
41 correctional services program, if the offender successfully completes the  
42 conservation camp program;

43 (6) assign the defendant to a house arrest program pursuant to K.S.A.

1 21-4603b and amendments thereto;

2 (7) order the defendant to attend and satisfactorily complete an al-  
3cohol or drug education or training program as provided by subsection  
4(3) of K.S.A. 21-4502, and amendments thereto;

5 (8) order the defendant to repay the amount of any reward paid by  
6any crime stoppers chapter, individual, corporation or public entity which  
7materially aided in the apprehension or conviction of the defendant; repay  
8the amount of any costs and expenses incurred by any law enforcement  
9agency in the apprehension of the defendant, if one of the current crimes  
10of conviction of the defendant includes escape, as defined in K.S.A. 21-  
113809, and amendments thereto, or aggravated escape, as defined in K.S.A.  
1221-3810, and amendments thereto; repay expenses incurred by a fire dis-  
13trict, fire department or fire company responding to a fire which has been  
14determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-  
15ments thereto, if the defendant is convicted of such crime; repay the  
16amount of any public funds utilized by a law enforcement agency to pur-  
17chase controlled substances from the defendant during the investigation  
18which leads to the defendant's conviction; or repay the amount of any  
19medical costs and expenses incurred by any law enforcement agency or  
20county. Such repayment of the amount of any such costs and expenses  
21incurred by a county, law enforcement agency, fire district, fire depart-  
22ment or fire company or any public funds utilized by a law enforcement  
23agency shall be deposited and credited to the same fund from which the  
24public funds were credited to prior to use by the county, law enforcement  
25agency, fire district, fire department or fire company;

26 (9) order the defendant to pay the administrative fee authorized by  
27K.S.A. 22-4529, and amendments thereto, unless waived by the court;

28 (10) order the defendant to pay a domestic violence special program  
29fee authorized by K.S.A. 20-369, and amendments thereto;

30 (11) *assign the defendant to a work release program, provided such*  
31*work release program requires such defendant to return to confinement*  
32*at the end of each day in the work release program;*

33 ~~(11)~~ (12) impose any appropriate combination of (1), (2), (3), (4), (5),  
34(6), (7), (8), (9) ~~and~~, (10) *and* (11); or

35 ~~(12)~~ (13) suspend imposition of sentence in misdemeanor cases.

36 (b) (1) In addition to or in lieu of any of the above, the court shall  
37order the defendant to pay restitution, which shall include, but not be  
38limited to, damage or loss caused by the defendant's crime, unless the  
39court finds compelling circumstances which would render a plan of res-  
40titution unworkable. In regard to a violation of K.S.A. 21-4018, and  
41amendments thereto, such damage or loss shall include, but not be limited  
42to, attorney fees and costs incurred to repair the credit history or rating  
43of the person whose personal identification documents were obtained and

other than a  
program at a  
correctional  
institution under  
the control of the  
secretary of  
corrections as  
defined in K.S.A.  
75-5202, and  
amendments  
thereto

if the defendant is  
convicted of a  
misdemeanor or a  
felony provision of  
K.S.A. 21-4704(i),  
and amendments  
thereto,

21-4704(i)

i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, **shall not be served in a state facility in the custody of the secretary of corrections**, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

1 county regional forensic science center shall be deposited in the Sedgwick  
2 county general fund, the fee for services rendered or administered by the  
3 Johnson county sheriff's laboratory shall be deposited in the Johnson  
4 county general fund and the fee for services rendered or administered by  
5 the heart of America regional computer forensics laboratory shall be de-  
6 posited in the general treasury account maintained by the heart of Amer-  
7 ica regional computer forensics laboratory and disbursed for the  
8 following:

- 9 ~~(1) Providing criminalistic laboratory services;~~
- 10 ~~(2) the purchase and maintenance of equipment for use by the center~~  
11 ~~or laboratory in performing analysis; and~~
- 12 ~~(3) education, training and scientific development of the center's or~~  
13 ~~laboratory's personnel.~~ (a) *The court shall order any person convicted or*  
14 *diverted, or adjudicated or diverted under a preadjudication program*  
15 *pursuant to K.S.A. 22-2906 et seq., K.S.A. 2009 Supp. 38-2346 et seq., or*  
16 *12-4414, and amendments thereto, of a misdemeanor or felony to pay a*  
17 *separate court cost of \$400 for every individual offense if forensic science*  
18 *or laboratory services or forensic computer examination services are ren-*  
19 *dered or administered in connection with the investigation by:*

- 20 (1) *The Kansas bureau of investigation;*
- 21 (2) *the Sedgwick county regional forensic science center;*
- 22 (3) *the Johnson county sheriff's laboratory;*
- 23 (4) *the heart of America regional computer forensics laboratory; or*
- 24 (5) *the Wichita-Sedgwick county computer forensics crimes unit.*
- 25 (b) *Such fees shall be ordered if the services rendered or administered*  
26 *support an investigation leading to the filing of charges, regardless of*  
27 *whether the person is ultimately convicted, adjudicated or diverted of*  
28 *such specific charged offense.*
- 29 (c) *Such fees shall be in addition to and not in substitution for any*  
30 *and all fines and penalties otherwise provided for by law for such offense.*
- 31 (d) *The court shall not lessen or waive such fees unless the court has*  
32 *determined such person is indigent and the basis for the court's deter-*  
33 *mination is reflected in the court's order.*

- 34 (e) ~~The fees for services rendered or administered by:~~
- 35 (1) *The Kansas bureau of investigation shall be deposited in the Kan-*  
36 *sas bureau of investigation laboratory analysis fee fund;*
- 37 (2) *the Sedgwick county regional forensic science center shall be de-*  
38 *posited in the Sedgwick county general fund;*
- 39 (3) *the Johnson county sheriff's laboratory shall be deposited in the*  
40 *Johnson county general fund;*
- 41 (4) *the heart of America regional computer forensics laboratory shall*  
42 *be deposited in the general treasury account maintained by such labo-*  
43 *ratory; and*

provided

provided

Such fees shall be deposited into the designated fund of the laboratory or forensic science or computer center that provided such services. Fees for services provided by:

Forensic Laboratory and Materials Fee Fund

sheriff's laboratory analysis fee fund



1 (5) *the Wichita-Sedgwick county computer forensic crimes unit shall*  
 2 *be deposited in the Sedgwick county general fund.* ←  
 3 (f) *Disbursements from the funds and accounts described in subsec-*  
 4 *tion (e) shall be made for the following:*  
 5 (1) *Forensic science or laboratory services;*  
 6 (2) *forensic computer examination services;*  
 7 (3) *purchase and maintenance of laboratory equipment and supplies;*  
 8 (4) *education, training and scientific development of personnel; and*  
 9 (5) *from the Kansas bureau of investigation lab analysis fee fund, the*  
 10 *destruction of seized property and chemicals as described in K.S.A. 22-*  
 11 *2512 and 60-4117, and amendments thereto.*  
 12 Sec. 2. K.S.A. 2009 Supp. 28-176 is hereby repealed.  
 13 Sec. 3. This act shall take effect and be in force from and after its  
 14 publication in the statute book.

be retained by the Sedgwick county sheriff. 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.

2-2

1 county regional forensic science center shall be deposited in the Sedgwick  
 2 county general fund, the fee for services rendered or administered by the  
 3 Johnson county sheriff's laboratory shall be deposited in the Johnson  
 4 county general fund and the fee for services rendered or administered by  
 5 the heart of America regional computer forensics laboratory shall be de-  
 6 posited in the general treasury account maintained by the heart of Amer-  
 7 ica regional computer forensics laboratory and disbursed for the  
 8 following:

9 —(1) Providing criminalistic laboratory services;  
 10 —(2) the purchase and maintenance of equipment for use by the center  
 11 or laboratory in performing analysis; and  
 12 —(3) education, training and scientific development of the center's or  
 13 laboratory's personnel. (a) The court shall order any person convicted or  
 14 diverted, or adjudicated or diverted under a preadjudication program  
 15 pursuant to K.S.A. 22-2906 et seq., K.S.A. 2009 Supp. 38-2346 et seq., or  
 16 12-4414, and amendments thereto, of a misdemeanor or felony to pay a  
 17 separate court cost of \$400 for every individual offense if forensic science  
 18 or laboratory services or forensic computer examination services are ren-  
 19 dered or administered in connection with the investigation by:

20 (1) The Kansas bureau of investigation;  
 21 (2) the Sedgwick county regional forensic science center;  
 22 (3) the Johnson county sheriff's laboratory;  
 23 (4) the heart of America regional computer forensics laboratory; or  
 24 (5) the Wichita-Sedgwick county computer forensics crimes unit.  
 25 (b) Such fees shall be ordered if the services rendered or administered  
 26 support an investigation leading to the filing of charges, regardless of  
 27 whether the person is ultimately convicted, adjudicated or diverted of  
 28 such specific charged offense.  
 29 (c) Such fees shall be in addition to and not in substitution for any  
 30 and all fines and penalties otherwise provided for by law for such offense.  
 31 (d) The court shall not lessen or waive such fees unless the court has  
 32 determined such person is indigent and the basis for the court's deter-  
 33 mination is reflected in the court's order.

34 (e) The fees for services rendered or administered by:  
 35 (1) The Kansas bureau of investigation shall be deposited in the Kan-  
 36 sas bureau of investigation laboratory analysis fee fund;  
 37 (2) the Sedgwick county regional forensic science center shall be de-  
 38 posited in the Sedgwick county general fund;  
 39 (3) the Johnson county sheriff's laboratory shall be deposited in the  
 40 Johnson county general fund;  
 41 (4) the heart of America regional computer forensics laboratory shall  
 42 be deposited in the general treasury account maintained by such labo-  
 43 ratory; and

contained in chapters  
 21, 41 or 65 of the  
 Kansas Statutes  
 Annotated, and  
 amendments thereto,  
 or a violation of KSA  
 8-1567, and  
 amendments thereto

**HOUSE BILL No. 2637**

By Committee on Corrections and Juvenile Justice

2-3

9 AN ACT concerning court fees; relating to fees for the Kansas bureau  
10 of investigations DNA database; amending K.S.A. 2009 Supp. 75-724  
11 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 2009 Supp. 75-724 is hereby amended to read as  
15 follows: 75-724. (a) Any person required to submit a sample pursuant to  
16 subsection (c) of K.S.A. 21-2511, and amendments thereto, upon conviction  
17 or adjudication shall pay a separate court cost of \$100 as a Kansas  
18 bureau of investigation DNA database fee. ~~convicted or adjudicated of an~~  
19 ~~offense that, pursuant to K.S.A. 21-2511, and amendments thereto, re-~~  
20 ~~quires submission of a DNA sample upon arrest, charging or placement~~  
21 ~~in custody, shall pay a separate court cost of \$100 as a Kansas bureau of~~  
22 ~~investigation DNA database fee for every individual offense upon conviction~~  
23 ~~or adjudication.~~

24 (b) The court shall order such fees regardless of whether the person's  
25 DNA sample was already on file with the Kansas bureau of investigation  
26 at the time such person was arrested, charged or placed in custody.

27 (c) The court shall not lessen or waive such fees unless the court has  
28 determined such person is indigent and the basis for the court's deter-  
29 mination is reflected in the court's order.

30 ~~(b)~~ (d) Such fees shall be in addition to and not in substitution for  
31 any and all fines and penalties otherwise provided for by law for such  
32 offense.

33 ~~(c)~~ (e) Disbursements from the Kansas bureau of investigation DNA  
34 database fee deposited into the DNA database fee fund of the Kansas  
35 bureau of investigation shall be made for the following:

- 36 (1) Providing DNA laboratory services;  
37 (2) the purchase and maintenance of equipment for use by the lab-  
38 oratory in performing DNA analysis; and  
39 (3) education, training and scientific development of Kansas bureau  
40 of investigation personnel regarding DNA analysis.

41 ~~(d)~~ (f) Expenditures from the DNA database fee fund shall be made  
42 upon warrants of the director of accounts and reports issued pursuant to  
43 vouchers approved by the attorney general or by a person or persons

?

, unless the  
defendant can  
prove to the court  
that he has paid  
such fees in  
connection with a  
previous conviction  
or adjudication.

1 and which is an immediate chemical intermediary used or likely to be  
2 used in the manufacture of a controlled substance, the control of which  
3 is necessary to prevent, curtail or limit manufacture.

4 (h) "Isomer" means all enantiomers and diastereomers.

5 (i) "Manufacture" means the production, preparation, propagation,  
6 compounding, conversion or processing of a controlled substance either  
7 directly or indirectly or by extraction from substances of natural origin or  
8 independently by means of chemical synthesis or by a combination of  
9 extraction and chemical synthesis and includes any packaging or repack-  
10 aging of the substance or labeling or relabeling of its container. "Manu-  
11 facture" does not include the preparation or compounding of a controlled  
12 substance by an individual for the individual's own lawful use or the prep-  
13 aration, compounding, packaging or labeling of a controlled substance:

14 (1) By a practitioner or the practitioner's agent pursuant to a lawful  
15 order of a practitioner as an incident to the practitioner's administering  
16 or dispensing of a controlled substance in the course of the practitioner's  
17 professional practice; or

18 (2) by a practitioner or by the practitioner's authorized agent under  
19 such practitioner's supervision for the purpose of or as an incident to  
20 research, teaching or chemical analysis or by a pharmacist or medical care  
21 facility as an incident to dispensing of a controlled substance.

22 (j) "Marijuana" means all parts of all varieties of the plant Cannabis  
23 whether growing or not, the seeds thereof, the resin extracted from any  
24 part of the plant and every compound, manufacture, salt, derivative, mix-  
25 ture or preparation of the plant, its seeds or resin. "Marijuana" does not  
26 include the mature stalks of the plant, fiber produced from the stalks, oil  
27 or cake made from the seeds of the plant, any other compound, manu-  
28 facture, salt, derivative, mixture or preparation of the mature stalks, ex-  
29 cept the resin extracted therefrom, fiber, oil or cake or the sterilized seed  
30 of the plant which is incapable of germination. ←

31 (k) "Narcotic drug" means any of the following whether produced  
32 directly or indirectly by extraction from substances of vegetable origin or  
33 independently by means of chemical synthesis or by a combination of  
34 extraction and chemical synthesis:

35 (1) Opium and opiate and any salt, compound, derivative or prepa-  
36 ration of opium or opiate;

37 (2) any salt, compound, isomer, derivative or preparation thereof  
38 which is chemically equivalent or identical with any of the substances  
39 referred to in paragraph (1) but not including the isoquinoline alkaloids  
40 of opium;

41 (3) opium poppy and poppy straw;

42 (4) coca leaves and any salt, compound, derivative or preparation of  
43 coca leaves and any salt, compound, isomer, derivative or preparation

(k) "Minor" means a  
person under 18 years of  
age.

1 thereof which is chemically equivalent or identical with any of these sub-  
2 stances, but not including decocainized coca leaves or extractions of coca  
3 leaves which do not contain cocaine or ecgonine.

4 (l) "Opiate" means any substance having an addiction-forming or ad-  
5 diction-sustaining liability similar to morphine or being capable of con-  
6 version into a drug having addiction-forming or addiction-sustaining lia-  
7 bility. "Opiate" does not include, unless specifically designated as  
8 controlled under K.S.A. 65-4102, and amendments thereto, the dextro-  
9 rotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextro-  
10 methorphan). "Opiate" does include its racemic and levorotatory forms.

11 (m) "Opium poppy" means the plant of the species *Papaver somni-*  
12 *ferum* L. except its seeds.

13 (n) "Person" means individual, corporation, government or govern-  
14 mental subdivision or agency, business trust, estate, trust, partnership,  
15 association or any other legal entity.

16 (o) "Poppy straw" means all parts, except the seeds, of the opium  
17 poppy, after mowing.

18 (p) "Possession" means having joint or exclusive control over an item  
19 with knowledge of and intent to have such control or knowingly keeping  
20 some item in a place where the person has some measure of access and  
21 right of control.

22 (q) "School property" means property upon which is located a struc-  
23 ture used by a unified school district or an accredited nonpublic school  
24 for student instruction or attendance or extracurricular activities of pupils  
25 enrolled in kindergarten or any of the grades one through 12. This defi-  
26 nition shall not be construed as requiring that school be in session or that  
27 classes are actually being held at the time of the offense or that ~~children~~  
28 must be present within the structure or on the property during the time  
29 of any alleged criminal act. If the structure or property meets the above  
30 definition, the actual use of that structure or property at the time alleged  
31 shall not be a defense to the crime charged or the sentence imposed.

32 (r) "Simulated controlled substance" means any product which iden-  
33 tifies itself by a common name or slang term associated with a controlled  
34 substance and which indicates on its label or accompanying promotional  
35 material that the product simulates the effect of a controlled substance.

36 ~~(s) "Child-care facility" means any facility or home licensed or reg-~~  
37 ~~istered, or required to be licensed or registered, pursuant to article 5 of~~  
38 ~~chapter 65 of the Kansas Statutes Annotated, and amendments thereto.~~  
39 ~~This definition shall not be construed as requiring that children must be~~  
40 ~~present within the facility or home during the time of any alleged criminal~~  
41 ~~act. If the facility or home meets the above definition, the actual use of~~  
42 ~~that facility or home at the time alleged shall not be a defense to the crime~~  
43 ~~charged or the sentence imposed.~~

minors

STRIKE (S)

(r) "Presence of a minor"  
means:  
(1) A minor is within  
close proximity to the  
illegal activity;  
(2) the illegal activity is  
conducted in a place  
where minors can rea-  
sonably be expected to  
be present; or  
(3) in the minor's  
dwelling.  
This definition shall not  
be construed as  
requiring that a  
defendant  
actually be aware of the  
presence of a minor or a  
minor actually be aware  
of the illegal activity.

1 Sec. 2. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as  
 2 follows: 21-36a05. (a) It shall be unlawful for any person to cultivate,  
 3 distribute or possess with the intent to distribute any of the following  
 4 controlled substances or controlled substance analogs thereof:

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

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

11 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-  
 12 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.  
 13 65-4109, and amendments thereto;

14 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-  
 15 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-  
 16 4109, and amendments thereto;

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

20 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-  
 21 4109, and amendments thereto.

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

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

27 (A) Violation of subsection (a) ~~on or within 1,000 feet of any school~~  
 28 ~~property is a drug severity level 2 felony if that person is 18 or more years~~  
 29 ~~of age and the violation occurs on or within 1,000 feet of any child care~~  
 30 ~~facility or school property;~~

31 (B) violation of subsection (a)(1) is a drug severity level 2 felony if  
 32 that person has one prior conviction under subsection (a)(1), under K.S.A.  
 33 65-4161 prior to its repeal, or under a substantially similar offense from  
 34 another jurisdiction; and

35 (C) violation of subsection (a)(1) is a drug severity level 1 felony if  
 36 that person has two prior convictions under subsection (a)(1), under  
 37 K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense  
 38 from another jurisdiction.

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

43 (d) It shall not be a defense to charges arising under this section that

*if the offender is 18 or  
 more years of age and  
 the controlled substance  
 or controlled substance  
 analog is distributed or  
 possessed with the intent  
 to distribute to a minor, in  
 the presence of a  
 minor or on or within  
 1,000 feet of any school  
 property.*

minor

5-3

1 the defendant was acting in an agency relationship on behalf of any other  
2 party in a transaction involving a controlled substance.

3 Sec. 3. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as  
4 follows: 21-36a10. (a) It shall be unlawful for any person to advertise,  
5 market, label, distribute or possess with the intent to distribute:

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

11 (2) any product containing ephedrine, pseudoephedrine or phenyl-  
12 propanolamine, or their salts, isomers or salts of isomers for indication of  
13 stimulation, mental alertness, weight loss, appetite control, energy or  
14 other indications not approved pursuant to the pertinent federal over-  
15 the-counter drug final monograph or tentative final monograph or ap-  
16 proved new drug application.

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

22 (c) It shall be unlawful for any person to distribute, possess with in-  
23 tent to distribute or manufacture with intent to distribute any drug par-  
24 aphernalia, knowing or under circumstances where one reasonably should  
25 know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-  
26 36a01 through 21-36a17, and amendments thereto, except subsection (b)  
27 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

28 (d) It shall be unlawful for any person to distribute, possess with  
29 intent to distribute or manufacture with intent to distribute any drug  
30 paraphernalia, knowing, or under circumstances where one reasonably  
31 should know, that it will be used as such in violation of subsection (b) of  
32 K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

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

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

35 (3) violation of subsection (c) is a *severity* level 9, nonperson felony,  
36 except that violation of subsection (c) is a drug severity level 4 felony if  
37 ~~that person~~ ←

38 ~~(A) Distributes or causes drug paraphernalia to be distributed to a~~  
39 ~~person child under 18 years of age; or~~

40 ~~(B) is 18 or more years of age and distributes or causes drug para-~~  
41 ~~phernalia to be distributed on or within 1,000 feet of any child care facility~~  
42 ~~or school property;~~

43 (4) violation of subsection (d) is a class A nonperson misdemeanor,

54

the offender is 18 or  
more years of age and  
distributes or causes  
drug paraphernalia to be  
distributed to a minor,  
in the presence of a  
minor or on or within  
1,000 feet of any school  
property;

the offender is 18 or more years of age and distributes or causes drug paraphernalia to be distributed to a minor, in the presence of a minor or on or within 1,000 feet of any school property

1 except that violation of subsection (d) is a ~~nondrug~~ severity level 9, non-  
2 person felony if ~~that person:~~ ←

3 ~~(A) Distributes or causes drug paraphernalia to be distributed to a~~  
4 ~~person child under 18 years of age; or~~

5 ~~(B) is 18 or more years of age and distributes or causes drug para-~~  
6 ~~phernalia to be distributed on or within 1,000 feet of any child care facility~~  
7 ~~or school property.~~

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

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

16 (1) Actual knowledge from prior experience or statements by  
17 customers;

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

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

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

25 Sec. 4. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as  
26 follows: 21-36a13. (a) It shall be unlawful for any person to distribute,  
27 possess with the intent to distribute, or manufacture with the intent to  
28 distribute any simulated controlled substance.

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

31 (c) (1) Violation of subsection (a) is a nondrug severity level 9, non-  
32 person felony, except that violation of subsection (a) is a nondrug severity  
33 level 7, nonperson felony if ~~that person is 18 or more years of age and~~  
34 ~~the violation occurs on or within 1,000 feet of any child care facility or~~  
35 ~~school property;~~

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

37 Sec. 5. K.S.A. 2009 Supp. 21-36a01, 21-36a05, 21-36a10 and 21-  
38 36a13 are hereby repealed.

39 Sec. 6. This act shall take effect and be in force from and after its  
40 publication in the statute book.

the offender is 18 or more years of age and distributes or causes drug paraphernalia to be distributed to a minor, in the presence of a minor or on or within 1,000 feet of any school property

5-5