

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice Chairman Derek Schmidt at 9:35 a.m. on March 17, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Lauren Douglass, Kansas Legislative Research Department  
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Helen Pedigo, Executive Director, Kansas Sentencing Commission  
Mark Gleeson, Office of Judicial Administration

Others attending:

See attached list.

Senator Schmidt opened the hearing on **HB 2581 - Criminal procedure; correctional supervision fees; funding the use of a statewide, mandatory standardized risk assessment.**

Helen Pedigo appeared in support, indicting **HB 2581** will provide the funding required for the statewide implementation of and training for use of a risk needs assessment tool (LSI-R). This program initiated in 2003 has proven successful in reducing revocations and completion of paroles. The funding has been advocated for years and will allow working smarter with the resources available. Ms. Pedigo urged the enactment of the bill. (Attachment 1)

Mark Gleeson spoke in favor, stating this is the sixth attempt at acquiring funding for court services officers to administer the LSI-R program. It appears the only way to acquire the funding required is through the increase of probation supervision fees. In jurisdictions where the LSI-R program determines levels of supervision, successful discharges have increased and revocations have decreased. (Attachment 2)

There being no further conferees, the hearing on **HB 2581** was closed.

Chairman Owens assumed Chair of the meeting.

Chairman Owens called for final action on **HB 2661 - Further amendments to the recodification of the criminal controlled substances provisions.** Jason Thompson, staff revisor, reviewed the bill which was initiated at the request of the Revisor of Statutes. (Attachment 3)

There being no conferees, the hearing on **HB 2661** was closed.

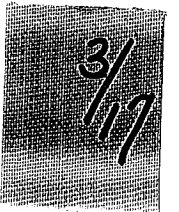
Senator Schmidt moved, Senator Kelly seconded, to reconsider **HB 2517 - Domestic violence offenses; special sentencing provision.** Motion carried.

The Chairman called for final action on **HB 2517 - Domestic violence offenses; special sentencing provision.** Jason Thompson, staff revisor, reviewed a balloon amendment requested by Senator Bruce. (Attachment 4)

Senator Bruce moved, Senator Vratil seconded, to amend **HB 2517** as reflected in the balloon amendment. Motion carried.

A balloon amendment recommended by the Kansas Coalition Against Sexual and Domestic Violence was distributed. (Attachment 5)

Senator Bruce moved, Senator Vratil seconded, to amend **HB 2517** as reflected in the balloon amendment. Motion carried.



CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on March 17, 2010, in Room 548-S of the Capitol.

Senator Schodorf moved, Senator Schmidt seconded, to recommend **HB 2517**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2581 - Criminal procedure; correctional supervision fees; funding the use of a statewide, mandatory standardized risk assessment.**

Senator Schmidt moved, Senator Vratil seconded, to amend **HB 2581** on page 2, lines 20-21, by changing the word "*incentive*" to "*initiative*". Motion carried.

Senator Schmidt moved, Senator Vratil seconded, to recommend **HB2581**, as amended, favorably for passage. Motion carried.

Chairman Owens called for final action on **HB 2661 - Further amendments to the recodification of the criminal controlled substances provisions.**

Senator Schmidt moved, Senator Schodorf seconded, to recommend **HB 2661** favorably for passage and place it on the Consent Calendar. Motion carried.

The Chairman called for final action on **HB 2667 - Recodification of certain domestic relations matters.**

Senator Vratil moved, Senator Kelly seconded, amend **HB 2667** by deleting Sections 52-59, found on page 24, line 22 through page 32, the end of line 19, and allow the revisor authority to renumber accordingly. Motion carried. Senators Donovan and Pilcher-Cook voted no and requested their votes recorded.

Senator Vratil moved, Senator Lynn seconded, to recommend **HB 2667**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 549 - Creating a private cause of action for victims of child pornography.** Jason Thompson, staff revisor, distributed a balloon amendment and reviewed the changes. (Attachment 6)

Senator Schmidt moved, Senator Haley seconded, to adopt the balloon amendment as distributed with the exception of striking "(3) attorney" in the balloon on page 2. Motion carried.

Senator Schmidt moved, Senator Schodorf seconded, to delete the contents of **HB 2509** and insert the contents of **SB 549**, as amended, re-title accordingly, and recommend **S Sub for HB 2509** favorably for passage. Motion carried.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-17-2010

NAME	REPRESENTING
Ed Klumpp	KACP / KPOA / KSA
Mark Gleason	Judicial Branch
Liza Webb	" "
Helen Pedigo	Sentencing Commission
TRAVIS HARRON	KSAG
Curt Brungardt	Jane's Campaign
Julian Mosler	Lead office of FRB
Sandy Bennett	KCSOV
JEREMY BARCLAY	KDOC
Susan Kay	KDHE
Jamie Corkhill	SRS / CSE
Kevin Barone	Te Cap City Prop. LLC
Sharon Citron's	Kansas Action for Children
Starr Winkle	KS Action for Children
STEVE KEARNEY	KAC
Richard Smurwey	Kemex Assoc
Gene Kuby	AAK
Jim Rost	KCSL

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE:

3-17-10

J

NAME	REPRESENTING
Sarah Gillooly	PPKM
Tim Madden	KDOC
Lou Saals	KDHE
Linda Kealey	KDHE
JEW MILLER	CAPITOL STRATEGIES



# KANSAS

**KANSAS SENTENCING COMMISSION**

Honorable Ernest L. Johnson, Chair  
Honorable Richard M. Smith, Vice Chair  
Helen Pedigo, Executive Director

MARK PARKINSON, GOVERNOR

**SENATE JUDICIARY COMMITTEE**

Senator Tim Owens, Chair

**TESTIMONY IN SUPPORT OF**

**HB 2581 PROBATION SUPERVISION FEE INCREASE**

Helen Pedigo, Executive Director

March 17, 2010

Mr. Chair and committee members, thank you for the opportunity to testify before you today in support of House Bill 2581 as amended by the House Committee. I'm here on behalf of the Kansas Sentencing Commission, a group of 17 criminal justice professionals, including local and state partners, members of all three branches of government, and the public.

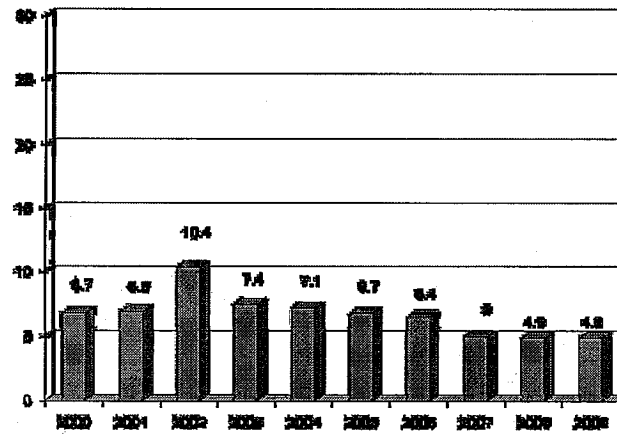
This bill raises misdemeanor probation fees from \$25 to \$60 and felony probation supervision fees from \$50 to \$120. In the 24 years since enactment of K. S. A. 21-2610a, probation supervision fees have not increased. The reason for the fee increase is to provide state-wide implementation of and training for use of a risk needs assessment tool, the Level of Services Inventory – Revised (LSI-R).

At the request of the Kansas Sentencing Commission, Johnson County initiated a pilot program in 2003 to assign supervision levels and specific probation conditions based on the risk assessment. This program provided a mechanism to allocate limited resources more effectively and to supervise offenders at appropriate levels. Offenders in the pilot program are assigned to either court services or community corrections supervision, based upon risk of reoffending and supervision needs. Outcomes from this program are attached and demonstrate a reduction in revocations and an increase in successful completions. This initiative is one that the Kansas Sentencing Commission has advocated for years, working smarter with the resources available, and thereby keeping the public safer.

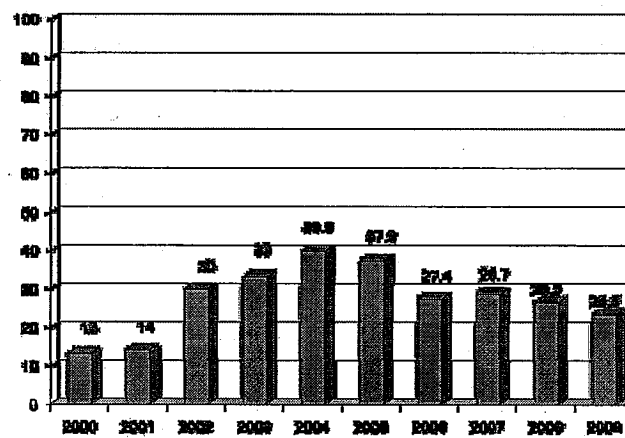
The House amended the funding and distribution mechanism pursuant to agreement between the Revisor and the Office of Judicial Administration. The bill passed in the House with a vote of 122 to 0.

I request the Committee's favorable consideration of this bill. Thank you for your time, and I'd be happy to answer questions.

Percent Revoke + Incarceration Rates\* by Year: Court Services



Percent Revoke + Incarceration Rates\* by Year: Community Corrections





State of Kansas  
**Office of Judicial Administration**

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

Senate Judiciary Committee

Wednesday, March 17, 2010

Testimony in Support of House Bill No. 2581

Mark Gleeson  
Director of Trial Court Programs  
Office of Judicial Administration  
March 17, 2010

Thank you for the opportunity to testify in support of House Bill 2581. Increasing the probation fee is essential to the Judicial Branch's ability to train court services officers to administer the Level of Service Inventory – Revised, as required by K.S.A. 75-5291. Among states that charge a probation supervision fee, Kansas has the lowest probation fee in the country. The fee of \$50 for persons placed on probation following conviction for a felony and \$25 for persons placed on probation following conviction of a misdemeanor was established in 1984 and has remained unchanged since that time. Over the past three years, the probation fee for adult offenders generated \$425,098 in FY 2007, \$403,700 in FY 2008, and \$393,902 in FY 2009.

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The Level of Service Inventory – Revised (LSI-R) is a quantitative survey of offender attributes and their situations relevant to supervision decisions. The results guide supervision officers in determining the appropriate level of supervision and treatment needs. The offenders are assessed on ten domains: criminal history, education/employment, financial, family/marital, accommodation, use of leisure time, companions, alcohol/drug problems, emotional/personal, and attitudes/orientation. The LSI-R assists the supervision officer in making effective use of limited resources by targeting specific needs of offenders. In jurisdictions where the LSI-R is used to determine levels of supervision, successful discharges have increased and revocations have decreased.

This is our sixth attempt at acquiring funding for court services officers to administer the LSI-R. In 2005, we submitted our first of three Byrne grant applications followed by State General Fund requests. Funding for this project is essential. We estimate it will require at least \$350,000 to purchase the software licenses and train the 275 court services officers who will administer these assessments by January 1, 2011. Increasing the fee appears to be the only way the Judicial Branch will acquire the funding to pay for training and support for court services officers to administer the LSI-R and to adopt evidence based practices in the supervision of offenders. Adopting these practices in Johnson County has reduced probation violations and recidivism. Without this fund or a separate appropriation, it will be virtually impossible for us to obtain the benefits of the LSI-R by providing the LSI-R, and other evidence based practices, to court services officers statewide as required by K.S.A. 75-5291.

Senate Judiciary

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Attachment 2

Sections 1 and 2 need a brief explanation as to why they are essential. Section 1 (a) of the bill accommodates the change from our current practice of submitting the probation supervision fee to the State General Fund through funds remitted to the State Treasurer as "Clerk's Fee State." Beginning July 1, 2010, all correctional supervision funds would go directly to the State Treasurer and then split with a portion of the fee going to the State General Fund and a portion going to the correctional supervision fund, as provided in Section 2. Section 1(a) is necessary in order to hold all funds harmless (including the State General Fund) after removing the current amount of probation fees (approximately \$400,000). Section 1(b) accommodates the expiration of the Judicial Performance Fund beginning July 1, 2013, and adjusting the percentages to hold all remaining funds harmless.

Further amendments to HB 2581 are not necessary. This bill increases the current probation supervision fee, establishes a new Correctional Supervision Fund, splits the fee so that the increase over the current supervision fee goes into the new fund, and holds harmless all remaining funds, including the State General Fund.

Please let me know if you have questions.



## MEMORANDUM

**To:** Chairman Owens and Members of the Senate Judiciary Committee  
**From:** Jason Thompson, Assistant Revisor (JT)  
**Date:** March 17, 2010  
**Subject:** HB 2661 - Further amendments to the drug code recodification.

HB 2661 was requested by the Office of Revisor of Statutes to correct errors made in the recodification of the drug code in 2009 HB 2332. Below is a brief explanation of the provisions of HB 2661.

- Section 1, municipal court jurisdiction (p. 1, l. 30): adds specific reference to subsection (b)(3) of K.S.A. 21-36a06 where possession of marijuana is located.
- Section 2, distribution (p. 2, l. 16-19): restores prior law that offender must be 18 or older for sentence enhancement, inadvertently left out in recodification.
- Section 3, possession (p. 3, l. 13-14): adds subsection (b)(6) to cover schedule V controlled substances, inadvertently left out in recodification.
- Section 4, prescription-only drug violations (p. 4): cleans up penalty provisions.
- Section 5, precursor violations (p. 4, l. 2-3, 20-23, 27-37): uses terms defined in the recodified drug code; restores prior law that offender must be 18 or older for sentence enhancement, inadvertently left out in recodification.
- Section 6 through 17: adds references to the uniform controlled substances act provisions repealed in recodification; makes clear that old law violations and new law violations are treated the same.
- Section 11, offender registration (p. 19, l. 24-28): reference to K.S.A. 21-36a05 is too broad, corrected to reflect only subsection (a)(1); provision is explicitly retroactive to remove registration requirement for anyone affected by the error.

## Substitute for HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

2-16

SubHB2517-Balloon-B2.pdf  
RS - JThompson - 03/17/10

Senate Judiciary

3-17-10

Attachment 4

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-  
11 2908 and K.S.A. 2009 Supp. 21-3110, 21-4603d, 22-2909 and 75-712  
12 and repealing the existing sections.

21-3412a,

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

15 New Section 1. (a) On and after July 1, 2011, in all criminal cases, if  
16 there is evidence that the defendant committed a domestic violence of-  
17 fense, the trier of fact shall determine whether the defendant committed  
18 a domestic violence offense. If the trier of fact determines that the de-  
19 fendant committed a domestic violence offense, the court shall place a  
20 domestic violence designation on the criminal case and the defendant  
21 shall be subject to the provisions of subsection (p) of K.S.A. 21-4603d,  
22 and amendments thereto.

23 (b) The term "domestic violence offense" shall have the meaning  
24 provided in K.S.A. 21-3110, and amendments thereto.

25 (c) This section shall be a part of and supplemental to the Kansas  
26 code for criminal procedure.

27 New Sec. 2. In all criminal cases, when a complaint is filed charging  
28 a defendant with commission of any crime whereby the underlying factual  
29 basis includes an act of domestic violence, as defined in K.S.A. 21-3110,  
30 and amendments thereto, the court may place a "DV" designation in the  
31 unique identifying case number assigned to such case. Nothing in this  
32 section shall be construed to limit the courts of this state from adopting  
33 a system of case designation deemed by the courts to be beneficial to the  
34 efficient administration of justice.

35 New Sec. 3. The attorney general shall promulgate rules and regula-  
36 tions necessary to carry out the provisions of subsection (p) of K.S.A.  
37 21-4603d, and amendments thereto, on or before July 1, 2011.

38 Sec. 4. On and after July 1, 2011, K.S.A. 20-369 is hereby amended  
39 to read as follows: 20-369. (a) If a judicial district creates a local fund  
40 ~~under this act~~, the court may impose a fee as provided in this section  
41 against any defendant for crimes involving a family or household member  
42 as provided in K.S.A. 21-3412a, and amendments thereto, *and against*  
43 *any defendant found to have committed a domestic violence offense pur-*

1 fender is involved or has been involved in a dating relationship or when  
 2 directed against a family or household member by a family or household  
 3 member. For the purposes of this definition:

4 (A) "Dating relationship" means a social relationship of a romantic  
 5 nature. In addition to any other factors the court deems relevant, the trier  
 6 of fact may consider the following when making a determination of  
 7 whether a relationship exists or existed: Nature of the relationship, length  
 8 of time the relationship existed, frequency of interaction between the par-  
 9 ties and time since termination of the relationship, if applicable.

10 (B) "Family or household member" means persons 18 years of age or  
 11 older who are spouses, former spouses, siblings, parents or stepparents  
 12 and children or stepchildren, and who are presently residing together or  
 13 have resided together in the past, and persons who have a child in com-  
 14 mon regardless of whether they have been married or have lived together  
 15 at any time. Family or household member also includes a man and woman  
 16 if the woman is pregnant and the man is alleged to be the father, regardless  
 17 of whether they have been married or have lived together at any time.

18 (8) "Domestic violence offense" means any crime committed whereby  
 19 the underlying factual basis includes an act of domestic violence, ~~a vio-~~  
 20 ~~lation of stalking, as defined in K.S.A. 21-3438, and amendments thereto,~~  
 21 ~~or a violation determined pursuant to K.S.A. 60-31a09, and amendments~~  
 22 ~~thereto, of any order issued pursuant to the protection from stalking act,~~  
 23 ~~K.S.A. 60-31a01 et seq., and amendments thereto.~~

24 ~~(7)~~ (9) "Dwelling" means a building or portion thereof, a tent, a ve-  
 25 hicle or other enclosed space which is used or intended for use as a human  
 26 habitation, home or residence.

27 ~~(8)~~ (10) "Firearm" means any weapon designed or having the capacity  
 28 to propel a projectile by force of an explosion or combustion.

29 ~~(9)~~ (11) "Forcible felony" includes any treason, murder, voluntary  
 30 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-  
 31 tery, aggravated sodomy and any other felony which involves the use or  
 32 threat of physical force or violence against any person.

33 ~~(10)~~ (12) "Intent to defraud" means an intention to deceive another  
 34 person, and to induce such other person, in reliance upon such deception,  
 35 to assume, create, transfer, alter or terminate a right, obligation or power  
 36 with reference to property.

37 ~~(11)~~ (13) "Law enforcement officer" means:

38 (a) Any person who by virtue of such person's office or public em-  
 39 ployment is vested by law with a duty to maintain public order or to make  
 40 arrests for crimes, whether that duty extends to all crimes or is limited to  
 41 specific crimes;

42 (b) any officer of the Kansas department of corrections or, for the  
 43 purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments



Strike

1 ~~(22)~~ (24) "Solicit" or "solicitation" means to command, authorize,  
 2 urge, incite, request, or advise another to commit a crime.  
 3 ~~(23)~~ (25) "State" or "this state" means the state of Kansas and all land  
 4 and water in respect to which the state of Kansas has either exclusive or  
 5 concurrent jurisdiction, and the air space above such land and water.  
 6 "Other state" means any state or territory of the United States, the Dis-  
 7 trict of Columbia and the Commonwealth of Puerto Rico.  
 8 ~~(24)~~ (26) "Stolen property" means property over which control has  
 9 been obtained by theft.  
 10 ~~(25)~~ (27) "Threat" means a communicated intent to inflict physical  
 11 or other harm on any person or on property.  
 12 ~~(26)~~ (28) "Written instrument" means any paper, document or other  
 13 instrument containing written or printed matter or the equivalent thereof,  
 14 used for purposes of reciting, embodying, conveying or recording infor-  
 15 mation, and any money, token, stamp, seal, badge, trademark, or other  
 16 evidence or symbol of value, right, privilege or identification, which is  
 17 capable of being used to the advantage or disadvantage of some person.  
 18 Sec. 6. On and after July 1, 2011, K.S.A. 2009 Supp. 21-4603d is  
 19 hereby amended to read as follows: 21-4603d. (a) Whenever any person  
 20 has been found guilty of a crime, the court may adjudge any of the  
 21 following:  
 22 (1) Commit the defendant to the custody of the secretary of correc-  
 23 tions if the current crime of conviction is a felony and the sentence pre-  
 24 sumes imprisonment, or the sentence imposed is a dispositional departure  
 25 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
 26 term provided by law;  
 27 (2) impose the fine applicable to the offense;  
 28 (3) release the defendant on probation if the current crime of con-  
 29 viction and criminal history fall within a presumptive nonprison category  
 30 or through a departure for substantial and compelling reasons subject to  
 31 such conditions as the court may deem appropriate. In felony cases except  
 32 for violations of K.S.A. 8-1567, and amendments thereto, the court may  
 33 include confinement in a county jail not to exceed 60 days, which need  
 34 not be served consecutively, as a condition of an original probation sen-  
 35 tence and up to 60 days in a county jail upon each revocation of the  
 36 probation sentence, or community corrections placement;  
 37 (4) assign the defendant to a community correctional services pro-  
 38 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
 39 a departure for substantial and compelling reasons subject to such con-  
 40 ditions as the court may deem appropriate, including orders requiring full  
 41 or partial restitution;  
 42 (5) assign the defendant to a conservation camp for a period not to  
 43 exceed six months as a condition of probation followed by a six-month

← Insert  
 Sec. 6. Amend K.S.A. 2009  
 Supp. 21-3412a (Attached).  
 Renumber remaining sections

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

7 (c) If a diversion agreement is entered into in lieu of further criminal  
8 proceedings on a complaint alleging a violation of K.S.A. 8-1567, and  
9 amendments thereto, the diversion agreement shall include a stipulation,  
10 agreed to by the defendant, the defendant's attorney if the defendant is  
11 represented by an attorney and the attorney general or county or district  
12 attorney, of the facts upon which the charge is based and a provision that  
13 if the defendant fails to fulfill the terms of the specific diversion agree-  
14 ment and the criminal proceedings on the complaint are resumed, the  
15 proceedings, including any proceedings on appeal, shall be conducted on  
16 the record of the stipulation of facts relating to the complaint. In addition,  
17 the agreement shall include a requirement that the defendant:

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

23 (2) enroll in and successfully complete an alcohol and drug safety  
24 action program or a treatment program, or both, as provided in K.S.A. 8-  
25 1008, and amendments thereto, and specified by the agreement, and pay  
26 the assessment required by K.S.A. 8-1008, and amendments thereto.

27 (d) *If a diversion agreement is entered into in lieu of further criminal*  
28 *proceedings on a complaint alleging a domestic violence offense, as defined*  
29 *in K.S.A. 21-3110, and amendments thereto, the diversion agreement shall*  
30 *include a requirement that the defendant undergo a domestic violence*  
31 *offender assessment and follow all recommendations unless otherwise or-*  
32 *dered by the court. The defendant shall be required to pay for such as-*  
33 *essment and, unless otherwise ordered by the court, for completion of all*  
34 *recommendations.*

35 ~~(d)~~ (e) If a diversion agreement is entered into in lieu of further crim-  
36 inal proceedings on a complaint alleging a violation other than K.S.A. 8-  
37 1567 and amendments thereto, the diversion agreement may include a  
38 stipulation, agreed to by the defendant, the defendant's attorney if the  
39 defendant is represented by an attorney and the attorney general or  
40 county or district attorney, of the facts upon which the charge is based  
41 and a provision that if the defendant fails to fulfill the terms of the specific  
42 diversion agreement and the criminal proceedings on the complaint are  
43 resumed, the proceedings, including any proceedings on appeal, shall be

agreed to with the prosecutor  
in the diversion agreement

4-5

1 Sec. 10. On and after July 1, 2011, K.S.A. 2009 Supp. 75-712 is  
2 hereby amended to read as follows: 75-712. (a) It is the duty of the mem-  
3 bers of the bureau to make full and complete investigations at the direc-  
4 tion of the attorney general. Each member of the bureau shall possess all  
5 powers and privileges which are now or may be hereafter given to the  
6 sheriffs of Kansas.

7 (b) (1) The bureau shall acquire, collect, classify and preserve crim-  
8 inal identification and other crime records, and may exchange such crim-  
9 inal identification records with the duly authorized officials of govern-  
10 mental agencies, of states, cities and penal institutions.

11 (2) *The bureau shall make available to the governor's domestic vio-*  
12 *lence fatality review board crime record information related to domestic*  
13 *violence, including, but not limited to, type of offense, type of victim and*  
14 *victim relationship to offender, as found on the Kansas standard offense*  
15 *report. Such crime record information shall be made available only in a*  
16 *manner that does not identify individual offenders or victims.*

17 (c) For purposes of carrying out the powers and duties of the bureau,  
18 the director may request and accept grants or donations from any person,  
19 firm, association or corporation or from the federal government or any  
20 federal agency and may enter into contracts or other transactions with  
21 any federal agency in connection therewith.

22 (d) The bureau shall conduct background investigations of: (1) Ap-  
23 pointees to positions which are subject to confirmation by the senate of  
24 the state of Kansas; and (2) at the direction of the governor, all judicial  
25 appointments. The bureau shall require the appointee to be finger-  
26 printed. The fingerprints shall be submitted to the bureau and to the  
27 federal bureau of investigation for the identification of the appointee and  
28 to obtain criminal history record information, including arrest and non-  
29 conviction data. Background reports may include criminal intelligence  
30 information and information relating to criminal and background inves-  
31 tigations. Except as provided by this subsection, information received pur-  
32 suant to this subsection shall be confidential and shall not be disclosed  
33 except to the appointing authority or as provided by K.S.A. 2009 Supp.  
34 75-4315d, and amendments thereto. If the appointing authority is the  
35 governor, information received pursuant to this subsection also may be  
36 disclosed to the governor's staff as necessary to determine the appointee's  
37 qualifications.

38 (e) Reports of all investigations made by the members of the bureau  
39 shall be made to the attorney general of Kansas.

40 Sec. 11. On and after July 1, 2011, K.S.A. 20-369, 22-2307 and 22-  
41 2908 and K.S.A. 2009 Supp. 21-3110, 21-4603d, 22-2909 and 75-712 are  
42 hereby repealed.

43

21-3412a,

**21-3412a. Domestic battery.** (a) Domestic battery is:

(1) Intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or

(2) intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

(b) (1) Upon a first conviction of a violation of domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a second time, such person shall be guilty of a class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.

(3) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a third or subsequent time, such person shall be guilty of a person felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$7,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court shall require as a condition of parole that such person enter into and complete a treatment program for domestic violence. If the person does not enter into and complete a treatment program for domestic violence, the person shall

serve not less than 180 days nor more than one year's imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(c) As used in this section:

(1) Family or household member means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(2) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(B) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(C) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any ~~three-year~~ five-year period.



## Substitute for HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

2-16

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-  
11 2908 and K.S.A. 2009 Supp. 21-3110, 21-4603d, 22-2909 and 75-712  
12 and repealing the existing sections.  
13

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

15 New Section 1. (a) On and after July 1, 2011, in all criminal cases, if  
16 there is evidence that the defendant committed a domestic violence of-  
17 fense, the trier of fact shall determine whether the defendant committed  
18 a domestic violence offense. If the trier of fact determines that the de-  
19 fendant committed a domestic violence offense, the court shall place a  
20 domestic violence designation on the criminal case and the defendant  
21 shall be subject to the provisions of subsection (p) of K.S.A. 21-4603d,  
22 and amendments thereto. ←

23 (b) The term "domestic violence offense" shall have the meaning  
24 provided in K.S.A. 21-3110, and amendments thereto.

25 (c) This section shall be a part of and supplemental to the Kansas  
26 code for criminal procedure.

27 New Sec. 2. In all criminal cases, when a complaint is filed charging  
28 a defendant with commission of any crime whereby the underlying factual  
29 basis includes an act of domestic violence, as defined in K.S.A. 21-3110,  
30 and amendments thereto, the court may place a "DV" designation in the  
31 unique identifying case number assigned to such case. Nothing in this  
32 section shall be construed to limit the courts of this state from adopting  
33 a system of case designation deemed by the courts to be beneficial to the  
34 efficient administration of justice.

35 New Sec. 3. The attorney general shall promulgate rules and regu-  
36 lations necessary to carry out the provisions of subsection (p) of K.S.A.  
37 21-4603d, and amendments thereto, on or before July 1, 2011.

38 Sec. 4. On and after July 1, 2011, K.S.A. 20-369 is hereby amended  
39 to read as follows: 20-369. (a) If a judicial district creates a local fund  
40 ~~under this act~~, the court may impose a fee as provided in this section  
41 against any defendant for crimes involving a family or household member  
42 as provided in K.S.A. 21-3412a, and amendments thereto, and against  
43 any defendant found to have committed a domestic violence offense pur-

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(1) Except as provided further,

(2) The court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto, only if the court finds on the record that:

(A) The defendant has not previously committed a domestic violence offense or participated in a diversion upon a complaint alleging a domestic violence offense; and

(B) the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member.

## SENATE BILL No. 549

By Committee on Federal and State Affairs

2-17

9 AN ACT creating a private cause of action for victims of child  
10 pornography.

11

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

13 Section 1. (a) Any person who, while under the age of 18, was a  
14 victim of an offense described in article 35 of chapter 21 of the Kansas  
15 Statutes Annotated, and amendments thereto, incest as defined in K.S.A.  
16 21-3602, and amendments thereto, or aggravated incest as defined in  
17 subsection (a)(2) of K.S.A. 21-3603, and amendments thereto, where any  
18 portion of such offense was used in the production of child pornography,  
19 and who suffers personal or psychological injury as a result of the pro-  
20 duction, promotion, or possession of such child pornography, may bring  
21 an action in an appropriate state court against the producer, promoter or  
22 possessor of such child pornography, regardless of whether the victim is  
23 now an adult.

24 (b) In any action brought under this section, a prevailing plaintiff shall  
25 recover the actual damages such person sustained and the cost of the suit,  
26 including reasonable attorney's fees. Any victim who is awarded damages  
27 under this section shall be deemed to have sustained damages of at least  
28 \$150,000.

29 (c) Notwithstanding any other provision of law, any action com-  
30 menced under this section shall be filed within three years after the later  
31 of:

32 (1) The conclusion of a related criminal case;

33 (2) the notification to the victim by a member of a law enforcement  
34 agency of the creation, possession, or promotion of the child pornography;  
35 or

36 (3) in the case of a victim younger than 18, within three years after  
37 the person reaches the age of 18.

38 (d) It is not a defense to a civil cause of action under this section that  
39 the respondent did not know the victim or commit the abuse depicted in  
40 the child pornography.

41 ~~To prevent the further exploitation of victims for monetary gain~~  
42 ~~by any other person, at~~ the victim's request, the attorney general may  
43 pursue cases on behalf of any Kansas victim under this section. All dam-

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knowing

At

1 ages obtained shall go to the victim, and the attorney general may seek  
2 reasonable attorney's fees and costs.

3 (f) Any action brought under this section shall be subject to the pro-  
4 visions of K.S.A. 74-7312, and amendments thereto.

5 (g) As used in this section, "child pornography" includes, but is not  
6 limited to, any visual depiction, as described in subsection (a) of K.S.A.  
7 21-3516, and amendments thereto, and any performance, as defined in  
8 subsection (b) of K.S.A. 21-3516, and amendments thereto. ←

9 Sec. 2. This act shall take effect and be in force from and after its  
10 publication in the statute book.

(h) This section shall not apply to acts done in the performance of duty by any:  
(1) Law enforcement officer of the state of Kansas or any political subdivision thereof; (2) forensic examiner; (3) attorney; or (4) child advocacy organization.