



Curtis L. Whitten, Commissioner

Juvenile Justice Authority

Sam Brownback, Governor

## Testimony for SB 39 February 8, 2011

SB 39 amends K.S.A. 22-4902 to create a new classification of "aggravated sex offender" for specified sex offenses if one of the parties involved is less than 16 years of age. Juvenile offenders are specifically included within the definition of "aggravated sex offender" (see SB 39, page 8, lines 11-15.)

SB 39 provides for two restrictions that would have significant impact on JJA's ability to make community residential placements and provide for the required and necessary educational needs of those youth falling under the "aggravated sex offender" designation.

Sec. 7 of SB 39 (page 14, starting at line 8) amends K.S.A. 2010 Supp. 22-4913 to preclude aggravated sex offenders from residing within a 2000 foot radius of schools and certain child facilities. JJA is responsible for making residential placement of youth placed by the court into JJA custody for out of home placement and for those youth leaving a juvenile correctional facility on conditional release. JJA has entered into provider agreements with numerous and various youth residential facilities and foster homes. Although JJA has not undertaken a study to see if any of our contracted residential providers are located within a 2000 foot radius of any school, child care facility or registered family day care home, if one of the residential providers are so located that would, by operation of SB 39, require that JJA no longer use that residential provider. Because of the limited number of licensed acceptable residential placements for youth, particularly youthful sex offenders, any limitation on placement options would have a negative impact on JJA's ability to meet the programmatic needs of these youths and reduce recidivism. Further, K.S.A 38-2365 requires that JJA prepare and follow a permanency plan for youth placed in JJA custody for out of home placement. The permanency plan provides for the reintegration of the youth back into the youth's family. The residency restriction would pose a significant obstacle to reintegration if the youth's family were to reside within the restriction zone and did not have the resources to relocate.

New Sec. 8 of SB 39 (page 15, starting at line 1) presents a similar problem. New Sec. 8 creates an offense of loitering within 500 feet of schools and certain child facilities by aggravated sex offenders and makes violation of this restriction a class A nonperson misdemeanor. Although new sec. 8 creates an exception for aggravated sex offenders who happen to be a parent, legal custodian or guardian of a child attending the school or child care facility, it makes no exception when the aggravated sex offender is the student. New sec. 8 prohibits aggravated sex offenders, who are also students, from attending any accredited public or nonpublic school. Adherence to this provision by those youth would require some form of alternative education that would not be situated in an accredited public or nonpublic school or within 500 feet of such building (or 2000 feet in the case of a home school).

These two issues will have a negative impact on the ability of JJA to carry out its mission and meet the programmatic and education needs of those youth who are "aggravated sex offenders." Accordingly, JJA respectfully requests the committee to strike juvenile offenders from the definition of "aggravated sex offender." Attached to this testimony is page 8 of SB 39 showing the proposed redaction beginning on line 12 and ending on line 15.

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

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

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

16 (c) "Sexually violent crime" means:

17 (1) Rape as defined in K.S.A. 21-3502, *prior to its repeal, or section*  
18 *67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
19 *thereto;*

20 (2) indecent liberties with a child as defined in K.S.A. 21-3503,  
21 *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the*  
22 *2010 Session Laws of Kansas, and amendments thereto;*

23 (3) aggravated indecent liberties with a child as defined in K.S.A.  
24 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter*  
25 *136 of the 2010 Session Laws of Kansas, and amendments thereto;*

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

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

33 (6) indecent solicitation of a child as defined by K.S.A. 21-3510,  
34 *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the*  
35 *2010 Session Laws of Kansas, and amendments thereto;*

36 (7) aggravated indecent solicitation of a child as defined by K.S.A.  
37 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136*  
38 *of the 2010 Session Laws of Kansas, and amendments thereto;*

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

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