

## MINUTES

### KANSAS CRIMINAL CODE RECODIFICATION COMMISSION

September 26, 2007  
Room 514-S—Statehouse

#### Members Present

Tom Stacy, Chairman  
Ed Klumpp, Vice-Chairman  
Judge Larry Solomon  
Judge Christel Marquardt  
Tim Madden  
Debra Wilson  
Senator John Vratil  
Senator David Haley  
Representative Lance Kinzer  
Representative Paul Davis  
Steve Opat  
Michael Kaye  
Kim Parker  
Ed Collister

#### Staff Present

Judge John W. White, Reporter  
Brett A. Watson, Staff Attorney  
Jerry Ann Donaldson, Kansas Legislative Research Department  
Athena Andaya, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor of Statutes  
Duston Slinkard, Office of the Revisor of Statutes

#### Others Present

Judge J. Patrick Brazil  
Kyle Smith, Kansas Bureau of Investigation  
Natalie Gibson, Kansas Sentencing Commission  
Jim Clark, Kansas Bar Association  
Kane Firebaugh, Kearney & Associates

## Morning Session

Prof. Stacy called the meeting to order. He announced the resignation of Judge Brazil, complimenting him for his knowledge, intelligence, and judgment. Prof. Stacy noted that Judge Brazil helped a great deal with legislative relations, but he simply did not have time to commit to the project.

Judge Brazil addressed the Commission, thanking them and telling them that he enjoyed the work. He noted the recent progress the Commission has made and that funding will enable the group to work 12 months out of the year. He said he made his decision reluctantly, but he was spread too thin and he wanted to make a quality commitment to the appellate courts.

Prof. Stacy addressed the staff issue. No motion was made to go to executive session; however, Judge White excused himself and left the room while the issue was discussed. Prof. Stacy referred to an e-mail he sent to the Commission members with several alternatives for dealing with Judge Brazil's departure. Prof. Stacy endorsed a proposal to increase Judge White's responsibilities and give him greater compensation in the amount that would have gone to Judge Brazil. Judge Marquardt moved to accept the proposal. The motion was seconded and passed unanimously.

Judge White returned to the room and invited Kyle Smith, with the Kansas Bureau of Investigation (KBI), to speak. Mr. Smith claimed to be responsible for and involved with many of the changes made to the drug code over the years. He emphasized that his statements were his own opinions and not necessarily the positions of the KBI or the Attorney General's Office.

He suggested that separating penalties from the Board of Pharmacy is a good idea. In 1985, manufacturing methamphetamine (meth) was a class A misdemeanor; however, the Uniform Controlled Substances Act (UCSA) was designed for licensing pharmacists. Mr. Smith said the penalties are now too severe for pharmacists. He expressed concern over what would be left in Chapter 65 to regulate pharmacists, and he suggested that the Commission contact the Board of Pharmacy.

Mr. Smith asked whether the new definition of manufacture leaves any room for civil law enforcement in Chapter 65. He argued that attempted manufacture should be penalized at the same degree as manufacturing because if the defendant fails to manufacture properly, he or she can still be as dangerous, in terms of fires and human health, as a successful defendant.

On marijuana, Mr. Smith stated that there is a perception that it is a less dangerous drug; however, it is not in terms of trafficking. There is a great deal of corruption and money involved in the trade. So much money is raised that it causes problems with corruption. Marijuana is also a gateway drug, therefore it is dangerous. Mr. Smith cited a study involving mice exposed to marijuana which concluded that the mice were more likely to abuse harder drugs.

Mr. Smith approved of the idea of cleaning up the departure section. He stated that the number of meth labs have increased greatly since 1985. Meth involves child abuse, fires, and explosions, among other things, and manufacturing is a different kind of harm. He claimed that severe punishment does not work in every case and meth is an addiction-driven problem; it is not largely manufactured for commercial purposes. On the other hand, he noted that Kansas does not want a weak manufacturing penalty relative to the surrounding states. He cited a case of a drug dealer who retained an attorney to do research on which state has the weaker laws and, on the basis of that research, came to Kansas to manufacture meth.

Mr. Smith noted a 73 percent reduction in meth labs since Sudafed was placed on schedule V in 2005. He noted that the market was affected, there were greater amounts being sold, though the price was not affected.

On recidivism, Mr. Smith noted that eliminating it from the statute may be wise. The history of Kansas drug laws involved separate statutes to deal with opiates because of concern for increased use of heroin. Before the guidelines, the statutes enhanced penalties based on recidivism. When the guidelines were passed they incorporated the old drug crimes intact without accounting for the fact that recidivism was part of the criminal history score.

Mr. Smith stated that manufacturing should not be treated the same as trafficking. When revising the definition of manufacturing, he stated, the Commission did not want to create two statutes that covered the same conduct so as to avoid a *McAdam* situation.

Mr. Smith recognized that the statutes covering manufacturing, possession of ephedrine, possession of paraphernalia, and attempted manufacturing are all a mess. The paraphernalia statute was changed because it seemed that paraphernalia for more serious offenses, *i.e.*, manufacturing, should be treated more seriously than, *e.g.*, roach clips. It did not occur to lawmakers at the time that a defendant could be charged with both.

He noted that K.S.A. 65-7006 was proposed by pharmaceutical lobbyists. Their concern was that their consumers would not be able to get their cold medicine. Mr. Smith recognized that possession of precursors is an attempt. The current statutes help alleviate the burden on KBI chemists testifying about the contents of a lab if the defendant only has pills in his or her possession. It also is helpful for plea bargaining, as it is easier to prove than attempted manufacturing. His reservation about the revision is that the courts will ignore the plain language of the statute and hold that attempt has to be more than mere preparation.

On the subject of lesser-included offenses, Mr. Smith asked how often convictions occur for attempted manufacturing and possession of ephedrine with intent to manufacture. He suggested this is probably not likely.

On retroactivity, Mr. Smith claimed the revision would adversely affect plea deals. He noted that dealers plead to possession to get a deal. After such a revision the number of post-conviction motions will be high, which will clog the courts and burden prosecutors and defense attorneys.

On possession, Mr. Smith noted that the revision would make possession a class A misdemeanor forever. This means that sentences would be served in the county jail, not the Department of Corrections. This may not be wise, as a felony conviction can often have a stronger impact on the offender.

Mr. Opat asked Mr. Smith about the appropriate treatment of Ecstasy. Mr. Smith noted that it was mostly in the college towns, and it affects the body similarly to methamphetamine. He noted that some states have proposed to treat Ecstasy as meth, or as a drug felony. It is generally imported, not manufactured in Kansas. Mr. Smith said it can be made here, but law enforcement has not found much of it manufactured in Kansas.

Mr. Klumpp stated that the Commission should listen closely to prosecutors and law enforcement in this area or else the drug problem in Kansas will skyrocket.

Prof. Stacy asked if the use of vernacular terms in the statute would be wise. He cited the example of a former student, a prosecutor, who could not find cocaine in the drug statute. Mr. Smith noted that colloquial names could be a problem because of ambiguity, but the statute could say "also known as Ecstasy."

Prof. Stacy agreed with Mr. Smith's points on retroactivity. He noted that the revision did not make distribution of marijuana less severe, but rather, it makes distribution in other substances more harsh. He referred to the Vera Institute study that found Kansas sentences for manufacturing are

more severe than surrounding states. Prof. Stacy asked Mr. Smith if he had an opinion on increasing distribution severity. Mr. Smith replied, so long as there is a method for the court to depart downward.

Senator Vratil suggested that the street names of the drugs should be placed in the Revisor's comments. The Revisor could contact the KBI each year and ask about changes.

Judge White called for a motion to approve the minutes from the August 22, 2007 meeting. Prof. Kaye moved to approve the minutes. The motion was seconded and passed unanimously.

Judge White invited Senator Vratil to speak. Senator Vratil expressed his concern that the Commission should not make substantive changes and should limit itself to organization and clean up of the code. He stated that the Legislature would not look kindly upon substantive changes.

He claimed that placing crimes in Chapter 21 and narrowing the definition of manufacturing was an appropriate revision. However, distinguishing between marijuana and other drugs and increasing distribution penalties are substantive changes. Eliminating recidivism from the statute can be construed both ways, as a substantive change and as the elimination of a duplication.

Representative Davis agreed with Senator Vratil's comments. He stated that the Legislature wants to see a product without much substantive changes. He also noted that if there are inconsistencies in the law then the Commission should raise those with the Legislature, otherwise they will never be raised. Representative Davis said he would like to see two products: recodification and list of issues/substantive changes that should be made. Senator Vratil agreed, stating the substantive changes should be made as recommendations.

Representative Kinzer agreed with these statements. He stated that the Commission should recommend areas of change, but if substantive changes are actually made it will bog down the Commission's work.

Judge White asked how the proposal should be offered to the Legislature. Representative Kinzer said working section by section makes sense; presenting it to the Legislature piecemeal is not a good idea.

Prof. Stacy said that no member wanted to spin his or her wheels and waste their time. He expressed appreciation for the legislators' help in drawing the line between what is proper and what is substantive. Changing offense severity ratings, Prof. Stacy concluded, should be recommendations, not part of a final draft. Senator Vratil concurred and stated that the material should not be presented to the Legislature piecemeal. However, it would be wise to present the work on drug crimes so the Legislature could look at in the 2008 Session.

Mr. Klumpp said that the drug section seems to offer the best chance to present the Legislature with a discrete section. It would give the Commission a good indication of what the Legislature thinks about the Commission.

Representative Davis indicated that he was in favor of that approach. It also would help the Legislature raise some substantive policy options.

Prof. Kaye also concurred with that approach.

Mr. Opat asked if the Commission would ask the Legislature to consider and approve the drug section before the rest of the code. He asked how the drug section would fit into the code.

Senator Vratil indicated that the drug section should be moved to Chapter 21, and that the Commission should consider eliminating recidivism, narrowing the definition of manufacture, and making other recommendations.

Judge White began a discussion of the revisions beginning with the table of contents. He noted that it contained a memo by Prof. Stacy advocating the placement of serious drug crimes in Chapter 21. A motion was made to adopt this proposal. The motion was seconded and passed unanimously. Senator Vratil asked the reporter to consult the Board of Pharmacy. Mr. Smith said that he already gave a copy to Deb Billingsley, the Executive Director. Senator Vratil said a formal letter should be written and provided to Director Billingsley asking for their comments.

Judge White opened the discussion on creating a distinction between marijuana and other drugs. Mr. Opat said it was a bad idea and that there is not such a dichotomy. Marijuana is not clearly less harmful than other drugs.

Ms. Parker cited anecdotal evidence from a district court judge in Wichita that marijuana is actually addictive.

Judge White pointed to a memo on how other states treat marijuana. Senator Vratil said the issue of marijuana may come to the Legislature through another avenue; possibly through medical marijuana. He indicated that it is better for it to come through that avenue, not this one; it is a hot-button issue, and it will affect the perception of this Commission by the Legislature.

Prof. Stacy asked if the Commission should make any recommendation, as the marijuana issue is related to the proposal to increase distribution to a drug severity II felony. He also cited the Vera Study which found that penalties for distribution of hard drugs are lenient, and penalties for manufacturing are harsh. He reminded the Commission that the issue was not to decrease penalties for marijuana; but rather, to increase distribution for other drugs. He noted that the Federal system distinguishes marijuana from other drugs. He also pointed to an anecdote from Judge Johnson, who said that he never had a case involving a violent rage based on marijuana use.

Senator Haley indicated that his concern was the issue of criminal intent, not the resulting harm. He stated that *mens rea* must be looked at, to determine what crime the defendant actually intended to commit.

Senator Vratil moved to increase the offense level from DIII to DII in distribution, except for marijuana, and make no recommendation to the Legislature for distinguishing marijuana (it would remain at DIII). The motion was seconded.

Ms. Wilson agreed with the proposal to distinguish marijuana. It seemed to her more like cigarettes and alcohol. She said criminalizing use of marijuana has made a large class of citizens into criminals.

Mr. Opat stated that a person who distributes a pound of cocaine should be as culpable as a person who distributes 100 pounds of marijuana.

Senator Vratil said his motion is something of a compromise. He noted that it is a political reality that the Legislature is not going to distinguish marijuana.

Prof. Kaye asked whether the issue of marijuana's being as harmful as other drugs is outside the Commission's expertise. He indicated that anecdotal evidence is insufficient. He noted an instance where Dr. Voath testified that marijuana is as dangerous, but he noted that the Commission is not qualified to make that determination.

Mr. Klumpp agreed, and noted that there also is a harm that comes with the distribution of marijuana, as Mr. Smith said. The issue is not only the harm the drug does to the body.

Mr. Madden said that Senator Vratil's motion seemed like a fair compromise. He noted that using weights does not present an *Apprendi* problem.

Ms. Parker asked if the motion only regarded distribution. Senator Vratil said that was correct. Judge White clarified the motion by stating that distribution of all drugs, other than marijuana, would be moved from drug severity level III to II; no recommendation regarding marijuana would be made elsewhere. Senator Vratil indicated that was correct.

Representative Kinzer said that he appreciated the difference between manufacturing and distribution. He claimed that making a distinction between marijuana and other drugs is less sensible in distribution, but more so in possession. He stated that another alternative would be to present information to the Legislature regarding how other states have drawn such distinctions and not make a recommendation.

Judge Marquardt offered an amendment to the motion not to distinguish marijuana in distribution. It was seconded.

Mr. Madden noted that distribution is a broad term, including large-scale sales and one person giving a joint to another person.

Prof. Kaye stated that if the Commission is not prepared to make a distinction between marijuana and the other drugs, it should not put marijuana in the same category as other drugs. He stated that the harm to the individual is important.

Judge White called for a vote on Judge Marquardt's amendment. The ayes were 6, the nays were 7. Judge White called for a vote on Senator Vratil's motion. The ayes were 9, the nays were 3.

Judge White praised Prof. Stacy on his extensive work on the draft of the revisions. The Commission broke for lunch.

### **Afternoon Session**

The Commission reconvened. Mr. Opat asked why should there be a difference between substances. He suggested the distinction should be based on weight.

Ms. Parker said the difference between manufacture and distribution is based upon the *mens rea*.

Mr. Klumpp asked how would a prosecutor establish quantities if the case is against a seller who is selling small quantities. Would law enforcement have to do several controlled buys?

Prof. Stacy noted there is a problem with proving the quantity of the drug at trial.

Mr. Opat suggested that the defendant in Mr. Klumpp's example could be charged with repetitive conduct, or a search warrant could be used to find the seller's supply.

Mr. Klumpp asked whether a dealer could avoid a severe sentence by dealing with a small amount of drugs.

Ms. Parker suggested that a number of felonies will pile up over time, such as in an embezzlement case. Such conduct could be charged as a continuing offense; the information could charge sales between x date and y date. That would determine the quantity.

Mr. Klumpp suggested that multiple sales within a certain period of time could be a separate crime.

Judge White stated that he and Mr. Watson would research other states' weight and other distinctions. This suggestion was accepted by Commission members without a vote.

Prof. Stacy indicated that he was attracted to the idea of weight. He suggested maintaining the distinction between manufacture and distribution, then make the severity of the offense based on weight. He noted that the federal sentencing guidelines have a concept of the heartland. Cases involving college students distributing a small amount may be outside the heartland and could be handled by downward departures. He suggested that drug mules could be handled in the same way.

Mr. Opat said it is easier to catch the small-time dealers than the big-time dealers. They are often caught holding drugs, not selling them. He noted that the federal guidelines are harsh, but they do not make it easier to get up the food chain. He stated that weight would be disproportionate, but no system is perfect and weight is better.

Judge Solomon asked if the Commission should defer the policy recommendations until the recodification work is finished.

Judge Marquardt noted that the Commission should keep a record of things it wants to revisit. The Commission concurred without a vote.

The Commission considered KSA 21-501. Judge White noted that the definition of manufacture and school or school property had been modified. The definitions were meant to clean up the statute.

Judge White noted that in Arkansas, proximity to certain facilities with children has been expanded to other places where you can find children. He asked if it was wise to revise the Kansas statute in such a way.

Judge Marquardt noted that it would be a suggestion since it would be a substantive change.

Representative Kinzer said that in Olathe, there are schools where kids are not in kindergarten, as part of an early school education. The current revision might exclude these places.

Senator Vratil suggested dropping the words kindergarten or grades 1-12. Judge Marquardt suggested that it might include situations where kids accelerate and go to college. Representative Kinzer pointed out that colleges would be excluded because they are not public, accredited schools within the meaning of the statute.

Judge White suggested putting the Arkansas provision into a comment. Mr. Madden said there would not be any place under the Arkansas definition where you would not get the school enhancement because it covers so many places.

Senator Vratil moved to approve KSA 21-501 as submitted. It was properly seconded. Prof. Stacy moved to amend the motion, subject to Board of Pharmacy review and the revision of the school definition.

Mr. Opat asked if subsection (l) should include distribution.

Mr. Klumpp asked if anyone was concerned about removing repackaging from the definition of manufacturing.

Ms. Parker said cutting could be part of manufacturing. Prof. Stacy said that Ms. Parker was suggesting that cutting, by itself, does not constitute manufacture. Senator Vratil proposed this distinction as a friendly amendment. It was seconded.

Ms. Parker noted that the definitions in the general provisions of the criminal code should match those in this section so that they do not conflict.

The motion passed unanimously.

The Commission considered KSA 21-502. Prof. Stacy moved to table this due to the earlier discussion of retroactivity. The motion was seconded and passed unanimously.

The Commission considered KSA 21-503. Judge White noted that attempting to manufacture drugs overlaps with the general attempt statute; therefore, a specific attempt statute is unnecessary. The general attempt statute makes a distinction in punishment between non-drug and drug crimes.

Prof. Stacy moved that under subsection (a)(1), the phrase "other than marijuana" be stricken and subsection (b) be removed. KSA 21-503 would be consistent with existing law, and a recommendation could be made later regarding marijuana. The motion was seconded and passed unanimously.

Prof. Stacy noted that attempted manufacture is treated the same as manufacture in the revision. This does not mean a change in law, it is a matter of coherence. Mr. Smith was opposed to an exception for drugs under the general attempt statute; however, the difference is only 6 months in the sentence.

Mr. Klumpp said the problem is that the manufacture of drugs is dangerous because of the process, even if it was incomplete.

Judge White asked if attempted manufacture should be criminal under the general statute or a specific statute.

Prof. Stacy moved to approve KSA 21-503, with changes he previously stated, which would eliminate attempt exception and place attempt prosecutions under the general statute. The motion was seconded and passed unanimously.

The Commission considered KSA 21-504. Judge White noted that no changes are proposed. Ms. Parker noted that the current statute is used occasionally, as the breakdown of drugs is a costly process. Judge White asked if the cost amount is usually agreed upon by the parties. Ms. Parker said it depends and there are evidentiary hearings on the matter. Judge Solomon moved to approve KSA 21-504. It was seconded and passed unanimously.

The Commission considered KSA 21-505. Judge White noted that Senator Vratil's earlier motion covered this section and most of it would be revised as a recommendation. Prof. Stacy moved to revise subsection (a) to provide that distribution is a drug severity III felony and subsection



(b) should be incorporated into (a). The motion was seconded. Senator Vratil proposed a friendly amendment to delete language in line 31 to line 36 which contains the definition of school property.

Mr. Watson said that the revision would eliminate recidivism, and the Commission should consider whether this should be a proposal or a recommendation.

Prof. Stacy noted that Mr. Smith said recidivism was a leftover from the pre-guidelines law. The Vera Study said that we increase the severity of the crime too much with the recidivism provision.

Senator Vratil said he had no objection to the merits of the proposal, but he was concerned the Legislature would construe it as a substantive change.

Prof. Stacy proposed an amendment to return the recidivism provisions to the statute. It was seconded and passed unanimously.

Mr. Klumpp asked Senator Vratil if the phrase "18 years or more" was a legislative choice. Judge White indicated that the meaning of that phrase was not an issue, and the language in the current Kansas statute is sufficient.

The Commission considered KSA 21-506. Prof. Stacy moved to restore the recidivism provisions. Judge White stated that upon further review, that language should be restored. Judge Solomon moved to adopt KSA 21-506 with revisions making it conform to current law. The motion was seconded and passed unanimously. Judge Marquardt asked if a recommendation on this point needed to be made later. Prof. Stacy indicated that such a recommendation was unnecessary.

The Commission considered KSA 21-507. Prof. Stacy proposed to strike the phrase "other than marijuana."

Judge Marquardt asked how should a court determine how a product is meant to be used. Prof. Stacy indicated it was unnecessary to confront that question because the revision just incorporated the language from the current statute.

Prof. Stacy suggested that subsection (d) should be deleted because the distinction between KSA 21-505 (a) & (b) has been eliminated. Mr. Klumpp moved to adopt KSA 21-507 with Prof. Stacy's recommended changes. It was seconded and passed unanimously.

The Commission considered KSA 21-508. Judge White noted that the definition of school property would be removed. He stated that the revision incorporates current law and 2007 amendments. Senator Vratil proposed on page 2, line 4, to insert "a" before the word "class A."

Mr. Klumpp asked if the revision eliminated the bonding provision. He moved to incorporate lines 29-36 on page 3 into the revision. The motion was seconded and passed unanimously.

Mr. Klumpp moved to adopt KSA 21-508 as amended. It was seconded and passed unanimously.

The Commission considered KSA 21-509. Mr. Klumpp noted that it was current law and moved to adopt it. The motion was seconded and passed unanimously.

The Commission considered KSA 21-510. Judge White noted that no change is recommended. Judge Solomon moved to adopt KSA 21-510. The motion was seconded and passed unanimously.

The Commission considered KSA 21-511. Judge White noted that no change from current law was recommended. Judge Marquardt moved to adopt KSA 21-511. Ms. Wolters asked if subsection (c) should be moved to the definition section. Prof. Stacy said no, because it is a definition only used in KSA 21-511. The motion was seconded and passed unanimously.

The Commission considered KSA 21-512. Judge White noted that the school property definition would be eliminated. Mr. Klumpp moved to approve KSA 21-512 with Judge White's proposed revision. The motion was seconded and passed unanimously.

The Commission considered KSA 21-513. Judge White noted that no change from current law was proposed. He suggested that a note in comment might indicate that the statute does not prevent a prosecution for theft by deception, and *State v. Marsh* deals with this issue.

Prof. Stacy stated that theft by deception is graded by the amount of the property. He asked what is the relationship between the two offenses. He suggested several alternatives: eliminate the statute as duplicative, add a comment that this is the more specific statute, or add a comment that a defendant cannot be sentenced to both offenses.

Ms. Parker stated that she did not think it was an overlapping offense. A defendant cannot be convicted of both because KSA 21-513 is the more specific offense.

Judge Marquardt concurred with clarifying the issue in the comments.

Mr. Madden said the issue reminded him of a case where a defendant was selling fake cancer medicine.

Prof. Stacy indicated that under current law, a drug transaction that involves thousands of dollars for fake drugs could only be charged as a misdemeanor.

Mr. Opat stated that the statute was silly because it involves a theft crime.

Judge Marquardt suggested eliminating the statute. Mr. Opat moved to eliminate it. Senator Vratil said it should be recommended. Mr. Klumpp moved to leave the statute in, recommend removing it, and research its legislative history. Judge Marquardt said there should be a detailed analysis of the two statutes, KSA 21-513 and the theft by deception statute. Mr. Klumpp's motion was seconded and passed by a divided vote.

Prof. Stacy stated that KSA 21-513 is the more specific offense, and a defendant would only be guilty of a misdemeanor. He moved to include in the comments a statement that the statute was not intended to supplant theft by deception or not meant to be a more specific offense than theft by deception. Senator Vratil said that he did not disagree but feared that the appellate courts would ignore the comment as inconsistent with the language of the statute. The motion was seconded and failed to gain a majority vote.

Representative Kinzer asked whether a drug buyer gets restitution when they are defrauded. He said it seems inappropriate. Mr. Madden said that a court will look at the degree of victim culpability under the restitution statute. Prof. Stacy said there would be no restitution, otherwise the courts would enforce an illegal contract. Judge Solomon suggested that the issue come up with controlled buys, not with actual bona fide buyers. Mr. Klumpp suggested recommending a subsection to address the pharmacist situations and made a specific statute for them. The Commission agreed, without a vote, that more research needed to be done on this issue.

The Commission considered KSA 21-514. Judge White noted that no substantive change is recommended. Judge Marquardt moved to adopt 21-514. The motion was seconded and passed unanimously.

The Commission considered KSA 21-515. Judge White noted that no substantive change was recommended. Judge Marquardt moved to adopt KSA 21-515. The motion was seconded and passed unanimously.

The Commission considered KSA 21-516. Judge White noted that the revision would remove the definition of school property, and subsections (a)(3), and (c) have been added. Mr. Klumpp moved to adopt KSA 21-516 with subsection (c) as a recommendation and striking the school language. He also noted that several of the verbs needed to be changed to a consistent tense and the phrase "uniform controlled substances act" needed to be replaced with "this article." The motion was seconded and passed unanimously.

Mr. Klumpp moved to incorporate KSA 79-5208, sale of drugs without a tax stamp, into Chapter 21. The motion was seconded. Judge White noted that there are 12 relevant statutes in Chapter 79; 10 are administrative, 1 relates somewhat to crime; 1 imposes a criminal penalty. Judge White suggested that he could bring a proposed revision to the next meeting. Mr. Klumpp revised his motion to also review other such statutes that could be incorporated into Chapter 21 or otherwise changed. The motion was seconded and passed unanimously.

The Commission considered KSA 21-517. Judge White noted that no substantive change was recommended. Judge Solomon moved to adopt KSA 21-517. The motion was seconded and passed unanimously.

Mr. Klumpp informed the Commission that all documents would be sent via the listserv. He suggested that future documents would be sent in PDF format. He then stated that in the future Commission members could bring their own copies with them and if they needed copies made, they should inform Judge White or Mr. Watson before the meetings.

Mr. Watson informed the Commission that the Revisor's Office would provide the members with a disk containing their versions of Chapter 21 and 22, but they were not to be distributed to non-Commission members. The disks would also include useful materials from the 3Rs Committee.

Senator Vratil suggested that the Commission review drugs again at the next meeting so that a draft could be prepared for the Legislature.

The meeting adjourned at 3:45 p.m.

Submitted by Brett A. Watson, Staff Attorney

Approved by Commission on:

October 24, 2007