



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

**Testimony in Support of House Bill 2283
Exempting certain victims from being considered an aggressor or participant as a
mitigating factor when considering a departure**

**Presented to the House Corrections and Juvenile Justice Committee
By Assistant Solicitor General Natalie Chalmers**

February 22, 2019

Chairman Jennings and Members of the Committee:

Thank you for the opportunity to testify on behalf of Attorney General Derek Schmidt in support of House Bill 2283. This bill seeks to end victim-blaming for young victims of sexually violent crimes, along with electronic solicitation, and for all victims when the offender offers to hire a victim to engage in an unlawful sex act.

At least since the sentencing grid has existed, judges have been permitted to apply departure sentences if “the victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.” K.S.A. 21-6815. While there may be valid reasons for such departures in some cases, the factor has the possibility of being used for victim-blaming. This was most recently seen in the recent Leavenworth County case that made national headlines.

In fact, it appears the typical use for the factor is in sex crime cases. E.g. *State v. Liskey*, 242 P.3d 1281 (Kan. Ct. App. 2010) (unpublished opinion) (In a case involving the crimes of aggravated indecent liberties and criminal sodomy, the factor a valid reason for a departure when the victim initiated kissing of 35-year-old defendant when he was 13, as the relationship progressed in the next few years, he reassured the defendant when she expressed concern over the illegality of their relationship, requested the victim return to Topeka after she moved to New Mexico to escape the relationship, and gave the defendant a ring while considering the pair to be husband and wife); *State v. Thomas*, 231 P.3d 1085 (Kan. Ct. App. 2010) (unpublished opinion) (In a case involving the crime of aggravated indecent liberties with a child, a barely 19-year-old defendant engaged in sex acts with an almost 16-year-old victim. The factor was found to be a valid reason for a departure because the victim wore only a t-shirt and underwear, touched the defendant, engaged in self-gratification in front of the defendant, and then took the defendant’s hand and invited him to join her on the floor.).

It is the position of the Office of the Attorney General that this factor should minimally be excluded from applying when the victim is younger than 14 while the defendant is over 18 and

for all victims hired to engage in unlawful sexual acts. The age range for victims of sexual violence corresponds with Jessica's law. But it would still permit judges to have the discretion to use the factor to issue departures in sex cases where juveniles are tried as adults and in cases where the victim's and the defendant's ages are similar to the legislative intent in enacting "Romeo and Juliet" laws. However, the Office of the Attorney General believes it should not be a factor in any cases where the defendant buys the victim. Such crimes contribute to human trafficking, and a zero-tolerance policy to end trafficking is sound.

Of course, this Committee is free to limit the scope of the departure factor even further if it so chooses. It could do so by enacting HB 2299, or a combination of the two bills. Both bills share the goal of ending unfair victim-blaming, and it is simply a matter of legislative policy as to the extent this Committee believes the departure factor should be modified.

Regardless of the specific language this Committee feels best fits the legislative policy of ending unfair victim-blaming, the Office of the Kansas Attorney encourages the adoption of a limitation of this departure factor. Thank you for your consideration.

###