


Approved 
March 21, 1990 Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Ginger Barr at
Chairperson

1:33 ~~am~~ p.m. on February 22, 1990 in room 526-S of the Capitol.

All members were present except:

Representatives Cates - Excused	Representatives Long
Douville - Excused	Peterson
Jenkins - Excused	Roy

Committee staff present:

Mary Galligan, Kansas Department of Legislative Research
Mary Torrence, Revisor of Statutes Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Representative Sprague
Helen Stephens, Kansas Peace Officers Association
Rick Sabel, Fraternal Order of Police, Lodge #3
Steve Kearney, Kansas State Troopers

Attachment No. 1 is a staff memo summarizing the major provisions of the Kansas Parimutuel Racing Act.

HB 2299

Representative Sprague explained the purpose of the bill, Attachment No. 2 and presented an article from the Topeka Capital-Journal, February 17, 1990, concerning TAG (the Assassination Game), Attachment No. 2A.

Committee discussion centered on the possibility of using neon orange on the barrel and the distribution of guns.

Helen Stephens spoke in support of the bill and emphasized the instantaneous decision officers must make when confronted by a weapon, Attachment No. 3. Attachment No. 3A is a survey regarding the number of crimes committed with imitation guns.

Rick Sabel was a proponent of the bill describing an incident in which a person with an imitation weapon was killed, Attachment No. 4. Officer Sabel presented two weapons, similar in every respect, except one was imitation. The officer demonstrated the imitation's removable clip and pellets which eject as the real bullet casings after firing.

Committee discussion:

The committee asked if other states had similar legislation; if the National Rifle Association (NRA) had a position on the bill; discussed the difficulty in tracing such a "weapon"; learned that a store owner/clerk killing someone using an "imitation weapon" during a robbery would probably not be convicted of murder, the defense being "in full fear of a real gun"; and the cost range estimated at \$20 - \$70.

Steve Kearney supported the bill emphasizing the split second decision officers must make when confronted by a weapon, Attachment No. 5.

There were no opponents.

Subcommittee - HB 2292

Representative Eckert explained the recommended change, Section 1(c)(1), to the bill, Attachment No. 6. Representative Eckert moved to introduce Sub. HB 2292, seconded by Representative Schauf. The motion was adopted. Representative Eckert made a motion to recommend the bill favorably, seconded by Representative Sughrue.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,
room 526-S, Statehouse, at 1:33 ~~am~~ p.m. on February 22, 1990.

The committee discussed:

1. The policy question of a teen losing a driver's license for alcohol or drug abuse even if he/she weren't driving at the time.
2. Driving is a privilege, not a right, as challenged and upheld in two other states.
3. The shortage of alternatives for penalizing juveniles was discussed. Adults may be fined or jailed.
4. The illegality for possession or use of alcohol by juveniles.
5. Treatment as the best course of action though it was generally agreed some sort of punitive measure would be available for the judge's discretion.

The motion carried.

The meeting adjourned at 2:23 p.m. The next meeting of the committee is scheduled for February 26, 1990, 1:30 p.m. in Room 526-S.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE February 22, 1990

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Stephanie Jones	2209 Arno Rd. SM KS 66208	Kansas University Student Nurse
Kim Crnko	214 E. Armour KC MO. 64111	University of Kansas Nursing Student
Courtney Barrett	2307 Victoria Dr #5204 KC, KS 66106	University of Kansas Student Nurse
Amy Wise	1320 BRIDGEWATER CT WICHITA KS 67209	GODDARD HIGH SCHOOL STUDENT
LISA McMullen	8901 University Wichita, KS 67209	GODDARD HIGH SCHOOL STUDENT
Stephanie Gorzlin	425 S. Westfield Wichita, KS 67209	GODDARD HIGH SCHOOL STUDENT
Matthew Weigert	332 Wind Row's Lake Dr. Goddard KS 67052	" " "
JANA L. HARRIS	RR#3 Box 278E LEAVENWORTH, KS 66048	UNIVERSITY OF KANSAS STUDENT NURSE
Diane Knapp	13219 W 76th St Lenexa KS 66216	KU Student Nurse
Clarissa Haugness	3628 Francis # 301 KC, KS 66103	Univ. of Kansas Student Nurse
Rick Sabel	204 W. 5th	Fraternal Order of Police
STEVE KENNEDY	TOPEKA	KS. STATE TROOPERS ASSN
TERRY STEVENS	TOPEKA	TOPEKA P.D.
Lt. BILL JACOBS	TOPEKA	KHP
Pat Larson	Horton	Nursing Student
Mary Woelz	Netawaka	Nursing Student
Jamie Mehl	2520 W. 34th Apt 1B Kansas City, KS. 66105	University of Kansas School of Nursing
Don Palmer	3312 Boulder St. Apt. 6 Kansas City, KS. 66103	University of Kansas School of Nursing
Melissa Schneider	20 So. 76th K.C. KS. 66111	University of Kansas School of Nursing
Amita K. Roschitz	7521 Waverly Ave KCKS 66109	University of Kansas School of Nursing, KCK.
Alan Morgan	Topeka	Governor's office
Mary Neubauer	Lawrence	Assoc. Press
C.J. Buck	Coldwater, KS. 67009 Box 42 Coldwater Jr. S. High School	Coldwater Grade School
Jacqueline Wilkerson	4054 12th St.	Humboldt, KS.
V. H. Herd	Coldwater, KS.	Coldwater, KS.
Judy Herd	Box 773	Coldwater, KS.

MEMORANDUM

Revised September 5, 1989
July 27, 1989

TO: Special Committee on Federal and State Affairs/
Governmental Organization

FROM: Kansas Legislative Research Department

RE: Kansas Parimutuel Racing Act, K.S.A. 74-8801 et seq.

The following paragraphs summarize the major provisions of the Kansas Parimutuel Racing Act.

Racing Commission

The Act creates the Kansas Racing Commission composed of five Kansas residents, at least one member of which must be from the each congressional district, appointed by the Governor for staggered three-year terms. Commissioners must be confirmed by the Senate. No more than three members of the Commission may belong to the same political party. The Commission is authorized to license and regulate all aspects of racing and parimutuel wagering in the state. Compensation, in addition to mileage and subsistence paid for meetings of the Commission, is determined by the Governor. (K.S.A. 74-8803)

Executive Director

The Governor also is authorized to appoint, subject to confirmation by the Senate, an executive director of the Commission. The executive director serves at the pleasure of the Governor, is a full-time unclassified employee, and receives compensation as determined by the Commission. The executive director is authorized to recommend to the Commission the number and qualifications of employees necessary to implement the Act, employ persons for positions approved by the Commission, and perform other duties as directed by the Commission. (K.S.A. 74-8805(a))

Commission Employees

The Commission is required to appoint three employees: an inspector of parimutuels; an animal health officer; and a director of security, all of whom serve in the unclassified service. All of the Commission's other employees are in the classified civil service. The director of security is required to be a professional law enforcement officer with education and experience in law enforcement. The full-time animal health officer and any part-time assistants must be veterinarians. The animal health officer or assistant animal health officers are permitted to administer drugs to racing animals as authorized by the rules and regulations of the

Commission. The Commission is authorized to require licensees to reimburse the state for the salaries of the assistant animal health officers. The Attorney General is authorized to appoint up to two Assistant Attorneys General to work for the Commission. (K.S.A. 74-8805, 74-8806, and 74-8809) The Commission is authorized to appoint and pay stewards and racing judges at each race meeting and to require organization licensees to reimburse the Commission for compensation paid to stewards and judges. (K.S.A. 74-8818)

Law Enforcement Powers of Employees

Employees designated by the executive director with the approval of the Commission have law enforcement powers in the execution of duties imposed by the act. Any employees certified to carry firearms are required to successfully complete the firearms training course required by statute for other law enforcement officers. (K.S.A. 74-8807)

Powers of the Commission

The Commission has sole authority to allocate race days and hours and review and approve all proposed construction and major renovations of racetracks. The Commission is authorized to exclude persons from races or racetrack facilities and suspend horses or greyhounds from races if the animals are involved in a violation of the racing law or regulations. The Commission is authorized to adopt rules and regulations providing for drug testing of any licensees and officers, director, and employees of licensees. Other powers of the Commission include:

- administering oaths and taking depositions;
- examining any books, papers, records, or memoranda of licensees to ascertain compliance with the Act;
- issuing subpoenas to compel access to or for the production of books, papers, records or memoranda for the purpose of ascertaining compliance with the act;
- overruling decisions of stewards or racing judges under certain circumstances;
- requiring fingerprinting of all persons necessary to verify qualification for any license authorized by the act;
- receiving criminal history record information from the KBI or other criminal justice agencies in a closed meeting; and

- adopting rules and regulations necessary to implement the act. (K.S.A. 74-8804)

Advisory Committee

The Commission is authorized to appoint an advisory committee composed of people knowledgeable in the horse and greyhound breeding and racing industries. The members of the committee serve without compensation. (K.S.A. 74-8805(d))

Prohibited Acts

Commission members are prohibited from having direct or indirect financial interest in any racetrack facility in Kansas during, or for five years immediately following, their term on the Commission. Members, employees, or appointees of the Commission are prohibited from:

- participating in or having a financial interest in a licensed concessionaire business, an owner or manager license, or any business that sells goods or services to an organization licensee;
- participating directly or indirectly as an owner, trainer, or jockey of an animal racing in Kansas;
- betting on races; or
- accepting compensation, gifts, loans, or other favors or services from any licensee.

Members, employees, or appointees of the Commission, or their families, are prohibited from:

- holding a license issued by the Commission; or
- entering into any business dealing with an owner or lessee of a racetrack in Kansas.

Other prohibited acts include:

- possession or a parimutuel ticket by a minor or selling a parimutuel ticket or interest in a ticket to a minor;
- placing bets for persons who are outside the racetrack;
- entering an ineligible animal in a race;
- providing false information on a horse registration application;

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- conducting an unlicensed race for the purpose of betting;
- running a racing animal in an improper class or grade or under a false name;
- using any device other than a whip or mechanical hare to affect a racing animal's speed during a race;
- using or administering drugs to a racing animal in violation of rules and regulations of the Commission;
- altering or attempting to alter the natural outcome of a race;
- failing to report violations of the prohibition against artificially affecting the speed of a racing animal;
- falsifying or making false statements in regard to the racing record, pedigree, identity, or ownership of a racing animal;
- knowingly passing or attempting to pass an altered or forged parimutuel ticket; or
- using any animal or fowl in the training of racing greyhounds. (K.S.A. 74-8810)

Organization Licensees

Under the act, only nonprofit organizations may be licensed to conduct races and the licenses may be for an exclusive geographic area. All persons working in the parimutuel operation are required to be employees of the nonprofit organization. Officers, directors, or members of organization licensees, other than county fair associations, are prohibited from having direct or indirect financial interest in a racetrack during or for five years immediately following the member's term with the licensee and are prohibited from receiving compensation in excess of that provided by law for most state boards and commissions. Those individuals are also prohibited from entering into business dealings with the licensee or, as private individuals, with a facility owner licensee, facility manager licensee, or concessionaire. Officers, directors, and members of organization licensees other than county fair associations are prohibited from betting on races held in Kansas. (K.S.A. 74-8813)

Organization licenses may be issued for a maximum

of 25 years and must be reviewed annually. (K.S.A. 74-8813(e) and (i)) Changes in ownership or control or contracts of licensees require Commission approval. (K.S.A. 74-8813(m))

The Commission is authorized to suspend or revoke an organization license or impose a fine up to \$5,000 or both for violations of the act including:

- one or more, or a pattern of repeated violations, of the provisions of the act or rules and regulations of the Commission;
- failure to follow one or more provisions of the licensee's plans for the financing, construction, or operation of a racetrack as submitted to and approved by the Commission;
- failure to remain in compliance with qualifications for licensure under the act;
- failure to maintain or make available to the Commission financial and other records sufficient to permit the Commission to verify the licensee's nonprofit status and compliance with the act or rules and regulations of the Commission;
- providing to the Commission any information material to the issuance, maintenance, or renewal of the license knowing the information is false or misleading;
- failure to meet the licensee's financial obligations incurred in connection with the conduct of a race meeting; or
- a violation of K.S.A. 74-8833 or rules and regulations adopted pursuant to that section. (K.S.A. 74-8813(j))

All contracts and agreements proposed by the licensee and plans for construction of racetracks must be approved by the Commission. (K.S.A. 74-8813(n)) Licensees may conduct races only within a single county that approved the parimutuel racing amendment at the November, 1986 general election. (K.S.A. 74-8813(c)(5))

No officers, stockholders, directors, employees, or agents of the licensee could ever have been convicted of racing or gambling offenses, sale or possession of controlled substances, operation of any illegal business, repeated acts of violence, or

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any felony. (K.S.A. 74-8813(c)(6))

Application and License Fees

For organizations other than county fair associations, an application fee of \$5,000 is required for a license to conduct horse or greyhound races at which parimutuel wagering is conducted. The application fee for a license to conduct horse races without parimutuel wagering is \$500. (K.S.A. 74-8813(a))

A license fee of \$200 for each day of racing also is required. (K.S.A. 74-8813(g)) County fair associations applying for organization licenses to conduct only harness racing without parimutuel wagering will be charged \$50 and no license fee will be charged for less than ten days of racing. (K.S.A. 74-8814(b))

The Commission is required to establish in rules and regulations an application fee that does not exceed \$500 and a license fee of \$100 per racing day for county fair associations that conduct no more than two race meetings per year for a total of 21 or fewer racing days in the county where the association is located. The lower application and license fees also apply to the associations at Eureka Downs or Anthony Downs for the number of meetings and days specified by the Commission. (K.S.A. 74-8814(a) as amended by 1989 H.B. 2564)

Licensure Investigations

The Racing Commission is authorized to charge certain license applicants for the cost of pre-licensure investigations. Fees in addition to the application fee, if any, are assessed against applicants for organization, facility owner, and facility manager licenses. The Commission is prohibited from issuing a license until all such fees are paid. (K.S.A. 74-8813 and 74-8815)

The Racing Investigative Expense Fund is created as the repository for the fees collected. The Commission is required to pay all investigation expenses from the fund including those expenses incurred by other state agencies that assist in an investigation. (K.S.A. 74-8835)

KBI Investigation Reports

The act authorizes the Kansas Racing Commission to recess into a closed or executive meeting to receive and discuss criminal history background investigation information about applicants for licensure. Negotiations with applicants regarding criminal history information may also be conducted in closed

session.

The act makes disclosure of information received in closed session a class A misdemeanor and grounds for removal from office, termination of employment, or denial, revocation, or suspension of any license issued by the Commission. However, disclosure of such information at a hearing held under the authority of the Kansas Parimutuel Racing Act is not prohibited. (K.S.A. 74-8804(n)) (Note: Access to expunged records is allowed to determine qualifications for executive director of the Commission, employment with the Commission, licensure, renewal of licensure, or continued licensure by the Commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director. (K.S.A. 21-4619))

**Distribution of Profits to
Charity**

Organization licensees, other than county fair associations, are required to distribute all of their net earnings (except amounts necessary for debt service and track maintenance) to other nonprofit, tax exempt, charitable, Kansas organizations that must spend the funds in Kansas. Licensees are prohibited from distributing more than 25 percent of their net earnings during any one year to any one organization. (K.S.A. 74-8813(d)(1))

**Applicants Who Will Build
a Track**

Applicants for organization licenses who propose to construct a racetrack and applicants for facility owner licenses are required to pay a deposit of \$500,000 for 150 racing days or more or a deposit of \$250,000 for less than 150 racing days. The Commission is authorized to establish a lesser deposit for county fair associations and the licensee operating races at the state fairgrounds. The deposit is to be refunded if the application is denied or when the terms of the license are met. If a licensee fails to meet the terms of the license, the deposit is forfeited. (K.S.A. 74-8813(b) and 74-8815(d))

Applicants for organization or facility owner licenses who propose to construct a track are required to submit a plan for financing with the application. The Commission is specifically authorized to approve the plan for financing as part of the licensing procedure, to reject applications based on the financing proposal, and to suspend or revoke a license if the approved financing plan is not followed. The Commission also is authorized to issue a conditional license pending proof of financing. The duration of the conditional license will be set by the Commission. (K.S.A. 74-8813(c) and 74-

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8815(e))

Facility Owner and Facility
Manager Licenses

The Commission is authorized to issue facility owner licenses to individuals, the State of Kansas, or any of the state's political subdivisions. The Commission is also authorized to issue facility manager licenses to any person who meets the legal requirements. The licenses may be issued for a maximum of 25 years. The application fee for either is \$5,000. (K.S.A. 74-8815)

Administrative Procedure
Act

The act exempts the original grant or denial of an organization, facility owner, or facility manager license from the provision of the Administrative Procedures Act (APA). The bill makes the original grant or denial of one of those three licenses a matter to be determined at the sole discretion of the Commission.

Any appeal of a Commission decision would be made directly to the Supreme Court in accordance with the act for Judicial Review and Civil Enforcement of Agency Actions. The scope of the Court's review would be limited to whether the action of the Commission was arbitrary or capricious or constituted an abuse of discretion. All competing applicants for a license would be party to the appeal. Refusal to renew one of the three types of license is subject to the APA.

Occupation Licenses

Any person working on the track including an owner of racing animals is required to have an occupation license issued by the Commission. Occupation licenses may be issued for a period of up to three years and the maximum license fee is \$200. The Commission has broad authority to conduct background examinations of applicants for occupation licenses. (K.S.A. 74-8816)

Concessionaire Licenses

All concessionaires and businesses that operate within the racetrack facility must be licensed by the Commission. The procedures and requirements are similar to those for occupational licensees. The Commission is authorized to establish a schedule of application fees and license fees based on the size of the business. A concessionaire license may be issued for a period up to ten years. (K.S.A. 74-8817)

Takeout

A minimum of between 78 and 82 percent of the total parimutuel wager pool, depending upon the type of wagers, is to be returned to bettors. The remainder of the pool, known as the takeout, is

used to pay purses to race winners and taxes to the state, with the balance going to the organization licensee. (K.S.A. 74-8819)

Purses

Minimum purses for greyhound races must total 4/18 of the takeout and minimum purses for horse races must total 6/18 of the takeout. (K.S.A. 74-8819)

Taxes

The tax rate on greyhound races conducted at single purpose tracks is 3/18 of the takeout for the first through fourth years of racing, 4/18 for the fifth year, and 5/18 for the sixth and subsequent years. At dual tracks the tax rate on greyhounds is 3/18 of the takeout for the first through seventh years, 4/18 for the eighth and ninth years, and 5/18 for the tenth and subsequent years. The tax rate on horse races is 3/18 of the takeout at any type of facility. (K.S.A. 74-8823)

The tax revenue is deposited in the State Racing Fund. (K.S.A. 74-8826)

A 10 percent tax is imposed on admission charges. Revenue from the admissions tax is also deposited in the State Racing Fund. (K.S.A. 74-8824)

An additional \$.20 per admission is imposed on all admissions, whether paid or unpaid, to tracks exempt from local property taxes. The tax is remitted to the state for disbursement to the county or city and county in which the racetrack is located. (K.S.A. 74-8824(b))

Dual Tracks

Provisions regarding dual tracks include:

- a penalty of 2 percent of the daily handle from the opening of the track to the originally specified completion date that would be imposed for failure to complete an approved dual facility;
- facility owners or organization licensees authorized to build a dual facility will have their licenses revoked if facilities are not built according to plans approved by the Commission; and
- organization licensees granted licenses for dual tracks are required to conduct horse races on no less than 20 percent of their approved annual racing days.

At dual tracks, the tax rate on greyhounds is 3/18

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of the takeout for the first through seventh years, 4/18 for the eighth and ninth years, and 5/18 for the tenth and subsequent years. Other provisions regarding dual tracks include: a penalty of 2 percent of the daily handle from the opening of the track to the originally specified completion date that would be imposed for failure to complete an approved dual facility; facility owners or organization licensees authorized to build a dual facility would have their licenses revoked if facilities are not built according to approved plans.

State Racing Fund/Gaming Revenue Fund

The act creates the State Racing Fund in the State Treasury. With the exception of the \$.20 admission tax and amounts collected to cover investigative expenses, all taxes, application fees, license fees and fines collected by the Commission are credited to the State Racing Fund. Operators of the Commission are paid from the fund. Any amount in the State Racing Fund in excess of the amount required for operating expenditures and an adequate fund balance will be transferred to the Gaming Revenue Fund on January 15, 1990, on the 15th of every month thereafter, and at other times as provided by law. (K.S.A. 74-8826)

Horse Breeding Development Fund and Greyhound Breeding Development Fund

The Kansas Horse Breeding Development Fund and the Kansas Greyhound Breeding Development Fund are created. Revenue for the two funds will be derived from unclaimed winning ticket proceeds and breakage (the result of rounding off odd cents on paybacks to bettors). (K.S.A. 74-8829 and 74-8831) Expenditures from the funds will be for supplemental purses for Kansas bred animals and for research, and 15 percent of the greyhound fund will be provided to the Department of Commerce for the promotion of greyhound-related tourism. In addition, the Commission is authorized to expend up to \$30,000 per fiscal year from the Greyhound Breeding Development Fund to pay a portion of the administrative expenses of the official registering agency designated by the Commission.

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TOPEKA

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SPEAKER PRO TEM

February 22, 1990

Testimony before the House Federal & State Affairs Committee on
 House Bill 2299.

I am here today to testify on behalf of House Bill 2299. I introduced this bill last year as the result of my son receiving a model of a .45 caliber pistol as gift. While I thought the gift was certainly an appropriate one, I was concerned about it being so authentic. This model was so realistic that just by looking I could not tell the difference between the model and a real .45 pistol when they were placed side by side.

I then started to notice incidents involving imitation firearms and law enforcement where officers did not know the weapons they were facing were replicas. Unfortunate incidents where officers have fired in self-defense against imitation guns have happened all over the country, including here in Kansas.

My concern for the safety of the public and the safety of law enforcement officials led me to introduce the bill. I did not feel safe carrying this replica around, and anyone seeing an imitation like this in public would have to be worried. Law enforcement is also concerned when these are shown in public, as is demonstrated by the article in the Topeka Capital-Journal of February 17, 1990. An article ran describing an incident where students were playing the "Assassination" game using

realistic pistols. People seeing these students carrying these guns in public then called the police, and the police responded. Other incidents in Topeka involving imitation firearms were also described in the article.

I would again remind the committee that the purpose of this bill is to reduce the threat of an accident involving these life-like weapons. The threat involves the public, especially young people, and it involves the safety of law enforcement officials. Law enforcement has to face many risks in their day to day routine, I don't think they should have to face this one.

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Topeka & Shawnee County

Gun game worries local police

By STEVE FRY

Capital-Journal law enforcement writer

A game played by area teens in which they stalk each other armed with detailed toy reproductions of a semiautomatic pistol greatly worries Topeka police Maj. Lee Sipes.

About 8 a.m. Feb. 6, police were sent to the 2500 block of Tidewater to find two youths armed with pistols. Callers told police the two were standing next to a car.

Before police arrived, the two boarded a school bus and left the area, patrol Capt. Duane Tegethoff said. Police later learned the youths were students at Shawnee Heights High School, which draws some students from Topeka city limits.

In the game, which is dubbed "Assassination," teams ambush one another. A team member is "eliminated" from the game when he's struck by a pellet fired from an opponent's toy pistol. Also called the "Tag Game," the winner of a game is the team that survives the ambushes.

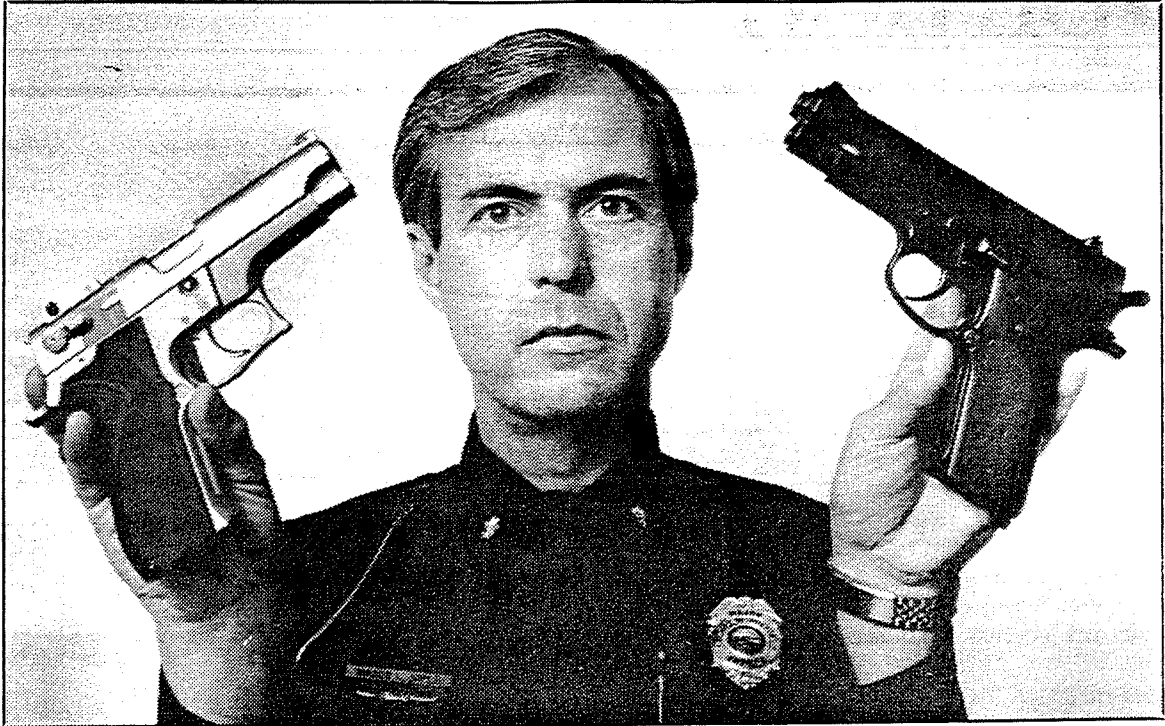
Sgt. Richard Johnson, head of the police crime prevention unit, said that before each game begins, ground rules are set, including locations where the game is suspended and a deadline to end the game. To participate in each game, a player must pay a "tuition fee," which pays for a prize for the winner, Johnson said. Teams may have two, four or more members.

Sipes, head of the patrol division, said police learned that Shawnee Heights students have 15 or 16 teams playing the game. Cpl. Phil Morrell, school liaison officer, said he understands that the game is being in all the school districts in Shawnee County.

At least some of the toy pistols are modeled on the Smith & Wesson Model 59 semiautomatic, a 9mm handgun. The black metal and plastic toy has "a slide action, a clip, a safety — it's all the same as the Model 59 semiautomatic down to the serial number engraved on the side," Sipes said. Powered by a spring, the replica fires plastic pellets that load into plastic shells. The empty shells are ejected after firing.

"If someone pointed one of those at me, I'd swear they were pointing a 9mm," Sipes said.

"My concern is that one of my



—Staff/Paul Beaver

Topeka police Maj. Lee Sipes displayed a realistic toy pistol used by some area teens in a game called "Assassin" and a real pistol. The

toy is on the right. Police fear a teenager could be harmed by police or homeowners who mistake one of the toys for a weapon.

officers might encounter one of these students, not be aware of the game and act accordingly," Sipes said. If the student points the toy at an officer, "you're expecting the officer to make a split-second decision on whether the student is telling the truth (that the gun is a toy)."

The game carries other potential dangers. A player's eyesight could be damaged if he is shot in the eye with a pellet, Sipes said. The other danger is that a player carrying one of the pistols could be shot by a homeowner, he said.

Tegethoff said the game isn't against the law. However, he said he thought the realistic toy guns "ought to be outlawed."

John Waugh, principal at Shawnee Heights High School, said students there are forbidden to bring the toy guns onto school grounds.

"About four or five years ago we made it real clear to our students that they would be subject to school disciplinary rules" ranging from a

conference with parents to expulsion, Waugh said.

About three years ago, a toy gun was spotted on the seat of a student's car at the school. The toy gun was confiscated, a parental conference was held, and the toy was returned to the student's parent, Waugh said.

Marvin Bonjour, chief of security at Topeka Public Schools, said Topeka schools haven't had any incidents involving toy firearms.

Besides the Feb. 6 incident, there have been other problems in Topeka with realistic toy guns:

- On March 28, 1989, a Topeka police officer and a Shawnee County sheriff's deputy disarmed a 14-year-old boy walking in a southeast Topeka neighborhood of what appeared to be an automatic assault pistol and a semiautomatic pistol. Both toys resembled 9mm firearms. Police seized the toy guns, and the youth was released to the custody of his mother.

- Police officers last summer reported seeing at least two teenagers carrying the realistic-looking toy pistols in shoulder holsters at White Lakes Mall. "They were fully decked out," Brown said the officers told him.

- On Oct. 21, 1987, a 29-year-old man was shot and killed after he pointed a toy pistol at police officers surrounding the man's house in the 300 block of Grattan. The man had repeatedly pointed the toy pistol at officers before he was fatally wounded with a shotgun blast fired by one of about 20 officers present.

According to a U.S. Department of Justice study released in December, 105 incidents have occurred since 1985 in which officers have used force in the belief that a toy gun was a real gun. The study, based on responses from 31 law enforcement agencies, didn't specify how many people were killed or wounded in the incidents.

KANSAS PEACE OFFICERS ASSOCIATION
January 22, 1990

House Bill No. 2299

Madam Chairman and members of the committee:

My name is Helen Stephens, representing approximately 7000 members of the Kansas Peace Officers Association. Thank you for the opportunity to speak to you today.

We are here to support passage of HB 2299. Imitation firearms have caused needless death and/or injury around the nation when used in various crimes by juveniles. To date, this has not happened in Kansas and we hope it never will.

Wichita has had a close call. Two undercover officers interrupted a college "war game" involving the use of imitation firearms, but disaster was averted due to their undercover role. What would have happened if a uniformed, on duty officer was taken by surprise? In some parts of Kansas, these war games are now being played by high school students.

Imitation firearms have no place in our everyday society -- especially for children. One of any law officer's fears is the innocent child coming out of nowhere pointing a firearm at a citizen or a law enforcement officer and having that firearm mistaken for a real one. Law enforcement is trained to respond to potential danger, but when faced with a weapon pointed at you (whether in broad daylight, at dusk or dawn, or by the light of a street lamp), some imitation firearms look exactly like the real thing and the seconds available for response do not allow for hesitation. If hesitation is there, death or injury could come to an innocent bystander or the law enforcement officer. By not hesitating, the loss of or injury to an innocent child could occur.

We urge your support of House Bill 2299.

**POLICE ENCOUNTERS WITH TOY GUNS:
CRITICAL FINDINGS**

**A SUMMARY OF A PROJECT MANDATED BY THE
UNITED STATES CONGRESS**

December 1989

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**POLICE EXECUTIVE RESEARCH FORUM
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This project was funded by Grant Number 89-BJ-CX-K012 awarded by the Bureau of Justice Statistics, U.S. Department of Justice to the Police Executive Research Forum, Washington, DC. BJS Project Monitor, Dr. Paul White.

WHY WAS THIS RESEARCH PROJECT CONDUCTED?

The project was mandated by the United States Congress in Public Law 100-615. The primary intent of the law was to provide definitive markings on toy and imitation guns to minimize the probability of the gun being mistaken for a real firearm. Among other provisions, the law established marking standards and required that research be conducted to explore the nature of crimes committed by toy guns as well as issues concerning armed confrontations with police where toy guns were involved. The Congressional mandate stipulated that the research would be funded by the Bureau of Justice Statistics, U.S. Department of Justice. Effective June 1, 1989, the Police Executive Research Forum was awarded the grant contract for the project.

WHAT WAS THE GOAL OF THE "TOY GUN RESEARCH PROJECT"?

A primary goal of the project was to document (a) the number of crimes committed by imitation guns and (b) the number of confrontations by police with persons who had imitation guns which were either thought to be or purported to be real.

HOW WAS THE RESEARCH PERFORMED?

The research process began with a comprehensive search of news stories reporting any toy gun incidents. These were reviewed to ascertain issues and trends in the incidents. Based upon this, a conceptual framework for the problem was developed as the basis for data collection. Information was gathered from two primary sources: survey research and site visits at law enforcement agencies.

Survey Research. A survey was developed which collected data on the experiences of police departments with toy gun incidents. The survey was sent to all municipal police and consolidated police departments serving populations of 50,000 or more inhabitants; all sheriff's departments with 100 or more sworn employees; and all primary state police agencies. The total survey response rate was 70% with a usable response rate of 65.5%

Questions on the survey solicited information about the police agencies' experiences with officers using deadly force and less than deadly force against people with imitation guns as well as information on robberies and assaults wherein imitation guns were involved. This information was solicited in three different categories of imitations: toy guns; replica guns; and BB, pellet and starter's guns. The survey also asked a series of opinion questions to police chiefs on issues related to imitation gun incidents and markings on toy guns.

Law Enforcement Agency Site Visits. The purpose of the site visits was to examine experiences and incidents of law enforcement agencies on a detailed basis. The site visits were conducted in "clusters" to maximize data collection. Agencies were identified through news reports and/or self-reports which indicated experiences with imitation gun incidents. These departments would serve as the foundation for the visits with additional departments in the region also visited to discuss their experiences with toy guns. This approach worked quite well giving the researchers a broader range of site experiences on which to base discussions of trends. Beyond experience with toy gun incidents, criteria for site selection included jurisdiction size, geographic distribution, and agency type. A total of 27 law enforcement agencies were

visited for the project including municipal police, consolidated law enforcement, county sheriff's departments, state agencies, and federal agencies.

WHAT WERE THE CHARACTERISTICS OF POLICE-TOY GUN ENCOUNTERS?

As the problem and issues were examined, it was determined that in order to meet the spirit of the study's mandate, the problem would have to be broken down into more operational components. Broadly viewed, circumstances involving toy guns can be categorized for study based on the *nature of the incident or nature of the weapon.*

Nature of the Incident...

- *Commission of a crime* with an imitation gun being intentionally used as an instrumentality of the crime.
- *Mistaken encounters* when a citizen and/or officer encountered a person with a toy gun but, as a result of the gun's appearance and the circumstances of the incident, the people involved reacted as if the gun was real.
- *Officer-involved shootings in non-criminal situations* where the circumstances facing the officer reasonably appeared threatening and/or criminal.
- *Commission of a crime and/or the brandishment of a toy gun as a real weapon resulting in an officer involved shooting.* In these cases the suspect was involved in a crime (or a criminal attempt) and attempted to dissuade officer intervention by acting as if the imitation weapon was real.

Nature of the Weapon...

- *Toys.* These are imitation weapons designed with the specific intent for playing. They include a wide array of game types such as a child using the toy in concert with his/her imagination (e.g., "cops and robbers"); the use of waterguns; toy guns designed for some type of "target practice"; and the more sophisticated games such as "laser tag".
- *Pneumatic Guns.* Types of guns using pneumatic pressure to propel some type of projectile. The propellant system may be either through an internal pump, hand operated by the person using the gun or one using a compressed CO₂ air cartridge.
- *Replica Guns.* Guns that are *replicas* of actual weapons. Replica guns are full size "working" reproductions of firearms. Replicas are manufactured so they are unable to fire.

WHAT ARE THE MAJOR FINDINGS?

- The requirement that a "blaze orange" plug recessed in the barrel of a toy gun no more than six millimeters has virtually no protective impact in alerting the officer or robbery victim that the object is a toy. The reason for this is that a person's concentration is not on the weapon, per se, and certainly not on the interior barrel of the weapon.

- On an average it was estimated that 15% of all robberies were committed with imitation guns.

- Persons interviewed felt, in light of the above factors, that most weapons' markings would be insufficient **particularly in low light conditions**. Rather, configuration of the weapons into distinctive shapes would be the best marking alternative.

- Pneumatic guns and realistically shaped toy guns pose the greatest threat to mistakes in the use of force by the police.

- The proliferation of real guns is affecting the way people act with toy guns. The proliferation of real guns on the street also makes police officers far more cautious in dealing with anyone who may be in possession of what appears to be a gun.

- Police officers are trained to *assume that any weapon they confront is real and that it is loaded*. To add another element of police training asking officer to look for distinctive markings of toy guns in a weapons encounter is an officer safety factor which should **not** be part of police training.

- During site visits officers discussed one "Shoot/Don't Shoot" training scenario where a suspect appears with a gun and says something to the effect, "don't shoot, it's a toy." When the officer relaxes, the suspect shoots the officer. This is one illustration of training and why officers are taught to assume that all objects that look like a firearm are real weapons.

- Officers pointed out that many people with real handguns have the front sight ramp colored orange to aid in aiming the weapon. This could be a confusing element to an officer in light of the orange toy gun markings. Our research found that a number of handgun manufacturers offer optional barrels for handguns wherein the front sight is colored red or orange.

- Training officers to look out for markings on toy guns was also feared to be a factor which could complicate police liability should a toy gun related shooting occur (e.g., civil rights complaint OR allegation of negligent training.)

- In all the cases we examined where officers used deadly force against a person who turned out to be carrying a toy gun, we found that officers followed police procedure properly. No investigations resulted in criminal charges or discipline.

- In several cases civil rights lawsuits were filed against the police department with the allegations typically being:

- Negligent selection
- Failure to supervise
- Failure to train
- Negligent entrustment

- Drug Enforcement Administration agents have reported seizing toy guns (most frequently water guns replicating Uzi and Tech 9 weapons), air guns, and replicas during drug raids. Nearly all such items were seized at "crack houses".

- Bureau of Alcohol, Tobacco, and Firearms agents have reported encountering replicas, starter's pistols, and some BB and pellet guns which have been seized. Generally, BATF agents have encountered these items either in "task force drug raids" or as a result of law enforcement officers bringing the weapons to ATF for inspection.

- "Victims" in the shooting incidents included: the deceased, the family of the deceased, the officer, the officer's family, and the citizen(s) who called the police on the suspicious person.

WHAT WERE THE CIRCUMSTANCES IN CASES WHERE POLICE OFFICERS USED DEADLY FORCE IN MISTAKING AN IMITATION GUN FOR A REAL WEAPON?

The research indicates that in cases where officers have used deadly force against a person with an imitation gun, five factors cumulatively interact which affect the officer's decision to fire.

- **The Nature of the Call Dispatch.** The information given to the officer from the dispatcher, the tone of the dispatcher's voice, and the locale of the call can all contribute to both heightened awareness and heightened stress inferring a life-threatening incident at the call.

- **Expectations of the Officer.** Based on the information received from the dispatcher, knowledge of problems in the area, nature of the neighborhood, observations of the officer enroute to the call, and a wide range of other experiential factors, the officer develops defined expectations of what might be encountered at the scene of the call. Usually, as a safety factor, the "worst case scenario" is expected.

- **Environment at the Scene of the Incident.** Upon arriving at the scene of the call or incident, the officer will evaluate the behavior of the "players" and observations of possible threats. These build on both the nature of the dispatch and the officer's expectations and can place the officer in a situation wherein the likelihood of using deadly force will increase.

- **Shape/Design of the Gun.** A finding repeated in every incident was that the shape or design of the gun was a paramount factor in the officer's decision to shoot. Many of the imitation guns are modeled after real weapons. Even those made of plastic and with some degree of coloration are frequently indistinguishable from real guns, particularly under low light conditions.

- **Actions of the Person(s) Involved in the Incident.** In the shooting incidents examined by the researchers, the factor ultimately influencing the officers' decisions to shoot was the actions of the individual. The actions were more than simply pointing the weapon, but included such things as overt threatening movements, shouting, and even acting like they were going to shoot at the officer.

SUMMARY OF SURVEY RESULTS

NUMBER OF REPORTED IMITATION WEAPONS SEIZED BY POLICE SINCE JANUARY 1, 1985

	Number
Toy Guns	10,065
Replica Weapons	2,478
Pneumatic Guns	<u>19,107</u>
TOTAL	31,650

ROBBERIES COMMITTED BY IMITATION GUNS BASED ON GUN TYPE AND YEAR

	Toy ^a	Replica ^b	Pneumatic ^c	TOTAL
1989*	443	181	406	1,030
1988	753	253	612	1,618
1987	665	179	499	1,343
1986	482	159	384	1,025
1985	453	164	21†	638
TOTAL	2,796	936	1,922	5,654

* 9 months

^aBased on 148 agencies reporting robberies known to have been committed with a **toy** gun.

^bBased on 80 agencies reporting robberies known to have been committed with a **replica** gun.

^cBased on 158 agencies reporting robberies known to have been committed with a **pneumatic** gun or **starter's** pistol.

†Based on the quantitative trends this number appears to be under reported, however, a review of the data received did not detect an anomaly.

**ASSAULTS COMMITTED BY IMITATION GUNS
BASED ON GUN TYPE AND YEAR**

	Toy ^a	Replica ^b	Pneumatic ^c	TOTAL
1989*	567	128	693	1,388
1988	686	213	1,188	2,087
1987	601	120	935	1,656
1986	615	124	780	1,519
1985	635	110	733	1,478
TOTAL	3,104	695	4,329	8,128

* 9 months

^aBased on 121 agencies reporting assaults known to have been committed with a **toy** gun.

^bBased on 65 agencies reporting assaults known to have been committed with a **replica** gun.

^cBased on 154 agencies reporting assaults known to have been committed with a **pneumatic** gun or **starter's** pistol.

**INCIDENTS WHERE AN OFFICER HAS WARNED OR
THREATENED THE USE OF FORCE BASED ON THE
BELIEF THAT AN IMITATION GUN WAS A REAL GUN
STRATIFIED BY GUN TYPE AND YEAR**

	Toy ^a	Replica ^b	Pneumatic ^c	TOTAL
1989*	91	59	113	263
1988	106	59	124	289
1987	72	103	106	281
1986	61	28	67	156
1985	55	23	61	139
TOTAL	385	272	471	1,128

*9 months

^aBased on 82 agencies reporting incidents known to have been committed with a **toy** gun.

^bBased on 32 agencies reporting incidents known to have been committed with a **replica** gun.

^cBased on 72 agencies reporting incidents known to have been committed with a **pneumatic** gun or **starter's** pistol.

INCIDENTS WHERE AN OFFICER HAS USED ACTUAL FORCE (DEADLY OR LESS THAN DEADLY) BASED ON THE BELIEF THAT AN IMITATION GUN WAS A REAL GUN STRATIFIED BY GUN TYPE AND YEAR

	Toy ^a	Replica ^b	Pneumatic ^c	TOTAL
1989*	16	6	23	45
1988	31	14	27	72
1987	45	10	31	86
1986	7	1	18	26
1985	6	4	13	23
TOTAL	105	35	112	252

*9 months

^aBased on 31 agencies reporting incidents known to have been committed with a **toy** gun.

^bBased on 15 agencies reporting incidents known to have been committed with a **replica** gun.

^cBased on 39 agencies reporting incidents known to have been committed with a **pneumatic** gun or **starter's** pistol.

QUESTION: How serious is the issue of officers potentially mistaking toy guns for real guns?

	Number	Percentage
1=Very Serious	213	48.2
2=Moderately Serious	102	23.1
3=Somewhat Serious	69	15.6
4=Marginally serious	28	6.3
5=Not Serious	30	6.8

MEAN RESPONSE = 2.00 (N=442)

QUESTION: In your opinion, do the police face a problem with toy guns that look real?

	Number	Percentage
Yes	384	86.9
No	58	13.1

(N=442)

QUESTION: In your opinion, to what extent are toy guns **used** in crimes?

	Number	Percentage
1=Very Frequently	8	1.8
2=Frequently	21	4.8
3=Occasionally	75	17.0
4=Seldom	169	38.3
5=Very Seldom	168	38.1
MEAN RESPONSE = 4.06 (N=441)		

QUESTION: What do you believe the probabilities are for **increasing** involvement of toy guns in crimes in your jurisdiction?

	Number	Percentage
1=Very Probable	27	6.1
2=Moderately Probable	66	15.0
3=Somewhat Probable	153	34.8
4=Marginally Probable	129	29.3
5=Not Probable	65	14.8
MEAN RESPONSE = 3.32 (N=440)		

LAS VEGAS, NEVADA - Two officers were responding to a "shots fired" call when they observed a vehicle matching the description of the suspect vehicle in the shooting call. The officers stopped the car which was occupied by six juveniles and turned out *not* to be the car involved in the call. As the officers approached the car, a 16 year old female in the rear seat pointed a "very realistic" revolver at one of the officers and yelled "bang". The revolver was a toy. One officer commented, "She will never come closer to dving."

QUESTION: How serious is the potential for realistic looking toy guns to be used in the commission of crimes?

	Number	Percentage
1=Very Serious	94	23.7
2=Moderately Serious	88	22.2
3=Somewhat Serious	85	21.2
4=Marginally serious	95	23.9
5=Not Serious	35	8.8
MEAN RESPONSE = 2.72 (N=397)		

QUESTION: How serious is the potential for realistic looking toy guns to be a threat to children playing with toy guns?

	Number	Percentage
1=Very Serious	67	17.0
2=Moderately Serious	88	22.3
3=Somewhat Serious	119	30.1
4=Marginally serious	86	21.7
5=Not Serious	35	8.9
MEAN RESPONSE = 2.83 (N=395)		

SAN FRANCISCO, CALIFORNIA - Officers responding to a silent alarm at a high school found an open door. After they entered the school, they found a candy machine which had been broken into. They then heard a crash and went to investigate. One officer, seeing a suspect walk through a room, went to "trap" him. As he stepped in a room the person pointed a gun at the officer's head, the officer turned and fired killing the individual. The officer swore the gun was a .357 Colt Python since the officer owns two of the weapons. It wasn't until the officer saw the gun had broken apart when it fell to the floor that he discovered the weapon was actually a pellet gun modeled to look like the Colt Python.

QUESTION: How serious is the potential for realistic looking toy guns to increase police officer stress?

	Number	Percentage
1=Very Serious	111	27.9
2=Moderately Serious	127	31.9
3=Somewhat Serious	89	22.3
4=Marginally serious	48	12.1
5=Not Serious	23	5.8
MEAN RESPONSE = 2.36 (N=398)		

QUESTION: How serious is the potential for realistic looking toy guns to make children lose respect for real guns?

	Number	Percentage
1=Very Serious	165	37.7
2=Moderately Serious	107	24.5
3=Somewhat Serious	96	22.0
4=Marginally Serious	39	8.9
5=Not Serious	30	6.9
MEAN RESPONSE = 2.23 (N=437)		

QUESTION: Do you believe a "blaze orange" barrel plug will be sufficient to identify a toy gun from a real gun?

	Number	Percentage
Yes	96	22.4
No	332	77.6

QUESTION: What one or two types of toy gun markings do you feel would be more effective than a "blaze orange" barrel plug?

	Number
Make toy gun transparent or translucent	116
Color entire surface of gun a bright color	176
Make gun surface white with bright color	65
Limit degree toy can look like real gun	242
Ban toy guns	44

QUESTION: Legislation requiring distinctive markings on toy guns will not increase police department liability if an officer is involved in the shooting of a person with a toy gun.

	Number	Percentage
1=Strongly Agree	33	7.7
2=Agree	44	10.2
3=Undecided	128	29.8
4=Disagree	125	29.0
5=Strongly Disagree	100	23.3
MEAN RESPONSE = 3.50 (N=430)		

RANCHO CUCAMONGA, CALIFORNIA - Late one evening a citizen called the San Bernardino County Sheriff's Office reporting prowlers at a school who were possibly armed. Deputies responded to the school and began a systematic search of the premises. They observed profiles of people moving around the school as if they were stalking. One deputy, armed with a shotgun, looked around a corner and saw a person approaching with a weapon in hand that appeared to be a "Desert Eagle" automatic pistol. As the man approached the officer yelled and ordered the man to drop the gun. Instead, the man turned, assumed a shooting position, and appeared to fire at the officer. The deputy fired the shotgun, spinning the man around. The man turned back in a shooting position again and the deputy fired a second shotgun round, killing the man. As the officer approached the downed man, he kicked the gun out of his hand and "heard the sound of plastic". At that point the deputy learned the

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gun was a toy and that the man had been playing "Laser Tag". Because of the psychological trauma of this incident, the deputy, a seven year veteran with a good service record, remains on disability leave and will probably not be able to return to duty. In addition, two trained reserve deputies who responded to the call at the school, resigned their commissions as a direct result of the trauma of this incident.

QUESTION: A reasonable likelihood exists that criminals will paint real handguns with markings similar to toy guns to disguise the weapon.

	Number	Percentage
1=Strongly Agree	94	21.6
2=Agree	87	19.9
3=Undecided	94	21.6
4=Disagree	103	23.6
5=Strongly Disagree	58	13.3

MEAN RESPONSE = 2.87 (N=436)

TESTIMONY OF
OFFICER RICK SABEL
FRATERNAL ORDER OF POLICE
LODGE #3
FEBRUARY 22, 1990
HOUSE BILL 2299

I am here today to testify on behalf of House Bill 2299. The Fraternal Order of Police Lodge #3 fully supports this bill. One reason we support such a bill is because of a situation that occurred approximately two and one-half years ago. This is a brief explanation of what occurred that night.

In October of 1987, in the 500 block of Grattan, I was dispatched with another officer to take a theft report from a citizen who implicated his son as the thief. An argument ensued between the complainant and officers because we would not arrest his son for the theft of some of the complainants money. We finally left the house after we explained the situation to the complainant and his son. This occurred at approximately 11:30 p.m. In approximately two hours the situation became heated with the father and son involved in the argument. We were sent by dispatch to return to the house and we were also informed that the son was armed with a gun. When we arrived at the scene the son was ranting and raving, screaming and yelling at officers as we approached the house. We also observed the subject holding a black gun in this right hand. Eventually more than 20 officers responded to the scene and a stand off continued for more than two hours. During this period of time the subject ran out the front door on numerous occasions threatening officers and waving the black gun at different officers. The subject would then run back into the house only to exit a few minutes later to scream and yell at officers and wave the gun around. Eventually, this subject exited the house waving the gun as an officer was changing positions. This officer felt extremely threatened when this subject pointed the gun at him and out of self defense fired his shotgun at the subject killing him instantly. I was the second person to reach the subject when another officer pulled the weapon from him. The weapon was a Beretta 9mm. The only problem that existed was the weapon was a plastic version of the Beretta 9mm.

The Topeka Police Department has encountered several situations like this in the past year and a half where a person easily could have been shot by officers because they brandished a realistic toy weapon. Situations like this will continue to occur as long as there are plastic guns being manufactured that closely resemble real guns and are available to the general public. Officers on the street have a split second to make a decision and react to someone pointing a gun at them. Any hesitation to react on the part of the officer could result in injury or death to the officer or the innocent bystander that we as law enforcement officers are sworn to protect.

The main concern of the Fraternal Order of Police Lodge #3 has is that there is no place in society for these types of guns. Manufacturers have the ability, capability and resources to make toys for our children that do not closely resemble the types of weapons that are killing members of our society at an increasingly alarming rate each and every year.

We feel this is a well written bill in that the availability of these realistic toy weapons will still be accessible to certain segments of our society. The general public however, will not have the accessibility to these toys that they enjoyed in the past.

The violence we all watch on television has a huge effect on our children. They are the ones we are genuinely concerned about. These programs on television also have a big effect on adults. Many people have a hard time distinguishing between fact and fiction and by restricting the accessibility of all people to these types of toys may in fact save someone's life. Possibly someone you know or care about.

Therefore, the Fraternal Order of Police Lodge #3 fully supports the passage of House Bill 2299 and we would appreciate your consideration of this matter.

TESTIMONY
BEFORE THE
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
ON
HB 2299
BY
STEVEN F. KEARNEY
OF
PETE MCGILL & ASSOCIATES
ON
FEBRUARY 22, 1990

Chairman Barr and Committee Members:

I am Steve Kearney with Pete McGill & Associates and we are appearing here today on behalf of the Kansas State Troopers Association in support of House Bill 2299.

The Troopers Association recognizes the dangers involved in the wide manufacture and distribution of toy or imitation firearms that so closely resemble actual functioning firearms that it makes it almost impossible to discern a real gun from an impostor.

The proliferation of these impostor firearms has created a very dangerous situation for the general public and for law enforcement officers. A decision by a law enforcement officer confronted with what appears to be a potentially lethal situation must be made in a split second whether or not to exercise deadly force. When confronted with a look alike firearm brandished by either an adult or a child, the law enforcement officer now not only has to decide whether to shoot or not shoot, but also must now decide whether or not the firearm is real. You will hear today, if you haven't already, examples of tragic incidents where both adults and children have been killed while brandishing an imitation or impostor firearm at a law enforcement officer.

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It is our belief that this legislation can help to prevent these incidents from occurring in the future. Your active consideration of this legislation will be greatly appreciated. Thank you for this opportunity to testify on behalf of the Kansas State Troopers Association in support of this bill.

I would be happy to attempt to answer any question which you might have.

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PROPOSED SUBSTITUTE FOR HOUSE BILL NO. 2292

By Committee on Federal and State Affairs

AN ACT concerning certain juvenile offenders; relating to dispositional alternatives for alcohol and drug-related offenses; amending K.S.A. 1989 Supp. 38-1663 and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 38-1663 is hereby amended to read as follows: 38-1663. (a) When a respondent has been adjudged to be a juvenile offender, the judge may select from the following alternatives:

(1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate, including a requirement of making restitution as required by subsection (c).

(2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders, including a requirement of making restitution as required by subsection (c).

(3) Place the juvenile offender in the custody of a youth residential facility, subject to the terms and conditions the court orders.

(4) Place the juvenile offender in the custody of the secretary.

(5) Impose any appropriate combination of subsections (a)(1) and (2), subsection (a)(3) or subsection (a)(4) and make other orders directed to the juvenile offender as the court deems appropriate.

(6) Commit the juvenile offender, if 13 years of age or older, to a state youth center if the juvenile offender:

(A) Has had a previous adjudication as a juvenile offender

under this code or as a delinquent or miscreant under the Kansas juvenile code; or

(B) has been adjudicated a juvenile offender as a result of having committed an act which, if done by a person 18 years of age or over, would constitute a class A, B or C felony as defined by the Kansas criminal code.

(b) (1) In addition to any other order authorized by this section, the court may order the juvenile offender and the parents of the juvenile offender to attend counseling sessions as the court directs.

(2) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 10 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent. If the parent does not request a hearing within 10 days after entry of the order, the order shall take effect at that time. If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 38-1606 and amendments thereto.

(3) The costs of any counseling may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than that the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative.

(c) (1) In addition to any other order authorized by this section, if a respondent has been adjudged to be a juvenile offender by reason of an act involving possession, use or abuse of any alcoholic beverage or controlled substance, or both, the court may require the juvenile offender to surrender to the court

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any driver's license in such offender's possession. The court shall transmit any such license, together with a copy of the adjudication order, to the division of vehicles of the department of revenue. Upon receipt thereof, the division shall revoke the driving privileges of the juvenile offender.

(2) No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked under subsection (c)(1) until such privileges have been restored. The juvenile offender may petition the court to have such privileges restored if: (A) Ninety days have elapsed since the offender's driving privileges have been revoked, upon the first offense for which such privileges have been revoked pursuant to subsection (c)(1); or (B) one year has elapsed since the offender's driving privileges have been revoked, upon the second or a subsequent offense for which such privileges have been revoked. Upon such petition and for good cause shown, the court, in its discretion, may restore the offender's driving privileges, subject to the completion of a driver's license examination as required for the issuance of an original driver's license.

(d) Whenever a juvenile offender is placed pursuant to subsection (a)(1) or (2), the court, unless it finds compelling circumstances which would render a plan of restitution unworkable, shall order the juvenile offender to make restitution to persons who sustained loss by reason of the offense. The restitution shall be made either by payment of an amount fixed by the court or by working for the persons in order to compensate for the loss. If the court finds compelling circumstances which would render a plan of restitution unworkable, the court may order the juvenile offender to perform charitable or social service for organizations performing services for the community.

Nothing in this subsection shall be construed to limit a court's authority to order a juvenile offender to make restitution or perform charitable or social service under circumstances other than those specified by this subsection or when placement is made pursuant to subsection (a)(3) or (4).

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(d) (e) In addition to or in lieu of any other order authorized by this section, the court may order a juvenile offender to pay a fine not exceeding \$250 for each offense. In determining whether to impose a fine and the amount to be imposed, the court shall consider the following:

(1) Imposition of a fine is most appropriate in cases where the juvenile offender has derived pecuniary gain from the offense.

(2) The amount of the fine should be directly related to the seriousness of the juvenile offender's offense and the juvenile offender's ability to pay.

(3) Payment of a fine may be required in a lump sum or installments.

(4) Imposition of a restitution order is preferable to imposition of a fine.

(5) The juvenile offender's duty of payment should be limited in duration and in no event should the time necessary for payment exceed the maximum term which would be authorized if the offense had been committed by an adult.

(e) (f) In addition to or in lieu of any other order authorized by this section, if a juvenile is adjudged to be a juvenile offender by reason of a violation of the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall order the juvenile offender to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation, except that such evaluation may be waived by the court if the court finds that the juvenile offender has successfully completed an alcohol and drug evaluation, approved by the community-based alcohol and drug safety action program, subsequent to the offender's arrest on this offense. If the court finds that the juvenile offender and

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those legally liable for the offender's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary or the department of social and rehabilitation services.

Sec. 2. K.S.A. 1989 Supp. 38-1663 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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