Approved 5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~a.m.~~/p.m. on March 28, 19 91 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Gomez and Hochhauser

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Juliene A. Maska, Statewide Victims' Rights Coordinator, Office of the Attorney General
Chris Biggs, Geary County Attorney
Senator Lana O'Leen
Chuck Simmons, representing the Department of Corrections
Jim Clark, Kansas County and District Attorneys Association
Rick Kittle, Assistant Appellate Defender
Ron Wurtz, Public Defender's Office
Shelly Gasper, Assistant Attorney General, Consumer Protection Division
Bob Storey, Attorney representing DeHart and Darr Associates, Inc.
Trisha Bannon, representing Services for Victims of Sexual and Domestic Violence
Gina Wright, a victim from Independence, Ks.
Judge James P. Buchele
Melanie Jack, Assistant Attorney General, KBI

The Chairman called for hearing on SB 211, notice to victim prior to parole required in Class A felony cases.

Juliene A. Maska, Statewide Victims'Rights Coordinator, Office of the Attorney General, appeared in support of SB 211. (See Attachment # 1).

There were no committee questions.

Jim Clark, County and District Attorneys Association, appeared to introduce Chris Biggs, Geary County Attorney, who testified in support of SB 211. (See Attachments 2-A and 2-B).

Committee questions followed.

Senator Lana O'Leen, a co-sponsor of SB 211, appeared in support of the bill. (No written testimony was submitted.

Committee questions followed.

Written testimony was submitted by Donald and Norma Bush, Junction City, Kansas. (See Attachment # 3).

Written testimony was submitted by Carol Otto, Emporia, Kansas. (See Attachment # 4).

Chuck Simmons, representing the Department of Corrections, appeared in support of SB 211. (See Attachment # 5). Mr. Simmons said for consistency, all notifications should come from the same source.

Committee questions followed.

There being no further conferees, the hearing on SB 211 was closed.

The Chairman called for hearing on SB 233, eliminating voluntary intoxication as defense.

Jim Clark, Kansas County and District Attorney's Association, appeared in support of SB 233. (No written testimony was submitted.)

Rick Kittle, Assistant Appellate Defender, appeared in opposition to SB 233. (See Attachment # 6).

In-depth committee questions followed.

The Chairman asked Representative Gregory, Chairman, of sub-committee studying intoxication defense to include SB 233 in their study.

Written testimony in support of the intent of SB 233 was submitted by James McHenry for Kansas Child Abuse Prevention Council. (See Attachment # 7).

Ron Wurtz, Public Defenders Office, appeared in opposition to SB 233. Mr. Wurtz noted that he had been dealing with the intoxication for twelve years. (No written testimony was furnished.)

The Chairman asked Mr. Wurtz to make himself available as a contact person to Representative Gregory's sub-committee.

There being no further conferees, the hearing on SB 233 was closed.

The Chairman called for hearing on SB 247, prohibits sellers from requiring a consumer to respond to a notice in order to avoid purchasing goods.

Shelly Gasper, Assistant Attorney General-Consumer Protection Division, appeared in support of SB 247. (See Attachment # 8).

Committee questions followed.

The Chairman suspended the hearing of SB 247 for a few minutes to receive a sub-committee report.

Representative Carmody reported from sub-committee assigned to study SB 183, conditions of probation to include confinement in county jail. Representative Carmody reported that the sub-committee suggests that SB 183 be amended to say "60 days" in lieu of "1 year", which need not to be served consecutively and recommends that HB's 2117 and 2185, similar bills be not passed.

Representative Carmody made a motion that the sub-committee report be adopted. Representative Snowbarger seconded. The motion carried.

Representative Carmody made a motion that SB 183 be passed as amended. Representative Snowbarger seconded the motion. The motion carried.

The Chairman resumed the hearing of SB 247.

Bob Storey, Attorney representing DeHart and Darr Associates, Inc., a member of the Direct Marketing Association (DMA) appeared in opposition to SB 247 and proposed amendments set out in Attachment # 9.

There were no committee questions.

Mr. Storey noted the presence of Charles Henson, Law Firm of Davis, Wright, Unrein, Hummer and McCallister and Mike Racht, AT&T.

The Chairman called for comments from Shelly Gasper, Assistant Attorney General, regarding Mr. Storey's suggestion of amending KSA 50-617. Ms. Gasper said she foresees no problem if the Attorney General was given enforcement.

There being no further conferees, the hearing on SB 247 was closed.

The Chairman called for hearing on SB 327, spousal abuse consideration in determination of child custody in divorce action.

Juliene A. Maska, Statewide Victims' Rights Coordinator, appeared in support of SB 327. (See Attachment # 10).

Committee questions followed.

Trisha Bannon, representing Services for Victims of Sexual and Domestic Violence, (S.O.S.) appeared in support of SB 327. (See Attachment # 11).

Committee questions followed.

Gina Wright, a victim from Independence, Kansas, appeared in support of SB 327, and related personal experiences. (See Attachment # 12).

There were no committee questions.

Written testimony was submitted in support of SB 327 by James McHenry, Kansas Child Abuse Prevention Council. (See Attachment # 13).

Written testimony was submitted in support of SB 327 by Dorothy Miller, LBSW, Executive Director, SAFEHOUSE, Inc. (See Attachment # 14).

There being no further conferees, the hearing on SB 327 was closed.

The Chairman called for hearing on SB 328, proper court security to be provided.

Judge James P. Buchele appeared to comment in support of SB 328. Judge Buchele related several incidents demonstrating the need for additional security for district court.

Committee questions followed.

There being no further conferees, the hearing on SB 328 was closed.

The Chairman called for hearing on SB 329 requiring collection of DNA exemplars from convicted felons.

Melanie Jack, Assistant Attorney General, KBI, appeared in support of SB 329 but proposed changes. (See Attachment # 15).

Committee questions followed.

The Chairman appointed a sub-committee to study SB 329. Sub-committee members are Representative Rock, Chairman; Representative Hamilton, and Representative Scott. The Chairman asked the sub-committee to work with conferees registered to address SB 329 this date: Juliene Maska, Statewide Victims' Rights Coordinator, Office of the Attorney General; Eileen Burnau and Steve R. Starr, KBI; and Helen Stephens, Kansas Police Officers Association.

Written testimony in support of SB 329 was submitted by Juliene A. Maska, Statewide Victims' Rights Coordinator, Office of the Attorney General. (See Attachment # 16).

Written testimony in support of SB 329 was submitted by Eileen S. Burnau, Kansas Bureau of Investigation (KBI). (See Attachment # 17).

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S Statehouse, at 3:30 ~~xxx~~m./p.m. on March 28, 1991.

Written testimony in support of SB 329 was submitted by Steve R. Starr, KBI. (See Attachment # 18).

The hearing on SB 329 was closed.

The Chairman called for hearing of SB 332, correctional institutions disposition of certain abandoned property of inmates.

Chuck Simmons, representing the Department of Corrections, appeared in support of SB 332. (See Attachment # 19).

Committee questions followed.

There being no further conferees, the hearing on SB 332 was closed.

The Chairman called for action on SB 296, copy and retention of report by attorney for the State.

Representative Parkinson made a motion that SB 296 be passed. Representative Macy seconded the motion. The motion carried.

The Chairman called for sub-committee report by Representative Smith on HB's 2098, 2248 and 2398. Representative Smith reported that the sub-committee's recommendation is to table HB 2098, table HB 2248, and prepare a substitute for HB 2398. Representative Smith made a motion that the sub-committee report be adopted. Representative Vancrum seconded the motion. The motion carried.

The Chairman called for action on SB 211.

Representative Hamilton made a motion that SB 211 be passed. Representative Macy seconded the motion.

Representative Rock made a substitute motion that on Page 2, Line 40, the work "actually" be stricken. Representative Macy seconded the motion. The motion carried.

Representative Snowbarger made a motion that the words "designated members" be stricken throughout SB 211. Representative Rock seconded the motion. The motion carried.

Representative Parkinson made a motion that SB 211 be amended to include notice by the Department of Corrections to victims of B, C, D and E felonies. Representative Macy seconded the motion. The motion carried.

Representative Parkinson made a motion that SB 211 be passed as amended. Representative Rock seconded the motion. The motion carried.

The Chairman said he will make the Report of Standing Committee on SB 211 available to committee members before signing it.

The meeting adjourned at 5:40 P.M. The next meeting is scheduled on March 29, 1991, 3:30 P.M. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 3/28/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Charles Simmons	Topeka	DOC
David McKune	Topeka	DOC
Kay Farley	Topeka	OJA
Judi Reecht	Topeka	AT+T
Bob Storey	Topeka	Hethert / Sars
Shelly Cooper	Topeka	AG
Jim Clark	Topeka	KCDAA
Melanie Sack	Topeka	KBI
Steve Starr	Topeka	KBI
Eileen Burnau	Topeka	KBI
Chris Canfield	"	KDOT
Craig Smith	"	"
Lynn Wright	Independence Ks.	Sedgwick
Denise Wright	Independence Ks.	Kansas Citizen
Arlene Mastin	Topeka	AG office
Marilyn Ault	Topeka	Battered Women Task Force
Trish Barron	Emporia	Battered Women's Shelter
Kyle Smith	KBI	
Steve Robinson	Topeka	Alcohol & Drug Prog

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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Testimony of
Juliene A. Maska
Statewide Victims' Rights Coordinator
Before the House Judiciary Committee
RE: Senate Bill 211
March 28, 1991

On behalf of Attorney General Bob Stephan and his Victims' Rights Task Force, I encourage your support of Senate Bill 211.

Our office has received several complaints from victims about not being notified of public comment sessions for Class A felons. These complaints usually refer to the horrendous tragedies that families experience.

K.S.A. 74-7335 provides notification of public comment sessions for crime victims. Senate Bill 211 would strengthen the need for notification before a Class A felon has a parole hearing and place the notification responsibility with the Secretary of Corrections.

When this bill was heard in the Senate Judiciary, we had proposed some amendments which were accepted by the committee. However, we must not have been clear enough in our request because the bill as amended does not have marked out everything that should be marked out.

We suggest that to be in correlation to the other notification statutes that the words designated and member be deleted from several sections of the bill.

HJUD
Attachment #1
3-28-91

I would ask the committee to amend this bill as follows:

On Page 2, Lines 35 and 37, "designated" and "member" should be deleted. Page 5, Line 33, "designated", and Line 34, "member" should be deleted. Line 39, delete "a designated" and insert "the victim's". Delete "member" on the same line. Line 41, delete "designated" and "member". Page 6, Line 2, delete "designated", Line 3, delete "members", Line 4, delete "designated", and Line 5, delete "members". Also, Line 8 needs "designated" and "member" deleted.

Our office has been working with the Department of Corrections in developing a program to provide notification. This program will assist the Department of Corrections in providing notification to victims as set out in K.S.A. 22-3718, which requires them to notify victims or the victim's family of any release of an inmate convicted of any crime in Act 34, 35, and 36 of Chapter 21. New Section 2 of this bill is similar to the program we have suggested to them.

Senate Bill 211 would strengthen the rights of persons who are victims of our most heinous crimes. I ask that you support Senate Bill with these amendments. Thank you.

First of all we want to say that we appreciate the opportunity to testify in support of house bill #211. We suggested that amendments be made to the present statute 22-3717 to require written notice be sent to victims or family of victims in class A felonies.

The reason we support the change is because there have been a number of cases in our jurisdiction wherein family members were not notified that the defendant s were coming up for parole. The Frank Pencek case which involved the brutal murder of a young Junction City woman is a classic example.

Our office endeavors to notify victims about parole hearings in every case when we receive notifications from the Secretary of Corrections. However, in this case we were never notified that the defendant was coming up for parole and it was only because of a chance inquiry that it was discovered that he had an immediate parole hearing set. The family rushed back from out of State and was able to testify and oppose parole which was ultimately denied. It would be a travesty if the murderer was released without there having been any attempt to contact the family of the victim.

We do support the bill as presently written, but there remains a statutory problem in the scheme under 22-3717f. As proposed, the County Attorney s have the duty to give a written notice of public comment sessions. However, statutes require that we be notified by the Secretary of Corrections of the fact of parole within ten (10) days <u>after</u> their decision concerning parole. We do receive comment sessions from the Secretary of Corrections. However, names are routinely left off the list which was the case in the Pencek matter.

We appreciate the efforts of the legislature in helping grant a Victims/Assistance Coordinator program. We feel we have a very effective program in our office. <u>However, there is no way we can perform our duty to notify victims or families of victims about parole hearings if the Secretary of Corrections is not required in a meaningful way to notify us in a timely manner</u>. We are also concerned that there is no definition under the proposed statute that as to who the victims' "designated representative" is under sub-section (f). If that is intended to be the Victims/Assistance Coordinator or County Attorney the statute should so state. We would also suggest that the statute should consider that no class A felon should be considered for a parole unless it appears from the file that a notice by certified-restricted delivery has been sent to the victims or the families

HJUD
Attachment # 2-A
3-28-91

of the victims or that an Affidavit appears in the file explaining that the victim or family has not been located and what steps have been taken to do so. This may be a task that takes some time but it would not be overburdensome considering all the time and energy that is involved in the part of the prosecutor and victims during the course of prosecutig an A felony case.

The Victim Assistance Coordinator in our office only discovered that the defendant who had bound and gagged her in her own home and robbed her and her husband was released because she ran into him in the Courthouse. His original sentence was 10 to 100 years and he was released after doing about four years without any notification. In another case a man who was sentenced to prison for threatening to kill someone was considered for parole without any notification to the victim, who remained fearful and convinced that she would be targeted by him upon his release.

These situations cannot be allowed to occur. Simply requiring the Secretary of Corrections to do something like give notice and include that with a limitation of liability accomplishes nothing without a provision which requires a notification by certified mail so there is some record to show what efforts have been made.

Chris Biggs
Geary County Attorney

Tracy McDaniel
Victim Assistance
Coordinator

PAROLE NOTIFICATION

Out of 24 Kansas victim/witness programs, 19 replied to a questionnaire concerning parole notification. The following is a summary of their replies:

1. Are you receiving adequate notice of upcoming parole hearings so you can notify crime victims?

Yes - 13
No - 6

Comments:

Depending upon the date of the case and the availability of a current address, some notifications may be delayed by a week.

It seems to have improved, but it would be nice to have an even longer period for notification.

I'm receiving adequate notice of public comment sessions, but not of everyone who will be eligible for parole.

In most cases, no. In cases that are over 3 or 4 years old, it is difficult, if not impossible to find a file easily. The court file does not contain victim information and in some instances where minor cases are involved, records might be destroyed over a period of time. Because the time frame from the instigation of the crime to the parole hearing date is often several years, the limited time does not allow us to find a forwarding address (whenever possible).

It is an ongoing problem. By the time we get notices it is too late to send notification to the victim/family.

Many times, we receive notice after the fact. If they are scheduled for work release or half-way house, I always have to call to see which one and the date on which they will be transferred.

We receive the announcement of the upcoming public comment session on the last two or three days of the month preceding the public comment session, which does not follow the statutory requirements. Again, address are not readily accessible. Oftentimes, lengthy searches of storage file rooms have to be made. At one time I was told that the parole board chose not to send us notices any sooner because they were afraid we would get confused and notify victims of the wrong hearing.

They are coming soon enough for some cases, but not soon enough for us to notify before the news media gets it.

2. When you receive the minutes from the parole board, do you understand them?

Yes - 9
No - 1
Not always - 9

HJUD
Attachment 2-B
3-28-91

Comments:
Neither the victim/witness program nor the county attorney have received parole board minutes since March 1990. We are working with the parole board to correct the situation.
Not always, however the parole board seem quite willing to explain when we have a question.
Certain terms are not understandable.
Some of the codes are used often enough that we have learned them, however, the improved coding that the parole board has implemented still requires us to call the parole board to decipher their action. The most common problem we have with their action is that we are unable to identify "when" the action will take place. Some type of time frame would be helpful.
Usually, except when revoked, they don't designate county of conviction.

3. Has the parole board ever sent you a key to the minutes so you could better understand them?

Yes - 0
No - 19
Comments:
Most of the comments are self-explanatory.
A key would be helpful.

4. Have you read the minutes of the parole board and saw someone from your county had a hearing but you had not been notified previously that the person was eligible?

Yes - 12
No - 7
Comments:
Has happened at least 24 times.
Has happened approximately 5 times.
Many people appear on minutes that have not appeared on parole hearing notices. Happens frequently.
On occasion. Sometimes the results are simply months after the initial announcement was received. We can usually find them by tracing back through the announcements. Other times we have no clue as to why there was some action but not an announcement. We aren't sure that there was a public comment session that we were not notified about.
We have indeed found instances where inmates are not shown on the eligible list, but show up on minutes after parole hearing.

5. Has DOC been contacting you for the victim's address before releasing an inmate?

Yes - 14
No - 5
Comments:
About 10-11 calls per month.
On a limited basis.
Sometimes they call me to swap addresses.

I can't say that it is "before" the inmate's release. I would like to see a system implemented wherein the victim's address is kept in DOC's records and the victim would have to notify them concerning changes.

6. How far in advance of the release of an inmate has DOC contacted you for the address of the victim?

Comments:
Usually day before except for Osawatomie. They give us several days.
From one day to two months.
Usually less than one week.
Usually day before.
Two days and as short as hours.
Not sure.
Sometimes same day.
Usually several weeks. Occasionally within a day or two of release.
According to the DOC, it is within 72 hours of the inmate's release. We can't be sure they contact us on all of them. It is not uncommon for the release to be within hours of the DOC requesting an address.

7. Do you think DOC is notifying victims too late?

Yes - 8
No - 3
Not sure - 2
Occasionally - 3
Comments:
Without the current parole board minutes, we do not have the information available to adequately assess notification requirement IAW K.S.A. 22-3718.
I think that the DOC is releasing the inmate whether or not the victim is being notified. The victim notification is a requirement of the statute but it does not say that the inmate cannot, under any circumstances, be released prior to the victim receiving notification.

8. Other problems experienced concerning notification:

Comments:
Old cases are a real problem. We don't have the time to search old files which are outdated anyway.
Our county attorney's office is not being notified of all inmates that are going before the board until after the fact. This is not allowing the victims to be heard at comment sessions or even gives them the chance to write to the parole board. As a victim, I feel there needs to be a big change in the current system. Notification can be done by this office as long as we are notified.
Notices are not always correct. Some cases listed for our county are not even our cases. This takes a lot of time to look up these cases.
In minutes it would be helpful if case number was included along with prison number. At present, only prison number appears.

I feel the victims or victims' families should be notified of the parole board's determination after all comments and interviews.

More than one day or same day notice of release would be helpful for our office in notifying victims.

I think the parole board should notify or attempt to notify all victims.

On occasion we have identified individuals eligible for parole who are labeled from the 1st district, when in fact the individual is from another jurisdiction. The Kansas Parole Board has been of great assistance in clarifying the error. Hopefully, other jurisdictions are also contacting the parole board when errors are identified so we may also receive adequate notice of any additions or deletions.

There is too much duplication of efforts on the part of the local parole officers and our office, i.e. they ask us to locate an address or make direct contact with the victim of an inmate coming up for parole. Would it be possible for the DOC to issue the announcement of the PCS by an alphabetized list, not broken down by institution. Also, the minutes in the same format sent on a monthly basis. The institution could be indicated by some type of symbol in both of these instances. I feel like it confuses the victim when we attempt to report the results of the parole hearing. We don't have any other resource except to refer them to the DOC, which inconveniences everyone.

More time to notify victims (an additional two weeks).

9. Any other problems or comments:

Comments:

Current victim addresses are a nightmare. We don't have the time or staff to try and locate them. If our old address is no good, we drop it. Victims rarely notify us when they move.

Why does the newspaper know before our agency does? In a recent murder case, it was in the paper before we even received our notification.

Just trying to learn so I will be able to avoid having problems. Do see this office being more of a victim assistance program, as the county attorney's secretaries work with witnesses and I contact victims.

The parole office in our county has been very helpful in notification of victims.

I would like some guarantee that the DOC has a procedure identified to notify a victim and the district attorney where the inmate was convicted, if an inmate escapes. We had an incident where a convicted rapist escaped and we subsequently learned about it through a local media representative. We were able to take care of the situation, but because of the intensity of the event, an established procedure should be established to notify the victims. Many of the problems experienced with the notification process and the DOC in general could be resolved by establishing a centralized method to disseminate information about inmates to victims. An 800 number that could be used by anyone attempting to gain information about inmates would be ideal.

Testimony SB211

Chairman Solbach and Members of the Committee

We were never officially notified that Pencek was being considered for parole. Concerned family friend of ours in Junction City somehow found out that he was one of the individuals to be considered by the Parole Board. My wife Norma and daughter Carol Otts attended the hearing in Topeka Aug 28, 1990. The Board did not have Pencek on their list. Two days later on Aug 30, 1990 my sister-in-law Nadine Carr appeared before the Parole Board in Wichita and his name still was not on their list. We were told by Department of Corrections Office, that a computer glitch caused the problem. We find this difficult to accept.

We have shared our experience with the Geary County Attorney and Sheriff. Both of these men expressed sympathy with us in the case because more often than not they are notified

HJUD
Attachment #3
3-28-91

appear the fact rather than before.
We were told by the Parole Board Chairman that we should have been notified by the Geary County Attorney. A bill passed by the 1990 legislature requires the County Attorney notify victims of a crime or the immediate family prior to the parole of an inmate. When we contacted the County Attorney he affirmed this fact but said it was not possible for him to notify victims when he is not notified. Therefor we feel there needs to be a bill passed to assure positive action so there would be no possibility for parole with out victims being notified prior to parole hearings when the victim has kept the correction authorities apprised of current address.

HJUD
ATTACH #3-2
3-28-91

In addition the victims acknowledgment of a parole hearing date should be in writing and on file with the Department of Corrections, along with the current addresses of the victims or victims family.

Donald and Norma Bush
106 N Jackson
Junction City, Ks 66441
913-762-3342

Chairman Solbach and Members of the Committee

I was called by a friend, that had read an artical in the paper. It read that Frank Pencek, the man that had killed my sister was to be coming up for parole. The public hearing was to be in 2 days.

I did appear at the parole hearing. They didnot have him listed, but would listed to what we had to say. The chairman of the parole board said we should have been notified by the County Attorney, because there is a law stating that he should notify us.

We checked with the Geary County Attorney and we were told he had not ever been notified, so he could not notify us. We were told by the Department of Corrections that their must have been an error in the computer. That is why no one was notified.

Bill# 211 in part might help. The victims or a member of their family be notified by having them sign a written notice of the parole hearing. With enough time to prepair for the board hearing.

Carol Otto

Carol Otto
R.R. 2 Box 127D
Emporia, KS 66801

HJUD
Attachment # 4
3-28-91

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

To: House Judiciary Committee

From: Steven J. Davies, Ph.D.
Secretary of Corrections

Subject: Senate Bill No. 211

Date: March 28, 1991

The Department of Corrections supports the concept of SB 211 regarding notification of victims or the victim's designated family member, particularly in the case of the possible parole of an individual convicted of a class A felony.

Under current statutes the notification to the victim or victim's family is made by the county or district attorney. Under SB 211 that function would be given to the secretary of corrections when the inmate being considered for parole has been convicted of a class A felony. In class B, C, D, and E cases notification would still come from the county or district attorney.

For purposes of consistency of notification, the Department believes that it would be best if all notifications came from the same source. The Department of Corrections could be that source if it had adequate resources to take on this responsibility. With existing staff, this additional task would not be possible to complete in the proper manner.

The Department of Corrections and the Attorney General have discussed the possibility of the Department receiving grants from the Crime Victims' Assistance Fund for use in establishing a victim notification procedure. With these grants the Department would be in a position to notify victims whether the case involved a class E felony or a class A felony.

HJUD
Attach #5
3-28-91

One problem in the area of victim notification has been maintaining a current address for the victim or the victim's family. SB 211 places the responsibility for notification of a change of address on the victim or the victim's designated family member in cases where a class A felony is involved. This responsibility should be extended to the victim or victim's designated family member in all cases.

It is not practical to place the responsibility for locating a victim or victim's family on the county or district attorney or Department of Corrections, particularly when the parole hearing occurs many years after the criminal act was committed.

In summary, the Department of Corrections supports fully the concept of victim notification. If the Department of Corrections receives adequate funding to take on this responsibility, the Department is willing to undertake the task of victim notification prior to public comment sessions for all classes of felony offenses.

SJD:CES/pa

Summary of Testimony Opposing Senate Bill 233
Submitted by Rick Kittel, Assistant Appellate Defender

I. Nature of Criminal Intent

A. Historical Aspects of Intent in Criminal Law

B. General Criminal Intent (21-3201)

C. Specific Criminal Intent (21-3208(2))

II. Voluntary Intoxication as a Defense to Specific Intent Crimes

A. Rationale for the Defense

B. Kansas Case Law History

C. Other Jurisdictions

III. Current Status of the Defense in Kansas

A. Evidence Sufficient to Warrant a Jury Instruction

B. Success of Defense

C. Elimination of Defense Eliminates Specific Intent Elements

D. Comments on State v. LaRoche

HJUD
Attachment #6
3-28-91

I

For centuries, in the field of criminal law, it has been deemed necessary to investigate a person's state of mind to determine if that person had the particular intent necessary for the commission of a crime. Historically, the determination of a criminal defendant's state of mind has been a factual question left to the jury.

In Kansas a number of other jurisdictions, criminal intent has been separated into two components: general criminal intent and specific criminal intent. General criminal intent is that intent which is set forth in K.S.A. 21-3201. It is an element of every offense defined in the criminal code. I would submit, that this legislature, by making intent an element of every crime in the code, has acknowledged the importance of the actor's state of mind at the time an offense was committed. A common sense view of criminal justice is that blame and punishment are inappropriate and unjust when the actor cannot comprehend his actions or their consequences.

Specific criminal intent is an intent which goes beyond general criminal intent. In a specific intent crime, the specific intent necessary to prove the offense is set forth as an element of that offense. Crimes are defined in these ways because a special state of mind is a crucial element in the description of the conduct sought to be prohibited.

Therefore, there are two classes of crimes: general intent and specific intent. Currently, K.S.A. 21-3208(2) establishes voluntary intoxication as a defense to specific intent crimes.

II

Voluntary intoxication is a defense to a specific intent crime, not because drunkenness excuses the crime, but because, if the mental status required by law to constitute the crime is one of specific intent, and drunkenness prevents the existence of the specific intent or state of mind, the crime charged has not been committed because the elements of the offense have not been proved.

In Kansas, voluntary intoxication to a specific intent crime has existed for decades, even before the defense was codified in the criminal code. In State v. Rumble, 81 Kan. 16 (1909), the Kansas Supreme Court acknowledged that drunkenness could be a defense to any specific intent crime. The Supreme Court has consistently recognized the validity of the voluntary intoxication defense. Some of the more recent cases are State v. Sterling, 235 Kan. 526 (1984), State v. Shehan, 242 Kan. 127 (1987), and State v. Gadelkarim, 247 Kan. 505 (1990). The voluntary intoxication defense was not established by the legislature, but is a part of the common law.
Statutory provision for the defense of voluntary intoxication are

common throughout the country. The current status of the law in Kansas is in the mainstream of thought on the issue.

III

The matter of voluntary intoxication is normally raised at trial through the defendant's request for a jury instruction on the matter. Such an instruction should only be given if there is evidence of intoxication which impaired the defendant's mental faculties to the extent that he was incapable of forming the necessary intent for the crime. See Gadelkarim, 247 Kan. at 509. Voluntary intoxication may only be raised as a defense to specific intent crimes. In my experience, the defense is only rarely available to a criminal defendant, and even more rarely successful.

Elimination of the defense has the effect of eliminating specific intent elements. For example, if a person is intoxicated to the extent that he could not form the specific intent necessary to the commission of the crime of theft, but is prohibited by this bill from raising the defense of voluntary intoxication, his state of mind at the time of the offense becomes irrelevant. This result is contrary to accepted Kansas law which requires that the defendant have a particular state of mind at the time of the theft. The result is also contrary to the principle of criminal law which says that a person is only responsible and can only be punished for acts committed with the required criminal state of mind.

It is my understanding that this bill is the result of a case from Bourbon County, State v. LaRoche. In that case, which was tried last year, the defendant was acquitted of the offense of indecent liberties with a teenaged girl. The defendant had raised the voluntary intoxication defense. The result of the case, however, was not necessarily due to that defense. Other factors affected the jury's decision. These factors were the charging decision of the prosecutor and the credibility of the victim.

Finally, there are questions about the constitutionality of this bill. Under the constitutions of the United States and Kansas, a criminal defendant is entitled to a fair trial. Part of a defendant's right to a fair trial is the right to present a full and complete defense. This bill infringes upon that right. The bill would deny the defendant the ability to produce evidence to disprove the specific intent element which is necessary for his conviction. Therefore, while the prosecution could produce evidence of the defendant's specific intent, the defendant would be prohibited from producing evidence to show that he did not have the requisite specific intent.

Kansas Child Abuse Prevention Council

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Topeka, Kansas 66612
(913) 354-7738

428 S. Broadway, Suite 204
Wichita, Kansas 67202
(316) 262-8434

Testimony in Support of SB 233
House Judiciary Committee

March 28, 1991

The Kansas Child Abuse Prevention Council supports the intention of SB 233. We are particularly interested in seeing voluntary intoxication removed as a defense in crimes involving the physical and sexual abuse of children. A case last year in Fort Scout drew our attention forcefully to this issue.

Research reported by the National Committee for Prevention of Child Abuse indicates that "when drinking is used as a response to stress, alcohol may act as a physiological disinhibitor thereby making it easier for child abuse to occur. For example, research suggests that alcohol is frequently present in cases of sexual abuse because it allows a person to ignore the social taboos against child molestation." (See David Finkelhor, A Sourcebook on Child Sexual Abuse. California: Sage Publications, 1986.)

While reasonable people may differ in their assessment of the damage done to children by corporal punishment, there is no room for debate regarding child sexual abuse. A recent article by a multidisciplinary team of experts concluded: "At the present time, it cannot be denied that child sexual abuse often has devastating long-term consequences. The terrible damage caused by sexual abuse has been described most eloquently by the adult survivors of child sexual abuse." (See "Expert Testimony in Child Sexual Abuse Litigation" by John Myers, et.al., reprinted from the Nebraska Law Review, Vol. 68, 1989, p. 53.)

Naturally we would all prefer to devote more time and resources to prevention strategies. However, when serious crimes against children do occur, it is imperative that their abusers be held fully accountable before the law. That a perpetrator would be allowed to hide behind a defense of voluntary intoxication ought to offend our sense of justice and motivate us to seal off that means of evading responsibility.

HJUD
Attachment # 7
3-28-91

Testimony submitted by James McHenry, Ph.D.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
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Testimony of
Assistant Attorney General Shelly Gasper
On Behalf of Attorney General Robert T. Stephan
Before the House Judiciary Committee
RE: Senate Bill 247
March 28, 1991

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Stephan and with the recommendation of his Consumer Protection Advisory Council, this bill was drafted to address a problem which has been occurring with greater and greater frequency.

This bill adds a new section to the list of per se unconscionable acts and practices under the consumer protection act. Typically, a company with an existing client base will add a new type of service, often giving that service cost-free for a period of one or two months, at which time the customer must then request that the service be discontinued or be charged for it.

Some examples of negative selection we have received complaints about include an electronic mail service (via computer) that charged an additional $13 per year for an online directory service. In the billing, one page of the bill told the consumer to delete $13 from his or her total and

HJUD
Attachment #8
3-28-91

fill out the form if the consumer did not want the service. Many people did not even know they were being charged for the service. As another example, a city trash service began offering a recycling program at an extra charge unless the consumer affirmatively opted out of the program. Also, a cable company began offering tiered services. The consumers who had subscribed to the basic service would be upgraded to a higher cost basic plus service unless they affirmatively sent in a card saying they didn't want the higher cost service.

This section would not apply to services that the customer has requested, such as a book or record club that commonly uses a monthly negative selection process to sell its book- or record- of-the-month, because of the unsolicited or unordered language. An amendment has been proposed changing the word "unsolicited" to "unordered," to which we have no objection.

On behalf of Attorney General Stephan, I ask for your support of Senate Bill 247. Thank you.

TESTIMONY OF BOB W. STOREY
SENATE BILL NO. 247
HOUSE JUDICIARY COMMITTEE

Members of the Committee:

I represent DeHart and Darr Associates, Inc., a member of the Direct Marketing Association ("DMA"). DMA has 15 members located in 8 Kansas cities and 47 members with operations in Kansas.

DMA and its members are opposed to Senate Bill No. 247 in its present form. They feel it is unnecessary because of the restriction the industry has placed on itself to protect consumers. However, we do understand that numerous members of the public object to being charged for unordered goods or services unless affirmative action is taken by the consumer to reject such goods or services.

DMA does not operate in the manner set out in paragraph (8) of Senate Bill No. 247. Nevertheless, it does have some concerns that even though its members do not impose an affirmative action on its customers relating to unordered goods or services, it could be construed that some of the goods and services it offers would be involved.

For example, members of the DMA offer the "Book of the Month" and "Record of the Month" programs through which members sign up to receive books and/or records on a periodic basis. No further contact is made of these customers until the product is received in the mail. At that time there is an affirmative duty on the part of the consumer to either return the merchandise or be charged for the merchandise.

HJUD
Attachment # 9
3-28-91

I have been advised by Dehart and Darr that the language contained in paragraph (8) of Senate Bill No. 247 is unlike any of the language drafted in other states to assist the consumer in these unwanted practices. I have further been advised that all other states which have laws of this type exempt organizations such as the "Book of the Month" and "Record of the Month" clubs.

DMA would like to point out here that the Federal Trade Commission has a very easy way of handling the problem of unordered goods or services being provided to a consumer. If a consumer receives unordered goods or services that requires affirmative action to be initiated by the consumer, the consumer is not obligated to either return or pay for the unordered goods or services. DMA certainly has no objection to the state law being consistent with the FTC rules and regulations.

Attached to this testimony are excerpts from the FTC rules and regulations with an explanation of DMA's role in helping to protect the consumer.

If the committee does not feel the FTC language is acceptable, we offer the following amendments, which should still bring about the result the Consumer Protection Division of the Attorney General's office is trying to accomplish with Senate Bill No. 247.

We suggest that paragraph (8) be changed to the following:

> (8) that the supplier charged the consumer for unordered goods or services.

We believe that this amendment would still do what the Consumer Protection Division is attempting to do and would also protect the consumer against unordered goods or services.

If the committee does not feel that the above amendment would be acceptable, we offer the following amendment which has been put into the law in certain other states:

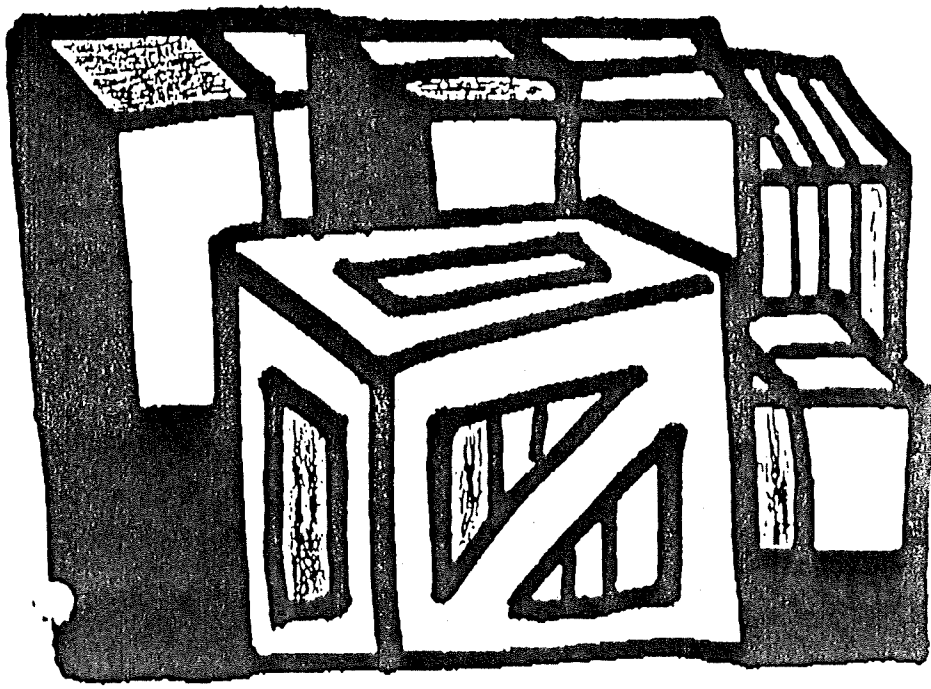
> (8) that the supplier imposed a duty upon the consumer to take an affirmative action so the consumer could avoid being charged for some new, unsolicited unordered goods or service except the sale or purchase of books, recordings, videocassettes and similar goods through a membership group or club regulated by the Federal Trade Commission or through a contractual plan or arrangement such as a continuity plan, subscription arrangement, series arrangement or single purchase under which the seller ships goods to a consumer who has consented in advance to receive such goods and the recipient is given the opportunity to review goods for at least seven days and to receive a full refund for return of undamaged goods.

Thank you for your consideration, and I would be more than happy to answer any of your questions at this time.

Attachment
Testimony of Bob W. [illegible]ey
Senate Bill No. 247

Unordered Merchandise

Consumer bulletin no. 2



Federal Trade Commission
nsylvania Ave., N.W. Washington, D.C. 20580

Federal Trade Commission

9-4

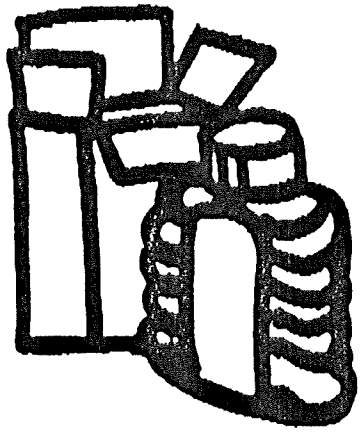
If violators do not voluntarily halt their mailings or agree to Commission cease and desist orders curtailing them, the FTC can "take the cases to court." Such court action, as well as failure to respect agreed-to cease and desist orders, can result in steep fines against the businessmen or corporations involved.

The provisions of Section 3009 of the Postal Reorganization Act follow:

Sec. 3009 — Mailing of Unordered Merchandise.

(a) Except for (1) free samples clearly and conspicuously marked as such, and (2) merchandise mailed by a charitable organization soliciting contributions, the mailing of unordered merchandise or of communications prohibited by subsection (c) of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45 (a) (1) of title 15.

(b) Any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.



(c) No mailer of any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.

(d) For the purposes of this section, "unordered merchandise" means merchandise mailed without the prior expressed request or consent of the recipient.

What does the law mean to you as a consumer?

There are only two kinds of merchandise that legally can be sent through the mails to a person without his consent or agreement:

* Free samples which are clearly and conspicuously marked as such.
* Merchandise mailed by a charitable organization soliciting contributions.

In either case you can consider the merchandise as a gift if you like. In all other instances, it is illegal to send merchandise to someone unless he has previously requested it.

Should you receive unordered merchandise of any kind, take it as a gift. Do what you like with it. You do not have to pay for it, and it is illegal for the person or firm sending it to you to dun you for it or send you a bill.

Consumers can be of great help to postal authorities and the Federal Trade Commission in eliminating the problem of unwanted, unordered goods and enforcing the law. If you are aware of violations or if you personally should have difficulty with unordered merchandise — particularly if you are plagued with statements demanding payment for it — contact the Federal Trade Commission, Washington, D.C. 20580, or your nearest FTC field office. A list of these offices follows:

TIPS FOR SHOPPING BY MAIL

As you know, shopping by mail can be a time- and energy-saving way to buy almost anything you want.

Whether you are an "old pro" at mail order shopping or a recent convert, questions may arise from time to time in shopping by mail, and you may not know how to answer them. For instance, who is responsible for return postage on an item of clothing that simply doesn't fit? Or, how long should it take for gift baskets you order by mail to be delivered?

When you "make knowledge your partner in mail order shopping," you take out the guesswork. That's the idea behind these "tips" for shopping by mail.

The Direct Mail/Marketing Association, the largest and oldest trade association of direct marketers and mail order firms, and the Federal Trade Commission, the agency that enforces the Mail Order Rule, have prepared this booklet to help you shop by mail wisely and with confidence.

Keep in mind that a good dose of common sense is also required when shopping by mail. If something sounds too good to be true, it probably is.

TIP # 10 If you ever get something in the U.S. mail that you didn't order, and you are not a member of a negative option or club plan, you can keep it without paying for it. It's your legal right.

A box of merchandise with a bill attached is the kind of package you might receive without placing an order. If you ever receive an unordered item in the U.S. mail, you may feel obligated to pay for it. Don't. If you didn't order it, and it isn't being sent as part of a negative option or club plan, you aren't obligated to pay. Remember, this right exists only if items are shipped through the U.S. mail, and not through other forms of shipment. But if you are billed for merchandise you did not order, it's a good idea to let the company know.

9-6

STATE OF KANSAS

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Testimony of
Juliene A. Maska
Statewide Victims' Rights Coordinator
Before the House Judiciary Committee
RE: Senate Bill 327
March 28, 1991

Attorney General Bob Stephan has asked that I speak to you today about Senate Bill 327.

In February 1988, Attorney General Stephan formed a 50-member Victims' Rights Task Force. The purpose of the task force was and still is to insure that the rights and needs of Kansas crime victims are not neglected. The Victims' Rights Task Force continues to address the issues concerning crime victims. The task force asked that Senate Bill 327 be introduced and seeks your support.

Senate Bill 327 would allow evidence of spousal abuse to be given when considering child custody. This bill stems from Congressional Resolution 172 passed by the U.S. House of Representatives with unanimous consent given by the U.S. Senate.

This U.S. resolution is not binding on the states and, therefore, this legislation is needed. The U.S. resolution addresses the following areas, which I believe apply to this bill as well. They are:

State courts have often failed to recognize the detrimental effects of having as a custodial parent an individual who physically abuses his

HJUD
Attachment #10
3-28-91

or her spouse, insofar as the courts do not hear or weigh evidence of domestic violence in child custody litigation;

There is an alarming bias against battered spouses in contemporary child custody trends such as joint custody and mandatory mediation;

Joint custody guarantees the batterer continued access and control over the battered spouse's life through their children;

Joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

A batterer's violence toward an estranged spouse often escalates during or after a divorce, placing both the abused spouse and children at risk through shared custody arrangements and unsupervised visitation;

Physical abuse of a spouse is relevant to child abuse in child custody disputes;

The effects of physical abuse of a spouse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

Children are emotionally traumatized by witnessing physical abuse of a parent;

Children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

Even children who do not directly witness spousal abuse are affected by the climate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

Research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

Witnessing an aggressive parent as a role model may communicate to children that violence is an acceptable tool for resolving marital conflict; and

Few states have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of physical abuse of a spouse in child custody cases.

For purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

The U.S. resolution was not intended to encourage states to prohibit supervised visitation.

Keeping these issues in mind, the Attorney General and his Victims' Rights Task Force ask for your support of Senate Bill 327.

S.O.S.
inc.
Services for Victims of Sexual & Domestic Violence

TESTIMONY of Trisha Bannon
P.O. Box 1191
Emporia, KS 66801

After doing extensive research for her book The Battered Woman, Lenore Walker concluded that "Whether or not they (the children) are physically abused by either parent is less important than the psychological scars they bear from watching their fathers beat their mothers". This finding is the core from which I speak here today.

For two (2) and one half (1/2) years I have had the agony of comforting children who are either anticipating a visit with their father or who have just returned from a visit. Children having to endure unending questions such as where are you staying, what is Mom doing, who is Mom seeing, this is all Mom's fault and even this is all your fault because you told.

The vicitimization these children are expected to withstand due to our societal socialization, our laws and our denial is ludicrous. It is hard to conceptualize that at this point our society is still more concerned with protecting parental rights than in protecting our states most precious resource - the children.

Violence is a generational cycle that can only be broken through intervention and treatment. However, treatment one hour per week at a shelter or mental health center cannot be effective if the child must return to the psychological and physical maltreatment that the abuser inflicts on a routine basis.

Social modeling is a cornerstone in the teaching of behavior to children.
We cannot expect our children to learn appropriate behavior when they are living with a parent who does not have appropriate coping skills. And I must ask - in forcing a child to return to an abusive home, what are we as the state of Kansas modeling, that abuse is okay?

HJUD
Attachment #11
3-28-91

We are really talking today about terror, the terror a child feels when they are placed in the custody of an abusive parent. One seven (7) year old boy went screaming, literally screaming through the shelter, out the backdoor into the backyard burying his face in the fence pleading that he not be made to see his father. This childs crisis was precipitated by a mere visit. To the best of our knowledge and his mothers knowledge this child has never been physically abused. It would be comforting to rationalize this childs behavior as rare and extreme. Unfortunately, this is a fairly typical response. A fifteen (15) year old girl who refuses to have any contact with her father stated "I had know ideal what it was like to live in a "normal" home, but now that I know I will never go back to my family.

The 15 year old may stand a chance in court system because of her age, they may hear her plea - but it's up to you- individually and as a committee to act upon the behalf of those who aren't eloquent in their speech, who aren't old enough yet to verbalize the terror they feel. These are the children who have been taught to lie to themselves and others about the abuse, they have lived in secrecy all of their lives. We must not let our children be forced into custody or visitation with a person who has little or no nurturing skills, anger control problems and the belief that physical abuse should be used to gain compliance. And still we cannot expect these children to verbalize their fears and their trauma before we can protect them. We as adults must be dedicated to the innocent, we must take it upon ourselves to rise above the denial of these horrors and become educated on the effects of spousal abuse on our children. We as the state of Kansas must protect our future, our children. They are our future, they will be the ones modeling the social skills we expect, and yet without our help they never stand a chance of learning about or modeling nonviolence.

Whitney Houston said it best in her song <u>The Greatest Love of All.</u>

I believe the children are our future;
Teach then well and let them lead the way.
Show them all the beauty they possess inside.
Give them a sense of pride,
To make it easier;
Let the children's laughter
remind us how we used to be.

LITTLE COTY CAN FORGET NOW.

The little boy of ten lies in his bed. While daddy's promises run through his head. The promises he's heard so many times before. Remembering the times he's shuddered behind his bedroom door.

But just today daddy promised and he remembers his embrace. So, he closes his eyes and theres a smile on his little face.

But then the screams of mommy awake him once again. Oh God, he prays let this horror come to an end! He stumbles out of bed and peeks through his door. And there once again mommy lies on the floor.

He cries and remember he's heard mommy scream that she can't leave. Cause she can't give up the house little Coty needs.

He remembers daddy screaming he'll never ever go. Cause he's the only daddy little Coty will know.

He'd snuck the gun out of daddy's dresser drawer. Cause he's heard daddy threaten to kill mommy many times before. So with trembling little hands and tears in his big blue eyes. Little Coty gets the gun from under his bed and writes his good-byes.

Dear Mommy and Daddy
I love you both so
But I can see its time
for me to go. And if I go now
and leave today. You both can
go your own way I love you both
Coty

P.S Plees give Spotty to Timmy
my best friend

11-3

TO THE HOUSE JUDICIARY COMMITTEE
Senate Bill #327
March 28, 1991

Dear Committee Members:

Thank you for taking the time to consider my concerns and remarks. I am here today in reference to Senate Bill #327. I am a victim of domestic violence x 2. I was married to an abuser, and grew up with a father that was a wife abuser. My father physically, sexually, and emotionally abused my mother.

Back then, we didn't know up to 80% of abusers also abuse their children. As a child, I had 23 fractures at one time. For this, my father received a dishonorable discharge from the air force. He started sexually abusing me at age 6. My mother didn't leave my father until I was 17 years old. My father went to mental institutions three times, each time for 3 months for the abuse he did to me. He was given visitation rights, even though I didn't want to see him during his stays at the hospitals. He remarried and sexually, and physically abused his wife and stepdaughter.

I didn't know that up to 60% of the women who are abused by husbands are also abused as children; I was at high-risk of marrying an abuser. My exhusband was a violent man. He would beat me, throw me, and threaten me. He had a quick temper. My children were 4 and 6 years of age when I left him. Many times I would put myself between him and the children. I was afraid to leave them with him. My husband's Neurologist explained to me that part of my husband's type of seizure condition was explosive anger before he had a petit mal seizure. The doctor witnessed one of his explosive episodes toward me in his office. My husband would either drink with his medication or not take his medication. I had a police report stating from his own sister that my husband had an explosive temper, and that no one in the family could control it.

Because of my experiences as a child, and by not being helped, I didn't think I could do anything about his temper, and beatings. Or how he would sleep with other women, and then bring home pictures of them to show and tell me about. Or sleeping in the car with the kids all night because I was afraid to go into the house. Or how I was afraid to leave the children alone with him. Or how as babies if they cried in the night and woke him up, he would become enraged and break furniture.

I know first-hand what the effects of child abuse are. When ever I remember the things that happened to me as a child, the pain of the memory is so intense I cry for long periods of time. It's taken 4 years of Safehouse counseling and work for me to be able to look a person in the eyes and talk to them. I'm just now stopping saying I'm sorry all the time. I still wake up terrified at night, fearing someone is going to come and hurt me. I am the only non-alcoholic child of 5 children from my original

HJUD
Attachment # 12
3-28-91

family. The others bury their pain of abuse in alcohol, but I just cry. I am just now learning not to go into a panic if I don't please someone.

I knew if I left my husband, he would really go after me. He was continually telling me what he would do if I ever left. He would threaten to take off with the kids and never come back. Or he'd say, "If you think it's bad now , just try to leave me." I explained his violent behavior to our judge in the divorce, stating my fears for my children when being in an auto alone with him: that he could pass out due to his abuse of medications, or drinking, as well as fearing his angry mood swings. The judge stated to me that my testimony and the police report about domestic violence along with a statement from his own sister would not be considered in determining child custody. My husband's physician would not release his medical record without my husband's consent. Nine months later, due to my husband's abusive behavior, my son was in intensive care for 5 days with multiple fractures of the skull. The Doctor said his skull cracked just like an eggshell, and if he had taken the blow all to one spot, he would have died. I have written documentation at the hospital of this incident. Nothing was done. He was simply told by the court to have an evaluation done, which he did not comply with. However, he still has joint custody and exercises unsupervised visitation rights.

For four years my ex-husband has used his child custody rights as a means to harass me: using it as an excuse to come to my home for any reason, threaten me, and be late in returning the children by 3 to 5 hours, knowing full well that I was terrified he had run off with them. I still live in fear for my children. My ex-husband can have them up to 3 days per week and every other holiday. I fear whether they will be able to live through his next anger attack. I fear his mental abuse will hurt them. I fear for my daughter: will he do to her what he did to me? I want so to protect them, but have found no legal way. So I pray to God. And I urge you to change the law, so others won't have to go through what I and my children have gone through.

Thank you for hearing my testimony in consideration of Senate Bill #327.

Gina Wright, R.N.
218 W. Maple
Independence, Ks. 67301

Kansas Child Abuse Prevention Council

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(913) 354-7738

428 S. Broadway, Suite 204
Wichita, Kansas 67202
(316) 262-8434

Testimony before the
House Judiciary Committee
in Support of SB 327

March 28, 1991

The Kansas Child Abuse Prevention Council wishes to support SB 327, a bill which would allow evidence of spousal abuse to be considered in the determination of child custody in divorce actions. Our support for this measure grows from our interaction with domestic violence shelters and related programs around the state. We are painfully aware that significant numbers of children as well as women end up being served by these programs. I'm attaching an overview prepared by the Attorney General's staff for your reference.

We know as well that 70% of men with a history of spouse abuse witnessed domestic violence while growing up, and 50% were themselves abused as children. These facts should add to our collective interest in breaking the cycle of child abuse, since it is clearly an intergenerational problem.

It seems both reasonable and prudent that clear evidence of domestic violence and spousal abuse should be considered when determining custody issues in divorce proceedings. To ignore that information, or to suppress it, is potentially damaging to all parties concerned, particularly the children. We encourage your support for SB 327.

HJUD
Attachment # 13
3-28-91

Testimony submitted by James McHenry, Ph.D.
Executive Director

Domestic Violence Questionnaire

(Reporting period: July 1 to September 15, 1990)

Please fill out and return by September 21, 1990.

Agency: 16 programs reporting out of 23 programs

5780 Number of crisis calls.

2610 Number of women who received services other than shelter (face-to-face contact).

922 Number of children who witnessed the abuse.

671 Number of children who received services other than shelter (face-to-face contact).

466 Number of women sheltered.

625 Number of children sheltered.

113 How many different counties did the women come from during reporting period?

597 Number women who received physical injury. Please list the different types of injury: bruises, cuts, scratches, broken bones, black eyes, gunshot wounds, choked, cigarette burns, sexual assaulted, dislocated joints, rope burns, dislocated eyeball, etc

330 Number of incidents where weapons were involved.

2529 Number of women emotionally abused.

197 Number of children physically abused. Please list type of injury: bruised, choked, sexually assaulted, burns, belt marks, scratches, etc.

1011 Number of children emotionally abused.

Return to Juliene Maska, Attorney General's Office, 2nd floor, Judicial Center, Topeka, Kansas 66612-1597.

"Helping People Help Themselves"

SAFEHOUSE, Inc. Est. 1979

NATIONAL BANK BUILDING • 101E. 4TH, SUITE 214 • PITTSBURG, KANSAS 66762-4851

Testimony before the House Judiciary Committee
March 28, 1991

Re: SB 327

SAFEHOUSE wishes to express appreciation for the protection of victims of domestic violence and their children encompassed in SB 327. While working with victims of domestic violence in the 12-county area of S.E. Ks., we often are faced with assisting victims through the divorce process with judges that refuse to consider spouse abuse when determining custody of the children. As is written in Charlotte Fedder's book Shattered Dreams, "Mental health professionals who are knowledgeable about the dynamics of family violence know that physical abuse is accompanied by psychological control and that when the victim takes action to end the violence, the assailant often turns to the court system to regain control and continue the harassment."

The child custody battle is often productive for the abuser. Many women go back to an abusive husband when faced with the horrible reality that, if they don't go back, their children will be in that dangerous situation without their maternal protection. Others never leave due to such fear. And others are legally forced to submit their children to a dangerous situation every other weekend, holidays, and an extended time in the summer. Still others have to cope with the reality that the abuser has somehow convinced the court that he is the better placement for the child's physical custody.

A major study of more than 900 children at battered women's shelters found that nearly 70% of the children were themselves victims of physical abuse or neglect. Nearly half of the children had been physically or sexually abused. And those are the ones we know about. Many states have already passed legislation recognizing that domestic violence should affect child custody decisions. I have enclosed a copy of the federal resolution which was passed last year in reference to this issue.

We are pleased to see that SB 327 is being considered. Thank you for your consideration of this critical topic.

Dorthy Miller, LBSW
Executive Director
SAFEHOUSE, Inc.

HJUD
Attachment # 14
3-28-91

Child Custody Resolution

On July 20, 1989, **House Congressional Resolution 172** was introduced by Representative Connie Morella (R-MD), to express the adverse effects of domestic violence on children and the need to incorporate evidence of domestic violence in child custody litigation.

Although Congress does not have jurisdiction to legislate how state judicial systems decide child custody cases, Congressional resolution can serve as an important tool for education at the state and local level. This resolution is currently awaiting a report to the Judiciary Committee.

101st Congress, 1st Session H. Con. Res. 172

Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive parent.

IN THE HOUSE OF THE REPRESENTATIVES

July 20, 1989

Mrs. Morella (For herself and Mr. Miller in California) submitted the following concurrent resolution; which was referred to the Committee on Judiciary

CONCURRENT RESOLUTION

Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.

Whereas State courts have thus far not recognized the detrimental effects of the batterer as a custodial parent due to their failure to hear or weigh evidence of domestic violence in child custody litigation;

Whereas joint custody guarantees the battered spouse's life through their children;

Whereas joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

Whereas a batterer's violence toward an estranged spouse often escalates during or after a divorce, placing both the abused spouse and children at risk through shared custody arrangements and unsupervised visitation;

Whereas spouse abuse is relevant to child abuse in child custody disputes;

Whereas the effects of spouse abuse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

Whereas children are emotionally traumatized by witnessing physical abuse of a parent;

Whereas children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

Whereas even children who do not directly witness spousal abuse are affected by the climate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

Whereas research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

Whereas witnessing an aggressive parent as a role model may communicate to the children that violence is an acceptable tool for resolving marital conflict; and

Whereas few States have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of spouse abuse in child custody cases: Now therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive parent.

14-2

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TESTIMONY
MELANIE S. JACK, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING SENATE BILL 329
MARCH 28, 1991

Mr. Chairman and Members of the Committee:

The Automated Fingerprint Identification System (AFIS) has seen increasing success in solving crimes through the use of it's fingerprint library to match known prints with crime scene prints. It is with this success that we ask the Legislature for another law enforcement tool to be implemented with the DNA laboratory. The Legislature has appropriated funds for the DNA laboratory at the Kansas Bureau of Investigation (KBI), which will put Kansas on the forefront of forensic technology. Once operational the KBI requests authority to utilize the DNA technology to develop a DNA databank much like the AFIS system. The source for the data bank will be from convicted felons. Such a system will not only identify suspects, but it will also exclude suspects. It could potentially reduce investigation time and insure that a correct identification of the suspect is made. Establishing such a databank can increase the chances of solving sexual assaults and violent offenses when no suspect has been identified. From a prosecutor's standpoint these cases are often very difficult to prove because it is usually one person's word against the other. It's strength is in the ability to make a positive identification.

The DNA databank proposal is drafted from an Illinois/Florida statute which provides for the collection of blood and saliva from persons

HJUD
Attachment # 15
3-28-91

convicted of sex crimes and other violent offenses. To date 11 other states have DNA databanks. In the future it is likely that the FBI will be in charge of central indexing for all states, which will allow access to the databanks from all states participating.

Recently the Kansas Supreme Court has approved the use of DNA in court which paves the way for it's continued use in criminal cases (see attached article).

Based upon our discussions with the Department of Corrections and their population estimates, we propose the following changes:

P. 1, line 17, delete 21-3403, 21-3404, 21-3414,& 21-3415
P. 1, line 18, 21-3606, should be 21-3609 (Child Abuse)
P. 1, lines 30-31 "sentence of probation, conditional discharge or periodic imprisonment as a result of such conviction"
Change to: "authorized disposition under K.S.A. 21-4603 and amendments thereto"
P. 1, line 39, "Kansas Reception and Diagnositc Center"
Change to: "Topeka Correctional Facility"
P. 2, line 5, After approved manner insert: "No person authorized by this section to withdraw blood and collect saliva, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices." (Adopted from SB 149, p.3, lines 16-21)

The Department of Corrections supports this bill and is available for questions.

On behalf of the Attorney General and the KBI, I would like to thank you for giving me the opportunity to speak.

(Attached is a copy of the bill with the proposed changes)

DNA EXEMPLARS ARE TO BE COLLECTED IN THE FOLLOWING CRIMES:

Rape	(includes attempt)
Indecent Liberties	"
Aggravated Indecent Liberties	"
Criminal Sodomy	"
Aggravated Criminal Sodomy	"
Lewd and Lascivious Behavior	"
Sexual Battery	"
Aggravated Sexual Battery	"
Incest	
Aggravated Incest	
Abuse of a Child	
Murder in the First Degree	
Murder in the Second Degree	
*Voluntary Manslaughter	
*Involuntary Manslaughter	
*Aggravated Battery	
*Aggravated Battery Against a Law Enforcement Officer	

*Proposed deletions to Senate Bill 329

The Topeka Capital-Journal

Saturday, March 2, 1991 9-A

DNA testing admissible

The Associated Press

DNA print testing will be admissible as evidence in court under a decision handed down Friday by the Kansas Supreme Court.

The court, in upholding the validity of the relatively new method of identification, upheld the conviction of Oliver K. Smith in the first-degree murder of a Marion County woman.

In an opinion written by Justice Tyler Lockett, the court in its precedent-setting decision unanimously agreed that the use of DNA material as a method of identifying a suspect generally is regarded as reliable by the scientific community.

DNA is the abbreviation for deoxyribonucleic acid, the principal carrier of genetic information in almost all organisms. It is found in the chromosomes of cells.

Smith was convicted of rape and murder in the death of Shelly Prine, who was found shot and lying in a pool of blood on her living room floor on Oct. 26, 1986. Although shot twice in the head, she was still alive and taken to St. Francis Medical Center in Wichita, where she died the following day.

Smith, who lived 13 miles away from the Prines, became a suspect in the case when neighbors told police they had heard a motorcycle leave the farm on the afternoon of the rape. Smith owned a motorcycle.

The DNA test was done on semen found on the victim. Three experts testified there was a 99 percent probability the semen was Smith's.

DNA profiling can match a person's genetic material with genetic material obtained from a small amount of human tissue left at the scene, on a murder weapon or on a suspect's clothing.

"Although traditional forensic methods exist for comparing blood, hair and semen, DNA profiling has the advantage of being performed on much smaller tissue samples than traditional tests," Lockett said.

15-4

AN ACT concerning criminal procedure; requiring collection of DNA exemplars from convicted felons; authorizing the Kansas Bureau of Investigation to act as the depository of the markers.

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

Section 1. (a) Any person convicted of an unlawful sexual act as defined in subsection (4) of K.S.A. 21-3501 and amendments thereto or an attempt of such unlawful sexual act or convicted of a violation of K.S.A. 21-3401, 21-3402, 21-3602, 21-3603 or 21-3609 and amendments thereto, regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas Bureau of Investigation in accordance with the provisions of this act, if such person is:

(1) Convicted of a crime specified in subsection (a) on or after the effective date of this act,

(2) ordered institutionalized as a result of being convicted of a crime specified in subsection (a) on or after the effective date of this act, or

(3) convicted of a crime specified in thi subsection before the effective date of this act and is presently confined as a result of such conviction in any state correctional facility or county jail or is presently serving an **authorized disposition under K.S.A. 21-4603 and amendments thereto.**

(b) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have specimens of blood and saliva collected within 10 days after sentencing: (1) If placed directly on probation, as a condition of probation, that person must provide specimens of blood and saliva, at a collection site designated by the Kansas Bureau of Investigation; or (2) if sentenced to the secretary of corrections, the specimens of blood and saliva will be obtained immediately upon arrival at the **Topeka Correctional Facility.**

(c) Any person required by paragraph (a)(3) to provide specimens of blood and saliva shall be required to provide such samples prior to final discharge, parole, or release at a collection site designated by the Kansas Bureau of Investigation.

(d) The Kansas Bureau of Investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood and saliva samples. The collection of samples shall be performed in a medically approved manner. **No person authorized by this section to withdraw blood and collect saliva, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.** The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician. The samples shall thereafter be forwarded to the Kansas Bureau of Investigation for analysis and categorizing into genetic marker groupings.

(e) The genetic marker groupings shall be maintained by the Kansas Bureau of Investigation. The Kansas Bureau of Investigation shall establish, implement and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching and storing analysis of DNA (deoxyribonucleic acid) and other biological molecules.

(f) The genetic marker grouping analysis information obtained pursuant to this act shall be confidential and shall be released only to law enforcement officers of the United States, of other states or territories, of the insular possessions of the United States , or foreign countries duly authorized to receive the same, to all law enforcement officers of the State of Kansas and to all prosecutor's agencies.

(g) The Kansas Bureau of Investigation shall be the State central repository for all genetic marker grouping analysis information obtained pursuant to this Act. The Kansas Bureau of Investigation may promulgate rules for the form and manner of the collection of blood and saliva samples and other procedures for the operation of this act. The provisions of the administrative procedure act shall apply to all actions taken under the rules so promulgated.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas Register.

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Testimony of
Juliene A. Maska
Statewide Victims' Rights Coordinator
Before the House Judiciary Committee
RE: Senate Bill 329
March 28, 1991

Attorney General Bob Stephan has asked that I speak to you today about Senate Bill 329. The Attorney General asked that Senate Bill 329 be introduced and seeks your support.

As the Statewide Victims' Rights Coordinator, I have received a number of calls from crime victims who requested that there be a central registry for sex offenders. The collection of blood and saliva specimens for all convicted felony sex offenders would be a major step forward in keeping track of sex offenders.

Sex offenders repeat their crimes. Nicholas Groth, a leading authority on sex offenders, states the average number of rapes committed by a particular offender before he is prosecuted is 13. If there are 12 other victims and some of them may have reported the crime but they could not identify their attacker, DNA profiling could possibly assist in identifying the sex offender.

HJUD
Attachment # 16
3-28-91

There is no known research that states sex offenders can be cured. Most diversion and treatment programs monitor the sex offender to see if they repeat the crime. While a number of sex offenders can be managed from repeating their crime, there are still those who cannot be treated or controlled.

By having this DNA profile of sex offenders, investigators can eliminate suspects and hopefully apprehend the correct offender. By keeping this accurate record of sex offenders, we can begin to stop repeat offenders. The chances will be far greater that the suspect will be prosecuted and found guilty.

With the DNA profiling, there will be a record of all sex offenders in Kansas. This will benefit victims of sex crimes and future victims.

I ask for your support of Senate Bill 329.

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TESTIMONY
Eileen S. Burnau, Supervisor
Serology/Trace Section
Forensic Laboratory
Regarding Senate Bill 329
March 28, 1991

Mr. Chairman and Members of the Subcommittee:

> "DNA Profiling has now become a formidable weapon in our arsenal against violent crime. In the near future crime laboratories across America should be able to analyze hair, blood or other body fluids left at the scene of a crime and make an identification." William S. Sessions, Director
> Federal Bureau of Investigation

I want to thank the members of the 1990 legislature because they took a very important step to give law enforcement a tool that can make a significant difference in solving violent crimes - especially homicides and rapes. It was truly a huge step to approve and fund the DNA Profiling Program for the Kansas Bureau of Investigation.

DNA Profiling has proven to be most valuable in identifying the perpetrator of a crime - and just as importantly - exonerating the innocent. Court acceptance of DNA profiling has been established. Today, DNA Profiling methods have proven that almost any dried human biological material can be put through the DNA process and establish positive identification beyond a reasonable doubt.

The 1990 Kansas legislature put in place an important

HJUD
Attachment # 17
3-28-91

structure that will assist in the investigation and prosecution of violent crimes. I am here today to ask you for another plank to improve this structure and make it even more effective in fighting crime. I urge approval for Senate Bill Number 329 that creates a DNA data bank of known violent criminal offenders.

Having the ability to classify DNA profiling information, catalog it and later run it through a computer search and compare it with other tests results is critical to law enforcement.

The value of a DNA data bank can be seen by comparing it to the data banks for fingerprints. The FBI maintains over 100 million sets of fingerprints in a computerized file. Over the years, this file has more than proven its worth in criminal investigation. In time, a comparable DNA file could be even more valuable. This is especially true with sexual assaults. While the assailant's fingerprints are frequently not found, in the majority of rape cases, the assailant leaves something of himself at the crime scene and that is seminal fluid. This evidence can be analyzed and compared to the known DNA profiles of convicted sexual offenders.

The justification for developing and creating a data bank of DNA profiles is based on the fact that individuals who commit violent crimes are often repeat offenders. More than one-half of convicted rapists are re-arrested within 3 years of release from prison. In addition, it is estimated that only 50% of the rapes (90,000 reported nationally in 1987) are closed by arrest. More

than 1 of every 8 rearrests are made in states other than the state in which the person was released.

Because of the high rate of recidivism, several states have passed laws requiring individuals convicted of sex offenses and other violent crimes to submit their blood for DNA profiling. The goal of data banks to apprehend serial offenders more quickly, even if their crimes are committed in different jurisdictions.

DNA testing as it is done today requires having the blood of the suspect before an identification or elimination is made. Data banking has tremendous potential in identifying assailants in those cases that have no suspect. Once the convicted offender file has been established, the evidence samples - such as semen - can be examined in one of two ways: The DNA from the semen can be compared to the known profiles of the convicted offenders; in addition, the DNA from the semen can also be compared to the DNA in other case samples. These comparisons would be useful not only in potentially identify suspects through the known offender file but also in determining if a series of rapes in a community were committed by one or more individuals.

In light of the high rate of recidivism, the convicted violent offender data would provide the investigator with a logical first place to look for the assistance in solving sexual assault and other violent crime cases in which no suspect has been identified through traditional investigation processes. DNA

tests would clearly identify perpetrators if they had been previously tested and their DNA profiles stored in a data base.

I again thank you for your support in 1990 in establishing a DNA Program at the Kansas Bureau of Investigation and ask for your approval of Senate Bill Number 329 that creates a DNA data bank of known violent criminal offenders.

DNA PROFILING
Convicted Violent Offender Profiles

The information listed below was taken directly from the book, Genetic Witness: Forensic Uses of DNA Tests, Congress of the United States Office of Technology Assessment, July, 1990.

Convicted Violent Offender Profiles

As of January 1990, at least 11 States have enacted laws to require some level of DNA typing of convicted offenders, including:

* **Arizona:** A 1989 law requires DNA testing of convicted sex offenders.

* **California:** 1985 and 1989 laws require all convicted sex offenders to provide blood and saliva specimens at the time of their release from prison. Samples collected to date and future samples will be submitted for DNA testing, and the California attorney general's office has begun studies to determine the best methods for collecting and storing data.

* **Florida:** A 1989 law calls for a computer bank for genetic information on convicted sexual offenders.

* **Illinois:** New legislation requires those who have been convicted of sexual assault or attempted sexual assault, or who have been in an institution as a sexually dangerous person, to submit specimens of blood or saliva to the State police.

* **Iowa:** A law enacted in 1989 permits DNA testing in the criminal law context. The attorney general's office will issue rules about which crimes are covered and who will be required to provide DNA samples. Genetic profiling could become a condition of parole.

* **Minnesota:** Recent legislation requires uniform procedures for collecting DNA information in cases of criminal sexual conduct, requires that a court sentencing a person for criminal sexual conduct order a DNA analysis specimen, and provides for admission of DNA test evidence without expert testimony.

* **Nevada:** A new State law requires that convicted sex offenders submit to testing of their blood and saliva. The law also requires that the test results be maintain in Nevada's criminal history records.

* **South Dakota:** A 1990 law allows law enforcement agencies to perform DNA typing of people convicted of sex crimes, calling for blood and saliva samples to be taken from those convicted or arrested.

* **Virginia:** The State legislature passed a bill in the 1989 session that requires DNA typing of convicted sex offenders. Virginia was the first state to establish its own DNA typing laboratory and expects to be the first State to come on-line with a DNA databank.

* **Washington:** State law requires a system to collect genetic descriptions of violent and sexual offenders. In addition, King County, which includes Seattle, passed an ordinance requiring DNA testing on sex offenders.

Several other States, including Connecticut, Massachusetts, Michigan, Indiana, and Ohio have proposed DNA databanking legislation that had not yet been enacted.

Investigative Support Data

The FBI is currently involved in the development of a theoretical model and working prototype for an investigative DNA profiling database that would include the following types of information:

* **Open Case:** The FBI would centrally maintain a file containing DNA typing information from blood, hair or semen evidence left at a crime scene. It would be used to help investigators in the same jurisdiction, or among different ones, determine if a series of crimes were related and committed by the same person.

* **Missing Persons/Unidentified Deceased:** The FBI would centrally maintain this file as an aid to medical examiners and investigators where other techniques, such as fingerprints, cannot be used. The FBI suggests that the file could include DNA typing information from parents who report their children missing. As children are located, the child's DNA type could be compared with parent DNA on file to effect identification.

* **Convicted Offenders:** These files would be maintained by the individual States according to their authority, but the FBI would provide an indexing service. It would contain DNA test results of convicted rapists, murderers and others, much as fingerprint cards are retained. States could have access to other States' files after receiving approval.

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TESTIMONY OF STEVE R. STARR, DEPUTY DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE
HOUSE JUDICIARY COMMITTEE
THURSDAY, MARCH 28, 1991
ROOM 115-S
STATE CAPITOL

Chairman Solbach and Committee Members:

The Kansas Bureau of Investigation strongly encourages your favorable support of SB 329, a bill designed to collect blood and saliva samples from persons convicted of certain criminal offenses. Thanks to the Kansas Legislature's initiative last year, the KBI's DNA laboratory is due to become operational this year and will become a valuable investigative tool to assist law enforcement in the identification of criminals.

SB 329 provides for the establishment of a DNA Databank to assist in the identification of repeat offenders. Like the fingerprint files, now computerized in AFIS to more easily identify offenders, the DNA databank would be able to quickly identify those repeat offenders who leave biological evidence at the crime scene. Many times fingerprints are not found at crime scenes, especially at sexual assaults. A recent Federal Judiciary Committee study of crimes against women found approximately 100,000 women are raped per year. Four times that number are sexually assaulted. The modern technology through DNA analysis now makes identification and conviction of the offender more attainable.

As originally drafted SB 329 would have included all violent and sexual convictions. During Senate hearings the DOC presented testimony which would have incurred significant fiscal impact on both KBI and Dept. of Correction.

Since that time we have had several discussions with DOC to attempt to reduce the overall fiscal impact. The KBI supports the concept of the original bill however recognizing the financial strain of the State budget recommends limiting the offenses the samples are drawn to only A & B Felony murder and all sexual convictions. This would reduce the impact to approximately $80,000 for the KBI. In addition, if a Criminalist I position could be added to the KBI's authorized strength, the DOC concern from contractual restriction, accreditation guidelines and fiscal impact constraints would be eliminated. The position would have the dual responsibility of collecting the samples and also assisting in the DNA analysis.

HJUD
Attachment # 18
3-28-91

The DOC has concurred with this revision in the bill and supports the concept of the DNA databank.

Last year the Legislature took the first step at keeping Kansas in the mainstream of fight against crime. Establishment of the DNA databank is the next logical step. We encourage your favorable passage of SB 329 as amended.

STATE OF KANSAS

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Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

To: House Judiciary Committee

From: Steven J. Davies, Ph.D.
Secretary of Corrections

Subject: Senate Bill No. 332

Date: March 28, 1991

The Department of Corrections requested the introduction of Senate Bill No. 332 in order to address a problem which has been ongoing for many years. Inmate personal property management has become increasingly more difficult with the growing inmate population. Storage space is in short supply. The more property which is placed in storage creates the potential for property claims due to lost, damaged, or misplaced property. Maintaining control of the property and management of property inventories is a time consuming effort for staff.

The enactment of Senate Bill No. 332 would reduce the management responsibility in this area as well as the risk of liability. Under this act, the property of an inmate who escapes from custody would be considered abandoned property. The Department of Corrections could then proceed to dispose of that property. It would no longer have to be held in storage until the inmate is retaken into custody.

For other inmates, the act provides that any property not taken with them at the time of their release would be held for up to 90 days. If not claims by that time, the property would be considered abandoned and could be disposed of at that time.

The passage of Senate Bill No. 332 will ease a problem which has been ongoing for many years. It could also reduce liability the state might incur as a result of lot or damaged inmate personal property.

HJUD
Attachment # 19
3-28-91

SJD:CES/pa