JUDICIARY SUBCOMMITTEE ON CRIMINAL LAW AND CONSUMER PROTECTION

Senator Jerry Moran, Chairman

March 28, 1991 - Room 522-S - 10:05 a.m.

HB 2365 - prohibiting possession of a firearm on school grounds. (Jud)

PROPONENTS:

Onan Burnett, USD 501
Gerald Henderson, United School Administrators (ATTACHMENT 1)
Norm Wilkes, Kansas Assoc. of School Boards (ATTACHMENT 2)
Chuck Bredahl, KS Adjutant General (ATTACHMENT 3)

OPPONENTS:

None appeared.

Subcommittee recommendation: to amend to give blanket exemption to military personnel in the exercise of duty; and to recommend favorable for passage as amended.

HB 2425 - defining and classifying the crimes of interference with the legislative process and possession of a loaded firearm within the capitol building.

PROPONENTS:

Emil Lutz, Legislative Administrative Services
Captain Fred Johnson, Capitol Area Security (ATTACHMENT 4)
Lieutenant W. K. Jacobs, Capitol Area Security (ATTACHMENT 5)

OPPONENTS:

None appeared.

Subcommittee recommendation: to amend by striking all language except that which pertains to the firearms provision and changing the effective date to publication in the Kansas register; and to recommend favorable for passage as amended.

HB 2231 - redefining sodomy. (Gomez)

PROPONENTS:

James Clark, Kansas County and District Attorneys Assoc. (ATTACHMENT 6)
Jeff Moots, ACLU

OPPONENTS:

None appeared.

Subcommittee recommendation: to amend to exempt acts between two consenting adults age 18 or older; and to recommend favorable for passage as amended.

HB 2184 - evidence of previous sexual conduct in prosecutions for sex offenses. (Hochhauser, Glasscock)

PROPONENTS:

James Clark, Kansas County and District Attorneys Assoc. (ATTACHMENT 7)
Bill Kennedy, Riley County Attorney (ATTACHMENT 8)
Ron Smith, KBA (ATTACHMENT 9)(written only)

OPPONENTS:

None appeared.

Subcommittee recommendation: to recommend favorable for passage.

HB 2152 - when traffic violator required to be taken into custody. (Empson, Garner)

PROPONENTS:

Representative Garner (ATTACHMENT 10)
Representative Empson (ATTACHMENT 11)

OPPONENTS:

None appeared.

Subcommittee recommendation: to amend to delete K.S.A. 1990 Supp. 8-262 which pertains to driving with a suspended or revoked license; and to recommend favorable for passage as amended.

HB 2143 - procedure when mentally retarded person is a victim of crime. (Empson)

PROPONENTS:

Representative Empson (ATTACHMENT 12)
Lila Paslay, Association for Retarded Citizens (ATTACHMENT 13)

Ron Smith, KBA (ATTACHMENT 14) (written only)
James Clark, Kansas County and District Attorneys Assoc. (ATTACHMENT 15)

OPPONENTS:

None appeared.

Subcommittee recommendation: to amend to provide a severability clause; and to recommend favorable for passage as amended.

HB 2353 - blood alcohol content lowered to .08 for DUI. (Crowell & 35 others)

PROPONENTS:

Juliene Maska, Statewide Victims Rights Coordinator, A.G. (ATTACHMENT 16)
Ed Klumpp, Kansans for Highway Safety (ATTACHMENT 17)
Representative Rex Crowell

OPPONENTS:

James Clark, Kansas County & District Attorneys Assoc. (ATTACHMENT 18)
Gene Johnson (ATTACHMENT 19)

Subcommittee recommendation: to amend to place in it SB 195 and forward to the full committee without recommendation.

HB 2500 - juvenile felons considered adults when convicted of lesser included offense. (O'Neal)

PROPONENTS:

James Clark, Kansas County & District Attorneys Assoc. (ATTACHMENT 20)

OPPONENTS:

None appeared.

Subcommittee recommendation: to amend with technical amendments; and to recommend favorable for passage as amended.

HB 2057 - extending the time limitations on the prosecution of juvenile offenders for certain crimes. (Jud)

PROPONENTS:

Paul Shelby, Office of Judicial Administration (ATTACHMENT 21)

OPPONENTS:

None appeared.

Subcommittee recommendation: to recommend favorable for passage.

HB 2105 - drug forfeiture money in special prosecutor's trust fund also spent on drug prevention programs in counties. (Parkinson)

PROPONENTS:

James Clark, Kansas County and District Attorneys Assoc. (ATTACHMENT 22)
Representative Mark Parkinson (ATTACHMENT 23)
Douglas R. Roth, Sedgwick County D.A. (ATTACHMENT 24)
Gene Johnson (ATTACHMENT 25)
Paul Morrison, Johnson County D.A.

Subcommittee recommendation: to recommend favorable for passage.

HB 2374 - victim rights to make a statement in presentence report; address the court at the sentencing hearing; and be informed before plea bargaining occurs. (Jud)

PROPONENTS:

Juliene Maska, Statewide Victims Rights Coordinator, A.G. (ATTACHMENT 26)
Representative Joan Hamilton (ATTACHMENT 27)
Paul Shelby, OJA (ATTACHMENT 28)
Beth Mellies

OPPONENTS:

James Clark, Kansas County and District Attorneys Assoc. (ATTACHMENT 29)

Subcommittee recommendation: to cite statute K.S.A. 21-3401A and amend to conform with Supreme Court rules concerning "hard-40" appeals; to amend to specifically change Section 4, page 2 to provide that the court may allow the victim or the family of the victim to address the court if they so desire; to amend to allow compensation to be awarded for children who are victims of certain crimes if filed with the Board within one year of the reporting; and to recommend favorable for passage as amended.

GUEST LIST

COMMITTEE: Senate Judiciary Subcommittee on CRIMINAL LAW

DATE: 3/28/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Betty Domar	Topeka	CVC Board
Paul Shelby	Topeka	OJA
Nancy Lindberg	Topeka	A.G. office
Mark Canfield		

Sub. Criminal Law, Attach. 1
03/28/91

USA
UNITED SCHOOL ADMINISTRATORS OF KANSAS

HB 2365

March 26, 1991

Testimony presented before the Senate Judiciary Committee
by Gerald W. Henderson, Executive Director
United School Administrators of Kansas

Mister Chairman and members of the committee. United School Administrators of Kansas is in complete support of **HB 2365** for obvious reasons. Not even during the volatile years of the sixties were school administrators worried about people coming to school and solving problems with guns. Now many of them are. A recent incident involving a handgun in a Topeka high school is indeed the reason for the introduction of this bill.

I can well remember as a teacher in southwest Kansas when I was confronted with a man with a loaded gun. It was a frightening experience to say the least. That person harmed no one, but he well might have. As I recall it, there were never any specific charges filed. It may well have been that the law enforcement people needed the provisions of this bill.

We encourage you to recommend **HB 2365** favorably for passage.

HB2365/gwh

Subcommittee - Senate Judiciary
3-28-91
Attachment 1

820 Quincy, Suite 200 Topeka, Kansas 66612 (913) 232-6566

Sub. Criminal Law - Attach 2
3/28/91

KANSAS ASSOCIATION OF SCHOOL BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony on H.B. 2365
before the
Senate Committee on Judiciary Subcommittee

by

NORMAN D. WILKS, DIRECTOR OF LABOR RELATIONS
Kansas Association of School Boards

March 26, 1991

Mr. Chairman and Members of the Committee, on behalf of the 292 of 304 Unified School Boards of Education, which are members of the Kansas Association of School Boards, we wish to express our support for the passage of H.B. 2365.

It is generally unnecessary for persons other than law enforcement officers to possess firearms on school property. We therefore, support the expansion of the definition of unlawful possession of a firearm to include possession on public school property.

We urge your favorable consideration of H.B. 2365 as passed by the House of Representatives.

Subcommittee - Senate Judiciary
3-28-91
Attachment 2

Sub. Criminal Law - Attach. 3
03/25/91

STATE OF KANSAS

THE ADJUTANT GENERAL
P.O. BOX C-300
TOPEKA, KANSAS 66601-0300

TESTIMONY FOR
SENATE JUDICIARY SUBCOMMITTEE
ON CRIMINAL LAW AND CONSUMER PROTECTION
HOUSE BILL 2365
TUESDAY, MARCH 26, 1991

MISTER CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

MY NAME IS CHUCK BREDAHL, SPECIAL ASSISTANT TO THE ADJUTANT GENERAL. I AM APPEARING ON BEHALF OF THE ADJUTANT GENERAL, MAJOR GENERAL JAMES F. RUEGER, WHO IS OUT OF THE STATE TODAY.

WHILE WE SUPPORT THE ENACTMENT OF HOUSE BILL 2365 RELATING TO THE POSSESSION OF FIREARMS ON SCHOOL GROUNDS, IT POSES A PROBLEM FOR THE KANSAS NATIONAL GUARD AND OTHER MILITARY UNITS

FREQUENTLY WE ARE CALLED UPON AS PART OF THE COMMUNITY TO PROVIDE COLOR GUARDS FOR ATHLETIC AND OTHER EVENTS HELD ON SCHOOL PROPERTY. FIREARMS ARE PART OF THE COLOR GUARD.

IF THE BILL PASSES AS WRITTEN, ALL MILITARY UNITS WOULD NO LONGER BE ABLE TO PARTICIPATE AT ATHLETIC EVENTS OR AT OPENING CEREMONIES FOR NUMEROUS EVENTS HELD ON SCHOOL PROPERTY.

WE WOULD LIKE TO PARTICIPATE IN THESE EVENTS SO WE WOULD ASK THAT YOU AMEND THE BILL IN SECTION D AFTER LAW ENFORCEMENT OFFICER TO INCLUDE "OR MILITARY PERSONNEL."

WE APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU AND EXPRESS OUR CONCERN.

WE ASK FOR SUPPORT FOR THE CHANGE TO HOUSE BILL 2365 AND THEN PASSAGE OF THE BILL.

Subcommittee - Senate Judiciary
3-28-91
Attachment 3

Sub. Criminal Law - Attach 4
03/28/91

SUMMARY OF TESTIMONY

Before the Senate Judiciary Committee

Presented by Fred Johnson

==========

Good morning Mr. Chairman and members of this committee. My name is Fred Johnson. I am the Troop Commander of the Capitol Area Security Patrol and I appear before you today on behalf of the Superintendent of the Kansas Highway Patrol and the members of the Capitol Area Security Patrol who support House Bill 2425.

As written, HB 2425 addresses two very important issues, 1). The unlawful interference with the legislative process and 2). The unlawful possession of a firearm within the state capitol building.

All persons have the constitutional right to be heard. To voice their concerns and express their opinion to those whom they are governed by. There are legal and proper ways to exercise that right. Nothing in this bill would take away any of these rights.

HB 2425 addresses only those acts one would take who is intent upon causing disruption or disorder within the legislative chambers, galleries or offices, or to possess a firearm in the state capitol building by making such acts a crime.

Hopefully, HB 2425 provides the authority for police and security officers of the Capitol Area Security Patrol to deal appropriately with any attempts to commit such unlawful acts. At present, the security officers of the Capitol Area Security Patrol have no authority to intervene in any attempts to disrupt or interfere with the legislative process and it would also appear the Sergeants-at-arms of the House and Senate have no clearly defined authority in addressing these issues.

Subcommittee - Senate Judiciary
3-28-91
Attachment 4

Summary of Testimony
House Bill 2425

The safety and welfare of all who visit or work in the capitol building is of primary importance to the Capitol Area Security Patrol. We are constantly striving for new and innovative methods that will enhance our ability to provide the highest quality protection that can be rendered and yet will not unduly impede the freedom and accessibility of those who wish to see the legislative process at work.

We believe House Bill 2425 will provide the ability to those who are charged with the responsibility for the safety and welfare of the capitol building and for all of those within, a means to exclude any who would intend to disrupt the legislative process, or to possess a firearm within the state house.

We therefore urge the members of this committee to implement the provisions of House Bill 2425.

4-2/2

Sub. Criminal Law - Attach. 5
03/28/91

75-4503. Capitol area security patrol; creation; police powers of members; disposition of persons arrested. (a) There is hereby created the capitol area security patrol which shall be under the supervision and management of the superintendent of the highway patrol.

(b) Members of the capitol area security patrol shall have the powers and authority of peace, police and law enforcement officers while wearing the prescribed badge of office and while on duty on or about any state owned, leased, or rented property or building in Shawnee county, Kansas, except the Topeka correctional facility — east, the Kansas neurological institute, the youth center at Topeka, the Topeka state hospital, and property of the Kansas national guard.

(c) All persons arrested by a member of the capitol area security patrol shall be turned over to the sheriff of Shawnee county, Kansas, to be dealt with by that sheriff in the same manner as other persons arrested by that sheriff, except in cases of violation of the ordinances of the city of Topeka, any such person may be turned over to the police department of the city of Topeka to be dealt with by it in the same manner as other persons arrested by police officers of the Topeka police department.

History: L. 1955, ch. 364, § 6; L. 1965, ch. 461, § 21; L. 1972, ch. 332, § 88; L. 1976, ch. 394, § 5; L. 1982, ch. 365, § 1; L. 1990, ch. 309, § 44; May 24.

Attorney General's Opinions:

Jurisdiction of Capitol Area Security Patrol. 90-24.

Subcommittee - Senate Judiciary
3-28-91
Attachment 5

Sub. Criminal Law - Attach. 6
03/28/91

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

HOUSE BILL 2231

The Kansas County and District Attorneys Association supports House Bill 2231. As amended, it contains parts of House Bill 2468, which we requested from the House Legislative Committee.

The purpose of our request is to amend the definition of sodomy to make it gender neutral, which the bill now does in lines 26 and 28. The present statute was amended during the 1991 Legislative Session to address the Kansas Supreme Court's decision in State v. Moppin, 245 Kan. 639, in which the Court ruled that oral-genital contact between the defendant and the five-year-old female victim (more commonly known as "cunnilingus") did not come under the statutory definition of sodomy. The legislation was first proposed as Senate Bill 687, amended several times, and subsequently merged into House Bill 2666 in its present form. Unfortunately, in response to the specific facts of the Moppin case, the 1990 amendment only prohibited conduct of a male perpetrators. Due to a lack of imagination by both lobbyists and legislators alike, there was no consideration of female perpetrators. It was not until State v. Schad, 247 Kan. 242, that the applicability of the statute to female perpetrators was considered, and rejected by the Supreme Court. That decision, involving cunnilingus by a mother on her five-year old female child, actually follows the holding in Moppin, but the Court also noted that the 1990 amendments would not have covered the facts of the case.

Presently, the conduct prohibited by K.S.A. 1990 Supp. 21-3506 applies to acts of cunnilingus only if committed by a male. Yet there is no evidence or rationale that a child under 16, or any other victim for that matter, is less harmed or less violated, if their assailant is female. The bill as originally drafted also includes application of the mouth as well as the tongue. Testimony from Assistant Shawnee County D.A. Maggie Lutes, and verified by other prosecutors, is that young victims are unable to distinguish what part of the perpetrators anatomy actually touched them. Again, for the protection of children, there is no rationale that application of the tongue is more harmful than the mouth.

For these reasons, we ask your support for House Bill 2231.

Subcommittee - Senate Judiciary
3-28-91
Attachment 6

Sub. Criminal Law - Attach. 7
03/28/91

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

TESTIMONY IN SUPPORT OF

HOUSE BILL 2184

The Kansas County and District Attorneys Association appears in support of House Bill No. 2184. The bill was originally requested by Riley County Attorney Bill Kennedy, and introduced by the Riley County delegation to the House of Representatives.

The purpose of K.S.A. 21-3525 is to protect victims of sex crimes from having their previous sexual conduct admitted into evidence during the prosecution of their assailant, except for certain exceptions, which must be approved by the court. The effect on prosecution is obvious. In keeping juries from making character judgments of the victim, excluding such evidence lets them decide the matter at hand: whether at a given time and place, the defendant committed a sex offense against the victim. The effect on the victim, however, is negligible. While keeping evidence of his or her prior sexual conduct from being admitted at trial may be of some comfort, the fact that motions and affidavits with specific allegations have been filed with the court, are public record, and may or may not have appeared in the local media is no comfort at all.

The purpose of HB 2184, then, is to extend the protection of privacy of sex crime victims by removing the applications, motions, affidavits and other allegations of prior sexual conduct from public record, and requiring that the parties in the litigation not discuss or disclose such details. By so doing, the bill expands the usefulness of the statute from one of mere evidentiary purposes to one of providing some measure protection of privacy to a victim.

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Attachment 7

Sub. Criminal Law - Attach. 8
03/28/91

Office of the Riley County Attorney

WILLIAM E. KENNEDY III
Riley County Attorney

Carnegie Building
105 Courthouse Plaza
Manhattan, Kansas 66502
(913) 537-6390

GABRIELLE M. THOMPSON
BARRY R. WILKERSON
BREN ABBOTT
Assistant Riley County Attorneys

GENIECE A. WRIGHT
Legal Specialist

Testimony of William E. Kennedy III
Presented to Senate Judiciary Committee
March 26, 1991

Reference: House Bill 2184
Amendment to K.S.A. 21-3525

The defense in a rape trial is often that the victim's conduct and the victim's past was such that the victim could not possibly be a victim of rape. This defense ignores the reality that the essence of the rape statute is the violation itself; the victim is then raped again in court.

The Rape Shield statute, K.S.A 21-3525, is designed to protect the privacy of a complaining victim of various types of sexual attack. The Act protects both adults and children. The basic design of the statute requires a defendant who would pierce the rape shield to file affidavits and motions supporting the affidavits in order to allow a judge to determine admissibility of defendant's evidence in a public trial. Hearings on the matter are held on the record, but are confidential. The weakness in the current statute is that the motions and affidavits, which may well be more flagrant and lurid in their descriptive terms than any testimony, are not required to be confidential.

The attached article appeared in The Manhattan Mercury the day before a rape trial was to begin. As can be seen, the writer of the article used defense motions to develop information for the newspaper article. The motion was overruled as the evidence did not live up to the proffer. However the damage to the victim's reputation was done.

The defendant can also be injured by a newspaper trial. A defendant who attempts to pierce the rape shield and fails may be dishonest in the eye of the jury if the jury knows that he has tried to pierce the shield and failed.

News speculation can be abated by passage of this bill.

Potential harm of pre-trial publicity to victims and defendants can be abated by passage of this bill.

Passage of this bill follows the original legislative intent of this bill.

Subcommittee - Senate Judiciary
3 - 28 - 91
Attachment 8

Marital rape trial set for local court

Patti Paxson
Staff Writer

The trial of a Colby man charged with marital rape—one of the first cases of its type in the state's history—will begin Wednesday in Riley County District Court.

Donald Lee Cranston, 31, of Colby, is charged with raping his wife on or about July 1 in Manhattan, according to court documents.

Rape, a class B felony in Kansas, carries a minimum sentence of not less than five years imprisonment, nor more than 15 years imprisonment. The crime carries a maximum sentence of no less than 20 years, but not more than life.

According to Riley County Attorney William Kennedy, a charge of marital rape has only recently been recognized in American courtrooms as a

See No. 4, back page

Marital rape trial

4 Continued from Page A1

legitimate charge. Kansas adopted a marital rape law in 1983.

Court documents state the only element anticipated to be an issue at the trial is whether Cranston's wife gave him consent to engage in sexual intercourse with her on or about July 1.

The couple was married December 1984, and separated in April of this year, according to court documents. As of September, their divorce was pending in Thomas County district court. Custody of the couple's son is a primary issue in the divorce, according to court documents.

Cranston's attorney intends to submit evidence regarding the complaining witness' sexual history, according to court documents. Kansas courts normally do not allow a person's sexual history to be submitted as evidence in a rape trial.

Additionally, the defense intends to submit evidence showing that the complaining witness has filed sexual harassment charges against former employees in the past.

The state intends to submit evidence regarding the complaining witness's testimony that she "is suffering from what is commonly known as battered women syndrome," according to court documents.

Jury selection begins at 9 a.m. in the Riley County Courthouse, with Judge Harlan W. Graham presiding.

8-7/2

Jud: Criminal Law, Attach. 7
03/28/90

INFORMATIONAL STATEMENT March 26, 1991
From the Kansas Bar Association

TO: Members, Criminal Law Subcommittee of the Senate Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: HB 2184

KBA offers this information for your review of this topic. We have no formal position on the bill.

The purpose of K.S.A. 21-3525 is to keep evidence of previous sexual conduct of the victim of a rape from being disclosed at trial unless done so under precise conditions set forth by the court. The court must conduct an in camera hearing and make findings of fact before such information is available for use by the defendant at trial. This is especially important if consent of the victim is an issue.

The amendments in the bill appear to go beyond the use of the information at trial, and limit its use generally by prohibiting access to previous sexual history for other reasons such as prohibiting use of the information in a newspaper story.

The bill allows release of the information to the defendant on condition it be released no further. This statute appears to carry no penalty if violated (except perhaps contempt of court). If the state wants to keep the press from accessing or publishing information relating to its governmental functions,[1] then it must do so by protecting the

[1] K.S.A. 21-3827 makes it a misdemeanor to publish the fact a warrant has been issued prior to the time it is served.

confidentiality of the information.[2] Is this bill limiting access to information regarding governmental functions, or private information the subject of a public trial? Is the difference important?

I don't know. However, Kansas courts have held that conviction under statutes prohibiting reporting of issued warrants prior to serving the warrants is unconstitutional "when the information concerning issuance of a warrant has been in the public domain."[3]

However, if a newspaper or other media gets access to the suppressed information about the previous sexual conduct of the complaining witness through lawful means and publish it, it may raise similar First Amendment issues to the Stauffer case footnoted below.

[2] Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 496, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975).

[3] State v. Stauffer Communications Inc., 225 Kan. 540, 592 P.2d 891, 896 (1979).

Submitted - Senate Judiciary
3-28-91
Attachment 9

Sub. Criminal Law - Attach 10
3/28/91

STATE OF KANSAS

JIM D. GARNER
REPRESENTATIVE, 11TH DISTRICT
P.O. BOX 538
COFFEYVILLE, KS 67337
STATE CAPITOL
TOPEKA, KS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER AGRICULTURE AND SMALL BUSINESS
JUDICIARY
TRANSPORTATION
LEGISLATIVE, JUDICIAL &
CONGRESSIONAL APPORTIONMENT

March 26, 1991

TO: Senate Judiciary Subcommittee on Criminal Law

TESTIMONY ON HB 2152

Mr. Chairman and members of the subcommittee, I come before you today to testify in support of HB 2152.

The bill would provide law enforcement officers discretion on whether to take a person, charged with certain misdemeanors, into custody. Current law mandates that officers shall take into custody persons charged with driving under cancelled or suspended license (KSA 8-262), leaving the scene of an injury accident (KSA 8-1602); leaving the scene of an accident involving property damage (KSA 8-1603); and failing to provide certain information, proof of liability insurance, or to render aid (KSA 8-1604). House Bill 2152 would eliminate immediate mandatory custody for violation of these misdemeanor offenses, but instead would leave the matter of custody to the discretion of the law enforcement officers.

This bill was requested by law enforcement officers who feel the current law creates an unnecessary burden of taking into custody some misdemeanor violators who they otherwise would not take into custody. They also feel their time could be better spent on other matters. I feel this is a reasonable change to current law and should be favorably passed.

I appreciate your consideration of this matter.

Subcommittee - Senate Judiciary
3-28-91
Attachment 10

Sub. Criminal Law - Attach. 11
03/28/91

STATE OF KANSAS

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P O BOX 848
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM 182-W
TOPEKA, KANSAS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL AND STATE AFFAIRS
EDUCATION
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

March 26, 1991

TO: SENATE JUDICIARY COMMITTEE

FROM: CINDY EMPSON

RE: H. B. 2152

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you in support of H.B. 2152.

The original bill removed three statutory violations from the list of 6 specific violations that require a law enforcement officer to take a person stopped for these offenses into immediate custody. These three violations are:
1) KSA 8-1602 which pertains to leaving the scene of an injury accident;
2) KSA 8-1603 which pertains to leaving the scene of an accident; and,
3) KSA-1604 which pertains to the duty of a driver to give certain information after an accident; failure to provide proof of liability; duty to render aid after an accident. The Committee amended a 4th violation into this bill, so the bill, as it passed the House, also contains KSA 1990 Supp. 8-262 which pertains to driving with a suspended or revoked license.

H.B. 2152 would provide an officer with the discretion to determine if the circumstances warrant immediate custody. There is also considerable paper work involved with an arrest and this time could be better used by the officer if the circumstances don't warrant immediate custody.

Subcommittee - Senate Judiciary
3-28-91
Attachment 11

Because all accidents don't fit into specific categories and circumstances differ with every accident, I believe our law enforcement officers are more capable of assessing a specific situation than we are from Topeka. This bill would give them that opportunity. I ask for your favorable consideration of H. B. 2152.

11-2½

Sub. Criminal Law - Attach. 12
03/28/91

STATE OF KANSAS

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P.O. BOX 648
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM. 182-W
TOPEKA, KANSAS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL AND STATE AFFAIRS
EDUCATION
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

March 26, 1991

TO: SENATE JUDICIARY COMMITTEE

FROM: CINDY EMPSON

RE: H. B. 2143

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you in support of H.B. 2143. I introduced this bill at the request of a detective and the Chief of Police on the Independence, Police Department. We had an incident in our community during the past year which precipitated the request.

Three female clients of Class Limited living in a group home setting in Independence were allegedly victims of sexual acts performed by the manager of the group home. The manager was arrested, charged and a trial date was set. The charges were subsequently dropped because it was determined that the three young ladies, while able to recount what happened to them, were not capable of testifying in an open courtroom setting.

H. B. 2143 simply adds the mentally retarded to a provision we passed last session which allows for video taping of the testimony of children under the age of 13 who are victims of a crime when it is established that the child would be traumatized by appearing in person. The definition of "mentally retarded person" as defined in subsection (f) of the bill was amended in the House Judiciary Committee to include the language "and who emotionally functions like a child less than 13 years of age". The Committee also amended into the

Subcommittee - Senate Judiciary
3-28-91
Attachment 12

bill a severability clause which was inadvertantly left out of the revised bill. I would suggest that such language be added to the bill.

I don't think the incident that occurred in Independence is an isolated incident. Therefore, I believe this bill would be beneficial to a prosecutor, but, more importantly, it would provide additional protection to a special group of people who, through no fault of their own, might be unable to adequately speak in their own behalf in an open courtroom setting. With that in mind, I ask for your favorable consideration of H.B. 2143.

12-7/2

Sub. Criminal Law - Attach 13
03/28

THE ASSOCIATION FOR
RETARDED CITIZENS OF KANSAS, INC.

P.O. BOX 676 • HAYS, KS 67601

Hope through understanding

March 26, 1991

TO: Members, Senate Judiciary Subcommittee

FROM: Lila Paslay, Chair
Legislative Affairs

RE: H.B. 2143

As spokesperson for the Association for Retarded Citizens of Kansas, I am here today to speak in support of H. B. 2143. The Association has a membership of 5,000 individuals most of whom are parents and/or guardians for persons with mental retardation. They belong to 37 local ARCs across the state.

At the present time, we are experiencing growth in the expansion of services in the community for persons with mental retardation. The range of services are from group homes to supported living. With these community programs, the risk for becoming a victim of a crime increases.

As a victim, the person with retardation may be able to identify and describe the exact circumstances. However, situations which may appear to be threatening to the individuals may cause the victim to be unable to express themselves without great difficulty.

Providing a setting in which the victim could feel more comfortable may enable more accurate information to be relayed.

We are particularly concerned about the area of abuse and/or neglect. Often the person with mental retardation is very anxious to please his/her family member, supervisor, instructor and teacher. For the person with a disability to confront the individual in a court setting might prove to be impossible.

We would encourage that individuals who are capable and desire to participate in a court proceeding be given that opportunity. We do not want the rights removed unless it is in the best interest of the person with mental retardation.

We believe the passage of this legislation would provide additional protection for the disabled individual and urge your support of this bill.

Subcommittee - Senate Judiciary
3-28-91
Attachment 13

Sub: Criminal Law - Attach. 14
03/28/91

INFORMATIONAL STATEMENT March 26, 1991
From the Kansas Bar Association

TO: Members, Senate Judiciary Subcommittee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: HB 2143

We have no position on this bill. However, I would point out that to the extent you try, through this statute, to allow the mentally retarded victims of crime to testify outside the courtroom by closed circuit television or electronic recording, it is an exception to the Sixth Amendment right to confront witnesses. There have been exceptions before, for small children. However, the children have to have been the victims of the crime. Further, in **Coy v. Iowa**,[1] while the court held that the right to confrontation of a witness under the Kansas and United States Constitutions includes the right of the accused to face-to-face confrontation while a victim/accuser is testifying against the accused, the right is not absolute. Exceptions can be made to further important public policy.[2]

The procedure in this line of cases requires the trial court finds that in-court, face-to-face testimony by the witness would so traumatize the child as to prevent the child from reasonably communicating or would render the child unavailable to testify, as more specifically stated in the opinion.[3] The state has the burden of proving by clear

[1] 487 U.S. ___, 101 L.Ed 2d 857, 108 S.Ct. 2798 (1988)

[2] **State v. Eaton**, 244 Kan. 370 (1989), Syl. 1.

[3] Id., syl. 4.

and convincing evidence that the child-victim witness would be so traumatized and thus unavailable to testify.

The point is the exception for children in direct confrontation was made because there was clear national evidence that children quite often were abused or the victims of crime. Absent supporting statistical evidence that mentally ill persons suffer similar fate in similar numbers that justified states making similar exceptions to the 6th Amendment for mentally ill witnesses -- the premise for this legislation that mentally ill persons can be treated the same when they are witnesses -- may not stand judicial review.[4]

Otherwise, we see no other problems with the bill.

[4] In **State v. Chisholm**, 245 Kan. 145, 777 P.2d 753 (1989), the court also added to the Eaton rationale that the state must show an important public policy consideration for doing so. See also **State v. Siard**, 245 Kan. 716, 783 P.2d 895 (1989).

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Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony on

HOUSE BILL NO. 2143

The Kansas County and District Attorneys Association is supportive of the purpose of House Bill No. 2143, to extend the protection afforded to victims of crime who are under 13 to victims who are mentally retarded.

There are some practical difficulties in establishing the level of emotional functioning, which will have to be dealt with on a case by case basis, using the resources available in the specific county where the case is heard.

More importantly, there are some Sixth Amendment problems concerning extending the protection afforded children to the mentally retarded. To illustrate the problem, we have attached a portion of Maryland v. Craig, the most recent holding by the U.S. Supreme Court which allows an exception to the face-to-face confrontation requirement of the confrontation clause on a case by case basis. In reaching its decision, the Court abandons legal precedent in favor of psychological data, and comes to the conclusion that the states have sufficient interest in protecting children to allow for special protection of child witnesses. Unfortunately there either does not now exist a similar departure in favor of the psychological problems of the mentally retarded. In view of the strictly construed Sixth Amendment protection given criminal defendants, it is highly likely that a court will not extend the same witness protection to the mentally retarded victim, which is the purpose of this bill. More importantly, adopting a worst case scenario, it is possible that by extending the witness protection measures beyond children, the entire statutes would be found unconstitutional. For this reason, we would ask that the bill include a severability clause, separating the protection if children from the protection of the mentally retarded.

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III.

[5] Maryland's statutory procedure, when invoked, prevents a child witness from seeing the defendant as he or she testifies against the defendant at trial. We find it significant, however, that Maryland's procedure preserves all of the other elements of the confrontation right: the child witness must be competent to testify and must testify under oath; the defendant retains full opportunity for contemporaneous cross-examination; and the judge, jury, and defendant are able to view (albeit by video monitor) the demeanor (and body) of the witness as he or she testifies. Although we are mindful of the many subtle effects face-to-face confrontation may have on an adversary criminal proceeding, the presence of these other elements of confrontation—oath, cross-examination, and observation of the witness' demeanor—adequately ensures that the testimony is both reliable and subject to rigorous adversarial testing in a manner functionally equivalent to that accorded live, in-person testimony. These safeguards of reliability and adversariness render the use of such a procedure a far cry from the undisputed prohibition of the Confrontation Clause: trial by *ex parte* affidavit or inquisition, see *Mattox*, 156 U.S., at 242, 15 S.Ct., at 389; see also *Green*, 399 U.S., at 179, 90 S.Ct., at 1946 (Harlan, J., concurring) ("[T]he Confrontation Clause was meant to constitutionalize a barrier against flagrant abuses, trials by anonymous accusers, and absentee witnesses"). Rather, we think these elements of effective confrontation not only permit a defendant to "confound and undo the false accuser, or reveal the child coached by a

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malevolent adult," *Coy*, 487 U.S., at 1020, 108 S.Ct., at 2802, but may well aid a defendant in eliciting favorable testimony from the child witness. Indeed, to the extent the child witness' testimony may be said to be technically given out-of-court (though we do not so hold), these assurances of reliability and adversariness are far greater than those required for admission of hearsay testimony under the Confrontation Clause. See *Roberts*, 448 U.S., at 66, 100 S.Ct., at 2539. We are therefore confident that use of the one-way closed-circuit television procedure, where necessary to further an important state interest, does not impinge upon the truth-seeking or symbolic purposes of the Confrontation Clause.

The critical inquiry in this case, therefore, is whether use of the procedure is necessary to further an important state interest. The State contends that it has a substantial interest in protecting children who are allegedly victims of child abuse from the trauma of testifying against the alleged perpetrator and that its statutory procedure for receiving testimony from such witnesses is necessary to further that interest.

We have of course recognized that a State's interest in "the protection of minor victims of sex crimes from further trauma and embarrassment" is a "compelling" one. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607, 102 S.Ct. 2613, 2620, 73 L.Ed.2d 248 (1982); see also *New York v. Ferber*, 458 U.S. 747, 756–757, 102 S.Ct. 3348, 3354, 73 L.Ed.2d 1113 (1982); *FCC v. Pacifica Foundation*, 438 U.S. 726, 749–750, 98 S.Ct. 3026, 3040–3041, 57 L.Ed.2d 1073 (1978); *Ginsberg v. New York*, 390 U.S. 629, 640, 88 S.Ct. 1274, 1281, 20 L.Ed.2d 195 (1968); *Prince v. Massachusetts*, 321 U.S. 158, 168, 64 S.Ct. 438, 443, 88 L.Ed. 645 (1944). "[W]e have sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights." *Ferber, supra*, 458 U.S., at 757, 102 S.Ct., at 3354. In *Globe Newspaper*, for example, we held that a State's interest in the physical and psychological well-being of a minor victim was sufficiently weighty to justify depriving the press and public of their constitutional right to attend criminal trials, where the trial court makes a case-specific finding that closure of the trial is necessary to protect the welfare of the minor. See 457 U.S., at 608–609, 102 S.Ct., at 2620–21. This Term, in *Osborne v. Ohio*, 495 U.S. ——, 110 S.Ct. 1691, 109 L.Ed.2d 98 (1990), we upheld a state statute that proscribed the possession and viewing of child pornography, reaffirming that "'[i]t is evident beyond the need for elaboration that a State's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling."'" *Id.*, at ——, 110 S.Ct. at 1696 (quoting *Ferber, supra*, 458 U.S., at 756–757, 102 S.Ct., at 3354–55).

[6] We likewise conclude today that a State's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court. That a significant majority of States has enacted statutes to protect child witnesses from the trauma of giving testimony in child abuse cases attests to the widespread belief in the importance of such a public policy. See *Coy*, 487 U.S., at 1022–1023, 108 S.Ct., at 2803–04 (concurring opinion) ("Many States have determined that a child victim may suffer trauma from exposure to the harsh atmosphere of the typical courtroom and have undertaken to shield the child through a variety of ameliorative measures"). Thirty-seven States, for example, permit the use of videotaped testimony of sexually abused children;[2] 24 States have autho-

2. See Ala.Code § 15–25–2 (Supp.1989); Ariz.Rev.Stat.Ann. §§ 13–4251 and 4253(B), (C) (1989); Ark.Code Ann. § 16–44–203 (1987); Cal. Penal Code Ann. § 1346 (West Supp.1990); Colo.Rev.Stat. §§ 18–3–413 and 18–6–401.3 (1986); Conn.Gen.Stat. § 54–86g (1989); Del. Code Ann., Tit. 11, § 3511 (1987); Fla.Stat. § 92.53 (1989); Haw.Rev.Stat., ch. 626, Rule

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rized the use of one-way closed circuit television testimony in child abuse cases; [3] and 8 States authorize the use of a two-way system in which the child-witness is permitted to see the courtroom and the defendant on a video monitor and in which the jury and judge is permitted to view the child during the testimony.[4]

The statute at issue in this case, for example, was specifically intended "to safeguard the physical and psychological well-being of child victims by avoiding, or at least minimizing, the emotional trauma produced by testifying." *Wildermuth v. State*, 310 Md. 496, 518, 530 A.2d 275, 286 (1987). The *Wildermuth* court noted:

> "In Maryland, the Governor's Task Force on Child Abuse in its *Interim Report* (Nov.1984) documented the existence of the [child abuse] problem in our State. *Interim Report* at 1. It brought the picture up to date in its *Final Report* (Dec.1985). In the first six months of 1985, investigations of child abuse were 12 percent more numerous than during the same period of 1984. In 1979, 4,615 cases of child abuse were investigated; in 1984, 8,321. *Final Report* at iii. In its *Interim Report* at 2, the Commission proposed legislation that, with some changes, became § 9–102. The proposal was 'aimed at alleviating the trauma to a child victim in the courtroom atmosphere by allowing the child's testimony to be obtained outside of the courtroom.' *Id.*, at 2. This would both protect the child and enhance the public interest by encouraging effective prosecution of the alleged abuser." *Id.*, at 517, 530 A.2d, at 285.

Given the State's traditional and " 'transcendent interest in protecting the welfare of children,' " *Ginsberg*, 390 U.S., at 640, 88 S.Ct., at 1281 (citation omitted), and buttressed by the growing body of academic literature documenting the psychological trauma suffered by child abuse victims who must testify in court, see Brief for American Psychological Association as *Amicus Curiae* 7–13; G. Goodman et al., Emotional Effects of Criminal Court Testimony on Child Sexual Assault Victims, Fi-

Evid. 616 (1985); Ill.Rev.Stat., ch. 38, ¶ 106A–2 (1989); Ind.Code § 35–37–4–8(c), (d), (f), (g) (1988); Iowa Code § 910A.14 (1987); Kan.Stat. Ann. § 38–1558 (1986); Ky.Rev.Stat.Ann. § 421.350(4) (Baldwin Supp.1989); Mass.Gen. Laws Ann., ch. 278, § 16D (Supp.1990); Mich. Comp.Laws Ann. § 600.2163a(5) (Supp.1990); Minn.Stat. § 595.02(4) (1988); Miss.Code Ann. § 13–1–407 (Supp.1989); Mo.Rev.Stat. §§ 491.675–491.690 (1986); Mont.Code Ann. §§ 46–15–401 to 46–15–403 (1989); Neb.Rev.Stat. § 29–1926 (1989); Nev.Rev.Stat. § 174.227 (1989); N.H.Rev.Stat.Ann. § 517:13–a (Supp. 1989); N.M.Stat.Ann. § 30–9–17 (1984); Ohio Rev.Code Ann. § 2907.41(A), (B), (D), (E) (Baldwin 1986); Okla.Stat., Tit. 22, § 753(C) (Supp. 1988); Ore.Rev.Stat. § 40.460(24) (1989); 42 Pa. Cons.Stat. §§ 5982, 5984 (1988); R.I.Gen.Laws § 11–37–13.2 (Supp.1989); S.C.Code § 16–3–1530(G) (1985); S.D.Codified Laws § 23A–12–9 (1988); Tenn.Code Ann. § 24–7–116(d), (e), (f) (Supp.1989); Tex.Crim. Proc.Code Ann., Art. 38.071, § 4 (Vernon Supp. 1990); Utah Rule Crim.Proc. 15.5 (1990); Vt. Rule Evid. 807(d) (Supp.1989); Wis.Stat.Ann. § 967.04(7) to (10) (West Supp.1989); Wyo.Stat. § 7–11–408 (1987).

3. See Ala.Code § 15–25–3 (Supp.1989); Alaska Stat.Ann. § 12.45.046 (Supp.1989); Ariz.Rev. Stat.Ann. § 13–4253 (1989); Conn.Gen.Stat. § 54–86g (1989); Fla.Stat. § 92.54 (1989); Ga. Code Ann. § 17–8–55 (Supp.1989); Ill.Rev.Stat., ch. 38, ¶ 106A–3 (1987); Ind.Code § 35–37–4–8 (1988); Iowa Code § 910A.14 (Supp.1990); Kan. Stat.Ann. § 38–1558 (1986); Ky.Rev.Stat.Ann. § 421–350(1), (3) (Baldwin Supp.1989); La.Rev. Stat.Ann. § 15:283 (West Supp.1990); Md.Cts. & Jud.Proc.Code Ann. § 9–102 (1989); Mass.Gen. Laws Ann., ch. 278, § 16D (Supp.1990); Minn. Stat. § 595.02(4) (1988); Miss.Code Ann. § 13–1–405 (Supp.1989); N.J.Rev.Stat. § 2A:84A–32.4 (Supp.1989); Okla.Stat., Tit. 22, § 753(B) (Supp.1988); Ore.Rev.Stat. § 40.460(24) (1989); 42 Pa. Cons.Stat. §§ 5982, 5985 (1988); R.I.Gen.Laws § 11–37–13.2 (Supp. 1989); Tex.Crim.Proc.Code Ann., Art. 38.071, § 3 (Supp.1990); Utah Rule Crim.Proc. 15.5 (1990); Vt.Rule Evid. 807(d) (Supp.1989).

4. See Cal.Penal Code Ann. § 1347 (West Supp. 1990); Haw.Rev.Stat., ch. 626, Rule Evid. 616 (1985); Idaho Code § 19–3024A (Supp.1989); Minn.Stat. § 595.02(4)(c)(2) (1988); N.Y.Crim. Proc.Law §§ 65.00 to 65.30 (McKinney Supp. 1990); Ohio Rev.Code Ann. § 2907.41(C), (E) (Baldwin 1986); Va.Code § 18.2–67.9 (1988); Vt.Rule Evid. 807(e) (Supp.1989).

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nal Report to the National Institute of Justice (presented as conference paper at annual convention of American Psychological Assn., Aug.1989), we will not second-guess the considered judgment of the Maryland Legislature regarding the importance of its interest in protecting child abuse victims from the emotional trauma of testifying. Accordingly, we hold that, if the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant.

[7] The requisite finding of necessity must of course be a case-specific one: the trial court must hear evidence and determine whether use of the one-way closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify. See *Globe Newspaper Co.*, 457 U.S., at 608–609, 102 S.Ct., at 2621 (compelling interest in protecting child victims does not justify a *mandatory* trial closure rule); *Coy*, 487 U.S., at 1021, 108 S.Ct., at 2803; *id.*, at 1025, 108 S.Ct., at 2805 (concurring opinion); see also *Hochheiser v. Superior Court*, 161 Cal.App.3d 777, 793, 208 Cal. Rptr. 273, 283 (1984). The trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant. See, *e.g.*, *State v. Wilhite*, 160 Ariz. 228, 772 P.2d 582 (1989); *State v. Bonello*, 210 Conn. 51, 554 A.2d 277 (1989); *State v. Davidson*, 764 S.W.2d 731 (Mo.App.1989); *Commonwealth v. Ludwig*, 366 Pa.Super. 361, 531 A.2d 459 (1987). Denial of face-to-face confrontation is not needed to further the state interest in protecting the child witness from trauma unless it is the presence of the defendant that causes the trauma. In other words, if the state interest were merely the interest in protecting child witnesses from courtroom trauma generally, denial of face-to-face confrontation would be unnecessary because the child could be permitted to testify in less intimidating surroundings, albeit with the defendant present. Finally, the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis*, *i.e.*, more than "mere nervousness or excitement or some reluctance to testify," *Wildermuth*, 310 Md., at 524, 530 A.2d, at 289; see also *State v. Mannion*, 19 Utah 505, 511–512, 57 P. 542, 543–544 (1899). We need not decide the minimum showing of emotional trauma required for use of the special procedure, however, because the Maryland statute, which requires a determination that the child witness will suffer "serious emotional distress such that the child cannot reasonably communicate," § 9–102(a)(1)(ii), clearly suffices to meet constitutional standards.

To be sure, face-to-face confrontation may be said to cause trauma for the very purpose of eliciting truth, cf. *Coy, supra*, 487 U.S., at 1019–1020, 108 S.Ct., at 2802–03, but we think that the use of Maryland's special procedure, where necessary to further the important state interest in preventing trauma to child witnesses in child abuse cases, adequately ensures the accuracy of the testimony and preserves the adversary nature of the trial. See *supra*, at 3166. Indeed, where face-to-face confrontation causes significant emotional distress in a child witness, there is evidence that such confrontation would in fact *disserve* the Confrontation Clause's truth-seeking goal. See, *e.g.*, *Coy, supra*, 487 U.S., at 1032, 108 S.Ct., at 2809 (BLACKMUN, J., dissenting) (face-to-face confrontation "may so overwhelm the child as to prevent the possibility of effective testimony, thereby undermining the truth-finding function of the trial itself"); Brief for American Psychological Association as *Amicus Curiae* 18–24; *State v. Sheppard*, 197 N.J.Super. 411, 416, 484 A.2d 1330, 1332 (1984); Goodman & Helgeson, Child Sexual Assault: Children's Memory and the Law, 40 U. Miami

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L.Rev. 181, 203–204 (1985); Note, Videotaping Children's Testimony: An Empirical View, 85 Mich.L.Rev. 809, 813–820 (1987).

[8] In sum, we conclude that where necessary to protect a child witness from trauma that would be caused by testifying in the physical presence of the defendant, at least where such trauma would impair the child's ability to communicate, the Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective confrontation. Because there is no dispute that the child witnesses in this case testified under oath, were subject to full cross-examination, and were able to be observed by the judge, jury, and defendant as they testified, we conclude that, to the extent that a proper finding of necessity has been made, the admission of such testimony would be consonant with the Confrontation Clause.

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Sub. Criminal Law - Attach 16
03/28/91

STATE OF KANSAS

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Testimony of
Juliene A. Maska
Statewide Victims' Rights Coordinator
Before the House Judiciary Committee
RE: House Bill 2353
March 27, 1991

Attorney General Robert T. Stephan has asked that I speak to you today about House Bill 2353.

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 look at the needs of crime victims.

The task force has taken a stand to support legislation which lowers the legal limit of blood alcohol level to .08 for drunk drivers. We continue to support lowering the legal limit to .08.

We believe this bill should be amended to reflect the .08 blood alcohol level as it was originally contained and that you not accept the amendments made in the House version.

We believe by passing House Bill 2353 as it originally was drafted, you will be providing law enforcement another means to remove alcohol impaired drivers from our streets and highways.

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3-28-91
Attachment 16

Sub. Criminal Law - attach. 17
03/28/91

Kansans for Highway Safety

MARCH 27, 1991

TESTIMONY BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON CRIMINAL LAW AND CONSUMER PROTECTION
REFERENCE HOUSE BILL NO. 2353
REDUCING THE LEGAL BLOOD/BREATH ALCOHOL LIMIT FOR DUI

Kansans for Highway Safety supports reducing the legal limit to .08 BAC. This change will further decrease the alcohol related accidents in Kansas. During 1989 there were a total of 14,280 breath tests given in Kansas and approximately 770 individuals were administered breath tests that showed results of .08 or .09 BAC. During the first half of 1990 there were 8783 tests administered and 550 showed results of .08 or .09. This indicates that the increase in DUI cases would be at least 5.7% if the legal limit is reduced to .08 BAC. It should be noted that these 1320 drivers that tested .08 or .09 were tested by law enforcement personnel for a reason. That reason in nearly all cases was the belief that the person was under the influence under current law based on driving characteristics and physical coordination. There would undoubtedly be additional testing in this BAC range if the legal limit was lowered. It is our belief that this would not be substantially higher but possibly going as high as a ten percent increase. It should also be noted that **during 1990 a driver had a blood alcohol concentration of .08 or .09 in 4.3% of the fatal accidents in Kansas in which blood alcohol contents of the drivers were reported**. Certainly this reflects a legitimate concern for the DUI problem in this area of BAC.

There are a few minor concerns that we have with this bill. We believe that the best deterrent effect will be produced by a .08 legal limit, just as the .10 is the limit under the current law. While we are not opposed to the concept of a "driving while impaired" law for those whose BAC is below .10 and .05 or greater, we feel that the potential for abuse of this law is great and out weigh the potential benefits. If the law is passed with this "driving while impaired" provision several safe guards must be written into it to allow this law to function as intended.

1. It is absolutely essential to avoid the dilution of the present law that would be created by plea bargaining abuses. This can be done by adding wording to the section for "driving while impaired" to specifically forbid any acceptance of a plea or charges being filed against anyone who
   a. submits to a test and that test shows a BAC of .10 or higher, or
   b. refuses a test.
2. A provision needs to be included under the "driving while impaired" section that will provide an incentive to those persons to complete the education or treatment programs. The way it is currently written nothing will happen to a person who decides not to complete these programs. This could be done by increasing the fine or providing for days in jail, then paroling part of it upon successful completion of the programs.

It is our opinion that the best solution is to pass a law with a straight .08 BAC limit. Not a prima facie case, but as an absolute limit.

It is our belief that the reduction of the legal limit will further the cause of traffic safety, reduce the carnage on our highways, and reaffirm the position of Kansans that drinking and driving will not be tolerated on our highways.

Subcommittee - Senate Judiciary
3-28-91
Attachment 17

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Kansans for Highway Safety

JANUARY 1990

POSITION STATEMENT

Reference: Driving Under the Influence laws

REDUCE LEVEL OF PRESUMPTION TO .08 BAC.

Statistics show us that there is a real problem with drivers who have consumed alcohol but are at blood alcohol levels (BAC) below .10. At a national level, from 1985 to 1988 the percentage of drivers involved in fatal collisions with a BAC of .10 or higher has dropped 1.1 percentage points while the percentage of drivers involved in fatal collisions with a BAC of .01 through .09 has dropped only .2 of a percentage point. Yet these drivers with a BAC of .01 through .09 are involved in more than 20% of all alcohol related fatal crashes.[1]

While these are reflective of the national problem, Kansas is not exempt from this problem. Similar statistical data by BAC is not available for Kansas but over 25% of all drivers involved in fatal collisions in Kansas have been drinking and over 7% of all drivers involved in injury accidents have been drinking.[2]

During 1990, law enforcement officers in Kansas administered breath tests to nearly one thousand drivers who had a BAC of .08 or .09. These drivers apparently displayed signs of impairment, either in driving or in physical coordination, to a degree to warrant the officer to take the time to administer this testing.[3]

Although Kansas law allows for the prosecution of persons for DUI who are under .10, in practice this is rarely done. Most officers are reluctant to arrest and most prosecutors are reluctant to prosecute when a blood or breath test is below .10 BAC, regardless of other signs of impared driving.

Studies have shown that **a driver with a BAC of .08 is four times as likely to cause a fatal accident** as a non drinker.[4] Studies also show that at .08 BAC critical driving skills are adversly effected. For example, tracking of the vehicle upon the roadway, the ability to see details of objects in motion, comprehension of road hazards, response to emergencies,judgement of speed and distance, and driving accuracy of steering, braking, and speed control.[5]

[1]FATAL ACCIDENT REPORTING SYSTEM 1988, US Department of Transportation, pgs. 2-4 and 2-5.

[2]AGE, ALCOHOL and TRAFFIC ACCIDENTS, 1981 to 1988, Kansas Department of Transportation, pgs. 49 and 53.

[3]Based on information provided by the Kansas Department of Health and Environment, Breath testing unit.

[4]Alcohol and the Driver, JOURNAL of the AMERICAN MEDICAL ASSOCIATION, Jan. 24-31, 1986, Vol. 255, No. 4, pgs 522-527.

[5]ALCOHOL IMPAIRMENT AND ITS EFFECTS ON DRIVING, US Department of Transportation.

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17-2/3

RELATIVE PROBABILITY OF A DRIVER BEING INVOLVED IN A MOTOR VEHICLE COLLISION AS COMPARED TO A DRIVER WITH A BAC OF .00

A DRIVER WITH A BAC OF .08 IS 4 TIMES AS LIKELY TO BE INVOLVED IN A MOTOR VEHIICLE COLLISION AS A DRIVER WITH A BAC OF .00

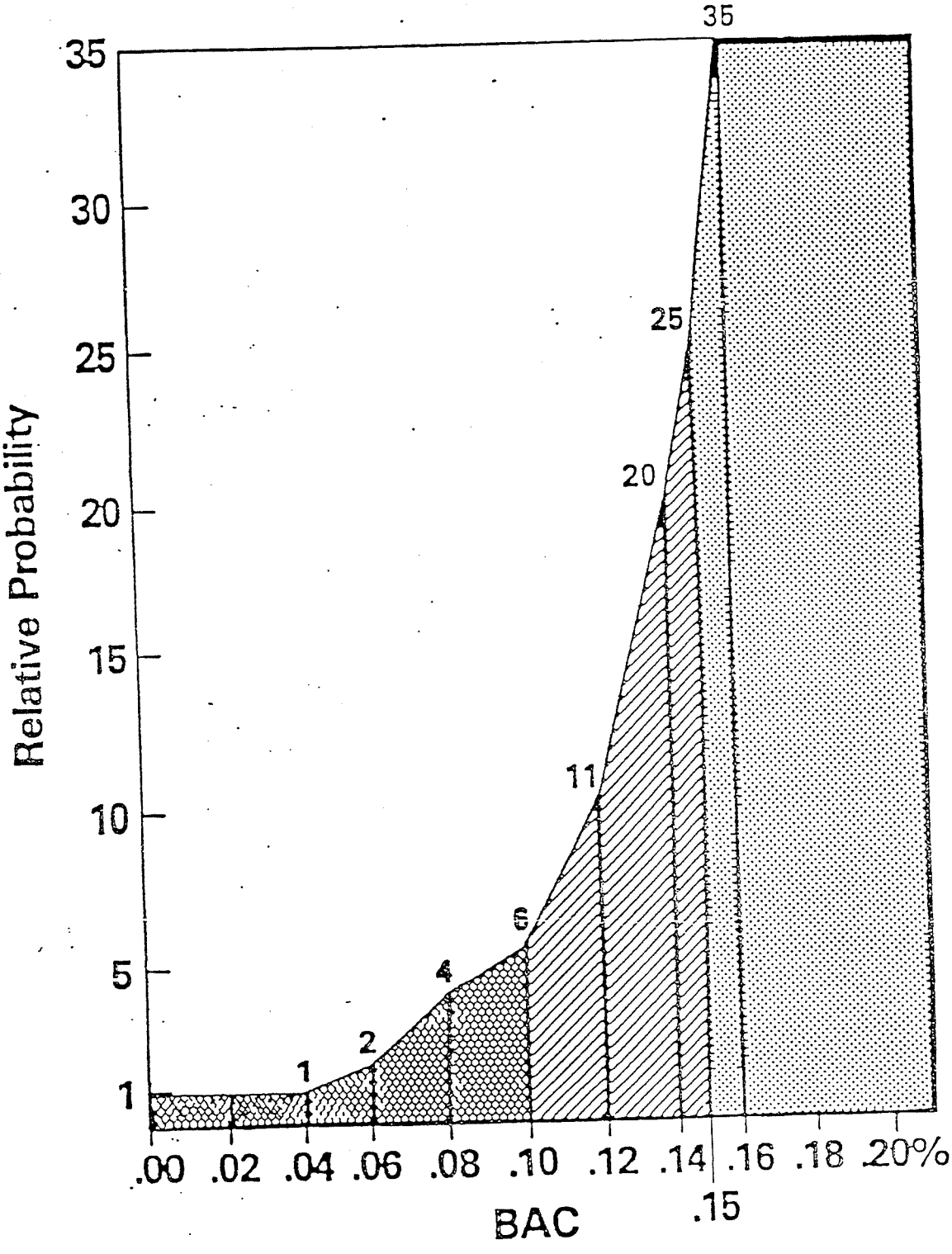

Figure 1. Aggregated probability of crash involvement by driver BAC levels

SOURCE:Association for the Advancement of Automotive Medicine, Des Plaines, Ill. 60018

17-3/3

Sub. Criminal Law - Attach 18
03/28/91

Kansas County & District Attorneys Association

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(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

MEMO

March 28, 1991

TO: Members of the Senate Judiciary Subcommittee on Criminal Law and Consumer Protection

FROM: Jim Clark, KCDAA Executive Director

RE: House Floor Amendments to HB 2353

At yesterday's hearing on HB 2353, there were questions concerning the effect of creating a lesser crime of driving while impaired. I had attempted to contact a DUI prosecutor in Denver, Colorado, and was unsuccessful until last evening.

According to Bobbi Benneddetti, Deputy District Attorney in charge of the traffic division of the 2nd Judicial District (Denver), Colorado has had a lesser offense of driving while impaired, Colorado Statutes 424-1204. It's elements include a blood alcohol content level of from .05 to .99, and driving with the slightest impairment. Sanctions include from 2 days to 6 months in jail, 24 hours of public service and a fine from $100 to $500. In addition, 8 points are assessed against the driver's license. DUI on the other hand assesses 12 points and the level of revocation is 10 points. Prosecutors are allowed to plea bargain and in her office, if there was no accident and the driver's operation did not appear to be seriously impaired, the driving while impaired is not usually charged unless there is a BAC of .065, and DUI is not usually charged unless there is a BAC of .180. Juries almost routinely convict of the lesser offense, but she was unable to speak to whether or not jury trials have increased as the law was already in effect when she began her career 9 years ago. Finally, in her opinion, the lesser offense at a .05 does deter drinking and driving. Because the sanctions of the lesser offense of driving while impaired are still quite serious, in her opinion a large number of drivers are deterred from driving with a BAC of less than .10. (She also admits that a large number are not deterred, and part of their rather lenient charging policy is based on the large case load assigned to her office.)

Subcommittee - Senate Judiciary
3-28-91
Attachment 18

Sub. Criminal Proc. - attach. 19
03/28/91

TO: Senate Judiciary Subcommittee

RE: HB 2353

DATE: March 27, 1991 - 10:00 a.m.

Mr. Chairman and Members of the Committee:

My name is Gene Johnson and I represent the Kansas Alcohol Safety Action Project Coordinators Association, the Kansas Association of Alcohol and Drug Program Directors and the Kansas Alcohol and Drug Addiction Counselors Association.

We appear today in friendly opposition to the proposed legislation known as HB 2353. We supported the original House Bill in the House Judiciary hearings as it stood in which it essentially lowered the legal limit from .10 to .08. This is very similar to the legislation contained in SB 195 which has previously been approved by this very committee and the full Kansas Senate.

We note that HB 2353 appeared on general orders before the full body of the House on March 13, 1991. At that time floor amendments were introduced erasing the .08 legal limit and raising it back to the .10 limit that is in our present law. In addition, the House then created a new crime on page 16 starting with line 8 under new section 7.

The new crime would be classified as driving while impaired or DWI at any time when the person's blood or breath has shown by competent evidence was less than .10 but .05 or greater. This type of evidence would be allowed as long as it is measured within two hours of the time of operating or attempting to operate the vehicle.

The new crime of driving while impaired would be classified just a misdemeanor. The penalties of that crime would be a fine of not less than $50 nor more than $200. In addition the court shall enter an order which requires the person to abide by alcohol and drug education or a treatment program as provided for in K.S.A. 8-1008.

However, there is a small problem. If the court should impose a $200 fine on that person who violated that section there would be little or nor initiative on that guilty party to follow the court's order in completing the requirements as provided for

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under K.S.A. 8-1008. In order for this type of legislation to have enforceable standards the court must have a penalty of being able to place that person in custody for a length of time. Making this a Class C misdemeanor may solve this particular problem. However, we feel that this particular proposed legislation has larger implications than we see in just creating a new crime. We realize that if there is impaired driving under the present law that the officer can arrest that person for DUI even if the BAC is lower than .10. The prosecutor may use that evidence whether it is .00 or .09 and other competent evidence to get a conviction of DUI. So basically if the person's driving in an impaired fashion and does not measure a .10 he may still be charged, prosecuted and convicted.

Under the DWI proposal (.05 to .10) which would create a lesser and included offense under our current DUI bill. The new DWI law would allow the courts and the juries to find individuals guilty of a lesser and included offense even though their BAC was .10 or above. In addition, prosecutors might be tempted on a .10 or .11 or a relatively low BAC to file a lesser charge of DWI rather than, from the time consuming standpoint, take a chance of going to trial on the DUI charge.

Another problem is for that offender who may have two or more DUI convictions in the past five years and is arrested again for another drinking driving offense. By his own past record he is a danger to society and also himself. The defense counsel may tell the prosecutor, the court or a jury a real good sob story and convince them that his client should not be subjected to the normal one year in jail, paroled to no less than 90 days. He may be able to convince the prosecutor, the court or the juries that his client even though he has been arrested previously for DUI is trying to make a change and to give him a break and convict him of the lesser included charge of DWI.

It is noted in this new crime as set in HB 2353 that there is no enhancement of the penalties. A person may get as many as he can afford and never pay more than a $200 fine.

Another question that arises under this new crime is how it would be handled on

the habitual offender statute. Is this offense serious enough to be used as one of the convictions on the habitual violator statute or would we sweep this under the rug. In the present language of the new law we are actually sweeping it under the rug as there are no driver's license sanctions for a conviction of driving while impaired. In fact it is not even classified as a moving violation.

We also feel that by creating this new DWI offense that the burden that would be placed on the courts would be more than a nominal one. We would find a considerable amount of cases going to trial which had relatively low BAC's hoping that the court and the juries would allow the offender off with the lesser of the two offenses. In addition, we would anticipate a greater number of arrests from our law enforcement units for those people who are operating a vehicle at .05 and above.

Although we like the aspect of providing more evaluations and education and/or treatment to those people who drink and drive to determine whether they are a social drinker or a problem drinker, or alcoholic, we would prefer to have the much cleaner SB 195 to be passed out of this session of the Kansas Legislature. We hope that this subcommittee amends HB 2353 with the same language that passed out of this committee some two weeks ago in SB 195.

Thank you. I will attempt to answer any questions.

Respectfully,

Gene Johnson

Gene Johnson
Lobbyist for
Kansas Alcohol Safety Action Project Coordinators Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Alcohol and Drug Addiction Counselors Association

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Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

HOUSE BILL NO. 2500

The Kansas County and District Attorneys Association appears in support of House Bill No. 2500, as it addresses the problem of jurisdiction over juvenile felons convicted of a lesser included offense of the A or B felony they were originially charged with. We requested HB 2532, which dealt with the same issue, as well as continuing jurisdiction over persons charged with murder after the statute of limitations had passed. Our remedy for juvenile felons, however, was similar to HB 2500 in its original form, which would have left the juvenile a juvenile felon. The bill in its present form returns the juvenile to the juvenile systm if convicted of a lesser crime of a C felony or lower. While the remedy is exactly the opposite of the one we proposed, it does solve the problem of the question of jurisdiction. Our main concern was that if a jury returned a verdict on a C felony, because the law requires giving jury instructions on lesser included offenses if there is any evidence to support them, the present statute makes it unclear if the court has jurisdiction. If not, and the juvenile is returned to the juvenile system, he or she must then face adjudication on the lesser offense. There is a good argument that double jeopardy attaches, precluding further proceedings, and allowing a juvenile accused of a serious crime to go free.

We respectfully request the Senate Judiciary Subcommittee to approve this bill in order to clarify the question of jurisdiction in juvenile felon cases.

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03/28/91

House Bill No. 2057
Senate Judiciary Subcommittee
March 27, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2057. This bill would amend K.S.A. 38-1603, time limitations on prosecution for juvenile offenders.

This is a proposal from Judge Lee Nusser, Stafford County, supported by the District Magistrate Judges Association and our office.

Currently, proceedings under the juvenile offender code must be commenced within two years after the act giving rise to the proceedings is committed, with a couple of exceptions. (Murder in the first and second degree, can be commenced at any time). Sex offenses are not an exception to the current law.

Time limitations for sex offenses contained in K.S.A. 21-3106, which applies to adults, is five years.

This proposal would set the time limitations for sex offenses, for both adult and juvenile at five years.

The judges report that there are now more of these types of cases than in the past. These types of offenses show up after the two-year period and Judge Nusser indicated that he had to dismiss a case due to the two-year limitation.

We respectfully urge the committee to consider this proposal and pass the bill favorably.

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03/28/91

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

HOUSE BILL NO. 2105

The Kansas County and District Attorneys Association appears in support of House Bill 2105, as amended. The bill extends the usage of the prosecutor's 10% share of drug forfeiture moneys from only more forfeiture proceedings to include drug prevention and other drug enforcement applications. The bill still requires the limitation that such moneys be used for drug-specific applications.

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03/28/91

STATE OF KANSAS

MARK PARKINSON
REPRESENTATIVE, 14TH DISTRICT
REPRESENTING OLATHE AND OVERLAND PARK
16000 W. 136TH TERRACE
OLATHE, KANSAS 66062
913-829-5044

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS
JUDICIARY
TRANSPORTATION

OVERVIEW OF HOUSE BILL 2105

Presented to the members of the Criminal Law and Consumer Protection Subcommittee this 27th day of March, 1991.

House Bill 2105 is a proposed alteration to a portion of the Kansas forfeiture law. It amends K.S.A. 65-4173, which is the statute that controls what law enforcement agencies and prosecutors can do with money and property seized as a result of enforcement efforts. It usually relates to money and property gained from drug cases.

Current law provides that when property is seized the money gained from its sale is first applied to pay off any liens on the property. The next priority for payment is for costs to the seizing agency for any storage expense. The third use of the funds is to pay the prosecuting attorney office a fee, not to exceed 10% of the money gained from the seizure. Finally, the remainder goes to the seizing agency. Frequently there is a significant remainder and prosecuting attorneys and law enforcement agencies have benefited.

The problem with current law is that prosecutors are too restricted in how they can use these funds. Currently they can only use them for costs, and costs in these actions are not very much. The result is that some prosecuting attorneys have these funds accumulating, they would like to put the funds to good use, but the law prevents that from taking place.

House Bill 2105 corrects this problem by allowing prosecutors more discretion in the use of the funds. In addition to costs, the money could be used to develop, implement, or maintain drug education programs. At the same time, the Bill contains an important safeguard against frivolous use of the money. The county governing body must approve any expenditure.

House Bill 2105 was unanimously passed out of the House Judiciary Committee on February 20th and was passed 120-2 by the House on February 25th. From these results and the nature of this bill, I urge you to vote in favor of this legislation.

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03/29/91

OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
535 N. MAIN
WICHITA, KANSAS 67203

NOLA FOULSTON
District Attorney

(316) 383-7281

OUTLINE OF TESTIMONY BEFORE
SENATE JUDICIARY COMMITTEE WITH REGARD TO HOUSE BILL 2105
BY DOUGLAS R. ROTH, FIRST DEPUTY DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT, WICHITA, KANSAS

My name is Douglas R. Roth, and I am the First Deputy District Attorney for the Eighteenth Judicial District in Wichita, Kansas. I am here today representing our office in its strong support of the proposed amendments contained in House Bill 2105.

Before July 1, 1990, some prosecutors' offices shared in the proceeds of asset forfeitures pursuant to K.S.A. 65-4174. That statute provided that several law enforcement agencies which were substantially involved in effecting a forfeiture could equitably share in the distribution of the forfeited assets. However, until K.S.A. 65-4173 was amended by the 1990 legislature, there was no direct legislation governing the receipt, deposit, and expenditure of asset forfeiture funds received by a County or District Attorney's Office. The 1990 legislation provided that attorney fees should be deposited in the County Treasury and credited to the Special Prosecutors Trust Fund. The money in the trust fund could only be expended to aid in proceedings against property sought to be forfeited.

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The 1990 enactment authorizing the payment of attorney fees of up to ten percent (10%) to be deposited into the Special Prosecutors Trust Fund provided for uniformity in the use of the funds. However, the legislature limited the use of these funds to aiding in proceedings against property sought to be forfeited. Other law enforcement agencies are permitted to use forfeited drug money for many purposes. If the governing body deems it appropriate, the money may be used for such items as: 1) defraying costs of investigations; 2) providing technical equipment or expertise; and 3) providing matching funds for federal grants.

There are two (2) primary reasons to enact legislation that authorizes the forfeiture of assets in drug cases. First, it punishes the drug offender by denying him or her the use of the property used to commit the crime and his or her ill-begotten gains. Second, forfeited assets allow law enforcement agencies to fund drug investigations through the use of forfeited vehicles and cash for equipment, expenses of investigations, and to provide matching funds for federal grants. Law enforcement efforts are enhanced at no cost to the taxpayers.

The amendments contained in House Bill 2105 allow the County or District Attorney to use his or her share of forfeited assets to develop, implement, or maintain drug prevention or enforcement programs in their jurisdiction. The amendment will allow the use of the funds to not only pursue asset forfeitures, but also for use as matching funds in federal drug prosecution grants; to fund drug education programs; and to maintain and

enhance drug prosecution units. The amendment would permit prosecutors' offices to combine some or all of their forfeited assets with area law enforcement agencies to assist them in a multi-agency law enforcement approach to investigations and prosecutions. This can be extremely important in smaller jurisdictions where the resources to fight the drug problem are very limited.

Although House Bill 2105 expands the use of forfeited assets by a prosecutor's office, the use of those assets is still more restrictive than with other law enforcement agencies receiving forfeited assets.

Thank you for giving me the opportunity to testify in support of House Bill 2105, and I strongly urge you to pass this legislation.

Respectfully submitted,

Douglas R. Roth
First Deputy District Attorney
Eighteenth Judicial District

24-3/3

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03/28/91

TO: SENATE JUDICIARY SUBCOMMITTEE

RE: HB 2105

DATE: March 27, 1991 - 10:00am

Mr. Chairman and Members of the Committee:

My name is Gene Johnson and I represent the Kansas Alcohol Safety Action Project Coordinators Association, the Kansas Association of Alcohol and Drug Program Directors, and the Kansas Alcohol and Drug Addiction Counselors Association.

We support HB 2105 as a means of using proceeds from forfeited sales and money in a positive, constructive manner in the war against illegal drugs and alcohol. This proposed legislation would offer another method of funding for prevention programs, and we are using the drug dealer's forfeitures. We like that. Thank you.

Respectfully,

Gene Johnson

Gene Johnson
Lobbyist for
Kansas Alcohol Safety Action Project Coordinators Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Alcohol and Drug Addiction Counselors Association

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03/28/91

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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Testimony of
Juliene A. Maska
Before the Senate Judiciary Sub-Committee on
Criminal Law and Consumer Protection
RE: House Bill 2374
March 27, 1991

Attorney General Robert T. Stephan has asked that I speak to you today about House Bill 2374.

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 look at the needs of crime victims. The task force asked that House Bill 2374 be introduced and seeks your support. This bill would enhance the rights of crime victims.

Many times, victims are not sent a victim impact statement or no one explains the purpose of the statement. Since the prosecutor works with the victim throughout the trial process and provides victim assistance, we believe the county/district attorney's office would be a logical place for assisting court services with the victim impact statement.

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Crime victims should be allowed the opportunity to address the judge before sentencing. This bill would give the victim the right to tell the judge how the crime has affected him or her.

Also, concerning crimes against persons, new section 3 of the bill would allow victims to be aware of the criminal case dismissal. When plea bargaining takes place, the victim would also be made aware of any proposed plea agreements. Victims should be informed as to what is happening to the criminal case before decisions that would affect that case take place.

I would like to suggest an amendment to the bill. You have a copy of new wording to be amended into K.S.A. 74-7305(b). This would also enhance the rights of crime victims.

In 1986, the statute of limitations for child abuse victims was amended to allow victims less than 16 years of age to report any sexual assault crimes within five years after the incident. The Crime Victims Compensation Board at that time began awarding compensation to children falling within the five-year time limitation.

This amendment would place into law the practice of awarding claims to victims of child sexual assault.

Your support for House Bill 2374 with this amendment would strengthen rights for crime victims in Kansas.

STATE OF KANSAS

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Amendment for House Bill 2374

K.S.A. 74-7305(b) to read as follows:

(b) Compensation may not be awarded unless an application has been filed with the board within one year of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes:

(i) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (ii) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (iii) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (iv) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (v) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (vi) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (vii) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; or (viii) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto. For all other incidents of criminally injurious conduct.

Compensation may not be awarded unless . . .

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03/28/91

STATE OF KANSAS

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TOPEKA

HOUSE OF REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL & STATE AFFAIRS
GOVERNMENTAL ORGANIZATION
JUDICIARY

February 21, 1991

TO: HOUSE JUDICIARY COMMITTEE / SENATE JUDICIARY

RE: H.B. 2374

FROM: Joan M. Hamilton, 51st Representative
Chairperson, Subcommittee on Sentencing, Corrections and Parole, A.G.'s Task Force on Victims' Rights

I speak to you today with three hats on: 1) Representative; 2) Chairperson for Subcommittee listed above; and 3) former prosecutor and parole members having worked with over 500 victims and/or victims' families.

This bill was the result of a subcommittee composed of Det. Randy Murphy from the K.C., Ks. police department and a husband of a kidnapped and killed wife, Ken Christian from Overland Park, Ks. who is a businessman and also the father of a son who was killed in an armed robbery/murder case, and myself. We have all served on the Task Force since it started and have heard from hundreds of victims and families who have been through the criminal system and voiced their frustrations. This bill SHOULDN'T BE NECESSARY - ONE WOULD ASSUME IT IS JUST PUBLIC RELATIONS OR POLICY TO ALLOW THESE COURTESYS, BUT IT DOESN'T WORK THAT WAY ----- SO WE ARE ASKING YOU TO ALLOW VICTIMS AND FAMILIES THIS SMALL REQUEST THROUGH **H.B. 2374.**

The main change is the addition of the new Sec. 3 on page 2. This requires the D.A.s and County Attorneys to INFORM the victims and/or families of victims of crimes against persons, sexual offenses, and crimes against the family of their plea negotiations **BEFORE THEY TAKE PLACE.** This allows the victims to know what is happening before they read it in the paper, or hear it on the news. The Subcommittee members actually wanted a CONSENT element, but it was suggested we start with INFORMATION. The prosecutor can continue to proceed with their case, but at least the victims or families could go to other sources (i.e. special prosecutors) if they were not satisfied with the negotiations. It would also make the prosecutors more accountable for their over-charging, plea bargains, and dismissals. I will let two families tell you about their actual experiences in regards to this-----I've heard hundreds of horror stories, but time only allowed for me to get two brave women. Their cases are so severe--yet they lived through the trauma of the system. What must less serious cases go through?

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When County and District Attorney's use the excuse that they are unable to do this because of caseload and time, it should carry no weight. These Kansans deserve, at least, a bit of the justice we afford defendants. In the NEW LANGUAGE ADDED TO (4) (a) on Page 2 --- we just want victims and/or families to have an opportunity to address the court personally **if they request.** Presently, it is discretionary with the Court, yet we afford the opportunity for the defendant.

Lastly, we are asking that the victim impact statement become an important part of the pre-sentence investigation by requiring the C.A. and D.A.'s to assist the court officers in getting the statement into the file. Presently, the statements are merely sent to the victims, and depending on the court service officer, no follow-up is even attempted.

WITH THE POSSIBILITY OF THE ADOPTION OF THE SENTENCING COMMISSION GUIDELINES, victims will be losing some of the rights afforded them by the Legislature in past years. These courtesys will aid them in the fight for some voice in the criminal system, though they realize they have no rights.

Please pass this H.B. out of committee favorably. Thank you.

Joan M. Hamilton

Committee Members:

In case I'm in session when this bill is heard, please accept this written testimony. Thank you.

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House Bill No. 2374
Senate Judiciary Subcommittee
March 27, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2374.

I would like to address and support Section 4., page 3 of the bill which amends K.S.A. 1990 Supp. 21-4627, which provides that a conviction resulting in a mandatory 40-year sentence is subject to automatic review by and appeal to the Supreme Court, and that such review and appeal shall be expedited to the extent possible.

This amendment was requested by Chief Justice Holmes to Senator Winter and Representative Solbach due to the conflict in several ways with the normal procedures prescribed by Supreme Court rule for preparing criminal records for appeal and may actually result in additional delay which would not otherwise occur under existing appellate procedure. The Clerk of the Appellate Courts has received a number of inquiries from court reporters and Clerks of the District Court regarding the conflicts between the new statute and current procedures.

For example, Supreme Court Rule 3.03 requires completion of the transcript by the court reporter within 40 days after service of the appellant's order for transcripts, unless the court reporter applies for and obtains an extension from the Clerk of the Appellate Courts pursuant to Rule 5.02. In contrast, the new statute requires completion of the transcript by the court reporter within 60 days of the rendition of sentence, and allows the trial court to grant an extension of 30 days for good cause.

Furthermore, the statute directs the Clerk of the District Court to transmit the entire record to the Clerk of the Appellate Courts immediately upon completion of the transcript while under Supreme Court Rule 3.03, the transcript is to filed with the Clerk of the District Court, where the record is available to the parties during the time allowed for preparation of their appellate briefs. Under our current rules, the record is not transmitted to the Clerk of the Appellate Courts until such time as the briefs have been filed or the time for their filing has expired. The procedure outlined in the statute would require the attorneys for both parties to come to Topeka to access the record on appeal for purposes of preparing their briefs.

I have provided you with a copy of the letter from Chief Justice Holmes and since there are cases in the pipeline, the court has requested that this bill be effective upon publication in the Kansas Register. We urge your favorable support.

Subcommittee - Senate Judiciary
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Supreme Court of Kansas

Kansas Judicial Center
Topeka, Kansas 66612-1507

RICHARD W. HOLMES
Chief Justice

(913) 296-4898

February 7, 1991

Representative John Solbach
Chairman, House Judiciary Committee
Room 115S Statehouse

Senator Wint Winter
Chairman, Senate Judiciary Committee
Room 120S Statehouse
BUILDING MAIL

Gentlemen:

Lewis Carter, Clerk of the Supreme Court, has recently brought to my attention several problems relating to the implementation of 1990 S.B. 77, which authorizes a mandatory 40-year sentence for certain offenders convicted of premeditated murder.

K.S.A 1990 Supp. 21-4627(1) provides that a conviction resulting in a mandatory 40-year sentence is subject to automatic review by and appeal to the Supreme Court, and that such review and appeal shall be expedited to the extent possible. The third and subsequent sentences of the subsection set forth procedures for transcribing the record, filing the record with the Clerk of the Supreme Court, and filing the briefs.

The specific procedures set forth in the new statute conflict in several ways with the normal procedures prescribed by Supreme Court rule for preparing criminal records for appeal and may actually result in additional delay which would not otherwise occur under existing appellate procedure. For example, Supreme Court Rule 3.03 requires completion of the transcript by the court reporter within 40 days after service of the appellant's order for transcripts, unless the court reporter applies for and obtains an extension from the Clerk of the Supreme Court pursuant to Rule 5.02. In contrast, the new statute requires completion of the transcript by the court reporter within 60 days of the rendition of sentence, and allows the trial court to grant an extension of 30 days for good cause. Furthermore, the statute directs the trial court clerk to transmit the entire record to the Clerk of the Supreme Court immediately upon completion of the transcript. while under Supreme Court Rule 3.03, the transcript is to be filed with the

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district court clerk, where the record is available to the parties during the time allowed for preparation of their appellate briefs. Under our current rules, the record is not transmitted to the Clerk of the Supreme Court until such time as the briefs have been filed or the time for their filing has expired. The procedure outlined in the statute would require the attorneys for both parties to come to Topeka to access the record on appeal for purposes of preparing their briefs.

Several cases in which the "hard-40" sentence has been imposed have been brought to our attention, and Lewis Carter's office has received a number of inquiries from court reporters and district court clerks regarding the conflicts between the new statute and current procedures. Frankly, we fail to understand the rationale for creating an entirely different and inconsistent procedure for processing appeals from convictions of premeditated murder solely because they result in a "hard-40" sentence rather than the normal statutory life sentence pursuant to K.S.A. 21-4501(a). The existing statutory requirements could result in two separate appeals when the sentencing appeal should be included as one of the issues in the principal appeal.

I therefore respectfully request introduction and favorable consideration by your committees of legislation that would provide that automatic appeals from a conviction resulting in a "hard-40" sentence are to be handled in accordance with current rules and statutes of appellate procedure. We think this could be accomplished by amending subsection (1) of K.S.A. 1990 Supp. 21-4627 to read in its entirety as follows:

> "(1) A judgment of conviction resulting in a mandatory term of imprisonment hereunder shall be subject to automatic review by and appeal to the supreme court of Kansas in the manner provided by the applicable statutes and rules of the supreme court governing appellate procedure. The review and appeal shall be expedited in every manner consistent with the proper presentation thereof and given priority pursuant to the statutes and rules of the supreme court governing appellate procedure."

As there are cases in the pipeline, we ask that the amendment be effective upon publication in the Kansas Register.

I appreciate your consideration of this amendment, and I assure you the Supreme Court takes seriously its new statutory responsibility to automatically review each conviction resulting in a mandatory 40-year term of imprisonment. Please contact me if you have any questions.

Sincerely,

Richard W. Holmes
Chief Justice

RWH:cv

28-3/3

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03128/91

Kansas County & District Attorneys Association

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(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Opposition to

HOUSE BILL 2374, (as amended)

The Kansas County and District Attorneys Association appears in opposition to House Bill 2374, as amended by the House Committee of the Whole. While the bill as originally written imposes a number of additional duties on county and district attorneys (and without any additional funding), the purpose of the bill, to involve victims in the various stages of the proceedings, is laudable. While some county attorneys have expressed some opposition, the majority that I have spoken with feel that they accomplish most of the additional requirements already.

What we are opposed to is the use of a victims' rights bill as a trojan horse for enhancing appellate rights of certain defendants. The amendment to the bill makes changes in expedited appeals which were originally part of the "Hard-40" provisions. Unfortunately, the language appears to make such expedited appeals applicable to any felon subjected to a mandatory imprisonment, i.e. firearms sentencing under K.S.A. 1990 Supp. 21-4618. The new language inserted on the floor of the House may be an improvement over the present system, but it is significant: consequently, it should be the subject of hearings, and it should be required to stand on its own merit, and not fly under the banner of victims' rights.

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