

Approved 2-10-92  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 a.m./p.m. on February 4, 1992 in room 519-S of the Capitol.

All members were present except:

Representatives Hochhauser and Parkinson who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Donna Whiteman, Secretary of S.R.S.  
Tom Bishop, State Representative  
Gwen Welshimer, State Representative  
Ruby Gilbert, State Representative  
Georgia Bradford, State Representative  
Nola Foulston, Sedgwick County District Attorney  
Paul Goward, Deputy Chief, Wichita Police Department  
Jim Copple, Executive Director, Project Freedom  
Jeff Tymony, Vice-Chairman, Project Freedom  
Ella Williams, NEDARTS  
Leo Casados, Court Services Officer  
Gene Olander, Shawnee County District Attorney  
J. D. Spradling, Topeka, KS

The Chairman called the committee meeting to order.

Donna Whiteman, Secretary of S.R.S., requested introduction of three bills concerning 1) clarifying SRS in medical subrogation claims, 2) changing name of commission to Kansas Commission for Deaf & Hard of Hearing and 3) clarifying SRS role in adult abuse neglect cases. (Attachment #1) Rep. Douville moved to introduce requested legislation. Rep. Smith seconded the motion. Motion carried.

Hearings were opened on HB 2709, discharging a firearm at a house or vehicle and HB 2724, aggravated battery to include injuries that are reasonably foreseeable.

Tom Bishop, State Representative, testified in favor of HB 2709. (Attachment #2) He answered committee members questions.

Gwen Welshimer, State Representative, testified in favor of HB 2709. (Attachment #3)

Ruby Gilbert, State Representative, testified in favor of HB 2709. (Attachment #4)

Georgia Bradford, State Representative, submitted written testimony in favor of HB 2709. (Attachment #5)

Nola Foulston, Sedgwick County District Attorney, testified in favor of HB 2709. (Attachment #6) She answered committee members questions. She explained why this is needed legislation for drive-by shootings and why current law is not sufficient. She said an amendment to the bill was necessary by adding the words, "malicious and willful" in the language as that language was inadvertently left out in the bill draft.

Paul Goward, Deputy Chief of Police, Wichita, KS, testified in favor of HB 2709. (Attachment #7) He answered committee members questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 519-S, Statehouse, at 3:30 ~~xx~~m./p.m. on February 4, 1992.

Jim Copple, Executive Director of Project Freedom, Wichita, testified in support of HB 2709. (Attachment #8) He answered committee members questions.

Jeff Tymony, Vice-Chairman of Project Freedom, testified in favor of HB 2709. (Attachment #9)

Ella Williams, NEDARTS, Wichita, KS, testified in favor of HB 2709. (Attachment #10) She answered committee members questions.

Leo Casados, Court Services Officer, Wichita, KS, testified in favor of HB 2709. (Attachment #11) He said he had been a victim of a drive-by shooting, but did not report it to the police. He answered committee members questions.

Gene Olander, Shawnee County District Attorney, testified in support of HB 2709 and HB 2724. He feels the public is upset that drive-by shootings are currently only a misdemeanor when they can only be charged with criminal damage to property. He said HB 2724 does not solve the problem. He requested an amendment in HB 2724 on Line 19 by omitting "reasonably foreseeable" and adding "done in a wanton manner" instead. He said the Kansas County & District Attorneys Association prefers HB 2709 over HB 2724. He said he thought these kind of offenders should be in prison. He answered committee members questions.

J. D. Spradling, Topeka, requested a modification on HB 2709. (Attachment #12)

The hearing on these bills will be continued on February 6, 1992.

Meeting adjourned at 5:30 p.m. 6, 1992.

PROPOSED BILL NO. \_\_\_\_\_

By \_\_\_\_\_

AN ACT concerning social welfare; liens for medical assistance; amending K.S.A. 1991 Supp. 39-719a and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 39-719a is hereby amended to read as follows: 39-719a. (a) Where medical assistance has been paid by the secretary and a third party has a legal obligation to pay such medical expenses to or on behalf of the recipient, the secretary may recover the same from the recipient or from the third party and shall be in all respects subrogated to the rights of the recipient in such cases except as provided under K.S.A. 1991 Supp. 39-786 and 39-787, and amendments thereto, or under ~~section-303--and--amendments--thereto--of--the--federal--medicare catastrophic--coverage--act--of--1988~~ 42 U.S.C. Sec. 1896r-5, and amendments thereto, whichever is applicable. Payment of medical assistance by the secretary shall be secondary to any other insurance coverage or third party with a legal obligation to pay such medical expenses to or on behalf of the recipient. This lien exists whether or not the secretary has filed a written notice on the injured person, the injured person's attorney or the third party. The amount of the lien shall be the full amount of the medical assistance paid to providers under the operation of the medical assistance program, regardless of the amount the medical provider would normally bill.

(b) Pursuant to this section unless otherwise agreed, the court shall fix attorney fees, which shall be paid proportionately by the secretary and the injured person, such person's dependents or personal representatives, in the amounts determined by the court. Attorney fees to be paid by the

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secretary shall be fixed by the court in an amount not to exceed  $\frac{1}{3}$  of the medical assistance recovered pursuant to subsection (a) for cases settled prior to trial, or in an amount not to exceed  $\frac{2}{5}$  of the medical assistance recovered pursuant to subsection (a) in cases when a trial is convened.

(c) In the event of a recovery pursuant to K.S.A. 60-258a, and amendments thereto, the secretary's right of subrogation shall be reduced by the percentage of negligence attributable to the injured person.

Sec. 2. K.S.A. 1991 Supp. 39-719a is hereby repealed.

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

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PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning deaf and hard of hearing persons; name change of commission; amending K.S.A. 75-5391, 75-5392, 75-5393, 75-5394, 75-5395, 75-5396, 75-5397, 75-5397a, 75-5397b, 75-5397c and 75-5397d and repealing the existing sections.

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

Section 1. K.S.A. 75-5391 is hereby amended to read as follows: 75-5391. (a) There is hereby established within the department of social and rehabilitation services the Kansas commission for the deaf and hard of hearing impaired. The commission shall:

(1) Advocate services affecting the deaf and hard of hearing impaired in the areas of public services, health care, educational, vocational and employment opportunity;

(2) act as a bureau of information for the deaf and hard of hearing impaired to state agencies and public institutions providing general health and mental health care, employment, vocational, and educational services, and to local agencies and programs;

(3) collect facts and statistics and other special studies of conditions affecting the health and welfare of the deaf and hard of hearing impaired in this state;

(4) provide for a mutual exchange of ideas and information on the national, state and local levels;

(5) provide public education of prenatal and postnatal warning signs of conditions which may lead to deafness or hearing impairment in the fetus or newborn child;

(6) encourage and assist local governments in the development of programs for the deaf and hard of hearing impaired;

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(7) cooperate with public and private agencies and units of local, state and federal governments in promoting coordination in programs for the deaf and hard of hearing impaired;

(8) provide for the social, emotional, educational and vocational needs of the deaf and hard of hearing impaired and their families;

(9) serve as an advisory board to the governor on the needs of the deaf and hard of hearing impaired by preparing an annual report which reviews the status of all state services to the deaf and hard of hearing impaired within Kansas, and to recommend priorities to the governor for the development and coordination of services to the deaf and hard of hearing impaired;

(10) make recommendations for needed improvements, and serve as an advisory board in regard to new legislation affecting the deaf and hard of hearing impaired.

(b) Except as otherwise provided by this act, all budgeting, purchasing and related management functions of the Kansas commission for the deaf and hard of hearing impaired shall be administered under the direction and supervision of the secretary of social and rehabilitation services. Within the limitations of available appropriations, the secretary of social and rehabilitation services shall provide additional clerical and other assistance as may be required for the commission.

(c) The provisions of the Kansas sunset law apply to the Kansas commission for the deaf and hard of hearing impaired established by this section and the commission is subject to abolition thereunder.

Sec. 2. K.S.A. 75-5392 is hereby amended to read as follows:  
75-5392. (a) The Kansas commission for the deaf and hard of hearing impaired shall consist of 17 members who shall be responsible for the policies and management of the commission. The membership shall consist of the following:

(1) Five ex officio members, the administrative head, or a designee, of (A) vocational rehabilitation services, (B) social services, (C) the department of health and environment, (D) the

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state board of education, and (E) the state school for the deaf.

(2) Twelve members appointed by the governor as follows: Six members who are deaf or hard of hearing impaired persons, one of whom shall be representative of the Kansas association of the deaf; one member who is a speech language pathologist; one member from the state registry of interpreters for the deaf; one member who is a psychologist, nurse, teacher, rehabilitation counselor or social worker serving the deaf or hard of hearing impaired; one member who is not deaf or hard of hearing impaired and who is the parent of a deaf or hard of hearing impaired person; one member who is a clinical audiologist; and one member who is a board-certified otolaryngologist.

(b) The Of the members of the commission appointed after October 31, 1991, four shall serve for terms of one year, four shall serve for terms of two years and four shall serve for terms of three years, as designated by the governor. Thereafter members appointed by the governor shall serve on the commission for terms of three years and until their successors are appointed and qualified. ~~The--members--appointed--by--the--governor--who--are--serving--on--the--commission--on--July--17--1988--shall--continue--as--members--of--the--commission--for--the--term--of--office--for--which--originally--appointed--As--the--terms--of--members--appointed--by--the--governor--expire--and--as--vacancies--otherwise--occur--from--among--the--members--appointed--by--the--governor,--members--of--the--commission--shall--be--appointed--so--as--to--comply--with--the--requirements--of--subsection--(a)(2)--for--qualification--for--membership--on--the--commission.~~ In filling vacancies in the membership of the commission, the governor shall give preference to deaf or hard of hearing impaired persons qualified to fill such vacancies. Upon a vacancy in an appointive position in the membership of the commission, the commission itself and the Kansas association of the deaf may each submit to the governor a list of deaf or hard of hearing impaired persons deemed qualified to fill such vacancy, and the governor may fill such vacancy from among the persons on such lists.

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(c) Any appointive position in the membership of the commission which becomes vacant prior to the expiration of a full term shall be filled only for the period of the unexpired term.

(d) The members of the commission shall elect a chairperson annually. The commission shall meet at the call of the chairperson, but no less than four times a year. The members shall elect other officers as deemed necessary, set duties of officers, and set procedures for conducting their meetings for the purposes designated in this act. A simple majority of the membership of the commission shall constitute a quorum.

(e) Members of the commission shall receive no compensation for their services. Ex officio members of the commission shall receive travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto, which shall be paid by the respective departments of such members. Appointed members of the commission shall receive travel expenses and subsistence expenses or allowances for attendance at meetings of the commission authorized by the chairperson or the commission as provided in K.S.A. 75-3212, and amendments thereto.

Sec. 3. K.S.A. 75-5393 is hereby amended to read as follows: 75-5393. (a) The Kansas commission for the deaf and hard of hearing impaired shall employ an executive director and shall fix the duties, responsibilities and qualifications thereof. The executive director shall be a full-time employee of the commission who shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary to be fixed by the commission. The executive director shall receive actual and necessary expenses incurred while in the discharge of official duties.

(b) The executive director, with the advice and consent of the commission shall:

(1) Within the limitations of available appropriations, plan and oversee the establishment of service centers for the deaf and hard of hearing impaired in areas where the commission deems they are needed and in concurrence with the secretary of social and

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rehabilitation services and in consultation with local boards of directors of community service centers and local groups promoting or providing services to the deaf or hard of hearing impaired, or both;

(2) promote accessibility of all governmental services to deaf and hard of hearing impaired citizens in Kansas including those deaf and hard of hearing impaired persons with multiple disabilities;

(3) identify agencies, both public and private which provide community services, evaluate the extent to which they make services available to deaf and hard of hearing impaired people and their families, and cooperate with the agencies in coordinating and extending these services;

(4) provide for the mutual exchange of ideas and information on services for deaf and hard of hearing impaired people between federal, state and local governmental agencies and private organizations and individuals;

(5) survey the needs of the deaf and hard of hearing impaired population in Kansas and assist the commission in the preparation of its report to the governor;

(6) maintain a listing of persons qualified in various types of interpreting and aural rehabilitation for the deaf and make this information available to local, state, federal and private organizations and to individuals;

(7) promote the training of interpreters for the deaf and hard of hearing impaired;

(8) serve as an advocate for the rights of deaf and hard of hearing impaired people and perform such other duties as may be required by law;

(9) provide interpreter services for the deaf and hard of hearing impaired to be funded from user fees;

(10) provide a telecommunication message relay service for the deaf and hard of hearing impaired;

(11) provide sign language instruction to be funded from user fees; and

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(12) employ such persons as may be needed from time to time, in the judgment of the executive director, to carry out the director's responsibilities under paragraphs (9), (10) and (11) of this subsection. Such employees shall be in the unclassified civil service and shall receive an annual salary to be fixed by the commission.

(c) In selecting an executive director, the commission shall select an individual who is fluent in the American sign language of the deaf and shall give consideration and priority to qualified applicants who are deaf or hard of hearing ~~impaired~~.

Sec. 4. K.S.A. 75-5394 is hereby amended to read as follows: 75-5394. The commission for the deaf and hard of hearing ~~impaired~~ may request and shall receive from any department, division, board, bureau, commission, agency of the state or of any political subdivision thereof, such data as might be needed to enable it to properly carry out its activities under this act. Avoidance of unnecessary duplication of state-delivered services to the deaf and hard of hearing ~~impaired~~ shall be the primary objective of such cooperation.

Sec. 5. K.S.A. 75-5395 is hereby amended to read as follows: 75-5395. The Kansas commission for the deaf and hard of hearing ~~impaired~~ may make arrangements with other state agencies, and may contract with other individuals, organizations, corporations, associations other legal entities, including private agencies, or any department or agency of the federal government, state or any political subdivision of the state, to carry out the purposes of the commission.

Sec. 6. K.S.A. 75-5396 is hereby amended to read as follows: 75-5396. The Kansas commission for the deaf and hard of hearing ~~impaired~~ is authorized to receive moneys from any source, including federal funds, gifts, grants and bequests which shall be expended for the purposes designated in this act.

Sec. 7. K.S.A. 75-5397 is hereby amended to read as follows: 75-5397. The governor is authorized to designate existing departments of state government, or division thereof, to provide

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statewide services to the deaf and hard of hearing ~~impaired~~ as specified in this act.

Sec. 8. K.S.A. 75-5397a is hereby amended to read as follows: 75-5397a. (a) The Kansas commission for the deaf and hard of hearing ~~impaired~~ may fix, charge and collect reasonable fees for providing interpreter services and sign language instruction.

(b) The secretary of social and rehabilitation services shall remit all moneys received by the commission for such services to the state treasurer at least monthly. Upon receipt of each remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund.

Sec. 9. K.S.A. 75-5397b is hereby amended to read as follows: 75-5397b. (a) The Kansas commission for the deaf and hard of hearing ~~impaired~~ established by this act shall be the successor in every way to the powers, duties and functions of the Kansas commission for the deaf and hearing impaired in which the same were vested prior to the effective date of this act.

(b) Whenever the Kansas commission for the deaf and hearing impaired, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the Kansas commission for the deaf and hard of hearing ~~impaired~~.

(c) All orders or directives of the Kansas commission for the deaf and hearing impaired in existence on the effective date of this act shall continue to be effective and shall be deemed to be the orders or directives of the Kansas commission for the deaf and hard of hearing ~~impaired~~ until revised, amended, repealed or nullified pursuant to law.

(d) The Kansas commission for the deaf and hard of hearing ~~impaired~~ shall be a continuation of the Kansas commission for the deaf and hearing impaired.

Sec. 10. K.S.A. 75-5397c is hereby amended to read as follows: 75-5397c. (a) No suit, action or other proceeding,

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judicial or administrative, lawfully commenced by or against the Kansas commission for the deaf and hearing impaired, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the taking effect of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of such state agency, or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

Sec. 11. K.S.A. 75-5397d is hereby amended to read as follows: 75-5397d. (a) As used in this section, "commission" means the Kansas commission for the deaf and hard of hearing impaired.

(b) The commission shall design and provide for the issuance of a symbol or other device that may be attached to a motor vehicle regularly operated by a deaf or hard of hearing impaired person. The symbol may be attached to the lower left corner of the rear window of a motor vehicle, if the symbol does not exceed a width of five inches and a height of five inches; or the symbol may be attached to the rear bumper of a motor vehicle.

(c) A deaf or hard of hearing impaired person may apply to the commission for the symbol or other device. The commission may require acceptable medical proof that a person is deaf or hard of hearing impaired. The commission may collect a fee not to exceed \$2 for each symbol or device.

(d) The commission may contract with a state or local agency for the distribution of the symbol or other device.

(e) The commission shall provide law enforcement agencies in the state an explanation of the meaning of the symbol to be issued by the commission prior to the issuance of such symbol.

Sec. 12. K.S.A. 75-5391, 75-5392, 75-5393, 75-5394, 75-5395, 75-5396, 75-5397, 75-5397a, 75-5397b, 75-5397c and 75-5397d are hereby repealed.

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Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.

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PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning abuse, neglect and exploitation of certain persons; amending K.S.A. 1991 Supp. 39-1401, 39-1402, 39-1404, 39-1430, 39-1431, 39-1433, 39-1435 and 39-1440 and repealing the existing sections.

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

Section 1. K.S.A. 1991 Supp. 39-1401 is hereby amended to read as follows: 39-1401. As used in this act:

(a) "Resident" means:

(1) Any resident, as defined by K.S.A. 39-923 and amendments thereto; or

~~(2) any client cared for in an adult family home; or~~

(3) (2) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility; or

~~(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto; or~~

(5) (3) any individual, kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923 and amendments thereto.

~~(c) "Adult family home" has the meaning ascribed thereto in K.S.A. 39-1501 and amendments thereto.~~

(d) (c) "In need of protective services" means that a resident is unable to perform or obtain services which are necessary to maintain physical or mental health, or both.

(e) (d) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision

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of medical care for physical and mental health needs, the relocation of a resident to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

{f} (e) "Protective services" means services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services.

{g} (f) "Abuse" means neglect, infliction of physical or mental injury or deprivation by a caretaker of services which are necessary to maintain physical and mental health.

{h} (g) "Neglect" means the failure of a caretaker to maintain reasonable care and treatment to such an extent that the resident's health or emotional well-being is injured.

{i} (h) "Caretaker" means a person or institution who has assumed the responsibility for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

{j} (i) "Exploitation" means intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

{k} (j) "Medical care facility" means a facility licensed under K.S.A. 65-425 et seq. and amendments thereto but shall not

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include, for purposes of this act, a state psychiatric hospital or state institution for the mentally retarded, including Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Topeka state hospital, Kansas neurological institute, Parsons state hospital and training center and Winfield state hospital and training center.

~~(j)~~ (k) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility and Topeka state hospital.

~~(m)~~ (l) "State institution for the mentally retarded" means Kansas neurological institute, Parsons state hospital and training center and Winfield state hospital and training center.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

Sec. 2. K.S.A. 1991 Supp. 39-1402 is hereby amended to read as follows: 39-1402. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a chief administrative officer of a medical care facility, an adult care home administrator, a licensed social worker, a licensed professional nurse or a licensed practical nurse, who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of health and environment with respect to residents defined under (a)(1) and ~~(a)(3)~~ (a)(2) of K.S.A. 39-1401 and amendments thereto and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred

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by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working weekdays and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department of health and environment with respect to residents defined under (a)(1) and ~~(a)(3)~~ (a)(2) of K.S.A. 39-1401 and amendments thereto and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous place in every adult care home, ~~adult~~ family-home and medical care facility in this state.

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(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

Sec. 3. K.S.A. 1991 Supp. 39-1404 is hereby amended to read as follows: 39-1404. (a) ~~The department of social and rehabilitation services or~~ The department of health and environment upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, within 24 hours of receiving such report, shall initiate an investigation, including a personal visit with the resident and, within two weeks of receiving such report, shall complete the investigation to determine if the resident is being or has been abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation. The investigation shall include, but not be limited to, a visit to the named resident and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the investigation of each case, written findings shall be prepared which shall include a finding of whether there is or has been abuse, neglect or exploitation, recommended action and a determination of whether protective services are needed. If it appears that a crime has occurred, the appropriate law enforcement agency shall be notified by ~~the department investigating the report.~~

~~(b) The secretary of social and rehabilitation services shall maintain a register of the reports received and investigated by the department of social and rehabilitation services, the findings, evaluations and the actions recommended. The register shall be available for inspection by personnel of the department of social and rehabilitation services. The secretary of social and rehabilitation services shall forward a copy of any report of abuse, neglect or exploitation of a resident investigated by the department of social and~~

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rehabilitation--services--to--the--secretary--of--health--and environment--and,--in--the--case--of--a--report--of--abuse,--neglect--or exploitation--of--a--resident--of--an--adult--family--home,--to--the secretary--of--aging.

(c) The report received by the department of social and rehabilitation services and the written findings, evaluations and actions recommended shall not be deemed a public record or be subject to the provisions of the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of social and rehabilitation services or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests or agrees in writing to such disclosure or unless a judicial proceeding results therefrom. Except as otherwise provided in this section, no information contained in the register shall be made available to the public in such a manner as to identify individuals.

(d) The secretary of social and rehabilitation services shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The appropriate state regulatory authority may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority.

(e) (b) The department which investigates the report of health and environment shall inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken.

Sec. 4. K.S.A. 1991 Supp. 39-1430 is hereby amended to read as follows: 39-1430. As used in this act:

(a) "Adult" means an individual 18 years of age or older alleged to be unable to protect their own interest and who is

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harm or threatened with harm through action or inaction by either another individual or through their own action or inaction:---Such--term--shall--not--include--a--resident--as--the--term "resident"--is--defined--under--K.S.A.--39-1401--and--amendments thereto: when (1) such person is residing in such person's own home, the home of a family member or the home of a friend, (2) such person resides in an adult family home as defined in K.S.A. 39-1501 and amendments thereto, or (3) such person is receiving services through a community mental retardation facility or a residential facility licensed pursuant to K.S.A. 75-3307b and amendments thereto. Such term shall not include persons to whom K.S.A. 60-3101 et seq. and amendments thereto apply.

(b) "Abuse" means the intentional infliction of injury, unreasonable confinement, fiduciary abuse, intimidation, cruel punishment, omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness. Such term shall not include abuse as defined in K.S.A. 60-3102 and amendments thereto.

(c) "Neglect" means the failure or omission by one's self, caretaker or another person to provide goods or services which are necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(d) "Exploitation" means taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(e) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust.

(f) "In need of protective services" means that an adult is unable to provide for or obtain services which are necessary to maintain physical or mental health or both.

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(g) "Services which are necessary to maintain physical or mental health or both" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of an adult to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in this act.

(h) "Protective services" means services provided by the state or other governmental agency or by private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but shall not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services, and assistance in securing medical and legal services.

(i) "Caretaker" means a person who has assumed the responsibility for an adult's care or financial management or both.

(j) "Secretary" means the secretary of social and rehabilitation services.

(k) "Report" means a report of abuse, neglect or exploitation under this act.

(l) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes, investigate criminal acts and file criminal charges, whether that duty extends to all crimes or is limited to specific crimes.

(m) "Involved adult" means the adult who is the subject of a report of abuse, neglect or exploitation under this act.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason

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that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

Sec. 5. K.S.A. 1991 Supp. 39-1431 is hereby amended to read as follows: 39-1431. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, the chief administrative officer of a medical care facility, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed dentist, a law enforcement officer and, the chief administrative officer of a licensed home health agency, the chief administrative officer of an adult family home and the chief administrative officer of a community mental retardation facility licensed under K.S.A. 75-3307b and amendments thereto who has reasonable cause to believe that an adult is being or has been abused, neglected or exploited or is in need of protective services shall report, within six hours from receipt of the information, such information or cause a report of such information to be made in any reasonable manner. An employee of a domestic violence center shall not be required to report information or cause a report of information to be made under this subsection. Other state agencies receiving reports that are to be referred to the department of social and rehabilitation services, shall submit the report to the department within six hours, during normal work days, of receiving the information. Reports shall be made to the department of social and rehabilitation services during the normal working week days and hours of operation. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation. Law enforcement shall submit the report and appropriate information to the department of social and rehabilitation services on the first working day that social and rehabilitation services is in operation.

(b) The report made pursuant to subsection (a) shall contain

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the name and address of the person making the report and of the caretaker caring for the involved adult, the name and address of the involved adult, information regarding the nature and extent of the abuse, neglect or, exploitation or fiduciary abuse, the name of the next of kin of the involved adult, if known, and any other information which the person making the report believes might be helpful in the investigation of the case and the protection of the involved adult.

(c) Any other person having reasonable cause to suspect or believe that an adult is being or has been abused, neglected or exploited or is in need of protective services may report such information to the department of social and rehabilitation services. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation.

(d) A person making a report under subsection (a) shall not be required to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and amendments thereto. A person making a report under K.S.A. 39-1401 to 39-1410, inclusive, and amendments thereto, shall not be required to make a report under this act.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report not to be made shall be guilty of a class B misdemeanor.

(f) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous place in every adult family home as defined in K.S.A. 39-1501 and amendments thereto and community mental retardation facility or other facility licensed under K.S.A. 75-3307b and amendments thereto.

Sec. 6. K.S.A. 1991 Supp. 39-1433 is hereby amended to read as follows: 39-1433. (a) The department of social and rehabilitation services upon receiving a report that an adult is being, or has been abused, neglected, or exploited or is in need of protective services, shall:

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{1} (a) Make a personal visit with the involved adult:

{A} (1) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved adult;

{B} (2) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger;

{E} (3) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

{2} (b) Complete, within ~~two--weeks~~ 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved adult and what action and services, if any, are required. The evaluation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case. When a criminal act has appeared to have occurred, law enforcement shall be notified immediately and if the alleged perpetrator is licensed, registered or otherwise regulated by a state agency, such state agency also shall be notified immediately.

{3} (c) Prepare, upon completion of the evaluation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation, recommended action, a determination of whether protective services are needed, and any follow-up.

Sec. 7. K.S.A. 1991 Supp. 39-1435 is hereby amended to read as follows: 39-1435. In performing the duties set forth in this act, the secretary of social and rehabilitation services may request the assistance of all state departments, agencies and commissions and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Law enforcement shall be contacted to assist the department of social and rehabilitation services when the information received on the report indicates that an adult,

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residing in such adult's own home or, the home of another individual, an adult family home, a community mental retardation facility or residential facility is in a life-threatening situation.

Sec. 8. K.S.A. 1991 Supp. 39-1440 is hereby amended to read as follows: 39-1440. Subsequent to the authorization for the provision of necessary protective services, the secretary shall initiate a review of each case within ~~45~~ 60 days to determine where continuation of, or modification in, the services provided is warranted. A decision to continue the provision of such services shall comply with the consent provisions of this act. Reevaluations of the need for protective services shall be made not less than every six months thereafter.

Sec. 9. K.S.A. 1991 Supp. 39-1401, 39-1402, 39-1404, 39-1430, 39-1431, 39-1433, 39-1435 and 39-1440 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

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THOMAS A. BISHOP  
 "TOM"  
 REPRESENTATIVE, 91ST DISTRICT  
 SEDGWICK COUNTY  
 1500 W. 32ND N.  
 WICHITA, KANSAS 67204



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: ECONOMIC DEVELOPMENT  
 GOVERNMENTAL ORGANIZATION  
 PUBLIC HEALTH AND WELFARE  
 ADVISORY COUNCIL ON AGING

To: Mr. John M. Solbach, Chairperson  
 House Judiciary Committee Members

From: Rep. Tom Bishop 

RE: Testimony in support of HB 2709 to  
 increase penalties for discharge of a  
 firearm at a house or vehicle.

Date: February 4, 1992

I am here today to testify in support of HB 2709, a bill to increase the penalties for discharge of a firearm at a house or vehicle. The bill creates four categories of felonies, ranging from a D felony for shooting into an unoccupied dwelling up to an A felony for a death resulting from such an act.

I wish this bill weren't needed, in fact, I long for the day that this were so. The reality is the terror of these acts continues to spread across Kansas.

Random, or not; premeditated or not; with or without intent; the result of all these shootings is the same. The quality of life continues to deteriorate. The social fabric of community and neighborhoods is destroyed. Property values plummet. Businesses relocate.

You will hear testimony from those in law enforcement and from prosecutors citing statistics. Examine closely the dramatic increase of this criminal activity throughout the state. This is not a Wichita problem. This is not an urban problem. It is a Kansas problem. Let us join the other states that have made drive-by shootings a felony offence.

You will hear of Kansas citizens that have been affected. Their pain is real. So is the pain of the thousands that wonder if their neighborhood, their kids, will be a target today.

Humankind is tremendously adaptable, able to face overwhelming adversity, and sometimes even to triumph through all types of calamities. But they should not do so if such affliction is avoidable.

We have the ability to begin to curb this unnecessary violence. Help us to make our communities safe again.

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*Sent Comm.*

State of Kansas  
KANSAS SENTENCING COMMISSION

January 30, 1992

Representative John Solbach  
Room 115-South  
State Capitol  
Topeka, KS. 66612

Dear Representative Solbach:

The Kansas Sentencing Commission reviewed the bills your committee referred for comment. The Commission reviewed the two death penalty bills: HB 2290 and HB 2657. The Commission has no basis to assess the costs associated with these bills. The Commission assumes the fiscal impact would be related to defense and appeal cost, increased court costs, and increased housing costs due to special housing arrangements. The actual numbers involved would be difficult to assess, but the experience with the number of convictions on the hard forty should be a useful guide.

The Commission does not take any position on the merits of potential punishments. The Commission did not consider any off-grid crimes in their long term projections except to assume the number coming to prison each year would remain relatively constant and would continue to serve in excess of 15 years. Thus, there should be no impact on the numbers of persons coming to prison due to the enactment of either of these bills. As stated earlier, the cost involved will probably revolve around the initial trial and the on-going appellate process.

The Commission reviewed HB 2709. This bill enhances penalties for persons discharging a firearm towards houses or vehicles. The bill creates four categories of felonies, ranging from a D felony for shooting into an unoccupied dwelling up to an A felony for a death resulting from such an act.

If the bill were to pass the Commission would rank the various levels as follows:

- o Shooting into an unoccupied building would constitute a level 9 non-person offense. The sentence would range between 5 and 17 months depending upon prior criminal history. The guidelines assume probation unless the offender has two or more previous felony convictions for crimes against persons.

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- o Shooting into an occupied building would constitute a level 7 person offense. The sentence would range between 11 and 34 months depending upon prior criminal history. The guidelines assume probation unless the offender has two or more previous felony convictions for crimes against persons.
- o Shooting into a building and hitting someone would constitute a level 5 person offense. The sentence would range between 31 and 68 months depending upon prior criminal history. The grid assumes a sentence of incarceration for all these crimes.
- o Shooting into a building and killing someone would constitute an off-grid crime and would receive a life sentence.

It should be noted that the last two crimes may also be included in the current version of SB 358 under the Second Degree murder and Agg. Battery statute.

There is no way to accurately predict the number of crimes that would be prosecuted under this new statute. Some of these crimes are currently being prosecuted as misdemeanors. Based upon estimates received from prosecutors, the Commission estimates that these would be 50-60 new felony convictions per year. It is also assumed that these new convictions would be evenly split between adult and juvenile offender.

The cases would be distributed as follows: level 9 (15-17). level 7 (25-30), level 5 (8-10), off-grid (2-3).

If the distribution holds true you could expect the following new admissions to prison on an annual basis:

Level 9 = 1-2  
Level 7 = 4-5  
Level 5 = 4-5

Off-grid = 2-3 (These would have come anyway but not as A felons)

Thus you can expect an annual increase of between 10-12 new inmates. The level 7 and level 9 commitments will turnover every year and will not stack up.

The level 5 commitments will tend to accumulate since they will serve more than one year. The following reflects this effect:

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Representative Joh Solbach  
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Year 1	10-12 new inmates
Year 2	10-12 new inmates plus 4-5 level 5 convictions from the prior year for a total increase of 14-16
Year 3	10-12 new inmates plus 8-10 level five convictions from prior year for a total increase of 18-20
Year 4	Should stabilize at approximately 22-25 per year

There will also probably be a like increase in the number of youth coming to the State Youth Center. However, the exact impact is difficult to assess.

The Commission also reviewed the proposed Organized Crime Activity Act. I believe it has been introduced as SB 537. The Commission has no basis to estimate the number of prosecutions, but realized that it had the potential to be used in a wide range of offenses. If it were enacted it would probably be ranked as a level 4 or level 5 crime depending upon the nature of the crime. All convictions would result in a prison sentence. Thus it has the potential to significantly impact the prison population.

If you need any additional information please let me know.

Sincerely,



Ben Coates  
Executive Director

BC:jm

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2-4-92  
Attach #2  
408-4

GWEN WELSHIMER  
REPRESENTATIVE, EIGHTY-EIGHTH DISTRICT  
SEDGWICK COUNTY  
6103 CASTLE  
WICHITA, KANSAS 67218  
316-685-1930  
DURING SESSION  
LEGISLATIVE HOTLINE  
1-800-432-3924



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: TAXATION  
INSURANCE  
LOCAL GOVERNMENT  
ADMINISTRATIVE RULES & REGULATIONS

MEMO TO:           Judiciary Chairman and Committee Members  
FROM:             Representative Gwen Welshimer  
DATE:             February 4, 1992  
RE:                HB 2709

I am here as a co-sponsor of HB 2709 and to ask for your favorable passage of this bill.

A new crime wave is wounding Wichita. It is adults organizing other adults and children to commit crimes for which punishment lies in the grey areas of the law. Drive-By shootings is one of these crimes. Innocent children and their families are being killed, wounded, or forced to live in constant fear. The problem multiples daily. No neighborhood is safe.

Changes in our criminal laws help some and hurt others, no matter what we do. This bill considers the victims as the growing majority and addresses a frightening problem in Wichita, which is spreading to all counties and cities in Kansas.

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\*Hach #3

RUBY GILBERT  
REPRESENTATIVE, EIGHTY-NINTH DISTRICT

Home Address: 2629 N. ERIE  
WICHITA, KANSAS 67219  
(316) 686-6585

Office: STATE CAPITAL BUILDING  
TOPEKA, KANSAS 66612  
1-800-432-3924



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: GOVERNMENTAL ORGANIZATION  
FEDERAL AND STATE AFFAIRS  
INSURANCE

MEMO TO: Judiciary Chairman and Committee Members  
FROM: Representative Ruby Gilbert  
DATE: February 4, 1992  
RE: HB 2709

I am a co-sponsor of HB 2709 and ask for your passage of this bill.

A new crime wave is upon Wichita. I go to bed nightly in fear of the Drive-by shooting and vandalism that take place in my immediate area. We need to put more emphasis on what helps some people and hurts others. This is happening everywhere, not only in Wichita, but in other areas as well.

I am asking that you pass HB 2709.

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GEORGIA WALTON BRADFORD  
REPRESENTATIVE, NINETY-FOURTH DISTRICT  
1012 BAYSHORE DRIVE  
WICHITA, KANSAS 67212

STATE CAPITOL  
ROOM 183-W  
TOPEKA, KANSAS 66612



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: ECONOMIC DEVELOPMENT  
LOCAL GOVERNMENT  
LEGISLATIVE EDUCATION PLANNING

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE  
HOUSE BILL 2709  
FEBRUARY 4, 1992  
REPRESENTATIVE GEORGIA W. BRADFORD  
94TH DISTRICT, WICHITA, KANSAS

Mr. Chairman and Members of the Committee, I appear in support of House Bill 2709 which makes the act of discharging firearms towards or in the direction of buildings or conveyances of travel unlawful.

a. I live in Wichita, the largest metropolitan area of the state of Kansas, where crimes are increasing at a higher rate year after year. Weapons have become toys in the hands of the maladjusted, and people are becoming more and more fearful of being safe in their homes.

b. At the most basic levels (of safety and security), where people nurture their young and find respite for renewal in the sanctity of their homes, lives are challenged. Families now go into their neighborhoods and their homes with the dread that they will awaken to devastation - if they awaken at all.

c. "Shooting" at an unoccupied house or vehicle becomes a class D felony and

"Shooting" at an occupied house or vehicle becomes a class B felony and

"Shooting" which results in the death of a person becomes a class A felony in HOUSE BILL 2709.

I understand that this bill fills a void in the law. I can support such penalties because I see them as logical consequences of such behavior; however,

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d. I would like ask the following questions:

(1) Will you consider procedural issues in sentencing guidelines?

(a) Such as presumptive probation; and

(b) Such as presumptive incarceration?

(2) Will you consider community service provisions?

(a) Such as VALUES CLARIFICATION COURSES HELD BY COUNTY SHERIFFS AND/OR CITY CHIEFS OF POLICE; and

(b) Such as ONE YEAR OF COMMUNITY SERVICE FOR NO LESS THAN 100 HOURS for anyone who exhibits such behavior?

Thank you, Mr. Chairman, for the opportunity to testify on behalf of my friends and fellow citizens of Wichita.

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OFFICE OF THE DISTRICT ATTORNEY

EIGHTEENTH JUDICIAL DISTRICT

SEDGWICK COUNTY COURTHOUSE

535 N. MAIN

WICHITA, KANSAS 67203



NOLA FOULSTON  
District Attorney

(316) 383-7281

TESTIMONY OF DISTRICT ATTORNEY NOLA FOULSTON  
IN SUPPORT OF HOUSE BILL 2709:  
AN ACT RELATING TO  
THE UNLAWFUL DISCHARGE OF A FIREARM  
AT A HOUSE OR VEHICLE

Chairman Solbach, ladies and gentlemen of the House Judiciary Committee, thank you for the opportunity to come before you today to give testimony in support of House Bill 2709, an act relating to the unlawful discharge of a firearm at a house or vehicle.

Nationally, over one million fifty-four thousand (1,054,000) assaults in 1990 accounted for fifty-eight percent (58%) of all violent crime reported. In this same year, violent assaults were up eleven percent (11%) nationally with increases recorded in all regions and population groups throughout the United States. Urban as well as rural counties had been infected with the violent disease of criminality.

Kansas crime indexes mimic the national trends with reports of dramatic increases in violent assaults statewide and in metropolitan counties as follows:

Johnson County	-	up 17.7%;
Shawnee County	-	up 17.4%;
Sedgwick County	-	up 19.2%.

*\*These figures are comparisons for the time period of January-September of 1990 to January-September of 1991.*

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What is the problem in our streets? There are many divergent viewpoints on the underlying social ills of drugs and violence that infect our communities -- but the biggest problem is ineffective laws to deal with street terrorism.

Drive-by shootings are not new phenomena. We have had drive-by shootings in Kansas for many years; however, with the emergence of gangs in our communities and with individuals dealing with problems by "shooting it out" rather than "sorting it out," we have seen the escalation of this type of crime to become one of the more popular crimes of violence that threatens our very existence. With the upsurge in the number of cases reported, we became increasingly aware that we did not have adequate laws to address the criminal actions of these perpetrators. The following laws are available:

1. K.S.A. 21-4217 **Unlawful discharge of a firearm.**

This statute would be applicable to discharging a weapon upon any land of another or from a public roadway without having first obtained permission of the owner. Generally, this might be considered to have protected rural areas from unauthorized shooting which endangers livestock. The violation of this law is a Class C misdemeanor which carries a maximum penalty of thirty (30) days in the county jail.

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2. K.S.A. 21-3720 **Criminal damage to property.**

Criminal damage to property is by means other than fire or explosive willfully injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of the person. Criminal damage to property is a Class A misdemeanor if the property damaged is less than Five Hundred Dollars (\$500.00); Class E felony if the property damaged is in excess of Five Hundred Dollars (\$500.00) but less than Fifty Thousand Dollars (\$50,000.00); and a Class D felony if the property is damaged to the extent of Fifty Thousand Dollars (\$50,000.00) or more. The majority of all incidents that occur within at least Sedgwick County, with which we are familiar, the damages that have been done to property have not exceeded the misdemeanor amount of \$500.00; the maximum term of imprisonment for which would be up to one (1) year in the Sedgwick County Jail.

3. K.S.A. 21-3419 **Terroristic threat.** This is a much litigated statute subject to attacks for vagueness. While it is the lowest class felony, it contains no provisions for actual physical injuries being done to a person. Likewise, it is a specific intent crime that places the defendant in a position to say "I didn't mean it," and the jury to find reasonable doubt.

4. K.S.A. 21-3410 **Aggravated assault.** Aggravated assault is unlawfully assaulting or striking at another with a

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deadly weapon. In order for an aggravated assault to have occurred, it must be an intentional threat or attempt to do bodily harm coupled with the apparent ability to do so and resulting in immediate apprehension of bodily harm by the victim. In most all drive-by shooting cases, the apprehension of the bodily harm is after the fact and not before. It is the "anticipation" under the law that is generally not met, where the victim has no knowledge that a drive-by shooting is to occur; does not see it coming; and only feels the effect of the bullet with a mission!

5. K.S.A. 21-3301 **Attempted aggravated battery.**

Attempted aggravated battery does not require the immediate apprehension of bodily harm as found in the aggravated assault statute, but does require that the perpetrator have the "intent to injure" which is generally very difficult if not impossible to prove. A prosecutor must prove beyond a reasonable doubt that the defendant specifically did the act with the goal of injuring the person. In most cases where aggravated battery is charged -- whether it be a drive-by shooting, a barroom brawl or a child abuse case -- intent to injure is rarely accepted where a defendant puts forward a theory of defense of "no intent to injure."

6. K.S.A. 21-3414 **Aggravated battery.** Aggravated battery has the same problem as attempted aggravated battery, except in the aggravated battery situation the victim would have

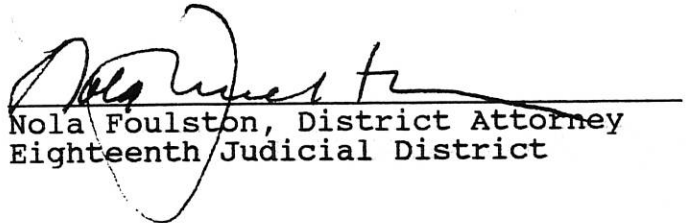
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Testimony of  
District Attorney Nola Foulston  
Re: House Bill 2709  
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been injured as opposed to merely an attempt to injure. The same problem of specific intent is found in this charge.

We urge the passage of our proposed drive-by shooting bill which we believe would be of great benefit to prosecutors statewide and would be a positive deterrent to the escalation of such conduct in the future where the public is made aware that this kind of conduct will not be tolerated.

Respectfully submitted,



Nola Foulston, District Attorney  
Eighteenth Judicial District

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HOUSE JUDICIARY COMMITTEE  
ROOM 519-S  
TESTIMONY REGARDING HOUSE BILL 2709  
TUESDAY, FEBRUARY 4, 1992

CHAIRMAN SOLBACH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE MY NAME IS PAUL GOWARD, DEPUTY CHIEF OF POLICE FOR THE CITY OF WICHITA. THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY REGARDING HOUSE BILL 2709, WHICH MAKES DRIVE-BY SHOOTINGS A FELONY OFFENSE.

THE RECENT INCREASE OF CRIMES ASSOCIATED WITH DRUGS AND GANG VIOLENCE HAS ALSO INCREASED THE NUMBER OF DRIVE-BY SHOOTINGS. IN THE FIRST MONTH OF THIS YEAR THE CITY HAS ALREADY HAD FIVE DRIVE-BY SHOOTINGS, AND ONE INVOLVED THE USE OF AN ASSAULT RIFLE. IN 1991 THE CITY EXPERIENCED 70 DRIVE-BY SHOOTINGS. AS YOU CAN SEE, THESE NUMBERS INDICATE THAT THIS TYPE OF CRIMINAL ACTIVITY IS A REAL PROBLEM FOR OUR COMMUNITY, AND ONE THAT IS NOT GOING TO GO AWAY.

DRIVE-BY SHOOTINGS NOT ONLY INSTILL FEAR IN THE OCCUPANT OF THE DWELLING, BUT TERRORIZE THE ENTIRE NEIGHBORHOOD AS WELL. THIS ACTION IS A WAY FOR A GANG MEMBER TO ESTABLISH TERRITORY, AND SUCH ACTS ARE ALSO USED AS A MEANS FOR REVENGE. I SHOULD ALSO POINT OUT THAT IT IS NOT UNCOMMON FOR THE VICTIM OF A DRIVE-BY SHOOTING TO BE AN INNOCENT PERSON CAUGHT IN THE CROSSFIRE.

THE CITY OF WICHITA VIEWS A DRIVE-BY SHOOTING AS A VERY SERIOUS CRIME, AND ONE THAT NEEDS STRONGER PENALTIES THAN CAN BE IMPOSED UNDER CURRENT LAW. THIS PAST YEAR THE CITY PASSED A NUMBER OF ORDINANCES TO ADDRESS THE DRUG AND GANG VIOLENCE PROBLEM. ONE OF THESE ORDINANCES PROVIDES FOR MANDATORY FINES AND JAIL TERMS FOR THOSE CONVICTED OF A DRIVE-BY SHOOTING OFFENSE. THE MAXIMUM PENALTY IS A \$2,500 FINE AND ONE YEAR IN JAIL. THE CITY OF WICHITA BELIEVES THAT THIS ORDINANCE IS NOT STRONG ENOUGH. WE NEED THE TOUGHER SANCTIONS PROPOSED IN HB 2709 IF WE ARE TO GET A HANDLE ON THIS PROBLEM.

IT IS THE CITY'S BELIEF THAT IF THIS, AND OTHER LEGISLATION IS PASSED, WE CAN BEGIN TO CONTROL DRUG AND GANG VIOLENCE CRIMES. IT HAS BEEN OUR EXPERIENCE THAT GANG MEMBERS AND DRUG DEALERS MEAN BUSINESS. THE THREAT THEY POSE IS REAL. WE NEED TOUGH LEGISLATION THAT SHOWS THEM THAT THESE ACTS WILL NOT BE TOLERATED IN OUR COMMUNITY.

THE CITY OF WICHITA URGES YOU TO ACT FAVORABLY UPON THIS LEGISLATION IN ORDER TO GIVE US YET ANOTHER VIABLE TOOL IN OUR EFFORTS TO FIGHT THE WAR ON DRUGS AND GANG VIOLENCE.

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Attach #7



# PROJECT FREEDOM

A community-wide organization to fight drug abuse.

428 S. Broadway  
Wichita, Kansas 67202  
(316) 833-4630  
FAX (316) 264-9343

#### Board of Directors

- Ben Burgess**  
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- Julie Baker**  
Northwest High School Student
- Martha Bruce**  
Staff Development, USD 259
- Leo Casados**  
18th Judicial District, Adult Probation
- David Coop, AADC**  
St. Joseph Medical Center
- Mary Davis**  
Human Services, City of Wichita
- Connie Dietz**  
WISE/BEST
- Rick Easter**  
United States Attorney's Office
- Judy Frick**  
Cities in Schools
- Rev. Tyrone D. Gordon**  
St. Mark United Methodist Church
- Floyd Hansen**  
Employee Assistance Consultants, Inc.
- Jack Hansen**  
Recovering Adolescent Program
- Helen Harjo**  
Regional Drug/Alcohol Abuse  
Prevention Center
- Mike Hill**  
Sheriff, Sedgwick County
- Ron Holt**  
K&E, The Electric Co.
- Ted Jobst**  
Alcoholism Family Counseling Center
- Mary Ann Khoury**  
YWCA DUI Victim Center
- Edith Knox**  
NEPARTS, Inc.
- Rev. Wanda McDaniel**  
Wichita Action Coalition
- Patricia MacDonald**  
Wichita/Sedgwick County  
Dept. of Community Health
- Hob Mann**  
Recovery Services Council, Inc.
- Kathy Melhorn, M.D.**  
University of Kansas  
School of Medicine - Wichita
- Jon Miller**  
National Education Association - Wichita
- Belou Ott**  
Parent
- Jane Richards**  
Substance Abuse, USD 259
- Carl Shackelford**  
Regional Drug/Alcohol Abuse  
Prevention Center
- Winthrop B. Smith, CADC**  
St. Joseph Medical Center
- Mike States**  
St. Joseph Medical Center
- Darrel Thorp**  
Board of Education, USD 259
- Anh Tran**  
Migrant Education, USD 259
- Marcia Wasinger**  
18th Judicial District  
Court Services Officer
- Ella Williams**  
NEPARTS, Inc.
- Isaac Williams**  
North High School Student

Project Freedom is supported by a consortium composed of more than 100 organizations, groups and individuals working in substance abuse prevention, education, intervention, treatment, aftercare and enforcement.

## Testimony in Support of House Bill #2709 an Act Related to Drive-by Shootings

**James E. Copple**  
Executive Director, Project Freedom

Mr. Chairman, members of the House Judiciary Committee, my name is Jim Copple and I am Executive Director of Project Freedom, a Community-wide Organization developed to combat the use/abuse of illegal drugs and alcohol. In my capacity as Executive Director of Project Freedom, I am also the facilitator of the Sedgwick County Inter-Agency Task Force on Gangs and Drug Related Violence. This Task Force has been meeting since October of 1990 for the purpose of planning and implementing community-wide strategies that balance programs in prevention, intervention and suppression.

Wichita/Sedgwick County is currently facing the rapid growth and development of street level crime and drug related violence associated with organized youth gangs. This phenomena, while relatively new to Wichita, is an experience being faced by many Midwestern cities. Youth gangs, historically associated with Los Angeles and Chicago, are establishing themselves in Wichita and other Kansas communities. Our organization is assisting in the development of comprehensive strategies in communities as diverse as Kansas City, Kansas, Topeka, Salina and Garden City. Quite simply, youth gangs are finding in Kansas a favorable market for drug trafficking and other crimes associated with gang activity.

The Inter-Agency Task Force on Gangs and Drug Related Violence made up of 30 representatives from law enforcement, education, the SRS, community-based social service agencies, the City of Wichita, Sedgwick County and many representatives from the 18th Judicial District, believe that our state needs a Drive-by shooting statute that makes the punishment commensurate with the terror and fear evoked by the crime. As is and has

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been revealed by other testimony this afternoon, Wichita in 1990 saw 24 drive-by shootings and in 1991, Wichita saw 70. This dramatic increase reflects a complete disregard for individual and community rights to property and security. The 55 gang sets and over 1200 gang members in Sedgwick County view existing ordinances and laws, related to the consequences of a drive-by shooting as a joke and a crime they can easily afford to commit without fear of appropriate punishment.

Law enforcement throughout our state must have the necessary tools to prosecute the full range of illegal activities associated with youth gangs. City and County government have given local agencies what tools they possess to prosecute perpetrators of drive-by shootings. But when all they can charge or impose is the crime or punishment of a misdemeanor, then we are sending a message to our gang element that we do not take your actions or crimes too seriously. To date, we have been limited in who and what we can prosecute. This situation is unacceptable when we have neighborhoods being terrorized by gang violence and the random shootings associated with drive-bys. The citizens of our state need and want to send a clear and direct message to individuals or groups discharging firearms for the purpose of intimidation and promoting violence. If and when you are caught - you will be appropriately punished.

At first reading of House Bill No. 2709, it would appear we are asking for powers that are unusual or extraordinary. Communities throughout the nation are having to embrace unusual and extraordinary remedies to address unusual and extraordinary behavior. To be sure, those states experiencing the growth and development of organized youth gang activity have already adopted appropriate measures to deal with the threat of drive-by shootings. Kansas is currently the exception. These are new issues for Kansans. Our community and the coalition I represent believes strongly that we need new and additional prosecutorial and enforcement tools to deal with our emerging gang problem. Paul Boyer

in his work Urban Masses and Moral Order has written about communities such as Wichita, when he said, "village solutions cannot remedy urban problems. We need urban solutions to urban problems." House Bill 2709 and Senate Bill 537 or 135 will provide our community the tools we need to send a clear and direct message that we will not tolerate the violence and abuse emerging from organized criminal activity. This act, along with the many prevention and intervention strategies being developed by our Task Force, will send a message to neighborhoods directly effected by drive-by shootings. Support of this legislation says we care enough about your safety and security to enact legislation that will appropriately punish those who threaten that safety and security. Help us to get ahead of this problem before the problem becomes bigger than our resources.

We ask you to consider this act seriously and to give our communities the power we need to say to gangs coming to Kansas from other states and to gangs that are indigenous to Kansas that we will no longer tolerate your violence, nor will we tolerate those who encourage you, directly or indirectly.

Our community wants this act. It received the unanimous endorsement of our Inter-Agency Task Force and the full support of the Legislative Committee of Project Freedom. Neighborhoods severely effected by gang presence are seeking, if not begging, for immediate relief from drug dealing and drug related violence. They view this act and the need for tougher legislation related to organized criminal activity as necessary first steps in driving the gangs from their communities. Furthermore, we have approached this issue and the whole issue related to gang violence based on research conducted by the University of Chicago's National Youth Gang Intervention and Suppression Project. This project, based on the study of over 45 cities, endorses and supports this type of legislative initiative. We ask for your support of this important legislation. If you need or require any

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other information, we would be more than happy to provide you with additional support material.

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MR. CHAIRMAN, MEMBERS OF THE JUDICIARY COMMITTEE, I APPRECIATE THE OPPORTUNITY TO SPEAK TODAY. MY NAME IS JEFF TYMONY AND I AM THE VICE CHAIRMAN OF PROJECT FREEDOM, BUT I THINK IT EQUALLY IMPORTANT FOR YOU TO UNDERSTAND MY BACKGROUND AND EXPERTISE, IN ORDER FOR YOU TO HAVE A FEEL FOR MY VIEW. I AM BY EDUCATION A SOCIOLOGIST, I TEACH BOTH JUVENILE DELINQUENCY AND CRIMINOLOGY AT KANSAS NEWMAN COLLEGE IN WICHITA. I HAVE BEEN THE EXECUTIVE DIRECTOR OF A HALFWAY HOUSE FOR FEDERAL INMATES FOR THE PAST FIVE YEARS AND PRIOR TO THAT I SPENT SEVEN YEARS IN THE JUVENILE COURT SYSTEM BOTH IN TREATMENT FACILITIES AND IN DETENTION. ALL TOTAL, I AM BEGINNING MY THIRTEENTH YEARS. THE POINT I AM MAKING IS THAT MY EXPERIENCE IS NOT FROM A TEXT BOOK, IT IS REAL.

WE ARE CONFRONTED WITH A VERY SERIOUS PROBLEM NOT ONLY IN OUR STATE BUT ALSO IN OUR COUNTRY AND THAT PROBLEMS IS GANG AND DRUG VIOLENCE BUT IT ALL ACTUALITY IT IS YOUTH VIOLENCE. THERE ARE MANY CAUSES AS TO WHY YOUTH VIOLENCE IS ON THE RISE ONE MAJOR CAUSE JUST VERY BRIEFLY ARE HOW THE MAJOR INFLUENCES ON YOUTH HAVE CHANGED. IN 1950 WE STILL HAD THE "NORMAN ROCKWELL FAMILY IN PLACE AND THE MAJOR INFLUENCES WERE IN THIS ORDER, HOME, SCHOOL, CHURCH, PEERS, TV. IN THE 90'S THESE INFLUENCE ARE ALMOST INVERTED, THEY ARE PEERS, TV, HOME, SCHOOL, AND CHURCH ADD THIS, WITH THE ADVENT OF DRUGS, SPECIFICALLY CRACK COCAINE AND YOU BEGIN TO SEE THE PROBLEM. IT TOOK US TWENTY YEARS TO CREATE THIS PROBLEM AND IT MAY TAKE TWENTY YEARS TO SOLVE IT.

THE PROBLEM MUST BE ATTACK FROM SEVERAL DIFFERENT SIDES 1. SUPPRESSION, ALL THOUGH THERE IS NO STATISTICAL EVIDENCE THAT INCARCERATION IS A SUCCESSFUL DETERRENT TO THOSE WHO COMMIT CRIMES, IT DOES IMPACT THE CRIME RATE BECAUSE YOU ARE TAKING MANY SERIOUS OFFENDERS OFF THE STREET. ONE OF THE MAJOR FAILINGS OF INCARCERATION AS A DETERRENT IS THE CRIMINAL JUSTICE SYSTEMS INABILITY TO MAKE THE SANCTIONS FOR CRIMINAL BEHAVIOR SWIFT AND CERTAIN, THIS IS NOT MEANT AS A CRITISIM BUT AS AN OBVIOUS REALITY. BECAUSE WE ARE HERE TO SPECIFICALLY DISCUSS SUPPRESSION STRATEGIES IT IS MY CONTENTION THAT MAKING DRIVE BY SHOOTINGS A FELONY WILL ACCOMPLISH, IF NOTHING ELSE THE AFOREMENTIONED RESULTS OF TAKING THEM OFF THE STREET.

I SHOULD ALSO POINT OUT THAT I FULLY UNDERSTAND THE IMPACT THAT ADDING LAWS HAVE ON THE COURT SYSTEM AS WELL AS ON CORRECTIONS FACILITIES, AND COMING FROM THE FEDERAL SYSTEM I REALIZE THAT WITH THE ADDITION OF SENTENCING GUIDELINES THOSE NUMBERS CAN INCREASE. THE SOLUTION TO THIS ISSUE SHOULD BE THE USE OF ALTERNATE SANCTIONS, NOT ALL OFFENDERS NEED TO BE IN PRISONS COMMUNITY FACILITIES CAN BE SUCCESSFUL FOR LOW LEVEL INMATES AS HAS BEEN PROVEN BY THE BUREAU OF PRISONS.

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IN CLOSING, I SUPPORT THE CONFINEMENT OF THESE PREDATORS, WHO  
JEOPARDIZE THE SAFETY OF HONEST AND INNOCENT INDIVIDUALS AND  
WHO MAKE PEOPLE PRISONERS IN THEIR OWN HOMES AND THEIR OWN  
NEIGHBORS. NOW THEY THRIVE IN SOMEONE ELSE'S NEIGHBORHOOD AND  
IN SOMEONE ELSE'S TOWN BUT SOON THEY WILL COME FOR YOU.  
THEY ARE EVERYWHERE SUBURBS, SMALL CITIES, LARGE CITIES TO  
INCLUDE ALASKA, AND THE DRIVING FORCE, THE SELL OF NARCOTICS.  
ALTHOUGH I AGREE WE NEED PREVENTION AND INTERVENTION, THOSE  
ARE LONG TERM STRAGIES, AN IMMEDIATE RESPONSE IS TO GET THEM  
OFF THE STREET.

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My name is Ella Williams and I am a resident in the Northeast area of town in Wichita. I have lived in this area the majority of my life. I continue to live there because it is my home, however the past year has brought increased fear for my safety.

I usually spend between 8-13 hours a day working with people from the Northeast area who are addicted to drugs or who have had some involvements with drugs.

I believe that it takes a whole community to deal with any one problem, especially one that impacts a community as this one does.

I believe that the people in the Northeast area are beginning to do their part in dealing with this problem that we have with drive by shooting.

In 1991 alone, drive-by shootings were up from 24 to 70. I cringe at the thought of losing that many people and God knows how many other lives were affected by these events.

The Northeast area demands that the legislation part of our community does its parts and elevate the violence crime of drive-by shootings from a misdemeanor to a felony.

We feel that drive-by shooting are a pre-meditated violent act and the penalties should reflect the seriousness of the crime.

I am doing my part every day when I struggle with my community to help in the destruction from substance abuse and related violence.

I am standing before you today pleading that this committee would consider the seriousness of this pre-meditated violent and do your part in helping this community as a whole.

Ella F. Williams

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Mr./Ms. Chairman, Committee Members:

My name is Leo Casados, I am a Court Services Officer with the 18th Judicial District in Wichita, Kansas. I am a supervisor in Adult Probation.

I am here today to ask you to consider making drive-by shootings a Felony crime in the State of Kansas. As a law enforcement officer for the Supreme Court of Kansas, I am sworn to protect and insure the safety of the community.

What is the safety of the Community? To make sure that individuals can live their lives, and conduct their business, with a reasonable assurance that they will not be harmed, threatened or intimidated in any manner. Currently, people are being harmed, threatened and intimidated by individuals who have taken it upon themselves to be involved in the gang related phenomena of a drive-by shootings. Misdemeanor crimes are exempt from the Federal Gun Control Act, which prohibits a known felon from possessing a firearm after having been convicted of a Felony. Most first time Felony offenders will be given probation. However, I believe, if a person convicted of a drive-by shooting, under the considered Felony legislation, the Gun Control Act law could be imposed, and could act as a deterrant for further criminal activity with a firearm. Terroristic Threat is a Felony which does not even require face to face confrontation, you could make a death threat to someone over the phone. How then, could shooting at someone from a car not constitute a Felony. Cost to the taxpayer for incarcerating individuals, has been mentioned as a reason for not making drive-by shootings a Felony. I ask you! How do we put cost above human life? Consideration of human life has always and must always have priority over budgetary politics.

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Dear committee members, do this not because of partisan politics, or cost.  
Pass this law because it's the right thing to do. At the very least, put drive-by  
shootings in the Felony category with Aggravated Assault and Criminal Damage To  
Property.

Thank you for your time and your kind consideration.

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MODIFICATION REQUEST  
FOR HB 2709

Hasty decision sometimes leads down the road to a bandage approach to crime control. These legitimate concerns are in HB 2709, regarding the drive by shootings and all other violent crimes.

My question is, are we going to let 2% of the population dictate policy to the other 98% of us? I hope not.

That's why I'm requesting a modification to this Bill to protect the potential victim from their perpetrators.

The words, **except this statute shall not apply in case of self defense**, will be inserted on Line 28.

We must remember that, "violence breeds violence," and when a nation consumes its' fill of violence through the mass media, you begin to resemble what you consume.

We shouldn't wonder why gangs start shooting each other after seeing the movie, *Juice*. Remember, "violence breeds violence."

So let's show that potential victim, whether you or I, that their hands are **not** tied in fighting back against the criminal element.

J.D. SPRADLING  
TOPEKA, KS

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