

Approved: February 28, 1992  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at  
9:30 a.m. on January 31, 1992 in room 514-S of the Capitol.

All members were present except:  
Senators Yost, Feleciano, Gaines, Martin, Parrish and Rock who were excused.

Committee staff present:  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:  
Edwin Van Petten, Deputy Attorney General, Criminal Division  
James Clark, Kansas County and District Attorneys Association  
Senator Ken Francisco  
Nola Fulston, Sedgwick County District Attorney  
Rick Stone, Chief of Police for the City of Wichita, and  
Kansas Association of Chiefs of Police  
James Copple, Wichita Project FREEDOM Director  
Mike Santos, City of Overland Park Police Legal Advisor  
Rich Hayse, Palmer Companies, Inc.

Chairman Winter called the meeting to order by opening the hearings for  
SB 135 - organized criminal activity act.  
SB 297 - engaging in continuing criminal enterprise.  
SB 447 - enacting the Kansas criminally influenced and corrupt organizations act.  
SB 537 - enacting the organized criminal activity act.

Edwin Van Petten, Deputy Attorney General, Criminal Division, testified in support of SB 297 and the concepts of the other bills being heard. (ATTACHMENT 1)

Mr. Van Petten responded to questions from the Committee by stating that enactment of an organized criminal activity provision should pose no major difficulties if the sentencing guidelines were enacted since they do not change the underlying felonies, the classification of the crimes should meld with the guidelines without any difficulty.

James Clark, Kansas County and District Attorneys Association, noted that SB 135, SB 297 and SB 537 do not contain any civil action. However, SB 447 does contain civil action and a forfeiture clause. He further noted that SB 135 and SB 537 contain duplicate measures.

Senator Ken Francisco presented a request to the Committee for introduction of a bill to amend the obscenity statute. (ATTACHMENT 2)

Senator Morris moved to introduce the bill as requested by Senator Francisco. Senator Bond seconded the motion. The motion carried.

Senator Francisco testified in support of SB 537. (ATTACHMENT 3) He noted that although SB 537 is quite similar to SB 135, it was the advise of the Revisor that a new bill be introduced than to amend SB 135.

Nola Fulston, Sedgwick County District Attorney, testified in support of SB 537 and noted the difficulties experienced by Wichita with gangs, it is much broader than a one city issue. (ATTACHMENT 8) She added that she feels SB 537 is a tool for prosecutors and not as a private cause of action, while SB 447 is much broader with the forfeiture provision. She did support the possibility of getting control of assets acquired by criminal activity.

Rick Stone, Chief of Police for the City of Wichita, testified in support of SB 537 as an effort to fight the war on drugs and gang activity. (ATTACHMENT 4) Chief Stone added that he also represents the Kansas Association of Chiefs of Police in his support of SB 537.

James Copple, Wichita Project FREEDOM Director, testified in support of SB 537. (ATTACHMENT 5)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 9:30 a.m. on January 31, 1992.

Mike Santos, City of Overland Park Police Legal Advisor, testified in support of SB 477 without any civil cause of action. He stated civil causes of action have been used against abortion protestors and the issue of organized criminal activity is too important to law enforcement to become entangled in the more societal issues such as abortion. He supported the forfeiture provisions of SB 477. He concluded by suggesting that SB 447 and SB 537 could be combined to provide an effective tool to fight the organized criminal activity.

Rich Hayse, Palmer Companies, Inc., testified in opposition to portions of SB 135, SB 537 and SB 447 as they relate to the publications distribution industry. (ATTACHMENT 6) Mr. Hayse suggested amending SB 537 to "knowingly" violate the obscenity statutes.

Chairman Winter requested Mr. Hayse submit his amendment in balloon form for the Committee's consideration.

This concluded the hearings for SB 135, SB 297, SB 447 and SB 537.

Chairman Winter noted the different requirements of the various pieces of legislation before the Committee and assigned the topic to the Subcommittee on Criminal Law. He suggested that Mr. Santos, Ms. Fulston, Chief Stone, Mr. Hayse, Mr. Van Petten and others meet prior to the Subcommittee hearing to work out solutions to the problems expressed at this day's hearing. He further requested the Subcommittee to meet within two weeks to complete work on the subject.

The meeting adjourned at 11:00 a.m.

Written testimony was submitted by James Copple, Project Freedom, in support of SB 125, lower blood alcohol levels for DUI convictions. (ATTACHMENT 7)





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  
Edwin A. Van Petten  
Deputy Attorney General  
Before the Senate Judiciary Committee  
RE: Senate Bills 135, 297, 447, and 537  
January 31, 1992

Mr. Chairman and Members of the Committee:

As you all are aware, there are a number of proposals before the Legislature this session which strive to control or at least have an impact on organized criminal activity. The most prevalent form seen of late being what we refer to as "gang activity."

While the most visible forms of drug activity is the delivery boys and enforcers, they can be dealt with to a degree with current criminal laws. But there is a problem in prosecuting and effectively punishing the persons who truly profit by this criminal activity. These are the individuals that are enabling this cancerous-like growth of drug addiction and death which we read about and see on a daily basis.

Senate Bill 297 was proposed by the Office of Attorney General Bob Stephan as an answer to the shortfall of our present criminal code to deal with a criminal organization. Hopefully, these provisions will take the criminals who

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Attachment 1*

operate in packs off the streets on a more permanent basis, and give society a chance at reclaiming them.

I have also reviewed the proposals before you in Senate Bills 135, 447 and 537 and commend Senators Bond, Francisco, Feliciano, and Yost for the time and obvious thought that has gone into these drafts. It seems that the number of proposals shows the need to deal with this problem.

I will be glad to provide any assistance our office can give to assist this committee in its determination of the most appropriate measure to adopt. Clearly, something must be done in this session.

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



NOLA FOULSTON  
District Attorney

(316) 383-7281

January 29, 1992

Senator Ken Francisco  
State Capitol, Room 136-N  
Topeka, Kansas 66612

Re: Obscenity Statute

Dear Senator Francisco:

As we discussed last week in Topeka, I would like to have you introduce the attached bill to revise the presently unconstitutional Promoting Obscenity Statute. In the case of State v. Hughes, 246 Kan. 607, an opinion delivered by the Supreme Court in 1990, the Court held that subsection (c) of K.S.A. 21-4301 which defines "obscenity devices" was not constitutional. Only that section of the statute needs to be amended to conform to the Court's directives as follows:

"Obscene device" means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of genital organs, except such devices disseminated or promoted for the purposes of medical or psychological therapy.

[Reference underlined material as revised.]

The proposed revision is taken from the language of the Court in its opinion, a copy of which is enclosed for your reference.

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Senator Ken Francisco  
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I appreciate your assistance in this matter, and should you have any questions, please contact me. I trust you will have your legislative assistant notify me of the filing of the bill and request that you forward this office a copy of the same upon printing.

Very truly yours,



Nola Foulston  
District Attorney

NF:vm  
encl.

ORGANIZED CRIMINAL ACTIVITY ACT  
SB 537  
BILL BRIEF

January 29, 1992

Proposed by: Sedgwick County DA's Office

Sponsored by: Francisco, Feleciano and Yost

The bill:

- (a) Makes it a crime to be involved in any enterprise consisting of 3 or more persons which commits or aids and abets others to commit an extensive list of crimes.
- (b) Makes it a crime to aid and abet, attempt, conspire, or solicit any violation of subsection (a).
- (c) Ranks the resulting crime, whether a felony or misdemeanor under the present criminal code, as at least a class C felony for purposes of the Organized Criminal Activity Act. If the most serious crime committed is a C felony or higher then each violation shall be one class higher. If the most serious crime is a class A felony then each organized crime shall also be a class A felony.
- (d) Sentencing of any group of one or more of the listed crimes may be consecutive, concurrent or as otherwise provided by law.
- (e) No statute of limitations applies if such a crime is a part of a violation of subsection (a) or (b) not otherwise barred by the statute of limitations.
- (f) Creates no civil cause of action.

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SENATE JUDICIARY COMMITTEE  
ROOM 514-S  
TESTIMONY REGARDING SENATE BILL 135  
FRIDAY, JANUARY 31, 1992

CHAIRMAN WINT WINTERS AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE MY NAME IS RICK STONE, CHIEF OF POLICE FOR THE CITY OF WICHITA. THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY REGARDING SENATE BILL 135, THE ORGANIZED CRIMINAL ACTIVITY ACT.

THIS IS A VERY IMPORTANT PIECE OF LEGISLATION FOR THE CITY OF WICHITA AS IT WILL STRENGTHEN THE LAWS RELATING TO THE ENFORCEMENT OF DRUGS AND GANG VIOLENCE ACTIVITIES. TODAY I WOULD LIKE TO SHARE WITH YOU SOME SPECIFICS ABOUT THE DRUG PROBLEM PLAGUING WICHITA, AND TELL YOU HOW THIS LEGISLATION CAN ASSIST US WITH FIGHTING THIS BATTLE.

THE CITY OF WICHITA HAS SEEN AN INCREASE IN CRIMES ASSOCIATED WITH DRUGS AND GANG VIOLENCE. GANG RELATED CRIMES SUCH AS AGGRAVATED ASSAULTS, ASSAULTS AGAINST LAW ENFORCEMENT OFFICERS, DRIVE-BY SHOOTINGS, AND HOMICIDES HAVE ALL INCREASED. THE WICHITA EAGLE-BEACON RECENTLY REPORTED ON JANUARY 21ST THAT THE CITY EXPERIENCED ITS THIRD DRUG RELATED HOMICIDE THIS YEAR. AN INDIVIDUAL WAS SHOT TO DEATH AS SHE WAS SITTING IN HER CAR PARKED ON STADIUM DRIVE. UNFORTUNATELY THIS IS NOT AN UNCOMMON EXPERIENCE. ACTS SUCH AS THESE ARE BECOMING MORE AND MORE PREVALENT WITHIN OUR COMMUNITY. AS A POINT OF INTEREST, ALREADY THIS YEAR THE WICHITA POLICE DEPARTMENT HAS EXPERIENCED OVER 40 GANG RELATED CRIMES. THESE INCLUDE THE STABBING OF A SHERIFF'S OFFICER AND THE INCREASED USE OF ASSAULT RIFLES IN DRIVE-BY SHOOTINGS AND ONE OF THE THREE HOMICIDES RECORDED THIS YEAR.

JUST AS DRUG RELATED CRIMES ARE ON THE INCREASE, SO ARE THE NUMBER OF INDIVIDUALS IN GANGS. IN 1990 THE CITY ESTIMATED THAT 600 INDIVIDUALS WERE MEMBERS OF GANGS. THIS NUMBER MORE THAN DOUBLED BY THE END OF 1991.

OUR COMMUNITY HAS DETERMINED THAT A MULTIFACETED APPROACH IS NECESSARY IF WE ARE TO SOLVE THIS PROBLEM. AS A UNIT OF LOCAL GOVERNMENT WE RECOGNIZED THE INTENSITY OF THIS PROBLEM IN OUR COMMUNITY AND HAVE TAKEN A NUMBER OF ACTIONS IN AN ATTEMPT TO CONTROL THE PROLIFERATION OF DRUG AND GANG RELATED CRIMES. I WOULD LIKE TO TAKE A FEW MOMENTS TO HIGHLIGHT THOSE ACTIONS SO THAT YOU CAN SEE THAT THE CITY OF WICHITA IS TRYING TO BE PRO-ACTIVE - BUT WE WILL NEED EVERY AVAILABLE TOOL, IF WE ARE TO EVER GET THIS PROBLEM UNDER CONTROL.

FOR THE PAST TWO YEARS THE CITY HAS BEEN SUCCESSFUL IN SECURING FEDERAL DOLLARS (BUREAU OF JUSTICE ADMINISTRATION DOLLARS) ADMINISTERED BY THE GOVERNOR'S OFFICE TO COMBAT STREET LEVEL DRUG AND GANG ACTIVITIES. THESE DOLLARS HAVE FUNDED THE POLICE SCAT PROGRAM WHICH STANDS FOR SPECIAL COMMUNITY ACTION TEAMS. THE WICHITA POLICE DEPARTMENT HAS TWO SUCH TEAMS WHICH CONSIST OF SPECIALLY TRAINED OFFICERS WHO ARE CHARGED WITH EXHIBITING A HIGH LEVEL OF PRESENCE IN DRUG AND GANG INFESTED NEIGHBORHOODS. THEIR PURPOSE IS TO CONCENTRATE EFFORTS ON DISRUPTING AND ELIMINATING DRUG TRAFFICKING AND TO BREAK APART EXISTING GANGS AND DISCOURAGE THE FORMATION OF NEW GANGS. THE CITY HAS FOUND SCAT TEAMS TO BE AN EFFECTIVE MEANS FOR REDUCING THE CONCENTRATION OF DRUG AND GANG ACTIVITIES IN CERTAIN NEIGHBORHOODS.

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THE CITY COUNCIL HAS ALSO ADOPTED A NUMBER OF ORDINANCES AS ANOTHER MEANS TO ADDRESS THIS PROBLEM. THOSE ORDINANCES INCLUDE MAKING IT UNLAWFUL FOR A PERSON TO PUT GRAFFITI UPON PUBLIC OR PRIVATE PROPERTY AND ESTABLISHING A MECHANISM FOR GRAFFITI REMOVAL. A SECOND ORDINANCE CONSOLIDATES CURRENT SECTIONS OF THE CITY CODE PERTAINING TO CONCEALED AND UNCONCEALED WEAPONS INTO ONE ORDINANCE THAT CONFORMS TO STATE LAW. A THIRD ORDINANCE RELATES TO UNLAWFUL ASSEMBLY AND RIOTING, AND A FOURTH ESTABLISHES CURFEWS FOR MINOR CHILDREN. FINALLY, THE CITY COUNCIL ADOPTED AN ORDINANCE TO ADDRESS THE NUMEROUS DRIVE-BY SHOOTINGS WHICH PROVIDES FOR MANDATORY FINES AND JAIL TERMS. AS A SIDE NOTE, I UNDERSTAND THAT THIS LEGISLATION IS ALSO SUPPORTED BY THE GOVERNING BODY AS PART OF OUR COMPREHENSIVE PROGRAM AGAINST DRUGS AND GANGS.

THOSE ARE THE ACTIONS WE HAVE TAKEN LOCALLY, BUT THEY ARE NOT ENOUGH. WE SUPPORT THE PASSAGE OF SENATE BILL 135 BECAUSE WE SEE IT AS A SIGNIFICANT ATTEMPT TO OUTLAW CRIMINAL ACTIVITY BY PERSONS OR ENTITIES (WHICH ARE TERMED AN ENTERPRISE IN THE BILL) WHO JOIN TOGETHER FOR THE PURPOSE OF CARRYING OUT CRIMINAL ACTIVITIES. THIS DEFINITION OF AN ENTERPRISE, AS STATED IN THE PROPOSED LEGISLATION, IS A MEANS TO LINK TOGETHER INDIVIDUALS INVOLVED IN CRIMINAL ACTIVITY. THE CURRENT CONSPIRACY STATUTE PROVIDES FOR SUCH LINKAGE, HOWEVER, IT HAS HISTORICALLY BEEN DIFFICULT TO BUILD A CASE THAT WILL STAND UP IN COURT. IN OTHER WORDS, THIS BILL PROVIDES US WITH A MORE ENFORCEABLE DEFINITION OF GANG RELATED ACTIVITY - THROUGH THE CREATION OF A DEFINITION OF AN ENTERPRISE - AND TO CORRESPONDINGLY INCREASE THE PENALTIES FOR CRIMES COMMITTED BY A GANG MEMBER.

IT IS OUR BELIEF THAT IF WE HAVE A WORKABLE MEANS TO ARREST AND SEEK THE PROSECUTION OF ALL OF THE INDIVIDUALS INVOLVED IN THE COMMISSION OF A CRIME WE CAN MORE READILY REDUCE THE NUMBER OF GANG MEMBERS IN OUR COMMUNITY. THESE GANG MEMBERS AND DRUG DEALERS MEAN BUSINESS. THE THREAT THEY POSE IS REAL. WE NEED LEGISLATIVE ACTION TO HELP PUT THEM OUT OF BUSINESS AND SHOW THEM THAT THE STATE OF KANSAS WILL NOT TOLERATE THEIR ACTIVITIES.

IN SUM, 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.



# PROJECT FREEDOM

A community-wide organization to fight drug abuse.

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

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- Bob Mann**  
Recovery Services Council, Inc.
- Kathy Melhorn, M.D.**  
University of Kansas  
School of Medicine - Wichita
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Migrant Education, USD 259
- Marcia Wastinger**  
18th Judicial District  
Court Services Officer
- Ella Williams**  
NEPARTS, Inc.
- Isaac Williams**  
North High School Student

## Testimony in Support of the Organized Criminal Activity Act of Senate Bill #135 537

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

Mr. Chairman, members of the Senate Judiciary Committee, my name is Jim Cople 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 Sedgewick 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/Sedgewick 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, Sedgewick County and many representatives from the 18th Judicial District, believe that our state needs the Organized Criminal Activity Act. As evidenced in the testimony of District Attorney Nola Foulston and Wichita's Chief of

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Police, Rick Stone, this act gives law enforcement the necessary tools to prosecute the full range of illegal activities associated with youth gangs. This statute will permit law enforcement to prosecute members of gangs or organizations who have willingly or unwillingly been associated with deliberate criminal activity. Criminal liability could be the consequence of being a member or participating in a gang that has a history of serious and habitual violent or drug-related offenses. To date, we have been limited in who and what we can prosecute. This situation is unacceptable when we know full well that others within specific gangs are involved in criminal enterprises that are worthy of prosecution.

At first reading the Organized Criminal Activity Act would appear to be 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. 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." The Organized Criminal Activity Act 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 enable 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. Law abiding citizens and those engaged in legitimate

organizational or community activity need not fear this act nor the scope of this act. The target, quite simply, is individuals who have chosen to utilize their gang membership as a means for engaging in illegal enterprises.

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

TESTIMONY ON BEHALF OF PALMER COMPANIES, INC.  
IN PARTIAL OPPOSITION TO SENATE BILLS 135 AND 447

SENATE JUDICIARY COMMITTEE JANUARY 31, 1992

On behalf of Palmer Companies, Inc., we oppose the inclusion of subparagraphs 32, 33, 34, 35 and 36 of Section 2(a) of SB 135, and any comparable provisions of SB 447, in their present form. The background for our opposition is summarized in the attached letter to the chairman of this committee from the executive secretary of The Media Coalition, Inc. We urge members of the committee to give thoughtful consideration to the points expressed in the attached letter.

Let me briefly focus on the principal reason for our opposition to the language proposed in these bills as it relates to the publications distribution industry. We certainly have no dispute with the attempt to impose greater criminal sanctions on those who repeatedly engage in conduct which they know to be illegal. A person committing violations of the aggravated assault law knows that a wrong is being committed at the time of the act.

But those engaged in the commercial distribution of magazines, paperback books and other publications do not have that luxury. A wholesaler such as my client may distribute 2,000 different titles of magazines each year. The creation, publication and sale of those products is given the highest constitutional protection under the First Amendment unless there is a violation of the obscenity laws, for instance. But there is no bright line separating the obscene from the protected, the sacred from the profane.

The conscientious wholesaler plays a continuous guessing game if it tries to distribute only those publications it believes will avoid the nebulous definition of obscenity. The vast majority of retailers have absolutely no practical method to screen the printed products which arrive on their shelves through the stream of commerce. The reality is that no one knows that an obscenity law has been broken until some jury, somewhere, at some remote time after distribution and sale of the offending product, concludes that contemporary community standards have been violated and all the other tests have been met for a finding of obscenity.

Into this wealth of uncertainty we now mix the two bills under consideration today. SB 135 apparently says that if anyone in the chain of distribution is adjudged guilty of violating the obscenity laws, then everyone else is also guilty, at least for purposes of the sanctions imposed by the bill. SB 447 apparently aims to confiscate the property of repeat offender gangsters and racketeers, although the definitions are circular and the bill is probably fatally flawed.

We agree such provisions make sense when applied to those who knowingly violate the law. But they should not be applied to legitimate merchants selling products which reach them through the stream of commerce from forces over which they have no effective control, and who simply cannot tell whether they are right or wrong in selling a given publication. We therefore urge you to either eliminate the subparagraphs mentioned earlier, or amend them to insert a requirement for **knowing** violations as a predicate to culpability under these bills.

Thank you for giving consideration to these points.

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*Jack Hayes*

# THE MEDIA COALITION, INC.

900 THIRD AVENUE • SUITE 1600 • NEW YORK, N.Y. 10022

(212) 891-2070

Michael A. Bamberger  
General Counsel

Christopher M. Finan  
Executive Director

April 8, 1991

Senator Wint Winters  
Chairman, Senate Judiciary Committee  
Room 120 So.  
Kansas State Capitol  
Topeka, KS 66612

Re: Senate Bill 135

Dear Senator Winters,

The members of The Media Coalition have asked me to explain why they believe Senate Bill 135 threatens free speech in Kansas.

The members of Media Coalition represent most of the publishers, booksellers and periodical wholesalers and distributors in Kansas and the rest of the United States. They are neither the publishers of obscene material nor the owners of businesses that distribute obscene material. However, they do publish and sell legitimate books and magazines with sexual content--novels, art books, health and sex education works--and they are deeply concerned by any bill that would restrict the distribution of this material.

S.B. 135 threatens the sale of non-obscene books and magazines by creating an "organized criminal activity act" that includes as predicate offenses the publication or sale of obscene material to minors or adults and the display or sale to minors of non-obscene material that is "harmful to minors." Under this law, any "combination" of three or more people or enterprises that profits by an illegal act can be punished more harshly than a criminal who acts alone. Anyone convicted of participating in a combination would be guilty of a Class C felony even if the underlying crime were a misdemeanor.

While an organized crime law may be necessary to punish certain kinds of crime, it exercises a chilling effect on the distribution of legally protected works when it is applied to crimes involving obscenity or constitutionally-protected material that is "harmful to minors." By its very nature, the publication, distribution and retail sale of books and magazines involves "combinations" like those identified in S.B. 135. The sale of a work that is later determined to be obscene clearly implicates the retailer, the wholesaler and the publisher.

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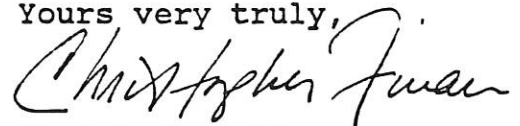
The problem is that an "obscene" book or magazine is not readily identifiable as such. The definition of obscenity set forth by the U.S. Supreme Court is vague. It is left to a jury to decide what is "obscene" according to "community standards." This vagueness leaves a bookseller unsure of what may be legally sold. S.B. 135 would leave the bookseller with little choice but to stop selling all works with sexual content. Faced with the prospect of a felony prosecution if he or she mistakenly sold an obscene work, the bookseller would err on the side of caution in deciding what works to display, removing from sale important works of literature, art and science.

S.B. 135 is particularly chilling because it applies not only to works that are obscene, and therefore unprotected by the Constitution, but also to works that may be legally sold to adults but are considered "harmful to minors." A retailer would be foolish to offer for sale constitutionally protected works that would subject him or her to a felony charge if mistakenly displayed or sold to a minor. Thus, S.B. 135 would hasten the suppression of works that adults have a First Amendment right to purchase.

The enactment of S.B. 135 could be a costly step. Because it threatens the distribution of legal works, S.B. 135 is vulnerable to constitutional challenge. If the law were successfully challenged, the State could be ordered to pay the plaintiffs' attorneys fees. In one case brought by The Media Coalition, the fees awarded to the plaintiffs amounted to over \$100,000.

The members of Media Coalition urge you not to include crimes relating to books and magazines in the organized crime act. These laws are powerful tools in the battle against organized crime. Their power must not be allowed to undermine First Amendment freedoms.

Yours very truly,



Christopher Finan  
Executive Director



**Testimony in Support of Senate Bill No. 125  
by Committee on Judiciary**

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

Project Freedom supports changing the Blood Alcohol Content level to .08% for adults over the age of 21 in Kansas. The lowering of the legal Blood Alcohol Content level reinforces our State's commitment to make our highways safe for all Kansans.

In assessing the minimum Blood Alcohol Content levels required to produce performance decrements relevant to driving, a special committee of the U.S. Transportation Department concluded that Blood Alcohol Content levels of 0.05% or more impair nearly all of the important components of driver performance: reaction time, tracking, divided attention performance, information processing, oculomotor functions, perception, and other aspects of psychomotor performance. Impairment, in fact, occurs of both the individual skills components and the combination of these skills in a divided attention situation.

From the impairment standpoint, recent studies have shown that impairment begins at levels as low as .02% to .04%. Most of these data are derived by a review by Moskowitz and Robinson (1987). The observed impairment comes from approximately 37 studies which show impairment at low alcohol concentrations.

Epidemiological data provide some additional information concerning what levels are appropriate. Such data result from measuring the proportion of drivers on the road who have alcohol concentrations at various levels and comparing these proportions with those of drivers involved in fatal alcohol-related crashes. Two of such studies were conducted in Vermont and in Michigan and were reviewed by Hurst (1974). These data suggest that the over involvement of alcohol in fatal crashes begins at about .04% and increases significantly at .08%. At a level of .06%, a driver is twice as likely to be involved in a fatal crash as a driver at .00%. At .10%, this increased risk rises to 12 times.

Another factor involved in the Project Freedom decision to advocate for lowering the

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Blood Alcohol Content level to .08%, is the large amounts of alcohol that are required in order to reach an alcohol concentration of .10%. A 160 pound male would require approximately 5 drinks (e.g. 12 ounce beers) in one hour to reach this level. For every additional hour, approximately one additional drink would be required. Thus, such a person, drinking for 5 hours would require 10 beers to have a Blood Alcohol Content Level of .10%. On average, persons arrested for DWI/DWI or involved in alcohol-related fatal crashes are at alcohol concentration levels of .16%. These persons have, on average, had more than 12 drinks.

In most industrialized nations, the legal Blood Alcohol Content level is lower than the .10% level which prevails in the United States. Project Freedom believes that lowering the Blood Alcohol Content level to .08% will reduce drunk driving by:

- \*Increasing the likelihood of convicting suspected drunk drivers;
- \*Increasing a persons' perception that he or she will get "caught" for driving after drinking; and
- \* Expanding the universe of those who can be arrested as impaired drivers.

Thousands are killed and maimed on highways each day due to drivers operating motor vehicles while impaired by alcohol. These deaths and injuries are entirely preventable. Project Freedom urges passage of Senate Bill No. 125 which will lower the Blood Alcohol Content Level to .08% for drivers above the age of 21 in Kansas.

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TESTIMONY OF DISTRICT ATTORNEY NOLA FOULSTON  
IN SUPPORT OF SENATE BILL NO. 537  
AN ACT CONCERNING THE CRIMINAL CODE;  
ENACTING THE ORGANIZED CRIMINAL ACTIVITY ACT

Chairman Winter, thank you for the opportunity to come before the Senate Judicial Committee in support of Senate Bill No. 537. As you know, the Organized Criminal Activity Act was drafted by the Office of the District Attorney of Sedgwick County and introduced by Senators Francisco Feleciano and Yost of the Sedgwick County delegation.

In support of introducing legislation of such magnitude, it is necessary to review the recent past history of the emerging gang issues of the State of Kansas. In 1989, it became reasonably apparent to law enforcement officials in Sedgwick County that we were subjected to an increased number of violent crimes and that the crimes being committed were involving gangs of youth in a more organized fashion than had been seen in previous years. A pertinent example of gang violence is seen in the case of State of Kansas v. Lamacy Woods, Sedgwick County Case No. 89 CR 1834. Woods, an insane Crip from the Los Angeles area, was sent here to Wichita in the initial expansion of drug sales from the State of California to the plains of Kansas. "Players" arrived and set up operation, drawing in youth of our community

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to their schemes. One such youth was Charles Green, who unfortunately did not meet all of the requirements set forth by Mr. Woods regarding accountability for monies from drug sales. Woods was the enforcer of discipline in the local Crips gang. His discipline was initiated by terror and physical intimidation. Charles Green is lucky to be alive today . . . after having been brutalized, kidnapped, and left for dead by Lamacy Woods and other gang members who followed the gang's code of violence in dealing with "one of its own."

Gangs filter into states using the economic infrastructure to further their criminal activity. We are no longer in the "horse and buggy days" of prosecution. It is necessary for us to get to the root of criminal enterprises such as the gangs that infect our state, making the legal deterrent to membership in any organization which has as its objective illegal purposes through criminal means.

It is of the utmost importance that Kansas legislature act promptly in stemming the tide of criminal activity by passage of the Organized Criminal Activity Act. This Act, similar to those found in the states of Texas, California and Arizona, has one thing not in common with these states . . . they waited too long and enacted legislation long after the problem had escalated to most unreasonable dimensions.

I would strongly encourage the Senate Judiciary Committee to review this legislation with an eye towards its

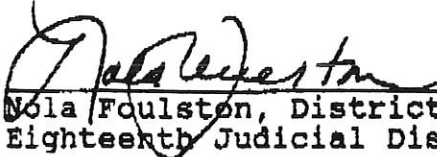
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passage. It is based on sound, legal principles that will assist prosecutors state-wide in their fight against organized criminal activity. The statute, as proposed, does not contain any civil remedies and will not permit a private cause of action such as federal RICO laws. This criminal statute can be only administered by law enforcement officials as a most useful tool in their fight against crime.

It should be made clear to members of the Senate that the Act as drafted imposes liability only on those persons or entities willfully participating in the affairs of an enterprise through the commission of, or aiding and abetting the commission of, one or more of the predicate felonies listed in the statute. It does not seek to impose liability on any member of a lawful organization for criminal acts of its members who may act as "an enterprise" as contemplated by the statute.

The Office of the District Attorney welcomes the opportunity to assist the Senate Judiciary Committee in any effort to hasten the passage of this legislation which is of critical importance to the State of Kansas.

Respectfully submitted,

  
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Nola Foulston, District Attorney  
Eighteenth Judicial District