

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 26, 1995 in Room 313-S-of the Capitol.

All members were present except:
Representative Candy Ruff - Excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Carla Stovall, Attorney General
Kyle Smith, Kansas Bureau of Investigation
Helen Stephens, Kansas Peace Officers Association
Brad Smoot, Kansas Civil Law Forum
Representative John Ballou
Representative Tom Bradley
Representative Brenda Landwehr
John Foster, Johnson County Undersheriff
Mark Thompson, Citizen
Nola Foulston, Kansas County & District Attorneys Association
Carla Dugger, America Civil Liberties Union

Others attending: See attached list

Kyle Smith, Kansas Bureau of Investigation, appeared before the committee with requests for several bill introductions. The first would have courts send notice of an expungement to the FBI through the KBI. (Attachment 1) The second would authorize the KBI to collect genetic markers, i.e. DNA Databank. (Attachment 2) The third bill request would add the KBI Director to the Kansas Information Resources Council. (Attachment 3) The next bill request would amend the statute controlling electronic surveillance. (Attachment 4) The fifth request would authorized the Department of Revenue to obtain funds and start using digital imaging for drivers license photographs. (Attachment 5) The last request would make a number of amendments to the Law Enforcement Training Act. (Attachment 6)

Representative Pauls made a motion to have these bill requests introduced as committee bills. Representative Graeber seconded the motion. The motion carried.

Helen Stephens, Kansas Peace Officers Association, appeared before the committee with a bill request which would add to the definition of criminal deprivation of property. (Attachment 7)

Representative Rutledge made a motion to have this bill request introduced as a committee bill. Representative Ott seconded the motion. The motion carried.

Brad Smoot, Kansas Civil Law Forum, appeared before the committee with two bill requests. The first dealt with the award of attorneys fees in certain automobile negligence cases. The second would re-enact the collateral source benefit bill, which passed both Houses and was vetoed by Governor Finney in 1994. (Attachment 8)

Representative Graeber made a motion to have these bill requests introduced as committee bills. Representative Edmonds seconded the motion. The motion carried.

Carla Stovall, Attorney General, appeared before the committee with two bill requests. The first would create a form of criminal trespass if a person was in violation of a condition of bond. (Attachment 9) The last request would expand the death penalty to apply to all premeditated murder. (Attachment 10)

Representative Yoh made a motion to have these bill requests introduced as committee bills. Representative Goodwin seconded the motion. The motion carried.

Hearings on **HB 2155** - convicted of two felonies, as listed, life imprisonment, were opened.

Representative Bradley appeared before the committee as the sponsor of the bill. The bill that the 1994 Legislature passed was intended to draw a line in the sand saying enough is enough. He doesn't believe that it

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on January 26, 1995.

sent that message, so he proposed this bill. (Attachment 11)

Representative Garner commented that on January 12, 1995 Chuck Simmons, Acting Secretary Department of Corrections, appeared before the committee and stated that by June 30, 1995 the Kansas prison system will be very near capacity. He asked if Representative Bradley had an estimate of what the impact on prison population would be. Representative Bradley replied that there was a fiscal note on the bill last year, which was minimal, and there hasn't been one done on the proposed bill.

Representative Ballou appeared before the committee as a proponent of the bill. He commented that there is a problem with violent & sexual crimes plaguing the state. People do not feel safe anymore. The state keeps letting criminals out of prison to commit more crimes. (Attachment 12)

Representative Landwehr appeared before the committee as a co-sponsor of the bill. She stated that governments first priority is to protect the people. Consequences for illegal behavior and actions must be created. This is the key to getting tough. (Attachment 13)

Carla Stovall, Attorney General, appeared before the committee as a proponent of the bill. She commented that the economic cost to the public is nothing compared to the human cost the victims pay. (Attachment 14)

Nola Foulston, Kansas County & District Attorneys Association, appeared before the committee as a proponent of the bill. The bill does a very good job of making people take notice of the fact that those who commit heinous crimes will be affected by the law. They were concerned with the mandatory nature of the bill. The application may be too harsh when given a mandatory application. It is important to take the bill and add a provision, much like the Hard 40. There will always be cases where this bill won't apply. The Association supports this bill in concept.

Representative Garner asked if the Association believes that there is a area of crime, i.e. drug crimes, that could be reduced in order to make room for increasing sentencing in the more violent areas. Mrs. Foulston responded that some of the Sedgwick County Prosecutors feel that it is distasteful for someone who is convicted of a drug crime to get more time than someone who has molested a child. What needs to be done is to look at the whole system, starting with the juvenile justice system.

Representative Adkins asked if the "get tough" legislation was not working and at what point does the legislature need to come up with other alternatives. Mrs. Foulston replied that historically there wasn't as many violent crimes being committed. She feels that the criminal justice system is watered down and we made it a "get out of jail free" card with the sentencing guidelines, and because of the number of beds available decided what the system could do. These are great concerns to prosecutors and law enforcement.

John Foster, Undersheriff Johnson County, appeared before the committee as a proponent of the bill. He stated that the public has the right to expect that persistent offenders will be locked up for a long period of time. (Attachment 15)

Mark Thompson, Citizen, appeared before the committee as a proponent of the bill. He commented that his primary concern is for the citizens and not for the offender. (Attachment 16)

Carla Dugger, American Civil Liberties Union, appeared before the committee as an opponent to the bill. She requested that the committee not confuse "sensible on crime" with "soft on crime". With the passage of this bill the state will see an increase in the unmanageable prison population. (Attachment 17)

Representative Mays asked if the penalties should be decreased. Ms. Dugger replied that ACLU opposes the death penalty, hard 40 and the sentencing grid which takes away any discretion.

Hearings on **HB 2155** were closed.

Representative Goodwin appeared before the committee with a bill request which would have entities that collect child support pay three times the amount due plus attorney fees if they do not forward the amount due to the court within 10 days.

Representative Goodwin made a motion to have this bill introduced as a committee bill. Representative Shriver seconded the motion. The motion carried.

The committee meeting adjourned at 5:15 p.m. The next meeting is scheduled for January 30, 1995.



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

REQUEST FOR LEGISLATION
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI). I am here today on behalf of Director Larry Welch to request legislation dealing with our expungement statute and criminal history record information.

First, the FBI has requested us to seek an Amendment whereby courts send notice of an expungement to the FBI through the KBI. They will not accept record modifications directly from a court.

Secondly, the expanding use of remote record check terminals, computerization of our database and federal legislation such as the Brady Act, require that we take a second look at the restrictions in K.S.A. 22-4707 placed on the dissemination of criminal history record information. The KBI is seeking legislative guidance to maximize use of real-time computer access, and the availability of these records to non-criminal justice agencies while ensuring a suitable level of privacy.

Thank you for your consideration.

House Judiciary
1-26-95
Attachment 1

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781

21-4619. Expungement of certain convictions. (a) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(b). Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed

on or after July 1, 1993, if convicted of an off-grid crime or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) a violation of K.S.A. 8-1567 and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been cancelled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage; or

(9) a violation of K.S.A. 21-3405b, and amendments thereto.

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A.

21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child as defined in K.S.A. 21-3609 and amendments thereto; or (12) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall

send a certified copy of the order of expungement to ~~the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction.~~ the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; with a criminal justice agency, as defined by K.S.A. 22-4701 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services; (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state; (C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery; (D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission; or (E) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record con-

who is to also notify the federal bureau of investigation,

tinued for the purpose of the new commitment.

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the conviction.

(h) Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(i) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a

prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery; or

(9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission.

History: L. 1978, ch. 120, § 28; L. 1979, ch. 90, § 7; L. 1980, ch. 102, § 2; L. 1980, ch. 103, § 1; L. 1981, ch. 158, § 2; L. 1982, ch. 139, § 2; L. 1984, ch. 39, § 35; L. 1985, ch. 48, § 15; L. 1986, ch. 129, § 1; L. 1987, ch. 292, § 24; L. 1988, ch. 315, § 2; L. 1989, ch. 96, § 1; L. 1990, ch. 105, § 1; L. 1992, ch. 239, § 247; L. 1993, ch. 253, § 16; L. 1993, ch. 291, § 186; July 1.

Revisor's Note:

Section was also amended by L. 1989, ch. 38, § 46, but such amendment was repealed by L. 1990, ch. 105, § 2.

Law Review and Bar Journal References:

"Expungement: Lies That Can Hurt You In and Out of Court," Steven K. O'Hern, 27 W.L.J. 574, 578, 586, 589, 598 (1988).

Attorney General's Opinions:

DUI diversion with prior expunged offense. 88-98.
Expungement of certain convictions; time requirements. 89-58.

Expungement; release of records to victim; certain records not required to be open. 92-27.

CASE ANNOTATIONS

8. Admissibility of acts constituting crime where acts may be relevant to fact in issue examined. *Pope v. Ransdell*, 251 K. 112, 125, 833 P.2d 965 (1992).



LARRY WELCH
DIRECTOR

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DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

REQUEST FOR LEGISLATION
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI). On behalf of Director Larry Welch I appear today to request legislation modifying K.S.A. 21-2511, the statute authorizing the KBI to collect genetic markers, i.e. the DNA Databank. The amendments will facilitate the KBI in participating with the FBI in a pilot nationwide network being developed as well as provide additional incentive for probationers to cooperate in the collection of these samples while ensuring that samples are taken by qualified individuals. We would also like to see the requirement for genetic markers being obtained reflected in the journal entry format set out by statute.

Thank you for your consideration.

House Judiciary
1-26-95
Attachment 2

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781

21-2511. Collection of specimens of blood and saliva from certain persons; Kansas bureau of investigation, powers and duties. (a) Any person convicted or adjudicated as a juvenile offender because of the commission of an unlawful sexual act as defined in subsection (4) of K.S.A. 21-3501, and amendments thereto, or an attempt of such unlawful sexual act or convicted or adjudicated as a juvenile offender because of the commission of a violation of K.S.A. 21-3401, 21-3402, 21-3602, 21-3603 or 21-3609, and amendments thereto, regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(1) Convicted or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving an authorized disposition under K.S.A. 21-4603, 22-3717 or 38-1663, and amendments thereto.

(b) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have specimens of blood and saliva collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, as a condition of probation, that person must provide specimens of blood and saliva, at a collection site designated by the Kansas bureau of investigation

(2) if sentenced to the secretary of corrections, the specimens of blood and saliva will be obtained immediately upon arrival at the Topeka correctional facility; or

(3) if a juvenile offender is placed in the custody of the secretary of social and rehabilitation services, in a youth residential facility or in a state youth center, the specimens of blood and saliva will be obtained immediately upon arrival.

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

(d) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, la-

Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

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

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

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

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

including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist.

The genetic marker grouping analysis information and identification system as established by this act shall be compatible with the procedures specified by the Federal Bureau of Investigation's Combined DNA Index System (CODIS). The KBI may participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

REQUEST FOR LEGISLATION
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI). On behalf of Director Larry Welch I appear today requesting this Committee entertain the concept of a committee bill which would amend last years' law creating the Kansas Information Resources Council, Chapter 340, Section 1(b) of the 1994 Session Laws by adding the director of the KBI to that council. This was suggestion was originally given to us by Lisa Moots, Executive Director of the Kansas Sentencing Commission.

Thank you for your consideration.

House Judiciary
1-26-95
A ttachment 3

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
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REQUEST FOR LEGISLATION
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI). On behalf of the KBI and it's Director Larry Welch, I appear today to request this Committee introduce a bill amending the statute controlling electronic surveillance, K.S.A. 22-2514.

The federal government has preempted this field to prohibit states from having broader authority to conduct electronic surveillance and is authorized under Title 3 of the United States Code. In late October as part of the digital telephony bill, the United States Congress further restricted the use of electronic surveillance by removing an exemption that had previously existed for cordless radio telephones. To ensure that Kansas law enforcement officers recognized that cordless phones are now covered by the warrant requirements for a wiretap, it is necessary that we strike language from the statutes that creates an exemption which no longer exists.

Thank you for your consideration.

House Judiciary
1-26-95
A ttachment 4

1620 TYLER TOPEKA, KANSAS 66612
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(7) "aggrieved person" means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed;

(8) "judge of competent jurisdiction" means a justice of the supreme court, a judge of the court of appeals or any district judge but does not include a district magistrate judge;

(9) "electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire, oral or electronic communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties; or

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(10) "communication common carrier" means common carrier, as defined by section 153(h) of title 47 of the United States Code;

(11) "electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system but does not include:

~~any communication transmitted by a telephone handset and the~~

~~(X) A~~ any wire or oral communication; _____ (a)

~~(X) A~~ any communication made through a _____ (b)

tone-only paging device; or

~~(X) A~~ any communication from a tracking device, as defined in section 3117, chapter 205 of title 18, United States code; _____ (c)

(12) "user" means any person or entity who:

(a) Uses an electronic communication service; and

(b) is duly authorized by the provider of such service to engage in such use;

(13) "electronic communications system"

means any wire, radio, electromagnetic, photo-optical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(14) "electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(15) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not:

- (a) Scrambled or encrypted;
- (b) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;
- (c) carried on a subcarrier or other signal subsidiary to a radio transmission;
- (d) transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(e) transmitted on frequencies allocated under part 25, subpart D, E or F of part 74, or part 94 of the rules of the federal communications commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

(16) "electronic storage" means:

- (a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
- (b) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

(17) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

History: L. 1974, ch. 150, § 1; L. 1976, ch. 165, § 1; L. 1976, ch. 163, § 4; L. 1976, ch. 165, § 2; L. 1986, ch. 115, § 55; L. 1988, ch. 117, § 1; July 1.

Cross References to Related Sections:

Definitions applicable to code of criminal procedure, see 22-2201, 22-2202.

Unlawful disclosure of authorized interception of wire, oral or electronic communications, see 21-3838.

Law Review and Bar Journal References:

"Evidence—Distinguishing Between Radio-Telephone



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

REQUEST FOR LEGISLATION
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI). On behalf of Director Larry Welch and the KBI, as well as all law enforcement in Kansas, I am here asking for an amendment to an amendment that was passed last year.

In 1994 the Kansas Legislature authorized the Department of Revenue to obtain funds and start using digital imaging for drivers license photographs, as opposed to traditional paper photography.

The use of digital images which can be transmitted over telephone lines could be of extreme value in criminal and missing person investigations: for instance, in the identification and creation of wanted posters. However, last years' bill contained language making such images confidential. The Department of Revenue has indicated they would have no objection to our seeking a limited exception to that confidentiality so law enforcement agencies would have access to those images for legitimate investigations.

Thank you for your consideration.

House Judiciary
1-26-95
Attachment 5

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781

CHAPTER 25
HOUSE BILL No. 2646

AN ACT relating to the division of vehicles; amending K.S.A. 74-2012 and repealing the existing section.

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

Section 1. K.S.A. 74-2012 is hereby amended to read as follows: 74-2012. (a) All records of the division of vehicles relating to the physical or mental condition of any person ~~or~~, to expungement or any photographs maintained by the division of vehicles in connection with the issuance of drivers' licenses shall be confidential. Records of the division relating to diversion agreements for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908, and amendments thereto, shall be confidential and shall be disclosed by direct computer access only to: (1) A city, county or district attorney, for the purpose of determining a person's eligibility for diversion; (2) a municipal or district court, for the purpose of using the record in connection with any matter before the court; (3) a law enforcement agency, for the purpose of supplying the record to a person authorized to obtain it under (1) or (2); or (4) an employer when a person is required to retain a commercial driver's license due to the nature of such person's employment. ←

All other records of the division of vehicles shall be subject to the provisions of the open records act except as otherwise provided by this section.

(b) Lists of persons' names and addresses contained in or derived from records of the division of vehicles shall not be sold, given or

Photographs or digital images maintained by the division of vehicles in connection with the issuance of drivers' licenses shall be available to law enforcement agencies for use in criminal investigations.



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

**REQUEST FOR LEGISLATION
KANSAS LAW ENFORCEMENT TRAINING CENTER
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995**

Mr. Chairman and Members of the Committee:

I appear today in my capacity as an Assistant Attorney General and counsel to the Kansas Law Enforcement Training Commission (KLETC). The Commission has requested that we request this Committee introduce legislation making a number of amendments, primarily clean-up amendments, to the Law Enforcement Training Act. Portions of the statute have not been amended since 1968 and various experiences have necessitated the changes that are contained in the attached draft.

Thank you for your consideration.

House Judiciary
1-26-95
Attachment 6

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781

Article 56.—LAW ENFORCEMENT
TRAINING CENTER; TRAINING
COMMISSION

74-5601. Citation of act. The provisions of K.S.A. 74-5601 to 74-5611, inclusive, and amendments thereto, K.S.A. 74-5604a, 74-5607a, 74-5609a, 74-5611a, 74-5616 and 74-5617, shall be known and be cited as the Kansas law enforcement training act. _____ and amendments thereto.

74-5602. Definitions. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603 and amendments thereto.

(b) "Commission" means the Kansas law enforcement training commission, created by K.S.A. 74-5606 and amendments thereto.

(c) "~~Director~~" means the dean of the ~~division of continuing education of the university of Kansas~~ Dean

(d) "~~XXXXXX~~ director," as created in K.S.A. 74-5603 and amendments thereto, means the ~~XXXXXX director of the division of continuing education of the university of Kansas~~ ~~XXXXXX shall serve as the~~ director of police training at the law enforcement training center.

(e) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; conservation officers of the Kansas department of wildlife and parks; campus policemen at all state educational institutions; law enforcement agents of the director of alcoholic beverage control; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol area security guards, existing under the authority of K.S.A. 75-4503 and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524 and amendments thereto; and school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222 and amendments thereto. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and

discharging such responsibility solely in the capacity of an attorney; any employee of the secretary of corrections or the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wild-life and parks; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(f) "Full-time" means employment requiring at least 1,000 hours of work per year.

(g) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of work per year.

74-5603. Establishment; location; purpose and function; responsibility of director; rules and regulations; associate director; additional personnel. (a) There is hereby created within the division of continuing education of the university of Kansas a law enforcement training center, to be located at the former site of the U.S. naval air station in Reno county. The purpose and function of such training center shall be the promotion and development of improved law enforcement personnel and procedures throughout the state, and the training center shall offer to qualified applicants, as defined in K.S.A. 74-5605 and amendments thereto, such programs and courses of instruction designed to fulfill this end.

(b) The director shall be responsible for the administration of the training center and for the operation of the programs thereunder. The director shall be responsible for determining the curriculum of the program, subject to such changes and modification as are directed by the law enforcement training commission. In consultation with the ~~director~~ law enforcement training commission ~~may prescribe a code of conduct applicable to all trainees.~~ director Upon consultation with and approval of the law enforcement training commission, the director is authorized to adopt such rules and regulations as are necessary for the effective operation of the law enforcement training program.

(c) The ~~director~~ dean upon consultation with and the approval of the commission, shall appoint ~~an associate director of the division of continuing education who shall exclusively conduct the training center in the capacity of~~ a director of police training. The ~~director~~ dean shall also appoint such additional personnel as is deemed necessary to carry out the law enforcement training programs of the training center, and such personnel, whether administrative, instructional or research, shall be in the unclassified service under the Kansas civil service act.

74-5605. Qualifications of applicant for training course; requirements. Every applicant for admission to a course for police officers or enforcement officers conducted by the training center shall be an employee of a state, county or city law enforcement agency, a railroad policeman appointed pursuant to K.S.A. 66-524, and amendments thereto, or a school security officer designated as a school law enforcement officer pursuant to K.S.A. 72-8222, and amendments thereto. Prior to admission to a course conducted at the training center or at a certified state or local law enforcement agency, the applicant shall furnish to the associate director a statement from the applicant's appointing authority or agency head certifying the applicant's fulfillment of the following requirements. The applicant:

- (a) Is a United States citizen;
- (b) has been fingerprinted and a search of local, state and national fingerprint files has been made to determine whether the applicant has a criminal record;
- (c) has not been convicted, ~~XXX~~ does not have an expunged conviction, by any state or the federal government ~~XX~~ a crime which is a felony or its equivalent under the uniform code of military justice;
- (d) is the holder of a high-school diploma or furnishes evidence of successful completion of an examination indicating an equivalent achievement;
- (e) is of good moral character;
- (f) has completed a psychological test approved by the commission; and
- (g) is free of any physical or mental condition which might adversely affect the applicant's performance of a police officer's or law enforcement officer's duties.

and on or after the effective date of this act has not been placed on diversion

for

(h) is of at least 21 years of age.

74-5606. Creation of training commission; members; exemptions. (a) There is hereby created the Kansas law enforcement training commission on peace officers' standards and training which shall consist of 12 members which shall include:

(1) The superintendent of the Kansas highway patrol, or the superintendent's designee;

(2) the director of the Kansas bureau of investigation, or the director's designee;

(3) a sheriff of a county having a population of 50,000 or more, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas sheriffs' association;

(4) a sheriff of a county having a population of less than 50,000 and more than 10,000, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas sheriffs' association;

(5) a sheriff of a county having a population of 10,000 or less, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas sheriffs' association;

(6) a chief of police of a city of the first class, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas association of chiefs of police;

(7) a chief of police of a city of the second class, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas association of chiefs of police;

(8) a chief of police of a city of the third class, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas association of chiefs of police;

(9) a training officer from a certified state or local law enforcement training school; to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas peace officers association;

(10) a full-time, commissioned law enforcement officer employed by either a state, county or city agency, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the fraternal order of police;

(11) a county or district attorney, to be selected by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the county and district attorneys' association; and

(12) a member representing the public at large who is not associated with law enforcement, selected by the governor to serve as chairperson.

(b) Each person initially appointed to a position described in subsection (a)(6), (a)(8), (a)(9) or (a)(12) shall serve for a two-year term and thereafter the term of members appointed to such positions shall be four years. Each person appointed to a position described in subsection (a)(3), (a)(4), (a)(5), (a)(10) or (a)(11) shall serve for a four-year term. A person appointed to a position on the commission shall resign such position upon vacating the office or position which qualified such person to be appointed as a member of the commission in that position. Vacancies in any position shall be filled in the same manner as original appointments.

(c) Membership on the commission shall not constitute holding a public office, and members of the commission shall not be required to take and file oaths of office before serving on the commission and shall not be required to be bonded. No member of the commission shall be disqualified from holding any public office or employment by reason of the member's appointment to or membership on the commission and no such member shall forfeit any such office or employment by reason of the member's appointment under this section, notwithstanding the provision of any law or ordinance.

_____ or an assistant county or district attorney,

74-5607a. Certification for permanent appointment; annual training; provisional appointment. (a) No person shall receive a permanent appointment as a full-time police officer or law enforcement officer, unless such officer has been awarded a certificate attesting to satisfactory completion of a course of not less than 320 hours of accredited instruction at the training center or at a certified state or local law enforcement training school or has been awarded such a certificate for not less than the number of hours of instruction required by the Kansas law enforcement training act at the time such certificate was issued or received a permanent appointment as a full-time police officer or law enforcement officer prior to July 1, 1969, or was appointed a railroad policeman pursuant to K.S.A. 66-524 on or before January 1, 1982. No person shall receive a permanent appointment as a part-time police officer or law enforcement officer, unless such officer has been awarded a certificate attesting to the satisfactory completion of the basic course of ~~80 hours of accredited in-~~ not less than instruction in law enforcement at the training center or at a certified state or local law enforcement training school.

(b) Beginning the second-year after certification, every full-time police officer or law enforcement officer shall complete annually 40 hours of law enforcement education or training in subjects relating directly to law enforcement. Failure to complete such training shall be grounds for suspension from work without pay until such training is completed. The ~~xxx~~ ~~xxxxx~~ director with the approval of the commission shall adopt rules and regulations regarding such education or training. Every city, county and state agency shall annually send to the ~~xxxxxxx~~ director certified reports of the completion of such education or training. The ~~xxxxxxx~~ director shall maintain a record of the reports in the central registry.

(c) Subject to the provisions of subsection (d):

(1) Any person who is appointed or elected as a police officer or law enforcement officer and who does not hold a certificate as required by subsection (a) may be elected or appointed as an officer on a provisional basis for a period of not more than one year. Any person appointed as a police officer or law enforcement officer on a provisional basis who does not receive the certificate required under subsection (a) within one year following the date of the person's original election or appointment shall forfeit such office or position at the end of such one-year period. Any person appointed as a police officer or law enforcement officer on a provisional basis who does not receive the certificate required under subsection (a) within one year following such original appointment shall not be reappointed as a police officer or law enforcement officer on a provisional basis within one year following the date on which such person last served as a police officer or law enforcement officer.

(2) Any police officer or law enforcement officer who does not complete the education or training required by subsection (b) by the date such education or training is required to have been completed shall ~~XXXXXX~~ the officer's office or position.

be subject to revocation or suspension of certification and loss of

(d) The ~~XXXXXX~~ director may extend the one-year time period when it is shown that the failure to comply with the requirements of subsection (a) or (b) was not due to the intentional avoidance of the law.

for the 320 hour basic reciprocity school or 80 hour part-time school and may extend, waive or modify the annual continuing education requirement.

74-5608a. Certification of persons completing training in other jurisdictions; waiver of courses. (a) The ~~XXXXXX~~ director may, in the exercise of discretion, award a certificate attesting to the satisfactory completion of a basic course of instruction to any person who has been duly certified under the laws of another state or territory if, in the opinion of the ~~XXXXXX~~ director, the requirements for certification in such other jurisdiction equal or exceed the qualifications required to complete satisfactorily the basic course of instruction at the training center.

(b) The ~~XXXXXX~~ director may waive any number of the hours or courses required to complete the basic course of instruction at the training center, for any person who, in the opinion of the ~~XXXXXX~~ director, has received sufficient training or experience that such hours of instruction at the training center would be, unless waived, unduly burdensome or duplicitious.

80 hour part-time school, reciprocity school or for the hours required for annual continuing education

74-5610. Temporary assignment of law enforcement officers; statutes governing; duties of director. (a) At any time, the employer of any police or law enforcement officer may assign temporarily one (1) or more of such officers to work with and under the jurisdiction and supervision of any other employer of police or law enforcement officers, for the purpose of mutual assistance and for the further training and education of the officers involved. Any officer so assigned shall be considered to be "on detail to regular work assignments" as that phrase is used in K.S.A. 75-4404, and shall be governed by the provisions of article 44 of chapter 75 of the Kansas Statutes Annotated. The exchange of police or law enforcement officers by cities and counties shall be accomplished pursuant to an interlocal agreement authorized by K.S.A. 12-2904. The director shall provide assistance in formulating any such agreements, and shall report to the governor's committee on criminal administration from time to time on exchanges made pursuant to this section. Such reports shall contain any recommendations the director may have for improved implementing legislation or other matters related hereto.

Repeal

(b) This section shall be a part of and supplemental to the Kansas law enforcement training center and advisory commission act, and as used in this section, the words and phrases defined by K.S.A. 74-5602 shall have the meanings respectively ascribed to them therein.

74-5611. Annual report to attorney general of persons attending academy. The director of the law enforcement academy shall annually report to the attorney general of the state of Kansas the names of all persons who attended said academy during each ~~calendar~~ XXXXXX training year.

74-5616. Eligibility for appointment as officer; certification by commission required; suspension, revocation or denial of certification; judicial review. (a) To be eligible for permanent appointment as a police officer or law enforcement officer, a person must first be certified to perform the function of law enforcement by the Kansas law enforcement training commission. The commission's certification shall be awarded to persons who:

(1) Are at least 21 years of age, have successfully completed or satisfied the training requirements specified by subsection (a) of K.S.A. 74-5607a and amendments thereto and meet the requirements of K.S.A. 74-5605 and amendments thereto; (2) received a permanent appointment as a police officer or law enforcement officer prior to July 1, 1969; or (3) hold a permanent appointment as a police officer or law enforcement officer on July 1, 1983.

(b) The commission may suspend, revoke or deny the certification of a police officer or law enforcement officer who fails to meet the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto, or has met such requirements by falsifying documents or failing to disclose information required for certification.

(c) The commission shall immediately institute proceedings to revoke the certification of any police officer or law enforcement officer convicted of a felony under the laws of this state, another state or the United States or of its equivalent under the uniform code of military justice.

(d) The procedure for the ~~suspension, revocation and denial of certification of a person as a police officer or law enforcement officer or an applicant for certification shall be in accordance with the Kansas administrative procedure act.~~

or on or after the effective date of this act diverted or

public or private censure, reprimand, probation

(e) Any action of the commission pursuant to subsection (d) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The attorney general shall prosecute or defend any action for review on behalf of the state, but the county or district attorney of the county where the police or law enforcement officer has been employed as such shall appear and prosecute or defend such action upon request of the attorney general.

19-301b. Qualifications for office; attendance at law enforcement academy required; exception; status and salary while in attendance. (a) No person shall be eligible for nomination, election or appointment to the office of sheriff unless such person:

(1) Is a citizen of the United States and a qualified elector of the county;

(2) possesses a high-school education or its recognized equivalent; and

(3) has never been convicted of or pleaded guilty or entered a plea of *nolo contendere* to any felony charge or to any violation of any federal or state laws or city ordinances relating to gambling, liquor or narcotics.

(b) Every person elected to the office of sheriff for the first time, or anyone reelected or appointed to the office after having been out of the office for two years or more shall be required to attend the law enforcement training academy as established by K.S.A. 74-5601 *et seq.*, and amendments thereto, and satisfactorily complete the required training course of not less than 320 hours, unless such person has satisfactorily completed such training course within the two years prior to election or appointment or unless the ~~associate~~ director, as defined in subsection (d) of K.S.A. 74-5602, ~~XXXXXX XXXXXX OF THE LAW ENFORCE- XXXXXXXXXXXXXXXXXXXXXXX~~ waives the requirements of this subsection as provided in K.S.A. 74-5608a and amendments thereto. Unless the requirements are waived, any person elected or appointed to the office of sheriff who has not attended the law enforcement training academy shall hold office on a provisional basis, and such person shall attend the next scheduled training program at the law enforcement training academy and satisfactorily complete such training program or the one subsequent to it, or shall forfeit such office.

(c) Each newly elected sheriff of each county who is required to attend the law enforcement training academy shall be hired as a deputy sheriff and shall be paid a salary as deputy sheriff while attending the law enforcement training center and the tuition, board, room and travel expense for the sheriff-elect at the law enforcement training center shall be paid by the county.

(severability clause)

AUTO DEPRIVATION
Requested by Kansas Peace Officers Association

21-3705. CRIMINAL DEPRIVATION OF PROPERTY. (a)(1) Criminal deprivation of property, **other than a motor vehicle as defined in K.S.A. 8-1437 and amendments thereto**, is obtaining or exerting unauthorized control over property, with the intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.

(2) Criminal deprivation of property that is a motor vehicle, as defined in K.S.A. 8-1437 and amendments thereto, is obtaining or exerting unauthorized control over a motor vehicle, with the intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.

(b) Criminal deprivation of property as provided in subsection (a)(1) is a class A nonperson misdemeanor. Upon a second or subsequent conviction of this section, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this section relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice. **Criminal deprivation of property as provided in subsection (a)(2) is a severity level 9, nonperson felony. For criminal history purposes, each third conviction of this section would equal 1 prior person felony**

KANSAS CIVIL LAW FORUM
A Coalition of Professionals and Businesses
Interested in the Kansas Court System

Brad Smoot, Coordinator
Mercantile Bank Building
800 SW Jackson, Suite 808
Topeka, Kansas 66612
(913) 233-0016 FAX (913) 234-3687

HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1994

REQUEST FOR INTRODUCTION OF COMMITTEE BILLS

Mr. Chairman and Members of the Committee:

On behalf of the Kansas Civil Law Forum, I respectfully request the introduction of two separate bills concerning civil law matters.

The first measure would amend K.S.A. 60-2006, which permits the award of attorneys fees in certain automobile negligence cases. The proposed changes would limit the statute to property damage cases as we believe was the original intent and require plaintiff's to make demand for payment thirty days before filing an action in order to recover the authorized attorneys fees. A copy of the requested change is attached to my statement.

The second measure would reenact a statutory collateral source rule. The 1988 law was declared unconstitutional by the Kansas Supreme Court in 1993 because of the \$150,000 "threshold" provision. We would urge the reenactment of the old law without the threshold provision just as was passed by the 1994 Legislature and vetoed by Governor Finney. A copy of this requested change is also attached to my statement.

Thank you for consideration of this request and I would be happy to respond to questions.

60-2006. Attorneys' fees taxed as costs in certain actions involving negligent motor vehicle operation.

(A) In actions brought for the recovery of damages of less than \$7,500 sustained and caused by the negligent operation of a motor vehicle, the prevailing party shall be allowed reasonable attorneys' fees which shall be taxed as part of the costs of the action unless:

(1) The prevailing party recovers no damages; or
(2) a tender equal to or in excess of the amount recovered was made by the adverse party before the commencement of the action in which judgment is rendered.

(b) This section shall apply to actions brought pursuant to the code of civil procedure and actions brought pursuant to the code of civil procedure for limited actions.

property

(b) For the prevailing party to be awarded attorney fees for the prosecution of such action, written demand for the settlement of such claim containing all of the elements of damage and the total monetary prayer to be asserted in the action must have been made on the adverse party not less than thirty (30) days before the commencement of the action.

(c)

SENATE BILL No. 761

AN ACT concerning collateral source benefits in certain actions for damages; repealing K.S.A. 1993 Supp. 60-3801, 60-3802, 60-3803, 60-3804, 60-3805, 60-3806 and 60-3807.

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

Section 1. As used in this act:

(a) "Claimant" means any person seeking damages in an action for personal injury or death, and includes the heirs at law, executor or administrator of a decedent's estate.

(b) "Collateral source benefits" means benefits which were or are reasonably expected to be received by a claimant, or by someone for the benefit of a claimant, for expenses incurred or reasonably certain to be incurred as a result of the occurrence upon which the personal injury action is based, except life or disability insurance benefits or benefits gratuitously bestowed on the claimant. Such term shall not include:

(1) Services or benefits for which a valid lien or subrogation interest exists; however, nothing in this act shall be construed to create or modify lien or subrogation interests not otherwise allowed by law; and

(2) amounts included as part of a criminal sentencing order or pursuant to state programs of victims assistance incurred by virtue of the defendant also committing a criminal act.

(c) "Cost of the collateral source benefit" means the amount paid or to be paid in the future to secure a collateral source benefit by the claimant or by anyone on behalf of the claimant. If the amount of any benefit paid or to be paid encompasses amounts paid over a period of time, thus making the benefit greater than it would be without such amounts paid, then evidence of such amounts paid shall be admissible in determining the cost of the collateral source benefit.

(d) "Net collateral source benefits" means the sum of collateral source benefits after subtracting the cost of the collateral source benefit.

Sec. 2. In any action for personal injury or death, in which the claimant demands judgment for damages, evidence of collateral source benefits received or evidence of collateral source benefits which are reasonably expected to be received in the future shall be admissible.

Sec. 3. When evidence of collateral source benefits is admitted into evidence pursuant to section 2, evidence of the cost of the collateral source benefit shall be admissible.

Sec. 4. In determining damages in an action for personal injury or death, the trier of fact shall determine the net collateral source benefits received and the net collateral source benefits reasonably expected to be received in the future. If the action for personal injury or death is tried to a jury, the jury will be instructed to make such determination by itemization of the verdict.

Sec. 5. (a) The amount of the judgment shall be reduced by the court by the amount of net collateral source benefits received, or reasonably expected to be received in the future but only to the extent that such benefits exceed the aggregate amount by which:

(1) Such judgment was reduced pursuant to subsection (a) of K.S.A. 60-258a and amendments thereto;

(2) the claimant's ability to recover such judgment was limited by the application of subsections (c) and (d) of K.S.A. 60-258a and amendments thereto, other than by virtue of claimant's settlement with or decision not to assert a legally enforceable claim against a named or an unnamed party;

(3) the amount to which the claimant's ability to recover such judgment was limited by the insolvency or bankruptcy of a person; and

(4) the award of damages has been reduced because of a statutory limit upon the recovery of damages.

(b) If there is no amount falling within subsection (a)(1) through (4) then the court shall reduce the judgment by the full amount of the net collateral source benefits.

Vetted by Governor 4-11-94

SENATE BILL No. 761—page 2

Sec. 6. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 7. The provisions of this act shall apply to causes of action accruing on or after July 1, 1994.

Sec. 8. K.S.A. 1993 Supp. 60-3801, 60-3802, 60-3803, 60-3804, 60-3805, 60-3806 and 60-3807 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the
SENATE, and passed that body

March 16, 1994

SENATE concurred in
HOUSE amendments March 30, 1994

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended March 25, 1994

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.



State of Kansas

Office of the Attorney General

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

CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY OF
ATTORNEY GENERAL CARLA STOVALL
HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

I respectfully request the House Judiciary Committee to introduce a bill which would address a particular need in the area of domestic violence. This is an area that we continue to visit as further needs are pointed out.

The changes I propose would require a judge to set conditions of bond on someone arrested for assault, battery, aggravated assault or battery, terroristic threat, sexual offenses and the like. The bond conditions would be to have no contact with the victim and not to go to the victim's place of residence or employment. Violation of the bond conditions would constitute criminal trespass. This would allow the law enforcement officers to arrest the perpetrator immediately. Without such a law, the prosecutors are limited to asking for bond revocation at a subsequently scheduled court hearing. Time is of the essence in domestic violence cases and law enforcement must be able to arrest the individual immediately. My office is asking for this to be introduced after having worked with the law enforcement community on this issue.

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State of Kansas

Office of the Attorney General

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

CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY OF
ATTORNEY GENERAL CARLA STOVALL
HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

I appear here today as the Attorney General to ask for a committee bill addressing the death penalty. I want the bill or bills to do two things. Make substantive and procedural changes. The substantive change I will address first.

I respectfully urge you to introduce as a House Judiciary Committee bill an expanded death penalty which will apply to all premeditated murder. Believe me when I tell you that I do not do this lightly--I have considered the ramifications of reintroducing this topic for legislative debate. I am aware of the Senate's position last year in staying firm on the very limited version of the death penalty even in the face of the House's desire for a broader version. I also am aware of the position of the Governor. But in good conscience, I must ask for this legislature to give the people of the state of Kansas a death penalty for all premeditated murder.

I commend the legislature for giving us some version of a death penalty last year. I know that took much work and agonizing and I don't minimize that accomplishment. But it is, quite simply, not enough. We have had approximately 68 murders in Kansas since July 1, 1994 and only two cases have been death penalty eligible. What do we tell the families of the other murdered victims? Perhaps one of the most gruesome murders of which I have ever read involved a 19-year old man, Timothy Evans, who was shot and killed. He was then decapitated, his body dismembered, and his flesh peeled from his body. I cannot imagine much worse. And yet the D.A. had to tell his family the murder was not bad

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enough to allow her to seek the death penalty. The death penalty should apply to all premeditated murder.

I respectfully ask this House Committee to introduce a death penalty for all premeditated murder.

The procedural changes that I will ask to be introduced will come after continuing careful review of our current death penalty law by my office. Now that the legislature has made the public policy decision to enact a death penalty it is incumbent upon us to align ourselves most closely with states that have tried and true death penalties which have passed muster with the United States Supreme Court decisions on their constitutionality. Based upon our review of states with death penalties and court decisions which have challenged and upheld them, we will recommend technical, procedural changes to Kansas' law.

Cursory explanation of the technical changes would include allowing in evidence in penalty phase all aspects of defendant's character (not just statutory aggravating and mitigating factors); defining "heinous;" expanding the requirement that prosecutors must declare they are seeking death penalty within 5 days of arraignment; and allowing for death penalty sentencing by the judge in the event the jury deadlocks.

It is our belief these changes will clean up and tighten our death penalty law. Doing so will have a positive impact upon the opportunities for appellate courts to uphold convictions and sentences under this law--and to ultimately reduce the costs the state pays for the inmates to challenge their convictions and sentences.

I respectfully request a bill addressing these procedural changes.



TOPEKA

 HOUSE OF
 REPRESENTATIVES
TOM BRADLEY

REPRESENTATIVE, FIFTY-SECOND DISTRICT
 5908 CLARION LANE
 TOPEKA, KANSAS 66610
 (913) 271-1167
 OFFICE:
 STATE CAPITOL, 174-W
 TOPEKA, KANSAS 66612-1504
 (913) 296-7642

COMMITTEE ASSIGNMENTS
 MEMBER: APPROPRIATIONS
 JUDICIARY
 GOVERNMENTAL ORGANIZATION
 & ELECTIONS

January 26, 1995

Last year I introduced THREE STRIKES AND YOU'RE OUT, which became the major crime bill of the 1994 session. After much debate, the 1994 crime bill doubled sentences for certain repeat criminals and made the "Hard 40 Sentence" easier to apply. It also made gang membership and sexual violence a consideration for tougher sentencing by judges. While all these steps are positive, we still need to do more to protect Kansans. "Kansans have a right to be protected from career and habitual, violent offenders. Crime is the primary concern of the people in my district. They feel threatened in their very homes."

"This legislation is intended to draw a line in the sand saying enough is enough. The purpose is to get tough on the 6% of criminals who commit 70 percent of the crimes."

"If a person has raped, kidnapped, or molested two times, then we have no more patience - he or she should be permanently removed from society. We must put away the habitual predators who stalk our communities."

Will this by itself solve the crime problem? The answer is

NO. It is only a part of the solution. In addition, we must look at prevention as well as punishment.

“No matter what you decide on this bill, you should review sentences that are actually shorter, after the issuance of the Sentencing Guidelines. There are a number of sentences that were actually reduced by the Sentencing Guidelines. These include, Aggravated Kidnapping, Aggravated Robbery and Robbery and Burglary.” Also, a recent post audit report indicated that a presumptive sentence of probation for repeat property offenders is certainly not considered severe enough by Kansas Judges. I want to reinforce to the Committee that “letting repeat property offenders walk away is not considered severe enough by my constituents!!!

The causes of crime are many. We know that unemployment, drugs, and broken families are all contributors, but no social approaches will stand a chance unless there is a framework of public order. It will take years to fix or reverse many of the social causes of crime. Until then, we have to be prepared to reclaim our streets, our classrooms and our communities.

JOHN BALLOU

REPRESENTATIVE, FORTY-THIRD DISTRICT

HOME ADDRESS: 19180 SOUTH WAVERLY

GARDNER, KANSAS 66030

(913) 856-6355

OFFICE ADDRESS: STATE CAPITOL, SUITE 155-E

TOPEKA, KANSAS 66612-1504

(913) 296-7683



TOPEKA

HOUSE OF
REPRESENTATIVES

January 25, 1995

COMMITTEE ASSIGNMENTS

AGRICULTURE

EDUCATION

FEDERAL AND STATE AFFAIRS

Thank you Mr. Chairman and members of the Judiciary Committee for allowing me this opportunity to speak to you about something I feel very strongly about. This is the problem of violent and sexual crimes plaguing our great state and its citizens.

There are not a lot of people committing these crimes, but rather a very small percentage of the population, making the vast majority of the honest citizens of the state scared to go out in the streets at night, drive their cars in some areas, and scared to even go to sleep at night in their own houses. People DO NOT feel safe anymore anywhere.

The problem is that we keep letting the same felons out of prison and back on the street to commit these same violent and sexual crimes over and over again on innocent and law abiding citizens.

Is not murdering an innocent citizen and destroying his or her family for the rest of their life, bad enough the first time?

Is not raping a woman and destroying her trust in people for the rest of her life, bad enough the first time?

Is not child molesting and destroying that child's faith and trust in adults, bad enough the first time?

For these reasons, and all the victims and their families across the state of Kansas, I ask that your Committee vote favorably on HB-2155, and send it to the whole House for debate.

Representative John Ballou

House Judiciary

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TOPEKA

HOUSE OF
REPRESENTATIVES

Thank you Mr. Chairman and members of the judiciary committee. It is my privilege to appear before you today as a legislator and sponsor of House Bill 2155. It is a shame that we have come to live in a society where crime has become a way of life, a daily occurrence, and at the top of many peoples minds. Governments first priority is to protect the people. We have created a society where convicts no longer live in fear, but where law abiding citizens live in fear of becoming a victim of crime. A society where no one is to blame for their actions.

We must create consequences for illegal behavior and actions. Such as the 2 strikes you're out provision in House Bill 2155. We must send a message that criminal actions will not be condoned in our society. Statistics show that every violent offender jailed usually admits to committing at least two (2) heinous violent crimes. Although they may have been jailed for one crime, they have usually victimized many more helpless individuals. Quite often the victims of these individuals are physically less able to protect themselves. They are the young, elderly, or female.

Approximately 62.5% of the prisoners that have been released from prison are re-arrested within 3 years. If it is a young parolee, that figure goes up to at least 69%. Statistics show that criminals that have been convicted of a violent sexual crime cannot be rehabilitated. In visiting with different people in law enforcement, and judges, I have found that they too are tired of seeing the judicial system being bogged down because of the revolving door for repeat offenders/criminals. It is time that we put systems in place in order to save time in our judicial systems, as well as our tax payers dollars, by implementing correct and appropriate sentencing in the front end of the system, not after the fact.

Drive-by shootings have become a weekly, even daily occurrence in our neighborhoods. It is high time that we show individuals that they will no longer be tolerated and that the consequences of their actions will indeed be severe. We cannot, will not, and should not expect our citizens to accept drive-by shootings as a way of life. We will not take it lightly any longer.

The key here is to get tough in the beginning so we can reduce the amount of time we spend reconvicting an individual, time and time again. We must halt the revolving door theory.

I urge you, Mr. Chairman, and members of the Judiciary Committee to hear, discuss, and debate House Bill 2155.

I thank you for your time here today and for your consideration Mr. Chairman, and I now stand for questions.

From,

Representative Brenda Landwehr

A handwritten signature in black ink, appearing to read "Brenda Landwehr". The signature is written in a cursive style with a large, looping initial "B".



State of Kansas

Office of the Attorney General

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

CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY OF
ATTORNEY GENERAL CARLA STOVALL
HOUSE JUDICIARY COMMITTEE
JANUARY 26, 1995

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

It is my privilege to appear here today as a conferee on House Bill 2155 commonly known as 2 strikes. I recall testifying last year before the House Judiciary on the 3 strikes bill then before the committee, and asking that you further restrict that bill's provisions to apply 2 strikes to all sexually violent offenses.

I absolutely support the bill in concept especially as it applies to sexual offenses. The recidivism of those offenders in particular is almost predictable and I believe they should not be released to further victimize children and adults.

The trauma that comes from sexual abuse is lifelong. The physical injury that comes at the time of the abuse can be dramatic. The psychological injury can be even more debilitating. My little sister in the Big Brothers/Big Sisters program had been sexually abused as a youngster. But she was adopted when she was 10 years old by a wonderful, stable family. But the abuse she suffered early in her life was an obstacle that neither she nor her adoptive family, nor her myriad of social workers and counselors could ever overcome.

She acted out in the most predictable ways of sexually abused children--the negative behavior increasing as she aged. It began with being truant from school and lying to her parents. It progressed to include running away from home, being committed to an adolescent psychiatric unit followed by extended stay in residential custody. She then had a miscarriage, was arrested for a criminal charge and jailed, became pregnant, placed the baby with neighbors

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while she travelled the country. She later regained custody of her infant and now is the welfare mother of two young children. They are now living in the same unstable, transient kind of home in which she herself was abused when she was a child.

Serving out the remainder of life in prison for the perpetrator of crimes against children cannot compare to the prison to which they have sentenced their victims. My young friend and, more importantly her children unless a miracle occurs, are sentenced to a life of hell because a man twenty years ago allowed himself to be sexually active with a five year old girl.

I know the outcry will be in fear of the need for more bed space if we lock up these offenders for their lives. More beds cost more money. I know that. But, I submit to you, the economic cost is nothing compared to the human cost the victims are paying now. And society is not escaping without financial cost now either. The cost of crime, financial assistance, health costs, are just harder to measure -- but they are there.

Let's be proactive and save our children. I respectfully ask you to pass House Bill 2155.

Testimony of: John L. Foster, Undersheriff
Johnson County, Kansas

House Bill 2155

One of the questions the public consistently asks is why are the criminal predators out on the street. Over the past several sessions, the Legislature has attempted to resolve that question. We believe they have done an admirable job. However, our agency will support legislation that will further make it difficult for the criminal predator to be exposed to the public. The public has a right to expect that the persistent offender will be separated from society for a protracted period of time. The public peace of mind and well being deserve no less.

My name is Mark Thompson, and I am here today to tell the House Judiciary Committee why I believe the "Two Strikes and You're In" is an important bill that should be enacted in Kansas. Let me begin by saying that I am appearing here today in my personal capacity only, not in any professional capacity as a federal prosecutor. I have two young children, a girl who is 2 1/2 and a boy who is 10 months, I am one of eleven children and have 31 nephews and nieces. Although I am a resident of Kansas City, Missouri, I have many ties to Kansas. During my four years of high school, I looked toward Kansas every day from Rockhurst High School which sits on State Line Road. Many of my best friends lived in Kansas and even more now live here. My wife and four of her siblings are proud alumni of the University of Kansas as are four of my own siblings. In addition, some of my siblings live in Kansas and my father has business interests in this state. And during two of the summers during my college years, I worked at a bank in Osawatomie, Kansas. So Kansas is my #2 "home state".

When I speak today, I have to let you know that I have a very personal bias against offenders who commit violent crimes. Actually, I have two biases. They are really not just biases, they are personal, they are real, they are my sisters. Sisters that were victims of criminal acts. Today one of them is dead after three and 1/2 years of fighting to recover from two gun shot wounds to the head by someone who was trying to rob her and the other is fed through a tube, breathes out of a tracheotomy, and has 24-hour nursing care after being hit in 1989 by a drunk driver who license had already been suspended. It has been more than difficult to handle these tragedies and to have to watch my parents and family members deal with it. But we cannot be defeated by these things because our philosophy is that we have to make good out of the bad things that come our way. That is why I am here today -- the spirit of my sisters is here with me today too. I hope and I pray that no others have to face what my family has been through. It is no less than hell on Earth. This bill's passage would make Kansas a better and a safer place to live, raise a family, make an investment and conduct business.

To be honest, it's hard for me to understand why someone convicted of a violent crime should be given more than one chance when he violently acts unjustifiably and brutally toward another person, but giving an offender more than one chance seems benevolent when you think about the real affect on our communities. This bill is more than just the catchy phrase, "two 'strikes' and you're in" -- it's not a baseball game -- it's real life with real victims. The events tragically and profoundly affect the community like a rock ripples the calm waters. People who have been convicted of serious crimes know that society does not excuse or tolerate their conduct based on the sentence that is imposed on them. Should repeat offenders be given more than two chances when those who were victimized had no chance, no due process, no say, but everlasting results?

The offenders' victims, people we read about each day in the papers and hear about in 10 second spots on the nightly news, are not just stories in the newspapers and on television, they are not just statistics. They are sons and daughters, mothers and fathers, brothers and sisters, friends and acquaintances, entrepreneurs and factory workers. These offenders have not committed insignificant acts or even justifiable acts. We are talking about people who have been convicted and served time for one violent crime, and now are convicted of a second and waiting to be sentenced. Even though they have already received one serious sentence for their first violent crime, obviously, it has not worked as a deterrent nor has their time in the system worked to rehabilitate them.

Some people believe that prison time should be imposed for punishment and as a deterrent against future acts. Other people believe that prison should be rehabilitative. But no matter which way you believe, it is evident that it has not worked either way for repeat offenders. In that case, neither of these theories should be the concern. The primary concern should be to protect the State's citizens. For repeat offenders, the only way to do that is to sentence them to life in prison without the possibility for parole. We can't afford to give anyone more than two chances, it costs too much to the society and is undescrivably devastating to the victims and their loved ones. When we hear that a repeat offender gets out of prison and commits a third act of violence, don't we all say, "Why did they let him out? They should have known. What were they thinking?" Yet the current law makes that a possibility.

Some might say this is too harsh, that it is too extreme; but who are they thinking of -- the perpetrator and his rights or the innocent victims and their rights. Would any members of this Committee take a chance of living with a person who has been released from prison for the second time for a violent crime conviction? What about letting that person live with members of your family or with your friends? Your concern, common sense and gut reaction would warn you not to do it. But by releasing repeat offenders from prison, isn't that what we are doing? We are releasing them back into our communities to live with us. And when they commit violence against another human being, people are devastated, lives are ruined, and the community is irreparably harmed. But nothing can be done to turn back the clock once the damage is done. When you have to face this kind of a tragedy, you wish it were not true. But the damage cannot be repaired. That is why we have to PREVENT repeat offenders from striking again. The passage of this bill can help to do that.

Some might also argue that the cost of life in prison without the possibility for parole is too much for society to bare. But what about the cost to individuals and businesses (in lost productivity, lost work days, lost energy and ideas, lost dollars spent in the community) and what about the cost to communities (with more police officers to pay for, more parole officers to pay for, more fear in the community, more victims that depend on the State for care) and it goes on. The cost of caring for both my sisters since 1986 is well over \$2,000,000. And as you probably know, criminals don't usually carry insurance or have deep pockets. That figure doesn't even account for the hardship that members and friends of the family had to endure which is hard to value in dollars but certainly impacts on the economy. Think of the prospects in the community to which that money could have been directed and the lost investments that will never be able to solicit that money. And that was the care for only two individuals. Think of those costs state-wide.

I think we all know that repeat offenders should never be given the chance to victimize someone a third time. Protect the future of Kansas and protect it citizens. I ask that you work to see that this bill becomes law in the State of Kansas.

Thank you.

TESTIMONY IN OPPOSITION TO HOUSE BILL 2155
THURSDAY, JANUARY 26, 1995
HOUSE JUDICIARY COMMITTEE
HON. MICHAEL O'NEAL, CHAIR

My name is Carla Dugger. I am the Associate Director of the American Civil Liberties Union of Kansas and Western Missouri, a membership organization which supports and defends civil liberties and constitutional rights as provided by the Bill of Rights of the United States Constitution and Kansas Constitution. I also serve as the registered lobbyist.

"Two strikes" proposals are an archetypal example of non-reasoned legislation that sounds good but fails to have any real impact on crime. In many instances such bills are constitutionally suspect, imposing automatic life imprisonment for crimes which may not warrant so harsh a penalty and which have the potential to disproportionately impact people of color and the poor. These proposals also constitute bad public policy; are unnecessary due to existing federal sentencing guidelines for repeat or "career" criminals; expensively retain low-risk geriatric prisoners without a corresponding benefit to society; and fail to effectively curb the crime rate. For these reasons, the American Civil Liberties Union opposes "two- or three-strikes" proposals, which serve to displace the dialogue and resources needed to truly have an impact on violent crime.

Under the specific provisions of HB 2155, we won't see a build-up in the prison population until we reach the point when those charged with the same offenses would have been released under current law. A level 3 offender with one prior person offense could, under current law, be released with "good time" after five years. So by the year 2000, when these prisoners who would otherwise have been released remain where they are, we will begin to experience the annual compounding of what could be called "terminal" prisoners.

We urge this Committee to carefully consider the fiscal note before taking action on this bill. Note that there are no mechanisms whatsoever for early release, no matter what the mitigating circumstances of the individual prisoner sentenced under HB 2155. Take the case of a man who, at age 19, was convicted of indecent liberties with a child when he had consensual sex with a 15-year old, and then hurt someone badly in a bar fight at age 20 (aggravated battery), and is sent away for life under the provisions of this bill.

Perhaps the sponsors are counting on the Kansas Governor in the year 2035 to remedy problems created by "two strikes" legislation by granting wholesale pardons to this man and other 60 year-olds who are no longer any conceivable threat to society, and may not have been such a significant threat in the first place.

By then, how much money has the state spent on warehousing them? The solution Great Britain came up with was to ship life-term prisoners to Botany Bay in Australia. We have no such "remedy" available in this country.

However, there are other ways to spend the state's money that could really help decrease the need for "two strikes" legislation in the future, a remedy which would actually make Kansans safer. We would suggest increased state services for juveniles -- education, social services, and sensible alternatives to imprisonment with supervision, not just surveillance. The money you spend on prisons and prisoners could be used to keep kids from turning into sexually violent offenders in the first place. I would prefer to live in a state like that, and I'm sure most people would agree with me.

When you examine the fiscal note, please think about what other uses you might like to see this money go toward.

In addition to the cost of this legislation, please take a close look at the kinds of crimes included in HB 2155. We've all heard the horror stories about violent offenders who are released too soon, without counseling or other services, and who repeat their crimes.

Here is a different kind of "horror story." A person convicted of one person felony gets into a bar fight and injures the other party. He knows he's looking at a life sentence. What incentive does he have not to go ahead and "finish off" the man he has injured? It's not premeditated, so he won't get the death penalty. He might as well kill the man.

Last year, the Kansas legislature enacted several major pieces of crime legislation which doubled the sentences for severity levels one through five crimes, categories A & B; made it easier to receive the 'hard-40' sentence; and of course re-enacted the death penalty.

Last year, this body also considered legislation similar to HB 2155 and rejected it. What is different this year? Does the state have more money to pay for greatly increased numbers of terminal prisoners in our penitentiaries? Has the crime rate skyrocketed? Will we really be safer if HB 2155 passes?

What will you do next year to be "tough on crime?"

The American Civil Liberties Union asks you not to confuse "sensible on crime" with "soft on crime." If this bill is passed, in five years we will begin to see the effects in terms of an increasingly unmanageable prison population, and then in 15-20 years we will begin to see the effects of a very geriatric prison population. Will Kansans in the year 2015 thank you for being so "tough" on crime, or will they wish you had been "sensible" on crime?

Please oppose House Bill 2155.