

Approved: 1-17-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on January 11, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Bond (excused)
Senator Martin (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Pat Hubbell, Kansas Railroad Association
Howard Ferguson, United Transportation Union
Jim Clark, County and District Attorneys Association
Tom Wilder, Kansas Insurance Department
Kyle Smith, Kansas Bureau of Investigation
Randy Hearrell, Judicial Council

Others attending: See attached list

The Chair called the meeting to order and announced that the meeting's agenda would include the introduction of proposed bills, a hearing on **SB 339**, and review and consideration of the holdover bills.

Bill introductions:

Senator Petty requested the introduction of a bill that would reduce the amount of time that specimens are held in the coroner's office with the prosecutor's approval. Senator Petty stated that current statute requirements that a coroner keep specimens in the office three years; and apparently, it is unnecessary because after that time the specimens have decomposed. This proposed bill would allow the prosecutor to sign off that there is no longer a need for that specimen. Senator Petty concluded that it would be a cost saving measure.

Motion was made by Senator Oleen, second by Senator Parkinson to introduce a bill that would reduce the time specimens are held by the coroner's office to two years provided the prosecutor has signed off that the specimen is no longer necessary. Motion carried.

Mr. Tom Wilder of the Kansas Insurance Department requested that a bill be introduced by the Senate Judiciary Committee. (Attachment 1) The proposed legislation would do the following:

1. Clarify the requirement for insurance companies to report suspected insurance fraud.
2. Make specific reference to the ability of the Insurance Department to investigate and prosecute insurance fraud by companies and insureds.
3. Set criminal penalties for fraudulent insurance acts.
4. Increase the statute of limitations for prosecution of criminal insurance fraud.

A motion was made by Senator Feleciano, second by Senator Reynolds to request as a Committee bill. Motion carried.

Mr. Hearrell, Judicial Council addressed the Committee requesting that three bills be introduced. The conferee presented copies of the proposed legislation to the Chair. The conferee described each of the proposed bills.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 11, 1996.

The conferee stated that one of the proposed bills concerned the reorganization of the statutes pertaining to the care and treatment of mentally ill persons. The conferee stated that the proposed legislation would reorganize the current statutes, provide revisions consistent with mental health reforms, and provide some clarification.

The next proposed legislation would amend K.S.A. 12-4509 related to reimbursement to city courts for the cost of providing counsel. The conferee stated that currently, unlike the district court, there is no statutory authority to require convicted indigent defendants to repay the city for expenditures for appointed counsel in the municipal court. The proposed changes made to K.S.A. 12-4509 by the Judicial Council would make the reimbursement to city courts parallel to the payment system of the district court.

Mr. Hearrell stated that the third proposal is the closing of certain small conservatorships. The conferee explained that this proposal would amend K.S.A. 50-3026 to allow medical assistance expenses and other expenses due the SRS to be paid directly by order of the judge.

Motion made by Senator Oleen, was seconded by Senator Reynolds to introduce the Judicial Council's three bill proposals. The motion carried.

Mr. Kyle Smith, Assistant Attorney General and Special Agent with the Kansas Bureau of Investigation, (KBI) discussed requested legislation. (Attachment 2)

Mr. Smith stated that the first request addresses the difficulty of having witnesses come forward in drug investigations, and protecting them once they come forward. The conferee stated that the federal government addressed that problem by creating a statute allowing the identity of federal informants not be revealed until the person actually testifies. Mr. Smith pointed out that once the witness has testified, the testimony is on record and there is not a reason to kill him. The conferee stated that it would be helpful to the KBI to have a similar law.

The second bill requested by Mr. Smith would change the statute to distinguish between paraphernalia for trafficking drugs and possession paraphernalia. The conferee requested that possession for personal use of paraphernalia remain on the same severity level, a misdemeanor. However, in crimes where paraphernalia is used in the trafficking of drugs, the law should be amended to make that a severity level four (4) crime on the drug grid.

Third bill requested by the KBI concerns money laundering statute, K.S.A. 65-4142. Mr. Smith stated that the KBI is requesting a bill enhancing the penalty for money laundering of drug proceeds to a severity level 4 drug offense.

Motion by Senator Feleciano, second by Senator Reynolds to introduce the proposed legislation requested on behalf of the KBI by Mr. Smith. The motion carried.

SB 339--Concerning crimes and punishment for destruction of railroad property.

Mr. Pat Hubbell, representing the Kansas Railroad Association, addressed the Committee as a proponent for **SB 339**. The conferee related that problems with trespassing and vandalism on railroad right-of-ways have increased. The conferee related that graffiti is a problem for railroads, because it is used as a communication system for gangs. The conferee stated that this proposed bill provides increased protection for railroad workers by specifically prohibiting certain malicious acts and providing penalties, and should reduce the number of fatalities due to trespassing. (Attachment 3)

Mr. Hubbell offered that lines 24 and 25 of **SB 339** should be deleted. Those lines concern the discharge of a firearm, and that offense is covered under a section in K.S.A. 21-4217 concerning drive-by-shootings. The conferee concluded that the Kansas Railroad Association believes there is a need for some type of recognition of the problems and potential problems faced by the railroads.

Committee discussion followed concerning current laws that already apply to some of the offenses listed in **SB 339**. The issue of higher severity levels under existing laws for the same offenses than what was signified in this bill was discussed by the conferee and the Committee members.

Howard Ferguson, Assistant Legislative Director, United Transportation Union of Kansas who was serving on behalf of the Director John Lindsey spoke in support of **SB 339**. Mr. Ferguson stated that UTU strongly supports every effort to discourage public trespassing on railroad property. (Attachment 4)

Mr. Ferguson encouraged the use of a new approach found in SB 339 which addresses specifically crimes against railroads. The conferee stated that three risk groups were identified as most often offenders. They are

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 11, 1996.

the youth, sportsmen, and substance abusers. The conferee stated that **SB 339** coupled with increased law enforcement will help encourage young people to find other places to congregate. Mr. Ferguson noted that hunters are often possessive of the railroad right-of-ways and occasionally take pot shots at the engine. The conferee concluded that **SB 339** will strengthen the trespass laws in Kansas.

In response to Senator Feleciano's question, Mr. Ferguson stated that this bill should have no impact on hunters.

The Chair noted that written testimony was provided by Mr. Jim Keele, Chairman of the Brotherhood of Locomotive Engineers Kansas Legislative Board in support of **SB 339**. Mr. Keele stated that **SB 339** provides a reasonable, enforceable statute to be used by law enforcement to address the problem of trespassing on railroad property and may reduce the number of resulting fatalities. (Attachment 5)

Mr. Jim Clark, Kansas County and District Attorneys Association, testified addressing concerns with the enforcement of **SB 339**, and its effect on other statutes in the criminal code. The conferee stated that the opposition to this bill is strictly technical in nature. The issue of concern is the Courts' application of the specific language in this bill with lesser penalties for offenses already covered under other statutes. Mr. Clark addressed other conflicts this bill has with existing statutes, which would lessen the penalties for certain crimes listed under this bill. (Attachment 6)

During Committee discussion, Senator Vancrum offered that it might be easier to place the specific incidence(s) listed in **SB 339** into existing law and broaden those definitions. In response to Senator Parkinson's question, concerning a creation of a new crime under this bill, the conferee stated that the act leading to unintentional derailment might be one.

Senator Parkinson requested that Mr. Clark collaborate with the proponents of **SB 339** to determine if this bill creates a new crime, that is not covered under existing statutes, and that suggestions be offered on how to incorporate such crimes into existing statutes.

In response to the Chair's request to communicate with the proponents and the revisor to get something drafted, Mr. Clark agreed.

The Chair referred to a list of bills to be purged from Committee assignment. (Attachment 7)

The Committee discussed issues concerning the bills to be considered during this session.

The Chair offered that the following bills should be reported adversely: **SB 72, SB 130, SB 131, SB 141, SB 142, SB 156, SB 183, SB 207, SB 231, SB 233, SB 238, SB 248, SB 250, SB 295, SB 313, SB 332**, total of sixteen senate bills.

Motion made by Senator Parkinson, second by Senator Vancrum to report those bills adversely. Motion carried.

The Chair adjourned the meeting.

The next meeting is scheduled for January 16, 1996.

#

Kansas Insurance Department

MEMORANDUM

To: Senate Judiciary Committee

From: Tom Wilder, Kansas
Insurance Department

Re: Request for Introduction of Legislation

Date: January 11, 1995

On behalf of the Kansas Insurance Department, I would like to request the Senate Judiciary Committee introduce the attached legislative proposal as a committee bill. The legislation is designed to make the following changes to the Kansas Insurance Code:

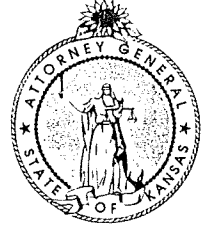
- (1.) Clarify the requirement for insurance companies to report suspected insurance fraud to the Kansas Insurance Department.
- (2.) Make specific reference to the ability of the Insurance Department to investigate and prosecute insurance fraud by companies and insureds.
- (3.) Set criminal penalties for fraudulent insurance acts.
- (4.) Increase the statute of limitations for prosecution of criminal insurance fraud.

Sen Jud
1-11-96
Attach. 1-1



LARRY WELCH
DIRECTOR

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



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, SPECIAL AGENT
BEFORE THE SENATE JUDICIARY COMMITTEE
REQUESTS
JANUARY 11, 1996

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General and Special Agent with the Kansas Bureau of Investigation (KBI). I appear today in behalf of the KBI and our Director Larry Welch to request this Committee introduce three bills which we believe would assist law enforcement in our continuing war on drugs.

1. Due to the rising level of violence and intimidation by drug organizations and gangs, a recurring problem has been convincing witnesses to come forward and keeping them protected during investigations and prosecutions. One of the responses under federal law has been to pass a statute that provides that informants do not need to be identified until they actually testify before a court. Of course, once the testimony is preserved on record it can be later used if the witness were to disappear. Such a statute would not only provide protection of greater anonymity for witnesses to come forward, but would remove the benefit that a drug dealer might derive from killing such a witness, as the recorded testimony can still be used against them. We would request a bill that would copy and adopt the federal statute into our state law.

2. Current Kansas statutes treat all drug paraphernalia, whether it be for personal use,

sale or manufacturing of drugs, as the same level of offense, generally a class A misdemeanor. We would request a bill that would amend K.S.A. 65-4152, 65-4153 and 65-4154 to appropriately differentiate between possession of drug paraphernalia which is utilized merely in possession for consumption of narcotics such as a bong, versus paraphernalia which is utilized in the more serious trafficking offenses such as distribution or manufacturing. Specifically we would request the bill increase the penalty for knowing possession of paraphernalia for manufacturing and distribution of drugs to a level 4 drug offense. This would still be presumptive probation for persons with up to one prior felony conviction. However, it would more properly reflect the seriousness of persons engaged in the trafficking of narcotics versus mere possession and consumption.

3. In 1992 we worked with this Committee to pass a money laundering statute in Kansas, K.S.A. 65-4142. Its provisions apply only to the laundering of drug proceeds. However, during the conversion to the sentencing guidelines it was converted from a class C felony to a level 7 non-person felony, not even included on the drug grid. In a recent case where a person was convicted of laundering over \$800,000 in drug money, the county attorney pointed out to me the inappropriateness of this type of sentence for this type of activity. We would request a bill enhancing the penalty for money laundering of drug proceeds to a level 4 drug offense.

Thank you for this opportunity to make these bill requests.

Requests

3
KANSAS RAILROAD ASSOCIATION

800 JACKSON

SUITE 1120

TOPEKA, KANSAS 66612-1292

PATRICK R. HUBBELL

913-435-3392

STATEMENT
by Pat Hubbell

KANSAS RAILROAD ASSOCIATION

Presented to the
KANSAS SENATE JUDICIARY COMMITTEE
Senator Tim Emert, Chairman

Statehouse
Topeka, Kansas
January 11, 1996

Sen Jud.
1-11-96
Attach. 3-1

For the record, Mr. Chairman, my name is Pat Hubbell and I appear today on behalf of the Kansas Railroads supporting SB 339.

* For the first time in 1990 and each year since, the number of trespassers who have died on railroad rights-of-way nationally exceeded 500.

* The trend in trespasser fatalities since 1975 has been steadily increasing to a point that in recent years trespassing fatalities are almost equal to the number of highway railroad crossing fatalities.

* SB 339 also provides increased protection for railroad workers by specifically prohibiting certain malicious acts and providing penalties.

Railroads have a strong interest in public safety and the safety of their employees. Each year, Kansas railroads spend millions of dollars on rail, ties, communications, signals, and other equipment, to maintain safe and efficient railroads for the benefit of our customers and communities we serve.

Yet these railroads, by their very nature, can potentially be subjected to great harm through willful, intentional acts, and even careless unintentional acts by persons illegally trespassing.

Today's railroads use extensive and highly complex electric signalling and communications systems to schedule and control train and maintenance operations. Elements of these systems are integral parts of the track's structure and right-of-way. However, some elements of the systems, such as microwave towers, can be located several miles away from the track and the right-of-way to enhance communication capacities.

The risk of harm is not confined to the particular company itself, but also to the public at large. Most trains carry 6,000 to 10,000 tons of freight, some of which might be hazardous. The railroads have one of the best safety records for moving freight, yet the potential risk from a derailment or collision of two trains caused by someone trespassing on railroad property is significant both to the public and to our employees.

On behalf of the Kansas Railroads, I respectfully urge your support of SB 339.

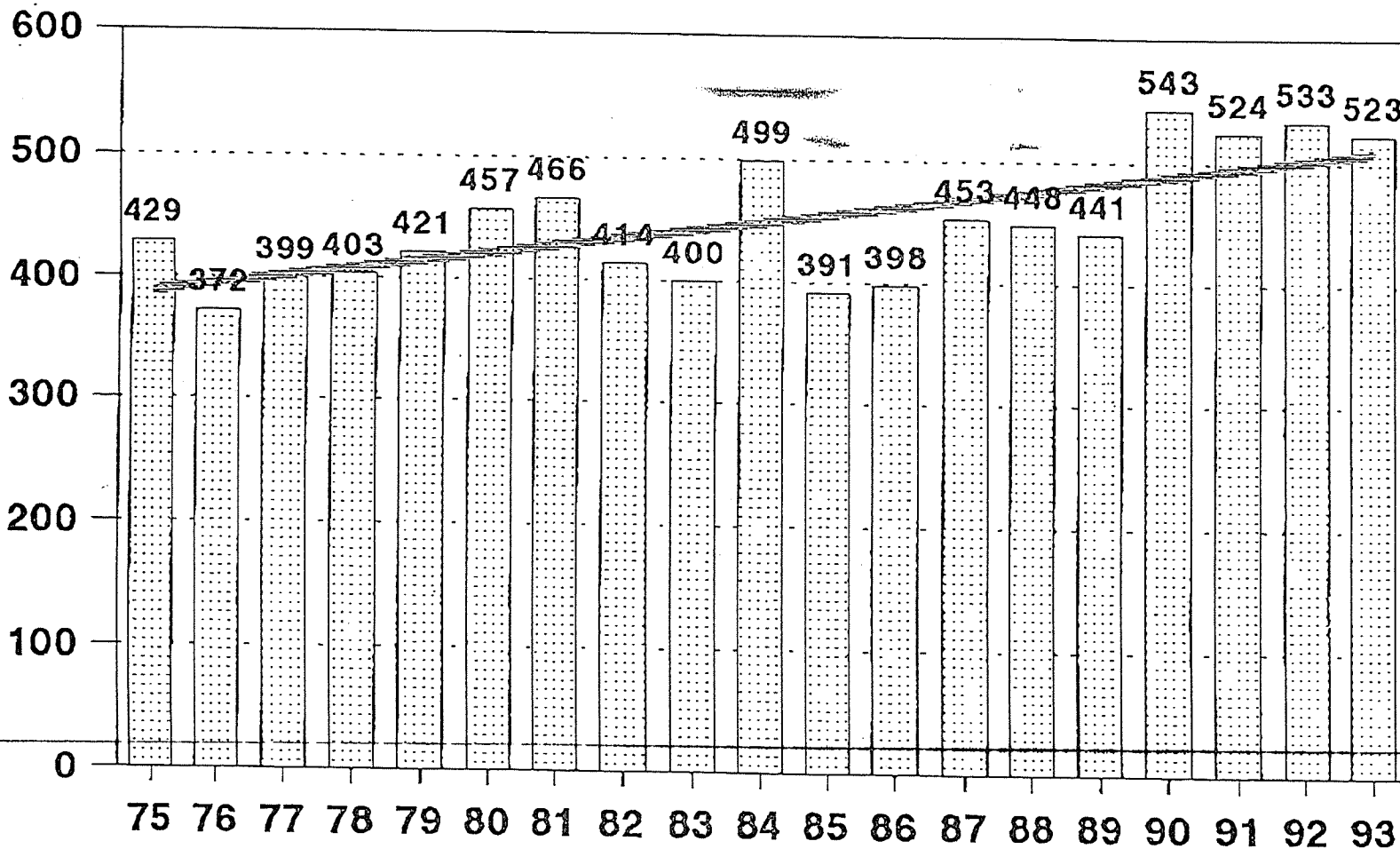
Thank you.



Trespasser Fatalities

U.S. Railroads

3-4



— Trend

Source: Federal Railroad Administration

Romance of the rails
lures some unlikely vagabonds

Weekend hobos

Keeping
track of
freight-hopper
lingo

Here, courtesy of Hobo Times magazine, is a partial glossary of hobo vernacular:

Angel food: Mission food after listening to a sermon.

Beanery: Railroad coffee shop.

Blowed-in-the-glass: A professional hobo.

Bone polisher: Mean dog.

Boomer: Migratory worker.

Bull: Railroad detective.

Catch out: Hop a freight.

Clover kicker: Farmer.

Croaker: Doctor.

Dog train: Slow freight.

Frisco circle: A circle drawn in the dirt, into which hobos contribute money.

Gator flats: Florida.

Hog: Locomotive.

Hotshot: Fast freight.

Jolt: Jail sentence.

Lump: Handout.

Midnight zipper: Fast night train.

Mop stick: Barfly.

Pear diver: Dishwasher.

Poodle: Town marshal.

Pound the ear: To sleep.

Rubber tramp: Tramp who travels by car.

Saddle blankets: Hot cakes.

Shakeytown: Los Angeles.

Side-door pullman: Boxcar.

Slave market: Employment agency.

Slides: Shoes.

Splinter belly: Carpenter.

Stem: Street.

Stew bum: Old-timer wasted too much booze.

Tap city: Broke.

Tangled-in-the-vine: Go on an extended drinking binge.

Teapot: Locomotive.

Throw the feet: Beg.

Unit: Diesel engine.

Weed patch: Hobo jungle.

By Ted Gregory

TRIBUNE STAFF WRITER

There are rich moments of hobo lore, and then there are occasions like the one that began unfolding in the predawn light of an Iowa rail yard a few weeks ago. With a growing chorus of birds chirping, the twitch of anxiety was becoming acute in "Milwaukee Mike." He had been sitting for nearly two hours in the lawn chair he often uses for his recreational—and entirely illegal—freight train rides. His arm was draped on the bar of a parked tanker car.

The eastbound train Mike was expecting to transport him and two companions back to Chicago hadn't arrived. In fact, he was unsure exactly when it would reach the yard and which of the six or so tracks on either side of him would carry the freight. The morning was starting to feel muggy and bugs were buzzing about him, in search of breakfast.

"This is what I hate about riding freights," he sighed, and swatted. "The novelty of this stuff wears off. It really does."

Mike caught his train, a source of temporary glee, when it stopped in the yard to change crews, but it happened to drop him about four miles from his destination, forcing him to walk that distance under a burning sun after a rocky, 12-hour journey without sleep. He ditched the lawn chair.

These are the yarns somehow lost in the romanticized reminiscence of the hobo legend, but they're good enough for the bull sessions at the North Side pizza joint where Mike and his kindred spirits meet discreetly every month. They trade stories of their adventures on the rails, plan trips, occasionally welcome visiting hobos and exchange the latest tips on riding the rails for free.

They are the "Loco Motives." Have lawn chairs, will travel.

Mike has given the group its name, though

CONT.

they hardly look as if they've earned the distinction. They are a modest collection: a wispy college philosophy professor, an advertising executive from the suburbs, a spectacled medical professional, and Mike, a sales engineer with a wife and grown son and daughter.

Let appearances not mislead, however. These affable men are railroad renegades, part of the legacy of the disappearing hobo culture and a small social group in the large, lawbreaking contingent that railway companies would like to terminate with extreme prejudice. They're called Recreational Hobos.

"It's illegal to ride freight trains?" asked Mike, 56, with deadpan demeanor. "It's hardly a serious crime," he added. Mike, like the other rail riders, agreed to talk about his adventures publicly only with the promise of anonymity.

"And I think the only reason the railroads make it illegal is to protect themselves," he said.

It is definitely about protection, freight officials say. Protection of railroad property and personnel, protection of customers' shipments and, most important, protection of human life.

"We're very sensitive and very appreciative of people who hold the railroad in a special place in their hearts," said Patrick Carter, police chief of the Santa Fe Railway, "and we think it's great that they want to preserve that, but the way to do it is not to illegally trespass on railroad property and hop freights. It's analogous to appreciating airplanes and standing on a runway while DC-10s take off and land."

Added John Fitzpatrick, spokesman for the Federal Railroad Administration in Washington, D.C.: "I would characterize recreational hoboeing as undoubtedly an illegal, dangerous and stupid act. It boggles my mind why people would risk their lives, regardless of the romantic images conjured up in hobo lore."

Call of the road

The philosophy professor knows why, but even he struggles to find the right words to describe the allure of the rails.

"If you were to press me, I'd say there's a sense of independence," said the 51-year-old professor, husband and father who carries the road name "Oats." "There's the

awe-evoking character of the movement of the freight train, that you're in the presence of something much larger than yourself, and the sense of being alone."

And, while the illegality bothers him, he contends that he and his friends are harmless.

"We don't do anything terrible," Oats said. "We don't vandalize. We don't pull the pins on cars. We don't harm anything. We don't bother anyone. We just ride."

Before they get blamed for encouraging a recreation that severs limbs and splatters bodies, the Loco Motives would like to acknowledge that this mode of travel can be hard, noisy, dirty and uncertain.

Another thing: Riding freight trains constitutes trespassing and, while it is unevenly enforced, conviction on such a charge could yield a \$1,000 fine and up to six months in jail.

Typically, rail police say, a trespasser is fined several hundred dollars and may be kept in jail for a few days, but rail riders say severe penalties rarely are enforced and punishment most often amounts to being shagged off railroad property. Many times, riders say, rail yard employees are cooperative and almost collegial, as long as they determine the rider is a sane individual who just enjoys the recreation of hopping a freight.

Riding freights also can be extremely dangerous, particularly if a rider chooses to jump on or off a moving freight train. Statistics from the Federal Railroad Administration show that trespasser fatalities—deaths of people who are illegally on railroad property—are steadily increasing and totaled 529 last year.

The Loco Motives say they hop on or remove themselves from trains that are standing still. Those members who say they have tried to jump from even slow-moving trains quickly point out that they narrowly escaped serious injury and they vow never to try it again.

The critical element is how to find freights that are stationary, and the Loco Motives have taken care of that too. They have acquired an extremely thorough underground guide to crew change points—those spots along the rails where trains stop to allow a fresh crew aboard—and the men conduct their own

research during their travels.

The guide also contains information about where most of the freights are traveling, though a rail rider's timetable must be extremely flexible—freights can stop and sit for an hour or more in the middle of nowhere—and open to missing specific destinations.

Other useful nuggets, including what to bring on a ride and preferred cars for riding, are provided in the guide. One of the most comfortable spots is the four-foot-deep wells on "double stack" cars.

Large containers are stacked and locked into place on the cars, which resemble long, narrow bathtubs on wheels. The positioning of the containers leaves a well at one end that typically measures about 5- by 8-feet—perfect for a couple of lawn chairs and their occupants.

Rail truths aren't pretty

Along with the lawn chair, some riders also like to bring cotton balls to stuff in their ears. The trains groan and rock and let out

a metallic screech that can be as frightening as it is exhilarating. Grime is a constant companion, picked up from everything you touch. Remember, porters do not clean these compartments after every trip to Carbondale.

And, in most cars, hobos are largely at the mercy of the weather. Winds can rush through the compartment as the freights hit speeds of up to 55 miles an hour, making sturdy layers of clothes flap as if they were flimsy flags in a stiff winter gust.

Temperatures are exaggerated. If it's sunny, you can bake on the metal cars. If it's chilly and you lack padding as a shield from the car floor, it can feel as if you're sitting on a large, frozen TV dinner tray.

Oh, and by the way, forget about potty breaks while riding, unless you lug a bulky plastic jug and are extraordinarily agile, or want to risk a most humiliating obituary.

The problems definitely take a bit of the luster off the romantic imagery of riding the rails and living the vagabond life, but they contribute something to the sense of adventure, rail riders say. The views from freight trains can be

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	408 388 370	386 366 346	178 170 161	167 158 150	154 146 138	141 134 127	127 122 115	116 110 104	103 97 92
II	308 292 276	288 274 260	135 128 121	125 119 113	115 109 103	105 100 95	96 91 86	86 82 77	77 73 68
III	206 194 184	190 180 172	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Default Box
Presumptive Imprisonment

4 Ferguson
united transportation union

DONALD F. LINDSEY, JR.
DIRECTOR/CHAIRMAN

KANSAS STATE LEGISLATIVE BOARD

January 11, 1996

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**STATEMENT OF DONALD F. LINDSEY JR., DIRECTOR
KANSAS STATE LEGISLATIVE BOARD
UNITED TRANSPORTATION UNION
IN SUPPORT OF SENATE BILL 339**

**PRESENTED TO SENATE JUDICIARY COMMITTEE
HONORABLE TIM EMERT, CHAIRMAN**

My name is Howard Ferguson, Assistant Legislative Director for the United Transportation Union in Kansas. I appear today on behalf of our Director, Don Lindsey, who is undergoing medical tests this morning. The UTU represents approximately 6,000 active and retired railroad workers and their families in Kansas. We appear today as a proponent to S.B. 339.

The United Transportation Union feels strongly that every effort must be made to discourage the public from trespassing on railroad property. We feel that Senate Bill 339 is a step in that direction.

Whenever one reads that a young man or woman was injured or killed on railroad property, it is a story of an injury or death which should never have happened. These injuries and deaths are avoidable because the act of trespassing itself is avoidable.

The CSX railroad recently conducted a study on their railroad of trespasser incidents between the years 1989-1993. When these incidents were broken down by age, the study indicated that 73% of the involved individuals were under the age of 35. Of that 73%, 49% of the trespassing incidents were attributed to individuals between the ages of 0-25. I have attached several graphs and statistical information to my testimony for your ready reference.

In December 1994, our Director, Don Lindsey, attended a Federal Railroad Administration seminar on Trespassing and Trespassing Enforcement. During this conference, three high risk groups were identified. They were: youth, sportsmen and substance abusers. The UTU believes that everything must be done to discourage and prevent young people from congregating on or near railroad property. Also, we must discourage sportsmen from using railroad right-of-ways as their personal trails into the wilderness. We believe that a bill, dealing specifically with the problem of railroad trespassing will prove beneficial.

Insanity has been defined as "expecting different results while doing things the same old way". It is for this reason, we believe, we should try a new approach. S.B. 339, coupled with increased law enforcement, will help encourage young people to find other places to congregate. The UTU acknowledges there are several factors which contribute to fatalities and injuries while trespassing on railroad property. Some of them are: 1.) low priority for public law enforcement agencies; 2.) difficult for railroads to police such large areas; 3.) the lack of parental direction; 4.) the fact that railroad tracks represent a short cut between points; and 5.) weak trespass laws.

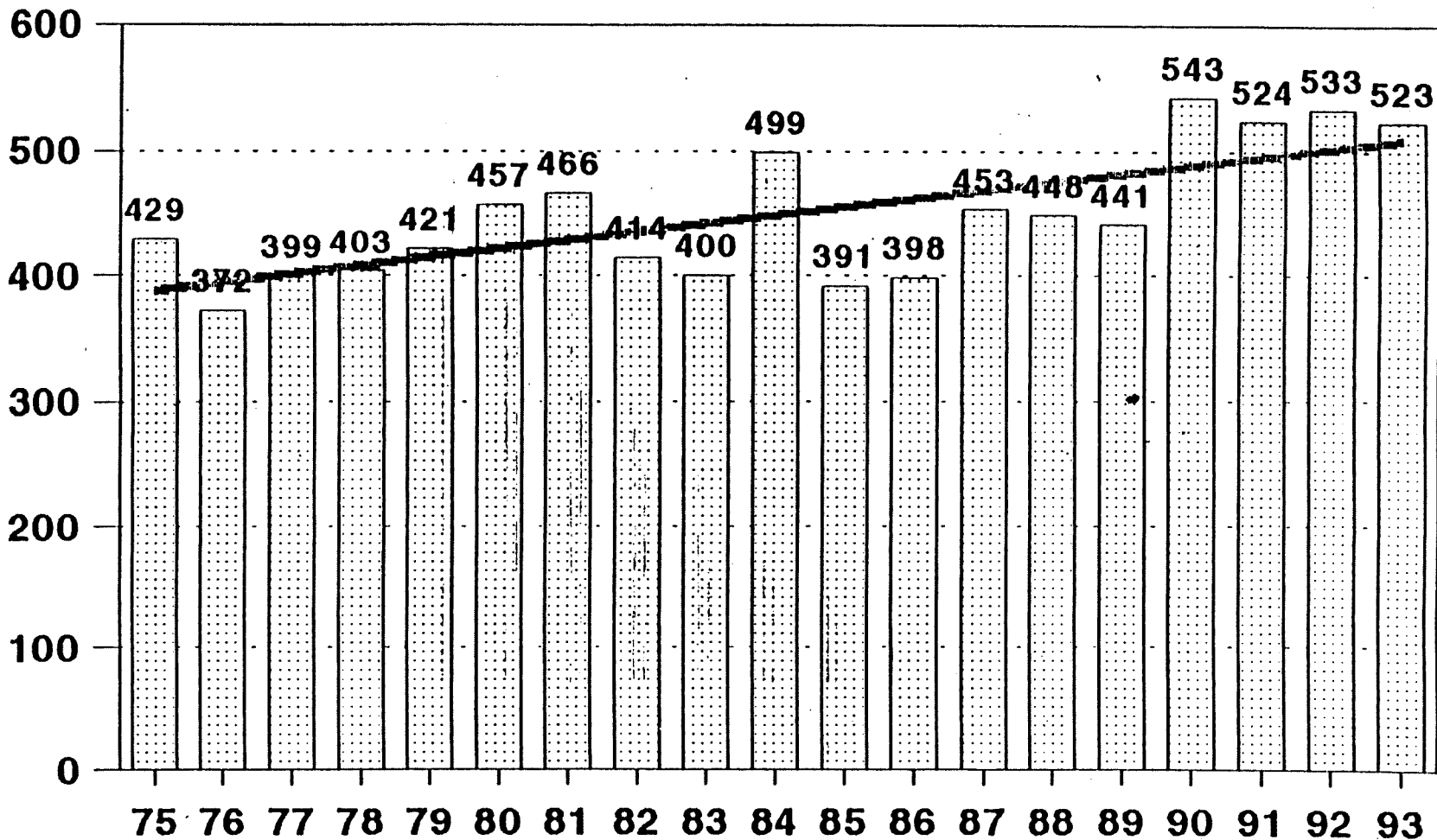
While UTU acknowledges there is a great need to work on all of the above named areas, S.B. 339 will address one of them, which is to strengthen the trespass laws in Kansas.



Trespasser Fatalities

U.S. Railroads

4-2

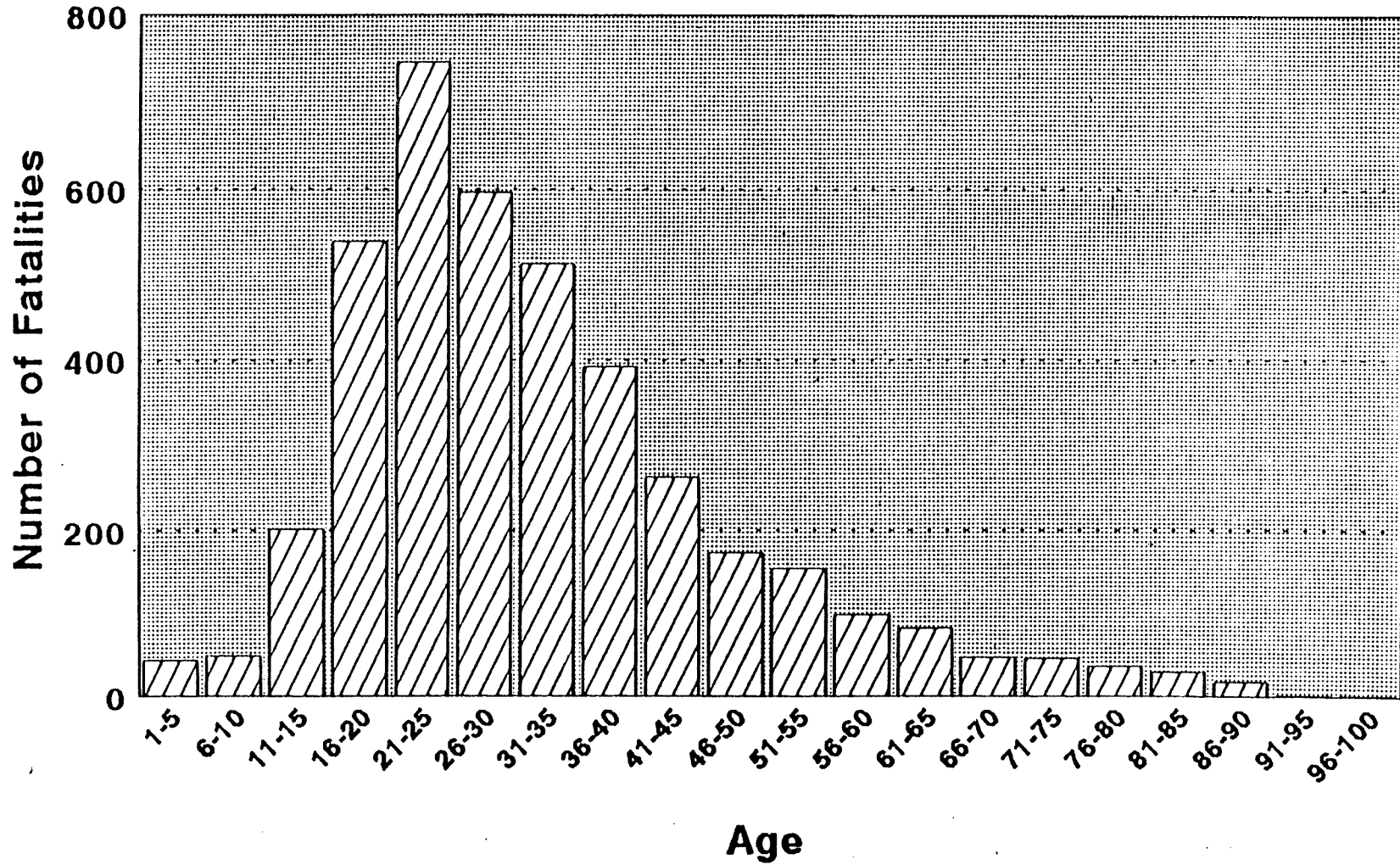


— Trend

Source: Federal Railroad Administration

TRESPASSER FATALITIES BY AGE

(1984-1993)



7

7

4

Agos 16 thru 35 comprised 50 percent of fatalities.

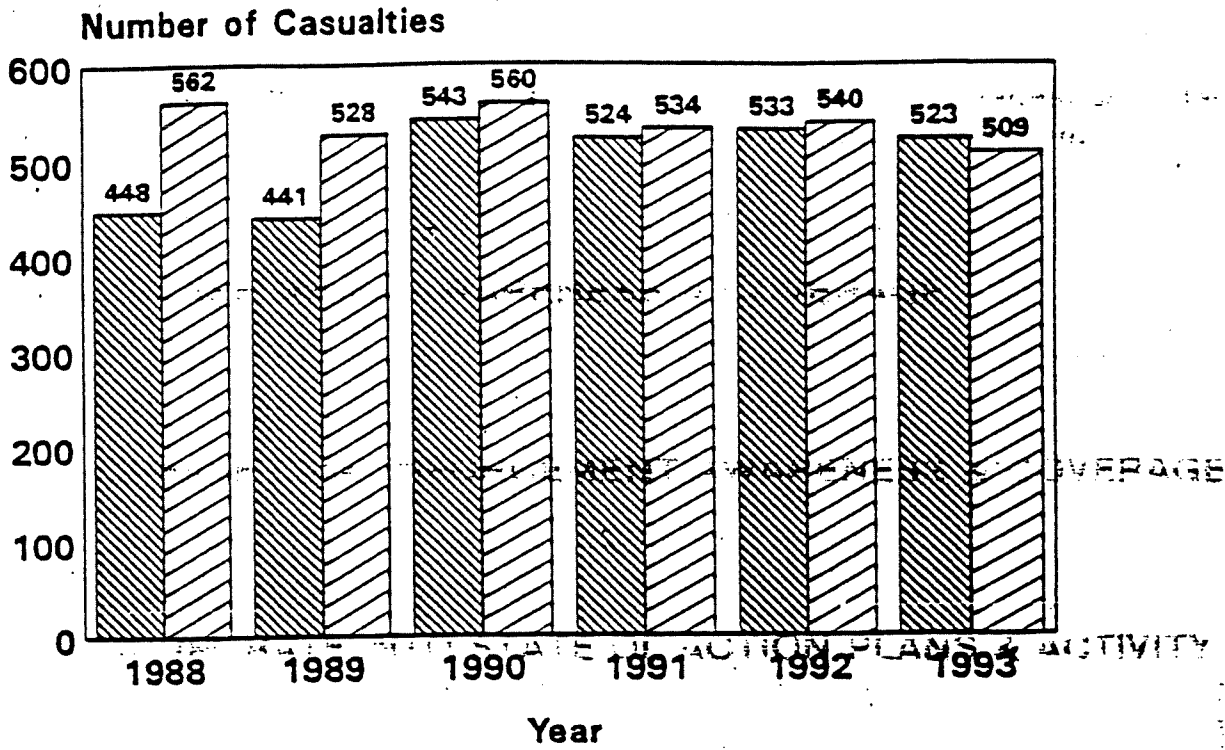
Source: Federal Railroad Administration

TRESPASSER FATALITY RATES
(FATALITY RATES X 100 / ROW MILES) 1984-1993

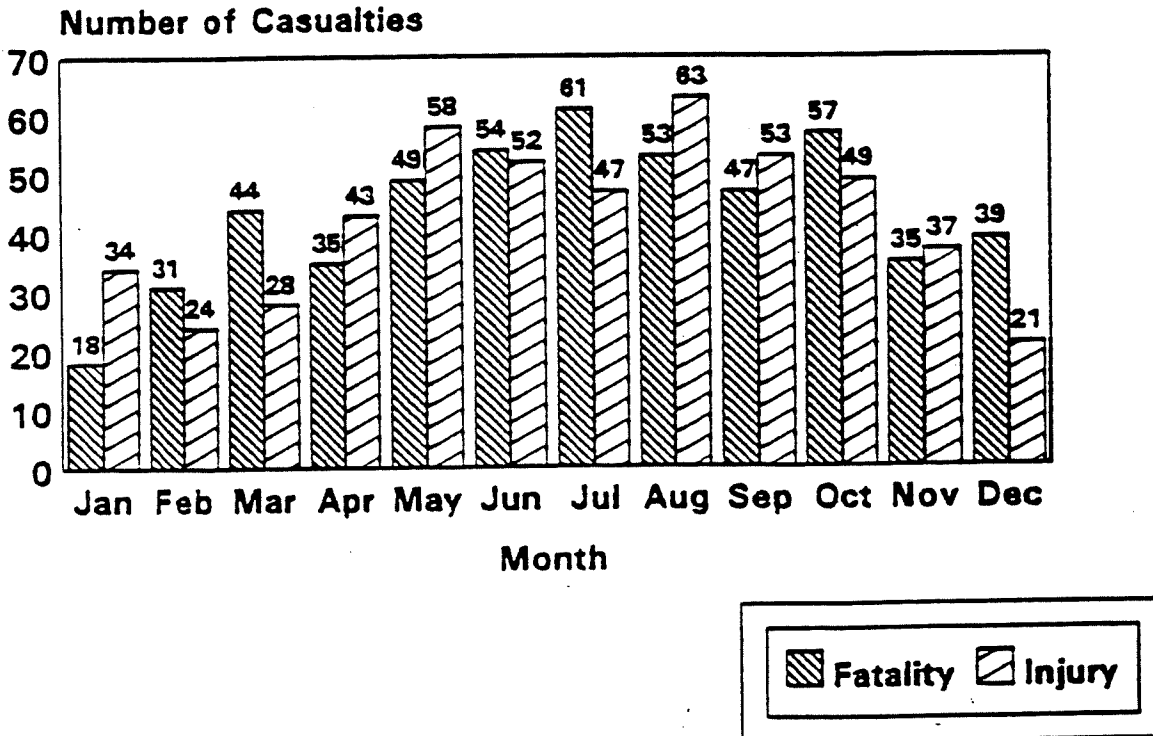
<u>STATE</u>	<u>10-YEAR FATALITIES</u>	<u>ROW MILES</u>	<u>FATALITY RATE</u>
Alabama	74	3,180	2.32
Arizona	89	1,413	6.29
Arkansas	47	2,036	2.30
California	559	5,537	10.09
Colorado	43	3,267	1.31
Connecticut	44	192	22.91
Delaware	17	226	7.52
District of Col.	8	37	21.62
Florida	272	2,037	13.35
Georgia	135	3,909	3.45
Idaho	20	1,665	1.20
Illinois	299	7,104	4.20
Indiana	111	3,492	3.17
Iowa	27	3,238	.83
Kansas	43	4,830	.89
Kentucky	75	2,425	3.09
Louisiana	80	2,401	3.33
Maine	6	-	0.00
Maryland	71	792	8.96
Massachusetts	86	441	19.50
Michigan	76	2,458	3.09
Minnesota	72	4,509	1.59
Mississippi	44	1,463	3.00
Missouri	79	4,669	1.69
Montana	37	2,266	1.63
Nebraska	35	3,810	.91
Nevada	18	1,352	1.33
New Hampshire	1	-	0.00
New Jersey	246	957	25.70
New Mexico	41	1,893	2.16
New York	317	2,413	13.13
North Carolina	176	2,614	6.73
North Dakota	15	3,276	.45
Ohio	156	4,543	3.43
Oklahoma	68	2,886	2.35
Oregon	54	2,361	2.28
Pennsylvania	206	3,606	5.71
Rhode Island	6	-	0.00
South Carolina	115	2,184	5.26
South Dakota	1	1,173	.08
Tennessee	81	2,199	3.68
Texas	382	10,315	3.70
Utah	18	1,396	1.28
Vermont	1	-	0.00
Virginia	129	3,261	3.95
Washington	151	2,767	5.45
West Virginia	61	2,700	2.25
Wisconsin	43	1,765	2.43
Wyoming	14	1,785	.78
TOTAL	4,749	122,843	3.86

1/ The fatality rates shown here were calculated by multiplying the total number of fatalities which occurred in each state during the 10-year period 1984-1993 by 100 then dividing by the total number of right-of-way track miles for Class I railroads within the state.

**TRESPASSER FATALITIES AND INJURIES BY YEAR
(1988-1993)**



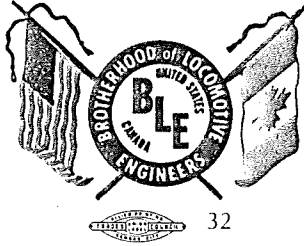
1993 TRESPASSER FATALITIES AND INJURIES BY MONTH



Source:
Federal Railroad Administration

Brotherhood of Locomotive Engineers

Kansas State Legislative Board



January 16, 1996

Mr. Chairman and members of the committee my name is Jim Keele. I am Chairman of the Brotherhood of Locomotive Engineers Kansas Legislative Board. I wish to submit this testimony in support of Senate Bill 339.

Last year in a ABC news 20/20 story it was reported that there are now more fatalities due to trespassing on railroad property (over 500 last year) than occur in U.S. airline accidents. The glaring fact about this statistic is that all these fatalities should have never happened. Federal Railroad Administration records indicate 70% of all trespassing fatalities were persons between 16 and 45 years of age. These are people whom shall we say were old enough to know better.

We believe that Senate Bill 339 addresses one of the major factors that will lead to preventing these fatalities by providing a reasonable, enforceable statute to be used by law enforcement to better address this problem. We should no more tolerate trespassing on railroad right of ways than we should tolerate these same bon fire parties, hunters, hikers and vandals in the medians of our interstate highways.

With the increasing rail traffic in our state this is a problem that will only accelerate into more tragic proportions without the passage of a more stringent statute like Senate Bill 339.

For myself and the other 650 locomotive engineers in the State of Kansas who must deal with this kind of tragedy in the course of our employment, I thank you for allowing me to submit this testimony and to urge your support for Senate Bill 339.

Sen Jud.
1-11-96
Attach 5-1

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Testimony Regarding SB 339

The Kansas County and District Attorneys Association does not oppose the philosophy behind Senate Bill No. 339. However, we have concerns with the enforcement of the bill, and its effect on other statutes in the criminal code.

Our primary concern has to do with the Kansas Appellate Courts construing legislative intent and holding that specific statutes apply over the more general ones. For example, a court service officer convicted of theft of several hundred dollars had his felony theft conviction reversed because the Court of Appeals found that the more specific statute, K.S.A. 75-3202, applied to state employees filing false vouchers. Defendant was convicted of an A misdemeanor rather than a D felony. The Supreme Court has construed the aggravated incest statute, a D felony, as being the more specific regarding sex abuse committed by the child's relatives, resulting in reversal of a conviction of indecent liberties with a child, a C felony. State v. Williams, 250 Kan. 730. The Court of Appeals followed this decision in State v. Chandler, 17 Kan. App. 2d 512, and reversed convictions of aggravated sodomy and indecent liberties with a child, the result of multiple acts of sexual abuse by a father on his biological daughter.

The provisions of SB 339 create concerns regarding the Courts' application of the specific over general doctrine. For example, does Section 1(a)(3) apply to the intentional or wanton causing of a derailment, with a maximum penalty of severity level 8, nonperson felony, even where the derailment caused several deaths? Without the bill, such an act would constitute reckless second degree murder.

The bill also conflicts with other statutes on the books, which are attached. It seems to require less of a notice than the criminal trespassing statute, 21-3721, creating an equal protection issue. It also conflicts with 21-3742, which involves throwing objects from a bridge or overpass onto a railroad right-of-way, or vehicle thereon. Where bodily injury results, the penalty under SB 339 is less than 21-3742.

Again, KCDA has no objection to the intent of the bill, but does oppose legislation that contributes to the already crowded appellate dockets.

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1-11-96

Attach. 6-1

21-3721. Criminal trespass. (a) Criminal trespass is:

(1) Entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) As used in this section:

(1) "Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(2) "Health care provider" means any person: (A) Licensed to practice a branch of the healing arts; (B) licensed to practice psychology; (C) licensed to practice professional or practical nursing; (D) licensed to practice dentistry; (E) licensed to practice optometry; (F) licensed to practice pharmacy; (G) registered to practice podiatry; (H) licensed as a social worker; or (I) registered to practice physical therapy.

(c) Criminal trespass is a class B nonperson misdemeanor.

History: L. 1969, ch. 150, § 21-3721; L. 1979, ch. 92, § 13; L. 1980, ch. 99, § 1; L. 1986, ch. 161, § 3; L. 1992, ch. 153, § 6; L. 1993, ch. 291, § 79; July 1.

Attorney General's Opinions:

Domestic violence matters; written policies adopted by law enforcement agencies; protection from abuse act. 92-34.

Subject and title of legislative bills regarding health care and abortion. 92-52.

CASE ANNOTATIONS

10. Consecutive sentences mandated by specific provisions in 21-4605(4) as controlling over general provisions in 21-4605(7) examined. *State v. Daniels*, 15 K.A.2d 335, 553 P.2d 65 (1993).

11. Criminal trespass not lesser included offense of burglary. *State v. Rush*, 18 K.A.2d 694, 695, 559 P.2d 357 (1993).

21-3742. Throwing or otherwise casting rocks or other objects from a bridge or overpass onto a street, highway or railroad right-of-way. (a) Any person who intentionally throws, pushes, pitches or otherwise casts any rock, stone or other object, matter or thing from a bridge or overpass onto a street, road, highway, railroad right-of-way, or upon any vehicle, engine or car thereon, is guilty of a class B nonperson misdemeanor.

(b) Any person violating subsection (a) who damages any vehicle, engine or car lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object is guilty of a class A nonperson misdemeanor.

(c) Any person violating subsection (a) who injures another person on the street, road, highway or railroad right-of-way is guilty of a severity level 7, person felony.

(d) In any case where a vehicle, engine or car is damaged by a person violating subsection (a) and a person is injured either as a result of the cast or thrown object or from injuries incurred as a result of damage to the vehicle in which a person was a passenger when struck by such object, the person throwing or casting the rock, stone or other object from the bridge or overpass causing the damage and injury is guilty of a severity level 6, person felony.

History: L. 1971, ch. 110, § 1; L. 1982, ch. 132, § 3; L. 1992, ch. 239, § 134; L. 1993, ch. 291, § 88; July 1.

MEMORANDUM

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January 9, 1996

Resolution
Judicial Branch

To: Senate Judiciary Committee
From: Mike Heim, Principal Analyst
Re: Holdover Bills

The following is a brief description of the 1995 holdover bills in the Senate Judiciary Committee:

1. S.B. 7 expands coverage of the law dealing with suspension, termination, or denial of professional licenses by persons who fail to pay child support.
2. S.B. 10 deals with disinterment of dead human bodies and would require a court order for disinterment if any next of kin refuses to consent.
3. S.B. 72 deals with venue in actions against corporations.
4. S.B. 130 makes restitution orders against juvenile offenders a judgment enforceable under the code of civil procedure.
5. S.B. 131 adds sex predators to the list of persons eligible for indigent defense services and authorizes payment of attorneys.
6. S.B. 134 adds a specific time frame *i.e.*, not less than 24 hours, for notices to be given to a minor's parents prior to the minor having an abortion.
7. S.B. 138 amends the law dealing with emergency divorces to allow for a quicker hearing.
8. S.B. 141 enhances the penalty for criminal deprivation of property of a motor vehicle. (This provision was enacted as part of H.B. 2223 in 1995.)
9. S.B. 142 makes restitution orders in adult criminal proceedings civil judgments. (S.B. 222 was enacted and codifies this provision.)
10. S.B. 146 expands the definition of aggravated juvenile delinquency to include false reports made by persons confined at a state youth center of abuse or neglect and

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makes it a class B nonperson misdemeanor for an employee of a youth center not to make a report of suspected child abuse and neglect.

11. S.B. 156 creates the Kansas Youth Correctional Authority. (S.B. 313 was enacted in 1995 and creates the Kansas Youth Authority and Juvenile Justice Authority.)

12. S.B. 161 authorizes school districts to require fingerprinting of all employees and prospective employees and to receive criminal history information from various state agency sources.

13. S.B. 177 enhances the penalties for repeat battery offenses. Third and subsequent offenses within five years are made level 5, person felonies.

14. S.B. 183 establishes an 8-hour minimum course for an alcohol and drug safety action treatment program in regard to DUI offenses and penalties.

15. S.B. 185 would require local prosecutors to notify the State Board of Education of persons placed on diversion for committing certain crimes against persons and certain sex crimes. The bill authorizes the cancellation of teacher certificates by the State Board of Education.

16. S.B. 207 would repeal the statute of limitations regarding adverse possessions of real property. (The 1995 Interim Special Committee on Judiciary recommended no change in this area of the law.)

17. S.B. 213 would prohibit any community based alcohol and drug safety program which conducts evaluation and supervision of persons from providing treatment to such persons either directly or through an affiliate. There is an exemption in districts with less than three programs. (The 1995 Special Committee on Judiciary recommended no change be made in the law.)

18. S.B. 227 would require competitive bids for legal services for certain state agencies.

19. S.B. 230 establishes a juvenile offender community intensive sanctions fund for communities to establish programs for juveniles that are an alternative to commitment of youth to SRS custody.

20. S.B. 231 creates the Kansas Children and Youth Authority. (S.B. 313 was enacted in 1995 and created a Kansas Youth Authority and Juvenile Justice Authority.)

21. S.B. 233 would require mediation before a divorce could be filed.

22. S.B. 238 deals with expungement of criminal records to prohibit expungement of certain sex crimes.

23. S.B. 241 establishes a life sentence without parole for a persistent sex offender and requires a minimum of 25 years confinement.

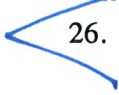
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24. S.B. 248 expands the crime of maliciously circulating false rumors to cover the municipal investment pool fund.



25. S.B. 250 expands the crime of burglary to cover fenced commercial yards.



26. S.B. 295 authorizes the administrative judge to establish criteria for alcohol and drug safety action programs. (House Sub. for S.B. 127 was enacted in 1995 and authorizes SRS and administrative judges to establish qualifications for these programs.)

27. S.B. 297 authorizes added consumer protection civil penalties against those who act in violation of this law against the elderly or disabled.

28. S.B. 311 authorizes subrogation rights under health insurance policies.



29. S.B. 313 expands the requirement that a consecutive sentence be imposed on a person as a result of a felony adjudication under the juvenile offender code to cover offenses committed by a person while at a youth center or while on probation or while participating in community corrections.

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30. S.B. 314 would require SRS to be responsible for the expenses of the care of juveniles committed to youth centers seven days after receiving notice of the commitment from the court.

31. S.B. 330 would require licensure and regulation of courier services and security companies and would create a private security licensure board under the jurisdiction of the Attorney General.



32. S.B. 332 deletes the seven-day requirement for a law enforcement agency to notify the victim compensation coordinator of a reported crime and deletes a provision dealing with county property crime compensation coordinators to work with court services and probation officers to track restitution payments. It provides for annual reports by the county coordinator to the county commission rather than the administrative judge.

33. S.B. 339 creates several new crimes related to railroad property. The crimes deal with trespass, throwing objects at trains, causing derailments, and discharging firearms or weapons at trains or rail-mounted work equipment.

34. S.B. 347 would establish a rebuttable presumption that it is not in a child's best interest to be placed in sole or joint custody of a perpetrator of domestic violence and would require domestic violence perpetrators to participate in a program of intervention for perpetrators as a condition of supervised visitation with a child. The bill provides for the issuance of restraining orders under the Protection From Abuse Act at the request of a parent, (victim), or prosecutor after a divorce action has been filed and a criminal action has been initiated against a perpetrator. All costs associated with domestic violence are to be paid by the perpetrator.

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35. S.B. 378 reduces the size of the Kansas Sentencing Commission by deleting the Kansas Parole Board Chair and the two members of the general public. It also deletes the four legislative members who serve as its ex officio members.

The following is a list of House Bills which were held over in the Committee. The description of each bill is very brief since these bills have had Supplemental Notes prepared.

1. H.B. 2012 deals with restitution. (S.B. 222 which passed enacted many of the provisions of H.B. 2012.)
2. H.B. 2013 would make the name of a victim of a sex crime not open to the public.
3. H.B. 2083 expands abortion record keeping requirements to include all medical care facilities. (S.B. 384 was enacted in 1995 and contained this provision.)
4. H.B. 2184 changes Medicaid expenses from a first class claim to a second class claim under the Kansas Probate Code.
5. H.B. 2213 creates an office of Administrative Hearings with the Department of Administration to provide a pool of administrative law judges, to conduct hearings under the Kansas Administrative Procedure Act.
6. H.B. 2219 increases the penalty against a payor, i.e. employer, for failure to pay support money withheld from an employee's paycheck. (S.B. 35 was enacted in 1995 which does this.)
7. H.B. 2270 amends the crime of obstructing legal process or official duty to expand the definition of "official duty" to include stopping a suspect and questioning him under K.S.A. 22-2402.
8. H.B. 2310 requires a \$3 docket fee for inmates filing cases and restricts good time credits when the filing of lawsuits is abused by inmates. (The \$3 docket fee was enacted in 1995 as part of S.B. 222.)
9. H.B. 2311 amends the Kansas Tort Claim Act to provide that a jury shall not be notified of the \$500,000 cap on damages.
10. H.B. 2318 expands the authority under a durable power of attorney to allow a principal's homestead rights to be mortgaged.
11. H.B. 2391 deals with special deputy sheriff's, their compensation and ability to carry concealed weapons.
12. H.B. 2425 raises the penalty for rape to a severity level 1 nondrug grid crime, doubles the sentencing ranges in the top three nondrug grid levels, and makes other changes.
13. H.B. 2586 amends the crime of criminal defamation; authorizes federal law enforcement officers to carry firearms and make arrests and adds them to the

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definition of Kansas Law enforcement officer; and amends the crime of stalking. (Provisions dealing with defamation and stalking were included in 1995 H.B. 2223 which passed.)

14. H.C.R. 5019 directs the Attorney General to bring an action to enjoin enforcement of the National Voter Registration Act.

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