

Approved: 3-7-96  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 14, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Vancrum (excused)  
Senator Brady (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: Carla Stovall, Attorney General of Kansas  
Shelley Krestine, Kansas Council on Developmental Disability  
Alice Hamilton Nida, Department of Aging  
Tom Young, American Association of Retired Persons, AARP  
Sherry Deil, Kansas Advocacy and Protective Services  
Bob Taylor, PSI Company  
Larry Bulla, Dillons Stores  
Jerry Spain, PSI Armored  
Kyle Smith, KBI  
Steward Entz, ProSecurity, Inc.  
Jim Clark, County and District Attorneys' Association

Others attending: See attached list

A motion was made and seconded to approve the Senate Judiciary Committee minutes for February 5, 1996. The motion carried.

**SB 297--Kansas consumer protection act, enhanced civil penalties when victims are elderly or disabled persons.**

Carla Stovall, Attorney General of Kansas spoke in support of SB 297. The conferee stated that this bill provides for an enhanced penalty of up to \$10,000 from each violation of the Kansas Consumer Protection Act against an elderly or disabled consumer. The conferee stated that the penalty is imposed by the court after considering specific factors set forth in section three of the bill.

The conferee stated that this bill is necessary because many unscrupulous telemarketing companies, door-to-door sales people, mail order companies, and other rip-off artist specifically target the elderly and disabled. The Attorney General stated that her office has received numerous heartbreaking cases of elderly Kansas citizens who were sold many worthless items, or because they were told their purchases would help a charity cause. Some have been dubbed into purchasing items as a condition of winning a sweepstakes. The conferee related that often elderly consumers are vulnerable to unscrupulous marketing and merchandisers because of loneliness or isolation and other life situations. The conferee stated that many of the elderly consumers have been involved with more than two or three telemarketing transactions, many losing their life savings. The conferee referred to examples contained in her written testimony. The conferee concluded by stating that this bill would provide additional deterrents to those who would prey on the elderly or disabled. (Attachment 1)

The Committee discussed the examples of telemarketing scams with the conferee.

Shelley Krestine, Kansas Council on Developmental Disabilities addressed the Committee in support of SB 297. The conferee discussed the purpose of her organization, and stated that the stiffer penalties that this bill imposes may provide added protection for those who need it most. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 14, 1996.

Committee members discussed with the conferee the list of those covered under this bill. The conferee stated that she had reviewed the list, and would not mind if it were expanded.

Alice Hamilton Nida, Director of Elder Rights for the Kansas Department on Aging (KDOA) testified in support of **SB 297**. The conferee stated that scam artist target older persons because they tend to be more polite toward strangers, more trusting and have more free time. The conferee cited examples of scams targeting the elderly. The conferee stated that this bill will make it more costly for scam operations to do business in Kansas. The conferee urged the passage of **SB 297**. (Attachment 3)

Tom Young, AARP, spoke in support of **SB 297**. The conferee stated that the manner and consequences of infringement of certain rights are often far different for older persons, some of whom may also have more limited abilities to protect themselves. The conferee stated that the National Aging Resource Center on Elder abuse found that financial exploitation accounted for twenty percent of all elder abuse cases. The conferee related that AARP feels that when an older citizen is cheated out of his or her life savings it hastens the time when they must go into the Medicaid system. (Attachment 4)

Sherry Deil, Kansas Advocacy & Protective Services, Inc., (KAPS) testified in support of **SB 297** and proposed an amendment. The conferee stated that for the purposes of clarification, KAPS staff would recommend that the definition of "substantially limits" be amended as follows:

Delete: "interferes with or affects over an extended period of time."

Add: The term "substantially limits" means:

- 1) unable to perform a major life activity that the average person in the general population can perform; or
- 2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity..."

The conferee stated that the above proposed amendment mirrors the definition of "substantially limits" under the ADA. (Attachment 5)

In response to the Chair, the Attorney General stated that her office has no problem with the amendment proposed by KAPS.

In response to questions by Committee members, the Attorney General stated that this bill would be an additional hammer to use against consumer fraud. The conferee also stated that education is very beneficial in combating consumer fraud.

A motion was made by Senator Oleen and seconded by Senator Reynolds to adopt the KAPS amendment. The motion carried.

A motion was made by Senator Reynolds, seconded by Senator Petty to recommend **SB 297** as amended favorably for passage. The motion carried.

The Chair appointed a subcommittee of Senator Petty, Senator Oleen, and Senator Emert to work on Youth Authority bills, (one in the Senate and one in the House).

The Chair made subcommittee assignments for hearings on fifteen bills.

The Chair referred to a bill request by Helen Stephans, Kansas Peace Officers and Sheriffs' Association, regarding eluding a police officer on a bicycle, and stated that Ms Stephans was unable to obtain the language for that bill, therefore, Ms Stephans is withdrawing the request for that bill.

Hearing no objections, the Chair instructed the revisor not to proceed with that bill introduction.

Senator Petty rescinded her February 12th request for two bills. The first bill concerns the requirement that county commissioners physically inspect property boundaries; and the second request, would place prosecutors under the same protective provisions from harassment as judges.

Hearing no objections, the Chair advised the revisor not to precede with those bill introductions.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 14, 1996.

**SB 330--Licensing of security officers and companies.**

Carla Stovall, Attorney General of Kansas addressed the Committee in support of **SB 330**. The conferee stated that the private security industry is not regulated, although, private detectives are regulated. The Attorney General stated that last year her office was approached by those in the private security business requesting some regulation. The conferee stated that this bill would establish a state-wide system of regulating security officers, companies and courier services under the authority of a three person board appointed by the Attorney General. The conferee stated that under **SB 330** this fee funded board would be financially supported by the licensees, thus not creating an additional tax burden to the public at large. The conferee stated that the licensing and reporting of private security companies should be self-supporting, through the collection of fees. The conferee explained that nearly \$425,000,000 is spent by industry in this country every year for private security. The conferee stated that to protect the public, this bill is needed to provide regulation for security services. (Attachment 6)

Bob Taylor, Professional Securities, Inc. (PSI), testified in support of **SB 330**. The conferee stated that this bill is necessary because currently, while some communities have licensing provisions and procedures for private security personnel, the requirements widely vary, and many communities have no licensing requirements at all. The conferee cited several problems existing in Kansas under the current system, as described in written testimony. The conferee stated that this bill would require state-wide licensing thus standardizing the requirements and bring competent private security services to Kansas. (Attachment 7)

Larry Bulla, Dillons Stores, testified in favor of **SB 330**. The conferee stated that a major problem experienced by his company is having different requirements in every city where Dillons has a store. The conferee related that in Great Bend there was a time delay of three weeks for obtaining a license. The conferee stated that some cities license the security company and others license the individual officer. The conferee concluded by stating that statewide licensing would allow the state to set the guidelines for licensing, training, accountability and fee structure. (Attachment 8)

Mr. Jerry Spain, PSI Armored, Inc. testified in support of **SB 330**. The conferee compared the licensing of security personnel to the licensing of drivers. The conferee stated that licensing of those carrying firearms should also be administered by the State. The conferee stated that this bill would provide a means of standardized, simplified and concise form of certification for all security and courier service employees. The conferee stated that he is also addressing the Committee on behalf of the Independent Armored Car Association in Wichita. (Attachment 9)

Mr. Kyle Smith, KBI testified in support of **SB 330**.

Stewart Entz, ProSecurity, Inc. testified in support of **SB 330**. The conferee stated that he had worked with the Attorney General's office in structuring this legislation. The conferee reported that this bill was patterned after a St. Louis, Missouri city ordinance. The conferee stated that a basic reason for this bill is for public safety purposes, because those who carry guns should be licensed as private detectives are. The conferee stated that public perception is that security guards have had some training or ability to provide additional security to the public. This is not the case in some incidents. The perception can give the public a false sense of security. The conferee stated that included in his written testimony were projections of the fee schedule and revenue resulting from this bill to cover the cost. (Attachment 10)

Committee members and the conferee discussed issues of insurance, training and fees charged to licensees and companies.

The Chair closed the hearing on **SB 330**.

The Chair directed the Committee members attention to **SB 334**.

**SB 334--Court order to test for certain infectious diseases: disclosure of certain information.**

Mr. Kyle Smith reported that because of concerns raised by the Department of Health and Environment, the inclusion of meningitis and hepatitis B may not be required and should be deleted as impractical for testing purposes and that the counseling language should be retained as well as the revision of the related juvenile statute. The conferee related that the KBI does not agree that current statutes provide sufficient protection to either victims or others who may come in contact with infected persons' bodily fluids. The conferee stated that as suggested by Jim Clark of the Kansas County and District Attorneys Association, an immunity from use provision for the criminal statute is included. (Attachment 11)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 14, 1996.

The Committee and conferee discussed that the results from this testing would be used for civil actions. The conferee stated that the six month retesting provision was retained. The conferee stated that on line 24, page 3, the following language should be struck; "~~upon proper application.~~" Discussion regarding amending page 2, line 41 to; "physician who discloses or *fails* to disclose."

**SB 339--Crimes and punishment; railroad property**

Jim Clark, Kansas County & District Attorneys Association stated that the Association supports the concept of **SB 339**. The conferee stated that the Association's primary concern has to do with the Kansas Appellate Courts construing legislative intent and holding that specific statutes apply over the more general ones. The conferee referred to a balloon attached to his written testimony that would address those concerns. (Attachment 12)

The Chair adjourned the meeting at 11:20 a.m., and discussion on **SB 339** continued.

The next meeting is scheduled for February 15, 1996.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/14/96

NAME	REPRESENTING
MARK RAN	PST Companies
Mike Eklund	PST ARMOR
Margie Pressgrove	InterHab, Intern
Anne Kimmel	AARP
Tom Young	AARP
Michael Jean Smith	KMAA
Harold Pitts	KCOA
Justin Osterreich	KHP
MARK BRUCE	KHP
J. MAPLE	KHP
J. Spans	PST ARMORED
Robert E. Taylor	Professional Security, Inc.
Larry Bulla	Dillona
Stu Kutz	PST
Kelley Keltala	KTLA
Sherry C. Diehl	KAPS
Shelley Krastner	KCDD
Alvin J. Miller	KDOA
STEVE RARRICK	A.G.





CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

## Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597

PHONE: (913) 296-3751 FAX: (913) 291-3699

CONSUMER HOTLINE  
1-800-432-2310

Testimony of  
Attorney General Carla J. Stovall  
Before the Senate Judiciary Committee  
RE: Senate Bill 297  
February 14, 1996

Chairperson Emert and Members of the Committee:

Thank you for the opportunity to appear before you today to testify in support of Senate Bill 297. This is a bill I requested that provides for enhanced penalties for those who prey on our elderly and disabled citizens. The bill provides an additional civil penalty of up to \$10,000 for each violation of the Kansas Consumer Protection Act against an elderly or disabled consumer. The imposition of the penalty is not automatic, but is imposed by the court after considering specified factors set forth in section three of the bill.

This bill would address the alarming problem of fraud committed against our elderly and disabled citizens, who are often in a position where fraud is financially devastating. It is well known that unscrupulous telemarketing companies, door-to-door sales people, mail order companies, and other rip-off artists specifically target the elderly and disabled. I have attached an advertisement that illustrates this unscrupulous practice of targeting the elderly. This ad blatantly seeks buyers for a monthly list containing 75,000 names, stating, **"These people, mostly seniors, have invested in sweepstakes, lotteries, and other chances to win merchandise or cash prizes."**

The Consumer Protection Division in my office has numerous heartbreaking cases of elderly Kansas citizens who were sold thousands of dollars in worthless items such as frisbees, pen sets, survival kits, water filtration units, vitamins, etc. In some instances, the elderly consumers had no need for these items, but were told they would win big prizes or cash if they would just send the money. In other cases, the elderly consumers were convinced by the unscrupulous telemarketer that their substantial purchase of items would help in the fight against drugs or some other worthy cause, when in fact the company had no intention of providing money to the worthy cause.

Many of the elderly consumers we hear from have been involved with more than two or three telemarketing transactions. All too often, substantial time has passed before we are contacted because these elderly consumers have spent so much of their life savings that some are ashamed to ask for help or to request refunds from the companies. Others sincerely believe they are going to win the enticing prize promised by the telemarketer or mail order company.

Sen. Judd.  
2-14-96  
Attach 1

Many elderly consumers do not realize they do not have to make a purchase to be eligible for sweepstakes offers because they are unable to read the fine print or because the offer is carefully worded to suggest that making a purchase will increase their chances of winning the higher valued prizes. All too often our elderly citizens do not believe they would be lied to and therefore tend to believe what they are told by unscrupulous telemarketing companies, door-to-door sales people, and mail order companies.

Attached to my testimony is a table summarizing the plight of 15 elderly Kansas consumers whose complaints were handled by just one Consumer Protections Special agent in 1992, 1993, and 1994. As you can see, these 15 elderly consumers had a total of 488 complaint files, demonstrating that unscrupulous businesses not only target the elderly, but go back to the proverbial well until it is bone dry. Because of this, I believe the enhanced penalties for fraud on the elderly are not only appropriate, but necessary to protect these valued citizens and put unscrupulous operators on notice that targeting the elderly for fraud in Kansas will not be tolerated.

Again, thank you for the opportunity to voice my support of this bill. I request your approval of the bill.



**OFFICE OF ATTORNEY GENERAL  
CARLA J. STOVALL**

<b>DATE</b>	<b>FILES</b>	<b>COUNTY</b>	<b>\$ SAVED</b>	<b>\$ LOST</b>	<b>CATEGORY</b>
'93	48	Phillips	\$83,971	\$86,038	mail order/puzzle contests/telemarketing/ sweepstakes/prize solicitations
'93-94	96	Shawnee	\$49,824	\$95,197	telemarketing/mail order/sweepstakes
93-94	10	Sumner	\$21,639	\$27,234	telemarketing/mail order/sweepstakes
'93	24	Morris	\$17,824	\$25,578	puzzle contests/mail order/sweepstakes
'94	28	Smith	\$24,263	\$94,191	telemarketing
'94	41	Marion	\$26,325	\$54,756	mail order/charitable/telemarketing/ sweepstakes
'93-94	55	Pottaw.	\$16,961	\$21,656	mail order/puzzle contests/telemarketing
'94	15	Shawnee	\$11,868	\$48,685	telemarketing
'94	31	Wallace	\$ 8,695	\$11,222	mail order/charitable
'93	29	Pawnee	\$10,522	\$24,741	puzzle contests/mail order/telemarketing
'94	24	Shawnee	\$ 7,988	\$13,722	mail order/puzzle contests/charitable/ telemarketing
'94	7	Coffey	\$ 8,647	\$28,555	mail order/telemarketing
'92-94	10	Morris	\$ 7,826	\$27,797	telemarketing
'93	49	Morris	\$ 5,284	\$ 5,861	mail order/telemarketing
'93-94	21	Sheridan	\$ 6,748	\$11,092	mail order/charitable/telemarketing/ puzzle contests
<b>Totals</b>	<b>488</b>		<b>\$308,385</b>	<b>\$576,325</b>	

SB297.tst

## Consumer

### RESPONSE

00949—STALWART DEMOCRATS January 1989 to March 1991 contributors list contains 528,782 names at \$60/M. These people support issues such as the extension of unemployment benefits, environmental benefits and middle-class tax relief. *Dependable Lists, Inc.*—708/544-1000.

00950—TITAN SPORTS ENTERTAINMENT CONGLOMERATE last 12-month buyers, subscribers and fan club members list contains 340,000 names at \$70/M. These wrestling and bodybuilding fans have subscribed to publications on both sports and purchased related merchandise. *Total Media Concepts Inc.*—201/692-0018.

00951—HOUSE OF WHITE BIRCHES total product buyers list contains 277,913 names at \$50/M. These people have purchased items including home and family products, dolls and collectibles and nostalgia products. *Direct Media Inc.*—203/532-1000.

00952—NEW ZEALAND PALANI FILE mail order buyers list contains 251,119 names at \$135/M. These New Zealanders have purchased a variety of items, including cookware, watches, clock radios and sporting equipment. *The Broadmoore Group*—1-619/324-3072.

00953—RAZOR & TIE MUSIC last 12-month mail order buyers list contains 107,433 names at \$55/M. These 1970s music enthusiasts are also members of the Preservation Society, dedicated to proving the '70s was the greatest decade of the 20th century. *ADCO List Management Services*—212/779-3650.

00954—FLORIDA COLLEGE CONTRIBUTORS AND SUPPORTERS list contains more than 92,000 names at \$65/M. These sports fans support athletic teams and have contributed to other school-sponsored programs and fund-raising appeals. *Fred Woolf List Co., Inc.*—914/694-4466.

00955—ANATOMICAL CHART COMPANY 1991-1992 buyers and inquirers list contains 90,000 names at \$90/M. These consumers are interested in health,

medicine, nutrition, childbirth and science-related topics. *HR Direct*—515/472-7188.

00956—CENTURY SPORTS YEARBOOK merchandise buyers list contains 77,387 names at \$70/M. These sports fans are interested in team information and sports-related merchandise. *Media Marketplace, Inc.*—215/968-5020.

00957—BIG BUCKS SUPER MULTIPUZZLE BUYERS monthly list contains 75,000 names at \$75/M. These people, mostly seniors, have invested in sweepstakes, lotteries and other chances to win merchandise or cash prizes. *JAMI Marketing Services, Inc.*—914/620-0700.

00958—SECRET OPPORTUNITY SEEKERS last 12-month buyers list contains 50,000 names at \$65/M. These people have purchased programs, manuals, franchises, make-money books and other success enhancers. *List Counsellors, Inc.*—609/259-0600.

00959—CARAMOR CENTER FOR MUSIC AND THE ARTS ticket buyers, contributors and supporters list contains 35,921 names at \$75/M. These upscale people, most from Connecticut, New York and New Jersey, enjoy classical, pop and jazz music. *Fred Woolf List Co., Inc.*—914/694-4466.

00960—SPORTS CARD TRADER active subscribers list contains 20,883 names at \$65/M. These sports card enthusiasts are interested in up-to-date prices and tips and the latest in sports memorabilia. *Media Marketplace, Inc.*—215/968-5020.

00961—KJL JEWELRY BUYERS last 12-month list contains 15,000 names at \$80/M. These consumers, mostly women, have purchased pendants, bracelets, necklaces, earrings, rings and pins. *Direct Media*—203/532-1000.

### COMPILED

00962—WEALTHIEST FAMILIES list contains 4.5 million names at \$50/M. These individuals have high levels of discretionary income, hold diversified investment portfolios and enjoy luxurious lifestyles. *Dunhill International List Co., Inc.*—305/974-7800.

00963—ULTRA AFFLUENT DATABASE list contains 2,450,000 names at \$50/M.

These people include millionaires, conservative and liberal contributors, investors and professionals. *American List Counsel, Inc.*—908/874-4300.

### INSERTS & CARD DECKS

00964—SYNCHRONAL insert program reaches 1.2 million annually at \$55/M. These upscale buyers have purchased kitchen aids, beauty products and real estate opportunity offers. *Coolidge List Management*—212/642-0310.

00965—EARLY WINTERS, LTD. insert program reaches 118,400 annually at \$60/M. These individuals are interested in clothing, equipment and other recreational-related accessories. *Millard Group Inc.*—603/924-9262.

00966—EVENFLO/BABY CONNECTION insert and sampling program reaches 1 million annually at \$55/M. These women are new mothers. *The Abadi Group Inc.*—908/531-7557.

## Business-to-Business

### RESPONSE

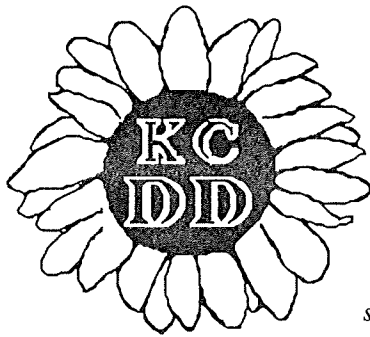
00967—JANDEL SCIENTIFIC list contains 80,739 names at \$100/M. These scientists and engineers purchase scientific-related microcomputer hardware, software and accessories. *Worldata*—407/393-8200.

00968—STUDIO ADVERTISING ART buyers list contains 20,836 names at \$100/M. These small to mid-sized business owners and top managers develop business presentations, advertisements, brochures, etc. *Worldata*—407/393-8200.

00969—ESTRIN PUBLISHING PARALEGALS file contains 18,000 names at \$125/M. These professionals, paralegals, attorneys and office managers, are interested in the latest books in the field. *PCS Mailing List Co.*—1-800/532-LIST.

00970—UNITED TRAINING MEDIA total file contains 15,830 names at \$90/M. These training personnel and sales executives (top and mid-level) use video-based training and motivational products and services. *Data Card*—301/680-3633.

1-4



## **Kansas Council on Developmental Disabilities**

BILL GRAVES, Governor  
TOM ROSE, Chairperson  
JANE RHYS, Executive Director

Docking State Off. Bldg., Room 141, 915 Harrison  
Topeka, KS 66612-1570  
Phone (913) 296-2608, FAX (913) 296-2861

*"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"*

**SENATE JUDICIARY COMMITTEE**

**FEBRUARY 14, 1996**

Testimony in Regard to S.B. 297 AN ACT RELATING TO THE KANSAS CONSUMER PROTECTION ACT; RELATING TO ELDER AND DISABLED PERSONS AS VICTIMS; ENHANCED CIVIL PENALTIES.

Mr. Chairman, Members of the Committee, I am appearing today on behalf of the Kansas Council on Developmental Disabilities in support of S.B.297, relating to the Kansas consumer protection act and enhanced civil penalties for targeting the elderly and persons with disabilities as victims.

The Kansas Council is a federally mandated, federally funded council composed of individuals who are appointed by the Governor. At least half of the membership are persons with developmental disabilities or their immediate relatives. We also have representatives of the major agencies who provide services for individuals with developmental disabilities. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices regarding their participation in society, just as you and I have choices.

Newspapers, magazines, and television seem to be filled these days with stories of our elderly and disabled populations being taken advantage of and being "scammed." Con artists prey on the vulnerable, and the stiffer penalties that this bill imposes may provide added protection to those that need it most. Thank you for allowing me the opportunity to lend the Council's support to this bill, and I would be happy to answer any questions.

Shelly Krestine, Grants Manager  
Kansas Council on Developmental Disabilities  
Docking State Office Building, Room 141  
915 SW Harrison  
Topeka, KS 66612-1570  
913 296-2608

Sen. Jud.  
2-14-96  
Attach. 2

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3

Testimony to the  
Senate Judiciary Committee  
by Alice Hamilton Nida, Department on Aging  
February 14, 1996

My name is Alice Hamilton Nida, Director of Elder Rights for the Kansas Department on Aging (KDOA). The Kansas Department on Aging supports Senate Bill 297.

It is estimated that American consumers, especially the elderly, lose \$100 billion dollars each year to consumer fraud.

Scam artists target older persons because they tend to be more polite toward strangers, more trusting, and have more free time. Older women living alone are particular targets for telemarketing.

Telephone solicitations appear to be the largest area of concern in Kansas. A common scenario is a friendly young voice that is so pleased to tell you that you've won a car. All you need to do is federal express (thus avoiding mail fraud) \$50, \$200 or \$250 to them. And they will send you your new car. This is consumer fraud. You don't get a car. The scam artists gets your money. This is what consumer fraud is about--getting your money.

We at the Kansas Department on Aging provide information to older Kansans on how they can protect themselves. They can say no. They can hang up on teleracketeers. They can throw away those sweepstakes offers and puzzle contests.

You can also help slow down consumer fraud.

Enhanced penalties drive up the cost of doing business in Kansas. A private right of action and attorney fees allow Kansas' citizens to fight back.

We support SB 297 and urge you to pass it.

Sen. Incl.  
2-14-96  
Attach 3

4  
2/14/96

SB297

THE RIGHTS OF OLDER PERSONS TO BE FREE FROM DISCRIMINATION, CRIME, AND ABUSE BY FAMILY AND INSTITUTIONS, ARE NO DIFFERENT FROM THOSE ENJOYED BY THE GENERAL POPULATION. HOWEVER, THE MANNER AND CONSEQUENCES OF INFRINGEMENT OF THESE RIGHTS ARE OFTEN FAR DIFFERENT FOR OLDER PERSONS, SOME OF WHOM MAY ALSO HAVE MORE LIMITED ABILITIES TO PROTECT THEMSELVES.

IT IS ONE THING TO FIND AT 35 YEARS OF AGE THAT AN INVESTMENT HAS GONE SOUR AND YOU HAVE LOST IT ALL. IT IS QUITE ANOTHER TO BE BILKED OUT OF YOUR LIFE SAVINGS AT AGE 70 OR 75. AT 35 YOU STAND A CHANCE OF REBUILDING THOSE SAVINGS AND INVESTMENTS BECAUSE OF THE OPPORTUNITY YOU HAVE TO WORK AND HAVE INCOME. AT AGE 70 YOU ARE LIVING ON SOME KIND OF RETIREMENT INCOME SUCH AS KPER'S OR SOCIAL SECURITY AND YOU HAVE NO CHANCE TO BEGIN AN INVESTMENT AND SAVINGS PROGRAM. OFTEN THOSE SAVINGS WERE THE OLDER PERSONS HEDGE AGAINST INFLATION AND THE INCREASED COST OF LIVING.

THE NATIONAL AGING RESOURCE CENTER ON ELDER ABUSE FOUND THAT FINANCIAL EXPLOITATION ACCOUNTED FOR TWENTY PERCENT OF ALL ELDER ABUSE CASES.

IT IS OUR FEELING THAT WHEN AN OLDER CITIZEN IS CHEATED OUT OF HIS OR HER LIFE SAVINGS IT HASTENS THE TIME WHEN THEY MUST GO INTO THE MEDICAID SYSTEM. AND RELY ON THE STATE & FEDERAL GOVERNMENT FOR SURVIVAL.

KANSAS NEEDS LEGISLATION WHICH WILL PROVIDE FOR STIFFER PENALTIES FOR THE EXPLOITATION OF OLDER KANSAS CITIZENS.

I ENCOURAGE YOU TO PASS SB 297

TOM YOUNG  
CCTF COORDINATOR  
AARP

Sen. Judiciary  
2-14-96  
Attach. 4

#3  
**KAPS KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.**

2601 Anderson Ave. Suite 200  
Manhattan, Kansas 66502-2876

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**Board of Directors:**  
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*Peter Williams, Vice President*  
*Josephine Patten, Secretary/Treasurer*  
*Martha Blue-Banning*  
*Sharon Joseph*

*Shirley Lifsey*  
*Nanette Roubideaux*  
*Patrick Russell*  
*Kate Shaer*  
*Ray Spring*  
*Tim Steininger*

MEMO TO: Senate Committee on Judiciary  
FROM: Kansas Advocacy & Protective Services, Inc.  
DATE: February 14, 1996  
RE: Staff Report on SB 297--Enhanced Penalties Under the Consumer Protection Act

Kansas Advocacy & Protective Services, Inc. (KAPS) is a federally funded non-profit corporation which advocates for the rights of Kansans with disabilities. KAPS administers four programs: (1) Protection & Advocacy for Individuals with Developmental Disabilities (PADD); (2) Protection & Advocacy for Individuals with Mental Illness (PAIMI); (3) Protection & Advocacy for Individual Rights; and (4) Protection & Advocacy for Assistive Technology (PAAT).

KAPS staff supports enhancing civil penalties available under the Kansas Consumer Protection Act relating to disabled persons and elders as victims of unscrupulous practices of persons found to violate the Consumer Protection Act.

KAPS staff believes the definition of a "disabled person" is appropriate in that it substantially mirrors the definition of a disabled person under the Americans with Disabilities Act (ADA). However, for purposes of clarification, KAPS staff would recommend that the definition of "substantially limits" be amended as follows:

Delete: "interferes with or affects over an extended period of time".

Add: "The term "substantially limits" means:

- 1) unable to perform a major life activity that the average person in the general population can perform; or
- 2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. . ."

The above proposed amendment mirrors the definition of "substantially limits" under the ADA.

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Too often, disabled persons have suffered at the hands of those whose goal in life is to take advantage of Kansas citizens without concern as to the consequences of their wrongdoing. KAPS staff believes the SB 297 "puts teeth" into the Consumer Protection Act for persons with disabilities, as well as our senior citizens.

KAPS staff encourages the Judiciary Committee to recommend SB 297 for passage. We respectfully request the Committee to consider our proposed amendment for purposes of clarification.

Thank you for the opportunity to address your Committee. I would be happy to answer any questions.

#6



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

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

STATEMENT OF  
ATTORNEY GENERAL CARLA J. STOVALL  
BEFORE THE SENATE JUDICIARY SUBCOMMITTEE  
RE: SENATE BILL 330  
FEBRUARY 14, 1996

Dear Chairperson Emert and Members of the Committee:

I appear before you today to ask for your support of Senate Bill 330 which was initiated at the request of the private security community. This bill would establish a state-wide system of regulating security officers, companies and courier services under the authority of a three person board appointed by the Attorney General. My support of the concept of state-wide regulation was elicited by the private security community shortly after I took office.

Currently security officers, companies and courier services are regulated by some, but by no means all, municipalities in Kansas with varying licensure qualifications and requirements. In addition, under current law such persons are permitted to carry concealed weapons in the absence of any consistent education or firearms training requirements. The current system of city by city regulation creates a situation of potential harm to the public who may come into contact with

Sen. Jud.  
2-14-96  
Attach. 6



security personnel with little or no training in the use of firearms.

Under the provisions of Senate Bill 330 a board under the jurisdiction of the Attorney General would establish consistent state-wide criteria relating to qualifications to obtain a license, firearms training and requirements for insurance and identification.

The creation of a private security licensure board under the authority of the Attorney General would be consistent with the Attorney General's responsibility to license and regulate private detectives. Under Senate Bill 330 this fee funded board would be financially supported by the licensees, thus not creating an additional tax burden to the public at large.

I urge your favorable consideration of Senate Bill 330 because of its value to public safety which would derive from the standardization of qualifications and training for those who would carry concealed weapons.

Burlingame Rd.  
Topeka, Kansas 66611  
Phone (913) 267-9203  
Fax (913) 267-4170

7130 W. Maple, Suite 210  
Wichita, Kansas 67209  
Phone (316) 942-9700  
Fax (316) 942-7074



## PROFESSIONAL SECURITY INC.

2951 E. Chestnut Exp. ay  
Springfield, Missouri 65802  
Phone (417) 863-9560  
Fax (417) 863-9699

430 Corporate Place  
Branson, Missouri 65616  
Phone (417) 336-2194  
Fax (417) 336-5765

### STATEMENT OF TESTIMONY

Senate Judiciary Committee

#7

DATE: February 14, 1996

RE: Senate Bill 330, Statewide licensing of Private Security  
and Courier Services

FROM: Robert E. Taylor, Professional Security, Inc. (PSI)

I am the Vice President/General Manager of the PSI Companies in Kansas. I'm here to testify in favor of Senate Bill 330.

We presently have two large Branch Offices in Kansas (Topeka and Wichita) that serve a number of communities throughout the state. The PSI companies employ over 300 hundred private security officers in Kansas.

A few communities in which we provide our services currently have licensing requirements for private security companies and their employees; many do not. No two cities, however, have the same licensing provisions or procedures. This makes it extremely restrictive for us and other private security providers to shift or move qualified security personnel quickly to points of need in the state.

Cities with very lax or no licensing requirements may, perhaps inadvertently, be subjecting their local businesses and/or citizenry to becoming victims of unscrupulous or under insured providers. It is not uncommon for known felons to be employed by service businesses or agencies where there is no required criminal or other background checking of employees.

Different degrees of licensing, training expectations and fee schedules (where they exist) make it very difficult for legitimate private security organizations to provide their services statewide. Not only do they face a logistical problem, but a financial one as well if they must purchase local licensing in order to do business in a specific community; this is often further complicated by the need for individual officer licenses or permits as well.

PSI believes that statewide licensing would alleviate all of the above problems and assist in providing top flight private security services to Kansas communities when and where they are needed.

The PSI Companies support Senate Bill 330.



DILLON STORES, A DIVISION OF DILLON COMPANIES, INC.  
2700 EAST FOURTH - P.O. BOX 1608  
HUTCHINSON, KANSAS 67504-1608 - (316)665-5511

STATEMENT OF TESTIMONY

Senate Judiciary Committee

DATE: February 14, 1996

RE: Senate Bill 330, Statewide licensing of Private Security and Courier Services.

FROM: Larry Bulla, Dillons Stores

I am the Security Supervisor for the Dillon Stores. I am here to testify in favor of Senate Bill 330.

Dillons operates 67 stores in 30 cities. We currently use private security in 43 stores involving 15 cities.

One of the problems we incur in obtaining a license for private security is not knowing what the requirements are, except they are never the same in any two cities.

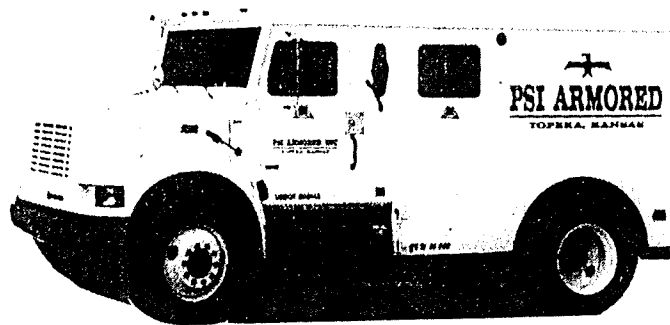
Some cities have no provisions for a temporary permit. If an emergency arises we must wait for a license. Case in point: In January we made application for a private security license through Williams Security & Investigations to operate security officers in both of our stores in Great Bend, Kansas. The chief of police said he did not have the authority to issue a license. He advised that the city council would have to vote on the application at their next meeting, which was not for two weeks. He could not issue a temporary permit. We ended up waiting three weeks for the license.

Some cities license the security company and others license the individual officer.

We feel statewide licensing would allow the state to set the guidelines for licensing, training, accountability and fee structure.

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2901 Burlingame Rd.  
Topeka, Kansas 66611



Corporate Off.  
Phone (913) 267-9203  
Fax (913) 267-4170  
Depot  
Phone (913) 862-3454  
800-366-8576  
Fax (913) 862-0089

**Date:** February 14, 1996

**Reference:** Senate Bill 330, Statewide Licensing of Private Security and Courier Services

**From:** Jerry Spain, PSI Armored, Inc.

As management for a Kansas owned corporation, it is important for us to complete the necessary task of research for our prospective markets in Kansas. As we conduct our research, we have found that working with local law enforcement agencies to be a rewarding experience. As we gain mutual respect for each other through shared knowledge, experiences and joint cooperation, the licensing procedures are beneficial yet trying especially when immediate action for licensing employees is necessary.

Being in the money transportation business, it is a requirement of our insurers to have armed personnel. More importantly, the weapon is an occupational necessity for the protection of the men and women who work out of armored vehicles. Those of us who carry these weapons, understand the great risk and responsibility of being armed and rely on local and state government to give guidance and training when needed.

PSI Armored is a rapidly growing company. We have many opportunities to expand our operations and reliable and trustworthy employees can be difficult to find. This senate bill will allow us to have greater flexibility in the placement of officers in new markets. Imagine if each city or town in Kansas had different requirements and testing to obtain a drivers license. Driving is a privilege with great responsibility. State wide testing makes obtaining a drivers license a convenient and controlled process. Carrying a firearm is a privilege which also has risk and responsibility and should also be administered by the State.

We are not asking for more government regulation. We are asking for a more standardized, simplified and concise form of certification for all security and courier service employees. The State of Kansas has the expertise, knowledge and resources to make state licensing of security personnel a reality.

PSI Armored fully supports Senate Bill 330.

Thank you for your consideration.



PSI ARMORED  
A Professional Security Inc. Affiliated Co.

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70.

**MEMORANDUM**

**To:** Senate Judiciary Committee  
**From:** Stewart L. Entz, ProSecurity, Inc.  
**Date:** February 14, 1996  
**Subject:** Senate Bill 330

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**PUBLIC SAFETY**

Mr. Chairman and Members of the Committee:

Public debate on gun control has created a general awareness of the issue of guns and public safety. Guns can be dangerous in the hands of anyone who is untrained. Obviously police officers receive training. Very seldom do law enforcement officers suffer accidental injury by reason of their firearms. The State requires hunter safety courses for those seeking hunting licenses and I believe that hunting accidents have been significantly reduced because of such training. Some of the states who are now approving the "right to carry" laws also require training.

It would seem to be good public policy that the one industry in the state which allows individuals to carry and use weapons (the security business) should have minimum requirements for training and insurance. Indeed I submit that the general public may assume that private security officers in banks, grocery stores, parking lots, etc. are trained in how to use the weapon and the public may, in fact, have a false sense of security in making such an assumption. As it presently stands, the metropolitan areas do have some form of training requirement but nothing is standardized. In some cities I believe it is an administrative burden to try and undertake the licensure and training responsibility that becomes a somewhat haphazard or loose effort on the part of local police departments. The Bill would assume standardization of training and a guarantee of insurance.

If standardization is to be encouraged and a statement of public policy is made, it would be logical that responsibility for that regulation be placed in the Office of the Attorney General. As the chief law enforcement officer, with responsibilities for coordinating many law enforcement programs, the Office of the Attorney General would be a logical agency to undertake this regulation. The Attorney General has

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already been given the task of licensing "private" investigators. The bill offers a simple statutory structure and leaves the detail to be set forth in rules and regulations.

**Fiscal Note**

Senate Bill 330 is proposed to be revenue neutral or self-funding. It is based upon the following assumptions:

Revenue Projection:

Assumptions:

Number of private security guards	1500
Number of "in house" security guards	1500
Number of security guard Employers	500
Individual guard license fee	\$50/yr*
Security Company license fee	\$350/yr*

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Total Annual License Fee Revenue	\$325,000
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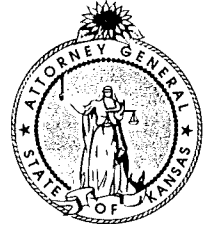
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\* Intent is to set fees at levels to insure licensure plan is self-funding. Fee to be established to cover all costs of administration. A lower fee was suggested by the Attorney General's office in a February 23, 1995 Memorandum to Committee.



LARRY WELCH  
DIRECTOR

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



CARLA J. STOVALL  
ATTORNEY GENERAL

February 12, 1996

Members of the Senate Judiciary  
State Capitol Building  
Topeka, Kansas 66612

Dear Mr. Chairman and Members of the Committee:

Attached please find balloon amendments to Senate Bill 334. As you will remember from the testimony at hearing, the Department of Health and Environment raised concerns with the bill as drafted. We have agreed that the inclusion of meningitis and hepatitis B may not be required and should be deleted as impractical for testing purposes and that the counseling language should be retained as well as the revision of the related juvenile statute.

However, we do not agree that current statutes provide sufficient protection to either victims or others who may come in contact with infected persons' bodily fluids, e.g. law enforcement personnel.

As suggested by Jim Clark of the Kansas County and District Attorneys Association, we have also included an immunity from use provision for the criminal statute. However, the juvenile version, K.S.A. 38-6092(g) would already seem to cover that issue.

Thank you for your consideration.

Sincerely,

Kyle G. Smith  
Assistant Attorney General

KGS:ld  
Encl.

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adjudicated as a juvenile offender and shall be committed to the custody of the secretary and placed in a state hospital. The respondent's continued commitment shall be subject to annual review in the manner provided by K.S.A. 22-3428a and amendments thereto for review of commitment of a defendant found not guilty by reason of insanity suffering from mental disease or defect, and the respondent may be discharged or conditionally released pursuant to that section. The respondent also may be discharged or conditionally released in the same manner and subject to the same procedures as provided by K.S.A. 22-3428 and amendments thereto for discharge of or granting conditional release to a defendant found not guilty by reason of insanity suffering from mental disease or defect. If the respondent violates any conditions of an order of conditional release, the respondent shall be subject to contempt proceedings and return to custody as provided by K.S.A. 22-3428b and amendments thereto.

Sec. 32. On and after January 1, 1996, K.S.A. 38-1692 is hereby amended to read as follows: 38-1692. (a) As used in this section:

(1) "Adjudicated person" means a person adjudged to be a juvenile offender or a juvenile felon or a person not adjudicated because of insanity mental disease or defect.

(2) "Laboratory confirmation of HIV infection" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Test for HIV infection" means a test approved by the secretary of health and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome.

(5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the judge shall inform the person or the parent or legal guardian of the person of the availability of testing for HIV infection and counseling and shall cause each alleged victim of the offense, if any, to be notified that testing for HIV infection and counseling is available.

(c) For any offense by an adjudicated person which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sexual act, the court: (1) May order the adjudicated person to submit to a test for HIV infection; or (2) shall order the adjudicated person to

(c) If the victim of the offense requests the court to order infectious disease tests of the alleged offender or if the person charged with the offense stated to law enforcement officers that the person charged with the offense has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the person charged with the offense to submit to infectious disease tests as defined in K.S.A. 65-6001.

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submit to a test for HIV infection if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If a test for HIV infection is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If the test results in a negative reaction, the court shall order the adjudicated person to submit to another test for HIV infection six months after the first test was administered.

~~(d)~~ The results of any test for HIV infection ordered under this section shall be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal guardian of the adjudicated person, and to each person designated under subsection (c) by a victim or by the parent or legal guardian of a victim. If a test for HIV infection ordered under this section results in a laboratory confirmation of HIV infection, the results shall be reported to the secretary of health and environment and to: (1) The secretary of social and rehabilitation services, in the case of a juvenile offender or a person not adjudicated because of insanity, mental disease or defect, for inclusion in such offender's or person's medical file; or (2) the secretary of corrections, in the case of a juvenile felon, for inclusion in such juvenile felon's medical file. The secretary of health and environment shall provide to each victim of the crime or sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus, testing for HIV infection in accordance with K.S.A. 65-6001 *et seq.* and amendments thereto and referral for appropriate health care and services. (e)

~~(e)~~ The costs of any counseling and testing provided under subsection (d) by the secretary of health and environment shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section. (f)

~~(f)~~ When a court orders an adjudicated person to submit to a test for HIV infection under this section, the withdrawal of the blood 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 licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the test for HIV infection nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices. (g)

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(h)

(g) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the results or information. Any violation of this section is a Class C misdemeanor.

Sec. 33. On and after January 1, 1996, K.S.A. 59-29a03, as amended by section 2 of 1995 Senate Bill No. 3, is hereby amended to read as follows: 59-29a03. (a) When it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02 and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection (d), 90 days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than 90 days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to K.S.A. 22-3305 and amendments thereto; or

(3) release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to K.S.A. 22-3428 and amendments thereto; or

(4) release of a person who has been found not guilty of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and the jury who returned the verdict of not guilty answers in the affirmative to the special question asked pursuant to section 21.

(b) The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection (d) of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) documentation of institutional adjustment and any treatment received.

(c) The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection (d), members of the prosecutor's review committee appointed as provided in subsection (e) and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct under this section.

(d) The secretary of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection (a). The team, within 30 days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent pred-

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## SENATE BILL No. 334

By Committee on Judiciary

2-15

9 AN ACT concerning certain infectious diseases; authorizing a court to  
10 order tests for such diseases in certain circumstances; disclosure of  
11 certain information; amending K.S.A. 65-6001 and K.S.A. 1994 Supp.  
12 65-6004 and repealing the existing sections; also repealing K.S.A. 1994  
13 Supp. 22-2913.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 65-6001 is hereby amended to read as follows: 65-  
17 6001. As used in K.S.A. 65-6001 to 65-6007, inclusive, and sections 3, 4  
18 and 5 and amendments thereto, unless the context clearly requires oth-  
19 erwise:

20 (a) "AIDS" means the disease acquired immune deficiency syn-  
21 drome.

22 (b) "HIV" means the human immunodeficiency virus.

23 (c) "Positive reaction to an AIDS test" means a positive screening  
24 test, approved by the secretary, indicating infection by HIV, with a pos-  
25 itive specific test as specified by the secretary comprising confirmed an-  
26 alytical results which are evidence of HIV infection.

27 (d) "Secretary" means the secretary of health and environment.

28 (e) "Physician" means any person licensed to practice medicine and  
29 surgery.

30 (f) "Laboratory director" means the person responsible for the pro-  
31 fessional, administrative, organizational and educational duties of a lab-  
32 oratory.

33 (g) "HIV infection" means the presence of HIV in the body.

34 (h) "Racial/ethnic group" shall be designated as either white, black,  
35 Hispanic, Asian/Pacific islander or American Indian/Alaskan Native.

36 (i) ~~"Law enforcement officer" means police officer or law enforce-~~  
37 ~~ment officer as such terms are defined under K.S.A. 74-5602 and amend-~~  
38 ~~ments thereto.~~

39 (i) "Corrections officer" means an employee of the department of cor-  
40 rections as defined in subsections (f) and (g) of K.S.A. 75-5202 and amend-  
41 ments thereto.

42 (j) "Emergency services employee" means an attendant or first re-

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1 incurred or imposed in an action resulting from such disclosure. Any such  
2 physician shall have the same immunity with respect to participation in  
3 any judicial proceeding resulting from such disclosure.

4 New Sec. 3. (a) If a corrections officer, emergency services employee  
5 or law enforcement employee comes in contact with or is otherwise ex-  
6 posed to transmission of body fluids from one or more other persons while  
7 performing duties within the scope of such employee's duties as an em-  
8 ployee, the head of the employing agency or entity may make application  
9 to a court of competent jurisdiction for an order requiring such other  
10 person or persons to submit to infectious disease tests.

11 (b) Such application shall include an allegation that the person or  
12 persons sought to be tested have been requested to voluntarily submit to  
13 infectious disease tests and have refused the tests. When any such appli-  
14 cation is received, the court shall hold a hearing forthwith and shall issue  
15 its order thereon immediately if the court finds that: (1) There is probable  
16 cause to believe that the employee involved has come in contact with or  
17 otherwise been exposed to transmission of the body fluids of the person  
18 or persons sought to be tested; and (2) the person or persons sought to  
19 be tested have been requested to submit to the tests and have refused,  
20 unless the court makes a further finding that exigent circumstances exist  
21 which would, in the court's judgment, excuse the applicant from making  
22 such a request.

23 (c) If an infectious disease test ordered pursuant to this section results  
24 in a negative reaction, the court, upon proper application, shall order the  
25 person tested to submit to another infectious disease test six months from  
26 the date the first test was administered.

27 (d) The results of any infectious disease test ordered pursuant to this  
28 section shall be disclosed to the court which ordered the test, the em-  
29 ployee and the person tested. If an infectious disease test ordered pur-  
30 suant to this section results in a positive reaction, the results shall be  
31 reported to the employee.

32 New Sec. 4. (a) At the time of an appearance before a magistrate  
33 under K.S.A. 22-2901 and amendments thereto, the magistrate shall in-  
34 form any person arrested and charged with a crime in which it appears  
35 from the nature of the charge that the transmission of body fluids from  
36 one person to another may have been involved of the availability of in-  
37 fectious disease tests and shall cause the alleged victim of such a crime,  
38 if any, to be notified that infectious disease tests are available. If the victim  
39 of the crime requests the court to order infectious disease tests of the  
40 alleged offender or if the person arrested and charged with a crime stated  
41 to the law enforcement officer making such arrest that the person arrested  
42 and charged with the crime has an infectious disease or is infected with

and counselling  
or the county or district attorney,

11-6

1 firefighter.

2 (k) "Law enforcement employee" means:

3 (1) Any police officer or law enforcement officer as defined under  
4 K.S.A. 74-5602 and amendments thereto;

5 (2) any person in the service of a city police department or county  
6 sheriff's office who performs law enforcement duties without pay and is  
7 considered a reserve officer; or

8 (3) any person employed by a city or county who is in charge of a  
9 jail or section of jail, including jail guards and those who conduct searches  
10 of persons taken into custody;

11 (l) "Employing agency or entity" means the agency or entity employ-  
12 ing a corrections officer, emergency services employee, law enforcement  
13 employee or jailer.

14 (m) "Infectious disease" means AIDS, ~~hepatitis B or meningococcal~~  
15 ~~meningitis.~~

16 (n) "Infectious disease tests" means tests approved by the secretary  
17 for detection of infectious diseases.

18 Sec. 2. K.S.A. 1994 Supp. 65-6004 is hereby amended to read as  
19 follows: 65-6004. (a) Notwithstanding any other law to the contrary, a  
20 physician performing medical or surgical procedures on a patient who the  
21 physician knows has AIDS an infectious disease or has had a positive  
22 reaction to an AIDS infectious disease test may disclose such information  
23 to other health care providers, emergency ~~personnel or law enforcement~~  
24 ~~officers services employees, corrections officers or law enforcement em-~~  
25 ~~ployees~~ who have been or will be placed in contact with ~~body~~ body fluids  
26 of such patient. The information shall be confidential and shall not be  
27 disclosed by such health care providers, emergency ~~personnel or law en-~~  
28 ~~forcement officers services employees, corrections officers or law enforce-~~  
29 ~~ment employees~~ except as may be necessary in providing treatment for  
30 such patient.

31 (b) Notwithstanding any other law to the contrary, a physician who  
32 has reason to believe that the spouse or partner of a person who has had  
33 a positive reaction to an AIDS test or who has AIDS may have been  
34 exposed to HIV and is unaware of such exposure may inform the spouse  
35 or partner of the risk of exposure. The information shall be confidential  
36 and shall not be disclosed by such spouse or partner to other persons  
37 except to the spouse or partner who has had a positive reaction to an  
38 AIDS test or who has AIDS.

39 (c) Nothing in this section shall be construed to create a duty to warn  
40 any person of possible exposure to HIV.

41 (d) Any physician who discloses information in accordance with the  
42 provisions of this section in good faith and without malice shall have

; or

(4) any person employed by a city, county or the  
state of Kansas who works as a schietist or  
technician in a forensic laboratory.

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1 the arrested person to submit to infectious disease tests. ←

2 (b) Upon conviction of a person for any crime which the court de-  
3 termines from the facts of the case involved or was likely to have involved  
4 the transmission of body fluids from one person to another, the court: (1)  
5 May order the convicted person to submit to infectious disease tests; or  
6 (2) shall order the convicted person to submit to infectious disease tests  
7 if the victim of the crime or the parent or legal guardian of the victim, if  
8 the victim is a minor, requests the court to issue such order. If infectious  
9 disease tests are ordered under this subsection, the victim of the crime,  
10 if any, who is not a minor, shall designate a health care provider or coun-  
11 selor to receive such information on behalf of the victim. If the victim is  
12 a minor, the parent or legal guardian of the victim shall designate the  
13 health care provider or counselor to receive such information.

14 (c) The results of any infectious disease test ordered under subsection  
15 (a) shall be disclosed to the law enforcement officer making such arrest,  
16 the person arrested and such other persons as the court determines have  
17 a legitimate need to know the test result in order to provide for their  
18 protection. The results of any infectious disease test ordered under sub-  
19 section (b) shall be disclosed to the court which ordered the test, the  
20 convicted person and to the person designated under subsection (b) by  
21 the victim or victims of the crime or by the parent or legal guardian of a  
22 victim if the victim is a minor. If an infectious disease test ordered under  
23 this section results in a positive reaction, the results shall be reported to  
24 the secretary of health and environment and to the secretary of correc-  
25 tions.

26 New Sec. 5. (a) When a court orders a person to submit to infectious  
27 disease tests under this act, the withdrawal of the blood may be performed  
28 only by: (1) A person licensed to practice medicine and surgery or a  
29 person acting under the supervision of any such licensed person; (2) a  
30 licensed professional nurse or a licensed practical nurse; or (3) a qualified  
31 medical technician. No person authorized by this subsection to withdraw  
32 blood, no person assisting in the performance of the infectious disease  
33 tests nor any medical care facility where blood is withdrawn or tested that  
34 has been ordered by the court to withdraw or test blood shall be liable  
35 in any civil or criminal action when the act is performed in a reasonable  
36 manner according to generally accepted medical practices.

37 (b) The results of tests or reports, or information therein, obtained  
38 under this act shall be confidential and shall not be divulged to any person  
39 not authorized by this act to receive the same. Any violation of this sub-  
40 section is a class C nonperson misdemeanor.

41 Sec. 6. K.S.A. 65-6001 and K.S.A. 1994 Supp. 22-2913 and 65-6004  
42 are hereby repealed.

The results of any tests obtained under this section shall be inadmissible in any criminal or civil proceeding.

11-8

#12  
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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

TO: SENATE JUDICIARY COMMITTEE

FROM: KANSAS COUNTY AND DISTRICT ATTORNEYS ASSOCIATION

RE: SB 339

In previous testimony, KCDAA expressed criticism concerning the provisions of SB 339. We want to assure the Committee and the proponents of the bill that we were not being critical of the intent of the legislation, rather we were simply pointing out conflicts with existing law that would make prosecution more difficult, and in some cases, would reduce penalties. The attached pages illustrate these conflicts.

**Sec. 1(a)(1).** Not only a conflict with the criminal trespassing statute, but presents a major policy decision: where railroad property is involved, is there a rational basis or significant state interest in eliminating the notice provisions?

**Sec. 1(a)(2).** Makes penalty for throwing objects an A np misdemeanor, a level 8 np felony where damage over \$1500 or bodily injury results; whereas 21-3742 makes throwing from bridge or overpass onto a railroad right-of-way, engine or car a B np misdemeanor, an A np misdemeanor if damage results, a level 7 p felony where a person is injured, and level 6 p felony where vehicle is damaged and injury results.

**Sec. 1(b).** While section raises penalty for damage from current law in 21-3742, it lowers penalty for bodily injury to level 8 np felony, which could otherwise be charged under 21-3414(2), reckless aggravated battery, either a level 5 or level 8 p felony. More importantly, without exclusion for death, may be construed as a more specific statute in a derailment where deaths result, over the more general reckless second-degree murder statute, 21-3402(b), a level 2 p felony.

**Sec. 1(c).** Makes shooting at a train or rail-mounted equipment a level 8 np felony with no classification for whether vehicles are occupied or unoccupied or where injury or death result; whereas, 21-4219 covers the similar conduct if the equipment is occupied, but makes it a 7 p felony, and a level 5 p felony if bodily harm results.

Sen. Jud.  
2-14-96  
Attach. 12

SENATE BILL No. 339

By Committee on Federal and State Affairs

9 AN ACT relating to crimes and punishment; prohibiting certain conduct
10 in regard to railroad property; providing penalties.

11
12 Be it enacted by the Legislature of the State of Kansas:

13 Section 1. (a) It shall be unlawful for any person to:

14 (1) Without consent of the owner or the owner's agent, enter or re-
15 main on railroad property, knowing that it is railroad property;

16 (2) throw any object at a train or rail-mounted work equipment; or

17 (3) maliciously or wantonly cause in any manner the derailment of a
18 train, railroad car or rail-mounted work equipment.

19 Violation of this subsection is a class A nonperson misdemeanor.

20 (b) Any person violating subsection (a) which results in a demonstra-
21 ble monetary loss, damage or destruction of railroad property when such
22 loss is valued at more than \$1,500 or results in bodily injury to a person — which does not
23 upon conviction shall be guilty of a severity level 8, nonperson felony. cause death,

24 (c) It shall be unlawful for any person to discharge a firearm or
25 weapon at a train or rail-mounted work equipment.

26 Violation of this subsection is a severity level 8, nonperson felony.

27 (d) Subsection (a) shall not be construed to interfere with the lawful
28 use of a public or private crossing.

29 (e) Nothing in this section shall be construed as limiting a represen-
30 tative or member of a labor organization which represents or is seeking
31 to represent the employees of the railroad, from conducting such business
32 as provided under the railway labor act (45 U.S.C. 151, et seq.) and other
33 federal labor laws.

34 (f) As used in this section "railroad property" includes, but is not
35 limited to, any train, locomotive, railroad car, caboose, rail-mounted work
36 equipment, rolling stock, work equipment, safety device, switch, elec-
37 tronic signal, microwave communication equipment, connection, railroad
38 track, rail, bridge, trestle, right-of-way or other property that is owned,
39 leased, operated or possessed by a railroad company.

40 Sec. 2. This act shall take effect and be in force from and after its
41 publication in the statute book.

trespass is:

(1) Entering or remaining upon or in any
land, nonnavigable body of water, structure, ve-
hicle, 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 au-
thorized 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 amend-
ments thereto, and the restraining order has been
personally served upon the person so restrained;
or

(2) entering or remaining upon or in any pub-
lic 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 per-
son 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 mainte-
nance organization, licensed mental health center,
or mental health clinic, licensed psychiatric hos-
pital or other facility or office where services of a
health care provider are provided directly to pa-
tients.

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

(c) Criminal trespass is a class B nonperson

12-2



Sec. 1 (a)(2)

**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.

Sec. 1(b)

**21-3414. Aggravated battery.** (a) Aggravated battery is:

(1) (A) Intentionally causing great bodily harm to another person or disfigurement of another person; or

(B) intentionally causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(C) intentionally causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

(B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

(b) Aggravated battery as described in subsection (a)(1)(A) is a severity level 4, person felony. Aggravated battery as described in subsections (a)(1)(B) and (a)(1)(C) is a severity level 7, person felony. Aggravated battery as described in subsection (a)(2)(A) is a severity level 5, person felony. Aggravated battery as described in subsection (a)(2)(B) is a severity level 8, person felony. A person convicted of aggravated battery shall be subject to the provisions of subsection (h) of K.S.A. 21-4704 and amendments thereto.

**History:** L. 1969, ch. 180, § 21-3414; L. 1992, ch. 298, § 12; L. 1993, ch. 291, § 29; July 1.

**21-3402. Murder in the second degree.** Murder in the second degree is the killing of a human being committed:

- (a) Intentionally; or
- (b) unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life.

Murder in the second degree as described in subsection (a) is a severity level 1, person felony. Murder in the second degree as described in subsection (b) is a severity level 2, person felony.

Sec. 1 (c)

**21-4219. Criminal discharge of a firearm at an unoccupied dwelling.** (a) Criminal discharge of a firearm at an unoccupied dwelling is the malicious, intentional and unauthorized discharge of any firearm at an unoccupied dwelling.

Criminal discharge of a firearm at an unoccupied dwelling is a severity level 8, person felony.

(b) Except as provided in K.S.A. 21-3411, and amendments thereto, criminal discharge of a firearm at an occupied building or occupied vehicle is the malicious, intentional and unauthorized discharge of a firearm at a dwelling, building, structure,

motor vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being who is not placed in immediate apprehension of bodily harm.

Criminal discharge of a firearm at an occupied building or occupied vehicle is a severity level 7, person felony.

Criminal discharge of a firearm at an occupied building or occupied vehicle which results in bodily harm to a person during the commission thereof is a severity level 5, person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

**History:** L. 1992, ch. 21, § 1; L. 1993, ch. 291, § 158; L. 1994, ch. 348, § 17; July 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, KCDAA has no objection to the intent of the bill, but does oppose legislation that contributes to the already crowded appellate dockets.