

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 15, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Vancrum (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: Jim Maag, Chairman of the Kansas Guardianship Program  
Jean Krahn, Kansas Guardianship Program  
Rebecca Woodman, Kansas Sentencing Commission  
Mark Gleason, Juvenile Intake Specialist, OJA

Others attending: See attached list

The Chair called the meeting to order.

A motion was made by Senator Bond, seconded by Senator Reynolds to approve the Minutes of February 6, 1996. The motion carried.

**SB 599--Kansas guardianship program, probate code sections**

Jim Maag, Chair of the Kansas Guardianship Program, addressed the Committee in support of **SB 599**. Mr. Maag stated that this program is one of the most unique programs operating in Kansas. The program provides volunteer guardians and conservators for people who have been adjudicated by the courts as needing this kind of protection and advocacy. The conferee explain that this program stated in 1979 worked very well under the Kansas Advocacy and Protective Services program. In 1994 the federal government determined that there was a conflict of interest between KAPS and the guardianship program and demanded that the programs be separated. **SB 342** provided for the separation of services as mandated by the federal government. The conferee stated that in creating the new entity a few technical problems occurred. The conferee stated that **SB 599** proposes to clean up those technical issues. The conferee introduced Jean Krahn, Executive Director of the Kansas Guardianship Program to explain specific aspects of **SB 599**.

Jean Krahn addressed the Committee in support of **SB 599** and discussed three problems that this bill addresses. The first problem pertains to the surety bonds required for conservators. The second problem, the conferee discussed is the need to clarify the legal status of the Kansas Guardianship Program. The conferee explained that the third problem to be resolved with the passage of **SB 599** was to avoid a complete turnover in Board membership by providing for staggered term limits for Board members. (Attachment 1)

Having no other conferees present, the Chair closed the hearing on **SB 599**.

A motion was made by Senator Parkinson, seconded by Senator Harris to recommend **SB 599** favorably and place it on the Consent Calendar. The motion carried.

**SB 583--Criteria for detention of juveniles in detention facilities.**

Rebecca Woodman, Kansas Sentencing Commission, spoke in support of **SB 583**. The conferee stated that **SB 583** would correct a technical oversight pertaining to a list of criteria for placing a juvenile in a juvenile detention facility. This bill reads into the statute comparable crimes classified under the sentencing guidelines. (Attachment 2)

Mr. Mark Gleason, Juvenile Intake Specialist with the Office of Judicial Administration spoke in support of **SB 583**. The conferee stated that **SB 583** converts into language consistent with sentencing guidelines. The conferee stated that the changes recommended in **SB 583** also need to be included in **SB 618**, the Juvenile Justice Reform Act of 1996. The conferee further discussed recommended changes to **SB 618** to maintain consistency between the detention criteria severity levels and the severity levels described in Section 63 of **SB 618**. The conferee discussed other differences as stated in his written testimony. (Attachment 3)

A motion was made by Senator Reynolds, seconded by Senator Petty to recommend **SB 583** favorably for passage and place it on the Consent Calendar. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 15, 1996.

**SB 585--Criminal procedure; reports and forms; reporting criminal information; period of suspension of sentence, probation and assignment to community corrections.**

Rebecca Woodman, Kansas Sentencing Commission, spoke in support of **SB 585**. The conferee stated that **SB 585** contains various amendments to the sentencing guideline statutes. Section one of this bill amends K.S.A. 21-4611 which sets forth the terms of probation or terms of confinement to community corrections. The conferee discussed the potential conflict between subsection (a) and subsection (c). The conferee stated that she will provide language for an amendment to **SB 585** that would provide clarification to this bill in limiting it to felonies. The conferee explained that this bill would eliminate forms mandated by statute. The conferee discussed further features of the bill as explained in written testimony provided. (Attachment 2)

The Chair closed the hearing on **SB 585** and referred to **SB 334**.

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

The Chair referred to testimony of Kyle Smith, KBI presented on **SB 334**. The Chair discussed the balloon presented by Mr. Smith. This balloon would limit the bill to testing for HIV and provide an immunity from liability provision. The Chair referred to an amendment not included in the balloon that would add "fails to disclose" on line 41, page 2. The Chair noted that the KBI, wanted "upon proper application" struck and include juvenile offender's code under this bill.

The Committee and staff discussed several issues concerning the bill. Stricken language on page 3, line 24 was discussed. The amendment to include juvenile offender code K.S.A. 38-1692 was discussed. The addition of a new subsection c, "if the victim of the offense requests a court ordered test or if the person charged with the offense stated to a law enforcement officer the person charged has an infectious disease then the court is required to order the person charged with the offense to submit to test."

The Staff reviewed the balloons proposed and discussed the addition of the juvenile offender's code; language added to new subsection 4 dealing with law enforcement employees,--expanding to include persons employed by city, county, state of Kansas who works as a scientist or forensic technician in a laboratory. Other changes discussed by the Staff included on page 3, line 38 adding, "if the victim of the crime or county or district attorney requests the test"; on page 4, the addition of new language, "the results of any test obtained under this section shall be inadmissible in any criminal or civil proceedings."

A motion was made by Senator Rock, seconded by Senator Bond to recommend the bill favorably as amended. The motion carries.

Committee discussion followed regarding bills assigned to the subcommittees. Issues concerning **SB 497** were discussed by Committee members.

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

Jim Clark, County and District Attorneys Association, testified on the balloon worked out between his Association and the Railroad Association. The conferee stated that the new balloon created a two tier trespassing statute. The crime of criminal trespass which requires notice would exclude railroad property. The conferee stated that the issues worked out on this bill were to eliminate conflict of this bill with existing statutes that would impose higher penalties. The conferee stated that references to bodily injury were removed because those are treated either under reckless aggravated battery, or reckless second degree murder, or involuntary manslaughter. The conferee stated that derailment and damage caused by derailment, line 22, page 1 was left in. The conferee stated that the whole reference on page 24, to shooting at a train was deleted because that is law in the drive-by statute, which is on the last page, criminal discharge of an unoccupied dwelling which was expanded to include the rail mount and equipment. The conferee stated that reference to bridge or overpass was deleted from the crime of throwing objects at a train, throwing or otherwise casting rocks. (Attachment 4)

The Committee discussed the Railroad Association's concern regarding the dangers of walking down the railroad tracks.

A motion was made by Senator Harris, seconded by Senator Petty to recommend the bill favorably as amended. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 15, 1996.

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 16, 1996.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-15-96

NAME	REPRESENTING
<del>Julian Jones</del>	KS Sentencing Comm.
REBECCA WORMAN	KS Sentencing Comm.
Julie Meyer	KS Sentencing Comm.
Sherry Deil	KAPS
Dennis Jackson	TJRC
Dayna Brannawilfer	Legislative Asst. to Senator Lana Olsen
Amy Praeger	SEN. Moran
Duane Waterworth	Division of the Budget
Mark Keson	Office of Judicial Administration
Joan Clark	KCDA
KETHA R LAUDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Kelly Kuitala	KTLA
Philip James-Martin	SRS-Children & Family Services
Eileen DelCore	Sen. Martin
Whitney Dameron	Kansas Bar Association

#1  
**KANSAS GUARDIANSHIP PROGRAM**

**KGP**

3248 Kimball Avenue, Manhattan KS 66503-0353

(913) 587-8555, FAX (913) 587-9626

**Kansas City Area**

**Wichita Area**

6700 Squibb Rd. Suite 104  
Mission KS 66202  
(913) 236-5207

1333 N Broadway, Suite B  
Wichita KS 67214  
(316) 269-2525

TO: Senate Judiciary Committee  
Senator Tim Emert, Chairperson

**Chairperson**  
*James Maag*  
*Topeka*

FROM: M. Jean Krahn, Executive Director

DATE: February 15, 1996

**Vice Chairperson**  
*Judge Frank J. Yeoman, Jr.*  
*Topeka*

RE: Proposed Amendments

*Jack E. Dalton*  
*Dodge City*

**BACKGROUND**

*Sen. Tim Emert*  
*Independence*

The goal of the Kansas Guardianship Program is to recruit volunteers to serve as court appointed guardians and conservators for those eligible persons adjudicated by the court as disabled and in need of this level of protection and advocacy. The KGP serves persons who are, essentially, the adult wards of the State.

*Sen. Barbara Lawrence*  
*Wichita*

*Sen. Janis K. Lee*  
*Kensington*

*Eloise Lynch*  
*Salina*

The Kansas Guardianship Program was established by the 1995 Kansas Legislature pursuant to K.S.A. 1995 Supp. 74-9602. The program itself, however, has existed since 1979 and was under the administration of Kansas Advocacy and Protective Services, Inc. (KAPS), the federal entity that administered the federal protection and advocacy programs for persons with disabilities. In 1994, federal reviewers determined there was conflict of interest in KAPS administering the state guardianship program. In response to that finding, the KAPS Board agreed to take steps to separate the Guardianship Program from KAPS. The separation was accomplished through the passage of S.B. 342 by the 1995 Legislature.

**Executive Director**  
*M. Jean Krahn*

**PROBLEM**

There are three problems that S.B. 599 addresses -- all of which are basically technical in nature and intended to clarify certain provisions of S.B. 342, which established the Kansas Guardianship Program last year.

The first pertains to the surety bonds required for conservators.

In 1987, H.B. 2906 became law. Its intent was to amend the law relating to the surety bonds for conservators to provide that the State would serve as surety on the bond of any conservator serving in the Guardianship Program. The purpose was to save the State the considerable cost of purchasing private bonds to protect the persons served through the program. Current language in the statute refers,

The Kansas Guardianship Program is a partnership involving the state of Kansas and its citizen volunteers.

*Sen. Jud.*  
*2-15-96*  
*Attach 1*

Page Two  
Senate Judiciary Committee

however, to “the agency designated as the developmental disabilities protection and advocacy agency pursuant to public law 94-103, as amended,” which is Kansas Advocacy and Protective Services. The proposed amendment changes this to the “Kansas Guardianship Program” to reflect the separation of the program from KAPS.

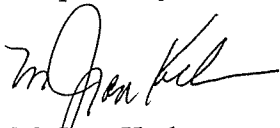
The second problem addressed in S.B. 599 is the need to clarify the legal status of the Kansas Guardianship Program. The bill establishing the KGP, S.B. 342, describes the agency as “a non profit corporation” and as “a body politic and corporate”. This has caused some confusion, particularly on the part of accountants who must determine whether the program should be audited on the basis of the non profit status or as a governmental entity. Removal of the “non profit” language is intended to clarify the legal status of the agency.

Finally, a problem was created inadvertently when S.B. 342 was amended last year regarding the procedures for appointing members to the Board of Directors. The portion of the bill establishing term limits was not amended to comply with the changes. The language in Section 5 (2) (c) of the bill is intended to set term limits while providing for staggered terms to avoid a complete turnover in Board membership.

We see these proposed amendments as basically technical in nature and do not anticipate that they would have any fiscal impact.

We ask your support in recommending S.B. 599 favorable for passage.

Respectfully Submitted,



M. Jean Krahn

MJK/acp

pc Board of Directors

4  
2

339



State of Kansas  
KANSAS SENTENCING COMMISSION

**SENATE JUDICIARY COMMITTEE**  
Testimony Regarding SB 583 and SB 585  
February 15, 1995

Among the mandatory duties assigned to the Kansas Sentencing Commission under K.S.A. 74-9101 are to make recommendations relating to modification and improvement of the sentencing guidelines. In carrying out those duties, the Commission introduced two bill proposals to this Committee on January 23, 1996, which resulted in the present bills, SB 583 and SB 585. I am here today to ask that SB 583 and SB 585 be passed favorably by the Committee. The Commission believes that the modifications to the sentencing guidelines as proposed in these two bills improve the guidelines considerably, and are essential to efficient and effective evaluation of guidelines sentences.

SB 583

SB 583 is intended to correct an apparent oversight contained in the list of criteria for placing a juvenile in a juvenile detention facility under K.S.A. 38-1640(a)(2) by integrating into the statute comparable crimes classified under the sentencing guidelines.

SB 585

SB 585 contains various amendments to the sentencing guidelines act and to sentencing guidelines procedures, which are intended to remove potential conflicts between provisions, and to improve generally the reporting and monitoring of cases under the sentencing guidelines.

Section 1 of SB 585 amends K.S.A. 21-4611, which sets forth terms of probation or assignment to community corrections. There is currently a conflict between the language in subsection (a) stating, "In no event shall the total period of probation, suspension of sentence or assignment to community corrections for a felony exceed the greatest maximum term provided by law for the crime,..." and the periods of probation for guidelines sentences set forth in subsection (c). The intent of the amendment to subsection (a) is to remove this conflict from the statute.

Sections 2, 3 and 4 of the bill amend K.S.A. 21-4714 dealing with presentence investigation reports in felony cases under the sentencing guidelines, K.S.A. 22-3426 dealing with journal entries in felony cases under the guidelines, and K.S.A. 22-3426a dealing with

SEN. JUDIC  
2-15-96  
ATTACH. 2

journal entries of revocation under the guidelines. Specifically, the amendments remove all mandated forms from these statutes, and replace them with language stating that the presentence investigation report, journal entry, and journal entry of revocation shall be on a form approved by the Kansas sentencing commission.

Under K.S.A. 1995 Supp. 74-9101(b)(5), the sentencing commission is required to "receive presentence reports and journal entries for all persons who are sentenced for crimes committed on or after July 1, 1993, to develop post-implementation monitoring procedures and reporting methods to evaluate guidelines sentences." The forms currently mandated were intended to encompass the necessary information to facilitate data entry, in order to carry out the commission's duties in this regard. However, the currently mandated forms have proved to impede rather than facilitate effective monitoring and reporting procedures. With respect to the journal entry form, for example, based upon feedback from preparers of guidelines journal entries it is clear that the current form, consisting of at least eight pages, is both confusing and cumbersome.

The impetus for the amendments came from responses to a questionnaire sent by the sentencing commission to all 105 county/district attorneys in the state in November, 1995. The questionnaire solicited feedback regarding the guidelines journal entry form. The responses to the questionnaire were consistent in the belief that the current form is too long, too cumbersome and too confusing, and asks for much irrelevant information. The consensus from county/district attorneys, and many others, is that the journal entry form can be and should be changed.

The sentencing commission believes that the presentence investigation form and the journal entry forms should be in a format which not only contains the required reporting information, but which is shorter and easy to complete. As an information resource for criminal justice agency personnel regarding the sentencing guidelines system, the commission routinely receives queries about the forms and how to fill them out. Therefore, the commission has the necessary expertise to identify problems with the forms and to revise the forms as necessary to make them more user-friendly, and to accommodate substantive changes to the guidelines.

Finally, SB 585 sets forth New Section 5, the purpose of which is to consolidate into one statute several provisions now under separate statutes (see K.S.A. 21-4714(h), K.S.A. 22-3426(g) and (h), and K.S.A. 22-3426a(d) and (e)) requiring courts to forward certain information to the Kansas Sentencing Commission or the Kansas Bureau of investigation, so that any confusion about exactly what information is to be sent to which agency will be avoided. A more specific purpose of the new section is to avoid the impediments to timely and effective monitoring of the sentencing guidelines which have resulted from journal entries and presentence investigation reports being sent separately to the sentencing commission, albeit in accordance with the current statutory scheme. Due to the volume of journal entries and presentence investigation reports coming in to the sentencing commission office on a daily basis, it is difficult and time consuming to match up a journal entry and PSI which have arrived separately and on separate dates, sometimes far apart.

The Kansas Sentencing Commission is committed to carrying out its duty to monitor the implementation of the sentencing guidelines. Studying the practical operation of the guidelines



and proposing amendments to improve their operation plays a significant part in the commission's performance of this duty. The Commission believes that SB 583 and SB 585 will substantially improve the practical operation of the sentencing guidelines, making it easier for practitioners in the field to comply with the guidelines, facilitating timely and accurate reporting to the Commission, thus resulting in more effective monitoring and evaluation of the sentencing guidelines structure.

Submitted by:

Rebecca E. Woodman  
Staff Attorney

#3

Testimony to Senate Judiciary Committee  
Regarding SB 583  
February 15, 1996

Mr. Chairman, members of the Senate Judiciary Committee, I appreciate the opportunity to testify regarding Senate Bill 583. My name is Mark Gleeson, and I am the Juvenile Intake Specialist for the Office of Judicial Administration. I am here to offer my support for SB 583. This appears to be one of the last sections of the Kansas Juvenile Offender code to be converted into language consistent with sentencing guidelines. This has been a problem for some time and has caused confusion for courts, law enforcement, detention centers, and juvenile intake and assessment programs.

In addition to offering my support for this bill, I also wish to bring to your attention that the changes recommended in SB 583 also need to be included in Senate Bill 618, the Juvenile Justice Reform Act of 1996. Specifically, Section 67 of SB 618 retains the old language of A, B, and C felony and needs to be converted. Perhaps SB 583 is a vehicle by which this can be accomplished.

I would also point out that the detention criteria severity levels and the severity levels described in Section 63 of SB 618 are inconsistent. This may not be important, but the result is that a drug severity level three offender and a severity level six felony offender are treated differently in the detention criteria of SB 583 and SB 618. Section 63 of SB 618 speaks to the issues of when and how a youth is presumed to be treated as an adult, and to extended jurisdiction juvenile prosecution, while SB 583 addresses the issue of detention criteria. Other differences exist, including no age limit on detention criteria in SB 618 and the absence of any mention of crimes described in article 35 of Chapter 21 of the Kansas Statutes Annotated (sex crimes) in SB 618.

I appreciate your time and attention.

SEN. JUD.  
2-15-96  
ATTACH 3

OFFICERS

Paul J. Morrison, President  
Nanette L. Kemmerly-Weber, Vice-President  
William E. Kennedy, Sec.-Treasurer  
Dennis C. Jones, Past President



DIRECTORS

Julle McKenna  
David L. Miller  
Jerome A. Gorman  
James T. Pringle

## Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612  
(913) 357-6351 • FAX (913) 357-6352

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  
2-15-96  
ATTACH 4

SENATE BILL No. 339

By Committee on Federal and State Affairs

2-16

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

SEN JUP  
4-2

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.

OFFICERS

Paul J. Morrison, President  
Nanette L. Kemmerly-Weber, Vice-President  
William E. Kennedy, Sec.-Treasurer  
Dennis C. Jones, Past President



DIRECTORS

Julle McKenna  
David L. Miller  
Jerome A. Gorman  
James T. Pringle

## Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612  
(913) 357-6351 • FAX (913) 357-6352

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

### 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) applies 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, KCDAAs has no objection to the intent of the bill, but does oppose legislation that contributes to the already crowded appellate dockets.