

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:34 a.m. on January 28, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Schmidt (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Senator Haley
Midge Grinstead, Lawrence Humane Society
Amy Suarez, Regional Director of Midwest Regional Office of The Humane Society of the U.S.
Officer Erik Thompson, President, Kansas Animal Control Association (KACA)
Sandy Barnett, Executive Director, Kansas Coalition Against Sexual & Domestic Violence
Koko Evans, Citizen
Lisa Cusick, Helping Hands Humane Society
John Freed, Lobbyist
Alvin Sykes, President, Justice Campaign of America (JCA)
Dr. Brian Levin, Professor, Criminal Justice, California State University, San Bernadino
Dr. Chris Hamilton, Chair, Political Science Department, Washburn University
Jesse Milan, State President, NAACP
Melvin Jenkins, Director, U.S. Commission on Civil Rights
Marcia Drake, Citizen

Others attending: see attached list

The minutes of January 23rd and 24th meetings were approved on a motion by Senator O'Connor, seconded by Senator Haley, Carried.

SB 229--re: cruelty to animals

Conferee Haley testified in support of **SB 229**, a bill which he stated, "creates a felony for extreme cruelty to animals." (no attachment)

Conferee Ginstead testified in support of **SB 229**. She stated that she investigates approximately 800 cruelty cases every year with 20% of the cases going before the court. She cited groups she has worked with to determine a correlation between animal and human violators. She further stated that perpetrators are rarely apprehended and when they are, they rarely "do time." Her suggestion to Committee members was that they treat this issue by legislating tougher laws but at the same time recognize that prevention rather than punishment will go further to alleviate the problem. She informed Committee that Lawrence and Douglas County have legislated tougher laws on cruelty to animals. (no attachment)

Conferee Suarez testified in support of **SB 229**. She stated her handout was submitted on behalf of Dr. Randall Lockwood and she urged Committee follow it along with her testimony. Following her brief discussion regarding the issue this bill addresses she emphasized the necessity of making cruelty to animals a felony as this provides the tools prosecutors need to help prevent violence. She further noted an increased citizen awareness of the problem and it's effect on society. (attachment 1)

Conferee Thompson testified in support of **SB 229**. He presented a brief background on KACA and reiterated the purpose of the bill. He stated that since first time felony offenders fall under the presumptive probation grid box on the sentencing guidelines he proposed an amendment to the guidelines in the bill to include mandatory jail time for the cruelest of offenders. (attachment 2)

Conferee Barnett testified in support of **SB 229**. She stated that pet abuse "often goes hand in hand with domestic violence and child abuse" and briefly elaborated on this before she introduced the next conferee. (attachment 3)

Conferee Evans testified in support of **SB 229**. She stated she is a current resident of a Battered Women Task Force Shelter. She presented personal testimony regarding the abuse her animals have suffered at the hands of her allegedly abusive husband. (attachment 4)

Conferee Cusick testified in support of **SB 229**. She discussed the link between animal violence and other forms of family violence and stated that certain experts are “using animal cruelty data in assessing domestic violence lethality.” She reviewed proposed amendments to the bill which would provide stronger sanctions and send a message to the community that cruelty to animals will not be tolerated. She stated that 33 other states have felony statutes in place and 19 states have mandatory counseling. ([attachment 5](#)) A copy of the proposed amendments to **HB 2362** (house version of **SB 229**) was submitted. ([attachment 6](#))

Conferee Freed testified in support of **SB 229** giving personal testimony of an animal abuse case and providing a handout of his web page. ([attachment 7](#)) Discussion followed.

SB 230—regarding sentencing; hate crimes

Conferee Haley testified in support of **SB 230** stating briefly that the bill “extends the penalty for hate crimes.”([no attachment](#))

Conferee Sykes testified in support of **SB 230** stating that JCA is currently involved in ongoing discussions with the sentencing commission and he would present testimony on the results of those meetings at a later date. ([no attachment](#))

Conferee Levin testified in support of **SB 230**. He presented a brief auto-biographical sketch, an analysis of several Supreme Court decisions that have addressed bias-motivated crimes, and an assessment of this bill. ([attachment 8](#)) He further provided a model hate crime statute. ([attachment 9](#))

Conferee Hamilton testified in support of **SB 230**. He discussed his investigation of hate crimes and supported increased sentencing and punishment. He stated he would add an aggravating factor to the bill if the perpetrator is a member of an organized hate group. ([no attachment](#))

Conferee Milan testified in support of **SB 230**. He briefly discussed the purpose of the bill and the need for its enactment. He emphasized the importance of strong enforcement provisions in the bill. ([attachment10](#))

Conferee Jenkins testified in support of **SB 230**. He reviewed the structure and function of the civil rights commission, discussed various advisory committee reports on the issues of “hate” or bias-motivated crimes, and stated that adequate legal tools as well as educational strategy are the necessary keys to eradicating this problem ([attachment 11](#))

Conferee Drake testified in support of **SB 230**. She provided personal testimony as a victim of hate crimes and asked Committee to consider the victims of these type of crimes. ([no attachment](#))

Written testimony supporting **SB 230** was submitted by the Kansas Coalition Against Sexual and Domestic Violence. ([attachment 12](#))

Following discussion, the Chair requested the Sentencing Commission provide Committee with a bed-impact study on **SB 230**.

The meeting adjourned at 10:30 a.m. The next meeting is January 29, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 28, 2001

NAME	REPRESENTING
Eric Thompson	Kansas Animal Control Assn
Amy Suarez	The Humane Humane Society of ^{the} U.S.
Michelle Grinstead	Lantern Humane Society
Pat Nuhliel	NAHS
LISA COSICK	HELP WITH HANDS U.S.
Marilyn Trubey	" " "
Stephanie Sharp	Amer. Cancer Society
TIFFANY MULLER	Kansas Coalition Against Sexual & Domestic Violence
ANGIE RINKEN	↑ KCSOV
Nicole Elkins	Gov. Gov. Office
Jeff Bothenberg	Kansas Sheriffs Ass'n
Todd Covault	Self
Doug Smith	KS Academy of Physician Assist.
Shawn Honessce	Greater KC Chamber of Comm.
Tina Osterman	w/NAACP
April Osterman-Lyons	w/NAACP
Shontay Osterman	w/NAACP
Jess Milaw	Kansas Club component of Branches, NAACP
Samuel Johnson Betts	KS. African American Affairs Commission
KELLY ROBERTSON	KS DENTAL ASSN

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
<i>Monica Gray</i>	<i>Self - Hate Crime Bill</i>
<i>Francis Scott Brown</i>	<i>Self - Hate Crime Bill</i>

Testimony Regarding SB 229

Animal Cruelty

Statement by Randall Lockwood, PhD

Vice President for Research and Education Outreach

The Humane Society of the United States

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I present this testimony to you today on behalf of The Humane Society of the United States (HSUS), the nation's largest animal protection organization, with more than 7 million members and constituents and almost 36,000 residing in Kansas. Thank you for the opportunity to provide some brief comments in support of Senate Bill 229 regarding a felony provision for animal cruelty.

We strongly support what you are trying to accomplish in strengthening animal cruelty laws in Kansas, and we support the strongest possible laws to help end violence against animals and people. Citizens of Kansas have been concerned about a wide variety of instances of intentional animal cruelty that has been strongly linked to domestic quarrels, including the killing of a puppy that was intentionally thrown to the ground, and a 18 month old cat that was stabbed when a husband and wife were fighting.

These incidents do not necessarily point to an epidemic of violence against animals unique to Kansas, but rather they point to the fact that the general public is increasingly disturbed by and intolerant of the savage mistreatment of animals. This treatment has often lurked in the background, but has been ignored in the past because of the prevailing attitude that the victims were "only animals", or that, for the perpetrators, it was simply a case of "boys will be boys".

The general public, and the mental health community, are wiser now. We recognize that such acts are often both an indicator of other violence that is being perpetrated along with the animal abuse, or a predictor that such individuals are at high risk of becoming increasingly violent offenders. Recent research by psychologists, sociologists and criminologists has demonstrated that animal abuse is present in nearly 90% of the pet-owning homes where there is physical abuse of children. Other studies have shown that over 70% of pet-owning women seeking protection in women's shelters have had a loved pet threatened, injured or killed by their abusers. Similarly, the victimization of animals has also been associated with the abuse of the elderly and the disabled as well as with a significantly higher involvement in property crimes, drug crimes and violent offenses.

A common thread in all these forms of violence is often a need to gain power and control over others, and the realization by disturbed individuals that they can accomplish this by causing the death or suffering of a vulnerable living being. When such a pattern is established, it can have serious consequences for people as well as animals. There are many examples of such early histories of violence from the life histories of violent offenders, including schoolyard shooters.

We must recognize that violence is violence and that intentional maltreatment of animals is a violent act that traumatizes not only the creatures who are victimized, but also the people who care for and about them and the community as a whole. Having felony provisions available in the prosecution of animal abuse provides valuable tools for the prevention of further violence. They provide greater incentive to prosecutors who might be unwilling to pursue serious cases if the end result will only be a slap on the wrist. Felony convictions can provide a permanent record and allow better tracking of future criminal activity, and provide a wider range of fines, sentences and creative intervention.

Prosecutors are increasingly recognizing the value of taking animal cruelty offenses seriously as part of their toolbox for addressing violence at an early stage or early age, enhancing their ability to get offenders into the system at a time when intervention or treatment is most likely to be effective. They also see animal cruelty as a crime that creates enormous public concern. People are genuinely frightened by the prospect of their being no consequences or intervention for violent offenders who brutally, intentionally take the lives of innocent victims.

Prosecutors see the value of responding to brutal acts of cruelty, regardless of the number of legs the victim has. But what I frequently hear from prosecutors is that the laws they have to work with often do not reflect the seriousness of the crimes, and the public's genuine concern.

During the past 10 years, 26 states have enacted stronger anti-cruelty laws, bringing to 34 the number of states with felony provisions within their cruelty codes. The interest and concerns expressed today, and during the last few months, demonstrate that such protection is supported by all of us seeking to control the proliferation of all forms of violence in our society.

The Humane Society of the United States currently runs the First Strike© Program, which is a national campaign designed to raise public and professional awareness about the connection between animal cruelty and human violence. With the passage of this legislation we would be available to take part in a training program for law enforcement and animal control authorities in investigating and responding to cases of serious abuse or neglect. We look forward to working with you and appreciate your advancement of this essential legislation.



SHAWNEE POLICE DEPARTMENT

ANIMAL CONTROL DIVISION

6535 Quivira

Shawnee, Kansas 66216

(913) 631-2155

Charles Clark, Chief of Police

Senate Judiciary Committee
300 SW 10th Street
Room 123-S
Topeka, KS 66612-1504

Re: S.B 229/ Cruelty to Animals / Hearing 01-28-2002, 9:30 a.m.

To the Honorable Senator Vratil and distinguished committee members,

I am writing this testimony in support of S.B 229, making Animal Cruelty a felony offense. I am currently the President of the Kansas Animal Control Association (KACA), and a Community Service Officer for Shawnee Police Department in Johnson County. KACA was developed to provide training and education to law enforcement personnel in addition to humane society workers. KACA is proud to support over 150 animal control officers and Police personnel from over 85 agencies across the state. KACA is also prominent in national networks such as the Humane Society of the United States (HSUS), and the American Society for the Prevention of Cruelty to Animals (ASPCA).

As President and lead instructor for KACA, I see a daily need for stronger state laws to help combat animal cruelty. The need is greater in western Kansas, where there are no local ordinances to help law enforcement agents deter heinous acts of animal cruelty. I receive weekly calls from officers in search of stronger sentencing guidelines, and requests for legal research to help combat many offenses. Many of these acts of violence against animals are closely related to drug houses, dog fighting rings, illegal gambling and outstanding warrants. The misdemeanor charge of Animal Cruelty is commonly dropped by prosecutors to plea bargain other crimes.

There is one concern brought to my attention by Ms. Sara Welch, a Johnson County ADA. Ms. Welch pointed out that under the current proposal, first time offenders would fall under the "Presumptive probation" grid boxes on the sentencing guidelines. Our fear is that judges will find the suspects guilty and then give them probation instead of jail time. For example, in a recent case, a dog owner tied his beagle up in a trash bag, placed it under his house in a crawl space and left it for dead. The canine was discovered three days later, starving and emaciated. The owner was located and charged with a class A misdemeanor and sentenced to six months in jail. Under the felony provision, the offender could easily be given probation and walk away unaffected by his actions.

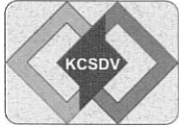
I would like to propose an amendment to S.B 229 sentencing guidelines, to include mandatory jail time as is applied to K.S.A. 8-1567. This would ensure that the cruelest of offenders would be incarcerated at a local facility, and the helpless animals removed from their custody.

In conclusion, KACA would like to strongly urge the committee to support S.B 229 and consider the amendment to the sentencing guidelines. Please help support the law enforcement officers and prosecutors in charging animal cruelty cases.

Respectfully Submitted,

Eric Thompson-President Kansas Animal Control Association

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UNITED AGAINST VIOLENCE

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

January 28, 2002

RE: Senate Bill 229, Cruelty to Animals
Senate Judiciary Committee

Dear Chairman Vratil and Members of the Committee,

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) supports the passage of Senate Bill 229, which proposes to increase the penalties for and clarify the crime of Cruelty to Animals. KCSDV is a network of Kansas domestic violence and sexual assault programs working to end violence against women and children. Cruelty to animals can often be an integral part of domestic violence.

Here's one example of how that happens: Just six weeks into their marriage, Tamara Barnes's husband began drinking heavily, shouting at her for no reason and abusing her cats. He broke one cat's leg and burned its paws. One day he wrapped up one of the cats with duct tape. "He was taped up like a football," Barnes says. "I was completely freaked out. I told him I was going to call the police. He said, 'Go ahead and call them. I'll kill this cat if I want to, and I can kill you, too.'"

We know that the leaders of Kansas want to make our state a safe and healthy place for families. But what you may not know is that an important part of making Kansas families safe is ensuring that there are appropriate legal consequences for those who torture and harm the family pet. Pet abuse often goes hand in hand with domestic violence and child abuse. If someone is harming the family pet, research shows there is a good chance others in the home are being hurt as well.

In one study conducted at a Utah battered women's shelter 71 percent of the women with pets reported that their male partner had threatened to hurt or kill one or more of their pets; actual harm or killing was reported by 57 percent. Victims in domestic violence programs in Kansas also report that threats and abuse of a family pet often accompany the cycle of violence in their homes.

Batterers utilize threats to a family pet as a means of intimidating a family member from calling the police or reporting child abuse. Abusers hurt or kill pets as means of threatening their victims with what might happen to them next, or to retaliate for the victim seeking help or shelter outside of the violent home.

There is growing evidence of the link between animal abuse and child abuse. For example, one study involved 57 families experiencing child abuse in New Jersey found that in 88 percent of these families, animals in the home had also been abused by the parent.

As long as killing and torturing animals doesn't carry a sufficient penalty in Kansas, batterers will continue to utilize the torture and killing of the family pet as a loophole in the law to terrorize abused family members.*

* Portions of this document were adapted from 'Animals Escaping Domestic Violence,' Patricia A. Murphy and 'The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women who are Battered', Frank R. Ascione, Claudia V. Weber, and David S. Wood, Utah State University

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My name is Koko Evans, and I am currently staying at the Battered Women Task Force Shelter, here in Topeka.

I left my home after my husband had killed my puppy. My puppy was 19 weeks old English Bulldog named Bo-Bo, which I raised since 4 weeks old. My husband has been physically, and emotionally abusive towards me the last few years while his drinking problem worsened. Since I bought the puppy, he became very jealous of Bo-Bo and I would see my husband kick him and leave him outside intentionally for a long time while I was not around. Whenever I would defend the puppy, he became very angry and mean to me as well. Besides Bo-Bo, we also have an 8 year old German Shepherd, named Kramer, which he loved very much. However, as his personality had changed over the years, which I believe due to his heavy drinking, he became abusive towards Kramer as well. Kramer used to go everywhere with him, but he started leaving him behind. When Kramer did not obey his command, my husband even punished him by withholding his food. I had to hide some dog food in the basement closet, so he could eat.

Before I bought Bo-Bo, I had asked his permission, and at first, he seemed pleased to have a tiny puppy in our lives again. But it did not last long and both Kramer and Bo-Bo became the victims of his abuse. As the result, B0-Bo was killed.

I left my husband, because if he was capable to kill the innocent puppy, he was also capable of killing me. I believe if we don't respect all lives including animals, we don't respect human life at all. If our pets were just personal belongings, and we thought we could do whatever we please, there is no love or compassion. Over the years, I had this eerie feeling that my husband treated me as if I was his belonging, like his clothes. One day, he would like a shirt, and the next day he would hate it.

Our pets don't pick the owners. It's the owner's responsibility to keep them healthy and well. We need to respect them as beings and not as toys.

People might say animals and humans are different and I don't argue with that. There must be some priority. However, through my experience, I can say my husband treated me without respect and treated me badly, because the way he treated our pets.

I could see certain similarities. If we failed to please him, we would be beaten. If we didn't obey him, we would be deprived. If we were happy, our lives would be in danger.

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I strongly believe, Bo-Bo, my puppy sacrificed his short life in order to let me know that my husband was dangerous and capable to kill me. His message was very clear, and I was afraid. This is the reason why I am staying at the shelter, and believe that cruel behavior towards animals should be concerned more seriously in the society.

January 28, 2002



SENATE BILL No. 229 as amended by HOUSE BILL No. 2362
Testimony by Lisa Cusick
Assistant Director, Helping Hands Humane Society

Abraham Lincoln once said, "I am in favor of animal protection as well as human rights. that is the way of the whole human being".

Animals play a central role in the lives of both children and families. More that three-fourths of American families have companion animals. Animals are part of our families and therefore we must view violence against them as yet another form of family violence. In recent years it has become widely accepted that the mistreatment of animals can be an indicator of many other forms of family violence and ongoing abuse and neglect, including child abuse, elder abuse, domestic violence and mistreatment of the disabled. Cruelty to animals can also be a significant indicator that a child or young adult is at high risk of becoming a perpetrator of violence in society. Over the last two decades, scientists, psychologists and criminologists have been documenting this connection and experts use animal cruelty data in assessing domestic violence lethality.

By adopting this Bill as amended, you can help break the cycle of violence in Kansas where existing law is inadequate and offenders face little chance of punishment or treatment. Mandatory jail time, graduated penalties and mandatory anger management are essential to stopping the violence at its roots. This type of action has been evidenced by the enhancement of the drunk driving laws and sentencing guidelines. Driving under the influence related deaths and injuries have dramatically dropped due to the impact of increased penalties and rehabilitation efforts.

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The following amendments to Bill No. 229 are being proposed:

(9) (d) (1)

(A) Upon a first conviction of a violation of subsection (a) (1), a person shall be guilty of a class B, nonperson misdemeanor, and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, and fined not less than \$100 nor more than \$500. The person convicted must serve at least 48 consecutive hours' imprisonment either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(B) On a second conviction of a violation of subsection (a) (1), a person shall be guilty of a class A, nonperson misdemeanor, and sentenced to not less than 10 consecutive days nor more than one year's imprisonment, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 10 consecutive days' imprisonment either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(C) On the third or a subsequent conviction of a violation of subsection (a) (1), a person shall be guilty of a nonperson felony, and sentenced to not less than 90 days nor more than one year's imprisonment, and fined not less than \$1,000 nor more than \$2,500. The person convicted must serve at least 90 days' imprisonment either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(D) In addition to any sentence for a violation of subsection (a) (1), the court shall enter an order which requires that the person enroll in and successfully complete an anger management program.

We feel that these sanctions are of sufficient length and amount to deter an offender and send a strong message that this behavior will not be tolerated. The nonprison sanction will serve community interests by promoting offender reformation and not adding to the already burdened penal system. Thirty-three other states already have felony statutes in place and nineteen states have mandatory counseling.

These strong anti-cruelty laws would help us better protect the animals that are beaten, burned, intentionally run over, stabbed, drowned, buried alive or shot. This will be our first line of defense in breaking the cycle of violence in Kansas.

Session of 2001

HOUSE BILL No. 2362

By Committee on Judiciary

2-7

AN ACT concerning crimes and punishment; relating to cruelty to animals; increasing penalty; amending K.S.A. 2000 Supp. 21-4310 and 21-4704 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 21-4310 is hereby amended to read as follows: 21-4310. (a) Cruelty to animals is:

(1) Intentionally killing, ~~injuring~~, maiming, torturing, ~~burning~~ or mutilating ~~or causing serious physical injury~~ to any animal;

(2) abandoning or leaving any animal in any place without making provisions for its proper care;

(3) having physical custody of any animal and failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal; ~~or~~

(4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; ~~or~~

(5) *causing any physical injury other than serious physical injury to any animal.*

(b) The provisions of this section shall not apply to:

(1) Normal or accepted veterinary practices;

(2) bona fide experiments carried on by commonly recognized research facilities;

(3) killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated;

(4) rodeo practices accepted by the rodeo cowboys' association;

(5) the humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or

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1 pound, a local or state health officer or a licensed veterinarian three busi-
 2 ness days following the receipt of any such animal at such society, shelter
 3 or pound;

4 (6) ~~with respect to farm animals~~, normal or accepted practices of
 5 animal husbandry;

6 (7) the killing of any animal by any person at any time which may be
 7 found outside of the owned or rented property of the owner or custodian
 8 of such animal and which is found injuring or posing a threat to any
 9 person, farm animal or property;

10 (8) an animal control officer trained by a licensed veterinarian in the
 11 use of a tranquilizer gun, using such gun with the appropriate dosage for
 12 the size of the animal, when such animal is vicious or could not be cap-
 13 tured after reasonable attempts using other methods; or

14 (9) laying an equine down for medical or identification purposes.

15 (c) As used in this section, "equine" means a horse, pony, mule,
 16 jenny, donkey or hinny.

17 (d) (1) (A) *Upon a first conviction of a violation of subsection (a)*
 18 *(1), a person shall be guilty of a class B, nonperson misdemeanor, and*
 19 *sentenced to not less than 48 consecutive hours nor more than six months'*
 20 *imprisonment, and fined not less than \$100 nor more than \$500. The*
 21 *person convicted must serve at least 48 consecutive hours' imprisonment*
 22 *either before or as a condition of any grant of probation or suspension,*
 23 *reduction of sentence or parole.*

24 (B) *On a second conviction of a violation of subsection (a) (1), a per-*
 25 *son shall be guilty of a class A, nonperson misdemeanor, and sentenced*
 26 *to not less than 10 consecutive days nor more than one year's imprison-*
 27 *ment, and fined not less than \$500 nor more than \$1,000. The person*
 28 *convicted must serve at least 10 consecutive days' imprisonment either*
 29 *before or as a condition of any grant of probation or suspension, reduction*
 30 *of sentence or parole.*

31 (C) *On the third or a subsequent conviction of a violation of subsec-*
 32 *tion (a) (1), a person shall be guilty of a nonperson felony, and sentenced*
 33 *to not less than 90 days nor more than one year's imprisonment, and fined*
 34 *not less than \$1,000 nor more than \$2,500. The person convicted must*
 35 *serve at least 90 days' imprisonment either before or as a condition of any*
 36 *grant of probation or suspension, reduction of sentence or parole.*

37 (D) *In addition to any sentence for a violation of subsection (a) (1),*
 38 *the court shall enter an order which requires that the person enroll in*
 39 *and successfully complete an anger management treatment program.*

40 (2) *Cruelty to animals as described in subsections (a)(2), (a)(3), (a)(4)*
 41 *and (a)(5) is a class A nonperson misdemeanor.*

42 Sec. 2. K.S.A. 2000 Supp. 21-4704 is hereby amended to read as
 43 follows: 21-4704. (a) For purposes of sentencing, the following sentencing

HB 2362

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1 guidelines grid for nondrug crimes shall be applied in felony cases for
2 crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

	3 + Person Felonies			2 Person Felonies			1 Person & 1 Nonperson Felonies			1 Person Felony			3 + Nonperson Felonies			2 Nonperson Felonies			1 Nonperson Felony			2 + Misdemeanors			1 Misdemeanor No Record		
	655	620	592	618	586	554	585	572	559	567	552	540	546	534	521	522	514	503	502	495	494	486	476	466	465	456	447
	495	467	442	460	438	416	414	395	394	390	390	381	384	374	365	362	360	352	354	346	339	336	331	323	323	317	309
	247	232	221	220	216	208	197	192	18	100	94	89	82	82	81	82	79	74	77	72	66	71	66	61	61	59	55
	172	162	154	162	154	144	75	71	68	64	66	62	64	60	57	59	56	53	52	50	47	42	45	43	41	39	
	116	110	102	125	120	114	69	57	53	55	52	50	51	48	45	47	44	41	42	41	38						
	45	43	40	41	37	37	38	36	34	36	34	32	32	30	28	22	20	25									
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LEGEND


Preemptive Imprisonment

1 (b) The provisions of this section shall be applicable to the sentencing
 2 guidelines grid for nondrug crimes. Sentences expressed in such grid
 3 represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime severity
 5 and criminal history classification tool. The grid's vertical axis is the crime
 6 severity scale which classifies current crimes of conviction. The grid's
 7 horizontal axis is the criminal history scale which classifies criminal
 8 histories.

9 (d) The sentencing guidelines grid for nondrug crimes as provided in
 10 this section defines presumptive punishments for felony convictions, sub-
 11 ject to judicial discretion to deviate for substantial and compelling reasons
 12 and impose a different sentence in recognition of aggravating and miti-
 13 gating factors as provided in this act. The appropriate punishment for a
 14 felony conviction should depend on the severity of the crime of conviction
 15 when compared to all other crimes and the offender's criminal history.

16 (e) (1) The sentencing court has discretion to sentence at any place
 17 within the sentencing range. The sentencing judge shall select the center
 18 of the range in the usual case and reserve the upper and lower limits for
 19 aggravating and mitigating factors insufficient to warrant a departure.

20 (2) In presumptive imprisonment cases, the sentencing court shall
 21 pronounce the complete sentence which shall include the prison sen-
 22 tence, the maximum potential reduction to such sentence as a result of
 23 good time and the period of postrelease supervision at the sentencing
 24 hearing. Failure to pronounce the period of postrelease supervision shall
 25 not negate the existence of such period of postrelease supervision.

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
 27 nounce the prison sentence as well as the duration of the nonprison sanc-
 28 tion at the sentencing hearing.

29 (f) Each grid block states the presumptive sentencing range for an
 30 offender whose crime of conviction and criminal history place such of-
 31 fender in that grid block. If an offense is classified in a grid block below
 32 the dispositional line, the presumptive disposition shall be nonimprison-
 33 ment. If an offense is classified in a grid block above the dispositional
 34 line, the presumptive disposition shall be imprisonment. If an offense is
 35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
 36 nonprison sentence upon making the following findings on the record:

37 (1) An appropriate treatment program exists which is likely to be
 38 more effective than the presumptive prison term in reducing the risk of
 39 offender recidivism; and

40 (2) the recommended treatment program is available and the of-
 41 fender can be admitted to such program within a reasonable period of
 42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, aggravated as-
6 sult against a law enforcement officer or K.S.A. 21-3415, aggravated
7 battery against a law enforcement officer and amendments thereto which
8 places the defendant's sentence in grid block 6-H or 6-I shall be pre-
9 sumed imprisonment. The court may impose an optional nonprison sen-
10 tence upon making a finding on the record that the nonprison sanction
11 will serve community safety interests by promoting offender reformation.
12 Any decision made by the court regarding the imposition of the optional
13 nonprison sentence, if the offense is classified in grid block 6-H or 6-I,
14 shall not be considered departure and shall not be subject to appeal.

15 (h) When a firearm is used to commit any person felony, the of-
16 fender's sentence shall be presumed imprisonment. The court may im-
17 pose an optional nonprison sentence upon making a finding on the record
18 that the nonprison sanction will serve community safety interests by pro-
19 moting offender reformation. Any decision made by the court regarding
20 the imposition of the optional nonprison sentence shall not be considered
21 a departure and shall not be subject to appeal.

22 (i) The sentence for the violation of the felony provision of K.S.A. 8-
23 1567, *subsection (d) (1) of K.S.A. 21-4310* and subsection (c)(3) of K.S.A.
24 21-3412 and amendments thereto shall be as provided by the specific
25 mandatory sentencing requirements of that section and shall not be sub-
26 ject to the provisions of this section or K.S.A. 21-4707 and amendments
27 thereto. Notwithstanding the provisions of any other section, the term of
28 imprisonment imposed for the violation of the felony provision of K.S.A.
29 8-1567, *subsection (d) (1) of K.S.A. 21-4310* and subsection (c)(3) of
30 K.S.A. 21-3412 and amendments thereto shall not be served in a state-
31 facility in the custody of the secretary of corrections.

32 (j) The sentence for any persistent sex offender whose current con-
33 victed crime carries a presumptive term of imprisonment shall be double
34 the maximum duration of the presumptive imprisonment term. The sen-
35 tence for any persistent sex offender whose current conviction carries a
36 presumptive nonprison term shall be presumed imprisonment and shall
37 be double the maximum duration of the presumptive imprisonment term.
38 Except as otherwise provided in this subsection, as used in this subsection,
39 "persistent sex offender" means a person who: (1) Has been convicted in
40 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
41 amendments thereto; and (2) at the time of the conviction under subsec-
42 tion (1) has at least one conviction for a sexually violent crime, as defined
43 in K.S.A. 22-3717 and amendments thereto in this state or comparable

1 felony under the laws of another state, the federal government or a for-
2 eign government. The provisions of this subsection shall not apply to any
3 person whose current convicted crime is a severity level 1 or 2 felony.

4 (k) If it is shown at sentencing that the offender committed any felony
5 violation for the benefit of, at the direction of, or in association with any
6 criminal street gang, with the specific intent to promote, further or assist
7 in any criminal conduct by gang members, the offender's sentence shall
8 be presumed imprisonment. Any decision made by the court regarding
9 the imposition of the optional nonprison sentence shall not be considered
10 a departure and shall not be subject to appeal. As used in this subsection,
11 "criminal street gang" means any organization, association or group of
12 three or more persons, whether formal or informal, having as one of its
13 primary activities the commission of one or more person felonies or felony
14 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
15 and amendments thereto, which has a common name or common iden-
16 tifying sign or symbol, whose members, individually or collectively engage
17 in or have engaged in the commission, attempted commission, conspiracy
18 to commit or solicitation of two or more person felonies or felony viola-
19 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
20 amendments thereto, or any substantially similar offense from another
21 jurisdiction.

22 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
23 and amendments thereto when such person being sentenced has a prior
24 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
25 3716 and amendments thereto shall be presumed imprisonment.

26 Sec. 3. K.S.A. 2000 Supp. 21-4310 and 21-4704 are hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after its
28 publication in the statute book.

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67

I was shot by a high powered rifle, tied to a vehicle and dragged over 3 miles, flung into a ditch to be discovered by a farmer.

Please support SB229.

I did not deserve to be tortured and murdered.

Click on the
Red Box below
to read SB 229



Senate Bill 229

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Your Kansas Friendly Lobbyist - John Freed

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Senator Kratil,

A year before his death, at the age of 2 months, we acquired a Wolf/Malamute Cross pup, a stately red critter with more character and intelligence than any dog I'd ever seen. We named him Cherokee.

The neighbor man, told us how he would see Cherokee follow me to the gate and sit by the hay shed after I left, waiting for me to come back home. For hours on end that dog would stay there and wait.

That made him an easy target for the sick-minded individual who tortured and murdered Cherokee last September 20th.

Cherokee had become a part of our family almost overnight; as I needed a friend at that time, and I'll tell you, that dog was this man's best friend. I looked forward to seeing him by that hay shed near the farm's gate, but one afternoon, he was gone.



When Cherokee was taken out of my life, my construction company meant nothing to me; my work as an equipment operator was absolutely irrelevant; I had no inward drive to carry on.

It was like someone shot the boat out from under us and we were just drifting in the water.

We'll get through Cherokee's tragic death, but we can never get over it.

As I'm sure anyone would, I would replay the scene in my mind over and over until I believe I can now hold to two theories.

Either someone has hated me so much they wanted to "get even" or a thrill-seeking piece of no good human flesh just drove by and saw an easy target to torture.

I tend to believe the later, because no one has "gained satisfaction" by letting me know how much they hurt me.

I believe the sadistic criminal saw Cherokee at the hay shed, took one shot at him, wounding him, and he ran under my camper, his home, in hope that I could help him, but I was not there.

Then the gunman took another shot, killing the dog in its home. He then would have taken the piece of yellow plastic rope I had by the outdoor grill and tied his hind feet together, pulled Cherokee out and then tied the rope to his vehicle and drove nearly 3 miles, removed his collar and flung the mutilated carcass into the ditch, leaving the rope tied to Cherokee's feet.

This letter furnished by joegarden.com

- your Kansas Friendly Lobbyist - John Freed, 1-785-966-2373 or john@joegarden.com

A thoughtful neighbor found him four days later in a road ditch near his house. He responded to a picture of Cherokee in the Holton newspaper concerning his disappearance.

We can never express the deep hurt we experienced when we had picked up the remains of our best friend and took him home for burial. But we can express the absolute hatred and anger we feel that under the current laws of Kansas, my home state, had this individual been caught red handed in the act of torturing and murdering a "domestic animal" he would only be charged with a misdemeanor.

Congressmen, the lot falls to you, this is your hour to stand up and be counted as not only leaders in our state; but examples of how our judicial system works: That we humans are responsible for our actions. I ask that you support Senate Bill 229, re: Animal Cruelty and for your sake and the sake of other animal caring people, that the heartaches I endured will never have to befall others.

Thank you.

Sincerely

Russell Scheid

Russell was unable to meet
with me to sign this due to the
upcoming ice storm -
I am hand delivering them
for him.

John Truesdell

I would like to thank Chairman Vratil and members of the Judiciary Committee for the opportunity to testify today in favor of Kansas Senate Bill 230. My name is Brian Levin, and I am Director of the Center for the Study of Hate & Extremism at California State University, San Bernardino where I am also a Professor of Criminal Justice. I previously served as Associate Director for Legal Affairs of the Southern Poverty Law Center's Klanwatch/Militia Task Force Projects in Montgomery, Alabama. I am the principal author of various United States Supreme Court amici briefs relating to bias crime and have testified before various state legislatures on the subject. I testify here today at the invitation of the Justice Campaign for America, and with the support of the National Association for the Advancement of Colored People's (N.A.A.C.P.) Kansas State Conference. I briefed the Apprendi and Mitchell cases for amici National Association of Human Rights Workers, an organization that favors penalty enhancement laws for bias crime.

While the United States Supreme Court has unanimously upheld the Constitutionality of state criminal penalty enhancement provisions for discriminatory crimes, also known as bias crimes, it has also wisely established guidelines to prevent impermissible governmental interference with protected civil liberties. In this testimony I will analyze various Supreme Court decisions that have addressed the issue of bias motivated behavior and additionally assess Kansas Senate Bill No. 230, a criminal penalty enhancement provision that increases the punishment for felonies that have a discriminatory component.

SB 230 Punishes Discrimination: A Compelling Governmental Obligation
Discrimination is the act of treating similarly situated groups of individuals differently without a legal or sufficient basis. Not every differential form of treatment constitutes discrimination. To promote social order and fairness for instance, society constantly makes justifiable distinctions based on age, education, talent, income, and behavior. We tax high income people differently from the destitute, we deprive youngsters of the ability to vote, we punish lawbreakers, and we only let those who pass driving tests operate motor vehicles.

However, society has decided that in a variety of contexts subjecting people to unjustifiable differential treatment is extremely harmful, not only to immediate victims and their group, but to society as a whole. As a result the government has been given substantial authority to prevent, punish, and deter invidious discrimination.

The fact that discrimination oftentimes emanates from a person's beliefs and associational desires do not prevent the government from enacting and enforcing anti-discrimination laws. As the United States Supreme Court held in *Roberts v. United States Jaycees*:

[A]cts of invidious discrimination...cause unique evils that the government has a compelling interest to prevent -- wholly apart from the point of view such conduct may transmit Accordingly, like violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact, such practices are entitled to no constitutional protection.

United States Attorney General John Ashcroft echoed a similar refrain last year:

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...discrimination is something we will not tolerate...The enforcement of the law will be accorded to every citizen, and that no citizen will be beyond the reach of the law."

The federal government and many states have laws that punish discrimination in employment, public accommodations, public education, and housing. It reasons that if legislatures can punish discrimination in these areas, they may also punish criminals for discriminating in the commission of offenses.

The Situational Nexus Of An Act Is Routinely Used To Gauge Punishment
SB 230 addresses this form of discriminatory crime by enhancing the punishment for felonies where a defendant discriminates or intentionally selects a target based on membership or perceived membership in various enumerated groups. Two points are important to note here. First, the criminal law, through our legislators, prosecutors, judges and juries, consistently adjust levels of punishment amongst seemingly similar types of conduct when contextual factors and justice mandate. These factors include time, location, instrumentality, recidivism, intent, motive, victim characteristics, offender characteristics, provocation, self-defense, and exigency. Carrying a concealed gun on a plane and dealing drugs near schools, for instance, are punished more harshly than the same conduct elsewhere. Sexual assaults against children are punished differently than those against adults. Offender motive, in particular, is critical in determining punishment. Breaking and entering only becomes burglary once it is shown that the offender meant to commit an additional crime while on someone else's property. Shooting someone who is mugging you is probably justifiable; shooting a person while you are doing the mugging is not.

Laws & Procedures That Punish Discriminatory Crimes Are Constitutional
The second important point is that the Supreme Court has consistently affirmed the authority of legislatures to craft well drafted laws to specifically punish discriminatory crime. After the Supreme Court affirmed federal civil rights statutes used in the 1960s to punish the killers of civil rights activists, it soon addressed the issue with regard to the states.

In a 1983 case, *Barclay v. Florida*, the Court held that a defendant's anti-white racial animus and motivation to ignite a race war were relevant in determining punishment in a race murder case. Later, the Court set important limits on the government's authority so as to protect bigoted beliefs and expression. In *Dawson v. Delaware*, the Court overturned the death sentence of a white defendant because his supremacist beliefs and associations were introduced against him - even though they were irrelevant to the commission of the crime for which he was charged. In *Dawson* the Court prohibited the government from penalizing abstract bigoted beliefs that had no impact on the illegal conduct. The Court further held, however, that the government is free to introduce evidence of a defendant's constitutionally protected beliefs and associations to show motive or to establish intentionality. This was done with Timothy McVeigh, and is likely to be repeated in forthcoming trials against alleged foreign terrorists.

In *R.A.V. v. St. Paul*, the Supreme Court invalidated a municipal "hate speech" ordinance that punished the use of certain hateful symbols- but only when they were used to promote certain hatreds deemed offensive by the government. The law was used to prosecute a teenage skinhead for burning a cross in the yard of an African-

merican family with several young children. The statute's focus on the specific viewpoints that the symbols expressed and their offensiveness, rather than their discriminatory or threatening elements proved to be fatal. The justices unanimously rejected the statute, but they were sharply divided as to their rationales. Because the law punished certain types of hostile crossburnings when used to express some prejudices, but not others, the court invalidated the ordinance. Interestingly, the Court later let stand a Florida statute that punished all terroristic crossburnings without making reference to the underlying belief. The federal government under a housing discrimination criminal statute successfully prosecuted the young skinhead defendant in the R.A.V. matter.

The issue of the overall constitutionality of bias crime laws as a category was definitively settled in 1993 in *Wisconsin v. Mitchell*. There, the Court, in an opinion by Chief Justice William Rehnquist unanimously upheld the constitutionality of another type of bias crime statute- a penalty enhancement law. Specifically, the enhancement law at issue punished an offender's intentional selection of a victim or property based on the status characteristics of another person. The characteristics covered by Wisconsin's law included race, religion, color, national origin, and ancestry. From a constitutional standpoint the law is indistinguishable from SB 230.

Chief Justice Rehnquist cited three basic reasons for affirming the statute. First, while the government may not punish abstract beliefs, it can punish a vast array of depraved motives. The Court further found that penalty enhancement laws, unlike the statute at issue in R.A.V. did not prevent people from expressing their views or punish them for doing so. Lastly, the Court pointed to the severity of bias crimes, stating that they are "thought to be more likely to provoke retaliatory crimes, inflict distinct emotional harm on their victims and incite community unrest." (*Mitchell*, p. 487-88).

Penalty Enhancers That Punish Beyond The Statutory Maximum Sentences For Underlying Crimes Must Meet Certain Requirements

In June 2000, the United States Supreme Court struck down a New Jersey bias crime law in *Apprendi v. New Jersey*. Charles Apprendi challenged his twelve year prison sentence under New Jersey's unusual bias crime law. Apprendi fired numerous rounds into the home of an African-American family. He also made an admission, which he later retracted, that he committed the offense because the family was African-American. New Jersey's bias crime law allowed a judge, rather than a jury, to increase the sentence of a convicted defendant beyond the maximum enumerated in the criminal code for the underlying offense upon a showing of racial bias by a preponderance of the evidence. The Court held 5-4, that when a factor impacts a sentence as substantially as racial bias did in *Apprendi*, it must be established before a jury by a higher standard-beyond a reasonable doubt. The impact of the decision in the area of bias crime law was limited because the overwhelming majority of bias crime statutes already meet the Court's standards.

SB230 is fully consistent with the requirements mandated by the *Apprendi* decision because it directs the finder of fact to prove the discriminatory element of an offense by a showing of beyond a reasonable doubt.

Discriminatory Crime Is A Quantifiably Serious Type of Victimization
 Available bias crime data, which is admittedly incomplete, nevertheless offers a disturbing composite of a crime that is much more serious than previously thought. These crimes are much more likely to be directed against persons than is overall crime. Generally, bias crime offenses appear to be primarily clustered around simple and aggravated assault, vandalism and threats. Person directed bias crime appear twice as likely to result in injury than overall person directed crime. Aggravated assaults also appear to occur with greater frequency in bias crime than they do in overall crime.

Reported bias crimes appear to be more violent than non-bias motivated offenses. Bias motivated offenses are almost six times more likely to involve crimes against persons than are crimes generally. The National Incident Reporting System (NIBRS), a more detailed federal data collection project of the FBI, also analyzes crime data. The most common single bias crime offense reported to the FBI NIBRS system was a property offense, vandalism at 28%, but twice as many bias crime offenses, 60% were directed against persons. (Strom, 2001). In contrast, only about 12% of crimes overall were directed against persons. (Federal Bureau of Investigation, Crime, 2001). NIBRS person based bias crime was clustered around three offenses, intimidation (verbal or related threats of bodily harm) at 23.1%, simple assault at 21.9%, and aggravated assault at 12.9%. The next most common NIBRS person based bias crime offense was robbery at 1.3%, with the remaining 4 person offenses accounting for less than 1% combined. (Strom, 2001).

The 2000 annual national FBI UCR bias offense data is similar to that of the smaller but more detailed NIBRS sampling. As in previous years intimidation was the most commonly reported UCR bias crime offense at 34.9%. Vandalism and property destruction had ranked first among the NIBRS bias crime data, but was second in the UCR data set at 29.3%, followed by simple assault at 17.1%, and aggravated assault at 12.6%. (Federal Bureau of Investigation, Hate crimes, 2001).

Hate Crime Incidents By Offense, NIBRS Data 1997-99, 10-17 States

Person Offenses

Assault, intimidation	23.1%	687
Assault, simple	21.9%	651
Assault, aggravated	12.9%	385
Robbery	1.3%	38
Other person offenses	<1%	

Property Offenses:

Vandalism	28%	832
Larceny/Theft	5.1%	153
Burglary	3.0%	88
Other property offenses	2.2%	

Other Offenses 1.7%
 (Strom, 2001).

*BI, Hate Crime Statistics By Offense: 2000,
National Data Set 48 States & D.C.*

<i>Person Offenses</i>	<i>65%</i>
Intimidation	34.9%
Simple Assault	17.1%
Aggravated Assault	12.6%
<i>Property Offenses</i>	<i>34.9%</i>
Damage/Destruction/ Vandalism	29.3%

Other .1%
(Federal Bureau of Investigation, Hate crimes, 2001).

Weapon use in bias crime attacks appear to primarily involve imprecise weapons of opportunity that can be spontaneously accessed such as fists, blunt objects and knives. Bias crime victims are more likely to face assailants who are unknown or strangers to them. Most, but not all, research indicates that multiple offenders are more likely in bias crime cases. Bias crimes are most likely to occur at residences and it appears that there is a relationship between changing racial and ethnic housing patterns and bias crime. Bias crime frequency also appears to be related at various times to the existence of a trigger event which ignites a cycle of retaliatory violence between or against certain communities, as was the case with anti-Muslim and South Asian bias crimes after the September 11, 2001 terrorist attacks.

At least 60% of bias crime victims are male. Racial bias accounts for about 55% of reported bias crime, with 66% of those victims being African-American. (Federal Bureau of Investigation, Hate Crime, 2001). Research further indicates that the vast majority of assailants are not confirmed to be members of bigoted bias groups. Bias crimes also appear to be less likely to be reported to authorities than crime overall. Research further indicates that bias crime victims often face serial victimizations. Research also indicates that bias crime victims face greater psychological and behavioral consequences as a result of their attacks, and that these negative indicators last far longer for bias crime victims than they do for similarly situated victims of non bias crime.

The enforcement of bias crime laws varies greatly among different jurisdictions. Even in jurisdictions where bias crime enforcement is aggressive, few offenders are caught and the number of convictions low. There is a paucity of scholarly research relating to how bias crime affects secondary victims such as coworkers and community members, but it would stand to reason that the effect would be significant because of the perceived the interchangeability of victims within a targeted group. Presumably, the terroristic fear of bias crime would extend beyond direct victims to those who feel that they share the characteristics and attendant vulnerability of someone targeted for a crime- particularly when the assailant is unknown or a stranger.

Improving Kansas' Approach To Discriminatory Crime

While SB 230 is a well drafted bill, the state should consider additional measures to protect those within its jurisdiction from the scourge of discriminatory violence. First, legislators should add gender to the list of protected classes

covered by the bill. Over 20 states now protect on the basis of gender in their bias crime statutes. In addition, the legislature should enact legislation that enhances the punishment for misdemeanors, not just felonies. Many bias crimes start out as threats, property damage, and simple assaults before escalating to felonies. According to the FBI, of the 11,605,751 index crimes reported in 2000 only 8063 were bias crimes, or less than .0007%. The relatively low number of bias crime means that the state would not suffer adverse financial impact as a result of punishing misdemeanors more severely. The legislature should also enact a statute that streamlines civil action for bias crime victims to make it easier to get injunctive or monetary relief from the assailants. In addition, the state should mandate educational alternatives for juveniles when imprisonment is deemed inappropriate. The state should also take measures to encourage reporting by victims by protecting them from repercussions. This should include keeping the identity of victims private at the initial stage of reporting and shielding undocumented persons from deportation as a result of reporting a crime.

Available data indicate that Kansas has one of the worst systems for counting bias crime in the nation. Out of the almost 11,700 agencies supplying data to the FBI in 2000, only one agency from Kansas participated. Data collection is regarded as a gateway first step to other action by authorities with regard to crime. It is likely that training, procedures, victim support, and prosecutions are inadequate in jurisdictions that maintain inadequate data. Because bias crime laws are not self executing the state should require police departments to train their members to respond to and collect bias crime data. While the present bill requires data collection, I am concerned that some agencies will merely submit forms attesting that there were no bias crimes in their jurisdictions whether or not this is the case.

Conclusion

In a series of cases culminating in *Wisconsin v. Mitchell*, the Supreme Court has upheld stronger punishment for discriminatory crimes. In *Mitchell*, the justices cited the ability of bias crime enhancements to punish both discrimination and motive, and to address the severity of bias crimes. Laws, like SB 230 are constitutional and effective weapons in society's arsenal to combat criminal discrimination. Government has a special obligation to rid this state of a violent form of criminality on the one hand, and an act of discrimination on the other. Kansas would do well to enact this statute and institute the other measures outlined here to protect all of God's children who reside within your borders.

Thank you.

Cases

Apprendi v. New Jersey, 530 U.S. 466 (2000)

Barclay v. Florida, 463 U.S. 939 (1983)

Jawson v. Delaware, 503 U.S. 159 (1992).

R.A.V. v. St. Paul, 505 U.S. 377 (1992).

Roberts v. United States Jaycees, 468 U.S. 609, 628 (1984).

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Biographical Sketch

Brian Levin, Esq.
Professor of Criminal Justice & Director, Center on Hate & Extremism,
California State University, San Bernardino

Criminologist and civil rights attorney Brian Levin is a professor of criminal justice and director of the Center for the Study of Hate & Extremism at California State University, San Bernardino where he specializes in analysis of hate crime, terrorism and legal issues. Prof. Levin began his academic career as a professor at Stockton College in New Jersey in 1996.

Previously, Professor Levin served as Associate Director-Legal Affairs of the Southern Poverty Law Center's Klanwatch/Militia Task Force in Montgomery, Al.; Legal Director of the Center for the Study of Ethnic and Racial Violence in Newport Beach, Ca. and as a corporate litigator for the law firm of Irell & Manella. He was also a New York City Police Officer in the Harlem and Washington Heights sections of Manhattan during the crack wars of the 1980s.

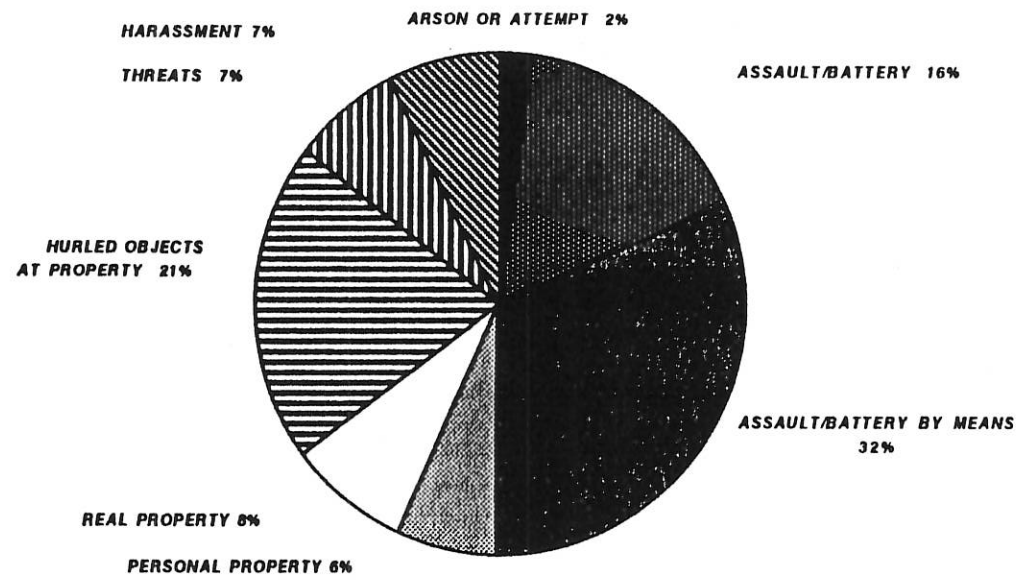
Mr. Levin is a graduate of Stanford Law School, where he was awarded the Block Civil Liberties Award for his work on hate crime. He is a member of the Bar of the Supreme Court of the United States and the state of California. He received his bachelor's degree with multiple honors from the University of Pennsylvania, where he was awarded a grant to study hate crime.

He is the author or co-author of books, scholarly articles, training manuals and studies on extremism and hate crime. He was also the author of influential Supreme Court briefs in the Supreme Court case of Wisconsin v. Mitchell in 1992-3, where he analyzed criminological data establishing hate crime's severity. His book, the Limits of Dissent is about the Constitution and domestic terrorism. He is presently writing another book about the hate crime and extremism. His research has been cited by The California Court of Appeals and in numerous scholarly journals and major law reviews.

Prof. Levin has testified before Congress, the US Commission on Civil Rights and various state legislatures on hate and terrorism. He has presented instruction and/or advised the Federal Bureau of Investigation, US Department of Justice, Treasury Dept., U.S. Customs, American Bar Association, American Prosecutor's Research Institute, National Academy of Sciences-National Research Council, National Bar Association, National College of District Attorneys, National District Attorneys Association, the Federal Law Enforcement Training Center, International Association of Chiefs of Police and numerous police departments, colleges, universities and human rights organizations.

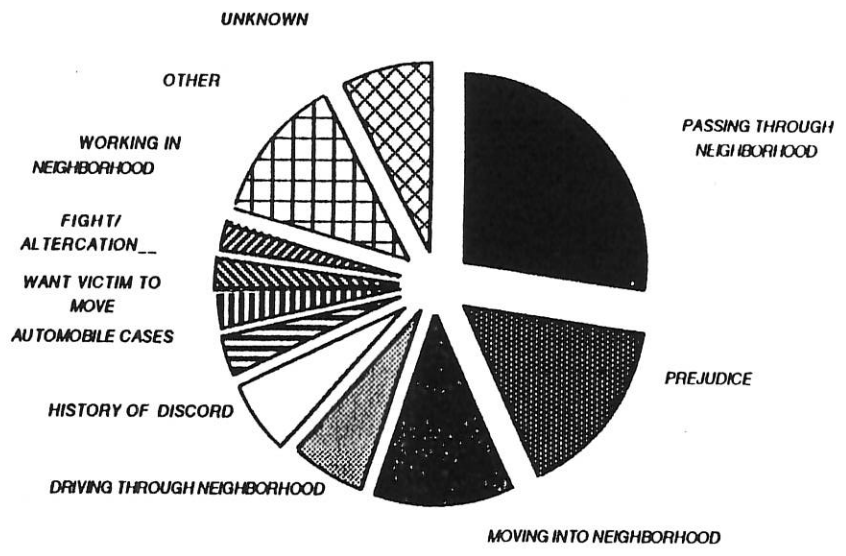
Mr. Levin is a court certified expert on extremism in the United States and England. He has appeared on every network and cable television evening news broadcast and various network magazine shows on the subjects of civil rights, criminal law, and extremism. He has also appeared in every major American newspaper, newsmagazine and wire service.

BOSTON BIAS CRIMES BY TYPE 1978 - 1991



Source: Boston Police Department Community Disorders Unit.
Chart reprinted courtesy of Stanford Law & Policy Rev.

BIAS CRIMES CLASSIFIED BY REASON GIVEN



A-8

SOURCE: The McDevitt Study at Table V

8-11

BACKLASH - NEW YORK CITY BIAS CRIMES IN WAKE OF HOWARD BEACH HOMICIDE

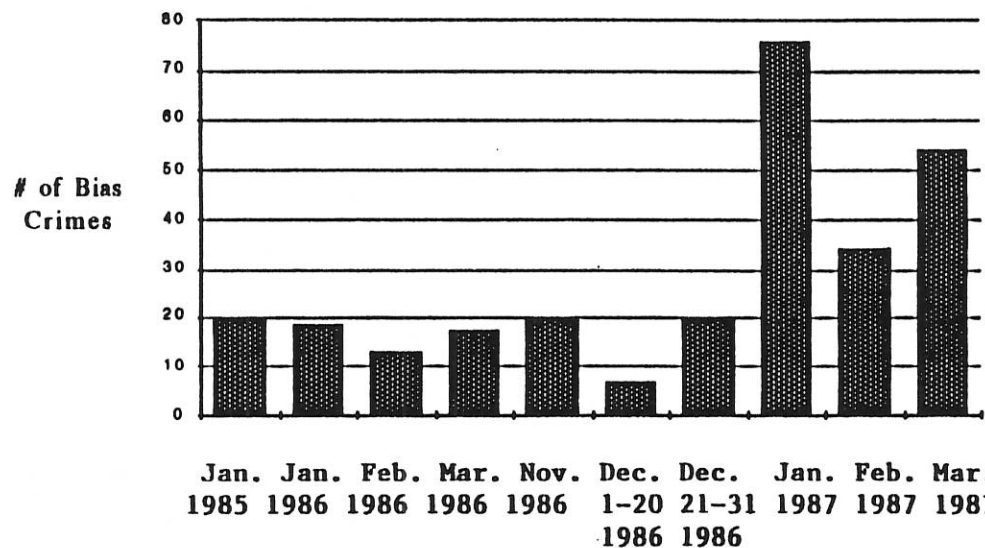


Chart from Levin, A Practical Approach to Bias Crimes II (1993)

Howard Beach attack occurred Dec 20, 1986.
This graph shows the explosive nature of these incidents.

Source of Data: New York City Police Dept.

8/8

THE IMPACT

A Pattern of Attacks

Reports of bias attacks tend to peak shortly after a widely publicized incident.

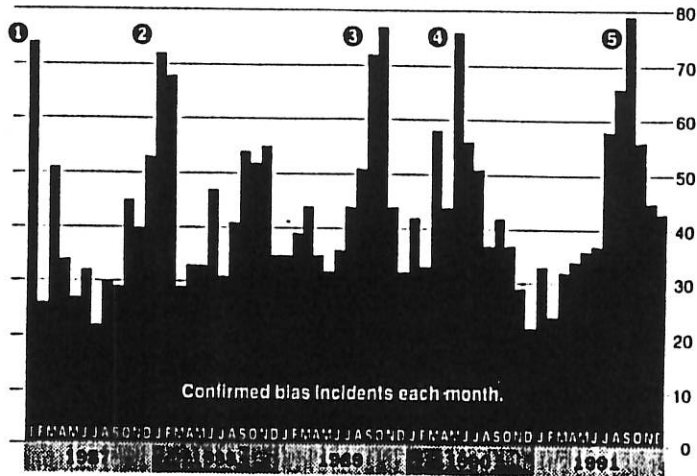
1. Dec. 20, 1986 Michael Griffith, a black man, is killed in Howard Beach, Queens, as he is chased onto a highway by a group of white men.

2. Nov. 28, 1987 Tawana Brawley is found in Wappingers Falls, N.Y., with racial slurs written on her torso. Law-enforcement officials later say her report of assault by six white men is a hoax.

3. Aug. 23, 1989 Yusuf Hawkins, a black teen-ager, is confronted by a gang of white teen-agers and shot in Bensonhurst, Brooklyn.

4. April and May 1990 A dispute between a Korean grocer and a black customer in the Flatbush section of Brooklyn provokes demonstrations.

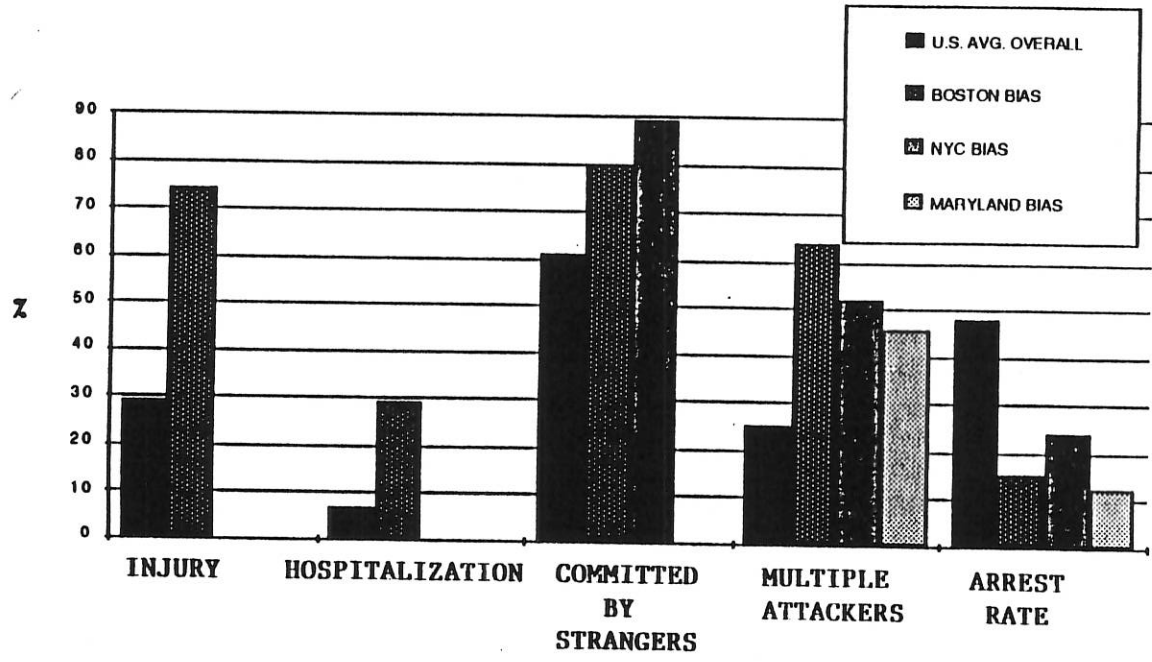
5. Aug 19, 1991 A Jewish driver loses control of his car in Crown Heights, Brooklyn, killing a black child.



Source: New York City Police Department

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COMPARISON OF BIAS AND NON-BIAS CRIMES



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Model Hate Crime Statute

The following is a constitutionally sound model hate crime statute designed to be used by states and communities that either lack hate crime laws altogether or have laws with inadequate coverage.

- A) Anyone who intentionally selects a person or public or private property to be the target of a criminal act because of the actual or perceived race, color, religion, disability, sexual orientation, gender, or national origin or ancestry of another shall have the penalty for the underlying crime increased to the next higher offense level.
- B) This statute requires that a trier of fact separately establish that the requisite elements prescribed in the law exist beyond a reasonable doubt.
- C) This statute shall not apply to any state offense where the race, color, religion, disability, sexual orientation, gender, or national origin or ancestry of a victim is an element of the offense.
- D) The offense by the defendant shall be increased by 2 (two) levels upon a showing of either (1) a prior conviction under this statute, or (2) the defendant acted in concert with another in the commission of the crime charged.
- E) The Court shall have jurisdiction to order restitution or to enjoin the defendant from any future conduct that intimidates, threatens, coerces another from the exercise of any right secured by the constitution or laws of this state or the United States. Each violation of this order is punishable by one year imprisonment and a \$5000 (five thousand dollar) fine.
- F) Anyone injured by an act charged under this statute may also institute a civil action against the offending party(ies) for injunctive or other appropriate relief, including compensatory and punitive damages, as well as attorneys fees and costs.
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**Jesse Milan, President
Kansas State Conferences of Branches, NAACP**

**Presentation at the Senate Hearing on Senate Bill 230 on January 28,
2002**

**HONORABLE SENATORS, GOOD MORNING. I RISE ON BEHALF
OF THE KANSAS STATE CONFERENCE OF BRANCHES IN
SUPPORT OF THE HATE CRIME BILL YOU ARE CONSIDERING
FOR ENACTMENT, SENATE BILL 230. WE URGE YOUR
PASSAGE OF THIS BILL BECAUSE HARDLY A WEEK GOES
BY THAT I DON'T RECEIVE A CALL WHEN SOMEONE IS
ALLEGING HAVING BEEN THE VICTIM OF A HATE CRIME.
SUCH CALLS COMES FROM CITIZENS IN THE WORK PLACE,
SCHOOLS, WHILE SHOPPING, AND THEIR RESPECTIVE
COMMUNITIES. AT THE PRESENT TIME THERE IS NO STATE
LAW IN KANSAS THAT PROVIDES PROTECTION FROM SUCH
ACTS AGAINST THEM. THEREFORE. I URGE YOU TO PASS
THIS BILL TO PROVIDE SUCH PROTECTION FROM A KANSAS
LEGISLATIVE PERSPECTIVE.
AS YOU CONSIDER SUCH ENACTMENT, I ASK YOU TO
SPECIFICALLY CONSIDER THE ENFORCEMENT OF A HATE
CRIME COMMITTED AGAINST ANOTHER PERSON BECAUSE**

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**OF THEIR RACE, RELIGION, COLOR, DISABILITY, GENDER,
ETHNICITY AND OR SEXUAL ORIENTATION.**

**AS YOU CONSIDER SUCH ENACTMENT, I AS THAT YOU GIVE
SPECIAL ATTENTION TO THE ENFORCEMENT OF SUCH ACT.**

THAT IS TO ENSURE, TO THE GREATEST EXTENT POSSIBLE,

THIS LAW WOULD BE ENFORCED IN AN EQUAL MANNER. I

**SAY THIS BECAUSE A RECENT REPORT FROM THE
LEADERSHIP CONFERENCE ON CIVIL RIGHTS AND**

LEADERSHIP CONFERENCE ON EDUCATION REPORTED:

**"RACIAL DISPARITIES IN THE AMERICAN CRIMINAL
JUSTICE SYSTEM". THEY NOTED THAT**

**"..IN ONE CRITICAL AREA - RACIAL INEQUALITY IS
GROWING, NOT RECEDING. OUR CRIMINAL LAWS,
WHILE FACIALLY NEUTRAL, ARE ENFORCED IN A
MANNER THAT IS MASSIVELY AND PERVASIVELY
BIASED...." (Justice on Trial)**

THEREFORE, WE URGE YOU CONSIDER THE PROVISION

**THAT SPEAKS TO THE INCARCERATION OF SUCH
OFFENDERS AS OPPOSED TO PARDONING. TO PROVIDE FOR**

**PARDONING AN OFFENCE, COULD RESULT IN ANOTHER
INSTANCE OF A AS ENFORCEMENT AS NOTED BY THE**

**LEADERSHIP CONFERENCE ON CIVIL RIGHTS IN THEIR
DISCUSSION, JUSTICE ON TRIAL.**

**IT IS MY UNDERSTANDING THAT KANSAS IS ONE OF 10
STATES THAT DOES NOT PROVIDE A HATE CRIME LAW FOR
THE PROTECTION OF ITS CITIZENS. MEMBERS OF THIS
STATE ARE ENTITLED TO PROTECTION AGAINST HATE
CRIMES.**

**THEREFORE, IN CLOSING I URGE YOUR PASSAGE OF SENATE
BILL 230.**

THANK YOU.

A handwritten signature in cursive script, appearing to read "Jesse M. Morley".

Good Morning. To the Chair and member of the Kansas State Senate Judiciary Committee, I am Melvin L. Jenkins, Director of the U.S. Commission on Civil Rights, Central Regional Office located in Kansas City, Kansas.

The United States Commission on Civil Rights is an independent, bipartisan factfinding agency of the Federal Government. The Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based race, color, religion, sex, age, disability, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study and collection of information relating to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections; and preparation and issuance of public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the law. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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The Commission has established Advisory Committees in the 50 States and the District of Columbia. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise of all relevant information concerning their respective states on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference that the Commission may hold within the state.

In Kansas, the State Advisory Committee is Chaired by law professor Phillip DeLeTorre of the University of Kansas in Lawrence. Over the years, the Central Regional Office of the Commission which covers the State of Iowa, Kansas, Missouri, Nebraska, Mississippi, Alabama, Arkansas,

Louisiana, and Oklahoma, has conducted numerous studies regarding hate crimes, hate group activities, and bigotry and violence against protected groups. In recent years the regional office through the various Advisory Committees has released the following reports:

1. *A Time to Heal: Race Relations In Dubuque, Iowa;*
2. *Bigotry and Violence on Missouri's College Campuses;*
3. *Racial Profiling in Metropolitan Kansas City; and*
4. *Racial and Religious Tensions on Selected Kansas College Campuses;*
5. *Hate Group Activity in Metropolitan Kansas City.*

These reports define hate crimes or bias-motivated crimes as offenses motivated by hatred against a victim based on race, ethnicity or national origin. These Advisory Committees also note that the battle against hatred and all the "isms", including civil rights violations, should be fought on two fronts: first, against racial hatred and human rights violations and second, to strive for economic and political justice in order to reduce poverty and unemployment which breed ethnic conflict and racism. I should point out there should be increased opportunity for more interaction between groups in social and professional settings. With

these increased opportunities there will be more understanding and appreciation for various differences. At the present time, it seems that most interaction occur during a racial crisis.

As we look at bigotry and violence, we find that effective police responses to these incidents are necessary to keep such incidents from spreading. If the police fail to respond, or respond in ways that clearly demonstrate a lack of sensitivity, perpetrators can interpret the police inactivity as official sympathy or even sanction.

Another factor that affects police response is the widespread lack of hard, comprehensive, and comparative data concerning the number, location, and types of crime that are motivated by racial or religious bigotry. Police and community response can be affected adversely by the absence of reliable data on criminal violence motivated by bigotry because this gap in knowledge makes it difficult for police to measure trends, develop enforcement strategies and allocate personnel. The lack of data also impairs the ability of policymaker and other concerned groups and individuals to assess the extent of the problems and develop adequate measures of prevention.

In conclusion, education is one key element in effort to eradicate racism and prevent violence. Further new legislative initiatives aimed at outlawing specific tactics of racial and religious bigotry have been undertaken by a number of States and local legislative bodies in apparent recognition that adequate legal tools as well as improved educational strategies are important to fight against overt bigotry.

As I close, I want to thank Senator Haley and this Committee for inviting me to share some of the Commission's and State Advisory Committees findings regarding bigotry and violence. I wish you well in your deliberations.



UNITED AGAINST VIOLENCE

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

January 28, 2002

RE: Senate Bill 230
Senate Judiciary Committee

Dear Chairman Vratil and Members of the Committee,

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) supports the passage of Senate Bill 230, which proposes to enhance the penalties for bias motivated crimes. KCSDV is a network of Kansas domestic violence and sexual assault programs. One of the Coalition's goals is to confront and affirm issues of empowerment affecting women and children without regard to race, color, creed, age, physical limitations, national origin, sexual orientation, religious affiliation, marital/parental status, education and income.

Anyone can be a victim of a random crime. However, when a crime specifically targets women, homosexuals, people of color, or other groups that are commonly singled out for discrimination, it is no longer a random crime. These crimes terrorize an entire community, not just the victim.

By increasing the penalties for hate crimes, the legislature sends a message that the criminal justice system takes these crimes seriously. In turn, law enforcement officers, prosecutors, judges, and society in general begin to take these crimes more seriously.

The Kansas Coalition Against Sexual and Domestic Violence urges passage of Senate Bill 230.

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