

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on March 9, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Jerry Ann Donaldson, Legislative Research Department
Becky Krahl, Legislative Research Department
Nicoletta Buonasera, Legislative Research Department
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, KBI
David Anderson, Lawrence Police Department
Senator David Haley
Gary Lewis
Annette Lewis

Others attending:

See Attached List.

Frank Henderson, Jr., Executive Director of Crime Victims Compensation Board briefed the committee on the board. The board was established by the legislature in 1978 to provide monetary compensation for out-of-pocket medical expenses, loss of earnings or support, burial expenses, and other costs associated with the treatment of injuries sustained as a result of being a victim of a violent crime. ([Attachment 1](#))

The board is made up of three members appointed by the Attorney General. Members are subject to confirmation by the Kansas Senate. No more than two members of the Board are to be of the same political party. The chair is required by statute to be a person regularly admitted to practice law in Kansas. The appointed term served is four years.

SB 299- Concerning Kansas surety agents

Chairman Loyd opened the hearing on **SB 299**.

David Anderson, Lawrence Police Department, spoke in favor of the bill. The bill would take great strides in regulating and restricting bounty hunters. ([Attachment 2](#))

Kyle Smith, KBI, appeared as a proponent of the bill. The goal is to control those few bad bondsmen and bounty hunters that have abused citizens and damaged the reputation of the profession. Striking the entire last sentence of section 3 was suggested. ([Attachment 3](#))

Senator Haley, spoke in favor of the bill and offered several balloons. ([Attachment 4](#))

Gary Lewis, spoke in opposition to the part of the bill that deals with felony convictions. ([Attachment 5](#))
Annette Lewis spoke in opposition to same section of the bill. ([Attachment 6](#))

Doug Smith, Kansas Professional Sureties, submitted written testimony in support of the bill. ([Attachment 7](#))

Chairman Loyd closed the hearing on **SB 299**.

HB 2835 – Unlawful use of a recording device

A balloon that would limit the scope of language as applied to a motion picture theater and not a retail facility. (Attachment 8)

Representative Carter made the motion to move the balloon with technical amendments. Representative Owens seconded the motion. The motion carried.

Representative Owens made the motion to report **HB 2835** favorably for passage as amended. Representative Carter seconded the motion. The motion carried.

SB 337 – Repealing the crime of hypnotic exhibition

Representative Swenson made a motion to report **SB 337** favorably for passage. Representative Dillmore seconded the motion. The motion carried.

SB 431 – Criminal use of weapons; certain subsections not apply to laboratories certified by the U.S. department of justice

Representative Ward made the motion to report **SB 431** favorably for passage. Representative Swenson seconded the motion.

Representative Goering made the substitute motion for a technical amendment. Representative Carter seconded the motion. The motion carried.

Representative Ward made the motion to report **SB 431** favorably for passage as amended. Representative Swenson seconded the motion. The motion carried.

Representative Dillmore moved the committee minutes from January 14, 15, 21, 22, 26, 27, 28, and February 24, 2004 be approved. Representative Pauls seconded the motion. The motion carried.

The meeting was adjourned. The next meeting is March 10, 2004.

(7)

**KANSAS HOUSE OF
REPRESENTATIVES
CORRECTIONAL JUVENILE JUSTICE
COMMITTEE**

**Briefing
Office of the Attorney General
Crime Victims Compensation Board**

**Frank S. Henderson, Jr.,
Executive Director,
C.V.C.B.**

March 9, 2004



**STATE OF KANSAS
OFFICE OF THE ATTORNEY
GENERAL**

**PHILL KLINE
ATTORNEY GENERAL**

**CRIME VICTIMS
COMPENSATION BOARD**

Board Members

Glenda Cafer, Topeka	Chair
Paula Salazar, Wichita	Member
Louis Johnson, Kansas City	Member

Staff

Frank S. Henderson, Jr.	Executive Director
Dee Boeck	Investigator
Tanya Hoyer-Rogers	Investigator
Yolonda Newman	Accounting Specialist
Phyllis Pankratz	Secretary II
Ramona Taylor	Office Assistant III
Judy Nightingale	Restitution Coordinator



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I. INTRODUCTION

The Crime Victims Compensation Board (CVCB) was established by the Kansas Legislature in 1978 pursuant to K.S.A. 74-7301, *et seq.*, to provide monetary compensation for out-of-pocket medical expenses, loss of earnings or support, burial expenses, and other costs associated with the treatment of injuries sustained as a result of being a victim of a violent crime. Compensation provided in fiscal year 2003 totaled \$3,174,159. In the first 24 years of its existence, from 1978 through 2003, the Board granted payments to crime victims totaling \$40,048,421. While financial assistance alone does not provide complete restoration, the Legislature is to be commended for recognizing that monetary aid can relieve some of the immediate pressures and stresses that compound the consequences of crime.

II. COMPOSITION OF THE CRIME VICTIMS COMPENSATION BOARD

The Crime Victims Compensation Board is a three-member Board appointed by the Attorney General. Members are subject to confirmation by the Kansas Senate. No more than two members of the Board are to be of the same political party. The chair is required by statute to be a person regularly admitted to practice law in Kansas. Each member is appointed for a term of four years. There are seven staff members: an executive director, two investigators, one accounting specialist, one secretary, an office assistant, and a restitution coordinator. The Board meets monthly to review claim summaries and to make claim determinations. The meetings are conducted at the agency office at 120 S.W. 10th Avenue, Topeka.

I can't express how much this means to me. When I got home from being kidnapped and had to go through some of the things I went through, I thought nothing would ever be right. When I heard you approved compensation for my lost wages it made me cry. I was so blessed not to have to worry about how I was going to pay my next months of expenses. I would like to thank you for everything you have done for my family and me.

III. ELIGIBILITY

An application for compensation may be filed by (1) the victim; (2) a dependent of a deceased victim; (3) a third person other than a collateral source; or (4) an authorized person acting on behalf of any of the above.

- The claim must be filed within two years of the incident (Child sexual assault claims are based on the date the crime was reported to law enforcement officials)
- Compensation for mental health counseling may be provided if a claim is filed within two years of testimony to a claimant who is, or will be, required to testify in a sexually violent predator commitment of an offender who victimized the claimant or the victim on whose behalf the claim is made.
- The victim suffered bodily injury or death as a result of the criminal actions of another or the victim needs mental health counseling due to emotional trauma resulting from a violent crime.
- The incident occurred in Kansas, or was an act of terrorism, as defined in 18 U.S.C. 2331, committed outside the United States.
- The incident was reported to law enforcement officials within 72 hours or would have been reported within that time except for a valid reason.
- The victim and/or claimant fully cooperated with law enforcement officials during the investigation and prosecution of his or her case.
- Economic loss (medical expenses, wage loss, etc.) will total \$100 or more and has not been, nor will be, totally paid by other sources. The loss may be less than \$100 for crimes of sexual assault.
- The claimant was not the offender or an accomplice of the offender. An award may not be made to another person if the award would unjustly benefit the offender or accomplice.

Compensation may be awarded only if the Board finds that, unless the claimant is awarded compensation, the claimant will suffer financial stress as the result of economic loss that is otherwise reparable. A claimant suffers financial stress only if the claimant cannot maintain the claimant's customary level of health, safety and education without undue financial hardship.

IV. BENEFITS

Compensation payable to a victim, and to all other claimants sustaining economic loss because of injury to or death of that victim, may not exceed \$25,000 in the aggregate.

Compensable Costs/ Limits

- Medical Expenses, including transportation to obtain medical assistance -- \$25,000 maximum.
- Mental Health: inpatient psychiatric care -- \$10,000; outpatient counseling -- \$3,500; grief therapy for family members of homicide victims -- \$1,000. All therapy is subject to a \$60 per hour maximum allowance.
- Dependent Economic Loss, Lost Wages and Replacement Services -- maximum of \$400 per week.
- Funeral and related expenses --\$5,000.
- Moving Expenses -- reasonable allowance compensable at recommendation of law enforcement.
- Rehabilitation Services -- \$25,000.
- Attorney Fees -- \$45 per hour, for claim preparation only.
- Reasonable costs for items of clothing and bedding seized as evidence.
 - *No other property items are subject to compensation.*
 - *Compensation can not be provided for pain and suffering.*

*Thank you! This has helped ease
the pain in the loss of my mother.*

V. COMPENSATION REVENUE SOURCES

The Crime Victims Compensation Board receives funding from both the state and federal government. The monies come from the following sources:

- 7.99 percent of all fines, penalties and forfeitures remitted from Kansas district courts.
- Fines, penalties and forfeitures from federal convictions. This money is administered through Victims of Crime Act (VOCA) grants by the Office for Victims of Crime within the U.S. Department of Justice. States may apply for a grant each year equal to 60 percent of the total awarded to victims from state funds in the previous federal fiscal year.
- Court-ordered restitution from offenders, subrogation, and refunds. (When compensation is awarded to a crime victim, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages for economic loss from a collateral source, to the extent that compensation was awarded. Refunds are received when a claimant's financial obligation has been met through a collateral source.)
- Five percent of the gross wages of Kansas Department of Corrections' inmates employed in a private industry program other than work release. This is paid monthly into the Crime Victims Compensation Fund.
- Supervision fees from parolees and probationers and administrative fees assessed to inmates for maintenance of their trust accounts.

Thank you so much for your support and caring. It means a lot to me. We've been through so much for so long, so it gives us hope.

CRIME VICTIMS COMPENSATION BOARD

REVENUE

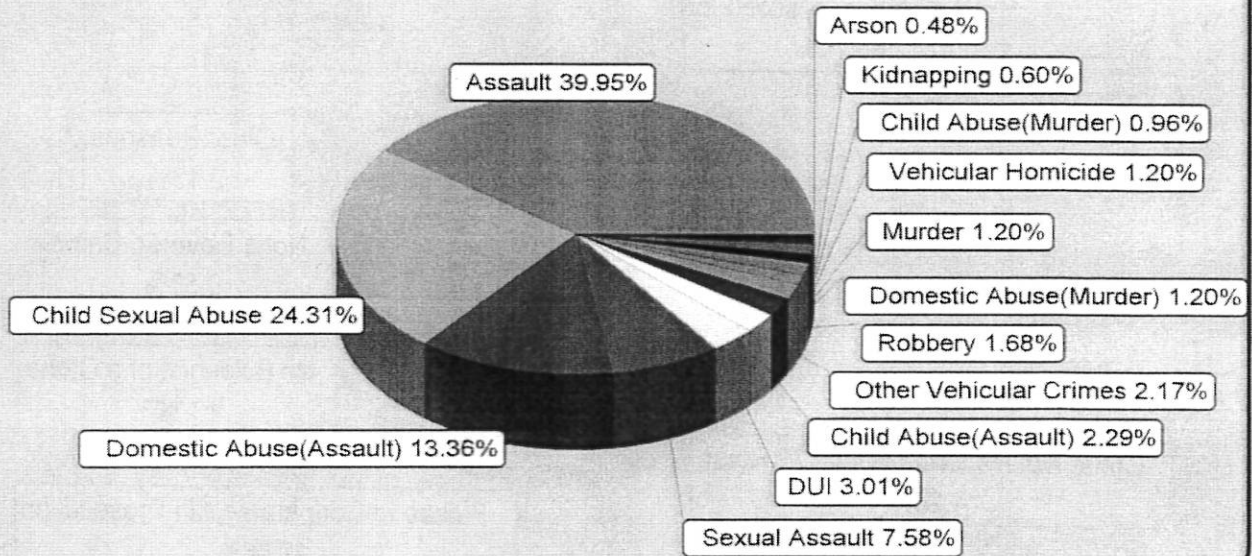
	FY 2003	FY 2002	FY 2001	FY 2000	FY 1999
Fines/Penalties	\$1,509,035	\$1,269,802	\$2,328,815	\$2,297,471	\$2,184,006
Restitution	144,240	98,101	117,031	123,322	84,055
Subrogation	13,443	20,480	32,352	20,796	24,493
Refunds	0	0	350	0	3,649
Department of Corrections					
Parole Supervision Fees	166,211	139,771	134,687	158,778	100,147
Inmate Contributions	189,666	174,017	176,611	135,089	127,472
Administration Fees	102,511	96,384	96,860	97,462	86,095
Department of Justice VOCA Grant	1,058,000	1,074,000	911,000	580,000	694,000
TOTAL	\$3,183,106	\$2,872,555	\$3,797,706	\$3,388,225	\$3,303,917

CRIME VICTIMS COMPENSATION CLAIMS

FY 2003

	FY 2003	FY 2002	FY 2001	FY2000	FY1999
NEW CLAIMS RECEIVED	1319	1277	1272	1176	1019
CLAIMS RESOLVED	1404	1325	1101	1116	1011
CLAIMS PENDING AT YEAR END	415	500	548	377	317
TOTAL NUMBER OF ORIGINAL CLAIMS	710	653	544	599	688
TOTAL AMOUNT AWARDED ON ORIGINAL CLAIMS	\$2,285,719	\$2,095,498	\$1,520,827	\$1,753,612	\$2,540,051
AVERAGE AMOUNT AWARDED ON ORIGINAL CLAIMS	\$3,219	\$3,209	\$2,796	\$2,928	\$3,691
TOTAL NUMBER OF SUPPLEMENTAL CLAIMS	520	449	459	436	471
TOTAL AMOUNT AWARDED ON SUPPLEMENTAL CLAIMS	\$888,440	\$866,243	\$920,982	\$837,711	\$926,182
AVERAGE AMOUNT AWARDED ON SUPPLEMENTAL CLAIMS	\$1,709	\$1,929	\$2,007	\$1,921	\$1,966
TOTAL AMOUNT AWARDED ON CLAIMS	\$3,174,159	\$2,961,744	\$2,441,809	\$2,591,324	\$3,466,233

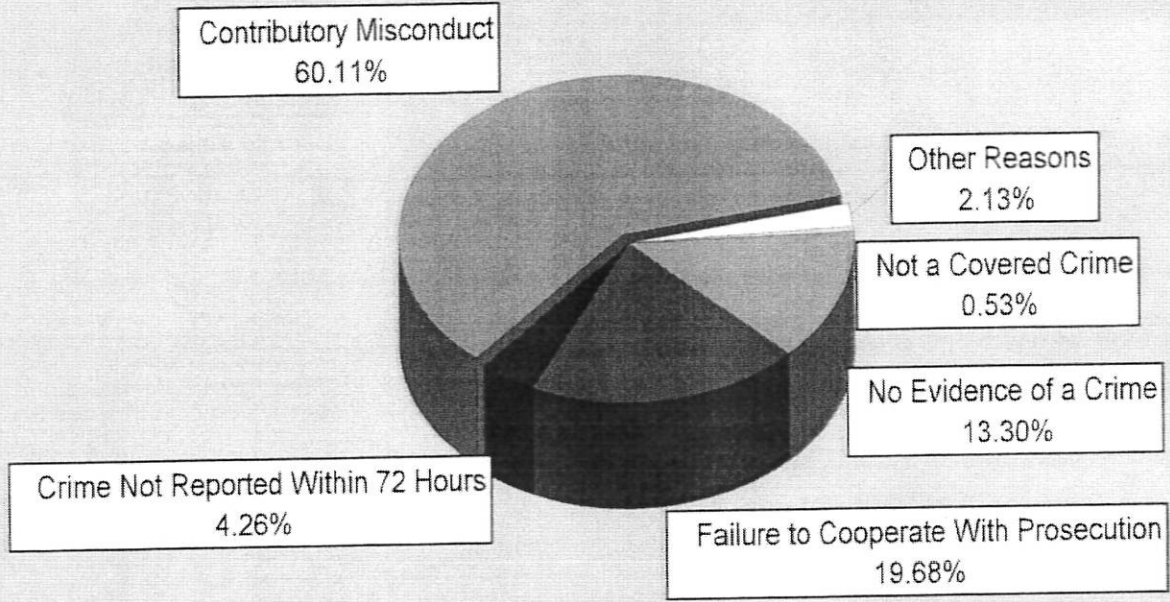
APPROVED CLAIMS



APPROVED CLAIMS - FY 2003

Type of Crime	Total
Assault	332
Arson	4
Child Abuse (Assault)	19
Child Abuse (Murder)	8
Child Sexual Abuse	202
Domestic Abuse (Assault)	111
Domestic Abuse (Murder)	10
DUI	25
Kidnapping	5
Murder	115
Robbery	14
Sexual Assault	63
Stalking	0
Vehicular Homicide	10
Other Vehicular Crimes	19
Other (Miscellaneous) Crimes	0
TOTAL	937

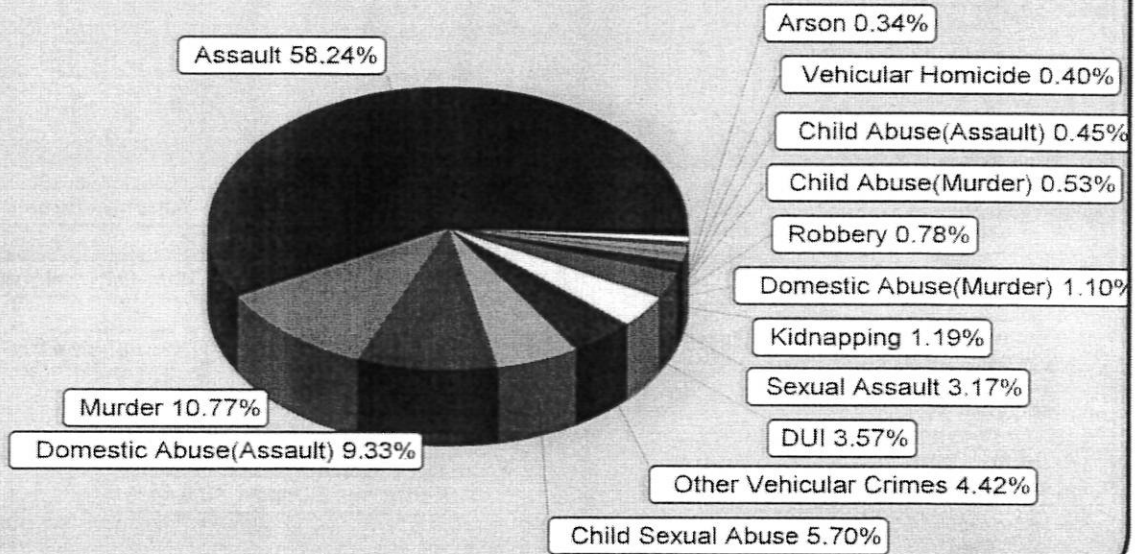
DENIALS



DENIALS FY 2003

<u>Reason for Denial</u>	<u>Total Claims</u>
Not a Covered Crime	1
Other Reasons	4
Crime Not Reported	8
No Evidence of a Crime	25
Failure to Cooperate With Prosecution	37
Contributory Misconduct	113
TOTAL	188

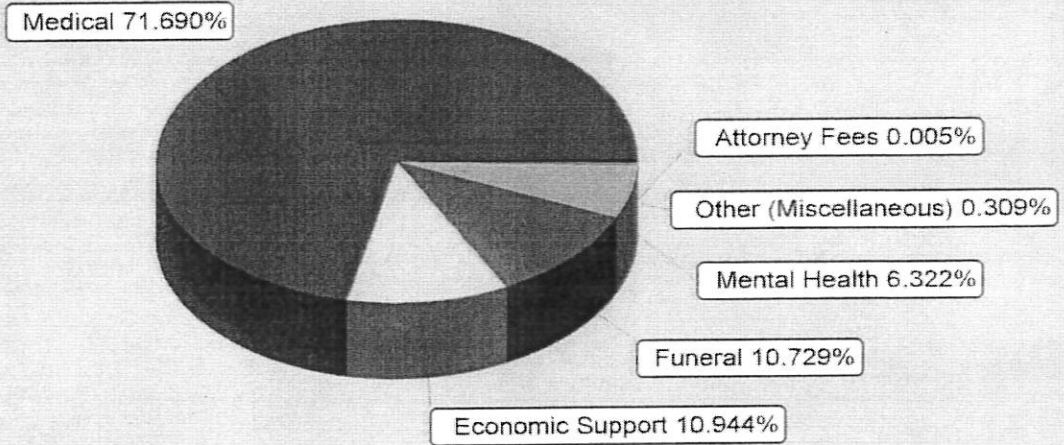
EXPENDITURES BY CRIME CATEGORY



EXPENDITURES by Crime Category FY 2003

<u>Type of Crime</u>	<u>Total</u>
Assault	1,844,880
Arson	10,912
Child Abuse (Assault)	14,409
Child Abuse (Murder)	17,006
Child Sexual Abuse	181,387
Domestic Abuse (Assault)	296,903
Domestic Abuse (Murder)	34,982
DUI	113,698
Kidnapping	37,975
Murder	342,985
Robbery	24,918
Sexual Assault	100,921
Stalking	0
Vehicular Homicide	12,586
Other Vehicular Crimes	140,597
Other (Miscellaneous) Crimes	0
TOTAL	3,174,159

EXPENDITURES BY AWARD CATEGORY



EXPENDITURES by Award Category FY 2003

<u>Expense</u>	<u>Total</u>
Medical	2,275,568
Economic Support	347,391
Funeral	340,570
Mental Health	200,669
Other (Miscellaneous)	9,812
Attorney Fees	149
TOTAL	3,174,159

ILLUSTRATED CASES

APPROVALS

- A 52 year old female was involved in an argument with her husband. Her husband became violent by kneeling the applicant several times in the back, putting a knife to her throat, and threatening to kill her. This was promptly reported to law enforcement and charges were filed. The Board approved \$240.00 in medical expenses.
- A 21 year old male and a friend were out fishing late at night at a nearby river. The applicant heard a voice from behind saying "Give me all your money now!" The applicant did not hand his money over, instead he turned around and looked at the suspect who was pointing a gun at him. The suspect fired the gun, striking the applicant in the leg, and fled. The offender was never identified. The Board approved \$11,591.71 in medical expenses.
- A 9 year old girl was molested by her step-father. The girl's mother came home from work early one day and discovered her husband and daughter coming out of the bedroom. The mother, after questioning the daughter, reported the incident to the Department of Social and Rehabilitation Services, who in turn notified law enforcement. Charges were filed and the husband plead guilty. The Board approved \$159.89 in counseling expenses.
- A 33 year old male and his 23 year old cousin were riding with an acquaintance when the acquaintance shot both of the men in the back of their heads. The motive was to keep the younger man from testifying in a murder trial. The offender was charged and convicted of two counts of First Degree Murder. The Board approved \$8860.05 in funeral expenses.

DENIALS

- A 24 year old male, who admittedly was drunk the night of the incident, was approached from behind and assaulted. He suffered brain damage which required surgery as a result of the beating. The manager of the pub indicated to law enforcement that the applicant provoked the offender by yelling profanely and threatening to shoot the offender. The manager also stated that the applicant was escorted from the property, but returned to the pub and continued to provoke the offender.
- A 45 year old male indicated that he was at a friend's house sitting around talking. He reported that suddenly one of the guys started hitting and kicking him and trying to take his money. The law enforcement investigation concluded that the applicant was using illegal drugs with the suspects and had supplied the group with crack cocaine. Apparently, the suspects felt that the applicant had shortchanged them on the drug purchase. The applicant admitted to law enforcement that he was indeed using drugs.

TESTIMONY BEFORE THE HOUSE CORRECTIONS AND JUVENILE
JUSTICE COMMITTEE
KANSAS SURETY RECOVERY AGENTS ACT (SENATE BILL 299)
DETECTIVE DAVID P. ANDERSON
LAWRENCE, KANSAS POLICE DEPARTMENT
MARCH 9, 2004

Chairman Loyd and Members of the Committee:

I am pleased to appear today on behalf of Chief W. Ronald Olin and the Lawrence Police Department. I am grateful that this committee is seriously studying an issue that can greatly effect the safety and constitutional rights of the citizens of Kansas.

The problem of bail bondsmen and their agents commonly referred to as bounty hunters or recovery agents, committing irresponsible and sometimes even violent acts, while "doing their jobs", has existed for a long time. The power that bounty hunters claim is derived from an 1872 United States Supreme Court decision, Taylor v. Taintor. In short, when bail is granted, the bail bondsman is considered as having been given custody of the defendant. This creates a private, contractual relationship between the bondsman and the accused and gives the authority and jurisdiction to the bondsman to deliver the defendant whenever and wherever the defendant is ordered to appear. Whenever the bondsman chooses to do so, the bondsman may apprehend the defendant and return the defendant to custody. Most typically, this occurs when the accused fails to make a court appearance. The bondsman may recapture and seize the defendant any time, day or night,

without a warrant. A bondsman may pursue the defendant into other states. The bail bondsman may exercise this authority in person or by agent (bounty hunter). Using reasonable force, the bondsman or his agent may even break and enter into the defendant's home to effect this apprehension.

The extraordinary, mostly unregulated, power that bondsmen and bounty hunters can exercise over defendants, most of whom have yet to have been actually convicted of a charge is far more power and jurisdiction than a trained, certified law enforcement officer possesses. Yet, bounty hunters are often untrained, unqualified, and unrestricted.

Without bail bondsmen and their agents, however, the criminal justice system would be crippled. Without bondsmen, bails would have to be significantly lowered or many accused would never be able to be released, pre-trial. Jails are already overcrowded now with those convicted. The extra burden placed on jails, if those awaiting court were added to the population, would likely overwhelm them. Thus, the bail bonding system as it exists in this country may be a necessary evil. Some states have enacted statutory restrictions on bounty hunters, Kansas has not. Let me review with you some reasons why Kansas should join those states that do set some standards. The following are just some of the outrageous acts inflicted on Kansans, by unqualified, unregulated bounty hunters.

On an evening in January 2001, in Lawrence, Kansas four bounty hunters arrived at the home of an elderly resident and her adult son. Two of the bounty hunters from Kansas City enlisted the assistance of two Lawrence bounty hunters. Their quest was to locate an individual who had been

bonded by a Kansas City bonding agency and who had missed a court date on a drug related charge. Believing that the resident's son had information on the whereabouts of the fugitive, the bounty hunters used bullying and misrepresentation to gain access to this residence, which was never listed as the residence of the fugitive. During the investigation and subsequent prosecution of three of these individuals, it was discovered that one of the bounty hunters from Kansas City was a Federal Parolee. The other bounty hunter from Kansas City was murdered before prosecution in this case was complete. It was further discovered that one of the Lawrence bounty hunters was also a convicted felon and six months later he was convicted of Aggravated Kidnapping, Aggravated Burglary, and Aggravated Robbery and was sentenced to over 20 years in prison on an unrelated Jefferson County case. At the sentencing of the bounty hunter from Kansas City, Douglas County District Court Judge Michael Malone stated, *"This was a presumptive probation case, but the crime was committed while you were on probation. And the Court has a very clear idea of what happened here, and it amazes me that our state still has common-law rules as it relates to bail bondsmen, which I believe gave you some belief that you could act without consequence in looking for an individual who jumped bail. The fact that you and your colleagues were even in that business tells the Court that the business of bail bondsman is poorly regulated. And by that I mean here was a gentleman hired to apprehend fugitives, when you yourself were a convicted felon. What this tells this Court is that the bail bondsman industry is poorly regulated and perhaps it's time for the state government to get involved in these matters"*.

In a recent Shawnee County case, a Topeka bail bondsman pled guilty in June of 2003 to Possession with Intent to Sell Methamphetamine. He was subsequently placed on intensive probation supervision. However, under current Kansas law, he is still free to operate as a bail bondsman.

In Reno County, the owner of a Hutchinson bail bonding company was recently charged with 3 counts of Felony Possession of Stolen Property. The State has alleged that the bondsman was receiving stolen property in lieu of defendant's making their bond payments.

Two men in downtown Kansas City throw an apartment manager by the name of Lester Bishop on the hood of his own car. They place handcuffs on his wrists and drag the startled man to their vehicle, telling him only that they are, "going to Police Headquarters". Instead, they drive around the metropolitan area for two hours. Eventually, they arrive at the Kansas City, Missouri East Patrol Division building, where they quickly drop off Mr. Bishop. Who were these two men? Federal agents? Undercover Kansas City police officers? Ordinary criminals, kidnapping another random victim in a big city in America? The answer is, none of the above. These two men were bounty hunters who happened to grab the wrong man and then could not find a key to unlock the handcuffs they had put around his wrists. They apparently drove to Kansas City, Kansas, in an effort to locate their friend who was a security guard, hoping he might have a handcuff key. When they could not find the guard, they drove to the East Patrol where police had to remove the handcuffs. The disturbing part of this story is that to this day, no one knows the identity of the bounty hunters, as they left the police station

too quickly. Mr. Bishop was simply told that bounty hunters “have the law on their side”.

In another Kansas City case, police arrested a bondsman who was carrying a loaded pistol tucked in his waistband. He claimed authority to do so under the aforementioned Taylor v. Taintor case. Though this decision certainly does not authorize the carrying of a concealed weapon, the prosecutor’s office declined to file charges against the bondsman. That the prosecutor’s office declined to pursue charges is not all that surprising, given their workload. What was shocking was the information uncovered through a criminal history records check of the bondsman. This bondsman had been convicted of resisting arrest, aggravated assault, possession of a firearm, burglary, criminal damage, and unlawful use of a weapon. A sodomy charge was pending.

In a highly publicized case which also occurred in Kansas City, in June of 2002, three bounty hunters went to the home of a man wanted on Municipal Court warrants. As two of the bounty hunters handcuffed the individual they were seeking, a physical altercation broke out between the fugitive’s brother and the third bounty hunter. Witnesses told police that the bounty hunters hit the men on their heads with flashlights and that the fugitive’s brother was placed in a choke hold. When police arrived on the scene they found the fugitive, handcuffed and bleeding from the head. Police found the brother unresponsive. The medical examiner ruled that the brother died from strangulation and chest compression. The bounty hunter was found guilty of Second Degree Manslaughter.

On a night in January of 2002, a Kansas City, Kansas resident and his wife were sound asleep in their home when they heard loud knocking on the door. Voices on the other side of the door announced that they were law enforcement officers and that they would kick in the door if it were not opened. When the resident opened the door, two men forced their way inside. One of the two intruders, later identified as a bail bondsman, told the resident that he was there to arrest him. It was soon determined that the bondsman was actually looking for the resident's son, who did not live there. The two men forced the couple to remain in their living room while they searched the house. When the resident attempted to retreat to his bedroom in order to put some clothes on, the bondsman put his hand on his handgun and told the resident that if necessary he would be forcibly restrained. This bondsman pled guilty to Aggravated Assault in Wyandotte County District Court.

In another more recent case which also occurred in Kansas City, Kansas, in September of 2002, an employee of a bail bonding company, accompanied by at least two other men, allegedly entered and searched the residence of an elderly female. The bondsman was seeking the whereabouts of the resident's son, who was wanted on an outstanding warrant. A physical altercation ensued between the bondsman and the elderly female. The resident claims that the bondsman brandished a metal baton and struck her with it several times, causing injuries to her arm, leg, and wrist. A medical examination revealed that the elderly female suffered a fractured arm. This bondsman has been bound over in Wyandotte County District Court on a charge of Aggravated Battery.

In Cherokee County, a Baxter Springs bail bondsman was bound over on charges of Insurance Fraud, Making False Information, and Falsely Reporting a Crime. The complaint in this case alleges that between May and July of 2002, the bondsman reported that his car had been stolen, although he had conspired with another individual to destroy the car in order to collect insurance money. In an unrelated case, another complaint was filed against the bondsman that charged him with Rape and Illegal Acquisition of State Assistance. These charges stem from an allegation that he had sexual relations with a female client against her will on November 11th and November 12th, 2002, and also forced her to use her Kansas Vision Card to buy him groceries. While out on bond on both of the aforementioned cases, another case was filed against this bondsman which alleged that on December 3, 2002, he kidnapped a girl with the intent of holding her for ransom. This case was eventually dismissed when the girl failed to appear for Court. While still out on bond, another case was filed against this bondsman that alleged that on March 11, 2003, he was involved in the fraudulent sale of cars. He has been bound over on a charge of Making a False Writing in this case.

While some of the perpetrators of these acts were prosecuted criminally for their outrageous conduct, please remember that under current Kansas law, they can go right back to being "Surety Recovery Agents". Civil lawsuits are not a solution as few of these thugs have any assets and the bonding companies claim that the bounty hunters are "independent contractors", and not employees.

The aforementioned known cases undoubtedly represent only but a few of the many examples of bad behavior committed in recent years by bail bondsmen and their agents.

Clearly, we have a serious and recurring problem in Kansas. After considerable discussions with those representing the bail bondsman industry, Senate Bill 299 was passed out of the Senate Judiciary Committee as an agreeable initial step towards regulating bounty hunters. On February 27, 2004, a Senate Floor Amendment was passed which with the removal of the word "not", would now allow bounty hunters to enter any residence to recover a fugitive without first demanding admittance and explaining the purpose for which admittance is desired (page 2, lines 4-6). The proponent of this Floor Amendment told the Senate that his proposal was for the safety of bounty hunters who needed the element of surprise to enter a residence. He went on to state that law enforcement does not "knock and announce" when serving warrants to ensure their safety. On the contrary, only in very specialized situations, is law enforcement not required to "knock and announce". "Knocking and announcing" helps ensure the safety of all parties during the service of a warrant. With the exception of this Floor Amendment, Senate Bill 299 would take great strides in regulating and restricting bounty hunters. This legislation would help ensure the safety and constitutional guarantees of all Kansans. I would defer to Kyle Smith for suggested changes in the language of the aforementioned Floor Amendment.

Thank you for your time and consideration. I would be happy to answer any questions.



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

TESTIMONY
BEFORE THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
KYLE G. SMITH
DIRECTOR OF PUBLIC AND GOVERNMENTAL AFFAIRS
IN SUPPORT OF SB 299
March 9, 2004

Dear Chairman Vratil and Members of the Committee:

I am pleased to appear in support of SB 299, finally addressing a neglected problem area of the criminal justice system. In addition to my work at the KBI, I also serve as the Kansas Peace Officer's Association Legislative Chairperson. As such, Detective Anderson contacted me regarding the problems they have had in his jurisdiction with bondsmen and bounty hunters. His interest hit a responsive cord with me, as the very first legislation I ever worked on was an effort to license bondsmen when I was an Assistant County Attorney in Emporia 21 years ago. My efforts then were unsuccessful, but the problems did not go away. As you have heard from the collection of horrific abuses put together by Detective Anderson, we have serious problems in this area with serious abuses, not just to criminals but innocent citizens as well. The mystery is why this one area of the criminal justice system has so much power with absolutely no supervision, restrictions or controls.

SB 299 is a simplified version of last years SB 248. It has two main parts, which should fix most of the abuses, but avoids the licensure and expense that SB 248 would have required. Our goal is to control those few bad bondsmen and bounty hunters that have abused citizens and damaged the reputation of the profession.

Section 1, provides definitions of “Surety” and “agent of surety” to clarify who is, and is not, covered by the act.

Section 2 would require that prior to trying to apprehend a person, the surety or their agent would have to inform local law enforcement and provide documentation of their identity and authority to be seizing a person. Having law enforcement see and review the proposed activity should weed out the worst abuses. And by having law enforcement know ahead of time of a potential conflict when the surety recovery agent tries to apprehend an individual, we will be able to avoid the dangers and confusion which result when an altercation is reported by citizens and law enforcement doesn't know what is going on. Requiring a showing of authority and disclosure of their activities should ensure that legitimate recovery efforts are planned and that the innocent will not be harmed.

Section 3 mandates that persons participating in the criminal justice system surety work not be criminals themselves. Persons convicted of felonies and certain other offenses (taken from the prohibitions in the Kansas Private Detective Licensing Act) would be prohibited from acting as bondsmen or bounty hunters.

We would make a suggested amendment to the new language found at the end of section 3. Originally an amendment by Senator Haley, it was a requirement that bondsmen announce their authority before trying to enter a home, much like law enforcement officers normally do. On the senate floor, Senator Journey moved to strike the word “not” from the language, apparently authorizing surety recovery agents to enter anyone’s home without knocking and announcing their authority. Apparently, Senator Journey was under the misapprehension that law enforcement officers normally do this and he thought it might improve the chances of apprehension. In reality, while ‘no-knock’ warrants can be issued by a judge if there is reasonable suspicion that knocking and announcing would be too dangerous, for safety’s sake police normally make sure that the residents know who and why the police are there: any citizen

may well shoot an unknown assailant breaking down their door. Especially since bondsmen are not working with warrants issued by a court, giving them statutory authority to enter homes unannounced is extremely dangerous to the bondsmen themselves, the rights of citizens and is probably unconstitutional. We would suggest simply striking the entire last sentence of section 3, thus leaving their authority to the established case law: they can force entry into the residence of the client but not of other persons.

Section 4 makes it a class A misdemeanor for a first violation and a level 9 non-person felony upon the second or subsequent conviction to violate these new provisions. Hopefully little bed space impact but these would be disqualifying convictions from future bonding activities.

During the interim hearings this summer Senator Allen asked why this problem hadn't been addressed before. I believe there are two reasons: First, the most common victims of these abuses are criminals and their families, not a group with the most credibility or political clout. Second, while everyone in the system recognizes the problem but not as their problem. Prosecutors, cops, judges and defense attorneys all had horror stories of bad bounty hunters but no group felt they were in charge of them.

We feel that by requiring the prior check by law enforcement of their authority and by eliminating those persons from participating in the criminal justice system who have serious criminal history of their own, most of the abuses can be stopped. It seems ironic that people with a history of already seriously participating in the criminal justice system in another capacity, are supposed to make our criminal justice system work.

I appreciate the opportunity to address this committee and will be happy to answer any questions.

Felons Can't Be Bounty Hunters But They Can Be...

- Teachers → evidence of rehabilitation within 5 years from release.
- Doctors, Chiropractors, Osteopaths → license issued or renewed if felon demonstrates sufficient rehabilitation to warrant public trust.
- Charitable Solicitor → if felony committed does not deal with the misuse of money.
- Professional Counselors → evidence of rehabilitation to warrant public trust.
- Dental Hygienist → evidence of rehabilitation to warrant public trust.
- Psychologist → if felony committed did not involve moral turpitude.
- Real Estate → granted license if rehabilitation demonstrated.

...If Bill 299 Passes Without Amendment!!

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 299

By Special Committee on Judiciary

1-9

Senator David Haley
Proposed amendment #1
March 5, 2004

4-2

12 AN ACT concerning surety agents.

13

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

15 Section 1. As used in this act: (a) "Surety" ~~has the same meaning as~~
16 ~~K.S.A. 40-1102 and amendments thereto~~ *means a person or commer-*
17 *cial surety, other than a defendant in a criminal proceeding, that*
18 *guarantees the appearance of a defendant in a criminal proceeding,*
19 *by executing an appearance bond.*

20 (b) "agent of a surety" means a person not performing the duties of
21 a law enforcement officer who tracks down, captures and surrenders to
22 the custody of a court a fugitive who has violated a surety or bail bond
23 agreement.

24 Sec. 2. Any surety or authorized agent of a surety, commonly re-
25 ferred to as a bounty hunter, who intends to apprehend any person in
26 this state pursuant to K.S.A. 22-2809 and amendments thereto, or under
27 similar authority from any other state, shall inform law enforcement au-
28 thorities in the city or county in which such surety or agent of a surety
29 intends such apprehension, before attempting such apprehension. The
30 surety or agent of a surety shall present to the local law enforcement
31 authorities a certified copy of the bond, a valid government-issued photo
32 identification, written appointment of agency, if not the actual surety, and
33 all other appropriate paperwork identifying the principal and the person
34 to be apprehended. Local law enforcement may accompany the agent.
35 *Nothing in this section shall prevent a surety from lawfully taking*
36 *custody of a client who has been surrendered to such surety or when*
37 *a surety has inadvertent contact with a client and the surety is*
38 *aware that a court order is currently active for the apprehension of*
39 *that client.*

40 Sec. 3. No commercial surety or person acting as an authorized agent
41 of a commercial surety or bounty hunter shall have been convicted in this
42 or any other jurisdiction, of a felony, a violation of this section, or within
43 ten years immediately prior to the date of the intended apprehension.

1 been convicted of any crime ~~[involving moral turpitude, dishonesty]~~ of
 2 licular homicide, assault, battery, domestic battery, assault of a law en-
 3 forcement officer, misdemeanor battery against a law enforcement offi-
 4 cer, criminal restraint, sexual battery, endangering a child, intimidation
 5 of a witness or victim or illegally using, carrying or possessing a dangerous
 6 weapon. ~~A surety ^(recovery) agent may not enter a residence to re-~~ or
 7 ~~cover a fugitive without first demanding admittance and explaining~~ of a surety
 8 ~~the purpose for which admittance is desired.~~

9 Sec. 4. Violation of this act shall be a class A nonperson misdemeanor
 10 for the first violation and a level 9 nonperson felony upon a second and
 11 subsequent violation.

12 Sec. 5. This act shall take effect and be in force from and after its
 13 publication in the statute book.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 299

By Special Committee on Judiciary

1-9

Senator David Haley
Proposed amendment #2
March 5, 2004

4-4

12 AN ACT concerning surety agents.

13

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

15 Section 1. As used in this act: (a) "Surety" ~~has the same meaning as~~
16 ~~K.S.A. 40-1102 and amendments thereto~~ means a person or commer-
17 *cial surety, other than a defendant in a criminal proceeding, that*
18 *guarantees the appearance of a defendant in a criminal proceeding,*
19 *by executing an appearance bond:*

20 (b) "agent of a surety" means a person not performing the duties of
21 a law enforcement officer who tracks down, captures and surrenders to
22 the custody of a court a fugitive who has violated a surety or bail bond
23 agreement.

24 Sec. 2. Any surety or authorized agent of a surety, commonly re-
25 ferred to as a bounty hunter, who intends to apprehend any person in
26 this state pursuant to K.S.A. 22-2809 and amendments thereto, or under
27 similar authority from any other state, shall inform law enforcement au-
28 thorities in the city or county in which such surety or agent of a surety
29 intends such apprehension, before attempting such apprehension. The
30 surety or agent of a surety shall present to the local law enforcement
31 authorities a certified copy of the bond, a valid government-issued photo
32 identification, written appointment of agency, if not the actual surety, and
33 all other appropriate paperwork identifying the principal and the person
34 to be apprehended. Local law enforcement may accompany the agent.
35 *Nothing in this section shall prevent a surety from lawfully taking*
36 *custody of a client who has been surrendered to such surety or when*
37 *a surety has inadvertent contact with a client and the surety is*
38 *aware that a court order is currently active for the apprehension of*
39 *that client.*

A surety or agent of a surety forcibly entering a residence shall insure the residence is secured before leaving the scene of the apprehension.

40 Sec. 3. No commercial surety or person acting as an authorized agent
41 of a commercial surety or bounty hunter shall have been convicted in this
42 or any other jurisdiction, of a felony, a violation of this section, or within
43 ten years immediately prior to the date of the intended apprehension.

1 been convicted of any crime involving moral turpitude, dishonesty, ve-
 2 hicular homicide, assault, battery, domestic battery, assault of a law en-
 3 forcement officer, misdemeanor battery against a law enforcement offi-
 4 cer, criminal restraint, sexual battery, endangering a child, intimidation
 5 of a witness or victim or illegally using, carrying or possessing a dangerous
 6 weapon. ~~A surety ~~recovery~~ agent may not enter a residence to re-~~ or
 7 ~~cover a fugitive without first demanding admittance and explaining~~ of a surety
 8 ~~the purpose for which admittance is desired.~~

9 Sec. 4. Violation of this act shall be a class A nonperson misdemeanor
 10 for the first violation and a level 9 nonperson felony upon a second and
 11 subsequent violation.

12 Sec. 5. This act shall take effect and be in force from and after its
 13 publication in the statute book.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 299

By Special Committee on Judiciary

1-9

Senator David Haley
Proposed amendment #3
March 5, 2004

4-6

12 AN ACT concerning surety agents.

13

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

15 Section 1. As used in this act: (a) "Surety" ~~has the same meaning as~~
16 ~~K.S.A. 40-1102 and amendments thereto~~ *means a person or commer-*
17 *cial surety, other than a defendant in a criminal proceeding, that*
18 *guarantees the appearance of a defendant in a criminal proceeding,*
19 *by executing an appearance bond;*

20 (b) "agent of a surety" means a person not performing the duties of
21 a law enforcement officer who tracks down, captures and surrenders to
22 the custody of a court a fugitive who has violated a surety or bail bond
23 agreement.

24 Sec. 2. Any surety or authorized agent of a surety, commonly re-
25 ferred to as a bounty hunter, who intends to apprehend any person in
26 this state pursuant to K.S.A. 22-2809 and amendments thereto, or under
27 similar authority from any other state, shall inform law enforcement au-
28 thorities in the city or county in which such surety or agent of a surety
29 intends such apprehension, before attempting such apprehension. The
30 surety or agent of a surety shall present to the local law enforcement
31 authorities a certified copy of the bond, a valid government-issued photo
32 identification, written appointment of agency, if not the actual surety, and
33 all other appropriate paperwork identifying the principal and the person
34 to be apprehended. Local law enforcement may accompany the agent.
35 *Nothing in this section shall prevent a surety from lawfully taking*
36 *custody of a client who has been surrendered to such surety or when*
37 *a surety has inadvertent contact with a client and the surety is*
38 *aware that a court order is currently active for the apprehension of*
39 *that client.*

40 Sec. 3. No commercial surety or person acting as an authorized agent
41 of a commercial surety or bounty hunter shall have been convicted in this
42 or any other jurisdiction, of a felony, a violation of this section, or within
43 ten years immediately prior to the date of the intended apprehension.

1 been convicted of any crime involving moral turpitude, dishonesty, ve-
 2 hicular homicide, assault, battery, domestic battery, assault of a law en-
 3 forcement officer, misdemeanor battery against a law enforcement offi-
 4 cer, criminal restraint, sexual battery, endangering a child, intimidation
 5 of a witness or victim or illegally using, carrying or possessing a dangerous
 6 weapon. ~~A surety (recovery) agent may not enter a residence to re-~~
 7 ~~cover a fugitive without first demanding admittance and explaining~~
 8 ~~the purpose for which admittance is desired.~~

or
 not
 of a surety

9 Sec. 4. Violation of this act shall be a class A nonperson misdemeanor
 10 for the first violation and a level 9 nonperson felony upon a second and
 11 subsequent violation.

12 Sec. 5. This act shall take effect and be in force from and after its
 13 publication in the statute book.

SENATE BILL No. 299

By Special Committee on Judiciary

1-9

Senator David Haley
Proposed amendment #4
March 5, 2004

4-8

12 AN ACT concerning surety agents.

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

14 Section 1. As used in this act: (a) "Surety" ~~has the same meaning as~~
15 ~~K.S.A. 40-1102 and amendments thereto~~ *means a person or commer-*
16 *cial surety, other than a defendant in a criminal proceeding, that*
17 *guarantees the appearance of a defendant in a criminal proceeding,*
18 *by executing an appearance bond.*

19 (b) "agent of a surety" means a person not performing the duties of
20 a law enforcement officer who tracks down, captures and surrenders to
21 the custody of a court a fugitive who has violated a surety or bail bond
22 agreement.

23 Sec. 2. Any surety or authorized agent of a surety, commonly re-
24 ferred to as a bounty hunter, who intends to apprehend any person in
25 this state pursuant to K.S.A. 22-2809 and amendments thereto, or under
26 similar authority from any other state, shall inform law enforcement au-
27 thorities in the city or county in which such surety or agent of a surety
28 intends such apprehension, before attempting such apprehension. The
29 surety or agent of a surety shall present to the local law enforcement
30 authorities a certified copy of the bond, a valid government-issued photo
31 identification, written appointment of agency, if not the actual surety, and
32 all other appropriate paperwork identifying the principal and the person
33 to be apprehended. Local law enforcement may accompany the agent.
34 *Nothing in this section shall prevent a surety from lawfully taking*
35 *custody of a client who has been surrendered to such surety or when*
36 *a surety has inadvertent contact with a client and the surety is*
37 *aware that a court order is currently active for the apprehension of*
38 *that client.*

39 Sec. 3. No commercial surety or person acting as an authorized agent
40 of a commercial surety or bounty hunter shall have been convicted in this
41 or any other jurisdiction, of a felony, a violation of this section, or within
42 ten years immediately prior to the date of the intended apprehension.
43

No surety or agent of a surety shall wear, carry or display any uniform, badge, shield or other insignia or emblems that purport to indicate that such person is an employee, officer or agent of any state, any political subdivision of any state or the United States.

1 been convicted of any crime involving moral turpitude, dishonesty, ve-
 2 hicular homicide, assault, battery, domestic battery, assault of a law en-
 3 forcement officer, misdemeanor battery against a law enforcement offi-
 4 cer, criminal restraint, sexual battery, endangering a child, intimidation
 5 of a witness or victim or illegally using, carrying or possessing a dangerous
 6 weapon. ~~A surety ~~recovery~~ agent may not enter a residence to re-~~
 7 ~~cover a fugitive without first demanding admittance and explaining~~
 8 ~~the purpose for which admittance is desired.~~

or
 of a surety

9 Sec. 4. Violation of this act shall be a class A nonperson misdemeanor
 10 for the first violation and a level 9 nonperson felony upon a second and
 11 subsequent violation.

12 Sec. 5. This act shall take effect and be in force from and after its
 13 publication in the statute book.

5

GARY Lewis
DBA GARY Lewis Bail Bonds

I am in agreement with Sill #299 with the exception to the part regarding felony convictions for the following reasons:

- ① I have spent 20 years building and developing my business and have enjoyed one of the best reputations in this industry.
- ② I have paid the penalty and suffered the embarrassment for my mistake, and have been welcomed back into the industry by my Administrative Judge Phillip Sieve and his fellow judges.
- ③ If this bill cannot be defeated, I feel that it can only be fair and just to other persons in the field to allow them to be grand fathered into their present positions and not lose years of dedication and devotion.

Thank you

Gary Lewis

3-04

Annette Lewis

7331 Nolliday Dr K.C.KS 66104

I am in agreement with (Bill 299) with exception to the part regarding felony convictions for the following reasons,

① I have been in the business for 5 yrs.

② I have been punish for my crime and welcome back to the field by my sentencing Judge (Wayne Lampton) and also my administrative Judge (Phillip Seive) of the Wydot County courts.

③ If this Bill can not be defeated, I feel it only be fair and just to allow myself & other persons in the field from losing their jobs, If we learn grandfather in.

Thank you
Annette Lewis

7

Kansas Professional Sureties

**TESTIMONY
HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
SENATE BILL NO. 299
MARCH 9, 2004**

Dear Chairman Loyd, and Honorable Members of the House Committee:

Thank you for the opportunity to submit remarks on Senate Bill No. 299. I regret that I am unable to present these remarks to your committee in person, but I am out of the state on business. I have prepared these written remarks on behalf of the Kansas Professional Sureties. Our members are all property or "pocket" bondsman. Meaning they use their own assets, either real estate or other cash assets to secure the bonds they guarantee.

These remarks are offered in support of Senate Bill No. 299.

A bail bondsman, or surety, provides a valuable service to the judicial branch of government and to individuals involved in legal matters before the courts. When a bond is written for a defendant in a criminal case the bondsman is entering into a contractual agreement with the defendant assuring their next appearance, as directed by the court. A bondsman has a strong incentive, through their financial commitment, to ensure that the defendant appears. If the defendant fails to appear, the bondsman must both locate them and return them to the court or they must pay the face amount of the bond.

Senate Bill No. 299 is a sound and affordable alternative to other complex pieces of legislation relating to bail bondsmen previously submitted to the legislature for consideration.

We believe that requiring communication between surety recovery agents and local enforcement prior to an attempt to apprehend a bail or bond violator will be beneficial to all parties. As a regular business practice our members notify the local sheriff or police department whenever they are required to be in the field attempting to pick up someone who has forfeited their right to be out on bond. This is not only for our employee's legal and personal protection but offers a sense of security to the others involved, especially when it is believed that the subject will refuse to comply with the Court's order. Cooperation with local law enforcement is vital to a bondsman's ability to conduct business.

We also endorse the proposed language, prohibiting convicted felons from serving as surety recovery agents. This is a business practice our members have already adopted.

In addition, the Kansas Professional Sureties would like to add our support to a proposal by the Kansas Bureau of Investigation and the Lawrence Police Department to remove language on Page 2, lines 6, 7 and 8 - relating to a recovery agent entering a residence. We believe that language although well intended may become problematic.

Thank you for your time and consideration this morning. We request that you act favorably upon Senate Bill No. 299.

Douglas E. Smith
For the Kansas Professional Sureties.

House Corr & JJ
Attachment 7

3-09-04

HOUSE BILL No. 2835

By Committee on Federal and State Affairs

2-11

9 AN ACT defining and classifying the crime of unlawful use of a recording
10 device.

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

13 Section 1. (a) Unlawful use of a recording device is knowingly op-
14 erating, in any facility where a motion picture is being exhibited, an au-
15 diovisual recording function of a device without the consent of the owner
16 or lessee of such facility and of the licensor of the motion picture being
17 exhibited.

theater, while a motion picture

18 (b) Unlawful use of a recording device is a class A nonperson mis-
19 demeanor on conviction of the first offense. Unlawful use of a recording
20 device is a severity level 9, nonperson felony on conviction of a second
21 or subsequent conviction.

motion picture theater

22 (c) The owner or lessee of a facility where a motion picture is being
23 exhibited or the licensor of the motion picture being exhibited, or the
24 authorized agent or employee thereof, who alerts law enforcement au-
25 thorities of an alleged violation of this section shall not be liable in any
26 civil action arising out of measures taken by such owner, lessee, licensor,
27 agent or employee in the course of subsequently detaining a person that
28 the owner, lessee, licensor, agent or employee in good faith believed to
29 have violated this section while awaiting the arrival of law enforcement
30 authorities, unless the plaintiff can show by clear and convincing evidence
31 that such measures were manifestly unreasonable or the period of deten-
32 tion was unreasonably long.

33 (d) This section shall not apply to

a

34 ~~(1) A person operating an audiovisual recording device as part of such~~
35 ~~person's lawfully authorized investigative, law enforcement, protective or~~
36 ~~intelligence gathering duties as a lawfully authorized investigative, law~~
37 ~~enforcement, protective or intelligence gathering employee or agent of~~
38 ~~the state or federal government; or~~

39 ~~(2) a person operating an audiovisual recording function of a device~~
40 ~~in a retail establishment solely to demonstrate the use of such device for~~
41 ~~sales purposes.~~

42 (e) Nothing in this section shall prevent prosecution under any other
43 provision of law which provides a greater penalty.

1 (f) As used in this section:

2 (1) "Audiovisual recording function" means the capability of a device
3 to record or transmit a motion picture or any part thereof by means of
4 any technology now known or later developed.

5 (2) ~~"Facility" does not include a personal residence.~~

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

"Motion picture theater" means a movie theater, screening room, or other venue when used primarily for the exhibition of a motion picture.