

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on February 9, 2006 in Room 313-S of the Capitol.

All members were present except:

Representative Kenny Wilk- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:

Representative Richard Carlson
Senator Phil Journey
Keith Wood, NRA-ILA
Kelly Johnston, Interfaith Ministeries
Ernestine Krehbiel, League of Women Voters

Others attending:

See attached list

Chairman Edmonds opened the floor for bill introductions, and introduced Representative Cox who requested a bill concerning annuities. With no objections, this bill was accepted for introduction.

Representative Burroughs requested the introduction of a bill - an act concerning work environment related to dues and powers of guardians. With no objection, this was accepted for introduction.

The Chair requested a bill having to do with inspections for wood destroying insects which was accepted for introductions, and a bill having to do with inspections appraisals on certain vehicles which also was accepted for introduction.

At the Chairman's request, Counselor Athena Andaya, Legislative Research Department, gave a briefing on the current laws and regarding use of deadly force for protection.

Chairman Edmonds opened the floor for public hearing on **HB 2577** - Use of deadly force to protect persons and property; when justified.

Representative Carlson was recognized as a proponent of **HB 2577**. The Representative related that this is not a gun bill, but a victim rights bill. This bill authorizes the use of deadly force against force, without the duty to retreat, wether it be in ones' home, vehicle or any public place where one had the right to be, without fear of criminal prosecution and immunity from civil action. It codifies into statutory law ancient common law, the Castle Doctrine, that says your home is your castle and you have every right to protect it. (Attachment 1)

Senator Phil Journey addressed the Committee in support of **HB 2577**. In his testimony, the Senator stated that the bill amends three statutes, K.S.A. 21-3211, 21-3212, and 21-3213. He further related that these three statutes are the current embodiment of the right of self defense and codify basic tenets of common law that flow from the natural rights given to all of us by our creator. The bill will help juries determine the appropriate outcome of cases where self defense is asserted by the defendant. It will also help clarify the law for law enforcement and for the citizens of the state of Kansans. Senator Journey urged the Committee to pass out **HB 2577** unamended in its current form. (Attachment 2)

Keith Wood appeared on behalf of the National Rifle Association supporting **HB 2577**. In his testimony, Mr. Wood stated that this is not a "get out of jail free card", but rather sound public policy that creates rebuttable presumptions that favor the law-abiding over the criminal. He also stated that it is not a gun bill and it is not a partisan issue. On behalf of his organization and the members, he urges support of **HB 2577**. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on February 9, 2006 in Room 313-S of the Capitol.

Written testimony regarding **HB 2577** was received from the Kansas Sheriffs Association. They are not opposed to the bill, but are requesting that the Committee work with the Attorney General's Office as to the legality and language to ensure that the best is being done for Kansans. (Attachment 4)

With no other proponents of **HB 2577**, the Chairman opened the floor to the opponents and recognized Kelly W. Johnston who represents Safe State Kansas/Inter-Faith Ministries. His testimony related that Safe State believes that the law should not be changed. They opined that too often, new legislation creates "unintended consequences". Mr. Johnston went over the six sections and gave his organizations separate analysis of each section. (Attachment 5)

Mr. Johnston also submitted information regarding the NRA Gun Safety Rules. (Attachment 6)

Ernestine Krehbiel, Co-President of the Wichita Metro Area League of Women Voters appeared as an opponent of **HB 2577**. In the League's opinion this bill could have many unintended consequences. Nothing in the law would preserve the rights of an innocent bystander who was shot in the incident to pursue a civil action against the shooter for negligence in the handling of a firearm. They also feel that it may give cover to real criminals who use this as their defense. They also expressed the concern that the bill has not had careful consideration and urge a vote against **HB 2577**. (Attachment 7)

There was no other person wishing to address **HB 2577** and the Chairman closed the public hearing.

With no further business before the committee, Chairman Edmonds adjourned the meeting.

FEDERAL AND STATE AFFAIRS GUEST LIST

Date 2-9-06

Emestine Krehbiel	Kansas League of Women Voters
Namatai Simbabwe	Southwestern College
Cameron Prester	Domestic Violence Assoc. (Central Kansas)
Heather Super	DVACK
Meg Holmgren	DVACK
Bobbie Lamore	DVACK, Salina, KS
Qimeu Brooks	DVACK
Andiea Quil	DVACK
Kelly W. Johnston	Safe State/Inter Faith
Barnes Turner II	Bethel College Nursing
Brian Davis	Bethel College Nursing
Angela Steinkirchner	Bethel College Nursing
T. L. S. J.	Bethel College Nursing
Sarah Watters	Bethel College Nursing
MIRA MINNER	Southwestern College
Andrea Thurber	Southwestern College of Nursing
Kathryn L. Inay	Southwestern College
Frank McCullum	Neosho C. College
BILL BUDY	S.C.
Keith Wood	NRA
Richard Carlson	Ks. Leg.
Constance L. Spille	Neosho County Community College
Alice + Greenlee	LARC/DVS Liberal, KS
Belinda McDonald	LARC/DVS Liberal, KS
Ashley Monroe	Southwestern College

FEDERAL AND STATE AFFAIRS

GUEST LIST

Date 2-9-06

Andy Stephenson	Southwestern College
Joi Stewart	Southwestern College
Jon Phuongham	Southwestern College
Kelle Hinson	Southwestern College
Blair M	Southwestern College
Sarah Vusck	Southwestern College
Jessica Miller	Southwestern College
Heather Muel	Butler Comm. College
Erica Vaughn	Butler C.C.
Namfon Soudchaphook	Butler CC
Jenni A. Miller	Butler CC
Cindy Payne	Butler CC
Denise Weaver	Butler CC
Marleen Parker, RN	KWU / KSNA
Hannah Stange	Baker University
Amber Stroup	Baker University
Michelle Keith	Bethel College
Dantelle Phillips	Bethel College
Nancy Prevatt	(Colby College) Nursing, Law Enforcement
Allison Mulen	Colby College
Stephanie Turner	Colby Community college
Amber Souter	Butler Community College
Dansie Phillips	Butler CC
Michelle	Butler CC
Vickie Runyon	Colby Community College

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TOPEKA

HOUSE OF
 REPRESENTATIVES

HB 2577 — STAND AND DEFEND

Chairman Edmonds and members of the committee, thank you for the opportunity to be here today to speak as a proponent of HB2577.

HB2577 is not a gun bill, but rather victim rights legislation. As I told a reporter several days ago, if you are attacked and all you have is a hammer you can use it to protect yourself. This is legislation to protect the victim and to allow him or her to use whatever force is available at the time, whether it be a hammer, golf club or anything else to repel an attack.

Over the past 50 or 60 years most court decisions and legislation has dealt with criminal rights, such as the Miranda decision, search and seizure, excessive force and various other legislation protecting criminal rights. It's time to enact victim rights legislation.

Should a traumatic occasion arise whereby a citizen is victimized by a home intruder or an attack upon their person at a public place this bill insures their legal right to defend themselves with force and not fear prosecution.

HB2577 authorizes the use of deadly force against force, without the duty to retreat, whether it be in one's home, vehicle or any public place where one had the right to be, without fear of criminal prosecution and immunity from civil action.

The bill codifies into statutory law ancient common law, the Castle Doctrine, that says your home is your castle and you have every right to protect it, just as Kings in early times had that right. When outside the home, English common law found that citizens had no more duty to retreat than the soldiers of the King who were assigned to protect the King. The citizens of Kansas believe they have the same absolute right to protect themselves and their families.

HB2577 has three components that make up the personal protection package.

1. The absolute presumption that anyone who breaks in or forcibly intrudes is there to do harm and therefore any manner of force can be used against that person without fear of prosecution or civil suit.
2. The bill states unequivocally there is no duty to retreat in the face of attack anywhere you have a right to be. You may run away, but you don't have to, you can stand your ground and fight back, meeting force with force, as long as you reasonably believe it is necessary to prevent great bodily harm to yourself or others.

FEDERAL AND STATE AFFAIRS

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Attachment 1

3. Immunity from prosecution and immunity from civil liability for harming an attacker or attackers. This bill puts the presumption of guilt on the criminal, not the victim and that's where it belongs.

Two of our fundamental American rights are the right to own property and be safe and secure in our homes or vehicles and the right of self preservation anywhere we have the right to be.

To those who would argue this bill if enacted would cause more violence or encourage someone to use more force than necessary is totally unfounded. Most of the people of this great nation are law abiding and moral, not just because of our laws, but because they are just good people who believe in right and wrong. They are responsible and will stay responsible. It is the criminal element who trashes our laws, invade our homes, hijack our vehicles and commit rape and other violent crimes. In Topeka alone last year there were 10,356 reportable crimes, which includes homicides, rape, robbery, aggravated assault, burglary and theft. Would you defend your wife, child or grandchildren if forced to, I think you would. The odds are high that, God forbid, you may have to someday and you shouldn't have to fear prosecution when you do.

The bill doesn't say you should meet force with force. It says you may meet force with force. A sensible person will still try to avoid a deadly confrontation. If you can get your family to safety and call 911 from next door, that's still the best thing to do and responsible people will still do that if there is time.

The bill also requires a police investigation and there must be a reasonable belief that you or people near you are in imminent danger. But, in that few seconds a person has to respond to an attacker, those precious seconds where your life may be in the balance, you can use whatever amount of force you have available to you to repel the attack.

I urge you to pass this bill out of committee, favorable for passage. Let us give the people of Kansas common sense legislation, grounded in the principles of self defense and self preservation, the belief that our home is our castle, that our first line of defense against the criminal is us and finally that our laws are righteous and just.

Thank you for your time and consideration today and I will be glad to answer any questions at the appropriate time.

A handwritten signature in cursive script, appearing to read "Rich F. Lamb". The signature is written in dark ink on a white background.

SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT
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TOPEKA

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CORRECTIONS AND JUVENILE JUSTICE
OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

**Testimony in Support of HB 2577
Before the Kansas House of Representatives
Federal and State Affairs Committee
Thursday, February 9th, 2006**

Mr. Chairman and members of the Committee, it is an honor and privilege to come before you today to speak in support of HB 2577. While legislation of this type is new on the horizon of legislative activity among the states, it is law in the state of Florida.

House Bill 2577 by Representative Carlson amends three statutes, K.S.A. 21-3211, 21-3212, and 21-3213. These three statutes are the current embodiment of the right of self defense and codify basic tenets of common law that flow from the natural rights given to all of us by our creator. The right to self defense is well established under the law and in the history of civilized society. HB 2577 simply clarifies the right of self defense under Kansas law. Unlike a few states, Kansas has never recognized, codified, or required a duty to retreat be imposed upon individuals defending themselves or other persons. In the past, Kansas law has been generalistic in its nature recognizing the reasonable-man standard which rightly is now described as gender neutral in HB 2577. The sections of the bill clarify the right to self defense in a number of scenarios that many Kansans will be confronted with in the future.

HB 2577 will help juries determine the appropriate outcome of cases where self defense is asserted by the defendant. HB 2577 will also help clarify the law for law enforcement and for the citizens of the state of Kansas. The presumption that a reasonable person is placed in fear of imminent death or great bodily harm when their home is invaded or an individual is being kidnaped should be self evident to all as a reasonable circumstance in which deadly force may be used. When their vehicle is being car jacked, the great potential for bodily harm or death from these and other violent felonies warrant the use of deadly force to protect an individual's life. Exceptions to these basic tenets of the right to self defense are also described in HB 2577. The presumptions are tempered with exceptions that further clarify this fundamental right including an exception for law enforcement who could be executing their duty. HB 2577 does not extend the protection to unlawful activity such as a meth lab. HB 2577 does not allow the law to be a shield from the enforcement of a lawful custody order. The presumption of intent imposed upon violent criminals is illegal activity may be assumed by the victim to be an act involving force or violence. This concept only recognizes the reality of our modern age. The specific declaration that there is no duty to retreat in the state of Kansas is merely a reiteration of well-founded court opinion and interpretation of current statutes.

FEDERAL AND STATE AFFAIRS

Date 2-9-06Attachment 2

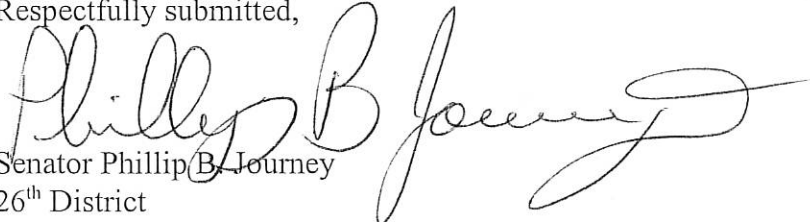
One positive and proactive aspect of this statute appears in Section 3, where civil and criminal immunity is granted to an individual who justifiably acts under the amended statutes. The requirement of probable cause prior to arrest merely clarifies the current state of the law and is not a significant change. One unique change is the award of attorney fees, court costs, and compensation for lost income or all expenses incurred by an individual in defense of a civil action when the plaintiff fails to meet the minimal burden of proof required in a civil case.

Finally, the use of force in protection of property is limited just as the current interpretation of statute to the reasonable-person standard limiting the level of force used to circumstances a reasonable person would do in the same situation. Defense of another person in the final section to prevent a forceful felony is simply a further clarification of current law which authorizes the use of deadly force when a reasonable person believes that great bodily harm or injury to oneself or another person needs to be prevented.

Like many pieces of legislation that support an individual's right to self defense, opponents will present hypothetical scenarios of the most inflammatory type claiming that enactment of this positive legislation will cause any number of incidents resulting in public mayhem. Of course, the reality from the experience we have had in the past shows that the truth will be a somewhat different picture from what the opponents portray.

I would urge the committee to pass out HB 2577 unamended in its current form and to disregard the unfounded statements of the opponents and their predictions of the future.

Respectfully submitted,



Senator Phillip B. Journey
26th District



NRA

Testimony in support of HB 2577

Chairman Edmonds, Members of the Committee,

My name is Keith Wood and I am here on behalf of the tens of thousands of members of the National Rifle Association who live in the state of Kansas. As the lobbyist representing these individuals and their families, I would like to convey to you their strong support for this important legislation.

This issue is of special importance to me- prior to my employment with the National Rifle Association I was a felony prosecutor with the Office of the State Attorney in the 19th Judicial Circuit of Florida. Coincidentally, the Florida Legislature has led the nation on this issue by enacting legislation nearly identical to HB 2577. In response to some of the opposition to this legislation I have had the opportunity to frankly discuss the issue of use of force legislation with my former colleagues. Their opinions did not reflect those of HB 2577's opponents and they did not feel handicapped by the "Castle Doctrine" law which took effect there last Fall.

This legislation is not a "get out of jail free card", but rather sound public policy that creates *rebuttable* presumptions that favor the law-abiding over the criminal. Those who use force without justification will clearly still be subject to arrest and prosecution for their unlawful actions, however, innocent victims will not be further victimized by overzealous prosecutors or predatory civil litigation.

HB 2577 is not a gun issue and it's not a partisan issue. This legislation is about preserving the fundamental right of self-preservation in Kansas. It's about choosing the victim over the aggressor. It's about taking back the advantage from criminals by turning the tables of justice right side up once again. On behalf of my organization and our members- your constituents, I urge you to support HB 2577.

FEDERAL AND STATE AFFAIRS

Date 2-9-06

Attachment 3

Kansas Sheriffs Association

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 Coffey County

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Robert Stephan

To: House Committee on Federal and State Affairs
 Re: HB 2577

The Kansas Sheriff's Association comes forward to provide testimony in regards to HB2577. The concept in which this bill we believe is intended to address is understandable. In Kansas today we are seeing more and more home invasions and carjackings. Many times in the commission of a home invasion or carjacking the victim is either injured or killed. We believe in the principle that an individual has the right to defend themselves or others against such crimes and to use the force necessary to do so.

We would express a few concerns with the bill. Our concerns primarily center on the language of the bill. We would not want to see individuals become vigilantes. Another concern would be that citizens would resort immediately to deadly force upon a situation occurring in which deadly force may not be justified. This would put law enforcement agencies in a position to investigate and perhaps arrest an individual who believes that they were acting within the law.

We would ask that this committee work with the Attorney General's Office as to legality and language to ensure that we are doing what is best for Kansans. We would not want to make a criminal out of someone who believed that they were acting within the scope of the law.

We are committed to making Kansans safe in their homes and their vehicles. This bill does deserve consideration and should be worked.



Randy L. Rogers
 Legislative Chair

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FEDERAL AND STATE AFFAIRS

Date 2-9-06

Attachment 4



Program Director

Karole Bradford

TESTIMONY BEFORE THE HOUSE FEDERAL
AND STATE AFFAIRS COMMITTEE
REP. JOHN EDMONDS, CHAIR

H.B. 2577 - LIBERALIZING THE LAW OF SELF-DEFENSE

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February 9, 2006

Prepared by Kelly W. Johnston
for Safe State Kansas/Inter-Faith Ministries

This bill proposes to amend the Kansas Criminal Code regarding the law of self-defense. These statutes have withstood 35 years of use in our trial courts, appellate court review, and legislative oversight. Safe State believes that the law should not be changed. Too often, new legislation creates "unintended consequences". New legislation in an area involving homicide and use of firearms should not be considered without careful forethought and analysis by district attorneys, law enforcement agencies, and professors of criminal law. Safe State also submits that the proponents of this legislation have not demonstrated why current self-defense law is inadequate to protect the rights of persons claiming self-defense. This proposal contains six sections, and our analysis will look at each section separately.

Community Liaisons

Trevor Foreman
Newton

Eleanor Harris
Leawood

Kerry Johnston
Andover

Rod Nitz
Salina

Steve Robinson
Lawrence

Tom & Susan Maloney
Towanda

Carolyn Weinhold
Topeka

New Section One creates a factual presumption that the person (defendant) claiming self-defense "held a reasonable fear of imminent death or great bodily harm to such person's self or another person" [p.1, l. 15 - 17] if certain facts exist. Under current law, in order to justify the claim of self-defense, the person claiming such a defense "must present some evidence, either through his own testimony or from other witnesses, to support each prong of a two-prong test. The first prong is subjective, and requires a showing that the defendant sincerely and honestly believed it necessary to kill in order to defend himself. The second prong is an objective standard and requires a showing that a reasonable person in the defendant's circumstances would have perceived self-defense as necessary." **State v. Lutter, 27 Kan. App. 2d 858, 860, 10 P.3d 16 (2000)**. Under the proposed bill, this presumption as to the intent of the defendant will prevail upon a showing that the person against whom deadly force was used, was engaging in criminal conduct, and that the defendant had reason to believe that certain kinds of criminal conduct was occurring or had occurred. It is important to understand under this proposal that the focus has shifted away from the intent of the defendant, and would instead be directed upon the conduct of the person against whom deadly force was directed. There would no longer be an affirmative obligation upon a defendant to produce evidence that they believed themselves or another person to have been in imminent danger of grave bodily harm. There is also no guidance in this bill as to how much time may pass between the act of alleged self-defense, and the previous occurrence of the criminal act ("or had occurred") which prompted the self-defense. [p. 1, l. 25.]

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Margalee Wright

New Section One also disqualifies four classes of circumstances from benefiting from the presumption shield. But there are potential problems with the definition of these classes. Subsection (b)(1) prevents use of the presumption where deadly force was used against a titled homeowner or lessee. What about a permitted user of an automobile, such as a child of the owner, or someone who has a key to a neighbor's home to feed the neighbor's dog? Do these people fall within the classification of "an owner, lessee or titleholder"? [p. 1, l. 29.]

Of most concern to Safe State, however, is subsection (b)(4) concerning police officers. Obviously, we agree they should be in this excepted class, but we are concerned that the proposed language only permits police officers to fall within this exception if certain facts exist. Safe State believes that an "unintended consequence" of adopting this language could be to make it easier to prove self-defense for shooting a police officer. No presumption shield should be available where a police officer is the victim. Self-defense should be an assertion available to a defendant, but he should be required to prove that assertion in the manner provided under current law. See, for example, **State v. Tyler, 251 Kan. 616, 625-27, 840 P.2d 413 (1992)**.

Subsection (c) proposes to extend a shield of presumptive criminal intent to the person against whom deadly force is used. What would happen in the situation where a car owner became confused which car in a large parking lot at night was his? If he was "attempting to enter" [p. 2, l. 3] a car occupied by someone sleeping off an intoxication, and is shot by that person who might legally (if the carrying of concealed weapons became legal, for example) be carrying a firearm, then why should the mistaken car owner be presumed to have had "intent to commit an unlawful act involving force or violence." [p. 2, l. 11 - 14.] If he is dead, he certainly will not be able to prove otherwise. Notice that H.B. 2577 not only would create a presumption that the defendant had an innocent intent, but also proposes circumstances where the person the defendant attacked is assigned a presumed criminal intent. Safe State believes the current law of self-defense has not been demonstrated to be inadequate to serve the needs of citizens properly asserting self-defense. Guilt or innocence should be determined by juries, not by confusing presumptions.

New Section Two is ill-advised because "attacked" is not defined. Is being "attacked" to be determined by an objective standard like "a reasonable person" or is it based solely on the viewpoint of the person using self-defense? In addition, the language "has the right to stand such person's ground and meet force with force" [p. 2, l. 14.] is ambiguous at best. What would happen if a woman walking alone in a park while wearing headphones, but carrying a concealed firearm, is tapped on the shoulder from behind by a man carrying a cane? If she is frightened, and can't hear the man asking for directions to the water fountain, and she thinks his gestures with the cane are a threat, is this a situation where "force" can be met with "force", and she can shoot him without first trying to warn off the man, or trying to retreat and run? This is dangerous language because it is so vague.

New Section Three substantially broadens the scope of the shield that will be available to those claiming self-defense. **New Section Three** also provides immunity from criminal prosecution (defined at p. 2, l. 26 - 27 as "arrest, detention in custody and charging or prosecution") and civil liability (remember O.J. Simpson was exonerated of criminal liability but still found liable for civil damages for wrongful death). See Subsection (c), which allows attorney fees, court costs and loss of income or expenses to someone who is sued for negligently causing a wrongful death, if a court finds that they are entitled to immunity under these proposals. It is strange that the proponents of this bill allow a person claiming self-defense to file a civil lawsuit, but the victim of a negligent or reckless shooting is denied the same right. Why? **New Section Three** may hamper the ability of law enforcement agencies to carefully investigate the use of deadly force. There has also been no demonstration by the proponents of this bill why the ability of law enforcement agencies and district attorneys to investigate and prosecute are being curtailed and limited.

New Section Four would extend the presumptions in **New Section One** and the immunities in **New Section Three** to people using deadly force to prevent the commission of a "forcible felony". [p.3, l. 3.] "Forcible felony" is defined by K.S.A. 21-3110(8) to mean "any felony that involves the use or threat of physical force or violence against any person." [Suppl. 2004.] This proposal, therefore, would shield from arrest, custodial detention, and prosecution any one who involves themselves in a situation where they "reasonably" believe "a threat of physical force or violence" is occurring. If it becomes lawful to carry a concealed firearm in public, then this language could have "unintended consequences". The general public is not trained to accurately assess and deal with crime. This language has the distinct potential for encouraging the public to involve themselves in crime as it happens on the street, and great potential will exist for mistake, mishap and mayhem. More important, **New Section Four, Five and Six** could be used to shield a vigilante from arrest, detention and prosecution.

New Section Five would extend the presumptions in **New Section One** and the immunities in **New Section Three** to people using deadly force "to prevent the imminent commission of a forcible entry." [p. 3, l. 14.] This language vastly liberalizes the law of self-defense to include defense of personal property, or even the property of a stranger. The way the last clause of **New Section Five** is written, the person asserting self-defense would not even have to prove another person was in danger. As long as the defendant perceived that "forcible entry" into a backyard shed or a rusting car up on blocks was taking place - or he thought it was taking place - then deadly force could be used, and criminal and civil immunity would be extended. What better shield from interference by police would a neighborhood group of concealed weapon licensees need? It is irresponsible to enact legislation that could encourage vigilantism.

New Section Six makes even clearer that deadly force may be used only to defend property ("prevent or terminate an unlawful interference with property, other than a dwelling or occupied vehicle"). [p. 3, l. 21-22.] This grant of immunity is conditioned upon the defendant using "only such degree of force or threat thereof as a reasonable

person would deem necessary to prevent or terminate the interference may intentionally be used." [p. 3, l. 245 - 27.] While this is proper language to include, we do not understand why this language is not included in **New Section Two**? But then subsection (b) is added to **New Section Six** thus creating confusion as to what exactly is intended to be addressed by this section.

In summary, without demonstrating why any of these changes are necessary, H.B. 2577 would vastly alter and change the law of self-defense. Safe State contends that too much potential for "unintended consequences" exists with these confusing proposals. The potential for harm is expanded when you consider that Kansans may soon become legally permitted to carry concealed weapons in their cars and in public venues.

These are a few of the published decisions of the Kansas Supreme Court and Kansas Court of Appeals in the last eight years that discuss the law of self-defense.

KANSAS COURT OF APPEALS

City of Wichita v. Cook, 32 Kan. App. 2d 798, 89 P.3d 934 (2004)

State v. Walker, 28 Kan. App. 2d 700, 20 P.3d 1269 (2001)

State v. Lutter, 27 Kan. App. 2d 858, 10 P.3d 16 (2000)

State v. Bradford, 27 Kan. App. 2d 597, 3 P.3d 104 (2000)

KANSAS SUPREME COURT

State v. Bryant, 276 Kan. 485, 78 P.3d 462 (2003)

State v. Bell, 276 Kan. 785, 80 P.3d 367 (2003)

State v. Hunt, 270 Kan. 203, 14 P.3d 430 (2000)

State v. Jacques, 270 Kan. 173, 14 P.3d 409 (2000)

State v. McCown, 264 Kan. 655, 957 P.2d 401 (1998)

Every year, hundreds of unpublished decisions from our appellate courts are issued and hundreds more trials take place in our district courts. If K.S.A. 21-3211 through 21-3215 are changed, countless criminal cases every year could potentially be affected. The rule of unintended consequences needs to be taken seriously.

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NRA Gun Safety Rules

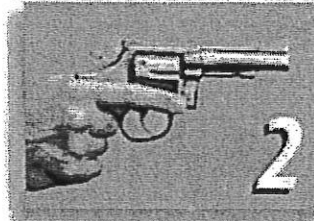
Available as a brochure

The fundamental NRA rules for safe gun handling are:



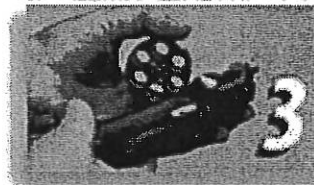
1. ALWAYS keep the gun pointed in a safe direction.

This is the primary rule of gun safety. A safe direction means that the gun is pointed so that even if it were to go off it would not cause injury or damage. The key to this rule is to control where the muzzle or front end of the barrel is pointed at all times. Common sense dictates the safest direction, depending on different circumstances.



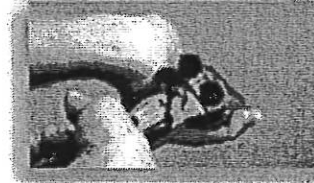
2. ALWAYS keep your finger off the trigger until ready to shoot.

When holding a gun, rest your finger on the trigger guard or along the side of the gun. Until you are actually ready to fire do not touch the trigger.



3. ALWAYS keep the gun unloaded until ready to use.

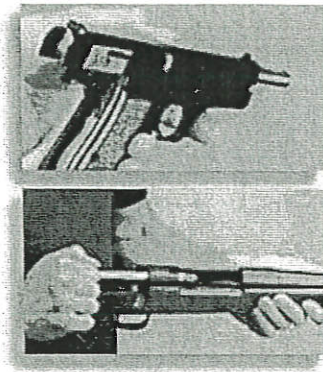
Whenever you pick up a gun, immediately engage the safety device if possible, and, if the gun has a magazine, remove it before opening the action and looking into the chamber(s) which should be clear of ammunition. If you do not know how to open the action or inspect the chamber(s), leave the gun alone and get help from someone who does.



FEDERAL AND STATE AFFAIRS

Date 2-9-09

Attachment 6



When using or storing a gun, always follow these NRA rules:

- **Know your target and what is beyond.**
Be absolutely sure you have identified your target beyond any doubt. Equally important, be aware of the area beyond your target. This means observing your prospective area of fire before you shoot. Never fire in a direction in which there are people or any other potential for mishap. **Think first. Shoot second.**
- **Know how to use the gun safely.**
Before handling a gun, learn how it operates. Know its basic parts, how to safely open and close the action and remove any ammunition from the gun or magazine. Remember, a gun's mechanical safety device is never foolproof. Nothing can ever replace safe gun handling.
- **Be sure the gun is safe to operate.**
Just like other tools, guns need regular maintenance to remain operable. Regular cleaning and proper storage are a part of the gun's general upkeep. If there is any question concerning a gun's ability to function, a knowledgeable gunsmith should look at it.
- **Use only the correct ammunition for your gun.**
Only BBs, pellets, cartridges or shells designed for a particular gun can be fired safely in that gun. Most guns have the ammunition type stamped on the barrel. Ammunition can be identified by information printed on the box and sometimes stamped on the cartridge. Do not shoot the gun unless you know you have the proper ammunition.
- **Wear eye and ear protection as appropriate.**
Guns are loud and the noise can cause hearing damage. They can also emit debris and hot gas that could cause eye injury. For these reasons, shooting glasses and hearing protectors should be worn by shooters and spectators.
- **Never use alcohol or over-the-counter, prescription or other drugs before or while shooting.**
Alcohol, as well as any other substance likely to impair normal mental or physical bodily functions, must not be used before or while handling or shooting guns.
- **Store guns so they are not accessible to unauthorized persons.**
Many factors must be considered when deciding where and how to store guns. A person's particular situation will be a major part of the consideration. Dozens of gun storage devices, as well as locking devices that attach directly to the gun, are available. However, mechanical locking devices, like the mechanical safeties built into guns, can fail and should not be used as a substitute for safe gun handling and the observance of all gun safety rules.
- **Be aware that certain types of guns and many shooting activities require additional safety precautions.**
- **Cleaning**

Regular cleaning is important in order for your gun to operate correctly and safely. Taking proper care of it will also maintain its value and extend its life. Your gun should be cleaned every time that it is used.

A gun brought out of prolonged storage should also be cleaned before shooting. Accumulated moisture and dirt, or solidified grease and oil, can prevent the gun from operating properly.

Before cleaning your gun, **make absolutely sure that it is unloaded.** The gun's action should be open during the cleaning process. Also, be sure that no ammunition is present in the cleaning area.

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LEAGUE OF WOMEN VOTERS® OF KANSAS

February 9, 2006

The Honorable John Edmonds, Chair
Federal and State Affairs Committee
The Kansas House of Representatives

President
Janis McMillen
Overland Park

Chairman Edmonds and members of the Committee:

1st Vice President
Sharon Ailsieger
Wichita

I am Ernestine Krehbiel, co-President of the Wichita Metro Area League of Women Voters and I am here on behalf of the League of Women Voters of Kansas. The League is a non-partisan organization which seeks to educate our members and the public in order to become better informed citizens and voters. We have approximately 800 men and women members in Kansas.

2nd Vice President
Doris Slocombe
Emporia

Secretary
Carol Snyder
Overland Park

Based on our positions, the League believes that HB 2577 represents a solution to a problem that does not exist, and we oppose this bill.

Treasurer
Leonore Rowe
Overland Park

The current self-defense law has been around for over 30 years and has effectively allowed people to legitimately defend themselves. The change proposed in this legislation has the danger of many unintended consequences, such as allowing real criminals to hide behind the self-defense claim.

Directors
Mary Ann Bradford
Topeka

Emma Doherty
Salina

It is not accurate to call it a "wild west" bill saying folks were safer in the old days when all could carry a gun. Even in old Wichita of the Cowtown days, there was a sign at the edge of the city saying that everyone while in town had to turn in their guns to the law men of Wichita.

Gwen Elliott
Topeka

Ellen Estes
Wichita

The League of Women Voters has always measured proposed laws against the Constitution, and is very concerned about legislation that endangers the guarantees to all citizens under the Fifth and Sixth Amendments* of the Bill of Rights. The Fourteenth Amendment* makes these protections extend to state laws. To open Kansas up to vigilante justice as this bill can do, goes against the principles of the 5th and 6th Amendments and the guarantee of due process of law for any one accused of a crime, a guarantee for a public trial with an impartial jury and the right to confront witnesses against him.

Linda Johnson
Manhattan

Bob Kruh
Manhattan

Carrie Moore
Lawrence

All people are guaranteed due process of law when charged with a crime. This proposed law has the effect of allowing anyone who perceives that a felonious act is about to be committed to become the prosecutor, judge, jury and executioner. Just to THINK that the other person was about to commit a crime would be enough for the person to take the law into his own hands and execute the suspect. This is not what American justice is about.

Bill Powell
Salina

According to Steven Riczo (Society for the Advancement of Education, March 2001) writing in USA Today, reports of interviews with detectives in various police departments revealed that in a recent year about 90% of residential burglaries occur when the owner or family is not at home. In a recent year a citizen had a four one-thousandth of one percent chance (.004%) of being killed during a burglary. This bill is a dangerous solution to a non-existent problem.

Under this proposed law the shooter merely has to feel he (or some property) is threatened as long as the shooter "is not engaged in unlawful activity" and is "attacked in a place

where such person has a right to be". The proposed law says the shooter has no duty to retreat even if he could and "has the right to stand such person's ground and meet force with force". This eliminates the previous expectation that the shooter would act as any reasonable person would and retreat if possible--walk away from a fight outside a bar, go and call the police, exit out the back door if an unidentifiable person is coming in the front. Therefore, under this bill, even if the shooter started a fistfight that escalates, the shooter could receive immunity because he is told he can "stand his ground".

This bill can have many unintended consequences. Nothing in the law would preserve the rights of an innocent bystander who was shot in the incident to pursue a civil action against the shooter for negligence in the handling of a firearm. What provision does it make if the shooter kills an innocent by-stander, kills a neighbor child coming into the yard to rescue a cat, kills someone who merely was approaching on the street with a question? (Of course, if the latter person is dead, then it is only the word of the shooter that he felt threatened.) The shooter could even receive immunity for shooting recklessly into a crowd, as long as he reasonably believed he was in serious danger. And as I said earlier, it may give cover to real criminals who use this as their defense.

The over-all rate of violent crime in the United States is at the lowest since 1974. The number of murders (not just the rate) in the U.S. according to the United States Justice Department's latest figures was the lowest it has been since 1970. The property crime numbers are the lowest since 1978. Even burglaries, at which this bill is presumably aimed, are the lowest since 1969.

There is no need to add a law in Kansas that has many unintended consequences when the current law does what Kansans want—gives persons the right to self-defense when they cannot get away.

The League of Women Voters of the US for many years has had a position in favor of appropriate regulation of the legal use of fire arms. When the League adopts a position it is with careful study and often long consideration. This bill has NOT had careful consideration as to all the unintended consequences that it may create, and we urge your vote against the bill.

***Amendment V** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, nor be deprived of life, liberty, or property, without due process of law; ...

***Amendment VI** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, ... to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

***Amendment XIV** ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws....