

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 16, 2006 in Room 313-S of the Capitol.

All members were present except:

Representative Ray Merrick- excused  
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:

James Martinez  
Julie Huntwork  
Jennifer Roth

Others attending:

See attached list

The Chairman opened the meeting for bill introductions and recognized Representative Mah who requested three bills.

1. A conceptual bill for a confidential address program to prevent victims of domestic violence from being tracked through change of address
2. A bill regarding sexual assault crises intervention
3. A bill regarding re-corking of wine bottles in restaurants

With no objections, those three requests were accepted for introduction.

Chairman Edmonds opened the floor for public hearing on **HB 2754** - Miki's law; establishment of registry of persons convicted of felonies using a deadly weapon.

James Martinez was recognized to give testimony supporting **HB 2754**. Mr. Martinez related that his daughter, the mother of two young children, was kidnaped and brutally murdered. He believes that if the "Miki Bill" were enacted it would save lives by empowering the people with the knowledge of violent offenders, who are required to register. He further opined that the enactment of the "Miki Bill" would work like Megan's Law, the federal law that requires sex offenders to register their presence in a community. (Attachment 1)

Julie Huntwork came before the committee to support the passage of **HB 2754** and to answer any questions regarding the bill. (No Written Testimony)

There were no other proponents for **HB 2754** and the Chair recognized Jennifer Roth, an attorney from Lawrence, Kansas as an opponent. Ms. Roth explained that she did not feel that the passage of this law in its current form would make Kansas a safer place to live. In her testimony, Ms. Roth, related her concerns regarding the bill including the fact that the term "a deadly weapon" was too broad and the fact that she felt it would have a bigger fiscal impact than anticipated. (Attachment 2)

No other person wished to address the bill and Chairman Edmonds closed the public hearing on **HB 2754**.

With no further business before the committee, the meeting was adjourned.



*Good Afternoon, my name is James Martinez*

*Thank you for your time and attention.*

*Throughout life many of us experience unexpected tragedies. Often we ask our Lord why.*

*My prime example is the loss of Mr. Dale Earnhardt Sr.'s life. Subsequently through Dale's death all Nascar drivers are now required to practice more secure neck and head restraints, in hopes such precautions will prevent future, similar death.*

*My unexpected tragedy is the sudden loss of my eldest daughters' life. Our Lord shows me through the loss of Mikiala that there are changes needed, in hopes such precautions will prevent future, similar death.*

*In this aspect I no longer ask our Lord why.*

*Therefore I would like to present to you our most reasonable and practical idea of precaution.....we call it The Miki Bill.*

*My entire reason for life changed on February 21<sup>st</sup> twenty and four when the evils of this world stole my eldest daughter, Mikiala's life at the tender age of nineteen. My Mikiala was kidnapped then brutally murdered....my first born spent the last moments of her life alone and in fear, her body was literally discarded in rural Barton county Kansas. I wish my grief upon none other.*

*The men that murdered my daughter, the beloved mother of two young children, were frequent patrons at the liquor store in Lyons Kansas. When I spoke with the proprietor he stated if he had been aware either of the men were currently on parole he would have never done business with them. If*

FEDERAL AND STATE AFFAIRS

Date 2-16-06

Attachment 1

*our Miki Bill would have been in affect at that time I strongly feel my daughters life may have been spared.....we are all adults and we are aware how alcohol can affect ones decisions and actions.*

*We believe the Miki Bill enacted will save lives by empowering the people with the knowledge of violent offenders, who are required to register through Megans' Laws,' release status. We propose usage of the present Megans Law requirements and regulations. Our proposal would require little to no funding to be successful. In no way do we wish to downplay Governor Sebelius' attempt at tracking registered offenders with G.P.S. device though we feel assured this would be costly not to mention complicated. Our drive and desire to empower the people runs deep....forever deep. No one can protect themselves or their loved ones from potential danger if they are unaware of it's presence.*

*Enactment of our Miki Bill would respectively allow law enforcement opportunity to focus on priority issues instead of continually monitoring these offenders.*

*We wish our Miki Bill be associated to Megans Law. We propose required public broadcast by local media informing locale and physical description of offenders registered through Megans Law. We ask these broadcasts be labeled Miki Alerts.*

*After Megan Kankas tragic death in 1994, Mr. And Mrs. Kanka lobbied to put into place a federal law requiring all 50 states to notify the community of the presence of sex offenders who posed a risk to public safety. The enactment of Megans Law in 1996 by President Bill Clinton granted the*

*public the right to know who resides in our communities....we, us, the people. Law enforcement and legislators alike are bestowed with the authority, ability and the duty to protect us citizens. To continue to ignore the publics' need to be knowledgeable about who resides in our communities is irresponsible and life threatening. Our proposal enacted will amend Kansas' Megans' Law procedure of informing the public.*

*We were blessed to obtain space at the Kansas state fair in twenty and five where we secured over 3000 signatures of support. We present committee members with this show of public support for our Miki Bill today, proving to you there is need for change.*

*God bless every one of you for giving The Miki Bill the time and attention she deserves. May He forever keep you and yours safe from the evils of this world. Thank you.*

**House Committee on Federal and State Affairs**  
**House Bill 2754**  
**Opponent**  
**February 16, 2006**

Chairman Edmonds and Members of the House Committee on Federal and State Affairs:

My name is Jennifer Roth. I am a Lawrence resident and have been a criminal defense attorney in Topeka for over five years. I am married with a two-year-old daughter.

I must admit I am not certain of the circumstances behind Miki's Law. It is my understanding that the law is named for Mikiala Martinez. According to newspaper articles I read, Ms. Martinez was murdered in February 2004 by Damien Thompson. Mr. Thompson testified that he was afraid Ms. Martinez would go to police with information about a stabbing and robbery he was involved in about ten days before with his cousin, Sidney Gleason, and two other men. Mr. Gleason was charged with capital murder and first-degree murder in connection with Ms. Martinez' death, as well as the murder of her boyfriend, Darren Wornkey. Both Ms. Martinez and Mr. Wornkey were murdered with guns.

According to the Kansas Department of Corrections website (I did a KASPER search), as of February 2004, Mr. Thompson had a prior conviction for house burglary in 1997 and Mr. Gleason had prior convictions for attempted car burglary and attempted criminal damage. This is probably not the full extent of these men's prior convictions (they may have some priors they did not go to prison for and thus are not included on the DOC website), nor does the KASPER search reveal whether deadly weapons were used in the commission of their prior crimes.

I confess I do not have a full understanding of the background of Miki's Law, but I do understand how senseless and tragic Ms. Martinez's and Mr. Wornkey's deaths were. Even with this understanding, I cannot help but wonder how could a registry have saved Ms. Martinez's and Mr. Wornkey's lives? Would Mr. Thompson and Mr. Gleason, with whatever prior offenses they had, have even been on a registry such as that proposed by HB 2754?

I do not believe that HB 2754, in its current form, will necessarily make Kansas a safer place.

**Currently, offenders required to register pursuant to the Kansas Offender Registration Act** (also known as KORA, K.S.A. 22-4901, et seq.) **include those convicted of "sexually violent crimes"** or crimes that were determined beyond a reasonable doubt to have been **sexually motivated**, as well as **"violent offenders"** who were convicted of capital murder, first and second degree murder, voluntary manslaughter and involuntary manslaughter. It also includes registration for defendants convicted of **certain acts against victims under 18**, such as kidnapping, criminal restraint, adultery and certain types of other criminal sexual conduct. The Act requires registration for defendants not only who were convicted of completed acts as explained above, but also for an attempt, conspiracy or solicitation of an act.

FEDERAL AND STATE AFFAIRS

Date 2-16-06

Attachment 2



HB 2754 would require registration on the Kansas Offender Registry of any person who “is convicted of any felony in which the person used a deadly weapon in the commission of such felony.” (New Section 2 (c)(1)). Furthermore, HB 2754 applies retroactively and covers attempts, conspiracies or solicitations of an act, just as the current KORA does. HB 2754 also includes a **mandatory broadcast or publication within seven days of an offender’s registration in a county**: “the sheriff shall request notice of the registration to be given by at least two newspapers, radio stations or television stations having general circulation or broadcasting in the area where the offender is to reside. Any such newspaper, radio station or television station shall publish or broadcast the Miki alert at least once upon the sheriff’s request.” This publication or broadcast “shall include a **photograph of the offender and the address at which the offender is to reside** and shall be called a “Miki alert.” This is not part of the present KORA. In other words, we don’t even do this to registered sex offenders or murderers.

Problems with HB 2754 as proposed include:

**Including convictions for “a deadly weapon” is too broad**

- Crimes that involve use of a deadly weapon as an element include **aggravated assault** (intentionally placing another person in reasonable apprehension of immediate bodily harm with a deadly weapon), some forms of **aggravated battery** (intentionally or recklessly causing bodily harm to another with a deadly weapon or intentionally causing physical contact to another with a deadly weapon), **aggravated robbery** (robbery committed by a person armed with a dangerous weapon) and **criminal possession of a firearm**.
- When people think “deadly weapon,” guns and knives probably come to mind first. However, the definition of “deadly weapon” is wide open in Kansas law. I asked five of my colleagues about “deadly weapons” they have seen charged. In addition to guns and knives (of all sizes, even small pocket knives), we came up with the following list of **actual “deadly weapons” that our clients were charged with using in the commission of an aggravated assault, aggravated battery or aggravated robbery**:

- |  |                           |
|--|---------------------------|
| ballpoint pen  | class ring                |
| hoe  | broom stick               |
| iron skillet   | vacuum cleaner            |
| beer bottle  | scissors                  |
| big stick (from a tree)  | rocks                     |
| stairs   | bow and arrow             |
| drugs  | brass knuckle belt buckle |
| cars   | fork                      |
| doors, walls, floors (defendant grabbed victim and pounded head on them) |                           |
| fists or kicks (by people with martial arts training)                    |                           |

These are actual items charged - how many more can you imagine?

- Furthermore, other “**deadly weapons**” may include no weapon at all or fake weapons. You need look no further than published Kansas appellate court cases in which people were convicted of aggravated robbery or aggravated assault for using toy guns, pellet guns, guns that cannot fire/function or their finger in their coat to look like a gun. These are held to be “deadly weapons” for the purposes of certain offenses.

### **Bigger fiscal impact than anticipated**

- According to the fiscal note for HB 2754 (dated three days ago on February 13, 2006), “[a]n offender would have to be registered if the individual was convicted of a felony by using a firearm in the commission of the crime, convicted of criminal solicitation of a felony in which a firearm was used or required to register under any other law for a conviction of a felony in which the offender used a firearm and the offense would be a crime in Kansas.” **However, this is not what HB 2754 actually says. HB 2754 covers “any felony” in which “any deadly weapon” is used, not just firearms.** This calls into question whether the fiscal note has numbers on which you can rely. For example, when the KBI and Kansas Sentencing Commission submitted their figures, were they basing it on offenders registering for firearms or for any “deadly weapon?”
- The Fiscal Note states that HB 2754 would require an additional \$130,928 in funding for the KBI in the first year. However, there is no mention in the Note - nor in HB 2754 - how counties are to pay for these public broadcasts. It sounds as though the sheriffs’ departments must rely on the generosity of radio and television stations and newspapers. If the KBI is going to need more people to manage the registry, it stands to reason that there will be an extra burden on county sheriffs to deal with an increase in registrations. There is no funding mentioned for this.
- The current emphasis on finding and prosecuting non-compliant offenders is arguably already straining resources. On June 18, 2005, the *Topeka Capital Journal* published an article about the offender registry. In that article, KBI Director Larry Welch is quoted as saying that at least **10% of the offenders on the registry are non-compliant**. The article explains that **there are 3,757 registered offenders**. This focus on the registry’s non-compliant has resulted in more prosecutions. For example, in Douglas County, five cases were filed in August 2005 alone. (*Lawrence Journal-World*, November 26, 2005).
- The Fiscal Note states that there will be a need for an additional 21 prison beds by the end of FY 2007. According to the Department of Corrections website, **housing an inmate for one year ranges from \$18,121 to \$28,697**, depending on the institution. As the Note points out, the DOC is already operating at near or excess capacity for medium and maximum custody male inmates.



## Recommendations and conclusions

- If the Legislature wants to have defendants who commit felonies with a firearm register, then amend "a deadly weapon" to "firearm." However, this will still include people convicted of criminal possession of a firearm (example: say I am a convicted felon for writing bad checks - the police pull me over one day and see a gun on my backseat - I am consequently convicted of criminal possession of a firearm). Criminal possession of a firearm is just that - possession. It requires no violent act or any use of the gun. It is a non-person felony. If the Legislature wants defendants who commit actual acts of violence with firearms to register, then amend "any felony" to "any person felony."
- If the Legislature does want to include defendants who are convicted of "any felony" with "a deadly weapon," then please consider having the Registry state what the "deadly weapon" was. To not give this information is to **cause unnecessary public panic and, frankly, makes a mockery of the Registry.** It may matter to an employer if the person they want to hire is on the Registry for recklessly hitting someone with a car versus shooting them with a gun. It may matter to a potential neighbor if the person near them is on the Registry for assaulting someone with a big stick as opposed to a switchblade knife. It may matter to a college or university if some applicant is on the Registry because, at age 14, he held up a Kwik Shop with his finger in his coat as opposed to a gun.

I truly believe this bill does not make people safer. It just broadcasts (literally) bits and pieces about a person without explaining circumstances. This is one reason I don't put much stock in the Registry that exists now.

I am more concerned about people being able to carry concealed weapons in places my baby goes - restaurants, parks, around schools - than whether my neighbor battered someone with a hoe. I am more concerned about whether my husband will be caught up in some defense of property struggle (see proposed HB 2577) where a property owner fires off some rounds to prevent someone from stealing his car than whether some guy threatened another person with a broken beer bottle outside of a pool hall.

**HB 2754 is not going to make this wife and mother feel any safer.**

Thank you for your time and consideration.

Sincerely,



Jennifer Roth  
505 Tennessee Street  
Lawrence, Kansas 66044  
785-832-9583