

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 13, 2006 in Room 313-S of the Capitol.

All members were present except:

Kevin Yoder- excused
Michael Peterson- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Charles Branscon, Douglas County District Attorney
Rose Rozmiarek, Kansas State Fire Marshal
Edward Bricknell, Wichita Fire Department
Chris Banister, Wichita Police Department, Bomb Squad
Jared Maag, Office of Attorney General
Representative Becky Hutchins
Karen Wittman, Shawnee County Assistant District Attorney
Cindy Thompson, Individual
Clayton Gurwell, Individual
Craig Miller, Individual

HB 2704 - number of small claims procedures filed each year

Representative Kinzer made the motion to report HB 2704 favorably for passage. Representative Watkins seconded the motion. There was some discussion about deleting any reference to the number of times a person can access small claims court but the committee decided to see how large of an increase there would be in cases being filed with the new bill before considering taking off the cap. The motion carried.

Chairman O'Neal opened the hearing on **HB 2701 - definition of drug paraphernalia.**

Charles Branscon, Douglas County District Attorney, explained that many stores are selling novelty items that are used for the ingestion of illegal substances. The proposed bill would make these items that are packaged in such a way that they would be illegal to possess. He provided the committee with an example of a rose container. The "rose container" actually holds a fabric rose but once the rose is removed the container is then turned into a smoking pipe for crack cocaine or methamphetamine. (Attachment 1)

The hearing on **HB 2701** was closed.

The hearing on **HB 2699 - inherently dangerous felonies; endangering a child; arson; aggravated arson; criminal use of explosive,** was opened..

Charles Branscon, Douglas County District Attorney, appeared in support of the proposed bill which would aid prosecutors and juries in not having to determine if the type of conduct, by an individual, was both intentional and reckless. It would simply instruct that a jury could choose either. The bill addresses instances where a person unintentionally damages a building or dwelling during the commission of a legal act in an unlawful manner or in a reckless manner. (Attachment 2)

Rose Rozmiarek, Kansas State Fire Marshal, commented that Florida, Illinois & Connecticut have similar laws. She explained four provisions in the proposed bill:

- would add the term felony arson into statute so that if the perpetrator commits a felony crime and due to his action a fire results he could be charged with the arson as well
- addresses the unintentional fires that are done in reckless manor

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 13, 2006 in Room 313-S of the Capitol.

- aggravated arson would include injuries to firefighters and investigators
- increases the severity level of the criminal use of explosives (Attachment 3)

Edward Brickniell, Wichita Fire Department, stressed the importance of allowing prosecutors to charge aggravated arson when firefighters are injured in arson fires. The proposed bill would hopefully make people aware that there are consequences for their negligent and irresponsible behavior. (Attachment 4)

Chris Banister, Wichita Police Department, Bomb Squad, supported including hoax bombs into the statute because they are just as destructive when they explode as real bombs. (Attachment 5)

Jared Maag, Office of Attorney General, stated that this was a good intended bill that would encompass all acts that the state is currently seeing that are not covered by current law. (Attachment 6)

The hearing on **HB 2699** was closed.

The hearing on **HB 2748 - traffic violation; failing to report an accident**, was opened.

Representative Becky Hutchins appeared as the sponsor of the bill. The issue was brought to her attention when an elderly lady was struck on her way to church services. She had fatal injuries and the individual driving the car left the scene of the accident. The proposed bill would lower the penalty for leaving the scene of a property damage accident but increase the penalty for leaving the scene of a bodily injury accident and allow for harsher penalties for leaving the scene of a fatal accident. (Attachment 7)

Karen Wittman, Shawnee County Assistant District Attorney, stressed that a lot of time and effort goes into finding individuals who commit hit & run accidents. Currently, the only thing that can be charged are levels A & C misdemeanors. (Attachment 8)

Craig Miller's grandmother was the elderly lady that was struck on her way to church services. His family has rage and anger towards the person who fled the scene. That individual has a long list of previous driving violations. He believes that it is reasonable that if a person causes injuries or death of another person they should have harsh penalties. (Attachment 9)

Chairman O'Neal pointed out that the proposed bill, while it labeled someone as a felony, would actually allow some individuals to receive probation, which is a lighter penalty than current law. Mr. Miller commented that he would like both the label of felony and a more strict penalty, not probation.

Cindy Thompson's boyfriend & Clayton Gurwell's son, Brent Gurwell was hit by a drunk driver who did not stop at the scene of the accident. She relayed their story of how Brent had spent over 30 days in the hospital, had over 4 operations and has received only \$25,000 from the insurance policy, which didn't even come close to covering the bills. The individual was charged with leaving the scene and fined \$500. (Attachments 10 & 11)

The hearing on **HB 2748** was closed.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for 3:30 p.m. on Tuesday, February 14, 2006 in room 313-S.

Testimony in support of House Bill No. 2701

By Charles Branson, Douglas County District Attorney

Committee on Judiciary

February 13, 2006

Mister and Madame Representative:

Several convenience stores in our State are currently selling novelty items on their checkout shelves that are used for the ingestion of illegal substances. These items are in the form of glass tubes in various shapes that contain a small fabric rose on a wire. By the simple act of removing the fabric rose, the glass container is transformed in to a smoking pipe for crack cocaine or methamphetamine.

The purpose of this amendment is to add to the factors that can be considered in making a determination if an item is drug paraphernalia. K.S.A. 65-4151 provides factors to consider when determining whether an item is drug paraphernalia. Those factors currently include the following:

- (a) Statements by an owner or person in control of the object concerning its use.
- (b) Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.
- (c) The proximity of the object, in time and space, to a direct violation of the uniform controlled substances act.
- (d) The proximity of the object to controlled substances.
- (e) The existence of any residue of controlled substances on the object.
- (f) Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of the uniform controlled substances act.

The innocence of an owner or person in control of the object as to a direct violation of the uniform controlled substances act shall not prevent a finding that the object is intended for use as drug paraphernalia.

House Judiciary

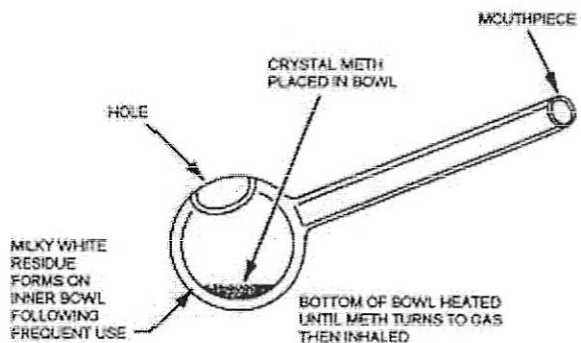
Date 2-13-06

Attachment # 1

- (g) Oral or written instructions provided with the object concerning its use.
- (h) Descriptive materials accompanying the object which explain or depict its use.
- (i) National and local advertising concerning the object's use.
- (j) The manner in which the object is displayed for sale.
- (k) Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products.
- (l) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- (m) The existence and scope of legitimate uses for the object in the community.
- (n) Expert testimony concerning the object's use.

The additional language under this proposed amendment is designed to make illegal items that are packaged in such a way that the packaging, but for the product contained to be sold inside, would be illegal to possess otherwise.

Currently, the argument is that if the product has some 'legitimate purpose' then it cannot be considered paraphernalia. The current statute does not have the ability to look beyond the ruse of 'legitimate purpose' to determine if the packing of the product serves any purpose other than to house the product for sale. An example 'rose' container is shown below.



Testimony in support of House Bill No. 2699

amending K.S.A. 21-3436; 21-3608a; 21-3718

By Charles Branson, Douglas County District Attorney

Committee on Judiciary

February 13, 2006

Mister and Madame Representative:

As to K.S.A. 21-3436 & 21-3608a:

K.S.A. 21-3608a defines aggravated endangering a child as: "Intentionally and recklessly causing or permitting a child under the age of 18 to be placed in a situation in which the child's life, body or health is injured or endangered."

K.S.A. 21-3201 defines "intentional" conduct is conduct that is purposeful and willful and not accidental. As used in this code, the terms "knowing," "willful," "purposeful," and "on purpose" are included within the term "intentional."

Further K.S.A. 21-3201 defines 'reckless' conduct is conduct done under circumstances that show a realization of the imminence of danger to the person of another and a conscious and unjustifiable disregard of that danger. The terms "gross negligence," "culpable negligence," "wanton negligence" and "wantonness" are included within the term "recklessness" as used in this code.

As the law is currently written, there is a requirement of proving two competing mental states. "Intentional" conduct requires the State to prove that an act was done purposefully and not accidentally. "Reckless" conduct requires a realization of an imminent danger and a conscious disregard for that danger.

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The distinction, then, between the misdemeanor and the felony is contained in the last portion of the subsection, which provides that the child's life body or health is *actually* injured or endangered, where the misdemeanor does not require this element.

An alternative to the proposed language is "Intentionally causing or permitting a child under the age of 18 to be placed in a situation in which the child's life, body or health is injured or endangered, with a reckless disregard for the danger to the child."

For the purposes of K.S.A. 21-3436, aggravated endangering a child should be added to the list of inherently dangerous felonies to substantiate a charge of murder in the first degree under K.S.A. 21-3401(b).

As to 21-3718(4) & (5):

Currently, Kansas law does not provide a penalty for someone who recklessly or during an unlawful act damages a building or property used as a dwelling of another by fire or explosive. Currently, a prosecutor must show that the defendant 'intentionally' damaged the property or 'accidentally' damaged the property during the illegal manufacturing of an illegal substance.

If a person unintentionally damages a building or dwelling of another during the commission of a legal act in an unlawful manner or in a reckless manner nothing can be done. Criminal damage to property K.S.A. 21-3720 specifically excludes damage caused by fire or explosion.



K A N S A S

F.S. JACK ALEXANDER
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS
GOVERNOR

TESTIMONY ON HB 2699 HOUSE JUDICIARY COMMITTEE

CONCERNING CHANGES TO CRIMINAL STATUTES

ROSE ROZMIAREK
CHIEF OF INVESTIGATIONS
KANSAS STATE FIRE MARSHAL'S OFFICE

FEBRUARY 13, 2006

Dear House Judiciary Committee:

I am here to speak to you as a proponent of House Bill 2699. More specifically, I want to address three sections of this bill. These areas address the state's arson statute, aggravated arson statute, and the criminal use of explosives.

As the Chief of Investigations for the State Fire Marshal's Office, my division deals with arson and explosive cases daily. We see that the Kansas statutes relating to these issues need to be revised to strengthen prosecutions and holding the perpetrators accountable for all their actions and activities when they commit crimes.

The first issue addressed is with the changes in the arson statute, 21-3718. What is being added is what you could term "felony arson". If a perpetrator committed any felony crime and due to their actions a fire results then the perpetrator could be charged for the fire as well.

The Emporia double fatality explosion fire in 2001. Even though the suspects in this case were convicted to life in prison they were not convicted of the arson. The jury members were polled and they all agreed that they could not find the evidence for the intent of the fire/explosion. If this felony arson addition was already on the books then the jury would not have had a problem with the deliberations.

In 2002 there were two suspects who burglarized a rural fire department in Stafford County with the intent to steal gasoline from the fire trucks. It was dark in the garage area, so one of the suspects flicked his lighter on for light as they were siphoning the gas. The fumes ignited. This severely damaged the fire trucks and the fire department building. It caused over \$ 80,000.00 in damage. Mutual aid from another rural fire department had to be called to fight the fire. The suspects' intent was not to set the fire but only to steal gasoline. They could not charge them with the damage to the fire department or the damage to the fire trucks.

The Kansas State Fire Marshal's Office only sees about five percent of the total number of cases investigated by them to fall in this category. Of the five percent, only about one percent will result in the development of a suspect. Comparatively, these percentages would be higher than the total for the whole State of Kansas since the Fire Marshal's Office is usually called in on cases that have a suspicion of criminal activity.

Another change to the arson statute addresses the unintentional fires done in a reckless manor. When individuals set fires and it is foreseeable that the fire will cause damage to property of another, these individuals must be held accountable for the damages they cause. To say that there are civil actions that can make them accountable does not work in most of these cases. Many of the cases involve individuals who do not have the monetary means of restitution and they know it. These individuals will and have continued to set these fires knowing there is nothing that the authorities can do to them. There must be some accountability assessed to individuals.

The next change pertains to the Aggravated Arson, 21-3719. What is being added is the inclusion of injuries to the fire fighters fighting a fire and the investigators determining the cause of the fire. If a fire is ruled arson and these injuries occur the case would be upgraded to aggravated arson. Fire fighters and investigators take great risks in the work they do and they take those risks gracefully when there is an accidental fire. Those fires are going to happen but when a person sets an arson fire they put these public servants at risk due to their actions. The fire fighters and investigators must enter the structures to fight and investigate the fires. Statistics will show that set fires can be a more intense fire because the arsonist wants to make sure the building burns down. They want to intensify the fire. With the increase in intensity there is more likelihood of more structural damage and more danger to anyone who is in or near the fire. There is no way for the fire fighters or the investigators to know if the fire was arson until after the fire is extinguished and the investigation is over. They will actively attack the fire and investigate through to the end. We must make the suspect accountable for all damages and injuries that result from his / her actions. There are statutes in place to increase the crime when law enforcement officers are attacked in the line of duty, those who set fires should be accountable for those who respond to the fires he / she creates.

Over the last five years there has been an average of 1987 arson fires per year in the State of Kansas which resulted in an average of 45 fire fighters injuries. Of those it is estimated that only about .5 (1/2) percent of them would qualify for an increase in the crime to aggravated arson. That is only a small fraction per year.

One question I am sure will be of concern is the additional workload for the courts and prison bed space. Overall there should not be a significant increase in cases in the courts. Being realistic, of the arson cases that would fall into this category, only a fraction of them will actually develop a suspect and charges filed. At best we can hope for a total of two percent. With the aggravated arson charge, the suspect would have been charged with arson anyways so there would not actually be an increase in the number of cases in court but only a change in what crime the suspect is charged with.

The states of Florida, Connecticut, and Illinois all have similar statutes and we would follow suit in making the criminals accountable for ALL their actions when they commit crimes in the State of Kansas.

The next issue is with the criminal use of explosive statute, 21-3731. Explosives are deadly materials in the hands of the wrong people. Explosives are still and will remain the weapon of choice for terrorist, domestic and international. We have in the last few years tried and still are strengthening our state's explosive licensing statutes and regulations to assure the explosive materials are not getting into the wrong hands. Even with these changes explosives will be obtained by criminals, if not commercial explosives they can produce them from some common household items. Our statutes need to change with the ever changing adaptations and technology criminals use to complete their crimes.

Increasing the severity level of the criminal use of explosives will only send a message to the persons who intend to commit this act that they will be punished appropriately due to the devastating impact of the explosive materials or device.

Another area addressed in the section has to do with the language amendment to clarify other explosive devices that are being constructed and are very dangerous and destructive. People, including teenagers are constructing explosive devices from class 'C', 1.4 fireworks. These fireworks are the type you can purchase during the forth of July. One type of device law enforcement agencies in Kansas as well as across the nation are seeing is what is referred to as 'sparkler bombs'. These devices utilize sparklers taped together in confinement and once lit can have a devastating effect. We had one in 2002 move a 350 pound monument off of its pedestal. They can go off in the kids hand and cause major debilitating injuries. Not only are they using fireworks but also normal household items such as aluminum foil and 'drano' for acid bombs and then there are the dry ice bombs. All these homemade bombs can cause damage and injuries just like commercial explosives.

The next issue deals with the development of the 'hoax' device addition to the statute. Section 5 with 21-3731 (a) (2) only deals with hoax devices. With hoax devices they cause the same response from emergency service personnel as a regular device. The determination that the device is a 'hoax' is not done until after the response is completed. All precautions must still be implemented such as building evacuations and disrupting the

surrounding area and communities. This disruption can last for hours resulting in the displacement of residents and loss of business income.

The last issue I will address is with a language clarification change in section 6 dealing with the bottle rocket statute 31-155. Section (a)(1) only addresses the sell of bottle rockets where (a)(2) addresses the use. The original intent of the statute was to address all issues of possession, use and sell in the state.

I request your support of this bill and the amendment of these statutes. People who commence to illegal activity must be held for their disregard of life and property. The investigators need to be allowed to fully investigate these crimes. We must also protect the land / property owners and innocent victims in these cases.



Fire Department

HOUSE BILL No. 2699

Committee on Judiciary

Dear Committee Members

My name is Edward Bricknell, and I am the Fire Marshal for the Wichita Fire Department. I am here as a proponent for the passage of **House Bill No. 2699**.

Is Kansas Burning? Yes it is. Why is Kansas Burning? Because there are loopholes in the current law that allow those who, in an irresponsible and reckless manner, set or cause fire to occur, with the total disregard for the safety and property of others.

The setting of fires is something firefighters and law enforcement officers take seriously. Arson fires are destructive, and permanent. In 2005 alone, 94 incendiary fires in Wichita caused \$3,000,000 in property damage with Juvenile fire setters causing another \$170,000.00 in property damage.

Many of these intentionally set fires are not prosecutable under current state statutes. For instance, a person can set a fire to a pile of trash in their backyard and cause their neighbor's house and related property to catch fire, and not be held accountable. Current law does not protect innocent people from the reckless acts of others.

The following example demonstrates the need for change as well. A fire was set in a pile of leaves and spread to a church's playground equipment, which was subsequently destroyed. Three juveniles were apprehended. When the case was presented for prosecution, the District Attorney declined the case, not because the juveniles denied setting the fire, but because their intent did not involve the destruction of the playground equipment. The destructive behavior of these individuals led to the damage of property, and no one was held accountable.

Under current law, a person committing a felonious act, such as a burglar cutting open a safe with a welding torch subsequently causing a fire, has not committed the crime of

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Attachment # 4

arson. The Wichita Fire Department experienced this very scenario in 2004. There were thousands of dollars in fire damage, and no one was held accountable.

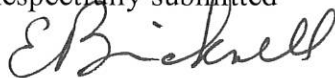
Every day, firefighters and law enforcement officers place their lives in jeopardy in order to safeguard the lives and property of those they serve. Hundreds of firefighter in Kansas are injured in the line of duty. Under current law, if a person sets a fire and a firefighter or law enforcement officer is seriously injured or killed while fighting or investigating said blaze, the only consequence in this case is a charge of simple arson, instead of aggravated arson. The proposed changes would give the courts the opportunity to appropriately charge the crime of aggravated arson.

Each year, throughout the United States, approximately 3500 individuals die in fire related incidents, 100 of which are firefighters. Billions of dollars of property goes up in smoke. The proposed changes in the Kansas Arson Law would allow the courts to hold those individuals responsible who start fires without due regard for the safety and loss of property of others. Making people aware that there are consequences for negligent, irresponsible behavior will certainly have an impact on the overall fire problem plaguing our State.

Thank you for your consideration in this matter.

THE WICHITA FIRE DEPARTMENT

Respectfully submitted



Ed Bricknell
Fire Marshal

**SYNOPSIS OF HOW HOAX AND CHEMICAL REACTION BOMB STATUTES
WOULD IMPACT KANSAS**

The intent of this law is to discourage and punish those intent on disrupting commercial or private industry by placing hoax explosive devices or chemical reaction bombs with the intent to cause panic, instill fear, destroy property or disrupt commerce.

There are numerous examples from around the State where public safety officials have received reports of suspect packages in and around inhabited structures, highways, railroads, hospitals, places of worship, public and private businesses and schools. Many times these packages are found to be innocent in nature, but there are still many instances where the suspected package was made to look like a real bomb, thereby causing unnecessary emergency response and the closing of the day to day operations of the affected area.

For example, Wichita alone has experienced the unnecessary evacuation of the State Office Building, as well as the full decontamination of employees due to suspected anthrax exposure. Additionally, law enforcement, fire service and emergency medical personnel are tied up for hours dealing with fake devices until it can be definitively identified as a hoax. Another example of this occurred when authorities in central Kansas received a call regarding a bomb on the porch of a residence. All evidence pointed to the home owner's ex-wife, a New York Times best selling author, as the suspected bomber. After several hours with numerous public safety personnel on scene, the bomb was dismantled and determined to be a hoax. Additional investigation determined the hoax bomb was made and placed on the porch by the home owner to better his chances in divorce court.

It is this type of disruptive behavior the proposed statutes are intended to deter and punish if necessary. The offender described above was charged under the current Kansas Criminal Use of Explosives Statute but this charge was later dismissed, as that statute did not have jurisdiction to prosecute a fake or hoax bomb, only actual bombs.

Just as disruptive as, and potentially more dangerous than the hoax bomb, chemical reaction bombs are and have been used to injure people and destroy public and private property. These small home made devices contain a combination of chemicals that when combined, overpressure the plastic container they are placed in until it ruptures. Once detonated, the chemical reaction bomb throws plastic shrapnel and/or acid indiscriminately. Just like hoax bombs, chemical reaction bombs are an ever increasing problem throughout the State, but unlike hoax bombs, chemical reaction bombs have actually caused injuries and property damage due to their caustic ingredients.

It is believed these two proposed statutes would eliminate the current confusion of how, or even if, hoax devices and chemical reaction bombs are criminal in nature.

LT. CHRIS BANNISTER
WICHITA POLICE BOMB SQUAD
House Judiciary

Date 2-13-06
Attachment # 5



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

February 13, 2006

TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE

JARED S. MAAG
DEPUTY ATTORNEY GENERAL
CRIMINAL LITIGATION DIVISION

CONCERNING HB 2699

Chairman O'Neal and Members of the Committee:

Thank you for allowing me to appear today on behalf of Attorney General Phill Kline in support of HB 2699, a bill intended to strengthen Kansas' felony murder statute and arson laws.

Section 1 seeks to add aggravated endangering of a child to the list of inherently dangerous felonies set forth at K.S.A. 21-3436. Given the potential for death associated with methamphetamine manufacturing, it is important to include this language in K.S.A. 21-3436 to cover instances where children are exposed to this potentially deadly trade.

Section 2 seeks to tighten up the language in K.S.A. 21-3608a, specifically changing the conjunction "and" to "or" and adding the term "causing" to subsections (2) and (3).

Section 3 makes a significant change to K.S.A. 21-3718 by adding the language "while in the commission of a felony" as well as providing for what would be considered unintentional yet reckless arson. These additions are necessary to cover arson offenses that simply are not dealt with under the present law.

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Section 4 adds an important provision wherein arson would be elevated to aggravated arson in the instance that "great bodily harm or disfigurement to a firefighter or law enforcement officer" occurs during the course of either fighting or investigating a fire. This provision recognizes the danger inherent in the profession that these men and women have chosen. It is important that the law recognize that danger and provide for increased consequences in the event that one or more of them are injured fighting or investigating a fire that is intentionally or recklessly set.

Section 5 seeks to amend K.S.A. 21-3731 to keep up with current instances where explosive devices are created. New and ingenious methods are employed everyday by those who are intent on causing damage through the use of explosives. The law must keep pace with these instances, and this amendment reflects that need.

Section 5 further adds language to cover devices that are used as a hoax in order to intimidate or cause alarm in others.

Section 6 simply tightens up the law with respect to the possession and transportation of bottle rockets.

On behalf of Attorney General Phill Kline, I encourage the committee to support HB 2699 and to recommend the bill favorably for passage.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Jared S. Maag
Deputy Attorney General
Criminal Litigation Division

STATE OF KANSAS

BECKY HUTCHINS
REPRESENTATIVE, FIFTIETH DISTRICT
JACKSON AND SHAWNEE COUNTIES
700 WYOMING
HOLTON, KANSAS 66436
(785) 364-2612



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CHAIR: TOURISM AND PARKS
MEMBER: EDUCATION
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ON STATE
TRIBAL RELATIONS

TESTIMONY ON HB 2748
February 13, 2006

Chairman O'Neal and members of the House Judiciary Committee:

Thank you for the opportunity to come before you today to speak in support of HB 2748.

HB 2748 deals with leaving the scene of an accident. This issue was first brought to my attention by District Attorney Robert D. Hecht.

People from the Topeka area may remember a vehicle accident where a driver struck an elderly woman on her way to morning church services, causing fatal injuries to the woman, and leaving the scene of the accident. Afterwards, the family was shocked to discover the possible penalty to be assessed was no more than if the person had scraped the fender of a parked car and had left the scene.

What HB 2748 would do is assess a lower penalty for leaving the scene of a mere property damage accident, an increased penalty for leaving the scene of a bodily injury accident, and an even greater penalty for leaving the scene of a fatal accident.

I think this is an issue of justice and common sense, and ask for your favorable consideration of HB 2748.

Respectfully submitted,

A handwritten signature in cursive script that reads "Becky Hutchins". The signature is written in dark ink and is positioned above the printed name.

Rep. Becky Hutchins.

House Judiciary

Date 2-13-06

Attachment # 7

Law Offices of
DISTRICT ATTORNEY
Third Judicial District
Shawnee Co. Courthouse, 200 SE 7th Street
Second Floor, Suite 214
TOPEKA, KANSAS 66603

Robert D. Hecht
District Attorney

Karen C. Wittman
Senior Assistant District Attorney
Traffic Division
785 233-8200 x4330
www.shawneecountyda.org

February 13, 2006

TESTIMONY-HB 2748
Amending K.S.A. 8-1602 and K.S.A. 8-1606
HIT AND RUN, FAILING TO REPORT ACCIDENT

Good Afternoon, Mr. Chairman and Members of the Judiciary Committee.

My name is Karen Wittman. I am a Senior Assistant District Attorney in Shawnee County under District Attorney Robert Hecht. I am the attorney in charge of all traffic related offenses.

HB 2748 is a necessary change to the current law.

EXAMPLE:

Under current law, K.S.A. 8-1606, Failing to report an accident:

Having a **fender bender** and failed to report accident---C misdemeanor
Hitting a **parked car or sign** and failed to report accident—C misdemeanor
Having an collision resulting in the **death** of a person and failed to report —C misdemeanor

Under current law, K.S.A. 8-1602 and K.S.A. 8-1603 Leaving the Scene:

Having a **fender bender** and leaving the scene---C misdemeanor
Hitting a **parked car or a sign** and leaving the scene—C misdemeanor
Having a collision where person has **scratch and cuts**-leave the scene—A misdemeanor
Having a collision and person is **disfigured** and leave the scene—A misdemeanor
Having a collision resulting in **death** of a person and left—A misdemeanor

There should be a **severe** consequence to a person who strikes and severely injures or kills another when they fail to call for help and remain at the scene.

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Date 2-13-06

Attachment # 8

Testimony before the Kansas Legislative Judiciary Committee
House Bill No. 2748
Feb. 13, 2006

Craig Miller, 5900 W. 76, Prairie Village, KS 66208
Email: camillerinkc@sbcglobal.net

Mr. Chairman, Honorable Representatives –

My name is Craig Miller. I come before you today to speak as a proponent of this proposed legislation.

Not only do I speak for myself, but also for 50 other family members and spouses – the vast majority of which are spread across the State, in Olathe, Hutchinson, Lawrence, Blaine, Topeka – and myself in Prairie Village.

I come before you to share a human and personal side to this Legislation.

On a morning in Oct. 2004, I received a call from my sister at the office. My sister spoke in a haunting voice... one of those conversations you'll never forget. She told me that Mom was too upset to call. My grandmother, Josephine Pierce, had been crossing an intersection in the Oakland area, here in Topeka, about 4 blocks from her house and was struck and killed by a hit-and-run driver. She was struck at 35 mph, and left at the side of the road in the rain. A Parish priest was one of the first on the scene. She was walking to Church, carrying a cake she had baked for a retiree luncheon when she was struck nearly 2 steps from the opposite curb. In her lifetime, she probably made that identical journey thousands of times.

My grandmother, at the age of 82, was extremely active and feisty. While although her body may have started to slow-down a little bit – she was mentally extremely sharp. She knew her physical limitations. I had her picked to hit 100 easily. She was a precinct committeewoman, and frequently worked at the polls. She volunteered countless numbers of hours at Church, and helped fix hot lunches for nearly 150 kids in the school. Those 150 kids knew her as Grandma Jo.

More than that however, she was the matriarch of our family. She was my loving Grandmother. She made incredible French Onion soup, had an uncanny knack of finding 4-leaf clovers and would frequently send a note of encouragement during a tough week. I could go on about all the special things that Grandma was all about. We are a very close family. She left behind a family with 6 children, 16 grandchildren – and 18 great-grandchildren that continue growing. We get together for Christmas, Easter, Independence Day, Labor Day and normally look for any good excuse to have a family gathering.

On the day that I received that call... I was filled with such a mixed set of emotion. I was shocked / saddened at this sudden loss. I also felt a sense of rage that whoever hit this lovely woman, my grandmother, leaving her in the street - didn't even stop. People on the scene had a

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rough description of what the car looked like. I was ready to take vacation time just to drive around the city looking for a car that matched the description.

It was a very public event... the media in Topeka were all covering the story. The night before the funeral, we received a call from the Topeka Police Department. They had gotten a tip – and made an arrest.

A passenger, a young middle school student had been riding in the car – and was scared by what he had seen on TV. His aunt made the call to authorities. The driver denied anything happened, even though the front of his car was dented in – and his windshield cracked.

The individual that struck my Grandmother, as a matter of public record – has an extensive list of previous automobile accidents and moving violations. To print them off, the sheets would nearly cross the room. His license had been suspended multiple times, and a couple at the funeral shared a story of how they once had been pinned up against a traffic light in an accident caused by this same person.

We were amazed when we learned that the individual was released from jail on the very night of his arrest.

We continued with a very public funeral. The media asked for permission to attend the funeral. I was a pallbearer and saw myself on the evening news that night.

As time passed, we were eager to see some type of justice. The DA advised that the sentencing guidelines weren't very clear – and that they wouldn't be able to charge him with nearly what they might like to.

Finally, a year later almost to the day – this individual was given a year in jail, suspended to 180 days, his license suspended for 15 months and a \$2,500 fine – the maximum allowed for an A misdemeanor. I understand this outcome is a harsher sentence than what was originally agreed to between the DA and his attorney.

I'm not an expert on criminal law. I don't know what is and is not an appropriate punishment for this type of a crime. However I think it's reasonable that the penalty for someone who leaves the scene of a serious accident, resulting in serious injury or death should be more severe.

We miss Grandma – and nothing will ever bring her back. My Grandma spent her life loving family – caring for others, and giving back to the community. She was a very bright light in a sometimes-dark world. I try to emulate her spirit. Although I never would have guessed this to be the way Grandma would leave this world – it does seem fitting that in her passing, she's managed to point out perhaps a flaw in the status quo.

Grandma would be very happy that this Committee is looking at a way that may help alleviate some of the pain, the anger and sorrow of other families in the future.

Hi my name is Cindy Thompson and I would like to first take this opportunity to thank everyone involved in preparing this bill and bringing it to committee. I would like to thank the victims and their families for taking the time to come and testify in favor for this much needed legislation.

On December 16 2005 my boyfriend Brent Gurwell was the victim of a hit and run driver. Brent had walked a friend out to his truck and was standing beside his friend's truck when a car hit his friend's car and then him. Brent suffered multiple injuries and was taken to the hospital by ambulance. Brent underwent emergency surgery he had to have his spleen removed as there were 4 tears in it he also had to have wounds cleaned on his lower extremities. He was then transferred to the critical care unit where he stayed for over a week. Brent then had to have his second surgery on his left lower extremity it was a fasciotomy where the skin and some tissue and muscle had to be removed because it was dead and would cause an infection and would not heal properly and would not take a skin graft. He then began a series of extremely painful dressing changes. The dressing changes were so painful that it took 6 nurses 2 hours to do and Brent would scream and cry even with pain medication. The nurses felt it would be better if his dressing changes were done in the operating room where Brent would receive anesthesia. This was done twice a week Brent also would run high temperatures and had to be placed on a cooling blanket and given antibiotics to help control the fevers. His blood count was down and he had to have a blood transfusion. He was stabilized and then transferred to the 7th floor and remained on that floor until December 31,2005 He then went home and stayed home for 3 days and then returned to the hospital for his first skin graft on January 2nd. He then remained in the hospital at bed rest for a 1 week and then was allowed to be up in a wheelchair for short periods for a week and then was released and dressing changes were done at home by me. They continued to be very painful and had copious amounts of drainage Luckily the skin grafts took and Brent was readmitted to the hospital for the second set of skin grafts on January 26,2006 again they were very painful and had copious amounts of drainage so many times Brent would scream and cry from the pain he would say I don't know how much longer I can take this pain. He also said I now know what burn victims go through. He was release from the hospital January 31,2006 and is currently at home Brent was unable to stay at home by himself and I had to return to work so Brent's father would come over and stay with him at night. We would do the dressing changes every other day the cost of the dressing changes were \$ 120.00 and some of it was not covered by insurance and was our out of pocket expense. Brent has some lymph involvement and has edema in both lower extremities especially in the feet he is unable to wear shoes and the doctor told him the swelling he might have for the rest of his life. He currently is unable to walk with out the aide of a walker and is unable to put his left foot down he walks on his toes this is from part of the muscle being removed and will require physical therapy which he is currently receiving twice a week. Brent is unable to walk long distance and has to use a wheelchair. We are not sure when he will be able to return to work and if he will have any restrictions we pray for a full recovery and the doctor's are optimistic about him having a full recovery he will of course have scars on his legs for the rest of his life . This has been a long battle and Brent has his periods of depression but he has wonderful friends family and coworkers who have helped him through this by bringing him reading material and keeping him informed about what's going on at work their visits have meant a lot to both of us.

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Brent has been through so much and the person who hit him has not suffered in any way he only received fines. This man was only caught because his two friends turned him into the police because they thought they would get into trouble little did they know this is only punishable with a ticket. He also went to the police department and filed a false police report. He admitted to being drunk and nothing could be done. We just don't understand why there are not stricter laws regarding a hit and run. This mans insurance will pay the maximum benefits allowed under his policy which is \$25,000.00 but that does not even put a dent in what Brent's medical bills are and the fact that Brent's car insurance is having to pay and Brent was not even in his car his health insurance is also having to pay and this man received up to a \$500.00 fine for leaving the scene of and accident I don't think people are aware of how nothing happens to these drivers many people think they get charged with something more serious and are arrested and have to do some jail time. My 23 year old son made the comment that if he was to punch someone in the nose he would be arrested and charged with assault and battery and would get jail time and possibly fined and have to attend anger management classes and placed on probation but if you willfully get behind the wheel of a car drunk and hit someone and drive off you only get a citation and have to pay a fine. I will never understand how we can be so lax in this law I hope this law is passed and soon. We can't do anything about what has happened to Brent but let's not let it happen to anyone else. Thank you so much for allowing me to help be apart of this and I hope we can make something positive out of this tragedy.

Cindy Thompson and Brent Gurwell

From: Myrl Gurwell <mygu1954@sbcglobal.net>
To: <hutchins@house.state.ks.us>
Date: Fri, Feb 10, 2006 2:14 PM
Subject: House Judiciary committee Bill # 2748

JUDICIARY COMMITTEE MEMBERS,

ON DECEMBER 16, 2005 OUR SON BRENT GURWELL WAS HIT BY A DRUNK DRIVER. THE DRIVER'S NAME IS ROBERT BANKS.

OUR SON WAS STANDING BY A FRIENDS TRUCK. HE AND THE TRUCK WAS HIT.

MR. BANKS DIDN'T STOP. HE DIDN'T CALL AN AMBULANCE. HE DIDN'T CALL THE POLICE. HE LEFT OUR SON LAYING IN THE STREET.

THE NEXT DAY (WE WERE TOLD BY THE POLICE) THAT HIS FRIENDS THAT WERE IN THE CAR WITH HIM AT THE TIME OF THE ACCIDENT WENT TO THE POLICE STATION AND TURNED HIM IN. SAID THAT HE HAD HIT OUR SON AND THE TRUCK AND DROVE OFF. THAT HE WAS DRUNK AT THE TIME.

BY THE TIME THE POLICE GOT TO TALK TO HIM HE WAS SOBER AND DENIED EVERYTHING.

UNLESS YOU HAVE BEEN THROUGH A THING LIKE THIS YOU CAN'T UNDERSTAND HOW WE AS PARENTS FELT STANDING IN A HOSPITAL AND BEING TOLD BY A POLICEMAN THAT THE ONLY THING THEY COULD DO WAS TO ISSUE A TRAFFIC TICKET TO MR. BANKS. THAT WHAT HE DID BY KANSAS LAW WAS ONLY A TRAFFIC VIOLATION.

BECAUSE OF MR. BANKS OUR SON HAS HAD NUMEROUS OPERATIONS. HIS SPLEEN HAS BEEN REMOVED. THE MUSCLES AND TENDONS OF BOTH LEGS HAVE BEEN DESTROYED. HE HAS HAD SKIN GRAFTS. HE HAS TO GO UNDER AN ANESTHETIC TO HAVE THE BANDAGES CHANGED. HE IS NOW GOING THROUGH PHYSICAL THERAPY BECAUSE HE CAN'T WALK PROPERLY. HE IS STILL HAVING PAIN AND SUFFERING.

WE THINK IT IS TIME THAT THE STATE OF KANSAS CHANGES ITS LAWS TO PROTECT ITS CITIZENS. HIT AND RUN SHOULD BE A CRIMINAL OFFENSE NOT A TRAFFIC VIOLATION. WE WOULD LIKE TO SEE YOU CHANGE THE LAW TO DO JUST THAT.

THANK YOU FOR YOUR TIME.
MR. AND MRS. CLAYTON GURWELL

*2142 SW Jewell
Topeka KS 66611*

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