

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 9, 2006, in Room 123-S of the Capitol.

All members were present,

David Haley arrived, 9:44 a.m.
Greta Goodwin arrived, 9:55 a.m.
Derek Schmidt arrived, 9:59 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Senator Mike Petersen
Norman D. Williams, Chief of Police, Wichita, KS
Lt. Jeffrey T. Easter, Commander of the Gang Division, Wichita, KS
Ed Klumpp, Chief of Police - Retired, Kansas Association of Chiefs of Police
Kevin A. Graham, Assistant Attorney General, Director of Legislative Affairs
Kevin Tubbesing
Hal Hudson, State Director, National Federation of Independent Business
Sally Howard, Chief Counsel, Kansas Department of Transportation
Terry E. Beck, Kansas Trial Lawyers
James W. Clark, Legislative Counsel, Kansas Bar Association

Others attending:

See attached list.

Final action on SB 381--Pleas; court advisory that conviction or guilty plea may have immigration, naturalization consequences

A balloon amendment was provided to address the testimony of Rekha Sharma-Crawford at the February 8th hearing (Attachment 1). Senator Journey moved, Senator Umbarger seconded, to adopt the balloon amendment to SB 381. Motion carried.

Senator Umbarger moved, Senator Donovan seconded, to recommend SB 381 as amended favorably for passage. Motion carried.

The hearing on SB 458--Criminal street gang prevention act was opened.

Senator Mike Petersen spoke in support of the bill stating that enactment of the bill will provide tools for law enforcement to curb the increasing levels of street gang activity (Attachment 2).

Norm Williams appeared in favor of SB 458 indicating a dramatic increase in gang activity over the last two years (Attachment 3). This legislation will provide tools to take an aggressive approach to gang violence and recruitment by:

- Increasing accountability for violent actions and penalties for recruitment, especially children
- Preventing witness and victim intimidation
- Preventing retaliation against members wanting to quit gangs

Lt. Jeff Easter spoke in favor of SB 458 stating it will assist the Gang Plan, a comprehensive plan developed by the Wichita Police Department and members of the community (Attachment 4). Lt. Easter requested a change to New Section 5 which would increase bail for felony arrests.

Ed Clumpp appeared in support of the bill indicating that gang activity is on the rise and the provisions in this bill will provide a proactive approach to reduce the crime problem created by gang activity (Attachment 5). Kevin Graham spoke in support of SB 458 stating that the new crime definitions and stronger criminal

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 9, 2006, in Room 123-S of the Capitol.

penalties proposed have the potential to serve as deterrents to the proliferation of criminal street gangs (Attachment 6).

There being no further conferees, the hearing on **SB 458** was closed.

The hearing on **SB 445--In any civil action, excluding personal injury actions, the prevailing party recovers reasonable attorney fees** was opened.

Kevin Tubbesing appeared in support of the bill (Attachment 7). The legislation will decrease frivolous or nuisance suits as well as place the burden of collection costs on the debtor.

Hal Hudson spoke in support of **SB 445** and expressed the concern of small businesses across the state regarding lawsuits (Attachment 8). Many businesses go to extraordinary expense to have adequate liability insurance or limit their business to avoid lawsuits due to the high rate and cost of litigation.

Sally Howard appeared in opposition to the bill requesting an amendment excluding condemnation appeals are excluded from the phrase "civil action" (Attachment 9). It was her opinion that the current provision for attorney fees under K.S.A. 26-509 provides a better method to determine when a court should award attorney fees in condemnation appeals. Under K.S.A. 26-509 the landowner is never at risk of paying the condemner's attorney fees which could be the case with this bill.

Terry Beck spoke in opposition stating **SB 445** would favor those who are financially able to assume the risk of attorney fees and be a detriment to litigants who could face financial ruin if the lawsuit were lost (Attachment 10).

Jim Clark spoke on behalf of the Kansas Bar Association stating opposition to **SB 445** indicating that the bill will burden small businesses and the middle class (Attachment 11). The fear of bearing the costs of opposing counsel's fees will deter most people from filing valid claims.

Written testimony in support of **SB 445** was submitted by:

Marlee Carpenter, Vice President of Government Affairs, The Kansas Chamber (Attachment 12)

There being no further conferees, the hearing on **SB 445** was closed.

The meeting adjourned at 10:32 a.m. The next scheduled meeting is February 13, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/9/06

NAME	REPRESENTING
MIKE PETERSEN	SENATE
Jean Schodof	Senate
Scott Heiden	KS Assoc. of Defense Counsel
Nancy D. [unclear]	Wichita Police Dept
Jeffrey T. Easter	Wichita Police Dept.
Jeanne Goodwin	City of Wichita
JIM CLARK	KBA
KEVIN GRAHAM	A.G.
Dan Morin	KMS
[unclear]	DOT
Brent Haden	KLA
Bob Keller	JCSO
Mailee Carpenter	KS Chamber
Hal Hudson	NEIB/KS
Karin Tubering	San Bus. Owner
Sally Howard	KDOT
Josh Bender	KU SLAB
Ed Krump	KS Assoc. Chiefs of Police

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/9/2006

NAME	REPRESENTING
Natalie Gibson	Kansas Sentencing Comm.
Brenda Harmon	" " "

SENATE BILL No. 381

By Committee on Judiciary

1-18

PROPOSED AMENDMENT
Rekha Sharma-Crawford
February 8, 2006

Senate Judiciary
2-9-06
Attachment 1

9 AN ACT concerning criminal proceedings before trial; relating to pleas;
10 amending K.S.A. 2005 Supp. 22-3210 and repealing the existing
11 section.

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

14 Section 1. K.S.A. 2005 Supp. 22-3210 is hereby amended to read as
15 follows: 22-3210. (a) Before or during trial, a plea of guilty or *nolo con-*
16 *tendere* may be accepted when:

17 (1) The defendant or counsel for the defendant enters such plea in
18 open court: ~~and~~

19 (2) in felony cases, the court has informed the defendant of the con-
20 sequences of the plea, including the specific sentencing guidelines level
21 of any crime committed on or after July 1, 1993, and of the maximum
22 penalty provided by law which may be imposed upon acceptance of such
23 plea: ~~and~~

24 (3) in felony cases, the court has addressed the defendant personally
25 and determined that the plea is made voluntarily with understanding of
26 the nature of the charge and the consequences of the plea: ~~and~~

27 (4) the court is satisfied that there is a factual basis for the plea: *and*

28 (5) *the court has informed the defendant that, if the defendant was*
29 *not born in the United States, a conviction or guilty plea may have im-*
30 *migration or naturalization consequences.*

31 (b) In felony cases the defendant must appear and plead personally
32 and a verbatim record of all proceedings at the plea and entry of judgment
33 thereon shall be made.

34 (c) In traffic infraction, cigarette or tobacco infraction and misde-
35 meanor cases the court may allow the defendant to appear and plead by
36 counsel.

37 (d) A plea of guilty or *nolo contendere*, for good cause shown and
38 within the discretion of the court, may be withdrawn at any time before
39 sentence is adjudged. To correct manifest injustice the court after sen-
40 tence may set aside the judgment of conviction and permit the defendant
41 to withdraw the plea.

42 Sec. 2. K.S.A. 2005 Supp. 22-3210 is hereby repealed.

If the defendant was not born in the United States, the court must find, prior to the plea, that the defendant has been informed that a conviction or guilty plea may have immigration or naturalization consequences.

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TRANSPORTATION
UTILITIES

JT. COMMITTEE ON
INFORMATION TECHNOLOGY

SENATOR MIKE PETERSEN

February 9, 2006

Mr. Chairman and Members of the Committee, I want to thank you for allowing me to appear before you today. SB 458 is the result of work by the Wichita Police Department and the City Attorney's office. It is a combination of best practices from other states to combat rising gang activity.

This bill was introduced to provide some tools for our law enforcement to curb the increasing levels of street gang activity in our cities by providing definitions relating to criminal street gangs. As recently as the past week Wichita has had three schools placed on lock down due to gang activity. I believe these tools will enhance the state's ability to prevent recruiting of gang members and criminal street gang activity.

Thank you.

A handwritten signature in black ink that reads "Mike Petersen". The signature is written in a cursive, flowing style.

Senator Mike Petersen

Senate Judiciary

2-9-06

Attachment 2



Norman D. Williams
Wichita Chief of Police

TESTIMONY

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nwilliams@wichita.gov



Senate Bill 458 Street Gang Prevention

February 9, 2006

The City of Wichita supports Senate Bill 458. The City of Wichita is requesting this legislation to help the Wichita Police Department and other law enforcement agencies in the state of Kansas combat gang violence and recruitment.

In 2004 and 2005 Wichita experienced a resurgence of gang violence, particularly involving juveniles between the ages of 14 and 17. These juveniles have been involved in multiple and various crimes that impact the quality of life of our citizens and instill a sense of fear and trepidation in our community.

On January 14, two 15-year-old gang members fired multiple shots at a Kansas Highway Patrol Trooper, who had one of their friends pulled over on a car stop. Four days later, Wichita police discovered this same gang's graffiti on a building in Wichita that read "**187 Wichita PD**". This graffiti tagging, done by the Vato Loco Boys (VLBs) was a direct threat to kill a police officer. The "187" is the penal code in California for murder, and whatever noun follows in the tagging represents the intended target. Gang members already have an inherent belief that their lives will be short-lived and they have no respect for, or fear of, law enforcement officers. They also have little regard for average citizens, and place little value on human life.

A short two weeks later, on January 28, a member of the Buc Lao Killers gang, opened fire in Old Town in Wichita with more than 20 citizens present. He then attempted to fire his weapon at police and fled in his vehicle. He was arrested a short time later, booked into jail, yet in less than a week was out of jail on bond.

On January 31, a group of high school students and young people, some of who were Crips and Blood gang members, engaged in a shoot-out at the intersection of Zimmerly and Apache near Southeast High School in Wichita over the lunch hour. This was the fourth time in a 10-day period that the two groups had clashed in violence. Wichita Police made their first arrest in the case the next day when a 17-year-old was taken into custody. This young man reported that he grew up in a "gang family"; and he purports he was "jumped in" (initiation involving physical beating) to gang life when he was 12-years-old. He has five brothers and four sisters; his two older brothers are well-known gang members and are currently guests of the Kansas Department of Corrections. His other two brothers are only seven and eight years old, but unless something changes we fully expect them to become gang members.

These incidents cover only a two-week period. The Police Department and the Wichita community deal with these types of incidents on a daily basis.

No community in Kansas is immune from gang presence. Gang members, because of their associations, have a built-in network and are very mobile and transitory, often traveling to other Kansas communities to hide after committing crimes. In the January 31 shooting I just talked about, one of those suspects was located hiding out in a house in Hutchinson with one of his fellow gang members who had recently been paroled there.

In a more tragic example, members of the Asian Boys gang stormed in a home on May 25, 2001, and opened fire on a family living there. An 18-year-old resident was fatally wounded in the exchange of gunfire, and the assailants, a 19-year-old and a 16-year-old immediately left Wichita and headed to Salina. Ultimately they

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Attachment 3

we apprehended and convicted for their crime. In 1997, Chester Jamerson, a Crip gang member, committed a double homicide killing two Blood gang members in Wichita and then fled to Topeka.

Often gang members on the lam flee to neighboring states, traveling through various Kansas communities. In 1998 Oscar Torres, VLB gang member, killed eight-year-old Tony Galvan. He was booked into jail, made bond, and then fled. In 2005, he was located in Mexico, but is currently fighting extradition. The Galvan family waits for justice to be served. In 2004 David Pope, a member of the Junior Boys, murdered Tellus Colvin and then fled to Oklahoma City; in 2005 Demarco Colbert, a Crip gang member, killed Lazetta Smith and then fled to Tulsa, Oklahoma. The list goes on and on.

And there always remains the threat of new gangs moving into our state. In 2005, we documented two graffiti instances that have been identified as MS-13 taggings. The MS-13s are a very violent gang comprised of illegal immigrants from El Salvador that originated on the West Coast. They migrated to the East Coast and are now establishing a presence in the Mid-West. In 2004, the Virginia State Legislature was forced to pass new legislation to deal with this one street gang. (see attached article)

Because Wichita has always been on the cutting edge in addressing gangs and gang violence, our Department members are considered experts and are often called upon to assist, collaborate with, and/or provide training to other agencies. I have attached a list of those agencies.

Proposed Senate Bill 458 is just one facet of the Wichita Police Department's effort to proactively stem the tide of gang violence. Its purpose is to enhance the safety and well being of citizens and visitors throughout the state of Kansas by taking an aggressive approach to gang violence and recruitment. This proposed legislation would enable law enforcement agencies throughout Kansas to:

- Make gang members more accountable for their violent actions, and to penalize them for recruiting others into the gang, particularly our children. Throughout the state we are seeing an increase in the aggressive recruitment by gang members of young, impressionable children.
- Prevent witness and victim intimidation by gang members that have been arrested. Often times, the gang member is released on bond before the victim or witness has appeared in court to testify. This makes retaliation by gang members' all the more probable.
- Prevent retaliation by gang members against persons that are trying to get out of gangs and build a better life.

Law enforcement has an obligation to proactively address gang violence, and a responsibility to protect life and property in our communities. Proposed Senate Bill 458 would provide law enforcement officers with another tool to protect our communities and our children. All of us, including law enforcement, citizens, civic organizations, churches, etc., must work together to protect our cities from gang violence.

Your support of Senate Bill 458 is appreciated.

Gangs In the Wichita Community

Facts and Figures

- Individuals must meet stringent criteria before becoming “documented” gang members
- Currently in Wichita there are approximately 1,900 “documented” gang members.
- There are approximately 60 different gangs or “sets” of gangs in the Wichita area.
- There are 141 documented gang members, (seven percent of the total number) that are 17 or younger.
- An additional 147 youth between the ages of 13 and 17 are documented as gang “associates” because of their close ties to gang members.
- In 2005 there were 37 drive-by shootings where the victims or suspects were juveniles.
- At least once a month in 2005, gang detectives worked a case where victims/witnesses, or their family members, were threatened or assaulted by gang members prior to trial.
- In 2005, 194 new gang members were documented. This was up from 84 in 2004 and 67 in 2003.
- More than 140 guns were seized from gang members in 2005.
- WPD arrested more than 460 documented gang members in 2005.
- The WPD gang database is audited every year for accuracy. If a documented gang member cuts gang ties and has no negative police contact or gang activity for a period of three years, he/she is removed from the database.

Agencies that WPD has worked with on gang issues

All of the surrounding cities, towns and communities in the Wichita metro area

Federal Bureau of Investigation
Alcohol, Tobacco and Firearms
Office of Special Investigations - Air Force
Criminal Investigation Division - Army
Naval Criminal Investigative Service - Navy
Drug Enforcement Agency
Internal Revenue Service
Office of Inspector General – Social Security Administration
Immigration and Customs Enforcement
State and Federal parole and probation
US Postal Inspectors
US State Department
INTERPOL
Houston, TX
Los Angeles, CA
Los Angeles County, CA
San Diego, CA
San Diego County, CA
Phoenix, AZ Police
Denver, CO Police
Dallas, TX Police
Ft. Worth, TX Police
Garland, TX
Texas Rangers
Texas Dept. of Public Safety
Oklahoma Bureau of Investigation
Las Vegas Metro
Kansas City, KS
Kansas City, MO
Lawrence, KS
Ford County, KS
Oklahoma City, OK
Tulsa, OK
Arlington, TX
Winfield, KS
Wellington, KS
El Dorado, KS
Augusta, KS
Kingman, KS
Kansas Highway Patrol
Manhattan, KS
US Penitentiary El Reno
US Penitentiary Leavenworth
US Penitentiary Florence
US Penitentiary Fort Worth
US Penitentiary Balch springs
California Department of Justice



CITY OF
WICHITA

Lt. Jeffery T. Easter
Commander of the Gang Section

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Senate Bill 458 Street Gang Prevention

February 9, 2006

The City of Wichita supports Senate Bill 458. The City of Wichita is requesting this legislation to help the Wichita Police Department and other law enforcement agencies in the state of Kansas combat gang violence and recruitment.

During 2004 and 2005 a sharp increase in gang violence, gang recruitment and gang related retaliatory cases were observed in Wichita. The Wichita Police Department met with citizen groups, business leaders, high school students and the faith based community to devise a diverse plan to address the ever-growing gang problem. The group developed a comprehensive plan that addressed prevention and enforcement techniques that suggested both law enforcement and citizen groups' work within a partnership to directly affect the gang problem. The Gang Plan, (attached) also called for the Wichita Police Department to research new laws that could assist in the fight against gang recruitment and gang violence.

Gangs gain their power through fear and intimidation. Because of that fear, juveniles can be easily recruited into a gang and can be easily influenced to commit criminal acts for the gang. When juveniles finally realize what they are involved in, it is hard to get away from the gang and the lifestyle that is offered by gangs. I would like to offer a few examples of how gang intimidation has influenced younger gang members and crimes that have been committed due to fear and intimidation.

On July 1, 2005, a known Blood gang member shot another Blood gang member. One of the witnesses, a known Blood gang who was also a juvenile, did not attend court because other gang members had threatened him. The juvenile gang member was tracked down by gang unit detectives and he stated to the police that he was afraid for his life and for the life's of his family members because he had been threatened to not testify in this particular trial. The juvenile also refused to identify who had threatened him and his family.

In July of 2005, a known Vato Loco Boy gang member was walking down the street when a Players For Life gang member pointed a gun at him and threatened to shoot him. This was the fourth incident involving these two rival gangs in a time frame of two weeks. The PFL gang member was arrested and charged with aggravated assault. On August 10, 2005, a day before the preliminary hearing in the above case, members of the PFL gang, which one member was a juvenile, threatened the VLB gang member and his girlfriend. After the threats were made, the PFL's then rammed the VLB's car off the road and told him to not show up for court. During the investigation into this incident, two arrests were made and two individuals were charged.

In 1991, a 15-year-old juvenile was recruited into a gang. He did not like the gang life and told his fellow gang members that he wanted out of the gang. An unwritten code of gangs is blood to get into the gang and blood to get out of a gang. On August 18, 1991, this juvenile gang member was lured behind a building at 2700 N. Woodland where he was met by the leader of this particular gang. The leader possessed a shotgun and shot the juvenile several times, resulting in his death. The juvenile had made a mistake in joining the gang but paid the ultimate price for trying to get out.

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4

The youngest age that I have seen associating with a gang is seven-years-old. In the summer of 2005, several juveniles who are known gang members were caught along with a seven-year-old male, spray painting gang graffiti on local businesses. The first grader claimed to be a member of North Side Gangsters along with his cousins. The graffiti that was being painted was NSG graffiti and all of the juveniles were wearing colors related to the NSG gang.

These are just a few examples of the many cases that take place daily on our streets.

Law Enforcement spends an inordinate amount of time on gang cases due to their complexity. There have been several incidents where gang members have been arrested for person felony crimes such as drive by shootings and aggravated assaults; however, receive small bonds of \$25,000 or less. In most of these cases the suspect only has to post 10 percent of the bond and then he is released. In Wichita, we have experienced gang members commit a violent crime and then bond out of jail prior to being charged. The gang member then threatens the victim(s) or commits a retaliatory shooting against the rival gang. The need for a mandatory cash surety bond on known gang members who commit a felony crime is needed to prevent future victims of violence and the spread of fear and intimidation.

One example of the bonding issue occurred in February of 2005. A total of 18 drive-by shootings occurred in the month of February and four were attributed to one particular gang member, Ishmael Agnew. Due to the lack of cooperation and intimidation taking place, there was not sufficient probable cause for arrest. A detective conducted a background check and found two felony cases that had not been charged yet. One case was charged and the Mr. Agnew bonded out of jail. The other case, felon in possession of firearm, was investigated further and the weapon was sent to the Sedgwick County Forensic Science Center for DNA testing. Within the next two weeks two more drive by shootings occurred and this same gang member was a suspect in one of the shootings. The gun case was then charged due to the DNA matching that of our suspect. When the warrant was issued, Gang Officers located Mr. Agnew and he was found in possession of a gun and crack cocaine. He was not given a bond due to the violation of his first bond. He was eventually charged with one of the drive by shootings and two gun cases. After his arrest the second time, there was a sharp decrease in drive by shootings over the next three months and we believe it was due to Mr. Agnew being in jail awaiting trial. By the time of his conviction we had tied him to six drive by shootings in a month time frame.

In closing, your support of this bill will give parents the hope they so desperately need to keep their kids on the right track without fearing retaliation, and hopefully prevent any future homicides of juveniles who want out of gangs. The passing of this bill will also send a clear message to gang members that the State of Kansas is no longer going to allow bullies and criminals to threaten and intimidate our young people and their families.

Thank you for your support of Senate Bill 458.

TESTIMONY IN SUPPORT OF SB 458
The Criminal Street Gang Prevention Act
Presented to the Senate Judiciary Committee
On February 9, 2006
By Ed Klumpp, Chief of Police-Retired
On Behalf of the Kansas Association of Chiefs of Police

The Kansas Association of Chiefs of Police supports Senate Bill 458. In a recent meeting of the Association where this bill was discussed, it was very apparent that gang activity is on the rise—and not just in the big cities. It was also a concern among Chiefs from moderate and small sized cities. This bill has several provisions, all which will provide a proactive approach to reduce the crime problem created by criminal gang activity.

Many gang crimes occur in an atmosphere where investigations are difficult. Too many times the violent crime claims a victim that is an innocent bystander with no gang affiliation and not associated with the issues leading to the crime. To affectively deal with gang violence, investigations of these crimes must be swift and the perpetrators of the crimes must be kept off the streets. Witnesses and victims must feel they can tell their story to the police. Suspects must know they will be held accountable and cannot be allowed to achieve higher status among their peers because of their crimes. Recruiting of our youth has to be stymied. Several provisions of this bill would help achieve this.

Minimum bonds for those charged with crimes will help keep these thugs in jail providing several advantages. One, they can't participate in any retaliation or intimidation of witnesses or victims when they are in jail. Second, it will reduce the retaliatory acts of rival gangs since they will not be able to attack the person still in jail. And, third, it will remove any sense of "status" gained when the suspect rejoins his gang peers the next day freshly out of jail on little or no bond following a violent crime.

The intimidation provisions of this bill also address some of the issues mentioned above.

Gang recruiting also needs proactive attention and is included in this bill. This provision will serve as a proactive approach to the expansion of the criminal gangs. Recruiting is often times accomplished through aggressive methods over time leading to a person being "jumped in" to the gang or through some other ritual. Many times information is gained by law enforcement about such recruiting activities, but there is currently little that can be done to stop this recruiting. Only after it is too late, and another youth is lost to the gangs and committing criminal acts can action be taken, and even then not against the person recruiting people into the criminal gang lifestyle.

Gangs are a growing problem in all areas of our state. They are consuming our youth and depriving them of opportunities to be law abiding productive members of our society. The violent crimes committed by the gangs will continue to result in broken families, broken hearts, and suffering directly by innocent bystanders and indirectly by the communities where they operate. This bill is not a cure-all for gangs in Kansas. Many criminal justice and community efforts will be needed to address this problem. But this bill does offer opportunities for society to be proactive in reducing the gang impact and tools for law enforcement, prosecutors and judges to use in reducing gang membership and violence.

The Kansas Association of Chiefs of Police encourages you to take this positive step for reducing the criminal activity of gangs in Kansas and move this bill forward.



Ed Klumpp
Chief of Police-Retired
Topeka Police Department

Senate Judiciary

2-9-06

Attachment 5



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
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February 9, 2006

SENATE JUDICIARY COMMITTEE
Testimony of Kevin A. Graham
in support of
Senate Bill No. 458

Dear Chairman Vratil and Members of the Senate Judiciary Committee:

Thank you for allowing me to appear today on behalf of Attorney General Phill Kline in support of SB 458, a bill intended to bring greater attention to the ongoing problem of gang violence in our state and designed to define gang involvement and provide adequate penalties for individuals who commit crimes related to the proliferation of gangs and gang violence.

The language of New Section 2 of SB 458 sets out definitions for the terms "criminal street gang," "criminal street gang member," "criminal street gang activity" and "criminal street gang associate" in a clear and factually based manner. These definitions will aid law enforcement officers and prosecutors in determining whether a particular group or individual would legally qualify as a member/associate of a criminal street gang, or whether particular conduct would rise to the level of gang activity. The importance of clearly defining these terms goes beyond simply allowing law enforcement and prosecutors to categorize certain individuals, groups or activities; by establishing legal definitions for gang members/associations and gang activity prosecutors also will be provided with more accurate methods of determining how to proceed on prosecutions in cases where the offender may qualify as having committed a crime for the benefit of a criminal street gang (see K.S.A. 2005 Supp. 21-4704(k).)

SB 458 also creates two valuable, specific new offenses that will give law enforcement officers and prosecutors tools to deal with individuals who attempt to recruit new gang members or intimidate/deter individuals from leaving gangs. New Section 3 of SB 458 provides for a severity level 6, person felony offense for those who would recruit new street gang members. Section 4 of SB 458 likewise creates a new severity level 5, person felony offense for those who would use intimidation or threats to deter a person from leaving a gang or from assisting someone from leaving a gang. The key to the necessity of creating these specific offenses is that in many cases there would currently be no criminal offense that could currently be charged for similar activity, or if criminal charges could be brought under current law, the applicable penalties would be much lower than those proposed in the bill.

Example: Street gang member "A" is contemplating leaving the gang. Street gang member "B" then goes and beats member "A's" brother and tells him that "A better not leave the gang."

Under Kansas law, in this situation, it is likely that all "B" could be charged with is misdemeanor Battery (Class B, person misdemeanor, carrying a potential sentence of up to 6 months in county jail and a small fine.)

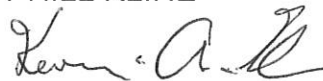
Example: Street gang member "A" hangs around near a youth center and socializes with juveniles who are in the area. "A" gives away items such as music CD's, expensive clothing or jewelry to various juveniles whom "A" is recruiting to join the street gang. "A" tells the juveniles that all them have to do to join the gang is steal a cellular telephone from a nearby electronics store.

Under current Kansas law, because the item proposed to be stolen would carry a value of less than \$1,000, the only offenses "A" could likely be charged with would be either conspiracy or solicitation a commit a misdemeanor theft (Class A, nonperson misdemeanor carrying a potential sentence of up to one year in county jail and a fine of up to \$2,500.)

Based on these examples it is clear that the new crimes and much stronger criminal penalties proposed in SB 458 have the potential to serve as deterrents to the proliferation of criminal street gangs. By enacting the provisions of SB 458 the legislature would provide law enforcement and prosecutors with valuable tools not only to punish individuals involved in spreading and maintaining criminal street gangs, but also tools to protect and encourage those already in gangs to get out.

On behalf of Attorney General Phill Kline, I encourage the committee to support SB 458 and to recommend the bill favorably for passage.

Respectfully,
OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Kevin A. Graham
Assistant Attorney General
Director of Legislative Affairs

TESTIMONY OF

KEVIN TUBBESING
SMALL BUSINESS OWNER

DATE

FEBRUARY 9, 2006

SUBJECT

SB445, "LOSER PAYS" CIVIL LAW/TORT REFORM - **SUPPORTING**

Part 1 - Frivolous/Nuisance Suits

If you will, imagine a beautiful beach. Clear blue skies, rushing ocean surf, and soft sand slipping through your toes. You share a loving glance at your spouse with a knowing smile that this is paradise. You have just purchase this beachfront property and have spent the last few months working with builders and architects to construct the home of your dreams.

Then, walking toward you from the palm tree lined street comes a man. He asks you to confirm your name then hands you a thick stack of white papers wrapped in a single baby blue cover page. You're being sued. Why? Because the property owner inland of your property is mad as hell that you're new home will block his view of the beach.

Well – we don't have ocean front beaches in Kansas, but my beach was 75th Street in the City of Shawnee. In the fall of 2001, I purchase a 3200SF, blighted gas station that had sat vacant for two years prior to my interest. Upon contracting for the property, I and the professionals I hired went about the process of obtaining city approval to reform this property into an 8500SF, Class A office building.

Upon receiving that approval through public hearings by the Planning Commission and City Council, the owner of the adjacent lot sued my company and the City because our building expansion would partially block the street's view of his property. Never mind the fact that that owner publicly admitted he would have bought our lot but was just waiting for the price to get a little lower. Never mind the fact that this neighbor was planning on developing two vacant lots further inland from his own existing building which would have obstructed these new building's view of the street as well.

After three long years of court battles and appeals, and over \$30,000 in attorney bills, we won our right to build.

It was wrong that we were not compensated for our attorney fees and court costs, not to mention the untold time and loss of revenue from the building we couldn't construct and therefore lease. Passage of SB445 would have prevented this frivolous suit from being filed to begin with. SB445 will encourage greater ethical review of the merits of a case by attorneys that are presented with frivolous or nuisance suits meant to simply delay or frustrate those in the right.

Part2 – Bad Debt

I first became a business owner in August 1994 and it didn't take long to experience my first deadbeat client. In eleven years of running an IT services company, I experienced over \$100,000 in bad debt. In talking to other business owners, I might just consider myself lucky in comparison to the average bad debt that is much higher.

What is the difference between a client that requests and receives a service then refuses to pay, from a common criminal that shoplifts from a local merchant? Let me tell you – the service theft is essentially encouraged by our laws. There is no reason for those without honor to pay. Ample competition in the marketplace can allow service thieves to go for years before running out of victims.

Often, companies are constantly – and properly – advised by their attorneys that it would simply not be worth going after the deadbeats. The legal bills themselves will often be as much or more than the debt, and the debtor knows that the worst that can happen is....they have to pay their bill. So why not just sit back and see how far a company will go to get paid? Heck, it costs them nothing and they might just get away with it again.

SB445 solves this problem. Deadbeats pay, or their bills only go up. Businesses that honorably provide goods or services can operate in an appropriate and fair business environment that simply requires those who purchase their goods or services to compensate them accordingly. The burden of collection costs should be on the debtor, not the seller.

Thank you for your time.

Senate Judiciary

2-9-06
Attachment 7

KANSAS

**Statement by Hal Hudson, State Director
National Federation of Independent Business
Before the Senate Judiciary
On Senate Bill 445
Thursday, February 9, 2005**

Mr. Chairman and members of the committee:

Thank you for this opportunity to speak with you in support of Senate Bill 445.

I am here today because, over the years, small business owners have said one of their greatest fears is that of lawsuits. Some say they go to extraordinary expense to make sure they have adequate liability insurance. Others have said they have altered, limited or restricted their business operations to avoid facing lawsuits.

On our Ballot for 2006, we asked of NFIB members in Kansas, "Should legislation be adopted to require the 'loser' to pay all attorney fee and court costs in all non-personal injury lawsuits?" Of those replying, 89.6% said YES. Only 3.3% said no. The remainder was undecided or did not answer.

We intentionally included the words "non-personal" to avoid conflicts with those cases – especially workers compensation issues.

With your permission, I would like to give you one example – a case in which I was implicated, as a member of the board of a private club.

One morning the club manager came to work earlier than normal and discovered a member of the kitchen staff in the walk-in cooler sacking up expensive cuts of meat to take home. Only the manager and the chef were supposed to have keys to the cooler. The manager took the key and the sack of meat from the employee, and discharged her on the spot.

A few days later, we were advised that the employee had hired an attorney, and charges of wrongful discharge were being filed. She was asking for \$20,000 in damages. The basis of the lawsuit was racial discrimination, without any acknowledgement that the employee had been engaged in a wrongful act.

Some period of time elapsed, during which the two attorneys were negotiating, when the club's attorney submitted a bill for \$10,000. A member of the club board, an attorney and district court judge, advised the board to settle by paying the former employee \$20,000. And we did.

Had this bill been law, I think we would have insisted on going to trial. I couldn't see how we could lose. But we did lose, in all \$30,000, over a lawsuit that never should have happened.

The rest of my testimony is anecdotal -- cases pulled from the archives of the NFIB Legal Foundation in Washington, D.C. In each of these cases the answer to the question on the attachment is below. (See attachment).

On the surface, they may seem amusing. But they are real cases, and if you were the defendant you would not think them amusing.

#1 – She sued her jeweler for telling her the ring was worth less than value the police had determined in charging the robber.

2 – The family sued the bartender, saying he should have walked the man to his door.

3 – He sued Winnebago for failing to post a warning sign that the driver should not leave the driver's seat while the vehicle was in motion.

4 – He sued the car owner, and collected damages for this injury.

5 – He sued the homeowner for entrapment.

Many nations, maybe most, in the civilized world have such laws on their books. I am asking you to consider the provisions of SB 445 appropriate for Kansas law.

Hal Hudson
State Director
KANSAS



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The following is a list of lawsuits that have been filed in court. See if you have what it takes to be a litigating attorney in this day and age.

The following are the questions and answers involving actual cases.

QUESTION: 1

A woman was leaving a grocery store when she was suddenly robbed of her diamond ring. Who did she sue and for what reason?

QUESTION: 2

A man was at a bar, and upon closing time had become too intoxicated to drive home. Feeling sorry for the man the bartender gave him a ride home. After being dropped off, the man fell over some steps that led to his front door, hit his head, and died. Who does his family hold liable for this incident?

QUESTION: 3

A man in Oklahoma City, Okla. had just purchased a brand new 32-foot Winnebago motor home. While driving the RV home the man set the cruise control at 70 MPH, got up and went to the rear of the RV to make himself a cup of coffee. When the motor home crashed and overturned whom did the man blame?

QUESTION: 4

A young man from Los Angeles, Calif. was attempting to steal the hubcaps off his neighbor's Honda Accord. He didn't notice that someone was seated in the car and was surprised when the owner of the vehicle ran over his hand. Who did he sue and how did the judge rule?

QUESTION: 5

A Pennsylvania man became stuck in a garage after the garage door malfunctioned. The door to reenter the house had locked when he shut the door behind him and he was stranded in the garage for eight days. He survived on Pepsi and a bag of dry dog food. This sounds bad until you realize the man had just finished robbing the home while the owners were gone on vacation. Did he sue anyone and what was his argument?

KANSAS

DEPARTMENT OF TRANSPORTATION
DEB MILLER, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE
REGARDING SENATE BILL 445,
RELATING TO THE AWARD OF ATTORNEY FEES
FEBRUARY 7, 2006**

Mr. Chairman and Committee Members:

Good morning. My name is Sally Howard, Chief Counsel for the Kansas Department of Transportation (KDOT). I appreciate the opportunity to testify in opposition to Senate Bill 445.

Senate Bill 445 would require a Court to award reasonable attorney fees to the prevailing party in any civil action. SB 445 specifically provides that a civil action does not include personal injury actions. KDOT respectfully requests that this committee amend SB 445 such that condemnation appeals are also excluded from the phrase "civil action." We believe that the current provision for attorney fees, as set forth under K.S.A. 26-509, provides a better method of determining when a court should award attorney fees in condemnation appeals.

Pursuant to K.S.A. 26-508, if a party is dissatisfied with the award of the appraisers, the party may appeal from the award by filing a notice of appeal and paying a docketing fee. The appeal is docketed as a new civil action and tried as any other civil action. Pursuant to K.S.A. 26-509, if the condemning party appeals from the appraisers' award, and a jury awards the landowner more than that award, then the court may require the condemnor to pay the landowner's reasonable attorney fees. This attorney fee provision gives the condemning authority reason to pause before deciding to appeal from an appraisers' award. In the majority of condemnations that I've been involved with on behalf of KDOT, the appraisers' award is not significantly different than the appraisals KDOT obtained of a given property. However, I have been involved in a number of condemnations where the court appointed appraisers awarded significantly more than we believed the property was worth. I will also tell you that we will only appeal awards that we believe are so excessive that no reasonable jury would agree. Given the subjective nature of appraisals, there aren't that many awards that fall into this category.

Pursuant to K.S.A. 26-509, if the landowner appeals from the appraisers' award he bears his own attorney fees. It's unclear how one would determine who the "prevailing party" would be in a condemnation appeal. However, assuming that you begin with the appraisers' award, then we assume that if a jury awards less than the appraisers' award, the condemning authority must have prevailed. Under SB 445, if a landowner appeals, and a jury awards less than the appraisers' award, the landowner would be responsible for paying the attorney fees for the condemning party. This would not occur under K.S.A. 26-509, and we don't believe the drafters of SB 445 intended such a result.

Senate Judiciary

2-9-06

Attachment 9

Senate Judiciary Committee
SB 445
February 7, 2006
Page 2

In closing, KDOT respectfully submits that the drafters of K.S.A. 26-509 crafted a fair and equitable means of determining when attorney fees should be paid. Under K.S.A. 26-509, the landowner is never at risk of paying the condemnor's attorney fees, and the condemnor is only at risk of paying the landowner's attorney fees if the condemnor appeals. KDOT would urge this Committee to except condemnation appeals from the term "civil action," as that term is used in SB 445, and allow K.S.A. 26-509 to continue governing attorney fees in these matters.

Mr. Chairman, I would be pleased to respond to questions.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Senate Judiciary Committee

From: Terry E. Beck
Kansas Trial Lawyers Association

Date: February 8, 2006

Re: 2006 Senate Bill No. 445

Chairman Vratil and members of the Senate Judiciary Committee. Thank you for the opportunity to submit comments regarding Senate Bill No. 445. I am Terry Beck, an attorney in private practice in Topeka and a member of the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the preservation of the civil justice system. We appreciate the opportunity to appear before you today in opposition to Senate Bill No. 445.

My law practice includes representing many small businesses in Topeka and surrounding counties and includes representing them in litigation, not involving personal injuries. In the recent past, I have represented small businesses in cases involving contract disputes, nuisance claims, boundary disputes, trademark infringement and unfair business practices, and collection matters, among others. My practice also includes representing individuals in disputes and litigation that do not include personal injuries.

KTLA and I are concerned about the proposed amendment to K.S.A. 60-2003 that is part of Senate Bill No. 445. The amendment would require courts to assess the prevailing party's attorneys' fees against the losing party in civil litigation, not including personal injury actions. This would reverse the long-standing "American Rule" concerning responsibility for attorney fees that Kansas has always had and substitute the "English Rule." This would be a very major departure from long-standing legal principles of American jurisprudence.

The American Rule is based on sound policy principles. Litigation is inherently uncertain, and it would be unjust to punish litigants for exercising their right to file or defend a law suit. The poor would be discouraged from vindicating their rights, not based on the merits of their cases, but for fear of being penalized with their opponents' attorney fees.

The American Rule has been favored in the United States virtually since its independence. The United States Supreme Court in the 1796 case of *Arcambel v. Wisemen*, 3 U.S. 306, rejected the English Rule. More recently, in 1967, the Supreme Court held in *Fleischman Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, that:

Terry Humphrey, Executive Director

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Senate Judiciary

2-9-06
Attachment 10

In support of the American rule, it has been argued that since litigation is at best uncertain one should not be penalized for merely defending or prosecuting a lawsuit, and the poor might be unjustly discouraged from instituting action to vindicate their rights if the penalty for losing included the fees of their opponents.

Also, the time, expense, and difficulties of proof inherent in litigating the question of what constitutes reasonable attorney's fees would pose substantial burdens for judicial administration. See *Oelrichs v. Spain*, supra, 15 Wall. 211 at 231 (1872).

I believe the adoption of the English Rule would have the unintended consequence of chilling the Kansas small business's access to the Courts as it would the individual's. Faced with litigating a case against a large out-of-state corporation, represented by a large, big-city law firm, the Kansas small business owner might well be discouraged from pursuing or defending its position, regardless of its merit, because of the potential liability for very large attorney fees.

Statutory deviations from the English Rule have historically been implemented with the public policy purpose of providing greater access to the courts for the less privileged, not to restrict access. That is the second concern that KTLA and I have concerning Senate Bill No. 445. It repeals the whole of K.S.A. 60-2006. K.S.A. 60-2006 allows recovery of attorney fees in small property damage automobile negligence cases in certain situations. It has the laudatory effect of protecting Kansas consumers by making insurance companies play fairly with claimants who would otherwise find it impossible to obtain legal counsel to pursue their claim if a reasonable settlement were not offered. Further, it has the safeguard of not allowing attorney fees in every case, but only those where the claimant is able to recover more than the amount offered in settlement of the claim. In 2005, SB 29 was introduced and it entirely deleted the \$7,500 limit in K.S.A. 60-2006 but otherwise left K.S.A. 60-2006 intact. We're not aware that hearings on SB 29 were ever held or why the bill was proposed, but we respectfully request that the committee take no action on the provisions of SB 445 dealing with K.S.A. 60-2006 until all public policy considerations are fully evaluated. Therefore, we oppose SB 445 in its entirety.

In summary, the English Rule favors the rich, who are financially able to assume the risk of attorney fees, to the detriment of every other litigant whose very financial survival could be jeopardized if the lawsuit were lost. It would also impose substantial burdens on the Court system that do not presently exist. It is not appropriate in every civil case.

I appreciate the opportunity to appear before the Committee and I thank you for your attention.



**KANSAS BAR
ASSOCIATION**

Testimony in Support of

SENATE BILL NO. 407

The Kansas Bar Association is a voluntary, professional association of over 6,700 members dedicated to serving Kansas lawyers, their clients, and the people of Kansas.

The KBA has a long-standing policy to support the increase in jury fees and has supported several measures over the years to increase jury compensation where appropriate. While there have been proposals to increase juror compensation, such as the "Jury Patriot Act" back in 2004, such measures were flawed because the burden of the increased compensation fell on plaintiffs wishing to file a civil case, through increased docket fees. SB 407 on the other hand, does not impose the cost of the fee increase on a disproportionate number of civil litigants, but is to be paid out of a county general fund, at the discretion of the board of county commissioners.

Consequently, the Kansas Bar Association is in support of SB 407, and urges the Committee to recommend it favorably.

James W. Clark
KBA Legislative Counsel
785-234-5696

* * *

Senate Judiciary

2-9-06

Attachment 11



Legislative Testimony

SB 445

February 9, 2006

**Testimony before the Kansas Senate Judiciary Committee
By Marlee Carpenter, Vice President of Government Affairs**

The Force for Business

Chairman Vratil and members of the committee;

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The Kansas Chamber and its over 10,000 member's support reforming the legal system and improving the business climate. The issues before you today will encourage settlements and provide for faster justice for many Kansans. The proposed legislation would shift attorneys' fees and allow the prevailing party to recover. The Kansas Chamber and the business community believe that this will encourage parties to settle and think twice about frivolous lawsuits against businesses.

In our December 2005 CEO and Business Owner's Poll, 85% of the 300 respondents believe that frivolous lawsuits increase the cost of doing business in the state. Our November 2004 poll of Registered Voters found the same firmly held belief. Nearly 65% of those participating believe that our current legal system should be reformed and 61% believe that lawsuit reform will contribute to economic growth.

The Kansas Chamber believes that this legislation encourages settlements, encourages speedier justice and reduces frivolous lawsuits. Thank you for your time and we encourage you to act favorably upon SB 445.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, Chamber Federation, have more than 10,000 member businesses, including local and regional chambers and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

Senate Judiciary

2-9-06

Attachment 12