

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:33 A.M. on March 14, 2007, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived, 9:41 A.M.  
Phil Journey arrived, 9:40 A.M.  
Derek Schmidt arrived, 9:34 A.M.  
Greta Goodwin arrived, 9:39 A.M.  
Donald Betts arrived, 9:41 A.M.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department  
Bruce Kinzie, Office of Revisor of Statutes  
Nobuko Folmsbee, Office of Revisor of Statutes  
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Dan Gibbs, Assistant Attorney General  
Kyle Smith, Deputy Director, Kansas Bureau of Investigation  
Carol Luttjohann  
Representative Oletha Faust-Goudeau  
Kevin Myles, President, NAACP, Wichita  
Cristi Cain, State Coordinator, Kansas Methamphetamine Prevention Project  
Bret Welch, Business Owner, Hutchinson  
Shawn Harrison, Orionz Outer Limits, Wichita  
Dr. Mark Schutter, Superintendent, Larned State Hospital

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2318--Allowing crime scene cleanup as a compensable expense for victims.**

Dan Gibbs appeared in support, indicating **HB 2318** expands the definition of "allowable expense" in K.S.A. 74-7301(a) to include crime scene cleanup and defines the term "crime scene cleanup". Enactment of the bill will enable the Crime Victims Compensation Board to better assist innocent victims of violent crimes in Kansas (Attachment 1).

Kyle Smith spoke in favor, stating the devastation and destruction left after a violent crime can be extensive. It is a horrific reminder to the victim or victim's family and a quick cleanup should be an option in every case. This legislation addresses a real need for many crime victims that is often overlooked (Attachment 2).

Carol Luttjohann testified in support and requested the committee include the provisions of **HB 2482** which concerns suicide crime scenes and reports (Attachment 3).

The Chairman indicated her proposed amendment could not be accomplished due to constitutional requirements and suggested checking with the revisor to see if there is an appropriate bill available to accommodate her request.

There being no further conferees, the hearing on **HB 2318** was closed.

The hearing on **HB 2359--Controlled substances, drug paraphernalia** was opened.

Rep. Oletha Faust-Goudeau appeared as a proponent, stating that the citizens of her district are concerned with the sale of drug paraphernalia at local convenience stores (Attachment 4). The drug paraphernalia is blatantly displayed, sending the wrong message to children and teens. It should be just as illegal to sell these items as it is to sell drugs.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:33 A.M. on March 14, 2007, in Room 123-S of the Capitol.

Kevin Myles appeared in support, stating his organization, NAACP, became involved with this issue through a grass roots effort seeking to improve conditions in their local community. Complaints were received concerning the sale of drug paraphernalia in neighborhood convenience stores. The number of complaints continued to increase and expanded to include other neighborhoods and eventually other towns and cities. The NAACP contacted Rep. Faust-Goudeau and Kyle Smith, KBI, and worked together on drafting a bill that would address the concerns of all involved. **HB 2359** will not eliminate illegal drug use but the permissiveness of current language and the availability of the items attracts criminal elements, lowers property values and exposes Kansas children to drug culture (Attachment 5).

Cristi Cain spoke in support, providing the committee with the results of a visual survey conducted in March 2006 of 88 Shawnee County convenience stores and which led to the formation of the Drug Paraphernalia Task Force. The Task Force determined through communications with attorneys and law enforcement officers that there is a lack of clarity pertaining to the definition of drug paraphernalia. **HB 2359** clarifies existing statutes. It would reduce the amount of drug paraphernalia available for sale (Attachment 6).

Kyle Smith appeared as a proponent, stating it is clear current laws are not working as intended. The changes proposed in **HB 2359** address the problems by clarifying exactly what constitutes drug paraphernalia and enhancing the penalties for selling the items near schools (Attachment 7).

Bret Welch spoke in opposition, indicating several items he now sells would be declared illegal with enactment of this bill. Mr. Welch stated all of the products he sells are for use with tobacco products and are sold only to persons over the age of 18 (Attachment 8).

Shawn Harrison appeared in opposition providing signatures from citizens affirming products purchased in his store were used only for tobacco products. Mr. Harrison states his store does not carry glass "rose" pipes, "oil burners" or meth pipes (Attachment 9).

Written testimony in support of **HB 2359** was submitted by:

Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 10)

Sally Zellers, Director, Safe Streets Topeka-Shawnee County (Attachment 11)

There being no further conferees, the hearing on **HB 2359** was closed.

The Chairman opened the hearing on **HB 2001--Civil commitment of sexually violent predators; rights and rules of conduct; transitional release when predator suffers from permanent dementia; battery against a mental health employee.**

Dr. Mark Schutter testified in support, stating groups of patient throughout the state are very different from each other and should be considered separately based on the abilities and cognitive level of the group. Residents of the Sexual Predator Treatment Program function at a high cognitive level and are not mentally ill outside the area of their sexual offending and do not require the same safeguards with respect to patient rights that other patients do. The Bill of Rights for Mentally Ill Patients does not fit the treatment and security needs of the Sexually Violent Predator population. HB 2001 allows for a more appropriate balance between patient rights with the rights of employees and community members. Dr. Schutter reviewed several changes proposed in the bill (Attachment 12).

The Chairman indicated the committee was out of time and would continue the hearing on **HB 2001** at the next scheduled meeting.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is March 15, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-14-07

NAME	REPRESENTING
Lindsey Douglas	Hein Law Firm
Kurt Fairchild	
Bret Welch	The Mystic Planet
Shawn Harrison	OZONE OUTER LIMITS
Ray Dalton	SRS
Mark Schutter	Larned State Hosp.
Helen Pedigo	KSC
Chris Meckler	OJA
<del>Richard Shannon</del>	KPA
Doug Anstett	KPA
Frank Henderson	KSAG
Whitney Daman	KS Bar Assn.
<del>Frank</del>	John Peterson
Richard Samways	Kenny & Sons
Carol Luttjohann	—
Willa DeCastro	Am. Adoptions
Kevin Myles	Kansas State NAACP
Rep. Faust - Bourdeau	84th Dist.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-14-07

NAME	REPRESENTING
Cristi Cain	Kansas Meth Prevention Project
Loretta Severin	Kansas Meth Prevention Project
DION LEFLER	WICHITA FALLS
Kyle Smith	KBI / KPOA
Mark Anderson	ORC



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PAUL MORRISON  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
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Senate Judiciary Committee  
House Bill 2318  
Assistant Attorney General Dan Gibb  
March 14, 2007

Chairman Vratil and Members of the Committee:

On behalf of the Office of Attorney General I am here to testify in support of House Bill 2318. HB 2318 expands the definition of "allowance expense" in K.S.A. 74-7301(a) to include an allowance up to \$1000 for crime scene cleanup. This bill also provides a definition of crime scene cleanup as "the removal of blood, stains, odors or other debris caused by the crime or the processing of the crime scene."

HB 2318 increases the benefits under the Crime Victims Compensation Board, a division of the Office of the Attorney General. The Crime Victims Compensation Board was established by the 1978 Legislature, as a payer of last resort, to assist victims of violent crime with out of pocket losses. Since its inception, the Board has granted more than fifty million dollars in awards, and has operated without the commitment of the state general fund since 1986.

Throughout Paul Morrison's career as a prosecutor, he has attended countless numbers of crime scenes, including murder scenes, where the violence and brutality of the crime was illustrated by the amount of bloodshed and debris left behind. General Morrison believes that the burden of crime scene cleanup greatly contributes to the amount of stress that a crime naturally causes and believes that the Attorney General's office, through passage of HB 2318, can help ease this burden for victim's families.

Thirty-three states presently provide compensation for crime scene cleanup. The fiscal impact has been very insignificant, and generally comprises about one-half of one percent of the total awards granted. If the experience in Kansas were to be similar, the annual commitment would be approximately \$1400.

This presents an excellent opportunity to enhance the award provisions of the Crime Victims Compensation Board Act without having to ask for additional funding. I ask for your support of House Bill 2318 to enable us to better assist the innocent victims of violent crime in the state of Kansas. Thank you for your consideration.

Senate Judiciary  
3-14-07  
Attachment 1



# Kansas Bureau of Investigation

Larry Welch  
*Director*

Paul Morrison  
*Attorney General*

Testimony in Support of HB 2318  
Before the Senate Judiciary Committee  
Kyle Smith, Deputy Director  
Kansas Bureau of Investigation  
March 14, 2007

Chairman Vratil and Members of the Committee,

On behalf of the Kansas Bureau of Investigation and the Kansas Peace Officers Association, I would respectfully ask your support of HB 2318, a bill to provide some assistance to crime victims in a way that has been ignored in the past. By providing that up to a thousand dollars as an allowable expense, this legislation will address a real need for many crime victims that is often overlooked.

I have been at many violent crime scenes. But after collecting evidence and getting a better understanding on how to present the case to the jury, I get to leave. The family has to still live there. The devastation and destruction left after these crimes can be extensive and a horrific reminder to the victim or the victim's family. A quick cleanup and remediation of the scene is needed and should be an option in every case. HB 2318 will provide those who otherwise might not be able to pay, a way to do some basic remediation and let them start living again.

The KBI and KPOA believe this bill deals with basic human decency and we are proud to support this legislation.

Thank you for your attention and consideration.

Senate Judiciary  
3-14-07  
Attachment 2

**TESTIMONY HB 2318**

**March 14, 2007**

**Carol Lutjohann**

Thank you for the opportunity to speak today.

My name is Carol Lutjohann. I am a graduate student at The Brown School of Social Work at Washington University in St. Louis.

I am here to ask that you consider amending HB2318 to include the provisions of HB2482. HB2482 was introduced by House Health and Human Services, but was not heard on the House side this session.

There are two provisions of HB2482: The first is the family at the scene of someone lost to suicide have the right to view the scene before and after the body is removed, but only after law enforcement has secured the scene and completed their work at the scene. The second is that after the death has been ruled by the coroner to be a death by suicide the law enforcement records be subject to the Open Records Act.

No loss is easy; however, a loss to suicide presents some challenges to those left behind that are not faced in other deaths. Family members need to have access to as much information as possible to help them try to understand the loss. In 2004, the most recent year that I found statistics for, there were 384 lives lost to suicide in Kansas. With an estimated ten survivors left to make sense of that loss, that translates to 3800 family members left to try to understand.

Last fall I did a community assessment of services available for survivors of suicide in Topeka for a class at Washburn University. Services are essentially non-existent that are specific for survivors of suicide. When I asked those I surveyed what their needs are in their process, 100% responded other survivors and access to information. Survivors want to feel "normal" and they want to know what happened.

Access to the scene will mean what survivors view might be horrific and graphic. Regardless of what they might view, they should have the right to make an informed decision. Often the reality of the scene is not as horrible as the images that are imaged. I was at the scene where my brother died. I was not given access to the room where he was. However, law enforcement talked openly about the scene. It took over two years and many hours of work to get access to information. The truth was not near as difficult as the images I had created.

Also, while I was at Washburn, I began research on the grief process associated with suicide. I looked at over 270 Websites created as memorials for someone lost to suicide. Getting “hooked” on research is what led me to The Brown School at Washington University. I presented that research at the Graduate Student Research Symposium in February in the Professional category, where I took third place. I learned a lot about how people deal with a loss to suicide. It seems to be universal that knowing what happened in those last moments of life, getting as much information as possible about what others saw and knew, and seeing what happened is important.

Because suicide is not statutorily a crime, survivors of suicide are not viewed as “victims,” and therefore, do not have the same rights to information as crime victims. I talked to one mother that went through an extensive legal procedure to get copies of the investigative records related to her son’s death. Another dad told me when he was at the scene, all he wanted to do is to get to his son and hold him. However, instead he watched his son being carried away in a black body bag.

I have literally hundreds of examples and stories of survivors just wanting to know and how devastating it is to be denied access to information. But the bottom line is simple: there are no costs to this bill. But there are high prices for those struggling with the loss to not have access to information.

Please consider this amendment and make the Kansas the first state to recognize how important it is to provide this critical support to those devastated by a loss to suicide.

Thank you,

Carol Luttjohann  
Permanent Address:  
501 Lincoln  
Topeka, KS 66606  
School Address:  
905 Eastgate 1N  
University City, MO 63130  
Cell: 785.608.8199



Session of 2007

**HOUSE BILL No. 2482**

By Committee on Health and Human Services

2-8

9 AN ACT concerning coroners; relating to the investigations of certain  
10 deaths; amending K.S.A. 2006 Supp. 22a-231 and 22a-232 and re-  
11 pealing the existing sections.

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

14 Section 1. K.S.A. 2006 Supp. 22a-231 is hereby amended to read as  
15 follows: 22a-231. (a) When any person dies; or a human body is found  
16 dead in the state, and the death is suspected to have been the result of  
17 violence, caused by unlawful means or by suicide, or by casualty, or sud-  
18 denly when the decedent was in apparent health, or when decedent was  
19 not regularly attended by a licensed physician, or in any suspicious or  
20 unusual manner, or when in police custody, or when in a jail or correc-  
21 tional institution, or in any circumstances specified under K.S.A. 22a-242,  
22 and amendments thereto, or when the determination of the cause of a  
23 death is held to be in the public interest, the coroner or deputy coroner  
24 of the county in which the death occurred, if known, or if not known, the  
25 coroner or deputy coroner of the county in which such dead body was  
26 found, shall be notified by the physician in attendance, by any law en-  
27 forcement officer, by the embalmer, by any person who is or may in the  
28 future be required to notify the coroner or by any other person. The  
29 coroner in the county of the cause of death shall decide if an investigation  
30 shall take place. If an investigation is authorized by the coroner of the  
31 county of cause of death, the coroner in the county of death shall under-  
32 take such investigation, with costs to be accounted to and reimbursed by  
33 the county of the cause of death. Investigation may include, but is not  
34 limited to, obtaining medical and law enforcement background infor-  
35 mation, examination of the scene of the cause of death, inquest, autopsy,  
36 and other duties required of the coroner. If the coroner of the county of  
37 the cause of death requests an investigation, the coroner of the county of  
38 death shall be responsible for the investigation and the certification of  
39 death.

40 (b) *Whenever such death is suspected to be a result of suicide, after*  
41 *all evidence has been secured, immediate family members of the decedent*  
42 *who are at the scene of the death may view the scene before and after the*  
43 *body has been removed.*

1 Sec. 2. K.S.A. 2006 Supp. 22a-232 is hereby amended to read as  
2 follows: 22a-232. (a) Upon receipt of notice pursuant to K.S.A. 22a-231,  
3 and amendments thereto, the coroner shall take charge of the dead body,  
4 make inquiries regarding the cause of death and reduce the findings to a  
5 report in writing. Such report shall be filed with the clerk of the district  
6 court of the county in which the death occurred if known, or if not known  
7 the report shall be filed with the clerk of the district court of the county  
8 in which the dead body was found. If the coroner determines that the  
9 dead body is not a body described by K.S.A. 22a-231, and amendments  
10 thereto, the coroner shall immediately notify the state historical society.

11 (b) If in the opinion of the coroner information is present in the  
12 coroner's report that might jeopardize a criminal investigation, the cor-  
13 oner shall file the report with the clerk of the district court of such county  
14 and designate such report as a criminal investigation record, pursuant to  
15 subsection (a)(10) of K.S.A. 45-221, and amendments thereto. *If such*  
16 *death is ruled to be a result of suicide, the report of the findings of the*  
17 *investigation, including, but not limited to, a suicide note, shall be made*  
18 *available to the immediate family members of the decedent. Such report*  
19 *shall not be designated as a criminal investigation record and shall be*  
20 *subject to the open records act, K.S.A. 45-215, and amendments thereto.*

21 (c) If a death investigation involves multiple jurisdictions, the coroner  
22 notified under K.S.A. 22a-231, and amendments thereto, may transfer  
23 jurisdiction to another jurisdiction if the coroners of both jurisdictions  
24 agree to the transfer.

25 Sec. 3. K.S.A. 2006 Supp. 22a-231 and 22a-232 are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its  
27 publication in the statute book.

3-3

STATE OF KANSAS

OLETHA FAUST-GOUDEAU

REPRESENTATIVE, 84TH DISTRICT

P.O. BOX 20335

WICHITA, KANSAS 67218

(316) 652-9067

Faust-Goudeau@house.state.ks.us / oletha84th@aol.com

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(SESSION ONLY)



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: ENERGY AND UTILITIES  
FEDERAL AND STATE AFFAIRS  
INSURANCE AND FINANCIAL INSTITUTIONS

Testimony for HB 2359  
Senate Judiciary Committee  
Wednesday, March 14, 2007

Honorable Chairman Vratil and Honorable Committee Members:

I appreciate the opportunity to speak before you today in support of House Bill 2359.

The issue before you today, House Bill 2359 was brought to my attention by Mr. Kevin Myles, President of the Wichita Chapter of the NAACP. At the request of concerned citizens in my district regarding the sales of drug paraphernalia in our neighborhood convenience shops, which imposes a negative impact on our community and state. I visited a few of these convenience shops and, as a matter of fact, I have witnessed those items on the front counter top of a local gas station just three blocks from our state capitol and it certainly concerned me and for this reason I stand in strong support of the language on page 4, section 4, line 28 which makes it illegal to sell drug paraphernalia.

In 2005, the Kansas legislature passed the Meth Bill, putting the key ingredient used in Meth Labs behind the counters in stores. I feel drug paraphernalia items used as a crack-cocaine pipe should not be so easily accessible to the public for purchase.

As lawmakers, we are sending a mixed message: when we say its illegal to use, to buy, or to sell illegal drugs, but we allow the sales of drug paraphernalia. It must be prohibited.

I would appreciate your consideration for the passage of HB 2359.

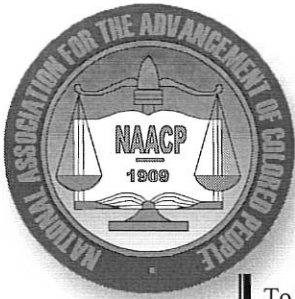
Thank you,

Rep. Oletha Faust-Goudeau  
84<sup>th</sup> District

Senate Judiciary

3-14-07

Attachment 4



**The Wichita Branch NAACP**  
*"98 years, Speaking Truth to Power"*  
March 14<sup>th</sup>, 2007

To the Honorable Senator Vratil and members of the Senate Judiciary Committee,

Kevin Myles  
*President*

Lavonta Williams  
*Vice-President*

Carolyn Wallace  
*VP Special Programs*

Kenya Cox  
*VP Public Affairs*

Elaine Guillory  
*Secretary*

Sandra Rankin  
*Asst Secretary*

Mark Ritchey  
*Treasurer*

EW Dogan  
*Asst Treasurer*

Carolyn Wallace  
*Veterans Affairs*

Otey Moss  
*Communications*

Elaine Guillory  
*Freedom Fund*

Mary Breckenridge  
Sandra Rankin  
Barbara Mackey  
*Education Co-Chairs*

Brenda Davis  
*Community Health*

Anthony Suber  
*Labor & Industry*

Mary Dean  
*Legal Redress*

Rev. Mark Smith  
*Membership*

VJ Sessions  
*Political Action*

James Arbertha  
*Eco. Development*

Rev. Reuben Eckels  
Rev. Mark Smith  
*Religious Affairs*

My name is Kevin Myles and I am the President of the Wichita Branch of the NAACP and the Political Affairs Chairman of the Kansas State Conference of NAACP Branches, representing nearly 2,000 members throughout the State of Kansas. I am here today to speak in favor of HB2359 which would strengthen our current statutes against the proliferation and possession of Drug Paraphernalia.

The NAACP became involved with this issue through a grass-roots campaign sponsored by the Wichita Branch NAACP. This project, entitled "the Broken-Windows" campaign, seeks to improve conditions in the community by addressing store and business owners who offer inferior products, poor or dirty conditions, and harmful or toxic products. The community is able to call upon our organization and request that we visit specific shops or businesses. Based on those complaints and our subsequent observations, we determine which businesses we will address.

In the course of this campaign we received a number of complaints regarding a particular convenience store in North Wichita. I personally visited the store to observe the conditions and once inside I noticed right away that they were selling what are sometimes referred to as "Crack Stems" and pipes right on the front counter just a couple feet away from the candy and gum. This is a store that is frequented by a number of children as it is located just a few blocks away from an Elementary school and three local churches. Shortly thereafter, we made contact with the store owner and then announced to the community that we would be addressing the conditions at this store, particularly noting their counter-sale of drug paraphernalia. As the word began to spread throughout the community, we started to receive calls from others in all parts of the city who complained about the same items being sold. Within a couple weeks, we'd received complaints from small neighboring cities such as Haysville and Newton.

I had a conversation around that time with Representative Oletha Faust-Goudeau about possibly developing some legislation that might arrest the sale of paraphernalia. In one of our conversations, she noted that there's a gas station/convenience store just a short distance away from this very building that also sells paraphernalia. So we began to research other State's statutes dealing with paraphernalia in comparison to our own. Once we'd come up with some proposed language for a new bill and submitted that to the revisors office, we were made aware of the fact that the KBI was also working on a new proposal. I was able to get in contact with Mr. Kyle Smith of the KBI and with only a minor change, we were able to assemble a draft representing the concerns and language of both the KBI's Task Force and of the NAACP.

For the record, we acknowledge that this bill will not halt illegal drug use. Persons who want to use drugs may continue to find means and methods to do so. But we know that as a community, we can not afford to act as enablers by allowing gas stations, convenience stores, and head shops to profit from the sale and distribution of merchandise designed specifically for the consumption of illegal drugs. The permissiveness in the language of the current statute and the availability of these items in neighborhood shops and convenience stores attracts criminal elements; both drug dealers and addicts, into the hearts of our communities. This has had the triad effect of introducing and maintaining criminal elements within the community, lowering neighborhood property values, and exposing children and teens to the very drug culture from which the spirit of our law intends to protect them.

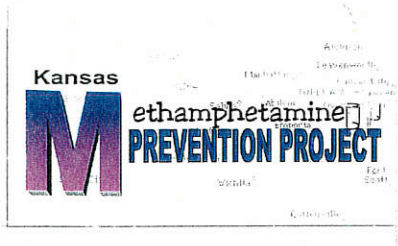
Our existing statute outlaws the possession of Drug Paraphernalia. However, its wording still allows for store owners and merchants to openly sell and distribute drug paraphernalia. This piece of proposed legislation would close that loophole; maintaining the prohibition against the private possession of paraphernalia, while also specifically outlawing its sale and distribution. We believe that removing these types of items from our neighborhood shops and convenience stores is a small but important step towards building safer and healthier communities.

Thank you for you time and I will stand for any questions...

Senate Judiciary

3-14-07

Attachment 5



Based at Shawnee Regional Prevention and Recovery Services, Inc.  
2209 SW 29<sup>th</sup> Street  
Topeka, Kansas 66611  
(785) 266-8666  
Fax (785) 266-3833  
E-mail: [ccain@parstopeka.com](mailto:ccain@parstopeka.com)  
Website: [www.ksmethpreventionproject.org](http://www.ksmethpreventionproject.org)

### **Testimony in Support of HB 2359 before the Senate Judiciary Committee**

**Cristi Cain, State Coordinator of the Kansas Methamphetamine Prevention Project  
and Co-Chair of the Kansas Alliance for Drug Endangered Children  
March 14, 2007**

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Drug Paraphernalia Task Force, as the state coordinator of the Kansas Methamphetamine Prevention Project, and as co-chair of the Kansas Alliance for Drug Endangered Children. I am a Certified Prevention Professional and have worked in substance abuse prevention for 11 years. I have been working to address access to drug paraphernalia in Shawnee County and throughout Kansas for one year. I am here today to share information we have obtained about the level of the drug paraphernalia problem in Shawnee County as well as throughout the state of Kansas.

We began efforts in March of 2006 by conducting visual surveys of a total of 88 convenience stores, gas stations and tobacco stores in Shawnee County to document whether paraphernalia was sold. The amount and varieties of paraphernalia available for sale in our community led to the formation of the Drug Paraphernalia Task Force. (Please see the written testimony of Sally Zellers, Director of Safe Streets Topeka-Shawnee County for specific information about activities and accomplishments of the Drug Paraphernalia Task Force.) As a member of the Task Force, I found it surprising how many different interpretations there were of the existing paraphernalia statutes (KSA 65-4150 through 65-4153) by law enforcement officers and attorneys with whom we discussed the issue. It became immediately apparent that there is a lack of clarity among prosecutors and law enforcement officers across the state about what constitutes paraphernalia. One commonly debated point was whether an item must contain drug residue to be considered paraphernalia. HB2359 clarifies the existing statutes in a way that will significantly reduce the amount of paraphernalia that is being sold in communities across Kansas. The information below provides information about the current level of the problem of availability of drug paraphernalia in Kansas communities.

Senate Judiciary

3-14-07

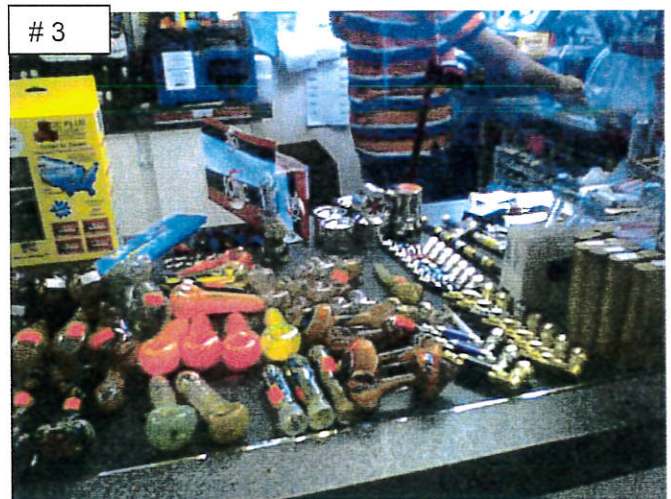
Attachment 6

# Drug Paraphernalia in Kansas-Why Should It Be Addressed Through Legislation?

March 2006- Display case at a convenience store in Downtown Topeka which contains many different types of bongs and pipes used for smoking marijuana (photo #1)



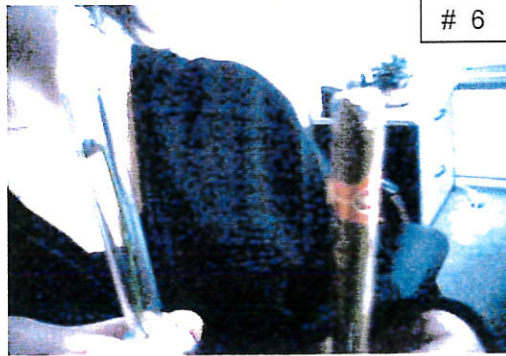
March 2006- Display case at a convenience store in North Topeka (from various angles) which contains bongs and pipes for smoking marijuana, devices to conceal drugs and paraphernalia (photos #2 and #3), and scales for weighing drugs (photo #4).



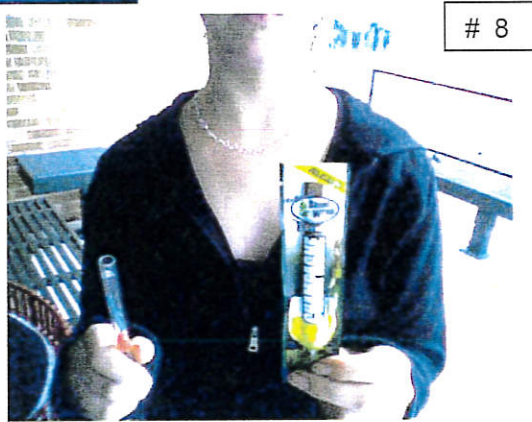
# Is Paraphernalia Available to Minors?



14 year old purchases items across the street from Lyman Elementary School- May 2006 (photos #5 and #6). Items include glass pipe and cigar.



14 year old purchases items near Highland Park High School- May 2006 (photos #7 and #8). Items include glass pipe and a flavored blunt wrap.



14 year old purchases items across the street from Topeka West High School- May 2006 (photos #9 and #10). Items include glass pipe and a flavored blunt wrap.



## ***Is This a Problem Across the State of Kansas?***

The following counties had paraphernalia available at convenience stores as verified by local law enforcement and/or the Kansas Department of Agriculture:

Allen	Bourbon	Brown	Cowley	Douglas
Ellis	Finney	Franklin	Johnson	Kearny
Labette	Linn	Lyon	McPherson	Miami
Osage	Reno	Rice	Saline	Sedgwick
Shawnee	Trego	Woodson	Wyandotte	

Out of 41 counties responding to a law enforcement survey conducted in December 2006, over 50% reported the availability of glass pipes and 43% reported the availability of blunt wraps. Additionally, 9 counties (Bourbon, Douglas, Franklin, Lyon, McPherson, Reno, Saline, Sedgwick, and Shawnee) reported that their community had "head shops". A "head shop" is a shop specializing in drug paraphernalia and other items appealing to the drug subculture. Ninety-seven percent (97%) of law enforcement officials responding to the survey were very supportive of legislation to clarify the existing Kansas statutes to limit the sales of paraphernalia at stores.

In Shawnee County, 50% of stores sold at least one type of paraphernalia. Twenty-one percent (21%) of convenience stores and 63% of tobacco stores sold large quantities and/or many varieties of paraphernalia. Thirty-one percent (31%) of the stores selling 3 or more types of paraphernalia failed previous tobacco compliance checks. (Data from March 2006)

### ***Why Is Drug Paraphernalia a Problem That Needs To Be Addressed?***

- Establishes community norm that drug use is acceptable/tolerated
- Increases danger for legitimate customers and employees
- Drug relapse trigger for people in recovery who are customers
- Glamorizes drug use to youth
- Increases availability (or perceived availability) of drugs
- Stores that sell it may sell illegal drugs as well
- Increase in illegal activity in areas around the store

I appreciate the opportunity to share information about the drug paraphernalia problem with you today. I wanted to mention that in addition to caring about this issue professionally, I am also a concerned parent of a six year old son. We have an obligation to protect our children by not allowing stores to sell them drug paraphernalia. The passage of HB2359 will greatly support our parents and communities in helping our youth live healthy and drug free lives. Thank you for your consideration of this legislation.



# Kansas Bureau of Investigation

Larry Welch  
*Director*

Paul Morrison  
*Attorney General*

Testimony in Support of HB 2359  
Before the Senate Judiciary Committee  
Kyle Smith, Deputy Director  
Kansas Bureau of Investigation  
March 14, 2007

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation and as legislative chair of the Kansas Peace Officers' Association in support of HB 2359, a revision and strengthening of our laws dealing with drug paraphernalia. The Shawnee County Task Force on Drug Paraphernalia has been working for almost a year now in identifying problems and finding solutions. It is clear that our current laws are not working – what is clearly paraphernalia is available across the state of Kansas. HB 2350 is our best effort in addressing what appear to be weaknesses in our criminal statutes dealing with paraphernalia.

The crux of the problem with paraphernalia law is that often legitimate items with legitimate uses are used to produce, store and consume illegal drugs. Needle nose pliers can be used as a roach clip and a turkey baster can not only keep the turkey moist but also help make methamphetamine. But we have merchants setting up shelves of items that are designed for use as paraphernalia, and any legitimate use is clearly an imaginary and twisted stretch.

When you see someone using an item as paraphernalia, or he or she admit they are going to do so, or there is residual evidence of past use, the criminal case is easy. But when items are for sale on the shelves of a gas station, none of that evidence is available and the case is more difficult. HB 2359 tries to address this problem by clarifying, to the advantage of both law enforcement and retailers, exactly what is paraphernalia, adding those items that have no legitimate use (e.g. disguised pipes) and enhancing the penalties for selling these items near schools. Attached is a copy of the bill with section-by-section explanations on each of the amendments. The House Judiciary committee made some minor changes to make the language more closely reflect the federal law so that stores and offenders had one set of rules to follow.

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

Senate Judiciary

3-14-07  
Attachment 7



## HOUSE BILL No. 2359

### Explanation of Proposed Amendments

AN ACT concerning crimes and punishment; relating to controlled substances; drug paraphernalia; amending K.S.A. 65-4153 and K.S.A. 2006 Supp. 65-4150, 65-4151 and 65-4152 and repealing the existing sections.

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

**Section 1.** K.S.A. 2006 Supp. 65-4150 is hereby amended to read as follows: 65-4150. As used in this act:

- (a) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.
- (b) "Deliver" or "delivery" means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.
- (c) "Drug paraphernalia" means all equipment and materials of any kind which are used or, **primarily** intended for use ~~or specifically or designed for~~ **use** in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the uniform controlled substances act. "Drug paraphernalia" shall include, but is not limited to:
- (1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.
  - (2) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
  - (3) Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.
  - (4) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
  - (5) Scales and balances used or intended for use in weighing or measuring controlled substances.

This language was added to assist in the prosecution for paraphernalia that is designed for such use but where it might be difficult to prove that anyone had the intent to use it at that time. E.G., a shop owner has paraphernalia for sale but says he never intended it to be used for drugs.

- (6) Diluents and adulterants, such as ***including, but not limited to***,quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.
- (7) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marihuana.
- (8) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.
- (9) Capsules, balloons, envelopes, ***bags*** and other containers used or intended for use in packaging small quantities of controlled substances.
- (10) Containers and other objects used or intended for use in storing or concealing controlled substances.
- (11) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.
- (12) Objects used ~~or, intended~~ intended for use ~~or specifically or designed for use~~ in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish, ~~or hashish oil~~, ***phenylacetone (PCP), methamphetamine or amphetamine*** into the human body, such as:
- (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - (B) water pipes, ***bongs or smoking pipes designed to draw smoke through water or another cooling device;***
  - (C) carburetion tubes and devices ***pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;***
  - (D) smoking and carburetion masks;
  - (E) roach clips (objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand);
  - (F) miniature cocaine spoons and cocaine vials;
  - (G) chamber ***smoking*** pipes;
  - (H) carburetor ***smoking*** pipes;
  - (I) electric ***smoking*** pipes;
  - (J) air-driven ***smoking*** pipes;
  - (K) chillums;
  - (L) bongs; and
  - (M) ice pipes or chillers; ***and***
  - (N) ***any smoking pipe manufactured to disguise its intended purpose.***
  - (O) wired cigarette papers; or

Changes here are intended to clarify and assist courts, law enforcement, defendants and prosecutors in knowing what is drug paraphernalia.

**(P) cocaine freebase kits.**

(d) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

(e) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

**Sec. 2.** K.S.A. 2006 Supp. **65-4151** is hereby amended to read as

follows: 65-4151. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, 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.

(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.

**Language is targeted at items that are made to hide their true purpose.**

(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.

(o) Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia.

***(p) Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, sale or cultivation of controlled substances.***

**Sec. 3.** K.S.A. 2006 Supp. **65-4152** is hereby amended to read as follows: 65-4152. (a) No person shall use or possess with intent to use:

(1) Any simulated controlled substance;

(2) any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act;

(3) any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the uniform controlled substances act; or

(4) anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.

(b) Violation of subsection (a)(1) or (a)(2) is a class A nonperson misdemeanor.

(c) Violation of subsection (a)(3), other than as described in paragraph (d), or subsection (a)(4) is a drug severity level 4 felony.

(d) Violation of subsection (a)(3) which involves the possession of drug paraphernalia for the planting, propagation, growing or harvesting of less than five marijuana plants is a class A nonperson misdemeanor.

(e) For persons arrested and charged under paragraph (a)(4), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

***(f) The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was designed for use or possessed with the intention for use as drug***

The "High Times" rule is an attempt to recognize the logical nexus between the advertising of an item in a magazine about illegal drug use and the item's intended use.

Some courts and prosecutors were unclear whether unused items could or should be considered paraphernalia.

*paraphernalia.*

**Sec. 4. K.S.A. 65-4153** is hereby amended to read as follows: 65-4153. (a) No person shall ***sell, offer for sale, have in such person's possession with intent to sell,*** deliver, possess with intent to deliver, manufacture with intent to deliver or cause to be delivered within this state:

(1) Any simulated controlled substance;

(2) any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of K.S.A. 65-4162, and amendments thereto;

(3) any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act, except K.S.A. 65-4162, and amendments thereto; or

(4) any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the uniform controlled substances act.

(b) ***Except as provided further,*** violation of subsection (a)(1) is a nondrug severity level 9, nonperson felony.

(c) ***Except as provided further,*** violation of subsection (a)(2) is a class A nonperson misdemeanor. Any person who violates subsection (a)(2) by delivering or causing to be delivered within this state drug paraphernalia to a person under 18 years of age is guilty of a nondrug severity level 9, nonperson felony.

(d) ***Except as provided further,*** violation of subsection (a)(3) is a nondrug severity level 9, nonperson felony. Any person who violates subsection (a)(3) by delivering or causing to be delivered within this state drug paraphernalia to a person under 18 years of age is guilty of a drug severity level 4 felony.

(e) ***Except as provided further,*** violation of subsection (a)(4) is a drug severity level 4 felony.

(f) ***Violation of subsection (a)(1) is a nondrug***

The N.A.A.C.P. requested this language to clarify that selling of paraphernalia, not just the delivery, is a violation of the act.

This language in (f) - (k)

*severity level 7, nonperson felony if such person is 18 or more years of age and the items involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.*

*(g) Violation of subsection (a)(2) is a nondrug severity level 9, nonperson felony if such person is 18 or more years of age and the items involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.*

*(h) Violation of subsection (a)(3) is a drug severity level 4 felony if such person is 18 or more years of age and the items involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.*

*(i) Violation of subsection (a)(4) is a drug severity level 3 felony if such person is 18 or more years of age and the items involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.*

*(j) Nothing in this section shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or*

mimics the controlled substances act's penalties and language for selling drugs near schools.

*property at the time alleged shall not be a defense to the crime charged or the sentence imposed.*

*(k) As used in this section, the term "or under circumstances where one reasonably should know" that an item will be used in violation of this section, shall include, but not be limited to, the following:*

*(1) Actual knowledge from prior experience or statements by customers;*

*(2) inappropriate or impractical design for alleged legitimate use;*

*(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or*

*(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.*

*New Sec. 5. If any provision of this act or the application thereof is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.*

Sec. 6. K.S.A. 65-4153 and K.S.A. 2006 Supp. 65-4150, 65-4151 and 65-4152 are hereby repealed.

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

"Severability clause" is in case any part of the act is declared unconstitutional, the remainder of the act can be upheld.

The Mystic Planet  
2610 S. Seneca  
Owner and Proprietor  
Bret Welch  
Wichita, KS 67217

March 14, 2007

Dear Committee,

Hello I would like to introduce myself, I am Bret Welch. I own a novelty shop known to many as "The Mystic Planet" in Wichita, KS. I am here to state my opinion about the house bill # 2359. Some of the items I carry in my place of business, the state of Kansas now want's to declare illegal. I sell tobacco water pipes and accessories along with gift items. I do not sell love roses, oil burner pipes etc. I refuse to allow any one in my place of business under the age of 18, all IDs are checked. I have been in business for eleven years and have paid my taxes for something that is possibly to become illegal the city and state, do not hesitate to accept taxes due from Revenue.

I have brought with me signed petitions which you have copies from customers stating they have purchased tobacco pipes and accessories for the use with tobacco. Also I have brought with me a few items water pipe, aqua pipe, proto pipe, hand pipe known as the monkey pipe all have been patented by the United States government.

For having said all of this I am having a hard time trying to understand why one tobacco pipe whether it be metal, water, or wooden can be illegal but at the same time the same items are patented by the United States government.

In conclusion if the committee would consider all of the above in their decision on the bill # 2359 so that I and others could continue business as usual it would be greatly appreciated.

Thank you,

Bret A. Welch

Senate Judiciary

3-14-07  
Attachment 8



Orionz Outer Limits  
Mr. Shawn Harrison  
Owner and Proprietor  
1602 South Seneca  
Wichita, Kansas 67213

COPY

March 7, 2007

To: Senator Jean Schodorf  
Kansas State Capitol Office Building  
300 South West 10<sup>th</sup> Street  
Room 241 E  
Topeka, Kansas 66612

Dear Senator Schodorf:

Enclosed with this correspondence are approximately four thousand (4,000) signatures from tax paying citizens, affirming in writing that the articles they purchased in my store were for use *only* with tobacco. These products include water pipes and other smoking accessories.

My store sells products only to individuals eighteen or older; no person is allowed in the store if they are under eighteen (valid I.D. is requested upon entry); and we refuse service to anyone who even mentions the illegal use of any narcotic while on the premises. We do not carry glass "rose" pipes, "oil burners" or meth pipes.

The petition signatures which are enclosed are a response to the proposed House Bill 2359. These tax paying customers also object to the intrusion of State government on their rights to purchase and/or consume tobacco products and accessories.

Please feel free to contact me, or my attorney Eric Kidwell of Wichita, Kansas, at any time to discuss these concerns over the proposed law. I am hoping that the enclosed signatures will be introduced *and* discussed on the floor or in any committee, because I believe that my elected representatives in Topeka should be aware of the existence of such opposition.

Very Truly Yours,



Shawn Harrison

cc: Eric J. Kidwell, Attorney at Law

Enclosures: Petition

Senate Judiciary

3-14-07

Attachment 9

**TESTIMONY TO THE SENATE JUDICIARY COMMITTEE  
IN SUPPORT OF HB 2359  
Presented by Ed Klumpp  
On behalf of the  
Kansas Association of Chiefs of Police**

March 14, 2007

This testimony is in support of HB2359 enhancing the definitions and provisions of state statutes relating to controlled substances and drug paraphernalia. A number of businesses in Kansas continue to openly display for sale products which are only used for the ingestion of illegal drugs. Several communities are exploring various methods of curbing this "in your face" display of products facilitating the use of illegal drugs, especially for our young people. Small smoking pipes, screens for pipes, and other products can be seen in many small convenience stores and head shops. Local efforts have met with limited success in dealing with this problem. Law enforcement agencies are frequently asked by citizens, many of them parents, why we can't do something about the sale of these items. Our experience has been difficulty with existing language in showing the intent for the product to be used for illegal drug consumption when the specific device has yet to be used in that manner. The only cases we are able to pursue with frequent success are those where we can show the item has already been used for illegal purposes. This addresses the drug user but does nothing to address the availability of products any reasonable person knows are only being purchased to facilitate illegal drug use and does nothing to keep these products more difficult for first time drug users to obtain.

The additional language in section 1 of the bill should clarify its applicability to items with the only logical use being to facilitate illegal drug use. The additions presented in section 2 and 3 will also aid in the prosecution of these cases. The provisions of section 4 provide good incentives for persons not to possess or sell these products.

The House Judiciary Committee worked this bill very carefully and amended it to closely follow federal law terminology.

We hope the provisions of this bill will assist us in getting the easy accessibility to these products stopped. If it does, we will be able to meet the demands of many of our community members and decrease the availability of these products.

We urge you to recommend passage of HB 2359.



Ed Klumpp  
Chief of Police-Retired  
Topeka Police Department

Legislative Committee Chair  
Kansas Association of Chiefs of Police  
E-mail: [eklumpp@cox.net](mailto:eklumpp@cox.net)  
Phone: (785) 235-5619  
Cell: (785) 640-1102

Senate Judiciary  
3-14-07  
Attachment 10



2209 SW 29th Street

Topeka, KS 66611-1908

Phone: 785-266-4606

Fax: 785-266-3833

March 13, 2007

Chairman Vratil  
Senate Judiciary Committee

Dear Chairman Vratil and Members of the Committee:

RE: House Bill No. 2359

I am writing as Chairperson of the Drug Paraphernalia Task Force in support of HB2359. Our task force has been meeting for the past year to address the drug paraphernalia issue in Shawnee County and across the state. The task force represents 13 agencies which include the Topeka Police Department, Shawnee County Sheriff's Office, Kansas Bureau of Investigation, Westar, Kansas Methamphetamine Prevention Project, Kwik Shops, Alcohol Beverage Control, Shawnee County Drug Court, Topeka City Attorney's Office, Safe Streets, Petroleum Marketers and Convenience Store Association, Prevention and Recovery Services and Kansas Family Partnership. The group used a multi-faceted approach to address this complex issue. The following is a listing of some of the activities and accomplishments of the Task Force:

- March 2006- Volunteers visited 88 gas stations, convenience stores and tobacco stores with a paraphernalia checklist to document the level of the problem in Shawnee County.
- April 2006- A Drug Paraphernalia Task Force with 13 agencies involved was formed.
- May 2006- A 14 year old volunteer was able to purchase paraphernalia at 3 stores near local schools.
- May 2006- Informational flyers were distributed to local elementary and middle schools.
- May 2006- A partnership was formed with the Kansas Department of Agriculture. Inspectors were provided checklists and began compiling information about the availability of paraphernalia in stores around the state.
- Summer 2006- Public awareness and media campaigns focused on paraphernalia were launched.
- Summer 2006- Customer dissatisfaction cards were created and distributed to the public to give to store owners/managers at local stores that were selling paraphernalia.



Senate Judiciary

**SAFE STREETS... a program of Prevention & Recovery Services - a United Wa**

3-14-07  
Attachment 11

March 13, 2007

Page 2

- July 2006- A presentation was given to Shawnee County Commissioners and information was provided to the Topeka City Council which led to the passage of a Topeka ordinance and a Shawnee County resolution requiring stores selling certain paraphernalia items to pay licensing fees. The revenue generated was earmarked for the Shawnee County Drug Court.
- Fall 2006- A website was established to educate the public about paraphernalia and available resources.
- Fall 2006- Local volunteers and law enforcement officers visited stores to determine if they were compliant with the recently enacted licensing regulations. Enforcement action was taken on stores in violation of the regulations.
- November 2006- An informal statewide survey of law enforcement agencies was conducted. The results demonstrated paraphernalia is a statewide problem.
- February 2007- House Bill 2359 is introduced in the Kansas Legislature.

The Task Force, made up of 22 members, has worked diligently this past year to address this issue. We have involved local and state entities as well as utilized an active grassroots movement to bring attention to this matter. At this point, legislative assistance is necessary to continue effectively addressing this important issue. The language in the current statute often causes confusion in its interpretation. It is critical that the language in the existing statute be clarified so that law enforcement agencies, prosecutors and store owners alike will interpret the statute similarly.

I greatly appreciate your help in addressing this significant issue. Thank you for your consideration of House Bill 2359.

Sincerely,



Sally Zellers

Director, Safe Streets Topeka-Shawnee County  
Chair, Drug Paraphernalia Task Force

Kansas Department of

# Social and Rehabilitation Services

Don Jordan, Secretary

Senate Judiciary Committee  
March 14, 2007

**HB 2001 - Rights and Rules  
of Sexual Predator Treatment Program  
Residents**

Health Care Policy  
Dr. Mark Schutter, Superintendent  
Larned State Hospital  
(620) 285-5806

For additional information contact:  
Public and Governmental Services Division  
Kyle Kessler, Deputy Secretary

Docking State Office Building  
915 SW Harrison, 6<sup>th</sup> Floor North  
Topeka, Kansas 66612-1570  
phone: 785.296.0141  
fax: 785.296.4685  
[www.srskansas.org](http://www.srskansas.org)

Senate Judiciary

3-14-07  
Attachment 12

**Kansas Department of Social and Rehabilitation Services**  
**Don Jordan, Secretary**

Senate Judiciary Committee  
March 14, 2007

**HB 2001 - Rights and Rules of Sexual Predator Treatment Program Residents**

Chairman Vratil and members of the Committee I am Dr. Mark Schutter, Superintendent of Larned State Hospital. Thank you for allowing me to speak with you today.

In carefully considering House Bill 2001, I think it is critical to remember that patients receiving services in the various programs at the different state hospitals are very different from one another. We ought to think about each patient group separately when making decisions impacting community safety, the safety of our hospital employees, the safeguarding of patient rights, and the responsible use of the state's resources. This bill preserves the rights of patients with a serious mental illness or a developmental disability, gives professionals the means to better ensure the safety of children in our communities and employees at our state hospitals, and permits better clinical and fiscal management of certain patient situations.

Please join me in looking at some of the changes that HB 2001 proposes. Section 1 outlines the rights for the Sexual Predator Treatment Program (SPTP) residents. This is in recognition of the fact that compared to individuals with severe and persistent mental illness in LSH and OSH's other programs, or individuals with developmental disabilities at KNI or Parsons, the vast majority of SPTP residents function at a high cognitive level and are not mentally ill outside the area of their sexual offending. These are individuals who do not need the same safeguards with respect to patient rights that other patients do. The legislature recognized that sexually violent predators are different in important ways from most with a mental illness or developmental disability when the Violent Sexual Predator Act was created in 1994. The vast majority of SPTP residents are diagnosed as pedophiles and over 50% are also diagnosed with anti-social personality disorder. Only about 2% of residents are diagnosed with a serious mental illness. The Bill of Rights for Mentally Ill Patients does not fit the treatment and security needs of the Sexually Violent Predator (SVP) population. Other states have recognized this fact and have adopted a separate bill of rights for SVP's. Looking at two examples, we find that Wisconsin's bill of rights is very detailed, while New Jersey's simply acknowledges the differences in populations and directs their Secretary to design rules and regulations based on the needs and characteristics of that population.

While Section 2 (c) has been expanded to include all SRS employees working at any state hospital, it will not infringe on the rights of mentally ill or developmentally disabled patients. Patients whose actions are substantially driven by their mental

illness or developmental disability are unlikely to be found competent to stand trial. Each battery and each patient will be considered on a case by case basis, with a focus only on those patients who are clinically considered to be responsible for their actions. In Larned, the County Attorney often inquires about the severity of a patient's illness before filing charges. While civilly committed patients in the Psychiatric Services Program at Larned (which treats patients with mental illness) commit substantially more assaults and batteries than individuals in the Sexual Predator Treatment or State Security Programs, only a subset of them would be seen as potentially competent and/or criminally responsible.

Section 3 (d) states clearly that the rights afforded residents of the SPTP program need to be considered separately from those patients whose low functioning calls for special protection of their rights. SVP's, due to their personality structure and tendencies toward criminal thinking and behavior, need to be managed differently. For example, while it is important to preserve the confidentiality of mail for mentally ill and developmentally disabled individuals, SVP's have at times abused this right. In one LSH example, SPTP residents sent phone cards to developmentally disabled females in the community who they then attempted to coerce into engaging in phone sex with them. Some SPTP residents at LSH have also been able to use their right to confidential use of the mail to contact and harass prior victims. Under current guidelines, LSH was powerless to stop these acts. In yet another example, SPTP residents at LSH who pose an extremely high risk to the community are also protesting the use of handcuffs when taking them into town for medical appointments – though that measure is necessary to assure the safety of children.

Section 4 (2) offers a safe and more cost effective approach for dealing with SPTP residents who have become so irreversibly infirm that they can neither complete the program nor offend against another person. We currently have at least two such individuals who could be cared for in a nursing home at significantly reduced cost to the state. As the SPTP resident population continues to age, keeping such individuals in the SPTP program will result in increasing demands on scarce clinical and financial resources, and will achieve no practical security benefit over other options.

Section 5 (a) (b) clarifies roles and responsibilities with respect to costs incurred in providing care and treatment for committed persons, and for providing transportation and security for patients going to court hearings. Several SPTP residents are contesting the practice of requiring them to share the burden of the cost of treatment. This past year, LSH paid approximately \$101,000 in SPTP resident wages and recouped roughly \$32,000 to pay their bills. Section 5 (c) helps the state avoid an unreasonable drain on state resources due to patient-initiated court involvement. These changes are particularly important with respect to the residents in the SPTP program who are more litigious than any other patient population. There are now several court petitions or lawsuits filed by SPTP residents who consistently see themselves as victims of the State of Kansas and further proclaim that their rights

have been violated because they are not allowed sufficient freedom to do as they like, or that their accommodations are not adequate.

In closing, HB 2001 does not detract from the preservation of the rights of individuals with a mental illness or a developmental disability whose level of functioning calls for special sensitivity to and protection of those rights. It does allow for a more appropriate balance between patient rights and the rights of community members and state employees to be protected from harm, and it helps ensure wise use of scarce resources.

I will be happy to answer any questions from the Committee.