

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on January 29, 2008, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused  
Donald Betts- excused

Committee staff present:

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

Conferees appearing before the committee:

Chief Duane Banzet, Neodesha Fire Department  
Dan McLaughlin, State Fire Marshal  
Robert Waller, Chief Administrator, Board of Emergency Medical Services  
Russell Walter, Chairman, Burton Consolidated Fire District #5  
Chief Gary Curmode, Sedgwick County Fire Department  
Chief Richard Maginot, Soldier Township, Shawnee County

Others attending:

See attached list.

Senator David Wysong and Senator Reitz requested introduction of a bill on a statewide smoking ban and associated penalties. Senator Bruce moved, Senator Schmidt seconded, to introduce the bill. Motion carried.

Senator Derek Schmidt requested introduction of a bill to create an office of consumer protection with the Kansas Corporation for landowners in dealings with oil and gas companies. Senator Schmidt moved, Senator Umbarger seconded, to introduce the bill. Motion carried.

Senator Bruce requested introduction of two bills addressing the extension of the mandatory retirement age of judges. The second bill relates to procedures to fill bench vacancies created by resignations or retirements. Senator Bruce moved, Senator Lynn seconded to introduce the bills. Motion carried.

Tim Madden, Kansas Department of Corrections, requested introduction of two bills. The first bill would authorize the use of inmate labor to repair rental property damaged by a parolee tenant. The second bill relates to restriction on the admission of offenders with ten days or less remaining to be served. Senator Goodwin moved, Senator Donovan seconded to introduce both bills. Motion carried.

The Chairman opened the hearing on **SB 429—Crimes; battery on a firefighter.**

Chief Duane Banzet appeared in support, recounting his personal experiences with increased instances of assault and battery committed during performance of his duties as a firefighter (Attachment 1). Chief Banzet feels that assault against first responders should be a felony the same as it is for law enforcement.

Dan McLaughlin testified as a proponent, stating that fire fighting is a hazardous occupation and supports enactment of this bill (Attachment 2).

Robert Waller appeared as a proponent, stating that emergency medical services attendants (EMS) face many situations that could result in violent behavior (Attachment 3). Mr. Waller proposed that EMS personnel be included in **SB 429**. The Chairman requested Mr. Waller work with the revisor to create a balloon amendment for his proposal.

Russell Walter spoke in favor, relating personal experiences as a victim of violence during performance of his duties (Attachment 4). Mr. Wall encouraged the inclusion of all EMS providers, not just those certified, as well as independent rescue and first responders.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:34 A.M. on January 29, 2008, in Room 123-S of the Capitol.

Chief Gary Curmode, appeared in support, stating all members of Kansas Fire Service and Kansas Emergency Medical Services have protection from assault as they perform their duties (Attachment 5).

Chief Richard Maginot spoke as a proponent, indicating firefighters often deal with people in stressful situations which can often turn violent (Attachment 6). Chief Maginot requested an amendment to include township and fire district firefighters. The Chairman requested he work with the revisor to create a balloon amendment for his proposal.

There being no further conferees, the hearing on **SB 429** was closed.

The hearing on **SB 430–Aggravated criminal threat, penalty** was opened.

Senator Bruce testified as sponsor of the bill indicting current law does not provide for economic loss on productivity as a result of criminal threats (Attachment 7). In addition, it is just as onerous to evacuate a house of worship or large gathering of people with no economic loss attached. Therefore, rather than base the severity level of the offense on economic loss, Senator Bruce feels it is appropriate to set the offense at a Severity Level 5 and allow restitution for economic losses to be decided by the court.

There being no further conferees, the hearing on **SB 430** was closed.

The Chairman called for final action on **SB 411–Factors affecting inmate's suitability for parole**. Senator Vratil reviewed the bill.

Senator Goodwin moved, Senator Schmidt seconded, to recommend SB 411 favorably for passage. Motion carried.

The Chairman called for final action on **SB 412–Health care; medical assistance repayment; discretionary trusts**. Senator Vratil reviewed the bill and noted additional written testimony from the Kansas Health Policy Authority (Attachment 8). Senator Journey suggested removing the proportionality section of the bill.

Senator Journey moved, Senator Schmidt seconded, to delete from SB 412 on page 6, lines 30, 31 and through the semicolon following the cord incarceration on line 32. Motion carried.

Senator Journey moved, Senator Lynn seconded, to recommend SB 412 as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:20 A.M. The next scheduled meeting is January 30, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: JANUARY 29, 2008

NAME	REPRESENTING
LAW/SL	OJA
Ron Szyber	Hein Law Firm
Ed Cross	KIOGA
Cory Sheedy	KHPA
JEAN MILLER	CAPITOL STRATEGIES
STEVE SUTTON	KS BOARD OF EMS
ROBERT WAUER	KS BOARD OF EMS
Tim Madden	KDOC
Callee Hartle	KS Assn for Justice
Richard Samaniego	Keating & Assoc.
Mike Padon	K Sentencing Commission
Brenda Harmon	" " "

**Written Statement  
Of  
Fire Chief Duane Banzet  
In support of SB 429**

Distinguished Senators:

I feel very honored today to be asked to testify before you on Senate Bill 429. It is my hope that you will see the justification for this bill and that this bill will pass both houses and be signed into law by Governor Sebelius.

I am the Fire Chief and EMS Director for the City of Neodesha. Neodesha is a small community of approximately 2,800 people. My department is responsible for providing Fire and transporting EMS services to the community and portions of Wilson County.

We are here today considering the matter before us because I attended a town hall meeting with Senator Derek Schmidt and Representative Forrest Knox almost a year ago now and brought to their attention a situation that had occurred to a member of my staff twice and to myself once in a relatively short period of time last year.

On two separate occasions patients in the back of an ambulance battered Neodesha Firefighter/EMT's while in the performance of their duties. The First incident occurred on the scene of a domestic abuse call with injuries. The male patient had some bite marks on him that law enforcement requested us to look at. After checking the patient's superficial injuries the patient refused transportation to the hospital and signed our refusal form. The law enforcement officer then started to place the patient under arrest. In a blink of an eye the patient became combative in the back of the ambulance and overpowered the police officer when he tripped on the cot. The officer requested our assistance. The patient began swinging his hands and kicking trying to escape. The officer was able to get to his feet and pulled his tazer out but was unable to discharge the weapon with out hitting either Firefighter/EMT-I Woodward or myself some how the patient was able to exit the side door of the ambulance and fell to the ground taking me and the police officer out the door with him. During the scuffle the patient knocked the tazer out of the officers' hand. Additional officers came to assist and took the patient into custody. Firefighter/EMT-I Woodward received an injury to his hand that required physical therapy and I had a bruised hip.

The Second incident occurred in the back of the ambulance while the patient was being transported to the hospital. When the ambulance was only about a block away from the hospital. The patient slipped his legs out of the cot straps and kicked Firefighter/EMT-I Woodward in the head. Police officers who were following the ambulance were radioed to assist the EMS crew. In both incidents the patients were suspected of being under the influence of drugs and or alcohol.

Senate Judiciary

1-29-08

Attachment 1

While talking with a local police officer I was surprised to find out that battery on a firefighter or EMS personal was not a felony. I am asking that Firefighters and EMS be given the same coverage under the law that Law Enforcement has. I believe that Kansas first responders (Police, Fire and EMS) should be covered under the law the same. The penalty for battery should be sufficient for the crime. The people who have chosen to be public servants should be able to count on our laws to provide penalties that help detour the crime against them in the first place. I am asking you to pass a law that will let the public know that it is not acceptable to batter our first responders.

In closing, I would like to Thank Senator Schmidt for submitting this bill for your consideration and I would like to thank the Chairman of the Judicial Committee for allowing me the privilege of testifying before you today. I thank all of you Senators for the work you do in this committee and for considering this bill.

Respectfully,



Duane Banzet  
Fire Chief  
Neodesha Fire Department



# K A N S A S

DAN McLAUGHLIN  
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS  
GOVERNOR

**Testimony on SB 429  
before the  
Senate Judicial Committee**

**By Dan McLaughlin,  
State Fire Marshal  
January 29, 2008**

The Kansas State Fire Marshal's Office stands in support of SB 429 concerning the crime of battery or aggravated battery against a firefighter. Fire fighting is already a hazardous occupation but when they are attacked when trying to perform their duties it adds to their sense of security.

In Kansas, based on reports provided to our office by the fire departments we average at least 11 injuries sustained to firefighters on the job. This is out of 250 injuries reported each year. There are also many times that this goes unreported when they may be struck with something, or spit on, as many of the people they come in contact with may be under the influence of alcohol and/or drugs. And as our state is made up of mostly a volunteer force this becomes a deterrent of volunteering. We encourage the committee to pass out favorably this bill.





# KANSAS

DENNIS ALLIN, M.D., CHAIR  
ROBERT WALLER, CHIEF ADMINISTRATOR

KATHLEEN SEBELIUS, GOVERNOR

## BOARD OF EMERGENCY MEDICAL SERVICES

### Testimony

**Date:** January 28, 2008  
**To:** Senate Judiciary Committee  
**From:** Robert Waller, Chief Administrator  
**RE:** Senate Bill 429

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony on the Senate Bill 429, my name is Robert Waller and I am the Chief Administrator for the Kansas Board of Emergency Medical Services (KBEMS).

Assault and Battery is defined as "the combination of two violent crimes: assault (the threat of violence) and battery (physical violence), and along with other public safety personnel the effects of such violence effects EMS. In a recent article "Fielding more calls, city EMTs often attacked, injured" written in the Journal of Emergency Medical Services (JEMS) magazine on September 1, 2007 by David Abel, EMS personnel in Boston were interviewed to discuss assaults on attendants, the following is a portion of the article...

"One had his nose broken four times. Another was attacked with cinder blocks dropped off the roof of a housing project. Others have been stabbed with drug-filled syringes, chased by dogs, and strafed by gunfire after arriving at crime scenes before the shooting stopped...

...But EMTs, who are responding to more calls each year, often become victims themselves as they face Boston's rampant street violence without the guns, mace, and nightsticks that police officers carry.

Last year, 28 percent of the 193 injuries suffered by city EMTs were the result of violence, a figure that has held constant over the past five years, according to Boston Emergency Medical Services. This year EMTs have been injured in 24 attacks.

Since 1994, four EMTs have left the department as a result of injuries from violence.

Nationally, no one tracks the number of EMTs and paramedics -- highly trained EMTs -- injured in violence on the job, but the National EMS Memorial Service, a volunteer group in Virginia, said 30 EMTs have died because of violence since 1993, 14 of them while responding to the terrorist attacks on Sept. 11, 2001.

"Violence isn't something an EMT should have to deal with," said Richard Serino, chief of Boston EMS, who noted that more than half of last year's total number of injuries left his employees out of work for a day or more. "One EMT injured as a result of an assault is too many."

When they encounter trouble, they have only a radio to call for help and handcuffs to restrain the attacker. Their radios, they say, aren't much help, because they can't call police directly; they must wait for an EMS dispatcher to e-mail police dispatchers..."

EMS attendants face a myriad of situations that could result in violent behavior. EMS attendants provide patient care not only for citizens who are critically ill, or involved in accidents (motor vehicle, industrial, etc), but also those citizens on illegal drugs, those suffering from a nightmare of paranoid delusions, and the mentally handicapped. EMS faces these dangers due to our responsibility to provide patient care and the need to assess and access the patient as quickly as possible. The goal of EMS is first "do no harm to the patient" and secondly, to return to the station safe and sound. However, violence against EMS providers is an ever-present danger one that is only now being researched and recorded.

### **Amendment**

KBEMS would propose the addition of the following language:

AN ACT concerning certain firefighters; establishing certain employment rights.

(a) No employer may discharge any employee by reason of the fact that the employee performs duties as a volunteer firefighter or certified emergency medical services attendant as defined by KSA 65-6112.

### **Conclusion**

Simply, members of the Committee, the passage of Senate Bill 429 provides EMS personnel legal protection from violence that undoubtedly EMS attendants face as they provide pre-hospital care face to face person to person 24 hours a day, 7 days week, 365 days a year. These are the individuals that get up in the middle of the night to help others when they are in need. KBEMS would ask that you help us protect the attendants of our state, and punish those who would attempt to prevent them from their service.

Thank you for allowing me to testify in support of the amended version of Senate Bill 429 and I will stand for any questions you may have.



Senate Committee on Judiciary

By Russell Walter

Chairman of Burrton Consolidated Fire District # 5

Testimony – SB 429

January 29, 2008

My name is Russell Walter. I am here as the Chair of Burrton Consolidated Fire District #5 and as the Burrton City Councilperson over Police, Fire and EMS. I am also here as an active field provider for both the Fire Department and the EMS department.

In regards to SB 429; I support the concept of this bill. All emergency services personnel should have this protection. I have personally been the victim of on scene violence as a Fire and EMS provider several times over the last 27 years. I have had a knife pulled, dogs turned loose and been physically assaulted while trying to render patient care. I have also witnessed several cases of others being assaulted as well. I would caution you to look closely at the wording as to not leave out anyone. Not all EMS providers are certified attendants. There are also independent Rescue and First Responder services that need the same coverage.

Thank you and I will be glad to answer questions

Russell Walter

# Kansas Professional Fire Chiefs Association

Gary Curmode, President 316-660-3473 4343 North Woodlawn Bel Aire, Kansas 67220-3837

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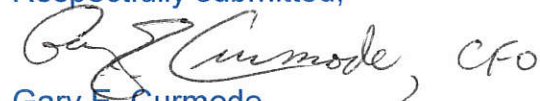
Senate Committee on Judiciary  
By Fire Chief Gary E. Curmode  
Testimony--SB 429  
January 29, 2008

Mr. Chairman, members of the committee: I am Gary Curmode, Fire Chief of Sedgwick County Fire District #1. Also, I am President of the Kansas State Professional Fire Chiefs Association.

I am in support of SB 429. It is imperative that our men and women of the Kansas Fire Service and the Kansas Emergency Medical Services have protection and support from "would-be assailants" as we perform our duty in the protection of life, property, and providing excellent medical care to our citizens of the State of Kansas. Many times in my career there have been assaults on our crews as we have tried to provide emergency response to ease the suffering and/or save the lives of individuals-both adult, pediatric, and newborn. On an average of eleven (11) times a year, somewhere in Kansas our firefighters/EMTs/Paramedics are being assaulted and battery while doing our job tasks. I can recall numerous instances as a responder myself, that emergency crews have been attacked while in the line of duty. In Sedgwick County alone, this happens several times a year, and there has been few laws that have been enacted to help minimize this. Please seriously consider this legislation to support emergency responders while they perform their duty.

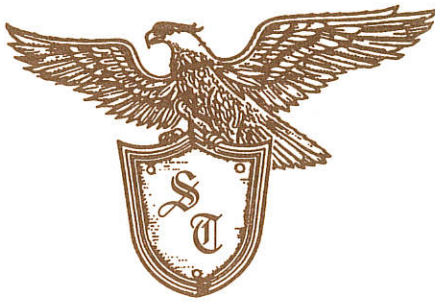
Thank you for your time today in addressing this important issue.

Respectfully submitted,



Gary E. Curmode

Fire Chief/President-Kansas Professional Fire Chiefs Association



# Soldier Township

600 N.W. 46th, Topeka, Kansas 66617

**Testimony on Senate Bill 429  
Relating to Battery on a Firefighter  
By  
Richard Maginot, Fire Chief  
January 29, 2008**

Firefighters often deal with people under very difficult circumstances. Whether their house or business is on fire, they or their loved ones have been injured in an accident or some other tragedy has befallen them they can sometimes become upset and angry. When this happens the situation may turn to violence against firefighters.

SB 429 amends current laws relating to the battery against a law enforcement officer to add battery against a firefighter.

Soldier Township supports SB 429 with a proposed amendment to the bill. The current language added by the bill in several sections reads "(C) a *uniformed or properly identified state, county or city firefighter*". There are other firefighters that are on Township or Fire District fire departments throughout the State that need to be included in the bill.

We would suggest the language in the bill be amended to read "(C) a *uniformed or properly identified state, county, township, fire district or city firefighter*" throughout the bill.

Thank you for your consideration.



TERRY BRUCE

STATE SENATOR  
34TH DISTRICT  
RENO COUNTY

TOPEKA

SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

VICE CHAIR: JUDICIARY  
MEMBER: JOINT COMMITTEE ON SPECIAL  
CLAIMS AGAINST THE STATE  
AGRICULTURE  
ASSESSMENT & TAXATION  
NATURAL RESOURCESTestimony in Favor of SB430  
before the Senate Judiciary Committee

January 29, 2008

Good Morning Mr. Chairman and members of the Committee.

I am here to testify in favor of SB430, or more appropriately, to request a change to Kansas' Aggravated Criminal Threat Statute, K.S.A. 21-3419a..

This past summer a number of bomb threats were called in to local Dillons stores in the Hutchinson area. They were originally perpetrated by a very sophisticated criminal enterprise operating in a foreign country. Unfortunately, copy cats caught on and called in more bomb threats at other stores in the Hutchinson area.

Prior to these events being referred to the U. S. Attorney's office, the local DA had to receive evidence as to the economic loss each location suffered. This economic loss is limited to the total of all wages and salaries. It does not include a loss of sales on productivity. The higher the economic loss, the higher the severity level.

Prompted by the Manager of the Hutchinson Walmart, Josh Anderson, to revisit this formula. I originally wanted to allow for the loss of sales and productivity to be included in the formula for economic loss. However, the question arose, "Why does the severity level depend on economic loss at all?" Does a church or a convention center that is evacuated pose less of a risk to life or property because it is not a business and does not incur a significant loss of salary or wages if evacuated?

In some situations, I believe it is more onerous to evacuate a house of worship or a large gathering of people. This is why SB430 removes the criteria of economic loss and sets it at an across the board Severity Level 5. As for the loss of salaries, wages, productivity or sales, these issues would be subject of restitution orders where the court will order the victims to be made whole.

I thank the Committee for it's consideration on this matter.

HOME  
401 E. SHERMAN  
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TOPEKA,  
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E-MAIL: BRUCE@

Senate Judiciary

1-29-08

Attachment 7



MARCIA J. NIELSEN, PhD, MPH  
Executive Director

ANDREW ALLISON, PhD  
Deputy Director

SCOTT BRUNNER  
Chief Financial Officer

BARBARA LANGNER, PhD  
Policy Director

January 22, 2008

The Honorable John L. Vratil  
Chairman, Senate Judiciary Committee  
Statehouse, Room 123-S  
Topeka, KS 66612

RE: SB 412 – Medicaid Supplemental Trusts

Dear Mr. Chairman:

I respectfully direct your attention to SB 412, which will be before the Senate Judiciary Committee on Tuesday, January 22, 2008. KHPA will be taking a neutral position on the bill.

Nonetheless, I would like to note the cooperative efforts of KHPA staff in working with various interest groups on the technical amendments to the trust rules found in K.S.A. 39-709 (e) (3), the statutory section being amended by SB 412. As you are aware, Medicaid is a complicated program governed by not only state rules but also by numerous federal statutes and rules. Often these cases become acrimonious litigation with entrenched positions revolving around facts subject to varying interpretations. Trust cases have the potential for this result because of competing interests between a state agency trying to manage limited resources for needy citizens and families seeking medical care for a loved one.

KHPA, through Reid Stacey and Brian Vazquez, have discussed the agency's concerns with various interest groups about trust practices. Similarly, Eric Anderson, an attorney from Salina, and members of the probate section of the Kansas Judicial Council have been willing to discuss their concerns over the agency's positions in trust cases. Despite differences, KHPA, the Kansas Judicial Council and Eric Anderson have found common ground. The language used in SB 412 is a fruit of that cooperative discussion. The efforts of these individuals and parties should be noted as an example of successful cooperation between a state agency and interested people in trying to resolve differences.

I would request that this letter be offered at the hearing on SB 412.

Sincerely,

Marcia J. Nielsen, PhD, MPH  
Executive Director

Cc: KHPA Executive Team

Agency Website: [www.khpa.ks.gov](http://www.khpa.ks.gov)  
Address: Rm. 900-N, Landon Building, 900 SW Jackson Street, Topeka, KS 66612-1220

Medicaid and HealthWave:  
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State Senate Judiciary  
Phone: 1-29-08  
Fax: 8  
Attachment 8