

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:35 a.m. on January 15, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Toni Wellshear, Member, AARP Kansas Executive Council
Lee Everett Urban, Assistant Attorney General, Kansas
Ed Brancart, Office of the District Attorney, Wyandotte County

Others attending:

See attached list.

The Chairman opened the hearing on **SB 6 - Professional fund raisers; required disclosures.**

Jason Thompson, staff revisor, provided an overview of the bill.

Senator Derek Schmidt spoke in support, indicating the proposed bill is aimed at making sure Kansans know where their money is going when approached by telephone solicitation. The bill would require telephone solicitors to disclose how much of each dollar donated actually goes to the charity (Attachment 1).

Toni Wellshear appeared in support, stating the proposed legislation would protect Kansans from unscrupulous marketers and solicitors that often target older people. Ms. Wellshear believes consumers need to have the best information available in order to best manage their resources (Attachment 2).

Lee Urban provided neutral testimony stating concern by the Attorney General's Office that **SB 6** is likely to be deemed unconstitutional based on a Supreme Court ruling Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781 (1988). The bill requiring disclosure of the percentage of gross receipts that goes to charity before asking for a donation, compels speech. Mr. Urban suggested working with Senator Schmidt and interested parties to craft amending language to accomplish the underlying goal of the legislation (Attachment 3).

Written testimony in support of **SB 6** was submitted by:

Douglas C. Tank (Attachment 4)

There being no further conferees, the hearing on **SB 6** was closed.

The hearing on **SB 19 - Concealed weapons; U.S. attorneys, county and district attorneys and assistants** was opened.

Senator Derek Schmidt spoke in support as sponsor of the bill indicating that prosecutors deal with the same group of often-unsavory characters as law enforcement officers. They have personal safety issues above those of the average citizen and this bill would provide an avenue of protection similar to that for law enforcement officials. Senator Schmidt indicated there would be a higher level of training required than what is required for normal concealed carry permits (Attachment 5).

Ed Brancart appeared in support, suggesting that two separate training requirements places a burden on prosecutors that does not exist with other public servants. He suggested a prosecutor-specific training course and that prosecutors should not bear the cost of such training (Attachment 6).

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on January 15, 2009, in Room 545-N of the Capitol.

Written testimony in support of **SB 19** was submitted by:

Richard Delonis, President, national Association of U.S. Attorneys (Attachment 7)

Thomas R. Stanton, Deputy, Reno County District Attorney (Attachment 8)

There being no further conferees, the hearing on **SB 19** was closed.

The next meeting is scheduled for January 16, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-15-09

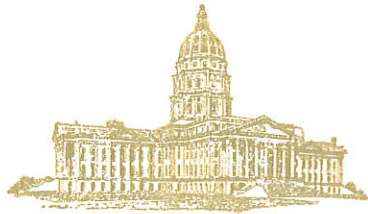
NAME	REPRESENTING
John Kellshead	AARP
Gus Kungly	AARP
Dan Gibb	KSAG
Lee Urban	KSAG
CW Klebe	KSAG
Joseph Molina	KS Bar Assoc.
Ligh Keck	Main Law Firm
Jeff Bottsberg	Polsinelli
Scott K. Blund	Sen. Majority Leader
SEAN MILLER	CAPITOL STRATEGIES
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Testimony in Support of Senate Bill 6
Presented to the Senate Judiciary Committee
by Senator Derek Schmidt

January 15, 2009

Mr. Chairman, members of the committee, thank you for the opportunity to testify today in support of Senate Bill 6.

This legislation would amend the Charitable Organizations and Solicitations Act to require that telephone solicitors raising money for charities affirmatively disclose, during their telephone solicitation, how much of each dollar donated would actually go to the charity.

I call this a 'truth in giving' proposal. This legislation is aimed at making sure good-hearted Kansans know to whom they are giving when they agree to donate to a charity. If, say, half the money goes to the charity and the other half to third-party fundraising expenses, Kansans should know that.

This problem has troubled me for almost a decade, since I served as an assistant attorney general for Kansas in the consumer protection division. But in years past, the bustle of the start of a new legislative session has pushed this issue to the back burner.

This year, I received one of these solicitation calls in late November. That story is relayed in the attached newspaper column, which was published in some of my district newspapers.

I believe it is time to act to ensure Kansans know to whom they are actually giving.

Thank you again. I would stand for questions.

Senate Judiciary

1-15-09

Attachment 1

Under the Dome A Weekly Legislative Update by Senator Derek Schmidt

January 2, 2009

Know who you're giving to

INDEPENDENCE -- (January 2, 2009) -- My home phone rang one afternoon in late November, and when I answered it the man on the other end said he was calling for a well-known Kansas charity.

I'm a fan of this particular charity (which I'm not going to name - no need to embarrass them). So I listened to his sales pitch.

The fellow told me that he was calling for this charity and that they do good work. Didn't I agree? He also said the charity would like me to donate some money to help their good cause. Would I do that?

Now, as I said, I like this particular charity. I've worked with it in the past. I support it.

But I had some questions for this poor fellow.

"Where are you right now?" I asked him.

"What do you mean?" was his befuddled reply.

"I mean, where exactly are you while we are talking to each other on the phone?" I continued.

"In my office," he said.

"And where is that? What town? What state?" I pressed on.

He gave me the name of a town in Missouri.

Now, that seemed a bit odd, since he was calling for a charity that is exclusively Kansas-based.

So I asked my next question.

Are you an employee of this charity? I asked him.

"I work for them," he replied.

"That's not what I asked. Are you an employee? Or are you a paid, contract solicitor they hired to help them raise money?" I persisted.

"I work for them," he said again.

I tried a different approach.

"Whose name appears on your paychecks?" I asked. Were his paychecks cut from the charity's account?

That got the answer I needed. The chap told me he was paid by a different company, not the charity itself. He was a paid solicitor.

So I asked my final question.

"What percentage of each dollar I might give you would actually go to the charity?" I asked. "And what percentage would your company keep?"

The fellow yammered about the question for a while. After some back-and-forth, he told me: "I'm sure at least half of your donation would actually go to the charity."

Actually, the fellow was wrong. I happen to be privy to some aspects of the arrangement this particular charity has with their contract solicitor, and the fellow's answer was misleading at best, inaccurate at worst. But I cut him some slack -- he was having a bad day, after all.

I didn't give any money that day. I told the man I'd rather give directly to the charity in Kansas than go through some out-of-state solicitor who was going to take a cut.

He thanked me for my time and hung up. Quickly.

Does any of this sound familiar?

Around the holidays, the number of phone calls soliciting donations to charity always increases. The need is real and great, and many folks are in a particularly giving mood around the holidays.

But it's important, I believe, to know what any donation you make will actually be supporting. And the truth is that most folks won't spend the time or have the inclination to grill the caller who asks for money to find out those details.

-- more --

Under Kansas law, paid solicitors and paid fund raisers helping Kansas charities raise money must register and must meet certain standards of honesty and truthfulness in their telephone solicitations. But, oddly, the law does not require them to disclose the most basic of all information: The fact that they are a paid solicitor, not part of the charity itself, and the fact that they keep a cut from any donation they raise.

Sometimes, that cut is large.

Several years ago, when I served as an assistant Kansas attorney general for consumer protection, I came across situations in which the portion of each donation that actually reached the charity was well under half. I've been told of cases in which the charity's share is as low as 10 or 20 cents on the dollar and the balance goes to the paid solicitor.

It seems to me that this information ought to be disclosed. If a donor wants to give to a paid solicitor -- and there are legitimate reasons that some charities use these kinds of outside firms to help them raise money - - that's just fine. But the donor ought to know how much of their contribution will actually reach the charity in whose name it was solicited.

That's why I will propose legislation this month to require that disclosure. It's a simple bill. It just amends the current Kansas law governing charitable solicitors to require that they tell the person they are calling that they are a paid solicitor, not a member of the charity itself, and what percentage of any contribution will actually reach the charity.

That seems reasonable to me. It's consistent with the spirit of goodwill in which charitable donations are sought and given. It's a provision of law that probably should have been proposed years ago.

As always, I appreciate knowing what's on your mind. The best way to reach me is through my Topeka office at the State Capitol, Room 390-E, Topeka, Kansas 66612 or by phone at (785) 296-2497. You also can e-mail me through my Website at www.DerekSchmidt.com.

Happy New Year!



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January 15, 2009

The Honorable Thomas Owens, Chairman
Senate Judiciary Committee

Reference – Senate Bill 6

Good morning Chairman Owens and Members of the Senate Judiciary Committee. My name is Toni Wellshear and I am a member of the AARP Kansas Executive Council. AARP Kansas represents the views of over 375,000 members in the state of Kansas. Thank you for allowing us to present our comments in support of Senate Bill 6.

Financial security is a top priority for AARP. With the wide use of computerized mailing lists, unscrupulous marketers and solicitors can target specific market segments for scams, questionable products and solicitations. Older people are often the targets of telemarketing solicitors that disguise their efforts as charitable when actually most of the money they collect is not distributed to the charity.

Herb Weisbaum, MSNBC, “Give to charity-but don’t be a sucker” reported that in December of 2007, Americans were expected to give more than \$300 billion to charity and that there were more than one million charitable organizations trying to get a share of this money. He wrote that the “vast majority of charitable organizations are honest and will put your money to good use – most, but not all. And even the legitimate ones sometimes use questionable solicitation tactics to get contributions.”

We believe that the vast majority of charitable organizations are honest and donations will be used wisely. However, AARP cautions members that before they give, they should make sure they know where their money will be going. They should ask questions to make sure contributions will support a worthwhile cause—not just the fund-raiser. (The attached list provides precautions recommended before making charitable donations.)

To further protect citizens, AARP believes that states should pass legislation to:

- deter solicitors from using solicitations that appear to come from the government,
- eliminate deceptive and misleading games-of-chance mailings, including sweepstakes,
- deter fraudulent use of charity look-alike names for solicitation,
- require all charities, and all people and entities soliciting on behalf of charities, to disclose what portion of public contributions is spent on activities related to the group’s charitable purpose.

(over)

AARP believes that consumers need to have the best information available so they can manage and use their resources effectively. Therefore, AARP Kansas supports SB 6 and respectfully requests the support of the Senate Judiciary Committee on this important piece of legislation.

Thank you.

Resources:

http://www.aarp.org/community/AARPWA/journals/Charities_Give_but_Give_/889611



Tips on Making Charitable Donations

To make a gift that counts, AARP encourages members to:

- Find out what percent of the donation will be spent on fundraising,
- Check with the charity directly to see if they authorized the fund raising effort,
- Watch for phony charities using names that sound like legitimate charities,
- Keep records of your donations and pledges so you can check if you are told you made a pledge and cannot recall,
- Pay by check to the charity and not to the fund-raising company.



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Senate Judiciary Committee
Senate Bill 6
Assistant Attorney General Lee Everett Urban
January 15, 2009

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony regarding Senate Bill 6. I am the Assistant Attorney General responsible for enforcement of the Charitable Organizations and Solicitations Act in the office of Attorney General Steve Six.

Senate Bill 6 would amend the Charitable Organizations and Solicitations Act to require professional solicitors to communicate total gross receipts going to charity, excluding the charitable organization's fundraising costs at the initial solicitation. Attorney General Six supports the goal of this legislation but is concerned that Senate Bill 6 is likely unconstitutional on its face.

In Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781 (1988) the United States Supreme Court held this North Carolina statute violated First Amendment free speech:

During any solicitation and before requesting or appealing either directly or indirectly for any charitable contribution a professional solicitor shall disclose to the person solicited...

“(3) The average of the percentage of gross receipts actually paid to the persons established for a charitable purpose by the professional fund-raising counsel or professional solicitor conducting the solicitation for all charitable sales promotions conducted in this State by that professional fundraising counsel or professional solicitor for the past 12 months, or for all completed charitable sales promotions where the professional fund-raising counsel or professional solicitor has been soliciting funds for less than 12 months.” (Emphasis added).

The Court's analysis applies to Senate Bill 6 because requiring a professional solicitor to disclose the percentage of gross receipts that goes to charity, before asking for a donation, compels speech.

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Attachment 3

Adverse Supreme Court case law does not foreclose us from addressing the underlying issue. Attorney General Six believes that by using the existing Kansas Charity Check website, we can integrate the data with one simultaneous search that pulls:

- (1) Whether or not a particular charitable organization is registered in Kansas;
- (2) Links to any professional fundraiser's annual report for a particular charitable organization; and
- (3) Any 990 filing with the IRS through the GuideStar website.

This alternative method would reduce the fiscal impact of the bill and allow the consumer to find out, with a single click of a button: (1) the net proceeds the professional fundraiser gives to a charity; and (2) what the charitable organization is doing with the charitable donations.

The Attorney General's office would be pleased to work with Senator Derek Schmidt and any other interested parties to craft amending language to this bill that would accomplish the underlying goal of the legislation.

DOUGLAS C. TANK
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Thursday, January 15, 2009
Senate Judiciary Committee
State Capitol – Room 545-N

This testimony concerns my experiences with charity telephone solicitations. I read a front page article in The Neodesha Derrick newspaper on 1/08/09 and was extremely pleased that Sen. Schmidt has chosen to address the much too common unscrupulous practices of telephone solicitation.

One of my experiences involved the United States Deputy Sheriff's Association and began with a solicitation call, supposedly from this association, in late December several years ago. I was told about a young deputy sheriff from Kansas who was shot and killed. The solicitor claimed that this deputy would have survived if access to a bullet proof vest had been available to him, but, due to financial restraints, this deputy's department could not afford to supply such a vest. The solicitor also claimed that this deputy left behind a wife and two young children. I certainly felt that a donation was warranted and pledged to make one. A couple of days later I received a letter supposedly from the "UNITED STATES DEPUTY SHERIFF'S ASSOCIATION" thanking me for my pledge and asking me to "Please take a moment and mail your check today." I did so.

Less than a month later in January I received another solicitation call from the same solicitor asking for another donation for the United States Deputy Sheriff's Association. I informed him that I had just made such a donation and asked why he was soliciting another donation in such a short period of time. He flippantly said, "This is a new year. Your donation was made last year." I told him not to call me until December.

That episode raised a red flag, so I decided to research this association on the internet. I found that the United States Deputy Sheriff's Association was located in Houston, TX. I then did a search for the solicitation firm and found that it was located in Kansas City. On the third or fourth page of the solicitor's web site I was astounded when I found, in small print that a donation was distributed in the following manner: 12% of the donation is sent to the charity and 88% is retained by the solicitation firm for "Fundraising and Operating Expenses."

I assumed that this had to be an error, and I contacted the United States Deputy Sheriff's Association in Houston, TX. I spoke with a woman and asked her if what I had discovered could possibly be accurate. The woman nonchalantly answered, "Yeah, that's the deal we have with them." I asked her, "Do you condone stories about a deputy losing his life because his department cannot afford a bulletproof vest, and, more importantly, do you condone the fact that some telephone solicitation organization is retaining 88% of my donation?" She replied, "It's free money for us – we don't have to do anything, and we get a check once a month." Needless to say, I have never made another donation to any charity telephone solicitor.

I only wish that my story ended here, but I came home on July 19, 2007 and my 91 year old mother informed me that she had been contacted by the United States Deputy Sheriff's Association. She told me that she pledged \$25.00. I asked her to ignore the letter that was coming, but she told me that she had given her word and had every intention of sending the pledged donation. Not too long after that, I received another call from this solicitation firm. The solicitor asked to speak to my mother. I told him to remove my telephone number from his list and to cease calling my mother. I also told him that I knew about the 12% / 88% split and had no intention of providing him with an income. That's when he used several inappropriate and highly offensive terms towards me and hung up. He continued to call on a daily basis – sometimes more often than once a day. I finally added "Caller I.D." to my phone service at a cost of \$7.00 per month to end the aggravation.

Senate Judiciary

1-15-09
Attachment 4

Once again, I am encouraged that Senator Schmidt is going to address this issue. My concern is that his proposed solution will rely on the very perpetrators of the problem to resolve it. I am having difficulties believing that these solicitors who are raping prospective donors are going to willingly admit their deviance. Who would have donated \$50.00 to USDSA if they knew that USDSA would only receive 25 cents of their donation? Secondly, legislation such as this requires adherence by those for whom this legislation was created. How and by whom is this legislation going to be enforced?

Sincerely,

Douglas C. Tank

If you visit the following:

Following I have listed some results of my recent research. In one of these it states that only ½ penny of every dollar that was raised under the receiver's supervision went to ADSA.

- **<http://www.kscharitycheck.org/results.asp?solid=2313153>**
You will find a disclosure of 35% to USDSA and 65% (plus their operating expenses) to the fund raising organization.
- **Phone calls for sheriffs' association arouse suspicions.**
http://www2.ljworld.com/news/2003/oct/06/phone_calls_for/
- **The American Deputy Sheriff's Association was, for years, America's best-known "badge scam."**
- **For every dollar ADSA raised under the receiver's supervision in 2005 and 2006, a half-penny actually went to charity. Telemarketing fees, overhead and the receiver's investigation swallowed the rest.**
- **Lewis inherited a contract with Charitable Resource Foundation, a Greenwood, Ind., telemarketer. The contract, which expires in 2011, gives the fundraiser nearly 90 cents of every dollar it raises in ADSA's name.**
<http://www.oeregister.com/articles/adsa-lewis-ohio-1981132-charity-contract>
- **The records indicate that Gold's companies collected \$6.8 million between 1995 and 1997 on behalf of roughly a dozen charities, which received about 11% of the sum.**
<http://articles.latimes.com/1999/may/16/news/mn-37915>
- **In March, the U.S. Federal Trade Commission announced an enforcement action naming Civic Development Group involving FTC charges that CDG misrepresented to consumers nationwide that contributions they were soliciting on behalf of a non-profit organization called the American Deputy Sheriffs' Association would benefit law enforcement in their own communities.**
http://www.iowaattorneygeneral.org/consumer/press_releases/disabled.html
- **Civic Development Group is still in business.**
<http://civicdevelopment.net/>

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Testimony in Support of Senate Bill 19
Presented to the Senate Judiciary Committee
by Senator Derek Schmidt

January 15, 2009

Mr. Chairman, members of the committee, thank you for this hearing today regarding Senate Bill 19.

This legislation would extend to federal and state prosecutors in Kansas the authority to obtain the appropriate training to be treated much like law enforcement officers in their ability to carry weapons. The legislation was requested of me some time back by a federal prosecutor in Kansas, who relayed real-life stories of concern for his personal safety.

I began discussing this concept with interested parties before the concealed carry law passed in Kansas in 2006. After enactment of that statute, I asked the interested parties to review it. Although it provided more opportunity for prosecutors to carry weapons for personal safety than previously, the statute still was viewed as inadequate by some prosecutors, in large part because of the various limitations it contains on where a concealed weapon may be carried.

This bill would authorize federal and state prosecutors in Kansas who hold a concealed carry permit to obtain additional firearms training established through the Kansas Law Enforcement Training Center. Upon completion of that training, a prosecutor would be treated more like a law enforcement officer than an ordinary concealed carry permit holder in terms of his or her ability to carry a firearm.

The rationale of this legislation is simple: Prosecutors deal with the same group of often-unsavory characters that law enforcement officers deal with. They have personal safety issues that are more similar to those of law enforcement officers than those of most other citizens. Therefore, they should have available to them an avenue for personal protection comparable to law enforcement officers.

I have attempted to craft a bill that is permissive rather than mandatory, that requires high levels of added training to obtain permission to carry a weapon, and that reflects a consensus among the interested parties. I do not know whether I have succeeded on these points, but at least this represents a solid starting point for the policy discussion.

Thank you again, Mr. Chairman. I would stand for questions.

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January 14, 2009

The Hon. Senator Thomas C. Owens, Chair, Judiciary Committee
The Hon. Senator Derek Schmidt, Majority Leader, Sponsor SB 19
The Hon. Senator David Haley, Ranking Minority Member, Judiciary Committee
Kansas Senate
Kansas State Capitol
300 S.W. 10th Street
Topeka, Kansas 66612

RE: Written testimony with respect to SB 19

Senators:

Prosecuting attorneys are sometimes in an awkward position - treated as not quite civilian, yet not quite police.

Meanwhile, prosecuting attorneys are heavily involved in holding dangerous criminals to account for their crimes. A career prosecutor may be involved with successive generations of career criminals - with desperate, violent, grudge-holding convicted felons - and with relatives, criminal associates, and other sympathizers to the same criminal defendants. These involvements accumulate. Sometimes they fester in the minds of the societal element who would do a prosecuting attorney harm.

Prosecuting attorneys throughout the United States are sometimes targeted for violence by criminals. You have each probably inspected the memorial on the statehouse lawn of Kansas law enforcement officers killed in the line of duty. There is a similar memorial in the center lawn of the Ernest F. Hollings National Advocacy Center on the campus of the University of

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Attachment 6

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South Carolina in Columbia. This memorial, however, honors prosecutors who were killed across the country during the performance of their duties.

Last August a deputy district attorney in Denver was murdered after being confronted in the yard of his own home by an armed man. It can happen in our neighborhood.

In August of 1993 a man from Jefferson County had been convicted of felony drug crimes. His name was Gary McKnight. On the day he was to be sentenced he came to Topeka armed with homemade bombs and handguns. McKnight went in the federal courthouse where he shot and killed a retired Kansas Highway Patrol trooper who was serving as a security officer in the courthouse. McKnight then searched throughout the building while discharging bombs and firing into court offices and critically injuring more victims. It can happen in our own backyard.

We make the case that district or county attorneys and their deputies and assistants who practice in "hot" courts where felony charges are litigated endure a continuing risk of personal harm by virtue of their public employment. One intending such harm would find prosecuting attorneys easily identifiable in a courtroom, or coming or going from their government offices or parking lots. The same risk follows a prosecutor who joins major case detectives at the scenes of violent crimes. In the case of a person who has fixated on a particular prosecutor the risk to prosecutor carries over to any place at any time. The same can be said of federal prosecuting attorneys.

As a general rule, Kansas prohibits the possession of a firearm under certain circumstances, and the carrying of a firearm concealed from public view in yet other circumstances. See K.S.A. 21-4201. That general prohibition is exempted when it comes to:

- A person doing so on his own land
- A person doing so in his own home

- A person doing so at his fixed place of business
- And...
- Law enforcement officers (without condition)
- Persons summoned by such officers to assist, while actually assisting
- Wardens...and keepers of prisons...jails...for the detention of persons accused or convicted of crime, while acting within the scope of their authority
- Members of the armed services or reserve forces of the US or Kansas national guard, while in the performance of their official duty
- Makers, shippers, and sales personnel of weapons to law enforcement officers, jailers and military personnel
- Watchmen, while in the performance of their employment
- Licensed hunters or fishermen while engaged in hunting or fishing
- Licensed private detectives, while in the performance of their employment
- Railroad detectives, while in the performance of their employment
- The state fire marshal, his deputies, or certain members of fire departments, while in the performance of their employment
- Special deputy sheriff's, who have obtained the training for part-time law enforcement officers
- Persons licensed under the Kansas Personal and Family Protection Act

It seems that at least some of the exemptions apply to the status of persons with greater need to carry a concealed firearm than felony prosecutors. Conversely, the same exemptions apply to those with less need to carry a concealed firearm.

Firearms are tools used both on offense and defense. A full-time police officer would use a firearm on both offense and defense. Prosecuting attorneys would typically not be involved with work-related offensive use of firearms, but instead would have the greatest need in connection with work-related personal defense or defense of others.

Felony prosecutors are entrusted with wide discretion that can and does result in the denial of a convicted person's life, liberty and/or property -- without a firearm. Surely the same public servants can be entrusted with the authority to protect themselves with a firearm.

Felony prosecutors in Kansas should be permitted the possession of firearms and the authority to carry firearms concealed from public view wherever they might be in

harms way, which is in any place and at any time. The authorization for doing so should be a statement of policy, including training policy. It should not include minute requirements that would then be inflexible in implementation.

We certainly concur that felony prosecutors should be adequately trained in the use of firearms. What amounts to adequate training? The answer is apparently a subject of some varied opinion.

First, with respect to the text of SB 19, New Section 4 requires prosecuting attorneys to obtain and maintain a concealed carry license under the Personal and Family Protection Act. Next, in addition to concealed carry training, SB 19 requires prosecutors to obtain firearms training as determined by the director of police training at KLETC. And finally, SB 19 saddles the individual prosecuting attorney with obtaining a concealed carry permit at his own expense.

The issue of expense may be misplaced in an authorizing statute. In the case of prosecuting attorneys, they would be protecting themselves from dangers made possible by their public employment. Law enforcement officers are not required by K.S.A. 21-4201 to pay for their own firearms training, nor are the other classes of public servants exempted from the prohibition against concealed carry. Other than the purely private instance of a concealed carry permit under the Personal and Family Protection Act, the non-public servants exempted in K.S.A. 21-4201 are not obligated by statute to pay for their own firearms training. The issue of payment for training is capable of resolution by other means than an authorizing statute. Nothing in SB 19 places a training burden on any trainer. The issue can be worked out between prosecutor and trainer.

The dual training requirement also places a burden on prosecutors that does not exist with any of the other classes of public servants or private individuals exempted from K.S.A. 21-4201. Additionally, the dual training requirement in SB 19 creates a Catch-22. A prosecutor who first obtains a concealed carry license is subject to the provisions of the PFPA -- which would not permit the carry of a firearm in certain places. If the PFPA licensee violates the rules his license may be suspended or revoked. Meanwhile, a prosecutor who would carry a concealed firearm to his office in a courthouse by virtue of the amendment in section 3 to K.S.A. 21-4218 would necessarily violate the rules associated with the PFPA license.

A PFPA license is not a suitable tool for insuring that prosecutors are adequately trained.

If felony prosecuting attorneys are worthy of having authority to carry concealed firearms at any place and any time, or wherever the legislature will approve, then **we recommend that the appropriate method would be to grant the authority without mention of payment for training, and with a training requirement not more burdensome than full-fledged law enforcement officers.**

District and county attorneys should be free to establish employment policies that would further regulate the possession and concealed carry of a firearm by prosecuting attorneys.

From our perspective the training requirements for PFPA licensure are insufficient for the purposes of prosecuting attorneys. Conversely, we do not advocate that prosecuting attorneys be required to train for the same uses of a firearm as do police. Police training is designed to prepare an officer for both offensive and defensive use of his firearm. Prosecutor training should be weighted to prepare a prosecutor for reasonably expected usage. **A prosecutor-specific training course is warranted.**

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In summation, we favor the concept of authorizing prosecuting attorneys to carry concealed firearms at any place and any time. We favor a policy statement within the law that such prosecutors have minimum mandatory firearms training at a level somewhere between that of PFPA training and full-time police training. We favor drafting the law to not limit a district or county attorney from establishing employment policies that further regulate the use of firearms by prosecuting attorneys.

Respectfully,

A handwritten signature in black ink, appearing to read "Jerome A. Gorman", is written over a horizontal line.

Jerome A. Gorman
District Attorney
Twenty-Ninth Judicial District
Wyandotte County
Kansas City, Kansas



National Association of Assistant United States Attorneys
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January 14, 2009

The Honorable Derek Schmidt
Majority Leader
Kansas State Senate
392-E
300 SW 10th Avenue
Topeka, KS 66612-1504

Dear Senator Schmidt:

I write on behalf of the National Association Assistant United States Attorneys to thank you for your efforts to improve the protection and safety of Assistant United States Attorneys in their efforts to secure justice for all Americans. More specifically, I write to extend the endorsement of the National Association of Assistant United States Attorneys for your proposed legislation to amend Kansas law to more broadly permit the carrying of concealed firearms by the United States Attorney and Assistant United States Attorneys for the federal district of Kansas, as well as Kansas state district attorneys and Kansas county attorneys.

It is well-recognized that firearms represent an effective personal security tool when judiciously placed in the hands of law enforcement officers and others who help to assure public safety. Your legislation responds to the increasing vulnerabilities, threats and assaults faced by federal, state and county litigators. It is narrowly and reasonably crafted, yet desirably promotes and expands the assurance of public safety. We urge the Kansas state legislature to adopt it.

Our association represents the interests of the 5,300 Assistant United States Attorneys (AUSAs) employed by the Department of Justice, including the nearly fifty AUSAs in the state of Kansas, located in United States Attorney Offices in Wichita, Kansas City and Topeka. These brave men and women constitute the front-line career-level employees of the Department of Justice responsible for the prosecution of persons charged with federal crimes, as well as the defense of the United States in civil matters.

Assistant United States Attorneys faithfully serve the people of the United States in significant and necessary ways, including the prosecution of the most serious, sophisticated and violent offenders in our society, ranging from drug kingpins to international terrorists to armed career criminals. The daily dangers faced by an Assistant United States Attorney are extensive and endless. The dangers faced by an Assistant United States Attorney can arise at any time and at any place during the investigation,

President:
Richard L. Delonis
ED of Michigan

Vice President:
Steven H. Cook
ED of Tennessee

Treasurer:
Robert Gay Guthrie
ED of Oklahoma

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appropriate amendment of your legislation to assure that continued sanctions remain against the carrying of firearms, where prohibited by federal law, rule or regulation.

Thank you for your consideration of these comments, and your most valuable efforts to improve the safety and protection of federal, state and county prosecutors. Please contact me whenever and wherever our association may be helpful to you and the Kansas legislature.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard R. Delonis".

Richard Delonis
National President
National Association of Assistant United States Attorneys

TO: The Honorable Senators of the Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney

RE: Senate Bill 19

Chairman Owens and Members of the Committee:

Thank you for allowing me to submit written testimony regarding Senate Bill 19. I have been a prosecutor for nearly eighteen years. I prosecute high-level drug crimes, as well as other serious felony offenses. I am proud to serve the citizens of Kansas as an advocate on their behalf.

Prosecutors serve a unique role in the justice system. We act to insure those who violate the laws of Kansas receive consequences for their actions. As a result, prosecutors are sometimes viewed as being responsible for the severity of those consequences. This can lead to prosecutors being targets of violent acts perpetrated by defendants, their families and their friends.

I have been the recipient of death threats because of my work, and I have also had threats made against my family. Some of these threats were simply the rants of the person making the threat with little or no real probability the threat would be carried out. Many others have been threats I believed could very well be carried out. I have often felt vulnerable to these threats because of my inability to carry a firearm for protection. I know many prosecutors who have the same concerns. I often meet those I have prosecuted out in the community of Hutchinson. Many of these chance meetings occur at local restaurants. I have run into former and current defendants in grocery stores, retail outlets and on the streets of Hutchinson. I recently had a chance meeting with a drug offender I have convicted three times in the Hutchinson Salt Museum. Many of the people I have prosecuted continue to use methamphetamine, making them very dangerous and very unpredictable.

It is for these reasons that I am pleased to see the introduction of SB 19. It is time to provide prosecutors with a way to arm themselves for their protection and the protection of their families. I appreciate the efforts of this body to provide us with the opportunity to protect ourselves.

I do wish to inform you of some concerns I have regarding the current form of the bill, however. I note that section 1, paragraph (b)(7) and section 3 paragraph (c) do place prosecutors in a protected position regarding the possession of concealed weapons generally and within the courthouse. However, the section requires that prosecutors comply with section 4 of the legislation. Section 4. Section 4 requires prosecutors to be licensed at their own expense

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under the carry concealed statute, and to be trained by the police law enforcement training center. As a former police officer, I believe no person should carry a firearm without being first adequately trained. However, I do not see the necessity of requiring both a carry concealed permit and KLETC firearms training. Additionally, I do not believe this legislation should require these conditions be at the prosecutor's personal expense. The source of the funding to meet any training requirements should be left to the individual county or district attorney, in consultation with their specific funding authority.

My other concern with this legislation is found in section 2, paragraph (b)(8). This section excludes prosecutors from the provisions of the criminal discharge of a firearm statute, but only when the prosecutor "is actually engaged in the in the duties of" his or her employment. This language defeats the purpose of the act. Prosecutors should be allowed to defend themselves in any threatening situation, not limited to only those occasions when the prosecutor is in the office or courtroom. Some of the likely scenarios in which a prosecutor might need to defend himself are away from the office, especially in transit to and from the office. A person who threatens to harm me may very well choose an opportunity to do so away from the courthouse.

Thank you for your consideration of my testimony on this issue. I look forward to the opportunity to protect myself and my family.

Respectfully submitted,

Thomas R. Stanton