

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 4, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Charlie Roth- excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Ann Swegle, Deputy DA & President, KCDAA

Rick Fleming, General Counsel, Kansas Securities Commission

Gail Bright, Associate General Counsel, Kansas Securities Commission

Others attending:

Ann Swegle, Deputy DA & President, Kansas County and District Attorneys Association (KCDAA)

Rick Fleming, General Counsel, Kansas Securities Commission

Gail Bright, Associate General Counsel, Kansas Securities Commission

SB 411 - Criminal possession of a firearm

Chairperson Colloton called the meeting to order and opened the hearing on **SB 411** and introduced Ann Swegle, Deputy DA and President of KCDAA, to give her testimony as a proponent of the bill. Ms. Swegle presented written copy of her testimony. (Attachment 1) She stated the bill will add certain drug felonies to the list of offenses under K.S.A. 21-4204 which serve as a basis for a ten-year proscription on the possession of a firearm for persons convicted of those crimes. She also stated it will add references to convictions under statutes which were recently repealed in order to place the crimes under provisions of Chapter 21 of the Kansas Statutes. In closing, she stated the Kansas County and District Attorneys Association request the Committee's favorable recommendation and support of the bill.

A question and answer session followed.

Chairperson Colloton called for any others wishing to testify on **SB 411**. Being none, she closed the hearing on **SB 411** and opened the hearing on **SB 386**.

SB 386 - Preventing transmission of unredacted personal identifiers during discovery; repealing a statute concerning recorded statements of child victims

Chairperson Colloton called on Ann Swegle, Deputy DA and President of KCDAA, to give her testimony as a proponent of the **SB386**. Ms. Swegle presented written copy of her testimony. (Attachment 2) She stated a prosecutor's obligation to provide discovery materials to a criminal defendant is an important one, and one that has both constitutional and statutory foundations. Generally items which reflect exculpatory and inculpatory evidence relevant to the case. Typically these items include personal identifiers of victims and witnesses, e.g., date of birth, home address, social security number, telephone numbers, driver's license number and in some cases financial account identification numbers and other sensitive data. To release these sensitive identifiers or personal or financial security to a criminal defendant could jeopardize a victim or witness' personal or financial security. For these reasons she urged the Committee to please support the bill.

A question and answer session followed with Jason Thompson, Office of the Revisor of Statutes, entering the discussion, to explain portions of the bill to the Committee.

Chairperson Colloton introduced Gail Bright, Associate General Counsel, Kansas Securities Commission, to give her testimony as a proponent of **SB 386**. Ms. Bright presented written copy of her testimony. (Attachment 3) She stated that the bill would make changes in the criminal procedure relating to discovery.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 4, 2010, in Room 144-S of the Capitol.

(Attachment 3) She stated that the bill would make changes in the criminal procedure relating to discovery. It will allow prosecuting attorneys to redact personal identifiers of victims, e.g., account numbers of active financial accounts, from discovery provided to defense counsel.

A question and answer session followed.

Chairperson Colloton called for any others wishing to testify on **SB 486**, being none, she closed the hearing.

SB 345 - H Sub for S 345 by Committee on Corrections and Juvenile Justice - Proportionality of sentencing; property and securities crimes

Chairperson Colloton opened the informational hearing on **H Sub for SB 345** and introduced Rick Fleming, General Counsel, Kansas Securities Commission, to inform the Committee on **H Sub for SB 345** by presenting his testimony. Mr. Fleming presented written copy of his testimony. (Attachment 4) He stated the bill would amend current law on securities crimes and property crimes to differentiate the penalty levels based upon the amount of loss. He explained current law and the proposed law to the Committee. Mr. Fleming addressed the questions of the Committee while giving his testimony.

Upon the conclusion of Mr. Fleming's testimony Chairperson Colloton called for others wishing to speak to the bill and there were none. She closed the informational hearing on **H Sub for SB 345** and adjourned the meeting at 3:00 p.m. The Next scheduled meeting is March 5, 2010 upon the adjournment of the House at approximately at 8:30 a.m. in room 546-S.



Kansas County & District Attorneys Association

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House Committee on Corrections and Juvenile Justice
March 4, 2010

Testimony in Support of SB 411

Submitted by Ann Swegle, Deputy District Attorney
President, Kansas County and District Attorneys Association

Chairman Colloton and Members of the Committee,

Thank you for the opportunity to testify regarding Senate Bill 411. This legislation will add certain drug felonies to the list of offenses under K.S.A. 21-4204 which serve as a basis for a ten-year proscription on the possession of a firearm for persons convicted of those crimes. It will also add references to convictions under statutes which were recently repealed in order to place the crimes under the provisions of Chapter 21 of the Kansas Statutes.

K.S.A. 21-4204 (a)(4) criminalizes the possession of a firearm by a person who has been convicted within the previous ten years of certain violent crimes, as well as felony crimes under the uniform controlled substances act. The drug crimes currently covered by the statute include felony crimes involving the possession, cultivation and sale of controlled substances. Crimes under K.S.A. 21-36a03, 21-36a07 and 21-36a09 (formerly K.S.A. 65-4159, 65-4141 and 65-7006) would be added to the list of crimes covered by the provisions of the statute under the provisions of this legislation. These crimes include the unlawful manufacture of controlled substances, unlawfully arranging a drug transaction using a communication device and possession of chemicals (anhydrous ammonia, lithium metal, pseudoephedrine, etc.) with the intent to manufacture methamphetamine. This body has determined that crimes involving the manufacture of controlled substances are serious crimes, and they carry some of the most stringent sentences of all drug crimes. However, these offenses were not included in those crimes which carry a ten-year firearm proscription under K.S.A. 21-4204.

This legislation basically cleans up the language of the statute to include drug crimes that were inadvertently excluded from the original statute. It adds crimes which are considered some of the most dangerous of all crimes in the ten-year firearm restriction for convicted felons. The Kansas County and District Attorneys Association request your favorable recommendation and support of this bill.

Corrections and Juvenile Justice

Date: 3-4-10

Attachment # 1



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House Corrections and Juvenile Justice Committee
March 4, 2010

Testimony in Support of SB 386

Submitted by Ann Swegle, Deputy District Attorney
President, Kansas County and District Attorneys Association

Honorable Chairman Colloton and Members of the House Corrections and Juvenile Justice Committee:

Thank you for the opportunity to address you regarding Senate Bill 386. On behalf of the Kansas County and District Attorneys Association (KCDA) and Nola Foulston, District Attorney, Eighteenth Judicial District, I would like to bring to your attention some unfortunate collateral consequences related to the provision of discovery materials in criminal cases that have led to this proposed legislation.

A prosecutor's obligation to provide discovery materials to a criminal defendant is an important one, and one that has both constitutional and statutory foundations. Discovery materials – generally items which reflect exculpatory and inculpatory evidence relevant to the case - include police reports and witness statements. These items typically include personal identifiers of victims and witnesses, e.g. date of birth, home address, social security number, telephone numbers, and driver's license number. In some cases, these reports contain financial account identification numbers, vehicle identification numbers, medical information and other sensitive data. The release of these sensitive identifiers or information to a criminal defendant could jeopardize a victim or witness' personal or financial security; in fact, it has already happened.

In the summer of 2008, an incident in Wichita exposed the risk attendant to the prosecutor's discovery obligation, when an inmate in the Sedgwick County Adult Detention Facility awaiting trial on a murder charge began to contact potential witnesses in writing after receiving copies of police reports containing the personal information of the witnesses from his attorney. The obvious intimidation felt by these witnesses also led to fears of identity theft and financial

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vulnerability. The defendant indicated to some witnesses that their information was being passed throughout the jail to inmates who had the ability to use it to the detriment of the witnesses. A somewhat similar situation subsequently occurred in Sumner County, and was brought to public attention by the mother of the defendant, who received the sensitive information from his attorney while in jail.

SB 386 would reduce the likelihood of future incidents of this nature. It allows for the protection of crime victims and witnesses against further victimization. It simply recognizes that unless there is a specific need for such sensitive information, it need not and should not be divulged. It does not adversely impact the defense's ability to have all necessary information to understand or challenge the State's case. Its primary purpose is to restrict access to personal, sensitive information by the defendant personally, unless the court deemed it appropriate for the defendant to have access. While many defense attorneys do not share police reports with their clients, some do. Unless previously redacted by the prosecution, defense counsel would now be required to excise sensitive information about victims and witnesses before disclosure of the reports to the defendant, unless they received court approval to do otherwise.

Similar protections for those involved in litigation were enacted by the Kansas Supreme Court through the implementation of Supreme Court Rule 123 in 2005. This rule requires attorneys to refrain from including, or at minimum partially redacting, information relative to a person's date of birth, social security number or financial account information from all pleadings filed in district courts.

Thank you for your time, attention and consideration in this matter. I would be happy to stand for questions.



OFFICE OF THE SECURITIES COMMISSIONER

MARK PARKINSON, GOVERNOR
CHRIS BIGGS, COMMISSIONER

TESTIMONY IN SUPPORT OF SB 386

**By
Gail E. Bright
Associate General Counsel**

**House Committee on Corrections and Juvenile Justice
March 4, 2010**

Chairwoman Colloton and Members of the Committee,

On behalf of Securities Commissioner Chris Biggs, I appear before you today to testify in support of SB 386 as it relates to K.S.A. 22-3212. This would include support of the amendment inserted by the Senate Judiciary Committee.

SB 386, if passed, would make changes to criminal procedure relating to discovery. The modifications to K.S.A. 22-3212, found at page 1, lines 41-43 and page 2, lines 1-11, would allow prosecuting attorneys to redact personal identifiers of victims, e.g., account numbers of active financial accounts, from discovery provided to defense counsel.

First, let me advise the Committee that the Office of the Kansas Securities Commissioner has an open discovery policy. In fact, we encourage defense counsel to review and copy our files during the pendency of active cases. However, as one might suspect with a financial crimes case, there can be numerous references to savings accounts, checking accounts, brokerage accounts, etc., as well as copies of actual deposit and withdrawal items.

As an example, in a recent trial, the court had to admonish the press not to publish photographs of an investment check being identified by a witness. In today's technologically advanced world, the check was being projected onto a screen for the jury and photographers started taking photographs.

It would be our position that complainants who have already been victimized should not risk additional harm by further publication of their active financial account numbers.

Thank you for the opportunity to appear before you today in support of SB 386 [related to K.S.A. 22-3212]. I would stand for any questions from the Committee.

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Attachment # 3



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

MARK PARKINSON, GOVERNOR
CHRIS BIGGS, COMMISSIONER

House Committee on Corrections and Juvenile Justice

March 4, 2010

Madam Chairperson and Members of the Committee,

Thank you for the opportunity to explain the effect of **House Substitute for Senate Bill No. 345** upon the sentencing for securities crimes in Kansas. Section 3 of the bill amends the sentencing provisions of the Kansas Uniform Securities Act.

Nearly all of our criminal cases include charges of securities fraud or investment adviser fraud. Along with the fraud charges, we often bring charges of selling unregistered securities and selling securities without a license. Because these are the most common criminal charges that we prosecute, I have prepared the attached chart to illustrate the effects of H. Sub. for SB 345 on the sentencing for those crimes.

In addition to the effects shown in the attached chart, H. Sub. for SB 345 makes the following changes to sentences for less common violations of the Kansas Uniform Securities Act:

1. It raises the penalty from a Level 8 to a Level 6 for making false filings, falsifying financial statements or appraisals, obstructing investigations, retaliating against whistleblowers, and falsely stating that a person or security is registered (K.S.A. 17-12a505 & 506). Similarly, it raises the penalty for violating a cease and desist order from a Level 7 to a Level 6.
2. It takes the following crimes out of the loss matrix and assigns them the severity levels as indicated, regardless of the amount of loss:
 - Employing an unlicensed person (17-12a402(d) & 403(d)) – Level 8
 - Employing a person who is barred from the industry (17-12a401(c) & 403(c)) – Level 7
 - Continuing to do business after being barred from the industry (17-12a404(e)) – Level 6
3. It lowers the penalty for “other” violations of the Securities Act, regulations, and orders from a Level 7 to a Level 8.

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In short, H. Sub for SB 345 would lower the sentences for securities crimes with lower dollar losses, but it would raise the sentences for frauds in excess of \$250,000 and other crimes of dishonesty. We believe this is a good trade-off. Under current law, if Bernie Madoff had lived in Kansas when he stole more than \$50 billion, he could have only been prosecuted for level 4 crimes under Kansas law. With no prior convictions, his base sentence would have been limited to 43 months, which would translate into an absolute maximum of 172 months under the double-double rule. With 15 percent good time credit, he would be released in a little more than 12 years.

Of course, the federal government often prosecutes very large, multi-state ponzi schemes, but we believe the state-level laws should have sufficient teeth to make state prosecution a viable option. We prosecute approximately two cases per year that involve losses of more than \$250,000, and unfortunately, million dollar losses are becoming more and more common. We are often frustrated at the lack of interest by federal law enforcement and federal prosecutors in these complex securities frauds. In addition, the securities laws themselves suggest that certain cases are “state problems” even if they involve large losses. For example, investment advisers with up to \$25 million under management are solely regulated by the states. A few years ago, I prosecuted one of these advisers for stealing \$7.3 million from his clients in a ponzi scheme with striking resemblance to the Madoff scheme. It appears that Congress will raise the threshold for federally-registered advisers from \$25 million to \$100 million as part of their financial services regulatory reforms, so we may see even larger cases that seem to be “state problems” by the very nature of the state-federal regulatory structure of the securities industry.

We recognize that securities fraud is given a higher sentence than other types of property crimes under H. Sub. for SB 345. We believe the higher penalties are justified for the following reasons:

- *The victims are unique.* In most property crimes involving large losses, the victims are businesses or the government. In contrast, securities fraud is typically perpetrated against individuals and the victims are often seniors who lose their entire life savings. The impact to victims is much greater in securities crimes than other types of property crimes involving large monetary losses.
- *A fiduciary relationship is violated.* Securities fraud is a unique property crime. It involves a violation of a fiduciary duty, which is a statutory departure criteria for other property crimes. However, the Kansas Court of Appeals has ruled that we cannot use a violation of a fiduciary duty as a departure factor because it is inherent in all securities frauds. *State v. Bryant*, 40 Kan. App. 2d 308, ¶3, 191 P.3d 350 (2008). Therefore, securities crimes should be punished more harshly than other property crimes because they involve an inherent aggravating factor that cannot be taken into account by judges at sentencing.
- *The economic harm is greater than the measurable “loss.”* Securities crimes not only cause the investors to often lose their entire life savings, they also can result in a chilling effect on the financial markets. Investor confidence is fundamental to economic growth

and stability. Confidence in the financial professionals selling the investments and the securities markets are important to capital formation and Kansas' economic prosperity.

Thank you for your consideration of this legislation. I would be happy to answer any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Fleming". The signature is written in a cursive style with a large initial "R".

Rick A. Fleming
General Counsel

Effect of H. Sub. for SB 345

4-4

Presumptive Imprisonment
Presumptive Probation

Securities fraud (17-12a501) Investment adviser fraud (17-12a502)

Amount of Loss	Current Sentence (assuming no prior convictions)	H. Sub. For SB 345 (assuming no prior convictions)
\$1,000,000 or more	Level 4 (38-43 months)	Level 2 (109-123 months)
\$250,000 - \$999,999		Level 3 (55-61 months)
\$100,000 - \$249,999		Level 4 (38-43 months)
\$75,000 - \$99,999	*Level 5 (31-34 months)	*Level 5 (31-34 months)
\$50,000 - \$74,999		*Level 6 (17-19 months)
\$25,000 - \$49,999		*Level 7 (11-13 months)
Less than \$25,000	Level 7 (11-13 months)	Level 8 (7-9 months)

Selling unregistered securities (17-12a301) Selling securities or advising without a license (17-12a401(a), 402(a), 403(a), 404(a))

Amount of Loss	Current Sentence (assuming no prior convictions)	H. Sub. For SB 345 (assuming no prior convictions)
\$100,000 or more	*Level 5 (31-34 months)	*Level 5 (31-34 months)
\$75,000 - \$99,999	*Level 6 (17-19 months)	*Level 6 (17-19 months)
\$50,000 - \$74,999		*Level 7 (11-13 months)
\$25,000 - \$49,999		*Level 8 (7-9 months)
\$2,000 - \$24,999	Level 7 (11-13 months)	Level 9 (5-7 months)
Less than \$2,000		Level 10 (5-7 months)

*Presumptive imprisonment because of special sentencing rule for losses of \$25,000 or more.