

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:30 a.m. on January 27, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the Committee:

Kyle Smith, Kansas Peace Officers Assn.  
Jennifer Roth, Kansas Association of Criminal Defense Lawyers  
Karen Countryman-Roswurm, LMSW, Wichita Children's Home  
Allie Devine, Kansas Livestock Association  
Amanda Lowe, Executive Director, Health Partnership Clinic of Johnson County  
Callie Jill Denton, Kansas Association for Justice

Others attending:

See attached list.

Bill Introductions

Senator Tom Holland requested the introduction of a bill which would add the act of texting to the definition of harassment. The bill was introduced without objection.

Senator Terry Bruce introduced a bill concerning the personal and family protection act. The bill was introduced without objection.

Susan Kang, Kansas Department of Health and Environment, requested the introduction of a bill regarding fingerprinting and background checks for potential employees of KDHE. The bill was introduced without objection.

The hearing on **SB 369 - Open records; reconciling a conflict** was opened.

Jason Thompson, staff revisor, reviewed the bill indicating it is a technical correction following legislation passed in the 2009 Legislative session. (Attachment 1)

There being no conferees the hearing on **SB 369** was closed.

The hearing on **SB 353 - Coercing employment; peonage; human trafficking; aggravated human trafficking; forfeiture** was opened.

Senator Derek Schmidt spoke in support stating **SB 353** is intended to continue the legislature's anti-human trafficking discussion where it left off in 2008. Human trafficking is a crime of economic opportunity and by adding it to the list of crimes subject to forfeiture it will provide law enforcement a powerful tool to combat traffickers. (Attachment 2)

Kyle Smith testified in support, stating that while unusual, human trafficking does occur in Kansas. SB 353 will expand the arsenal available to law enforcement in fighting those who subjugate people as animals for labor and sexual gratification. Mr. Smith provided two proposed balloon amendments. The first would add language to include the element of financial gain when transporting someone and the second would add aggravated human trafficking to Section 11, page 19, line 16. (Attachment 3)

Jennifer Roth spoke in support but indicated concern with Section 3 of the bill. Making a determination as to whether someone is "*lawfully present in the United States*" is not clear cut and could reach beyond the

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on January 27, 2010, in Room 548-S of the Capitol.

intended scope of the legislation. Ms. Roth provided several examples of the difficulties interpreting the language of Section 3, suggested there may be proportionality issues and recommended the Committee consider clarification before recommending the bill. ([Attachment 4](#))

Karen Countryman-Roswurm appeared in favor stating the consequences of sexual exploitation is devastating to the victim resulting in long-term costs to the victim and society. A young person can be sold repeatedly, profiting the trafficker with as much as \$75,000 a year. **SB 353** will decrease the temptation and greed of human trafficking through the civil forfeiture of assets. She recommended use of the term victim of sexual exploitation rather than prostitute. ([Attachment 5](#))

Allie Devine appeared in opposition due to the language contained in Section 3 which may unintentionally trap persons who are not the target of this legislation. While the Kansas Livestock Association does not condone the hiring or exploitation of unauthorized workers it appears the language could be misinterpreted and requested the Committee clarify the language in Section 3. ([Attachment 6](#))

Written testimony in support of **SB 353** was submitted by:

Bishop Scott J. Jones, United Methodist Church, Kansas area ([Attachment 7](#))

Nick Jordan ([Attachment 8](#))

Judy Smith, State Director, Concerned Women for America of Kansas ([Attachment 9](#))

There being no further conferees, the hearing on **SB 353** was closed.

The hearing on **SB 305 - Kansas tort claims act; charitable health care providers** was opened. Jason Thompson, staff revisor, reviewed the bill.

Amanda Lowe spoke in support of **SB 305** and provided a balloon amendment which would strike the language on page 2, lines 20-25. The group that proposed the amended language has agreed with interested parties on language of their own legislation making this amendment no longer necessary. By passing the bill as recommended it will support and strengthen the Safety Net Clinics' ability to provide services to our most vulnerable Kansans by using professional volunteers. ([Attachment 10](#))

Callie Jill Denton appeared in support stating the Kansas Associations for Justice's work on **SB 305** represents their understanding of the narrow intent of **SB 305** and the public policy interests that it serves to encourage the treatment of mental illness in Kansas' Safety Net Clinics. Ms. Denton indicated concern regarding the amended language added in 2009 by the Senate Public Health and Welfare Committee which changes the focus of the bill entirely. The Kansas Association of Justice requested that the Committee amend **SB 305** by striking the language added in 2009 and passing it in its original form. ([Attachment 11](#))

Written testimony in support of **SB 305** was submitted by:

Robert Stiles, Primary Care Director, Kansas Department of Health and Environment ([Attachment 12](#))

There being no further conferees, the hearing on **SB 305** was closed.

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

The next meeting is scheduled for January 28, 2010.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1<sup>st</sup> 27.10

NAME	REPRESENTING
Nilda King	Health Care Access Clinic / KAMU
Mike Hufflis	KAMU
Connie Hullman	KAMU
Robert Stiles	KDHE
Sonita Loyd	KDHE
Jennifer Roth	KACDL
Allie Deane	KLA
JEFF GURDEWIC	KS CHAMBER
Woody Moses	KAPA
Callie Jill Denton	KS Assn for Justice
Lane Walsh	Judicial Branch
Dodie Wellshear	KAFF
Chad Austin	KATA

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 01/27/10

NAME	REPRESENTING
Wigh Keck	Main Law Firm
Lexi Chitwood	501 Gifted
Joe Teeter	501 Gifted Ed.
Ruad / Bria Zuber	KGTC Gifted Ed.
Michael Smith	AG's office
Hannah Nusz	KU Social Work
Whitney Janzer-Pankratz	KU Social Work
Lindsay Pack	KU Social Work
Julie Evnen	KU Social work
Ashley Ballweg	Pinegar, Smith + Associates
Jeff Bottenberg	Polsinelli, Shughart P.C.
Susan Kang	ICDHE
Margaret Nichols	Register of Records - Shawnee Co.
Lisa Malm	KS BART ASSN
Richard Spruztego	Kemey Assoc.
Catie Rech	KNASW
Cimanda Lowe	KAMK
Cathy Harding	KAMU

MEMORANDUM

To: Chairman Owens and Members of the Senate Judiciary Committee  
From: Jason Thompson, Assistant Revisor  
Date: January 27, 2010  
Subject: SB 369 - Open records; reconciling a conflict (11)

K.S.A. 2009 Supp. 45-221 is the version adopted in 2009 HB 2099 (2009 SL Ch. 125, Sec. 1).

K.S.A. 2009 Supp. 45-221i is the version adopted in 2009 SB 336 (2009 SL Ch. 143, Sec. 17).

SB 369 simply repeals 45-221i, leaving 45-221 as the law.

K.S.A. 2009 Supp. 45-221 provision:

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

... (47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(Emphasis added)

K.S.A. 2009 Supp. 45-221i provision:

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

... (47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of crime, domestic violence or sexual assault.

(Emphasis added)

Senate Judiciary

1-27-10

Attachment 1

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15th District Office  
P.O. Box 747  
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**Senator Derek Schmidt**  
Majority Leader

Committee Assignments  
Chair: Confirmation Oversight  
Vice Chair: Assessment & Taxation  
Judiciary  
Organization Calendar & Rules  
Member: Legislative Post Audit  
Interstate Cooperation  
Message Only (800) 432-3924  
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**Testimony in Support of Senate Bill 353  
Presented to the Senate Judiciary Committee  
by Senator Derek Schmidt**

**January 27, 2010**

Mr. Chairman, members of the committee, thank you for this opportunity to testify in support of Senate Bill 353.

Last fall, the *Kansas City Star* published a revealing series of articles about human trafficking. The newspaper's investigation did an excellent job of shining light on the extent of this problem globally and also in our own region and state. It caught my attention because of the work our Senate did in proposing legislation to toughen the Kansas anti-human trafficking statutes two years ago.

I believe it is worthwhile for the legislature this session again to consider proposals to strengthen our existing state law against human trafficking. The current human trafficking statute, K.S.A. 21-3446, was enacted in 2005. Then-Senator Nick Jordan was the leader in the Senate in enacting this provision.

Since then, the Senate has considered a proposal to strengthen the Kansas anti-human trafficking laws. In 2008, the Senate debated and approved legislation that included several sections aimed at combating human trafficking. Although approved by the Senate, those measures died in conference committee.

Senate Bill 353 is intended to continue the legislature's anti-human trafficking discussion where it left off. Specifically, the bill again brings before us the four anti-human trafficking proposals that previously passed the Senate in 2008.

In my view, the most powerful element of this proposal is the addition of human trafficking to the list of crimes subject to civil forfeiture. Human trafficking is a crime of economic opportunity, and adding it to the forfeiture list would give law enforcement an added, powerful tool to combat the economic gain that traffickers obtain from their crime.

The other elements of the bill also may have merit. I have included them all in this bill as introduced in the spirit of truly continuing the policy discussion where it left off in the Senate.

Thank you for the opportunity to testify today. I know that the collective wisdom of this committee will further refine these proposals and will carry on the progress we have made in recent years in combating what really amounts to a form of modern-day slavery.

Senate Judiciary  
1-27-10  
Attachment 2

**Senate Judiciary Committee**  
Testimony of Kyle Smith  
Kansas Peace Officers' Association  
In Support of SB 353  
January 27, 2010

Chairman Owens and Members of the Committee,

On behalf of the Kansas Peace Officers Association, I appear today in support of SB 353, addressing the nefarious trade of human trafficking. As demonstrated by the attachments to my testimony, while a fairly unusual crime, human trafficking does occur here in Kansas. This bill would expand the arsenal available to law enforcement in fighting those who subjugate people as animals for labor or sexual gratification.

Section 1 creates new crimes of basically using force and coercion to obtain labor, and section 2 of holding people to provide such labor. These would dovetail with the amended version of the current Human Trafficking statute, K.S.A. 21-3446, found in section 3, where traffickers are involved in the trade of providing such laborers. Most of the remaining amendments merely clarify other statutes that reference 21-2446 by adding the adjective "human" before "trafficking".

However, Section 9 would be a major tool in fighting human trafficking. This section amends K.S.A. 60-4104 by adding human trafficking and aggravated human trafficking to those crimes that give rise to asset seizure and forfeiture. As some of you may remember, I was chairman of the task force that drafted the Kansas Standard Asset Seizure and Forfeiture Act back in 1992. Forfeiture can be a very effective tool against financially motivated crimes. Not only does it removed the assets that are being used to commit the crime, thus rendering them unavailable for future offenses, forfeiture strikes at the very reason the crime exists by removing the profit. This in turn can deter others from entering into such risky and illegal efforts as well as providing resources for law enforcement to conduct these fairly complicated financial investigations. Forfeiture works best when addressing financially motivated crimes.

And money is the root of this evil – note the amounts in the attachments - \$59,000, \$450,000 and \$6,000,000. Why should these criminal enterprises keep these funds? This bill addresses a terrible, dehumanizing crime and deserves your closest and quickest attention.

I do have two balloon amendments. First, on page 2, in Section 3, the language speaks of knowingly transporting someone who is illegally in the United States. We would suggest adding the language in the balloon to add the element of financial gain, so that transporting, such as police transporting a prisoner or a church social worker taking someone to the hospital, is not swept under this criminal sanction. Second, in section 11, on page 19, line 16, we would suggest adding aggravated human trafficking as well which was probably just an oversight.

I would be happy to answer any questions.

### SB 353 KPOA proposed amendments

Page 2

Sec. 3. K.S.A. 21-3446 is hereby amended to read as follows: 21-3446. (a) *Human trafficking is:*

- (1) Recruiting, harboring, transporting, providing or obtaining, by any means, another person knowing that force, fraud, threat or coercion will be used to cause the person to engage in forced labor or involuntary servitude; or *The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;*
  - (2) benefitting financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in subsection (a) paragraph (1). or (3); or
  - (3) *knowingly transporting or assisting in the transporting of any person into this state who is not lawfully present in the United States and who does so for the purpose of commercial advantage or private financial gain.;* or
  - (4) *knowing or in reckless disregard of the fact that an alien has come to, entered or remains in the United States in violation of law, conceals, harbors or shields from detection, or attempts to conceal, harbor or shield from detection, such alien in any place, including any building or any means of transportation and who does so for the purpose of commercial advantage or private financial gain. It is not a violation of this paragraph:*
    - (A) *For a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year; or*
    - (B) *if the state is prohibited by federal law from pursuing a prosecution under this provision.*
- (b) *Human trafficking is a severity level 2, person felony.*

...

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(i) "*Human trafficking*" means an act which if committed in this state would constitute the crime of *human trafficking* as defined by K.S.A. 21-3446, and amendments thereto **or aggravated human trafficking as defined by K.S.A. 21-3447, and amendments thereto.**



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## Parlor operators to be sentenced

BY THE ASSOCIATED PRESS

October 13, 2009 - 4:38am

KANSAS CITY, Mo. - Two operators of massage parlors in Johnson County, Kan., are scheduled to be sentenced Tuesday in federal court for forcing employees to engage in prostitution.

Zhong Yan Liu, also known as "Lucky," and Cheng Tang, also known as "Tom," pleaded guilty last year to human trafficking charges. Each faces up to 40 years in federal prison without parole.

The two admitted to coercing people to travel across state lines and international borders to engage in illegal sexual services. They also pleaded guilty to money laundering for wiring more than \$450,000 from the crimes to China.

Liu and Tang were among four people arrested in 2007 after an undercover operation led to raids of 12 businesses and four homes.

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## Globe owner gets 18 months

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BY [STEVE FRY](#)

Created November 24, 2009 at 12:31pm  
Updated November 25, 2009 at 12:31am

KANSAS CITY, Kan. -- Amarpreet Singh, owner of the Globe Restaurant in downtown

Topeka, was sentenced Tuesday to three concurrent terms of 18 months in federal prison tied to three convictions of harboring three unauthorized workers for commercial advantage or private financial gain.

Singh, 34, remained free on bond following sentencing in the Robert J. Dole U.S. Courthouse and awaits notification by the U.S. Marshal Service on when to report to begin serving his sentence.

Singh attorney Pedro Irigonegaray was jubilant at the outcome on Tuesday, saying "that justice has occurred.

"I'm very pleased that the court found all the allegations about abuse, coercion and threats (by Singh) not to have been proven," Irigonegaray said. Allegations that the workers "were treated as slaves" have been very hurtful to Singh and his family, he said.

A presentence investigation had recommended that U.S. District Court Judge Carlos Murguia sentence Singh to 27 to 33 months based on a finding by the PSI writer that Singh had involuntarily detained three male employees by coercion and threat. After hearing several hours of conflicting testimony, the judge found "the scales are balanced" and rejected enhancing Singh's sentence.

The judge had a choice to sentence Singh to 18 to 24 months, although Singh sought to be placed on probation. Murguia told Singh that a person can commit a crime, but that doesn't mean he is a bad person, adding that Singh has family and friends who support him.

A sentence of 18 months "would be appropriate in your case," the judge said.

The U.S. Bureau of Prisons will decide where Singh will serve his term. Murguia will recommend he serve it at the federal corrections facility in Leavenworth, but the judge said he couldn't guarantee the BOP would follow that recommendation. Singh requested Leavenworth so he could be near his family in Topeka.

One employee, Jacinta Sebastian Pereria, 45, whose body was found April 28, 2008, in a Topeka apartment Singh rented for his employees, had previously complained he was forced to work at the restaurant. Pereria died of acute pneumonia caused by bacteria, according to court records.

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Based on an agreement between prosecution and defense attorneys, Murguia also ordered that Singh forfeit \$59,299 minus \$3,500 for his family. The money was confiscated from Singh's home, business and bank accounts.

Witnesses gave conflicting accounts of whether Singh coerced his employees.

Brian Smithberg, special agent of Immigration and Customs Enforcement for the U.S. Department of Homeland Security, said a confidential informant had told him that Pereria said he wanted to leave the Globe and Topeka. Pereria said he couldn't leave the restaurant because "he didn't have his passport and couldn't get his passport back," Smithberg testified. Singh also owed wages to Pereria, and they wouldn't be paid to him if he left the restaurant, Smithberg said.

But defense witness Richard D. Benson, a Topeka attorney who has known Singh for five years and eaten at the restaurant on a daily basis, said he never saw Singh threaten or coerce his employees.

"It was a collegial relationship that I saw," Benson said.

Singh treated employees with respect and sponsored a birthday party for Pereria, which was "well received" by Pereria and other employees, he said. Benson was one of six witnesses who testified on Singh's behalf.

*Steve Fry either can be reached at (785) 295-1206 or at [steve.fry@cjonline.com](mailto:steve.fry@cjonline.com).*

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## Department of Justice Press Release

For Immediate Release  
May 27, 2009

United States Attorney's Office  
Western District of Missouri  
Contact: (816) 426-3122

### **RICO Indictment Human Trafficking Rescue Project: Eight Uzbekistan Nationals Among 12 Charged with Racketeering, Human Trafficking, Immigration Violations \$6 Million Scheme to Employ Illegal Aliens at Hotels, Other Sites in 14 States**

KANSAS CITY, MO—Matt J. Whitworth, Acting United States Attorney for the Western District of Missouri, announced today that eight Uzbekistan nationals were among 12 defendants indicted by a federal grand jury on RICO (Racketeer Influenced and Corrupt Organizations Act) charges related to labor racketeering, forced labor trafficking and immigration and other violations in 14 states.

"This RICO indictment alleges an extensive and profitable criminal enterprise in which hundreds of illegal aliens were employed at hotels and other businesses across the country," Whitworth said. "The defendants allegedly used false information to acquire fraudulent work visas for these foreign nationals. Many of their employees were allegedly victims of human trafficking who were coerced to work in violation of the terms of their visa without proper pay and under the threat of deportation. The defendants also required them to reside together in crowded, substandard and overpriced apartments."

Many of those workers, added Whitworth, were employed at hotels in the Kansas City area and in Branson, Mo.

"The indictment alleges that this criminal enterprise lured victims to the United States under the guise of legitimate jobs and a better life, only to treat them as modern-day slaves under the threat of deportation," said James Gibbons, Acting Special Agent-in-Charge, U.S. Immigration and Customs Enforcement. "The alleged conspiracy not only victimized foreign workers, but also defrauded U.S. businesses and displaced legal workers in the name of profit. ICE is committed to working closely with its law enforcement partners to target and dismantle human trafficking organizations that flout our nation's immigration laws." Based in Chicago, Gibbons oversees a six-state area, including Missouri.

Abrokhodja Askarkhodjaev, 30, Nodir Yunusov, 22, Rustamjon Shukurov, 21, citizens of Uzbekistan residing in Mission, Kan., Ilkham Fazilov, 44, Nodirbek Abdoollayev, 27, both citizens of Uzbekistan residing in Kansas City, Mo., Viorel Simon, 27, Alexandru Frumasache, 23, both citizens of Moldova residing in Kansas City, Kan., Kristin Dougherty, 49, of Ellisville, Mo., Andrew Cole, 53, of St. Charles, Mo., Abdukakhar Azizkhodjaev, 49, a citizen of Uzbekistan residing in Panama City, Fla., and Sandjar Agzamov, 27, and Jakhongir Kakhkharov, 29, both citizens of Uzbekistan who recently left the United States and are living abroad, as well as three companies owned or controlled by Askarkhodjaev – Giant Labor Solutions, LLC, headquartered in Kansas City, Mo., Crystal Management, Inc., headquartered in Mission, Kan., and Five Star Cleaning, LLC, headquartered in Overland Park, Kan. – were charged in a 45-count indictment returned under seal by a federal grand jury in Kansas City on May 6, 2009. That indictment was unsealed and made public upon the arrests and initial court appearances of eight defendants on Tuesday: Askarkhodjaev, Fazilov, Abdoollayev, Simon, Frumasache, Dougherty, Cole and Azizkhodjaev.

#### **Racketeering**

The RICO indictment alleges that, since January 2001, Askarkhodjaev has been the leader of a criminal enterprise and directed the rest of the co-defendants in carrying out unlawful activities in furtherance of the enterprise. Among the criminal acts alleged in a pattern of racketeering activity are forced labor trafficking, identity theft, harboring illegal aliens, mail fraud, conspiracy to commit money laundering, transporting illegal aliens, visa fraud, extortion, interstate travel in aid of racketeering, wire fraud and inducing the illegal entry of foreign nationals.

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Askarkhodjaev, Yunusov, Shukurov, Dougherty, Fazilov, Simon, Abdoollayev, Cole, Agzamov and Kakhkharov, along with corporate defendants Giant Labor, Crystal Management and Five Star Cleaning, are each charged in one count of racketeering and one count of participating in a RICO conspiracy.

According to the indictment, Askarkhodjaev owned and operated a labor leasing company, Giant Labor Solutions, at 607 Westport Road in Kansas City. Through Giant Labor and a dozen other businesses that he associated with or controlled as part of the criminal enterprise, Askarkhodjaev secured fraudulent labor leasing contracts from clients in the hotel/resort, casino, and construction industries in Missouri, Kansas, Alabama, Arizona, California, Colorado, Florida, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, South Carolina and Wyoming. The criminal enterprise allegedly used illegal aliens as part of its workforce to fulfill labor contracts for housekeeping, cleaning services and other duties.

Giant Labor's workforce was predominately comprised of foreign nationals, the indictment says, who either entered the United States illegally, overstayed their visas, or did not have legal authorization to reside or work in their specific locations within the United States during their term of employment.

Askarkhodjaev and others involved in the enterprise promised their clients to comply with all pertinent labor and immigration laws, to pay all relative employment taxes, and to carry proper insurance coverage. However, they allegedly failed to pay the required employment taxes, failed to pay overtime and failed to pay their workers in the manner required by federal regulations, defrauded insurance companies in order to obtain the required insurance coverage for their employees, and employed aliens that were not authorized to work in the United States.

Askarkhodjaev and others involved in the enterprise allegedly petitioned for hundreds of foreign workers by using false information in their applications in order to obtain certification and approval for H-2B work visa authorizations. The enterprise profited from these fraudulent applications, the indictment says, by collecting fees from the foreign nationals in exchange for obtaining or extending their visas. They allegedly charged fees ranging from \$400 to \$3,000, depending on the type of visa requested.

According to the indictment, Askarkhodjaev associated with or controlled the operations of multiple businesses in several states that fulfilled labor leasing contracts, filed fraudulent visa applications and petitions and concealed unlawful proceeds and the hiring of illegal aliens. Abdoollayev, Dougherty, Cole, Yunusov, Kakhkharov, Agzamov, Fazilov and Shukurov were employed by Giant Labor and also owned or controlled companies in Missouri and Kansas that were utilized to carry out the activities of the criminal enterprise. Simon acted as a supervisor with Giant Labor and Cole was a subcontractor for Giant Labor.

#### **Forced Labor Trafficking**

The federal indictment also alleges that Askarkhodjaev, Yunusov, Shukurov, Fazilov, Simon, Cole and Frumusache aided and abetted each other to obtain the labor and services of a person by means of serious harm and threats of serious harm, and by means of the abuse and threatened abuse of law and legal process. The indictment alleges they intended the person to believe that, if he did not perform such labor and services, that person or another person would suffer serious harm.

According to the indictment, the enterprise required the foreign nationals to work where the enterprise assigned them. The enterprise was already in violation of federal law and the H-2B visa provisions by fraudulently changing the terms of the visas and/or placing the foreign nationals in employment in violation of the H-2B visa certifications. However, the enterprise threatened to cancel the immigration status of foreign nationals who refused to work as directed by the enterprise.

The visas obtained by the enterprise for the foreign nationals were the workers' only means to remain legally within the United States. Thus, cancellation of their visas would render them illegally within the United States and without the ability to find other legal employment. The enterprise allegedly threatened to charge the families of the foreign nationals in their home countries a fee of \$5,000 if they returned to their home country.

The enterprise allegedly violated federal law by paying the foreign nationals on a commission/incentive type basis rather than the prevailing hourly wage. The enterprise paid some workers approximately \$3.50 for each hotel room that they cleaned. The enterprise profited by keeping a portion of each foreign national worker's wage, not paying them for all hours worked, failing to pay overtime, and by fraudulently retaining all payroll taxes.

The enterprise allegedly charged the foreign nationals additional fees, including transportation fees for driving the foreign national workers between the assigned work location and their apartments, and for driving the foreign nationals, even against their will, to other locations in the United States to work. The enterprise also charged uniform fees, miscellaneous and unexplained fees, and fees to petition for extensions on the foreign national workers' visas.

The enterprise further profited, the indictment says, by requiring the foreign national workers to reside in apartments it exclusively secured and controlled, for which it charged exorbitant rents. The enterprise leased various apartments for \$385 to \$650 per month while requiring anywhere from three to eight foreign nationals to reside in the apartment, charging each of the foreign nationals between \$250 and \$350 per month for that apartment's rent. The apartments were not sex-specific and usually mixed both men and women inside one apartment. The enterprise provided minimal furniture. The foreign nationals slept on the floor, mattresses, or air mattresses. In assuring compliance with the exclusive control of these living conditions, the indictment says, the enterprise often threatened to cancel the immigration status of foreign nationals who requested permission to seek alternative housing.

According to the indictment, these fees and expenses, combined with the lack of payment for hours worked, underpayment for hours worked, and lack of work assignments, often resulted in the foreign national workers receiving a paycheck with negative earnings. The enterprise allegedly ensured that the workers did not make enough to repay their debt, purchase a plane ticket home, or pay for their own living expenses while in the United States.

The enterprise further controlled the foreign national workers in the Kansas City area by not allowing them to receive mail, the indictment says. The enterprise maintained keys to the apartments and to the apartment mailboxes and forwarded the worker's mail to the business office of the enterprise.

#### **Additional Charges**

The federal indictment also charges various defendants in one count of fraud in foreign labor contracting, seven counts of visa fraud, two counts of aggravated identity theft, three counts of harboring illegal aliens, four counts of wire fraud, four counts of mail fraud, seven counts of money laundering, one count of transporting illegal aliens, one count of extortion and one count of interstate travel in aid of racketeering.

In addition to being charged in some of the above counts, Askarkhodjaev is also charged with one count of marriage fraud for entering into a marriage with a United States citizen for the purpose of evading immigration laws and two counts of visa fraud related to falsely claiming that he resided with his wife in Blue Springs, Mo., when in reality he was residing apart from his wife. Askarkhodjaev is also charged with three counts of money laundering, three counts of mail fraud, and one count each of identity theft and harboring illegal aliens.

#### **Allegation of Forfeiture**

The federal indictment also contains a forfeiture allegation, which would require the defendants to forfeit to the government all interest in any property involved in the alleged offenses, as well as all property derived from the proceeds obtained from the alleged offenses, including a money judgment of at least \$6 million.

#### **RICO**

The Racketeer Influenced and Corrupt Organizations Act (commonly referred to as RICO) is a federal law that provides for extended criminal penalties for acts performed as part of an ongoing criminal organization, or enterprise. A racket is an illegal business, and engaging in a racket is called racketeering.

Under RICO, a person who is a member of an enterprise that has committed any two of 35 crimes (27 federal crimes and 8 state crimes) within a 10-year period can be charged with racketeering. Those found guilty of racketeering can be sentenced to up to 20 years in prison and/or fined up to \$250,000. In addition, the racketeer must forfeit all ill-gotten gains and interest in any business gained through a pattern of racketeering activity.

Under federal statutes, those found guilty of forced labor trafficking, mail fraud, money laundering, extortion and wire fraud may also be subject to a sentence of up to 20 years in federal prison without parole.

Whitworth cautioned that the charges contained in this indictment are simply accusations, and not evidence of guilt. Evidence supporting the charges must be presented to a federal trial jury, whose duty is to determine guilt or innocence.

This case is being prosecuted by Assistant U.S. Attorneys William L. Meiners and Cynthia L. Cordes and Trial Attorney Jim Felte with the U.S. Department of Justice's Human Trafficking Prosecution Unit. It was investigated by U.S. Immigration and Customs Enforcement, the Federal Bureau of Investigation, U.S. Department of Labor, OIG – Office of Labor Racketeering and Fraud Investigations, IRS-Criminal Investigation, the Kansas Department of Revenue – Criminal Investigations, U.S. Citizenship and Immigration Services and the Independence, Mo., Police Department in conjunction with the Human Trafficking Rescue Project.

Press Releases | Kansas City Home

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3-9

1 tract of such independent contractor; (3) a person who is an employee or  
 2 volunteer of a nonprofit program, other than a municipality, who has  
 3 contracted with the commissioner of juvenile justice or with another non-  
 4 profit program that has contracted with the commissioner of juvenile  
 5 justice to provide a juvenile justice program for juvenile offenders in a  
 6 judicial district provided that such employee or volunteer does not oth-  
 7 erwise have coverage for such acts and omissions within the scope of their  
 8 employment or volunteer activities through a liability insurance contract  
 9 of such nonprofit program; and (4) a person who contracts with the Kan-  
 10 sas guardianship program to provide services as a court-appointed guard-  
 11 ian or conservator. "Employee" also includes an employee of an indigent  
 12 health care clinic. "Employee" also includes former employees for acts  
 13 and omissions within the scope of their employment during their former  
 14 employment with the governmental entity. "Employee" also includes any  
 15 member of a regional medical emergency response team, created under  
 16 the provisions of K.S.A. 48-928, and amendments thereto, in connection  
 17 with authorized training or upon activation for an emergency response.  
 18 "Employee" does not include an individual or entity for actions within  
 19 the scope of K.S.A. 60-3614, and amendments thereto.

20 (e) "Charitable health care provider" means: **(1) Officers, directors,**  
 21 **employees, agents of domestic not for profit corporations accred-**  
 22 **ited by the joint commission, inc. and licensed by the department**  
 23 **of health and environment to provide child placing, case manage-**  
 24 **ment, psychiatric residential treatment and psychiatric hospital**  
 25 **services reimbursed through contracts with the state of Kansas; and**

— Strike

26 ~~(2)~~ a person licensed by the state board of healing arts as an exempt  
 27 licensee or a federally active licensee, a person issued a limited permit  
 28 by the state board of healing arts, a physician assistant licensed by the  
 29 state board of healing arts, a *mental health practitioner licensed by the*  
 30 *behavioral sciences regulatory board* or a health care provider as the term  
 31 "health care provider" is defined under K.S.A. 65-4921, and amendments  
 32 thereto, who has entered into an agreement with:

33 ~~(1)~~ (A) The secretary of health and environment under K.S.A. 75-  
 34 6120, and amendments thereto, who, pursuant to such agreement, gra-  
 35 tuitously renders professional services to a person who has provided in-  
 36 formation which would reasonably lead the health care provider to make  
 37 the good faith assumption that such person meets the definition of med-  
 38 ically indigent person as defined by this section or to a person receiving  
 39 medical assistance from the programs operated by the ~~department of~~  
 40 ~~social and rehabilitation services~~ **Kansas health policy authority**, and  
 41 who is considered an employee of the state of Kansas under K.S.A. 75-  
 42 6120, and amendments thereto;

43 (B) the secretary of health and environment under K.S.A. 75-



Senate Judiciary Committee  
January 27, 2010  
Testimony of Kansas Association of Criminal Defense Lawyers  
**Proponent (with concerns) of SB 353**

The Kansas Association of Criminal Defense Lawyers does not oppose SB 353 except for major concerns with Section 3. This bill would amend K.S.A. 21-3446 to include “knowingly transporting or assisting in the transporting of any person into this state who is not lawfully present in the United States” as a form of human trafficking, a severity level 2 person felony. Under the sentencing guidelines, a severity level 2 felony carries a presumptive prison sentence of 109 to 493 months (depending on the person’s criminal history score).

Making a determination as to whether someone is “lawfully present in the United States” is not clear cut. In fact, the federal government has not issued regulations defining “unlawful presence” because it is so amorphous. The latest “guidance” from the Department of Homeland Security on this topic is a 50-page memo in May 2009. With this proposed law, law enforcement and prosecutors (and subsequently defense attorneys) will have to expend many resources and rely on guidance from non-state sources in order to pursue (or defend against) these cases.

In addition, this provision could reach beyond its intended scope. One of our members who practices almost exclusively in the area of immigration law offers this example. He has a client from Haiti who is a young woman who fled an abusive, incestuous father. She entered the U.S. legally, but her visitor admission ran out long ago, so she is “out of status,” or unlawfully present. She has a glimmer of hope now because of recent executive action to provide Haitian nationals with “Temporary Protected Status.” However, if he (her attorney) takes her to Immigration Court (which is in Kansas City, Missouri) to a hearing with an Immigration Judge, when they return to Wichita, he would be committing a felony under this statute.

Section 3 also creates another way to commit human trafficking: if a person “knowing or in reckless disregard of the fact that an alien has come to, entered or remains in the United States in violation of law, conceals, harbors or shields from detection, or attempts to conceal, harbor or shield from detection, such alien in any place, including any building or any means of transportation and who does so for the purpose of commercial advantage or private financial gain.” Being an “alien” does not mean one is “unlawfully present.” What constitutes “in violation of law?” This could be even more difficult to sort out than “unlawfully present”. Furthermore, it is cause for concern that this proposal acknowledges potential conflict with federal law: “it is not a violation of this paragraph . . . if the state is prohibited by federal law from pursuing a prosecution. . .”.

Thank you for your consideration,

  
Jennifer Roth  
rothjennifer@yahoo.com  
(785) 550-5365  
on behalf of KACDL

Senate Judiciary  
1-27-10  
Attachment 4

**Karen Countryman-Roswurm, LMSW**  
**Wichita Children's Home**  
**Founder/Coordinator of the Anti-Sexual Exploitation Roundtable**  
outreach7@cox.net; kcountryman@wichita.edu

January 26<sup>th</sup>, 2010

Dear Senate Judiciary Committee,

I support Senate Bill 353. I do so as a woman who was once a runaway and homeless youth after the sudden death of my mother at the age of thirteen. During this time I personally witnessed and experienced the vulnerabilities a young person faces when they are without the care and safety of a healthy adult. Second, my support comes from the perspective of a professional who is considered an expert in the field of domestic sexual exploitation.

For 12 years I have directly served homeless, runaway, and throwaway youth (HRTY) who are at-risk of or involved in sexual exploitation through street based service, individual and family therapy, and psycho-educational peer group approaches. Indirectly, I have served as a local, regional, and national youth advocate leading collaborative community awareness and intervention efforts, as well as, promoting best practice, procedural, and policy change. Furthermore, I have researched sexually exploited HRTY since 1999 as an associate with the University of Nebraska's Midwest Longitudinal Study of Homeless Adolescents (MLSHA); created, implemented, and assessed the effectiveness of cognitive-behavioral interventions with sexually exploited HRTY for B.S.W. and M.S.W.; and currently during my doctorate through the creation and validation of a Sexual Exploitation Risk Assessment tool which will identify and direct individualized treatment for youth at-risk of and/or involved in sexual exploitation. With such perspectives I say, we must do more to prevent trafficking in Kansas, particularly, the domestic sexual exploitation of our children and youth.

Sexual exploitation, the modern-day form of slavery, is the most heinous, and yet far too often the most invisible form of child abuse in the United States today. Trailing only slightly behind the illicit drug trade, the sexual exploitation of children competes with the illegal arms trade as the second largest and second fastest growing criminal enterprise in the world. It is estimated that there are well over two million teenagers currently sexually exploited within the U.S. and within Wichita alone conservative estimates fall between 300-400 youth annually. Illustrating the magnitude of such issue are the preliminary findings during the development of the Sexual Exploitation Risk Assessment tool. Of 250 youth interviewed at the Wichita Children's Home 67% (168) reported they had been sexually assaulted or raped; 46% (115) had been asked to strip, go on a date or provide sexual favors in exchange for food, shelter, money or drugs; and, 40% (100) reported that they had "agreed" or had been forced or manipulated to exchange stripping, intercourse or other sexual favors for food, shelter, money or drugs.

The consequence of such exploitation results in devastating immediate and long-term costs to the victim, as well as, to our society at large. On the other hand, the lucrative profit for traffickers is insurmountable. Unlike a sack of drugs which can be sold only once, a young person can be sold repeatedly, locally profiting his/her trafficker approximately \$75,000 annually. I support SB 353 in that it will decrease such temptation of power and greed through the enforcement of civil forfeiture of assets. In addition to my support, I recommend the evaluation of the use of the term prostitute versus victim of sexual exploitation (i.e. Section 7, Letter D, Number 5 and 6, et al.). Reference to a child less than the age of 14 as a prostitute sends mixed messages which distracts responsibility from the trafficker and paints the victim as a criminal. Those victimized through such sexual exploitation are not criminals, but are rather our friends, our nieces and nephews, our children and grandchildren have been or who are currently being physically, sexually, and mentally abused.

Sincerely,

*Karen Countryman-Roswurm, LMSW*

Karen Countryman-Roswurm, LMSW

Senate Judiciary

1-27-10  
Attachment 5



*Since 1894*

**TESTIMONY**

To: Senate Judiciary Committee  
Senator Tim Owen, Chairman

From: Allie Devine, Vice President General Counsel

Date: January 27, 2010

Re: SB 353

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

Thank you for the opportunity to comment on SB 353. The Kansas Livestock Association opposes SB 353 because provisions of Section 3 may unintentionally trap persons who are not the target of this legislation. It is our understanding that this legislation is intended to capture persons who are profiting from persons immigrating to the United States illegally and then coerced into modern day slavery.

KLA does not condone the hiring or exploitation of unauthorized workers. We strongly support and encourage employers to follow federal and state employment laws and verify that their employees are authorized to work in the United States. However, we all know that the immigration system in the US needs reform and that the system does not always work. Our concern is that no one is accused of human trafficking because of a hole in the immigration system.

We are confused whether the elements of "human trafficking" are all of Section 3 of SB 353 subsections (a) (1)-(4) or are each of subsection (a) (1-4) a type of human trafficking? We are confused by the addition of language in (a) (2) that refers back to (1) and forward to (3). It appears that someone could interpret the entire subsection (a) to have 3 different types of human trafficking by reading subsection (a)(1) separately; subsection (a)(2) and (a)(3) together; and (a)(4) separately. We ask that the committee clarify how this section is to be read.

For clarity, it is our understanding that SB 353 Section 3(a) (1) is to be read "as a whole" and not to be interpreted in portions. In other words all of the actions of recruitment, transportation etc. must be done with the purpose and intent of securing forced labor or involuntary servitude. If this is not the correct interpretation, we request that the committee clarify the language.

We are very concerned that the language of Section 3(a) (3) and Section (a) (4) may be used to prosecute immigration issues even though the language of Section (3) (B) seeks to prohibit that use. It is not unusual for employers to employ authorized alien workers. The employer must verify the status of that worker upon hiring. If a worker is temporarily authorized to work in the United States, employers are encouraged to track the expiration of an employee's documents and encourage the employee to renew their status prior to expiration of work authorization. However, this paperwork takes time and work status is unclear. Could an employer or other employee who is traveling (or "transporting") the unauthorized worker be accused and convicted under these provisions? We do not believe that is the intent of these provisions and we'd ask that the committee clarify these provisions. At a minimum, we suggest clarity that it must be shown that the person accused knew that the person(s) transported or assisted under section 3(a) (3) were without a doubt unauthorized.

The Kansas Livestock Association was part of a coalition of business groups that reviewed and opposed legislation two years ago involving immigration issues. The language of SB 353 was part of SB 458 which passed the Senate. However, it is our recollection that language dealing with human trafficking was modified in conference committee to address some of the issues we express today with SB 353. We are working to confirm those conference committee proposals. We hope you will understand this will take a little more time as the proposals are not published because neither the House nor Senate passed the conference committee report.

We look forward to working with the committee to clarify these issues. Thank you for your time.

Testimony of Bishop Scott Jones Concerning Human Trafficking  
Senate Bill 353

The heritage of Kansas with regard to human dignity began with our formation as a territory after the passage of the Kansas-Nebraska Act in 1854. The epic struggle to create a free state was finally settled in 1861 when Kansas entered the Union as a state where slavery would not be tolerated.

Human beings nevertheless find new ways to enslave others, and the current economic conditions foster the possibility that unscrupulous persons will mistreat others for monetary gain.

Illegal immigration is a complex problem that must be addressed in a variety of ways. Most of the load must be carried by the Federal government. I have long advocated a two-pronged approach. We must treat the strangers among us with hospitality and kindness, and we must teach a respect for law.

Part of that approach requires that persons be protected from exploitation by others. Some illegal immigration is created by persons who traffic in the lives of others. They use immigrants' status to abuse them, pay them illegally low wages, deprive them of their rights and even physically mistreat them. While it is unclear how much of the time this occurs, our laws should make it clear that we have zero tolerance for such mistreatment of those who are most vulnerable.

While there is great disagreement about what steps to take on the immigration matter, the passage of this bill is something that all should agree upon. It gives our law enforcement agencies another tool to suppress those who are helping to create illegal immigration while protecting the persons and rights of those who are most at risk.

I urge you to support Senate Bill 353.

**Contact Information**

Bishop Scott J. Jones  
Kansas Area,  
The United Methodist Church  
316-686-0600  
kansasbishop@kswestumc.org

# Testimony

## Senate Judiciary Committee Wednesday, January 27, 2010

### SB 353 – Human Trafficking By Nick Jordan

Thank you Chairman Owens and members of the committee for allowing me to present testimony this morning in support of SB 353. I certainly commend Senator Schmidt for bringing this bill forward. I am sorry a conflict arose and I am unable to appear in person.

Human trafficking has become an immense human tragedy. As you know the federal government started addressing the problem with the 2000 Trafficking Victims Protection Act which was reauthorized in 2003.

Kansas was one of the first states to pass legislation addressing human trafficking in 2005. I was privileged to be the sponsor of SB 151. We worked closely with the U.S. State Department.

Traffickers prey on vulnerable men, women, and children through creative, ruthless, and evil ploys that promise a better life through employment, educational opportunities, or marriage. Some families give children to adults, often relatives, who promise education and opportunity which turns into nightmares of prostitution or forced labor.

Internationally it is estimated that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time. 56% of all forced labor victims are women or girls.

The United States is a destination country for thousands of men, women, and children trafficked largely from Mexico and East Asia, as well as countries in South Asia, Central America, Africa and Europe for the purposes of sexual and labor exploitation. An unknown number of American citizens and legal residents are trafficked within the country, primarily for sexual servitude.

Back in 2005 we heard stories of human trafficking in Kansas. Today we read stories regularly in the newspapers. Recently the Kansas City Star did a very good series on the topic. Their investigation concluded that the Midwest is becoming a hub for human trafficking.

SB 353 strengthens the enforcement and prosecution of this horrendous crime. While there are a number of issues to be addressed federally and in state policies, Kansas has become a shining example of a state taking this crime seriously and prosecuting these evil perpetrators who are taking away human dignity.

Human trafficking is in direct violation to the most fundamental rights in America...the right to pursue life, liberty and happiness.

Thank you for this time and I urge your support of SB 353.



**ENDING MODERN-DAY SLAVERY IN KANSAS  
WRITTEN TESTIMONY  
CONCERNED WOMEN FOR AMERICA OF KANSAS  
SENATE JUDICIARY COMMITTEE  
S 353  
January 27, 2010**

**Senator Owens and Members of the Senate Judiciary Committee:**

Concerned Women for America of Kansas is testifying in support of enhancing penalties for human trafficking.

Every year by estimates of the United States State Department, between 14,000 and 17,000 children and women are brought into the United States for the purpose of labor/sex trafficking and/or both. Some estimates run as high as 50,000. In addition, U.S. children are lured into a life of slavery by unscrupulous men and women with promises of modeling jobs, careers in acting, etc. These victims are preyed upon by unscrupulous and sophisticated networks of criminals who are making over \$10 billion a year from enslaving them. The United Nations estimates that trafficking in persons is one of the top three sources of revenue for organized crime...behind drugs and weapons. The human beings lured into being trafficked end up in prostitution, sweatshops, farms, domestic work or other forms of involuntary servitude. Most are mistreated; threatened and degraded. Over half of the victims end up trafficked for sexual exploitation. The *United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons Especially Women and Children*, defines it as: "The recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms, of coercion, of abduction, of frauds, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation."

CWA has been involved in working to combat sex trafficking for over a decade. Dr. Janice Shaw Crouse, Ph.D. Senior Fellow of the Beverly LaHaye Institute has served on two national task forces and worked to pass national legislation concerning human trafficking. The 2000 Trafficking Victims Protection Act is a step toward increasing world-wide efforts to stem the tide of human slavery. She has directed a federal grant to provide training to Mexican leaders to combat trafficking into the United States through its southern borders.

Human trafficking is a human rights violation and every major city in America is affected. The Kansas City area, because of the confluence of several interstates is a prime area for sex trafficking, particularly involving prostitution at local truck stops. Very recently a group of women were rescued from an operation that involved a massage parlor in the Overland Park area. Often women from outside the U.S. are lured, coerced or sold into prostitution and forced labor. Their passports are confiscated by those who enslave them; the language difficulties and their innate distrust of law enforcement make it difficult for them to escape. In addition they are often beaten, threatened and given drugs to ensure their compliance.

This bill provides for increased awareness of the evil phenomenon of modern-day slavery and through this legislation makes it possible to bring an end to this crime that is causing so much tragedy for so many vulnerable children and women.

We urge you to enhance protection for women and children in Kansas. We further urge you to add "recruits, entices, harbors, transports, provides, or obtains, or so attempts, another person for the purposes of commercial sex acts or sexually-explicit performance," to labor or services. We feel "labor or services" equates prostitution and commercial sex transactions with work.

Judy Smith, State Director  
CWA of Kansas

P.O. Box 11233  
Shawnee Mission, KS 66207

Senate Judiciary  
1-27-10  
Attachment 9

**Testimony on:**

SB 305

**Presented to:**

Senate Judiciary Committee

**By:**

Amanda Lowe, Executive Director  
Health Partnership Clinic of Johnson County

January 27, 2010

**For additional information contact:**

KAMU  
1129 S Kansas Ave., Ste. B  
Topeka, KS 66612  
Ph: (785) 233-8483  
Fax: (785) 233-8403



Good morning Mr. Chairman and members of Senate Judiciary. I am **Amanda Lowe, Executive Director the Health Partnership Clinic of Johnson County, speaking on behalf of the Kansas Association for the Medically Underserved (KAMU)**. I appreciate the opportunity to visit with you this morning about SB 305.

Established as a 501(c)(3) non-profit organization in 1989, KAMU was designated the Primary Care Association of Kansas by the Bureau of Primary Health Care in 1991 and maintains that designation today. As the PCA, KAMU represents 45 members, including 41 safety net clinics. The 41 Safety Net Clinics along with their 29 satellite sites provide Kansans a total of 73 access points. Membership includes public and private non-profit primary care clinics, Federally Qualified Health Centers (FQHC's), one Federally Qualified Health Center Look-Alike, local health departments and the Statewide Farmworker Health Program.

KAMU's purpose is to grow and strengthen safety net clinics so that all Kansans will have a primary health care "home". This home is a place where people receive comprehensive primary, dental and behavioral health care, which cover the spectrum of preventative, acute and chronic health care needs. In addition, this primary health care home is defined by sustained relationships. Clients of our clinics receive care from people who know them. Together, they create a partnership for healthy lifestyles.

KAMU's mission is "to support and strengthen its member organizations through advocacy education and communication." KAMU members share a mission of providing needed health care services for all people regardless of their ability to pay.

Today our 41 Safety Net Clinics in Kansas provide primary medical care to over 200,000 underserved Kansans. Those Kansan's who are uninsured, underinsured, unemployed, and need health care regardless of their ability to pay come to our clinics for their primary health care needs.

SB 305 amends the Kansas tort claims act relating to charitable health care providers. The specific amendment we are requesting your support for is on page 2 of the bill, lines 29 and 30. The definition of "Charitable health care provider" has been amended to include the addition of "a mental health practitioner licensed by the behavioral sciences regulatory board". This addition to the definition of who is covered in the Charitable Care Act will allow Mental Health professionals to volunteer their time in Safety Net Clinics. This amendment was adopted by the Senate Public Health and Welfare Committee last year.

We would recommend that the approved amendment on page 2, lines 20 -25 be removed. The group that proposed this amendment has agreed with interested parties on language of their own legislation, so this amendment is no longer necessary.

By supporting the bill as suggested, it will support and strengthen the Safety Net Clinics' ability to provide services to our most vulnerable Kansans by using professional volunteers.

I ask your support of this bill.

Thank you Mr. Chairman and I will be glad to stand for questions.

10-2



*Your rights. Our mission.*

To: Senator Thomas "Tim" Owens, Chairman  
Members of the Senate Judiciary Committee

From: Callie Jill Denton JD  
Director of Public Affairs

Date: January 27, 2010

Re: SB 305 Tort Claims Act

The Kansas Association for Justice is pleased for the opportunity to appear before the Senate Committee regarding SB 305. KsAJ respectfully requests that the Senate Judiciary Committee amend SB 305 by removing previous committee amendments, and pass the bill out favorably without additional amendments.

KsAJ has been privileged to work collaboratively with the Kansas Association for the Medically Underserved for the past three years on SB 305. We appreciate KAMU's invitation to coalition with them on SB 305.

SB 305 amends the Kansas Tort Claims Act. The Tort Claims Act is a unique and limited remedy for those that have been hurt by the negligent or wrongful act or omission of a state employee acting on behalf of the State. The Tort Claims Act is a limited remedy because damages are capped at \$500,000, meaning that that is the maximum liability of the State relating to any single occurrence or accident, for both economic and non-economic damages. Also, the State has no liability under the Act for interest prior to judgment or for punitive damages. The Act also contains a number of exceptions, which are specific circumstances when the State bears no liability at all.

KsAJ's work on SB 305 represents our understanding of the narrow intent of SB 305 and the public policy interests that it serves: to encourage the treatment of mental illness in Kansas' safety net, primary care clinics. We understand SB 305, as originally introduced to have a very limited application: it applies only to mental health practitioners licensed by the behavioral sciences regulatory board, providing mental health treatment in health departments or non-profit health care primary health care clinics.

When SB 305 was heard in 2009 by the Senate Public Health and Welfare Committee, amendments were added by the committee that significantly expanded SB 305 and changed the focus of the bill entirely. KsAJ opposed the committee amendments, and continues to oppose them, without a more in-depth discussion of the amendments' purpose, and the public interest they serve.

KsAJ respectfully requests that the Senate Judiciary Committee amend SB 305 by removing last year's committee amendments, and pass SB 305 out favorably without additional amendments.

Thank you for the opportunity to offer you KsAJ's testimony on SB 305.

Senate Judiciary

*1-27-10*

Attachment *//*



Mark Parkinson, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Health

## Written Testimony on Senate Bill 305

Presented to  
Senate Judiciary Committee

By  
Robert Stiles, Primary Care Director  
Kansas Department of Health and Environment

January 27, 2010

Chairman Owens and members of the committee, I am Robert Stiles, Primary Care Director for the Kansas Department of Health and Environment. Thank you for the opportunity to present written testimony on Senate Bill 305. This bill proposes to include two new groups in the definition of "charitable health care provider" in KSA 75-6102.

The bill as introduced in the Senate Public Health and Welfare Committee proposes to add "a mental health practitioner licensed by the behavioral sciences regulatory board" to the definition of individuals eligible to become a Charitable Health Care Provider. This addition would allow enrolled mental health practitioners to enter into an agreement with the Secretary of the Kansas Department of Health and Environment (KDHE) to receive coverage under the Kansas Tort Claims Act when gratuitously providing care to "medically indigent" individuals.

The term, "medically indigent," includes uninsured individuals in a family unit earning under 200 percent of the federal poverty level and individuals enrolled in Medicaid or HealthWave. Currently, providers eligible to enter into agreements with the Secretary of KDHE include all professions licensed by the Kansas Board of Healing Arts, nurses, dentists, dental hygienists, mental health technicians, optometrists, and pharmacists. The proposed amendment would add those mental health practitioners licensed by the Behavioral Sciences Regulatory Board. At present, this includes social workers, professional counselors, masters-level psychologists, and marriage and family therapists.

The addition of these providers to the definition of those eligible to enter into agreements could have potential benefits for medically indigent Kansans through facilitating the provision of mental health services to these individuals. The addition of these mental health practitioners to the list of providers eligible for agreements would not require any additional staffing or financial costs for KDHE.

CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 300, TOPEKA, KS 66612

Voice 785-296-1086 Fax 785-296-1562

Senate Judiciary

1-27-10  
Attachment 12

During the hearing before the Senate Public Health and Welfare Committee, an amendment was added to the bill to include an additional group in the definition of Charitable Health Care Provider, "officers, directors, employees, agents of domestic not-for-profit corporations accredited by the joint commission, inc. and licensed by the department of health and environment to provide child placing, case management, psychiatric residential treatment and psychiatric hospital services reimbursed through contracts with the state of Kansas." The group included through this amendment would not enter into an agreement with the Secretary of KDHE to provide gratuitous care to "medically indigent" individuals, but would instead qualify as "charitable health care providers" through being an officer, director, employee, or agent of the type of not-for-profit corporation defined in the amendment.

Thank you for the opportunity to provide these written comments.

**Professions currently eligible for Agreements with the Secretary of the Kansas Department of Health and Environment to provide charitable health care services to medically indigent individuals—named in KSA 75-6102, KSA 65-4921, and KSA 40-3401**

Kansas Board of Healing Arts

- Medical Doctors
- Osteopathic Doctors
- Chiropractic Doctors
- Podiatric Doctors
- Physicians' Assistants
- Physical Therapists
- Physical Therapist Assistants
- Occupational Therapists
- Occupational Therapy Assistants
- Respiratory Therapists

Kansas State Board of Nursing

- Professional Nurses (RN, ARNP, CRNA)
- Practical Nurses (LPN)
- Mental Health Technicians

Kansas Board of Examiners in Optometry

- Optometrists

Kansas State Board of Pharmacy

- Pharmacists

Kansas Dental Board

- Dentists
- Dental Hygienists

“Health Care Providers” named in KSA 40-3401

- Medical care facilities, HMOs, professional corporations, limited liability companies, provider partnerships, not-for-profit corporations, non-profit corporations, psychiatric hospitals, and mental health centers/clinics

**Professions that the original amendment to SB 305 would make eligible for Agreements with the Secretary of the Kansas Department of Health and Environment to provide charitable health care services to medically indigent individuals**

Kansas Behavioral Sciences Regulatory Board

- Psychologists
- Masters Level Psychologists
- Licensed Clinical Psychotherapists
- Licensed Associate Social Workers
- Licensed Baccalaureate Social Workers
- Licensed Master Social Workers
- Licensed Clinical Social Workers
- Professional Counselors
- Licensed Clinical Professional Counselors
- Marriage and Family Therapists
- Licensed Clinical Marriage and Family Therapists

**Individuals that the amendment to SB 305 made during the Senate Public Health and Welfare Committee Meeting would make Charitable Health Care Providers**

Officers, directors, employees, agents of domestic not-for-profit corporations accredited by the joint commission, inc. and licensed by the department to health and environment to provide child placing, case management, psychiatric residential treatment, and psychiatric hospital services reimbursed through contracts with the state of Kansas.