

Approved: 4-2-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on March 15, 1993 in Room 514-S of the Capitol.

All members were present except: Senators Oleen and Feleciano (both excused)

Committee staff present: Michael Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Attorney General Robert Stephan
Chris McKenzie, Executive Director, The League of Kansas Municipalities
Bob Watson, City Attorney, Overland Park
Judge Sheldon Crossette, Municipal Court, Overland Park
Paul Morrison, Johnson County District Attorney
Dorothy Miller, President, Kansas Coalition Against Sexual and Domestic Violence
Gary Stotts, DOC
Tracey McDaniel, Victim/Witness Coordinator, Geary County
Nick Tomasic, Wyandotte County D.A.
Lynn Stemm, Victim Assistance Coordinator, Johnson County
Jim Clark, KCDA

Others attending: See attached list

SB 243 - Victim's right to be heard at sentencing.

Attorney General Robert Stephan appeared in support of Senate bills 243, 266, 342 and House bill 2458 and provided written testimony (Attachment 1). Attorney General Stephan noted that SB 243 changes "may" to "shall" in K.S.A. 1992 Supp. 22-3424, Section 4 as provided in the victims' rights constitutional amendment. He noted SB 266 would open juvenile proceedings to the crime victim and the victim's family and SB 342 would provide that the Department of Corrections is responsible for notification to victims when an inmate is released for parole or into a community program or if an inmate escapes or dies. HB 2458 establishes a victims' rights review committee which would review any report of noncompliance of the constitutional rights of a crime victim. General Stephan noted that Section 3 of HB 2458 declares the crime victims' compensation board's documents used for the purposes of determining eligibility to be confidential.

General Stephan testified in strong opposition to HB 2459 stating the bill would allow a municipality to evade the requirements of Article 15, Section 15 of the Kansas Constitution (Attachment 2). General Stephan agreed that reasonable criteria to define crimes and victims in municipal courts who have constitutional rights under the amendment is a viable alternative to this legislation.

HB 2459 - Bill of rights for crime victims; crime does not include violations of city ordinances.

Chris McKenzie, Executive Director, The League of Kansas Municipalities, testified in support of HB 2459 which would direct municipal governing bodies to adopt policies concerning victims' rights which specify which ordinance violations are covered (Attachment 3). Mr. McKenzie noted one problem for municipal courts in implementing the constitutional amendment is there is no clear definition of "victim of crime" in Kansas statutes.

Bob Watson, City Attorney, Overland Park, appeared in support of HB 2459 stating that Overland Park Municipal Court processed 42,000 cases in 1992 and determining and notifying victims at every step in the process for even 17,000 cases would require substantial staff time and financial resources (Attachment 4). He would support giving cities the authority to develop policy which affords rights to victims in specified crimes.

Judge Sheldon Crossette, Municipal Court, Overland Park, attended the meeting in support of HB 2459.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on March 15, 1993.

Paul Morrison, Johnson County District Attorney, appeared in opposition to HB 2459 and stated his concern that the bill allows cities to opt out of notifying victims of crimes (Attachment 5). Mr. Morrison feels it is very important for victims to be notified in cases involving violent crimes or sex offenses. He suggested amending HB 2459 to allow for mandatory notification for municipal courts in cases involving violations of criminal sanctions that relate to crimes against persons, sex offenses, and crimes against family relationships and children and reference that to Chapter 21, Sec. 34, 35 and 36 of the Kansas Statutes Annotated.

Dorothy Miller, President, Kansas Coalition Against Sexual and Domestic Violence, testified in opposition to HB 2459 (Attachment 6). Ms. Miller stressed the importance of victims constitutional rights and stated that allowing cities to adopt individual policies would only create confusion among victims and those assisting them.

SB 342 - Notice to victims of crime of release, death or escape of inmate.

Gary Stotts, Secretary, DOC, testified in support of SB 342 which establishes additional victim notification responsibilities for the Department (Attachment 7). Currently victims of "crimes against persons" are notified and SB 342 expands that to Article 33 felonies (the anticipatory crimes of attempt, conspiracy and solicitation).

Tracey McDaniels, Victim/Witness Coordinator, Geary County, appeared in support of SB 342 emphasizing the importance of victim notification when an inmate is released, escapes or dies in prison (Attachment 8).

Senator Parkinson moved that SB 342 be recommended favorably for passage. Senator Emert seconded. Motion carried.

SB 266 - Right of victim or victim's family to be present at juvenile offender proceedings.

☛ Nick Tomasic, Wyandotte County D.A., testified in favor of SB 266 which would allow the victims of crimes committed by juveniles access to court proceedings (Attachment 9). Mr. Tomasic suggested changes in the wording in the bill as outlined in his written testimony to assure the victims and their families access to all the hearings in a juvenile case.

The full Committee was adjourned at 11:00 a.m. and the hearings were continued before the Judiciary Criminal Law Subcommittee with Senator Emert chairing.

Paul Morrison, Johnson County D.A., commented that SB 266 is needed with the increase in violent crimes perpetrated by juveniles.

Lynn Stemm, Victim Assistance Coordinator, Johnson County, appeared in support of SB 266 and asked that the disposition hearing be specifically noted in the definition of hearings in the bill so that victims and their families may be present. She suggested excluding the victims from the social update portion of the disposition hearing. Ms. Stemm also suggested that the definition of victim's families be expanded to include siblings and legal guardians.

Tracey McDaniel, Victim/Witness Coordinator, Geary County, testified in support of SB 266 (Attachment 10). Ms. McDaniel emphasized the healing that can occur when the victim is informed and present at the juvenile offenders' hearings.

Jim Clark, KCDA, appeared in support of SB 266 and suggested amending the bill to exclude victims from the proceedings when confidential social history of the juvenile offender is presented (Attachment 11).

Senator Emert questioned if the detention hearing should be excluded from mandatory notification because of the time factor and it was agreed because of its preliminary nature, it would not be a critical proceeding.

HB 2458 - Victim rights review committee.

Dorothy Miller, President, KCSDV, appeared in support of HB 2458 (Attachment 12). HB 2458 would establish a victims rights review committee and would allow the Crime Victim Compensation Board to waive the \$100 economic loss requirement for all Article 35 of Chapter 21 sex offenses.

Jim Clark, KCDA, distributed a balloon proposing to amend HB 2476 into HB 2458 which would establish a victim protection review system (Attachment 13). Mr. Clark stated that this mechanism would address in part the gang problem we are facing because it would protect witnesses by removing them from the neighborhood until a case is disposed of.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on March 15, 1993.

By consensus, the Subcommittee will recommend the passage of SB 243 to the full Committee. By consensus, the Subcommittee agreed to recommend the adoption of the amendment proposed by Paul Morrison to HB 2459 which would reference K.S.A. Chapter 21, Sections 33, 34, 35 and 36 as crimes in which notification of victims would be mandatory for municipal courts. The Subcommittee agreed to recommend passage of HB 2459 as amended to the full Committee.

Senator Emert announced the Criminal Law Subcommittee will meet on SB 266 and HB 2458 on adjournment of the Senate today.

The meeting was adjourned at 12:00 p.m. The next meeting is scheduled for March 16, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-15-90

[illegible]



STATE OF KANSAS

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TESTIMONY OF
ROBERT T. STEPHAN
ATTORNEY GENERAL
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILLS 243, 266, AND 342,
AND HOUSE BILL 2458
MARCH 15, 1993

On behalf of my Victims' Rights Task Force, I urge your support of Senate Bills 243, 266, 342, and House Bill 2458. These bills will continue to enhance the rights of crime victims.

Senate Bill 243 changes the statutory language in K.S.A. 1992 Supp. 22-3424, Section 4: "Before imposing sentence the court shall: (c) allow the victim or victim's family to address the court, if the victim or the victim's family so requests." We are requesting this change because the constitutional amendment does not provide any option in regard to victim participation and "may" should be changed to "shall."

Senate Bill 266 would open juvenile proceedings to the crime victim and victim's family. This would allow the victim to be present and to know the outcome of a proceeding in which a juvenile was the offender. This does not mean that the

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Attachment 1

courts should open the proceedings to anyone -- it would only be open to the victim involved in the offense. It is just as important to the victim of a juvenile offense as it is to a victim of an adult crime to be present for the proceedings.

Section 2 of this bill would change the notification statute, K.S.A. 74-7335, to include notice to victims. It also amends section (c) of this statute to include city attorney or municipal court clerk since they would be responsible for providing notice to victims in municipal courts.

Senate Bill 342 creates a new statute on notification that the Department of Corrections (DOC) is responsible in providing to crime victims. Notice would go to all victims or victims' families whose offenders were convicted of crimes in K.S.A. 21 articles 33, 34, 35, and 36. These notices would be for release of any inmate on parole, conditional release, expiration of sentence or post-release supervision, if the inmate is released into the community in a program under the supervision of the secretary of corrections. Also, notice would be provided if there was an escape of an inmate or death of the inmate while in the secretary of corrections' custody.

New areas of responsibilities for the Department of Corrections, would be the notices on crimes in K.S.A. articles 33, escape and death of an inmate, which the DOC basically does now.

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House Bill 2458 would establish a victims' rights review committee which would fall under the jurisdiction of the Attorney General's Office. The committee will review any report of noncompliance of the constitutional rights of a crime victim. If the committee determines that such report of noncompliance has a basis of fact and cannot be resolved, the committee shall refer the report to the Attorney General to enforce compliance. Although the constitutional amendment passed in November allows crime victims to take individual action to protect their rights, those crime victims who cannot afford to enforce their rights would now have an avenue to use. By creating this committee, the legislature will help guarantee that constitutional rights for crime victims will be enforced in the years to come. Funds to assist this committee in expenses would come from the crime victims' assistance fund established through K.S.A. 74-7334.

Section 2 of this bill pertains to the filing of crime victims' compensation board claims. Currently, victims who apply for compensation must have an economic loss of \$100 except in cases of rape. The change on page 3 (g) would allow all victims of sexual assault offenses to be eligible.

Section 3 of this bill concerns the documents gathered for the purpose of processing claims for compensation. The purpose of compensation is to ease the financial burden of being a violent crime victim. However, at times, the crime victims' compensation board is being subpoenaed in cases

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involving litigation of other parties to produce compensation documents. While the courts have not allowed the use of such documents, the time involved in asking the court to quash the subpoenas are taxing to the staff. It is the intent of this amendment to declare the crime victims' compensation board's documents used for the purposes of determining eligibility to be confidential.

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THE ATTORNEY GENERAL'S VICTIMS' RIGHTS TASK FORCE

March 1993

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Statement of
ROBERT T. STEPHAN
Attorney General
Re: House Bill 2459
Before the Senate Judiciary Committee
March 15, 1993

I am pleased to have the opportunity to testify against House Bill 2459, which is probably as blatant a piece of special legislation as has been presented to any legislative session in recent times.

The absurdity of this legislation requested and engineered by the Kansas League of Municipalities is readily apparent. As an example, under K.S.A. 21-241, battery is the intentional touching or application of force to a person. Under a typical city ordinance, battery is "the willful use of force or violence against another." Both involve the same prohibited act. In some form of convoluted reasoning, the League of Municipalities is asking this legislature to say that a municipality has the authority to say that you can be beat up but, if you are in municipal court, you are not a victim.

Such an interpretation would allow a municipality to evade the requirements of Article 15, Section 15 of the Kansas Constitution. As you know, that provision gives victims of crime the right to be informed of and to be present at public hearings as defined by law and to be heard at the time of sentencing. Let me assure you that no court is about to say that judicial proceedings are closed or that a victim is a non-person in a municipal court but a victim in district court.

I attempted to work with the League of Municipalities, Overland Park and Wichita in setting up a reasonable criteria to define crimes and victims who have constitutional rights under Article 15, Section 15, and to assist in preparing waiver forms and a list of victimless crimes. The response has been to bring their muscle to this legislature in an attempt to vary a constitutional mandate by legislative fiat. The passage of this bill would be a slap in the face to the 84 percent of Kansans who voted for the constitutional amendment and to all of the victims of crime in our state.

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Attachment 2



THE LEAGUE
OF KANSAS
MUNICIPALITIES

**Municipal
Legislative
Testimony**

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Judiciary Committee

FROM: Chris McKenzie, Executive Director

DATE: March 15, 1993

RE: Support for HB 2459

I appreciate the opportunity to appear today on behalf of the over 500 member cities of the League of Kansas Municipalities in support of HB 2459, as amended. When the Legislature adopted SCR No. 1634 concerning victims' rights last session, little, if any, attention was given to its potential impact in the 343 municipal courts in Kansas. Rather it was justified based on public concern about more serious "felony" type offenses never prosecuted in municipal court. In fact, many legislators who were here last year were not even aware the amendment was to apply to municipal courts.

SCR No. 1634 provides that the legislature shall define key terminology in the amendment such as the terms "victims of crime" and "public hearings". Since no legislation was enacted contemporaneously with the constitutional amendment defining these terms, municipal courts and attorneys are in the untenable position of having to "guess" which criminal offenses are covered and which are not. HB 2459 resolves this confusion by directing municipal governing bodies to adopt policies concerning victims' rights which specify which ordinance violations are covered.

In addition, we support HB 2459 for the following reasons:

1. Municipal courts prosecute a large number of cases dealing primarily with "misdemeanor" offenses for which no victim may exist. The 343 municipal courts in Kansas prosecuted 452,579 cases in state FY 1992. In contrast, the state district courts prosecuted 329,022 cases, approximately 81% of which were traffic cases. We estimate that more than 80% of the 452,579 cases in municipal court also concerned traffic offenses. If HB 2459 is not enacted, we anticipate municipal courts will experience significant added administrative costs in order to comply with the victims' rights amendment. The direct result of such an impact would be an increase in filings in district courts. This would have a direct fiscal impact on the state government.

2. There is no clear definition of "victim of crime" in Kansas statutes. When the Colorado legislature approved a similar victim's rights amendment last year, it enacted companion legislation which specified 29 specific state crimes that were covered by the amendment and specifically **excluded** municipal courts from the scope of the amendment. In current Kansas statutes, there are at least **three** definitions of "victim", none of which was enacted for the purposes of implementing the Kansas Victims' Rights Amendment. These can be found at K.S.a. 19-4802(h), K.S.A. 1992 Supp. 74-7301(m), and K.S.A. 1992 Supp. 74-7333(b). At this time we are not sure which, if any, of these definitions applies.

3. If the victims' rights amendment applies to municipal courts, it is another unfunded state mandate. In today's tight fiscal times, cities are faced with a growing number of state and federal mandates. We anticipate that implementation of the amendment on a broad scale will be extremely expensive for the cities and taxpayers of the cities of the state.

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4. HB 2459 does not exempt municipal courts from the effect of the victim's rights amendment. HB 2459 simply requires municipal governing bodies to develop policies which specify which ordinance violations are covered by the victims' rights amendment. We respectfully submit that this is the most efficient way to implement the amendment with regard to cities because of the great disparity among cities in the nature of the ordinances that have been adopted for which there might be victims if they are violated. If HB 2459 is enacted, the League of Kansas Municipalities will develop a model policy which contains examples of the types of offenses that could be specified in such a policy.

In the absence of a crystal clear state policy with regard to the application of the victims' rights amendment in municipal courts, we would urge the Committee to enact HB 2459 to allow municipal governing bodies to respond to the amendment and give some form and substance to its application in municipal court.

Thank you for your attention. I would be happy to answer any questions.

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TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2459

TO: The Honorable Jerry Moran, Chairperson
Members of Judiciary Committee of the Senate
Kansas Legislature
Room 514 South
State Capitol
Topeka, Kansas 66612

DATE: March 15, 1993

RE: House Bill No. 2459 -- Victims Rights Amendment -- Acts
or Omissions in Violation of Ordinances of Cities.

Ladies and Gentlemen:

- The City of Overland Park is generally in sympathy with the goals and objectives of the crime victims' rights movement. The city gladly has been complying with the requirement found at K.S.A. 8-1019 that victims of alcohol and drug-related ordinance violations be notified that they are entitled to submit a victim impact statement at the time of sentencing, and the city does not object to continuing to do so. Furthermore, the city certainly does not want to be perceived as taking a calloused view toward the plight of victims of crime. However, the city also does not want the new constitutional amendment granting rights to victims of crime to be trivialized by being taken to impractical extremes that unnecessarily bog down municipal court processes or force unwarranted expenditures of taxpayer funds.
- Therefore, the City of Overland Park supports passage of House Bill No. 2459.
- I must respectfully take issue with Opinion No. 93-30 of the Kansas Attorney General issued on March 2, 1993:
 1. First, the extension of immunity to municipalities found in the Victims Rights Amendment passed by the voters of Kansas on November 3, 1992, does not necessarily indicate an intention by the framers or the voters to make the amendment applicable to municipal ordinance violations in municipal courts; rather, it indicates an awareness on the part of the framers and

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Attachment 4

the voters that municipal police departments and other city departments should be shielded from civil liability for their acts or omissions taken in enforcing and aiding in the prosecution of violations of state statutes in state courts.

2. Second, the Victims Rights Amendment is explicitly not self-executing. It depends upon the legislature to define three of its terms: "victims," "crime," and "public hearings." The amendment gives unfettered discretion to the legislature to define those terms. With all due respect for the opinion of the Attorney General, the cases it cites do not support its conclusions. To quote from one of those cases:

The problem here is that in enacting the proposed constitutional amendment the legislature determined the size of the mesh in the net and the requisite number of voters approved the mesh size. The mesh size is thus fixed in the constitution. The fact that unintended varieties of fish may pass through the mesh has little bearing on anything.

Colorado Interstate Gas Company, et al. v. Board of County Commissioners of Morton County, et al., 247 Kan. 654, 662 (1990).

3. Third, the opinion of the Attorney General begs the real question here. It argues that the will of the framers of the constitutional provision and the voters who voted for it should not be thwarted by the legislature's defining the term "crime" so as to exclude municipal ordinance violations in toto. What it fails to examine or analyze is the question it begs, that is, whether the framers of the constitutional provision and the voters who voted for it intended to include municipal ordinance violations within the term "crimes" to the point where the legislature is precluded from defining the term in a way that excludes them. Instead, the opinion simply asserts, baldly, that the framers and the voters had such an intent, but offers no proof of the fact. And even if the framers and the voters did have such an intent, the fact remains that they did not take the necessary steps to put that intent into effect. For example, the framers could have defined the term "crimes" themselves but they did not. They could have explicitly stated that the legislature must include ordinance violations in their definition of "crimes" but they did not.

4. Fourth, the minutes of the Attorney General's Victims Rights Task Force and the minutes of the various legislative committees which considered the Victims Rights Amendment reveal that the subject of municipal ordinance violations never once came up in the discussions. So how can it be said that it was the "purpose and intendment" of the framers or the voters that the legislature include municipal ordinance violations in its definition of the term "crimes"?

5. Finally, if the Kansas Legislature cannot define the term "crimes" so as to exclude municipal ordinance violations, then neither should the General Assembly of our sister state of Colorado have done so:

a. Like in Kansas, the voters of Colorado passed a state constitutional amendment on November 3, 1992, granting the right to victims of crime to participate in the criminal justice process. A copy is attached to this memorandum.

b. At the same time, the Colorado General Assembly enacted a statute which defines the term "crimes" to mean violations only of certain state statutes and not city ordinances. However, the statute also invites Colorado cities to adopt policies which afford rights to victims of city ordinance violations to the extent that it is practicable to do so in the particular city.

- House Bill No. 2459 follows the Colorado General Assembly's model for dealing with the problem of how the crime victims rights amendment should apply to cities and their municipal courts.
- Unlike state statutes which apply state-wide, cities regulate different activities in different ways. A laundry list of ordinance violations won't fit all cities. Furthermore, not all cities are equally capable of complying with a rigid and categorical set of guidelines due to the varying sizes of their police forces, prosecutorial staffs and court staffs.
- The current version of House Bill No. 2459 does not exclude municipal ordinance violations in toto anyway. It specifically requires cities to enact policies which afford rights to victims of such ordinance violations as the individual city specifies in its policy.
- We are convinced that it was not the intention of the Kansas legislature when it passed the Victims Rights Amendment last session that it apply to municipal courts.

- Our guess is that there are many cities across Kansas which are unaware that the new Victims Rights Amendment has the potential for applying to their municipal court operations.
- Most municipal court operations are geared toward processing large numbers of cases in a short amount of time using minimum staffing levels.
- Most municipal courts know the number of cases that can be processed through the existing system given the number of days the court is in session and given the number of clerical, judicial and prosecutorial personnel available. If additional duties are imposed upon those personnel through an unfunded state mandate, the same number of cases can be processed in the same amount of time only if either (1) the mandated additional work is absorbed by the existing staff while other necessary duties presently being carried out by that staff are abandoned, or (2) additional personnel are hired at additional taxpayer expense.
- How many additional personnel Overland Park would have to hire if the new constitutional amendment is made applicable to municipal courts is still under study, although we think it would be a considerable number. In addition to determining who are victims, typing notices and mailing notices, staff time will be spent helping victims on the telephone and helping them when they appear for court. The additional personnel would be needed in the police department, the prosecutors' office and the municipal court clerk's office.
- In the Overland Park Municipal Court alone, 42,000 cases were processed in 1992. Most of those cases were relatively minor when compared to those filed in the Johnson County District Court. Depending upon how the terms "crime" and "victim" are defined, at least 40% of those cases, or 17,000 cases, involved one or more "victims."
- The City of Overland Park regulates and makes unlawful -- "criminalizes," if you will -- hundreds of activities ranging from peeling paint, to speeding, to operating as a transient merchant without a license. Under the circumstances of the particular case, any of those hundreds of illegal activities may involve one or more "victims."
- To take one example, depending upon how broadly the terms "victim" and "public hearing" are defined, the owner of a house with peeling paint or weeds more than 18 inches high in violation of various codes of the city may thereby have caused the neighbors to conclude that the values of their own houses have fallen as a result and therefore that they have suffered direct financial harm. Must every owner of

every house in the neighborhood be given notice of every step in the proceedings against the offending home owner before the next step in the prosecutorial process can be taken?

- To take another example, Section 6.08.080 of the Overland Park Municipal Code makes it unlawful to allow a dog to make excessive noise that disturbs the neighbors. In a barking dog case must the prosecutor or the city officer determine all neighbors who are disturbed by the barking dog and give them notice of all public hearings before the case can proceed?
- To take a third example, some 25 cases of vandalism were prosecuted in the Overland Park Municipal Court last year. Many others involving much larger losses were prosecuted by the Johnson County District Attorney. Had the city been required to examine each police report to determine who were the victims, and then to notify each victim in each case of each step in the adjudicatory process, counting continuances, the city would have had to send out some 110 separate letters. When this level of effort is multiplied by the hundreds of different kinds of cases prosecuted, the mandate becomes unduly burdensome and impracticable.
- Also please be aware that the Kansas Supreme Court determined in a 1990 case that the term "crimes" includes all "traffic infractions," that is, all of those 131 different municipal ordinance violations which a person can dispose of by mailing in the fine. There were 36,000 traffic infraction cases in Overland Park alone in 1992. A requirement that cities give notice of all "public hearings" to "victims" of "traffic infractions" would nullify any expedition and efficiency in the criminal justice process intended to be fostered by the mail-in statutes.
- Finally, we ask that you consider in your deliberations the fiscal impact any new mandates will have upon the budgets of cities across the state and to vote in favor of House Bill No. 2459.

Thank you for your consideration.

The City of Overland Park

cc: Governing Body
City Manager
Administrative Judge

Colorado

Proposed Constitutional Amendment

10-5-1992 LETTER A

I, Natalie Meyer, Secretary of State of the State of Colorado, do hereby give notice that at the General Election to be held on the Third day of November, 1992 there will be submitted to the registered electors of the State of Colorado the question of amending the constitution of said state.

The authority for submitting such question is found in Section One (1) of Article V of the Constitution of the State of Colorado and in Resolution No. 1003 of the fifty-eighth General Assembly, first regular session which is in words and following viz:

HOUSE CONCURRENT RESOLUTION NO. 91-1003

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO ARTICLE II OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING THE RIGHTS OF CRIME VICTIMS.

Be It Resolved by the House of Representatives of the Fifty-eighth General Assembly of the State of Colorado, the Senate concurring hereto:

SECTION 1. At the next general election for members of the general assembly, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:

Article II of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 18a. Rights of crime victims. ANY PERSON WHO IS A VICTIM OF A CRIMINAL ACT, OR SUCH PERSON'S DESIGNEE, LEGAL GUARDIAN, OR SURVIVING IMMEDIATE FAMILY MEMBERS IF SUCH PERSON IS DECEASED, SHALL HAVE THE RIGHT TO BE HEARD WHEN RELEVANT, INFORMED, AND PRESENT AT ALL CRITICAL STAGES OF THE CRIMINAL JUSTICE PROCESS. ALL TERMINOLOGY, INCLUDING THE TERM "CRITICAL STAGES", SHALL BE DEFINED BY THE GENERAL ASSEMBLY.

SECTION 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either "yes" or "no" on the proposition: "An amendment to article II of the constitution of the state of Colorado, concerning the rights of crime victims."

SECTION 3. The votes cast for the adoption or rejection of said amendment shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress, and if a majority of the electors voting on the question shall have voted "Yes", the said amendment shall become a part of the state constitution.

"AN AMENDMENT TO ARTICLE II OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING THE RIGHTS OF CRIME VICTIMS."

YES

NO

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Colorado, at the City of Denver, Colorado this 14th day of September, 1992.
(SEAL)

Natalie Meyer
Secretary of State

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

PAUL J. MORRISON
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. BOX 728
OLATHE, KANSAS 66051
913-764-8484, Ext. 5333

TO: Members of the Senate Judiciary
FROM: Paul J. Morrison
DATE: March 15, 1993
RE: House Bill 2459

I am here today to testify in opposition to certain portions of House Bill 2459. I would also note that I believe a slight amendment to the bill would make it acceptable.

I believe it is fair to say that neither the legislature nor the voters of Kansas expected that victim notification be required in every case filed in District Court or Municipal Courts where criminal sanctions are possible. I am sure we all agree that it would be absurd to expect notification in cases involving traffic violations, zoning infractions, pet violations, etc. Efforts to clarify the law in this regard are certainly laudable.

However, I also think it is important to note that many municipal courts file serious cases involving crimes against persons, such as various sex offenses, criminal endangerment of children violations and domestic violence cases. In fact, some larger urban areas in the state (such as Wichita) run the majority of domestic violence cases through municipal court. I can tell you from firsthand experience that these cases oftentimes involve serious issues involving great personal trauma to victims and are important to all parties concerned. My concern is that House Bill 2459 as presently written will allow cities to "opt out" of victim notification if they so choose.

Why not amend the statute to allow for mandatory notification for municipal courts in cases involving violations of criminal sanctions that relate to crimes against persons, sex offenses, and crimes against family

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relationships and children and reference that to Chapter 21, Sec. 34, 35 and 36 of the Kansas Statutes Annotated. Most municipal ordinances are patterned after those chapters and it would be easy to reference the municipal code in that fashion to avoid undue confusion. That would not place an undue burden on municipal courts while still allowing for the notifications of victims in more serious crimes. The legislature could still allow the other provisions of 2459 intact to allow cities to expand their notification process they so choose.

KCSDV

KANSAS COALITION AGAINST SEXUAL & DOMESTIC VIOLENCE

P.O. BOX 1341

PITTSBURG, KS 66762

316-232-2757

Senate Judiciary Committee
Testimony of Dorthy Miller,
President, KCSDV

March 15, 1993

RE: HB 2459

Dear Committee Members:

Thank you for the opportunity to explain our concerns in reference to HB 2459. On behalf of the Kansas Coalition Against Sexual and Domestic Violence, the Attorney General's Victim's Rights Task Force, and Safehouse, I urge you to oppose this legislative change for the following reasons:

1. Implementation of this legislation would violate victims constitutional rights. By changing the definition of crime so as to not include violations of city ordinances, many victims of violent crime will again be subject to not receiving necessary notification. If, for example, a perpetrator is charged with criminal trespass in reference to a domestic violence incident, the victim might or might not receive notification; depending on the adopted policy of that particular city for that particular crime. Although it is necessary to be sensitive to the economic impact such notification can have, it is essential to also recognize the tremendous negative impact this bill could have on victims once implemented. Many violent crimes, and particularly domestic violence cases, are processed through municipal courts. Allowing such cases to be processed outside the realm of the victim's constitutional rights gives the same crime a different meaning to the victim, and to the perpetrator.

2. Allowing each city to adopt its own policies in reference to the rights granted to victims would create an unmanageable lack of uniformity. The clarity provided by the constitutional amendment would be lost. How will victims even know if their rights have been violated? It will be determined by many things; 1) if the crime happened in the city or the county, 2) if in the city which city, 3) what was the crime, and finally, 4) was the perpetrator charged under state statute or city ordinance. This will be confusing to both the victims and those attempting to assist them, whether that be law enforcement, victim advocates, or others.

3. The level of accountability would be seriously impaired, leaving many victims vulnerable. It is essential that victims have some recourse if their rights are not adhered to. This bill limits their recourse, allowing cities to remain unaccountable.

It is for these reasons that we strongly urge you to oppose the passage of HB 2459. Thank you for considering our concerns.

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Serving Victims Throughout Kansas

Attachment 6

1972
Lawrence

1974
Wichita

1976
Emporia
Lawrence
Wichita
Hutchinson

1977
Topeka
McPherson

1978
KOSAC

1979
KADVP
Hutchinson
Pittsburg
Overland Park

1980
Gallatin
Kansas City
El Dorado

1981
Hodge City
Great Bend
Garden City
Liberal

1983
Hays
Winfield
Scott City

1984
Topeka
Leavenworth

1985
Hillsboro

1986
Atchison

**Testimony by Secretary Stotts
Kansas Department of Corrections
SB 342**

**Senate Judiciary Committee
March 15, 1993**

The Department of Corrections supports SB 342, which establishes additional victim notification responsibilities for the department. Under current law, the department has the responsibility to notify victims of offenders convicted of Article 34, 35 or 36 felonies--which are basically crimes against persons--in the event of the offender's parole, conditional release, expiration of sentence, release to community work crew, furlough, or transfer to work release. SB 342 expands notification requirements to include offenders convicted of Chapter 21, Article 33 felonies (the anticipatory crimes of Attempt, Conspiracy, and Solicitation); it also provides for notification to victims in the event of the escape or death of an offender convicted of Article 33, 34, 35 or 36 crimes. Although not required by law, departmental policy currently provides for notification of victims when an offender escapes. As a matter of policy, the department also provides notification to victims who request notification when it is not required by law.

During FY 1992, the Department of Corrections notified an estimated 3,600 victims under the existing provisions of K.S.A. 1992 Supp. 22-3718. The department has identified a total of 99 offenders convicted under Article 33 (the anticipatory crimes of Attempt, Conspiracy, and Solicitation) who were released on parole, conditional release, or expiration of sentence during FY 1992. The number of offenders convicted under Article 33 who were transferred to work release, placed on community work crews, or released on furlough is unknown. Also unknown is the total number of victims of those offenders convicted under Article 33.

Between 1987 and 1992, the department experienced an average of 54 escapes per year, most from minimum security facilities, and victims of those offenders were notified in accordance with existing policy. During that same time period, an average of 12 inmates per year died while incarcerated.

In closing, the department regards SB 342 as being consistent with the overall public policy objective of keeping victims informed of relevant changes in the status of offenders. The Department of Corrections supports this objective.

SJ

3-15-93

Attachment 7

Testimony reference Senate Bill 342

My name is Tracey McDaniel. I am the Victim/Witness Coordinator for the Geary County Attorney's Office, and I have also been the victim of violent crime. In 1984, my home was broken into, I was held at knife point, force to give up all my jewelry that I was wearing, tied up with an extension cord and told not to call for help until we had counted to 100. I was also pregnant at the time and nearly lost my child. In 1989 the offender that committed this crime was eligible for parole overnight when the laws changed. I was not notified that this inmate would be released personally or through my position at the Geary County Attorney's office. I had the unpleasant experience of literally bumping into this inmate in the courthouse as I was taking a file into court for the county attorney. That feeling of fear that I had the night of the offense ran through my body the minute I saw him. I can only imagine what it would be like for a family member of a homicide victim to bump into the inmate that murdered one of their kin in a grocery store without knowing the inmate had been released.

In working with families of homicide victims, the most frequent question I have been asked is, "Will I be notified if the inmate escapes from prison, or dies in prison? It is very difficult for me to tell them no, because of my own experience. Victims should have the right to know if an inmate is out of prison. Many victims fear that if the inmate in their case escapes from prison, they would return and harm the victim again. Other victims feel that if the inmate should die in prison, they should be notified in order to put their own mind at ease. Notification to victims should be given in every type of release, escape, or death of an inmate.

Thank You,



Tracey McDaniel
Victim/Witness Coordinator
Geary County

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Attachment 8

Office of The
DISTRICT ATTORNEY
Of The 29th Judicial District of Kansas

Wyandotte County Justice Complex
710 N. 7th Kansas City, Kansas 66101
(913) 573-2851

DISTRICT ATTORNEY
Nick A. Tomasic

SENATE BILL #266

We must restore credibility to the Court system, both in the Juvenile Courts and the Municipal Courts -- we have an obligation to keep the public informed about what is happening.

Talk to John Q. Citizen about what goes on in these courts - they all feel left out -- they have the attitude that no one tells them what goes on.

They may be victims of a juvenile offender --- they press charges -- and then are told -- the rest is none of their business.

They are not allowed to even understand why a particular action was taken by the Court.

My experience has been that if we explain what is happening and let the people see what is happening, they will appreciate the result, even though they may not agree with or like it.

You have all kept up with the news accounts of the crimes being committed. Many are committed by 14 year olds, and some even younger.

I am not talking about truancy or shop-lifting, or runaways,

I mean, murder, rape, robbery, theft, etc.

It's time that we bring the juvenile code up to the 90's.

Why not let the victims, and the victims' families see how the criminal justice system works for them

not against them as they now believe.

"Juvenile Offender"

A person who does an act while a juvenile, which if done by an adult, would be a felony or a misdemeanor, K.S.A. 38-1602(b).

An action is commenced by the filing of a complaint. K.S.A. 38-1621.

5J

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Attachment 9

Detention hearing - purpose: to await hearing

- 1) place juvenile in a detention facility
- 2) allow juvenile to be released to parents
- 3) detain juvenile in S.R.S. custody if the parents are not suitable

Adjudicatory hearing - similar to a trial of an adult.
Rules of evidence applies (civil procedure)
Burden of proof beyond a reasonable doubt.

Adjudicatory hearing - a fact finding hearing at which the court determines the existence or non-existence of the allegations contained in the petition.

Disposition hearing - what is to be done with the individual

The Kansas Supreme Court in Stauffer Communications, Inc., V Mitchell, 246 K 492, 789 P2 1153 (1990)

discussed K.S.A. 38-1652, which reads:

"The hearing shall be open to the public and the court may allow others to attend "the hearing."

Prior to the enactment of K.S.A. 38-1652, the applicable statute was K.S.A. 38-822 which used the words:

"any hearing pursuant to the juvenile code".

In January of 1982, Senator Pomeroy introduced Senate Bill #520, which became K.S.A. 38-1652, and used the words:

"the hearing"

The Senate committee on the Judiciary in February of 1982 amended the wording of Senate Bill 520 to read:

"all hearings pursuant to this code."

The legislature that year refused to change the phrase to "all hearings," and instead the legislature retained the wording:

"the hearing"

The Supreme Court then in Stauffer held that the words "the hearing" as written in K.S.A. 38-1652 refers only to adjudicary hearing, and not any other of the hearings.

9-2

Senate Bill 266 needs to be changed on:

Section (1) line 15 - to "all hearings"

Section (1) line 23 - to "all hearings"

Section (1) line 21 - change "or" to "and"

Definition:

Section (1) line 25 -

1 (c) - as used in this section, hearings mean:

- a) detention;
- b) adjudication; any or all
- c) disposition; of them

Now - the respondent's family is allowed to be present -- but not the victim's family.

We have juveniles who are victims, who are raped, killed, beaten, robbed, etc.

Why can't their parents or families be present?

That is why the word "or" should be changed to "and"

example: if the victim is a young child who is raped -- shouldn't the victim's parents have a right to be present?

JUVENILE HEARINGS PRACTICAL OPERATION

In Wyandotte County, 1992 - we filed 1331 juvenile offender cases.

Our staff talks to all victims -- interviews them -- preparing them for the hearings.

We issue subpoenas to the witnesses to appear for the hearings.

So we are already notifying them.

9-3

MUNICIPAL COURT HEARINGS

No jury trial - just to the court. The victims are notified -- as are the witnesses.

Section 2(c) line 5 - should include:

or the city attorney or municipal court clerk.

9-4

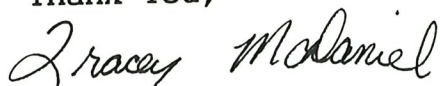
Testimony reference Senate Bill 266

My name is Tracey McDaniel. I am the Victim/Witness Coordinator for the Geary County Attorney's Office. I have held this position for the past three years. When I started the program in 1990, our juvenile court was closed to the public. The victims in the case were sent charge letters explaining that the juvenile offender was charged with a crime. However, I was not able to reveal any further information to the victim(s). This proved to be very frustrating not only to the victim(s), but to myself as well. Many victims took the notification as an insult. I was telling the victim that a juvenile was charged, but I could not tell them what those charges were, when the juvenile would go to court, when the disposition would be, or what the possible outcome of the disposition would be. It was like teasing a child. Everytime I sent out juvenile charge letters, I knew that I would be flooded with phone calls from angry victims, demanding to know what was going on in their case.

Recently, our juvenile judge has opened up the court to the victim and/or the victims families. I have noticed a tremendous change in attitudes in the victims. They are more satisfied being able to attend the hearings and knowing what is happening to the juvenile offender. Our county allowed a victims family member to address the court in a juvenile case last week in which the offender was charged with involuntary manslaughter. That family member later told me that she felt her relieved after being able to address the court. It gave her a tiny bit of satisfaction being able to say to the judge what the loss of her child has done to her family. It also helped her knowing that she was able to express to the judge what her idea of punishment should be for this offender.

As a victim/witness coordinator, I feel it is very important for every victim of crime to have the right to attend every court hearing. They should not be denied this right because they were unfortunate enough to be the victim of a juvenile offender.

Thank You,



Tracey McDaniel
Victim/Witness Coordinator
Geary County

SJ

3-15-93

Attachment 10

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John J. Gillett, Vice-President
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Kansas County & District Attorneys Association

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(913) 357-6351 • FAX (913) 357-6352

EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL NO. 266

The Kansas County and District Attorneys Association appears in support of SB 266, having requested a similar bill in the 1992 Session. House Bill 3059 died in the House Judiciary Committee without a hearing.

The purpose of the bill is simply to recognize that victims of crimes are victims -- regardless of the age of the perpetrator. The policy adopted by this Legislature, and the people of Kansas, by the victims rights amendment does not recognize this age distinction. The Kansas Supreme Court also does not recognize this age distinction. In State v. Busse (slip opinion, March 5, 1993) the Court held that it is the nature of the conduct rather than the status of the offender that determines the charge of aiding a felon. The purpose of Senate Bill No. 266 is simply to allow the victims the same right to be present as they are presently afforded in adult criminal proceedings.

There has been some opposition expressed concerning allowing the victims access to the juvenile offender's past history, which they would get if they were present at the adjudication hearing. A compromise solution would be to allow the victims the right to be present at the adjudication stage of the proceeding, but not at the dispositional stage. The state of Wisconsin has a similar bifurcated hearing process in its juvenile courts, and Sec. 48.299(1)(am) of the Wisconsin statutes has recently been interpreted to allow the victims to attend the fact-finding hearing, but not the dispositional hearing. In Interest of S.B.N. (Wis. Ct. App., Jan. 27, 1993).

Another option is to amend K.S.A. 1992 supp. 38-1661, predispositional investigation, report and hearing, by excluding victims from the proceedings when confidential matters concerning the juvenile's social history are to be heard.

SJ

3-15-93

Attachment 11

KCSDV

KANSAS COALITION AGAINST SEXUAL & DOMESTIC VIOLENCE

P.O. BOX 1341

PITTSBURG, KS 66762

316-232-2757

March 15, 1993

Senate Judiciary Committee
Room 514-S
Statehouse
Topeka, KS

Testimony of Dorthy Miller,
President, KCSDV

RE: HB #2458

Chairman Moran & Committee Members:

On behalf of the Kansas Coalition, and as a member of both the Attorney General's Victims Rights Task Force and the Crime Victim Compensation Board, I want to thank you for giving me the opportunity to voice my support of HB #2458. We believe the passage of this bill would accomplish two very important things:

1. Establish a victims rights review committee. The creation of such a committee would provide the necessary structure to effectively process reports of noncompliance of crime victim's constitutional rights. Many victims do not currently know what to do if their rights are violated. We know these rights are at times being violated, so it is necessary to have a system set up to address these problems as they occur.

2. Allow the Crime Victim Compensation Board to waive the \$100 economic loss requirement for all article 35 of chapter 21 sex offenses. In the past, this waiver applied only to rape victims. In many cases of child sexual abuse, it is undetermined as to whether an actual rape occurred. Furthermore, even when it is known that a rape did occur, indecent liberties with a child is often the preferred charge. This has made it particularly difficult for the Crime Victim Compensation Board to determine who is or is not eligible for this waiver. By applying this waiver in all sex offenses, we can achieve a consistency and fairness otherwise unattainable.

Due to these reasons, we urge you to support HB #2458. Thank you, again, for your consideration of the need for these changes.

SJ

3-15-93

Serving Victims Throughout Kansas

Attachment 12

HOUSE BILL No. 2458

By Committee on Judiciary

2-12

AN ACT concerning crime victims; relating to claims for compensation; establishing a victims rights review committee; relating to the confidentiality of records; amending K.S.A. 74-7305 and 74-7308 and repealing the existing section sections.

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

New Section 1. (a) There is hereby established a victims rights review committee. Such committee shall consist of three members appointed by the attorney general. Appointments to the committee during the first year shall consist of a two-year term, a three-year term and a four-year term. All appointments after the expiration of these terms shall be for four years. Members of the committee shall receive compensation, subsistence allowances, mileage and expenses from the crime victims assistance fund established in K.S.A. 74-7334, and amendments thereto.

(b) The committee shall review any report of noncompliance of the constitutional rights of a crime victim. Any crime victim, except a defendant or person accused or convicted of a crime against the victim, may enforce compliance by notifying the victims rights review committee. If the committee determines that such report of noncompliance has a basis in fact, and cannot be resolved, the committee shall refer such report of noncompliance to the attorney general to file suit to enforce compliance with the constitutional rights of a crime victim.

(c) The attorney general may adopt rules and regulations:

(1) Establishing standards for reviewing crime victims complaints of noncompliance; and

(2) for the administration of this section.

Section ~~2.3~~ K.S.A. 74-7305 is hereby amended to read as follows:

74-7305. (a) An application for compensation shall be made in the manner and form prescribed by the board.

(b) Compensation may not be awarded unless an application has been filed with the board within one year of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the

2
Section ~~1.~~ (a) There is hereby established in the executive department under the jurisdiction of the attorney general a victim and witness protection review board, consisting of the attorney general, or the attorney general's designee, who shall serve as the chairperson, and three members appointed by the attorney general. Of those appointments, one member shall be a county or district attorney, one member shall be a sheriff and one member shall be a chief of police.

(b) Each member of the board shall be appointed for a term of four years and until a successor is appointed and qualified. Upon the expiration of any term of office of any member, the attorney general shall appoint a qualified successor. In case of a vacancy on the board prior to the expiration of a term, the attorney general shall appoint a successor of like qualifications to fill the unexpired term.

(c) Members of the board shall receive compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto.

(d) The board shall adopt rules and regulations to carry out the provisions of this act.

~~Sec. 2.3~~ (a) A request to the board for assistance by a victim or witness shall include, but not be limited to, a plan for assistance, the nature of the services to be rendered, the cost associated with rendering such services and a description of how the services will enhance existing victim or witness protection efforts. Each request and plan shall place emphasis upon cooperation among law enforcement agencies, prosecutors, victim assistance programs, and shall maximize the use and coordination of existing resources in the area of the victim or witness.

(b) The board shall review each request for security and protection of victims and witnesses to determine whether:

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(1) The evidence proffered justifies the need for security and protection;

(2) adequate provisions have been made to ensure the safety of the victim or witness and the victim's or witness' immediate family, if any, during the time in which such person will be cooperating with law enforcement agencies and during the resettlement period;

(3) the cost of maintaining the victim or witness and the victim's or witness' family is reasonable; and

(4) providing the victim or witness protection services is likely to ensure the availability of victims or witnesses to provide information to law enforcement agencies in the investigation or prosecution, or both, of the relevant crime or crimes.

(c) Any victim or witness information, files and records, created pursuant to the request, in the possession of the attorney general, the board, and the local agencies relating solely to the assistance provided by the victim and witness protection fund, shall be confidential and shall not be disclosed by any person, except to the board, any agency requesting assistance or to an eligible victim or witness. Such information, files and records are not subject to disclosure in any judicial or administrative proceeding, unless the court in which the criminal proceeding is pending or was disposed of, upon notice to the county or district attorney and giving such county or district attorney an opportunity to be heard, determines that such disclosure would not endanger the health, welfare or safety of the victim or witness, or such victim's or witness' immediate family and is compelled by the interests of justice.

(d) Services agreed to be provided to the victim or witness by the board may include temporary relocation, transportation to and from court, moving assistance, temporary lodging and support services necessary for the prevention of intimidation and protection of the eligible victim or witness or such victim's or witness' immediate family.

Sec. 3.4 (a) There is hereby established in the state treasury the victim and witness protection fund.

(b) Subject to appropriations, moneys in the victim and witness protection fund may be:

(1) Used for security and protection for a victim of a crime or a government witness in an official proceeding or investigation where the board determines that an offense such as intimidating a witness, tampering with a witness or retaliating against a witness is likely to be committed, or which involves great public interest;

(2) used for the security and protection of the immediate family of, or a person otherwise closely associated with, such witness or

1 potential witness if the family or person may also be endangered;
2 or

3 (3) disbursed to any county or district attorney, state prosecuting
4 attorney, or law enforcement agency requesting funds, to assist a
5 crime victim or witness, or such victim's or witness' immediate family
6 who need protection.

7 (4) Payments from the fund shall be made upon warrants of the
8 director of accounts and reports issued pursuant to vouchers ap-
9 proved by the attorney general or by a person or persons designated
10 by the attorney general.

~~11 Sec. 4. This act shall take effect and be in force from and after~~
~~12 its publication in the statute book.~~

1 following crimes: (1) Indecent liberties with a child as defined in
2 K.S.A. 21-3503 and amendments thereto; (2) aggravated indecent
3 liberties with a child as defined in K.S.A. 21-3504 and amendments
4 thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506
5 and amendments thereto; (4) enticement of a child as defined in
6 K.S.A. 21-3509 and amendments thereto; (5) indecent solicitation of
7 a child as defined in K.S.A. 21-3510 and amendments thereto; (6)
8 aggravated indecent solicitation of a child as defined in K.S.A. 21-
9 3511 and amendments thereto; (7) sexual exploitation of a child as
10 defined in K.S.A. 21-3516 and amendments thereto; or (8) aggravated
11 incest as defined in K.S.A. 21-3603 and amendments thereto. For
12 all other incidents of criminally injurious conduct, compensation may
13 not be awarded unless the claim has been filed with the board within
14 one year after the injury or death upon which the claim is based.
15 Compensation may not be awarded to a claimant who was the of-
16 fender or an accomplice of the offender and may not be awarded to
17 another person if the award would unjustly benefit the offender or
18 accomplice.

19 (c) Compensation otherwise payable to a claimant shall be
20 diminished:

21 (1) To the extent, if any, that the economic loss upon which the
22 claimant's claim is based is recouped from other persons, including
23 collateral sources; and

24 (2) to the extent, if any, that the board deems reasonable because
25 of the contributory misconduct of the claimant or of a victim through
26 whom the claimant claims.

27 (d) Compensation may be awarded only if the board finds that
28 unless the claimant is awarded compensation the claimant will suffer
29 financial stress as the result of economic loss otherwise reparable.

30 A claimant suffers financial stress only if the claimant cannot maintain
31 the claimant's customary level of health, safety and education for
32 self and dependents without undue financial hardship. In making its
33 determination of financial stress, the board shall consider all relevant
34 factors, including:

35 (1) The number of claimant's dependents;

36 (2) the usual living expenses of the claimant and the claimant's
37 family;

38 (3) the special needs of the claimant and the claimant's
39 dependents;

40 (4) the claimant's income and potential earning capacity; and

41 (5) the claimant's resources.

42 (e) Compensation may not be awarded unless the criminally in-
43 jurious conduct resulting in injury or death was reported to a law

-8-5

1 enforcement officer within 72 hours after its occurrence or the board
2 finds there was good cause for the failure to report within that time.

3 (f) The board, upon finding that the claimant or victim has not
4 fully cooperated with appropriate law enforcement agencies, may
5 deny, withdraw or reduce an award of compensation.

6 (g) Except in K.S.A. 21-3602 or 21-3603 or cases of rape or
7 attempted rape sex offenses established in article 35 of chapter 21,
8 of the Kansas Statutes Annotated, and amendments thereto, com-
9 pensation may not be awarded if the economic loss is less than \$100.

10 (h) Compensation for work loss, replacement services loss, de-
11 pendent's economic loss and dependent's replacement service loss
12 may not exceed \$200 per week.

13 (i) Compensation payable to a victim and to all other claimants
14 sustaining economic loss because of injury to or death of that victim
15 may not exceed \$25,000 in the aggregate.

16 Sec. 2. K.S.A. 74-7308 is hereby amended to read as follows:
17 74-7308. (a) There shall be no privilege, except privileges arising
18 from the attorney-client relationship, as to communications or re-
19 cords relevant to an issue of the physical, mental or emotional
20 conditions of the claimant or victim in a proceeding under this act
21 in which such condition is an element.

22 (b) If the mental, physical or emotional condition of a victim or
23 claimant is material to a claim, the board may order the victim or
24 claimant to submit to a mental or physical examination by a phy-
25 sician or psychologist, and may order an autopsy of a deceased
26 victim. The order may be made for good cause shown upon notice
27 to the person to be examined and to all persons who have appeared.
28 The order shall specify the time, place, manner, conditions and
29 scope of the examination or autopsy and the person by whom it is
30 to be made; and the order shall require the person to file with the
31 board a detailed written report of the examination or autopsy. The
32 report shall set out the findings of the person making the report,
33 including results of all tests made, diagnoses, prognosis and other
34 conclusions and reports of earlier examinations of the same
35 conditions.

36 (c) On request of the person examined, the board shall furnish
37 a copy of the report to such person. If the victim is deceased, the
38 board, on request, shall furnish to the claimant a copy of the report.

39 (d) The board may require the claimant to supplement the ap-
40 plication with any reasonably available medical or psychological
41 reports relating to the injury for which compensation is claimed.

42 (e) All records and information given to the board to process a
43 claim on behalf of a crime victim shall be confidential. Such exhibits,

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1 medical records, psychological records, counseling records, work
2 records, criminal investigation records, criminal court case records,
3 witness statements, telephone records, and other records of any type
4 or nature whatsoever gathered for the purpose of evaluating whether
5 to compensate a victim shall not be obtainable by any party to any
6 action, civil or criminal, through any discovery process except:

7 (1) In the event of an appeal under the Kansas administrative
8 procedure act from a decision of the board and then only to the
9 extent narrowly and necessarily to obtain court review;

10 (2) upon a strict showing to the court in a separate civil or
11 criminal action that particular information or documents are not
12 obtainable after diligent effort from any independent source, and
13 are known to exist otherwise only in board records, the court may
14 inspect in camera such records to determine whether the specific
15 requested information exists. If the court determines the specific
16 information sought exists in the board records, the documents may
17 then be released only by court order if the court finds as part of
18 its order that the documents will not pose any threat to the safety
19 of the victim or any other person whose identity may appear in
20 board records; or

21 (3) by any board order granting or denying compensation to a
22 crime victim.

23 Sec. ~~34~~ K.S.A. 74-7305 is and 74-7308 are hereby repealed.

24 Sec. ~~45~~ 6 This act shall take effect and be in force from and after
25 its publication in the statute book.

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