

Approved: April 27, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on January 26, 1994 in Room 313-S of the Capitol.

All members were present except:

Representative Joan Wagnon - Excused
Representative Elaine Wells - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Representative Gary Haulmark
Peggy Schmidt, Johnson County
Gene Schmidt, Johnson County
Jeni Schmidt, Johnson County
Bob Stephen, Attorney General
Mark Gleeson, Chief Court Service Officer
Gene Fox, Speak Out for Stephanie
Kyle Smith, Kansas Peace Officers Association
David Orr - American Civil Liberty Union

Others attending: See attached list

Hearings on **HB 2660** - Parole and probation officers shall notify employers if employee committed a sexually violent felony & **HB 2661** - Amendments to the habitual sexual offender registration act, were opened.

Representative Gary Haulmark appeared before the Committee as the sponsor for both of the proposed bills. He stated that both pieces of legislation are a part of a comprehensive package proposed by an ad hoc task force on sexual offenders which met this year. Citizens have recognized that crime has become a problem. **HB 2660** would require probation officers to notify employers by mail if they have hired a sexually violent felon. The notification is currently done by telephone. It would also protect employers from civil damages unless the damages come about through gross negligence of the employer. **HB 2661** would require a felon convicted of a sexual offense to register with the county sheriff in the county where they reside, and would become public information. This would be done after the first conviction, (see attachment 1)

Representative Plummer questioned if probation officer's sometimes notify employers and sometimes don't. Representative Haulmark responded that the policy is that when the employer is notified they are given the criminal history of the person that they have hired.

Representative Garner stated that he is concerned that **HB 2660** would be giving more protection to the employer if he was to hire a sexually violent offender than if he hired others that don't have a criminal history. Representative Haulmark stated that the idea of the bill was to get more information out about the person to protect the employees.

Representative Garner stated that his concern with **HB 2661** is that there would be misidentification and asked what protections are in this bill to prevent that. Representative Haulmark responded that this information on the offender would have a street address and photo ID along with their name.

Representative Carmody stated that the employer, just by his hire, is not responsible for any violent acts by the employee, but if the employee is put in a position of trust then it might be construed as gross and wanton negligence.

Representative Macy questioned that the only real change in this bill is that they would notify the employee by mail. She questioned how this was going to help situations like the Schmidt case. Representative Haulmark responded that the only change this bill is making is the mail notice. Under the mail notice there would be proof that notification was sent. This would make sure that the information is given to the employer. Chairman O'Neal questioned what being able to prove that the employer received the notice do to help the situation. Representative Haulmark stated that the employer would have the responsibility to use good judgement in how they utilize these employees and not put other employees in danger.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on January 26, 1994.

Chairman O'Neal stated that given the fact that the employer is to be contacted verbally, are there any cases in which an employer has been exposed to civil liability involving what he did or didn't do with this information. Representative Haulmark stated that he didn't know of any. The Chairman then questioned what we lose by not addressing the issue of employer liability. Representative Haulmark stated that he would leave that decision up to the Committee.

Peggy Schmidt, Johnson County, appeared before the Committee as a proponent of the proposed bills. She stated that her daughter, Stephanie was raped and murdered by a repeat sex offender. Sex offenders can not be rehabilitated. Therefore, the two bills before the Committee would make a difference because they would allow for precautionary steps to make decisions to save lives. The rights of our children and families have to be greater than those who seek to destroy lives, (see attachment 2).

Chairman O'Neal questioned what effect this proposed legislation would have in regard to notification in writing. This bill does not address, one way or another, how employers deal with the information they receive. He asked Mrs. Schmidt what she would have expected the employer, in her daughters situation, to have done with that information if he had received it. Mrs. Schmidt responded that Stephanie wasn't the only college girl working there. He could have told them that this man has a prison record and it was for rape. The Chairman stated that she is assuming that he would have used this information to advise the employees of who they were working with. Mrs. Schmidt stated that she feels that he shouldn't have been working around college girls. The Chairman stated that he agrees with everything she is saying but that this legislation does not compel the employer to do anything with the information he receives. One would hope that the employer would use good judgement, but the bill imposes no responsibility or duty on the employer to use the information in any particular way and in fact one provision in the bill would actually immunize the employer if something bad happened. He questioned if she was comfortable with new Section 1 that states that "any employer who in good faith hires a person who has committed a sexually violent crime shall not be liable for any civil damage for acts committed by such person other than damages occasioned by gross negligence or by willful or wanton acts by the employer". Mrs. Schmidt responded that she feels that if an employer knows, he then has an obligation to tell his employees. She would like to see responsibility on the part of the employer with regard to the information that they are mandated to receive. Mrs. Schmidt stated that this would be difficult, but that we are dealing with lives.

Gene Schmidt, Johnson County, appeared before the Committee as a proponent of the bill. He asked how tough the legislature was going to be this year on sex offenders. Don Gideon was released from prison for rape. He did not have to register with anyone, because it was his first sex offense. He was employed by a restaurant in Pittsburg where he worked beside Stephanie and would later rape and murder her. Mr. Schmidt feels that had Don Gideon registered on his first sex offense, and the employer been notified that Mr. Gideon had a prior criminal record and this information was given to Stephanie, she would still be alive. The two bills that the Committee is hearing today are necessary safety nets that need to be in place for the public. He referred the Committee to Monograph 109, Supervision of Federal Offender, which specifically discusses federal procedures regarding third party risk and the risk of recidivism and guidelines for addressing this risk. He also referred the Committee to Guide to Judiciary Policies and Procedures, Probation Manual, which also discusses third party risk, (see attachment 3).

Chairman O'Neal stated that the frustration the legislature has is that they can pass all these crime laws but they don't necessarily make the citizens of Kansas any safer today than they were yesterday. However, it might give the families of the victims peace and consolation that the offenders will be dealt with in a harsher way. While the proposed bill would make a sincere and legitimate attempt at prevention, there are probably not enough bills that can be passed that would prevent random or calculated acts of violence. Mr. Schmidt commented that the Chairman was correct; that we as a society can't legislate values, but we can at least have a safety net in place.

The Chairman stated that the next step hadn't really been taken by placing the responsibility on the employer to do something one way or another. The employer would be given the tools and information that could be used as he deems fit. He stated that he was concerned about the immunity section. Mr. Schmidt commented that his understanding of the immunity section was to keep the employer from litigation if he fired the person. Chairman O'Neal stated that the idea of this section would be that the employer would use this information to terminate the employee or reassign him to a more appropriate place.

Jeni Schmidt, Johnson County, appeared before the Committee in support of the proposed bills. She stated that by growing up in this time period she has learned more about crime that most do by reading books. Current law states that sexual offenders only have to register after their second offense. Why should they be allowed a second chance to harm another innocent victim. She believes that registration information should be made available to the public, (see attachment 4).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on January 26, 1994.

Chairman O'Neal questioned what she felt that her employers responsibility should be with regard to the hiring of someone who has a prior sexual offense. Ms. Schmidt stated that her employer should tell them to watch their step and be careful, and not place her in a position where something could possibly happen. The Chairman stated that he understands her to say that the employer doesn't have an absolute duty to make an announcement to all employees, but that he should be ready, willing and able to provide them with that information should they ask for it.

Representative Rock stated that the bill reads that notification must occur when they are released on probation, and asked whether this also covers those that are released on parole. The Chairman stated that this is something the Committee needs to look at and it probably doesn't cover post-release supervision. The Chairman questioned that even if they are beyond the period of post-release supervision or the period of probation or parole has been completed, we still want the notification to take place. Representative Haulmark responded that the registration should take place for 10 years and the notification for as long as they have a parole/probation officer.

Robert Stephen, Attorney General, appeared before the Committee as a proponent of the proposed bills. Countless studies have shown that more often a sex offender's first offense is actually just the first time he has been caught. The registration should be open to the public and should be required as long as the offender is alive. This registration does not guarantee that sex crimes will not be committed but it does give the public more knowledge, (see attachment 5).

Chairman O'Neal stated that the Committee would be interested in hearing his comments on New Section 1, which was a good effort to try to immunize employers who may use this information to take action to reassign or terminate the employee. The Attorney General stated that the employer should be obligated to give that information to the employees, although he could see some reasons for the protection from liability. It is not the intent of this bill that anyone who has a prior offense can never work in an appropriate setting. The Chairman then questioned should the breach of that duty to give notification to the employees give rise to an individual cause of action on the part of the victim or family. The Attorney General responded yes.

Representative Garner stated that his concern is to protect those people who have similar names and live in the same community. The Attorney General stated that law enforcement agencies take more information before giving out a name. He doesn't see that there would be a problem.

Representative Heinemann questioned what other states are doing. The Attorney General replied that some states do have similar legislation. The Representative stated that he was concerned that newspapers would get a list of the sex offenders and print it in the paper. The Attorney General stated that we shouldn't worry about that; the public safety is what we should be concerned about.

Kyle Smith, speaking for the Kansas Peace Officers Association, appeared before the Committee as a proponent of the bills. He stated that he drafted the bill that passed last year to have sex offenders register on their second offense. This bill was designed primarily as an investigative tool to create a file for law enforcement officers to access to get information on potential sex offenders in their location. He had a technical amendment to **HB 2660**, New Section 2, line 1, to change "probation officers" to probation, parole and court services officers. In many states a lifetime registration is the normal requirement.

Chairman O'Neal questioned that some of the legislation that the Committee would address this year will be opening juvenile records. Would there be any reason that we shouldn't include juvenile's in this proposed bill. Mr. Smith replied that he doesn't see any reason why they shouldn't be added. Some of the most violent sex offenses are committed by juveniles.

Mark Gleeson, Chief Court Services Officer, appeared before the Committee in support of **HB 2660**. They have some suggested amendments. The first would add "community corrections officer" to the list of those that should notify employers. Also, the time standards for an officer to be notified of an employment change should be changed to 48 hours. It also needs to be clarified as to what information would be required to give the employer. Would the notification be required if the person had served time for a burglary but has a previous charge of a sex offense? They would request that this bill include juveniles that commit sex crimes, (see attachment 6).

Gene Fox, Speak Out for Stephanie, appeared before the Committee as a proponent of the proposed bills. He hopes that this legislation session would be a start to making offenders responsible for their crimes, (see attachment 7).

David Orr, American Civil Liberties Union, appeared before the Committee as an opponent to **HB 2661**. The ACLU has several problems with this bill. It violates due process of law, and equal protection. He stated

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on January 26, 1994.

that he doesn't see what the penalty is for not registering and asked if a person is convicted of a sexual offense and moves to Kansas how does he know that Kansas requires that he registers, (see attachment 8)?

Chairman O'Neal stated that Mr. Orr had raised some serious constitutional issues regarding the violation of due process, none of which were a problem last year. and questioned if he has cases he could site for the Committee. Mr. Orr stated he would provide the Committee with the cases.

David Orr continued to say that there were things slipped into the bill and are not related to what the bill is addressing. An example is that Section 2 (4) states that a sexually violent crime such as sodomy is defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505. He stated that sodomy is not a violent sexual crime. The Chairman stated that this was not slipped into the bill; this is current law. Mr. Orr proceeded to state that sodomy is a homosexual act between two consenting adults and doesn't understand why it was included the bill. Chairman O'Neal read K.S.A. 21-3505 (a)(2) and (a)(3) which states that "sodomy with a child who is 14 or more years of age but less than 16 years of age" is a sexually violent crime; hardly a victimless crime. Subsection (a)(3) states "causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal." The Chairman then proceeded to state that Aggravated criminal sodomy is a separate statute and that K.S.A. 22-4903 is the penalty section that applies.

Mr. Orr questioned if there was anything about offenders registering when they are from out of state. The Chairman read that a person is required to register as provided in this act and those that violate this act is guilty of a Class A non-person misdemeanor. Mr. Orr questioned if an offender came from out of state would they be subject to the same criminal liability. Chairman O'Neal responded that criminal law states that a person is presumed to know what is criminal and what isn't, even though they may move from state to state.

The following people did not appear before the Committee but requested that their testimony be included in the minutes: Secretary Gary Stotts, Department of Corrections; Jim Blaufuss, Schmidt Task Force; Kelli Gariglietti; and Dianne Farha (see attachment 9).

Hearings on **HB 2660 & HB 2661** were closed.

The Committee meeting adjourned at 5:45 p.m. The next meeting is scheduled for January 27, 1994.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE January 26, 1994

NAME	ADDRESS	ORGANIZATION
Mark G. Gleeson	6609 301 Main, Ottawa, KS	Kansas Assoc. of Court Services Officers
Paul Shelby	Topeka	QJA
Betsy Dineen	Topeka	KDOC
Libby Quaid		AP
Gena McFarland	Overland Park	OP Chamber of Commerce
Chris Beal	K.S.	Greater KC Chamber
William E. Ferrill	Topeka	Tax Payer
Susan Lyon	Topeka	Interested Citizen Pro Bills
Chuck Lyon	Topeka	" "
Kyle Smith	Topeka	KBI/KPOA
Mary Horch	Topeka	AG's office
Jim Claver	Topeka	KCPA
Dodie Lacey	Topeka	KCSA
Janet Alloy	Topeka	citizen
Douglas E. Johnston	Wichita	PPA
Joan Strickley	Manhattan	KAPS
Betty V. Poppe	Wichita, KS	Citizen
Walt Draz	Topeka	intense
Sen. Bob Vancrum	Overland Park	
WALT DARLING	Topeka	DIV. OF BUDGET
KEITH R. LAWRENCE	Topeka	CHRISTIAN SCIENCE COMM. ON PUBLICATION FOR KS
Michael Shields	Topeka	WSN
Mark	Topeka	

(over)

Don Jordan

Mary Ellor
Connie Goodnow

Topeka, KS

Topeka
Topeka

SRS-MHRS

KSNT-TV
Citizen

GARY HAULMARK

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

VICE CHAIR: ECONOMIC DEVELOPMENT
MEMBER: TRANSPORTATION
RULES & JOURNAL
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

Testimony in Support of HB 2660 and HB 2661

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today in favor of **HB 2660 and HB 2661**.

Both pieces of legislation are part of a comprehensive package proposed by a Ad Hoc task force on sexual offenders which met throughout the the Summer and Fall in Johnson County. The task force began its work in response to the murder and rape of Stephanie Schmidt; Stephanie was a student at Pittsburg State and her family lives in Leawood. I had the priviledge of serving on the task force with many of the people in the room here today. Our final work product is for Stephanie, but more importantly our work and the work of others will hopefully prevent future tragedies. Citizens all over the state of Kansas recognize that crime has become a huge problem. It is up to us to address that problem. This is a beginning.

HB 2660

Very simply this bill will require probation officers to notify employers by mail if they have hired a sexually violent felon. The state probation officers are currently notifying employers by telephone when they have hired any person who is on parole. Whatever the charge.

Also, this bill protects employers from civil damages unless damages come about through gross negligence of the employer.

House Judiciary
Attachment 1
1-26-94

HB 2661

This bill will require a felon convicted of a sexual offense to register with the county sheriff in the county where they plan to reside. This would have to be done after the first conviction instead of the second as current law states. Also this information would become public information.

These bills will make more information available to the public in order to help protect them from a class of criminal which is very likely to repeat and repeat its crimes.

Thank you again for your time and I would be glad to stand for questions.



January 26, 1994

Kansas House Judiciary Committee

RE: HB #2660 Employer Notification of Sex Offenders
HB #2661 First Time Sex Offender Registration

My name is Peggy Schmidt. I am the mother of Stephanie Schmidt who was murdered by a repeat sex offender this summer. Her body was found 6 months ago, today.

I am not a public speaker, but I am a very outraged mother who has suffered greatly and lost a part of life because my government let me down.

My daughter, Stephanie, was born in Topeka, Kansas, July 4, 1973. She was brutally raped and murdered 3 days before her 20th birthday by a repeat sex offender--a sex offender set loose by my government, with no supervision, no registration, and no notification to anyone.

Because of this broken system, my daughter was killed: senselessly. Senseless, because it should never have happened and senseless because it could have been prevented had common sense laws been in place.

Stephanie touched many lives in her life, and even in her death. So senseless was her tragedy that citizens all across the state of Kansas became outraged as if she were their own daughter. We have thousands of letters expressing this grief, this outrage, and this demand for changes in our laws. The citizens of Kansas felt just as victimized as we, her survivors, continue to be.

That is why I am here. There are a lot more Stephanies out there. And it is up to you to see that their parents don't have to come forward to plead for changes. It is up to you to protect the innocent families and children throughout this state. It is up to you to take bold steps forward in the prevention and awareness required to save lives: lives like Stephanies...lives like your children's and...lives of your families and the lives of all Kansans.

House Judiciary
Attachment 2
1-26-94

Before you are two bills: employer notification and sex offender registration. Last year you felt that sex offenders need not register until they commit a second crime. How many of you are willing to sacrifice yourself or your daughter for the first offence? I have had to.

Stephanie's death was the second offense of her rapist / murderer. Now that she has been killed, the law says her assailant should register. Had he been registered in the first place, Stephanie might be alive today. Had her employer been notified, Stephanie might be alive today. Yes, my daughter would be alive today if her rapist and murder would have had to register for his first offense. But last years legislation thought that was too severe...Severe is having to go to church to bury your children.

Sex offenders can not be rehabilitated. Isn't it time that we get rid of this naive attitude that all people are basically good and can be rehabilitated. How many more children are you going to sacrifice as you experiment on the public. Don't you feel any obligation to the parents, women, and children of this state? Don't you think they deserve to know who they are hiring? As long as you keep sex offenders records shrouded in secrecy, you will be placing a shroud on the women, children, and families throughout all of Kansas.

The two bills before you will make a difference. They will allow the living to take precautionary steps: to make decisions that would save their lives. Don't wait for more parents to become involved in this system by having their children sacrificed because of the short-sighted-ness of those who insist on protecting felons, murderers and rapists: short-sighted-ness of second and third chances. The rights and safety of our communities, children, and families has to be greater than those who seek to rape and destroy lives.

Our daughter was murdered by a man who was release by our system. Even though our system knew he was dangerous, (the Department of Corrections knew he had an uncontrollable rage toward women) yet they made no attempt to monitor him, to supervise him, or to notify anyone. Any contact with this slug of a human being was high risk. Yet, no one was told.

Don't you think it is time to change our laws? I hope you do! If an epidemic of disease was approaching our state, every precaution, warning and provision of protection would be exclaimed by our authorities. Yet when that same epidemic is a sex offender, our government chooses to turn its head and patiently wait while the death toll mounts. Our system is broken and the epidemic of violent sex offenders increases as we focus on second chances and rehabilitation.

Speak Out for Stephanie, and Stop Sex Offenders—now. Pass the two bills in front of you that would notify employers of sex offenders records and require all sex offenders to register. Although It is too late for Stephanie, you can still protect her sister, her friends, and the citizens of Kansas.



Speak Out for Stephanie

January 26, 1994

Kansas House Judiciary Committee

RE: HB #2660 Employer Notification of Sex Offenders
HB #2661 First Time Sex Offender Registration

Good Afternoon, my name is Gene Schmidt. I am the father of Stephanie Schmidt, and I am here to Speak Out for Stephanie— because as you know, she can no longer speak for herself.

Both Stephanie and I wish we could have been here last year: last year when a sexual predator act was defeated; last year when sex offenders were deemed not dangerous enough to register until they made a second offence.

Last year, Don Gideon, on an early release from prison for rape, was told to start a new life. He did not have to register with anyone; he did not have to disclose his past to his employer. Last year, it was felt his past needed to be kept a secret, so he could better rehabilitate himself. Last year, my daughter knew Don Gideon as a co-worker in a restaurant.

Ironically, the Department of Correction merely wished him good luck and turned him loose on the community of Pittsburg, Kansas, and the same surrounding areas where he had raped before. The only requirement was for him show up for work each day. If he didn't, he was in violation of his conditional release. Don Gideon, known by my government as a sex offender, was allowed to work side by side with my daughter.

Because he did not have to register, because he did not have to tell his employer, the community did not know he was a sex offender; the employer did not know, and fatefully for her, Stephanie did not know. She was a just 19 year old, innocent, college student trying to earn a few honest dollars working in a restaurant. Don Gideon, known by the state of Kansas as a rapist, raped and killed Stephanie; then he returned to work the same day (didn't want to violate conditions of his release) and then asked for a few days off on a long 4th of July weekend. (The same 4th of July weekend that Stephanie was to celebrate her 20th birthday.)

That is how tough you were on sex offenders last year. How tough are you going to be this year?

House Judiciary
Attachment 3

Two bills have been introduced today that ask for employer notification and first time registration. Hardly extreme reactions to a very extreme condition; nevertheless, I beg you to at least pass these minimum recommendations. There are other bills pertaining to sexual predators, but these bills here today are necessary safety nets that need to be in place for the public.

There are those among you who feel these bills are too strong. So, I ask you, "Why must the rights of killers, murders, and rapist of any degree have precedence over the rights of law abiding communities, citizens, and innocent children?" How many more fathers have to speak to you on behalf of their deceased or raped mothers, wives, sisters, or children? When will you say, "Enough is enough!"

This year, Kansas has a rare opportunity to stand up to the rest of this country and say, "Look, we are not going to take it anymore." This is the year to take the necessary bold steps. Make Kansas **"the law and order state."** The bills before you can start that process.

I would encourage you to pass these bills and to step forward boldly and proudly. Make these protective steps to help the public through awareness of any sex offenders release; protective steps to promote the rights of employers to know who they are hiring, and protective steps that would hold the rights of public safety over and above the rights of convicted felons, murderers, and rapists. Take these steps **THIS YEAR**. Take these steps for Kansas to serve as a proud example of law and order for all of our country.

Had Stephanie been informed about Don Gideon, she could have made a decision based on an awareness and knowledge about the risk involved. She had no such awareness because her government didn't feel it was necessary for anyone to know, last year.

Consequently because laws were not in place, Stephanie Schmidt was killed. She did nothing wrong. She didn't violate any law or even violate common sense. All she did was to ask for a ride home from a friend: a friend and co-worker whose rage toward women, and whose past record of sex offences was kept secret from Stephanie, from her employer, and from her community; a friend and co-worker who did not even have to register that he was a sex offender because you felt he needed to commit his crime one more time.

Well, he did! And my daughter is dead.

This sack from the KBI contains the clothing my daughter was wearing that night. Other than fond memories, this is all I have left of her because you would not get tough on sex offenders, last year. How many more sacks will you have to see before you pass bills to protect the innocent law abiding citizens of Kansas?

January 26, 1994

Kansas House Judiciary Committee

RE: HB #2660 Employer Notification of Sex Offenders
HB #2661 First Time Sex Offender Registration
INSERT TO SPEECH BY GENE SCHMIDT

Much has been said about employer notification and emotions at times have run very high. It is also understood that the Parole Officers under the direction of the Department of Corrections do notify employers—sometimes and maybe telephone. We are asking for this procedure to be formally presented by registered mail.

In addition, I would refer you to some key pages in Monograph 109, Supervision of Federal Offenders which specifically discusses federal procedures regarding third party risk and the larger issue of risk of recidivism and guidelines for addressing this risk.

Furthermore, I would refer you to the Guide to Judiciary Policies and Procedures, Probation Manual, Chapter IV, pages 36-40, specifically discuss third party risk:
Page 36, paragraph 3:

Probation officers have an equal obligation to control risk to the public...In meeting these obligations, the officer has a duty to warn specific third parties of a particular prospect of harm, physical or financial, which the officer "reasonably foresees" the offender may pose to them. This obligation exists whether or not the third party has solicited the information.

Furthermore in the monograph regarding supervision of Federal Offenders, it states that third-party risk should be reassessed at each change of residence or employment and at the 6-month status review.

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UNITED STATES PROBATION OFFICER
U.S. COURTHOUSE & FEDERA BUILDING
444 S.E. QUINCY
TOPEKA, KANSAS 66683
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Kansas House Judiciary Committee

**RE: HB #2660 Employer Notification
HB #2661 First Time Sex Offender Registration**

Hi, my name is Jeni Schmidt. As you know my sister Stephanie was raped and murdered in the summer of '93 by a repeat sex offender. I have been through a very difficult time since the death of my only sister. I have been very saddened and very angry. My anger stems even further knowing that the Justice System is also dead. I am confused because I cannot understand why my sister was brutally murdered. Most of all I cannot understand why it happened, knowing the system could have and should have prevented this tragedy.

My sister and I grew up right here in the capital of Kansas. I remember many tours of the capital building every school year. I remember coming home and asking my dad, what is this thing called government. He told me it was to protect us from bad things. He said that we have trusting people who speak up for the state of Kansas and make sure we live in a safe place.

After the death of my sister I asked myself what happened to this thing called government? I also questioned why this terrible tragedy happened, I had no answers. Today I would like to show my support in the efforts to put a stop to these painful questions. I am sharing my anger with you, the people who we trust to make it a safe place.

The current law states that sexual offenders only have to register after their second offense. What kind of message is that? Why are these amoral creatures given a second chance to harm another innocent victim? If they succeeded to destroy a life in the first place, why let them have the opportunity to do it again? How many more funerals does our society need?

House Judiciary
Attachment 4

1-26-94

GENE & PEGGY SCHMIDT ♥ P.O. BOX 7829 ♥ OVERLAND PARK, KS 66207

Another problem with the current law is that the registration information is only open to law enforcement agencies, not the community. For it to be available to the public is an invasion of the criminals' right to privacy. But isn't it an invasion of rights when those criminals turn around and rape or murder innocent individuals? This information should be available to everyone, especially employers. This violent creature could be the new custodian at the school your child attends, a plumber or electrician entering your home, or like in Stephanie's case, a co-worker. This individual could even be your next door neighbor!

If a person is raped, molested, or murdered, the victims must live with a scar for the rest of their lives. Their life will never be the same. The victim is made public and in some cases humiliated. Yet when a criminal commits such a heinous crime, people assume he is rehabilitated after incarceration. Then the criminal is released into society to live like nothing ever happened. The criminal's life is kept quiet.

What kind of government do we have? What kind of system protects guilty rapists, murderers, child molesters and other sexual predators? What kind of system continues to experiment on the same public it promises to serve and protect? I do not want to continue to be an experiment to see if sex offenders have been rehabilitated. I do not want to meet another suffering child who has been molested. I do not want to attend another funeral of an innocent victim.

I want to feel safe walking in parks. I want to have a job where I can be safe and be able to trust my co-workers. I want to see a Justice System, not a criminal sympathy system!



STATE OF KANSAS

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ROBERT T. STEPHAN
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**Statement of
ROBERT T. STEPHAN
Attorney General
Re: House Bill 2661
Before the House Judiciary Committee
January 26, 1994**

The current law requires sex offenders to register only after the second offense. Countless studies have shown that more often than not a sex offender's "first" offense is actually just the first time he or she has been caught. Why give them yet another opportunity to cause more damage and destroy more lives.

The registration information needs to be open to the public, not just to law enforcement agencies as it is under the current law. The purpose of the registration is to protect the public, but how can we do that if the public doesn't have the right to know when a convicted offender is residing in their community -- in fact may be their next door neighbor, or someone they work with.

The registration should be required as long as the offender is alive, not just for ten years. I am firmly convinced that the majority, if not all, sex offenders, even if they go through a voluntary rehabilitation program while in prison, cannot be rehabilitated. There is too much evidence and too many tragic cases of chronic rapists and child molesters who continue to prey on society to suggest otherwise.

According to a nationwide investigation into sex offenders by Readers Digest magazine, experts are increasingly rejecting the view that sexual deviants are mentally ill and can be treated. Says Virginia clinical psychologist Stanton Samenow who has studied criminals for more than 20 years, "The sex criminal is anything but 'sick.' He is calculating and deliberate in his actions. He just shuts off his knowledge of right and wrong long enough to commit his crimes."

An Oregon researcher and two associates reviewed the re-offense rates of sex criminals from treatment programs throughout North America and Europe and concluded: "There is as yet no evidence that clinical treatment reduces rates of sex re-offenses."

House Judiciary
Attachment 5
1-26-94

Our criminal laws should be based on our experience and knowledge of past criminal activity. We cannot base them on the mistaken and naive belief that all people are good and those who aren't can be rehabilitated and sent back into society with no accountability or supervision. The time has come, in fact is long overdue, for us to rethink the way we treat sex offenders who are predators and who have shown little regard for other people's safety and happiness. We must protect those who need protecting, not those who take advantage of the criminal justice system to continue their mean and barbarous behavior against society.

Fourth Judicial District of Kansas

Franklin County Court Building

3rd and Main
Ottawa, KS 66067
(913) 242-5433
(913) 242-5970 (Fax)



Anderson County
Coffey County
Franklin County
Osage County

Court Services

January 26, 1994

Honorable Michael R. O'Neal
Representative
State Capitol
Topeka, Kansas 66612

Dear Representative O'Neal,

Please accept this testimony regarding HB 2660. During the process of preparing this testimony, I contacted several Court Services Officers regarding this bill and their feedback is included. I welcome any questions regarding this testimony and look forward to following this bill.

Please give me a call if you or any member of your committee have questions or desire additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark G. Gleeson".

Mark G. Gleeson
Chief Court Services Officer
KACSO Legislative Chairperson

Testimony to House Judiciary Committee
Wednesday, January 26, 1994
House Bill No. 2660

Testimony developed and provided by Mark G. Gleeson, Legislative Chairperson, Kansas Association of Court Services Officers

HB 2660 requires Court Services Officers to notify in writing the employers of each person who has committed a sexually violent crime, and is under the Court's supervision, that such person has committed a sexually violent crime. At the present time, we have a duty to notify employers and others when a client poses a real threat to public safety or well being by reason of that clients employment and where there is an identifiable potential victim. We welcome the opportunity to expand this beyond what we currently enjoy. As such, the Kansas Association of Court Services Officers supports the intent and direction of HB 2660. We would, however, offer the following suggestions and comments so that, if passed, we can more effectively carry out this legislative mandate.

If not defined elsewhere in statute, the term "Probation Officer" should specifically refer to both Court Services Officers and Community Corrections personnel. Both Court Services and Community Corrections programs supervise a small number of clients who fit into this category and should be included in this bill.

Time standards should be defined which specifically state the amount of time a probationer has to notify the Probation Officer of his/her acquisition or change of employment. We would suggest that the probation officer be notified of any change of employment status within 48 hours of such change.

Time standards should also be established for the Probation officer to provide written notification to the employer. We would suggest that this be not less than 10 working days nor more than thirty working days. You might also consider imposing stricter standards for employer notification should a client obtain a position where he/she will have access to young children. As Court Services Officers, we are concerned about the method of notification and would consider establishing procedures which would require that all employer notification of this type be through registered mail, thereby verifying that notification was received by the employer.

While it may sound simple, we would request that the term employment be defined. Often our clients do not hold traditional 9 - 5 jobs but earn income through various "odd jobs". When does a client's "employment" require our notification. Does raking leaves, shoveling snow or performing itinerant farm labor constitute "employment".

We would request that the legislature provide clarification as to whether this applies to all persons who are currently under our supervision who have been convicted of a sexually violent crime as defined by K.S.A. 22-4902 or does it simply apply to those persons who are placed under our supervision having been convicted of a sexually violent crime as defined by this statute. Persons under our supervision for non-sex offenses such as burglary or theft may have prior convictions which include sex offenses which fall into this category.

Further, we would ask for clarification as to what information we are to provide to employers. It is not difficult to imagine that once an employer learns of a clients past criminal record that the employer will request additional information. Please be specific as to what information should be released. We recommend that all information be released to employers on the agency letterhead and that information be restricted to the following:

- Name
- Date of Birth
- Case number
- Date of Offense
- Date of Conviction
- Crime(s) of Conviction
- Sentence
- Probation Officers name, address, phone number

We would recommend that the following information be kept confidential:

- All victim information
- All client evaluation, assessment, and treatment records
- All probation records (i.e. case notes, correspondence, etc.)

Additional information can be shared with employers upon the supervising officer obtaining an authorized Release of Information form signed by the client.

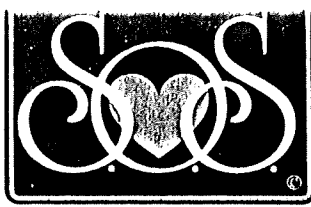
While this bill encompasses most sex offenses, it does not include sexual battery (K.S.A. 21-3517), lewd and lascivious behavior (K.S.A. 21-3508), or other misdemeanor sex offenses. Is it the intent of this committee to omit those sex offenses in this category?

Finally, does this requirement extend to those persons under the age of 18 who are adjudicated on sexually violent offenses? It is our position that the harm inflicted on victims is no less severe if perpetrated on a young child by a 17 year old adolescent than a 25 year old adult. We would, therefore, request

the authority of statute to notify employers in juvenile cases in the same manner as we would for our adult clients.

Every bill offers an opportunity for concern and this is no exception. Notifying employers of each person convicted of a violent sex offense will make employment opportunities more difficult for clients. Without doubt, there will be employers who will terminate an offenders employment upon learning that he/she has been convicted of a sexually violent offense. We recognize this and believe that, in some cases, we may be able to manage this through communication between the supervising officer, the client, and the employer. Our assumption is that the intent of this bill is to provide information to employers as a public safety policy and not as a deterrent to employment.

Thank you for the opportunity to bring these issues to this committee. I am available for questions.



Speak Out for Stephanie

Earlier this month while my daughter Kristi was home from college for the holidays, I was put in a position of having to leave her at home alone with a furnace maintenance man. You see, I had to leave before he was finished because I had a meeting with Gene and Peggy Schmidt at the Johnson County Sun. We were there to discuss the need for the Sexual Predator Bill. Two of the components...employer notification and registration...are before you today.

Surely there are none of you who can't understand why the Schmidts are today devoting their lives to this legislation. After all, their daughter's life was lost because it wasn't properly in place last summer.

But let me tell you, that the horrors of last summer were again felt for my daughter and I when I left her alone to go off to campaign with the Schmidts for stricter laws. I telephoned home from Steve Rose's conference room every 10 minutes or so, but believe me it was an uneasy couple of hours.

Unlike my good friends, the Schmidts, everything turned out OK. The furnace company had employed a decent man. But what if they had only thought they had hired a decent man? What if, instead, this maintenance man had previously been convicted of rape and the Kansas correctional system had "mandated" that he be released after only serving 10 of his 20 years? Would I be burying Kristi today instead of talking to you?

Perhaps so.

The victim today or tomorrow may not be named Kristi. She may be a Sara...a Rebecca...a Cathy. He may be a Timmy...an Adam...a Sean. That victim may be your wife, your daughter...granddaughter or grandson.



Kristi Fox

Stephanie Schmidt

The violence swirling around us is real. We speak of real death. This is not Made-for-Television fantasy. There are statistics, and there are facts, but most importantly, there are Stephanie Schmidt's to prove it; that if we continue to let sexual predators back into our schools and communities, they will RAPE and MURDER our children.

Richard Grissom was a convicted murder. And

we let him out to do it again.

Why Allan Dodd was a convicted murder and child molester. And we let him out to do it again.

Richard Allen Davis was a convicted murder and child molester. And we let him out to do it again.

Donald Ray Gideon was a convicted rapist. And we let him out to do it again. Only the next time he also murdered.

We should not let these predators loose. But if you do, we ask that you register them.. We ask that you warn us. We ask that you notify us.

Is it right to hope that people like Gideon, Grisom and Davis can be kept in prison. Yes. Is it right to expect our children to be protected from these people. Absolutely. Then do it.

Is it too much to ask who is working beside your daughter on the late shift at Hardy's? Is it too much to ask who is in the house alone with my daughter?

If we are to have compassion, let it be

for the victims...not those who have de
them victims. If are to protect, let it be
families who we protect...not those who
would destroy our families.

Let this be an age of accountability. Let us hold sexual predators as well as all violent offenders accountable for their heinous crimes

nous crimes against our children. Because if we don't, ultimately, it's the law makers themselves who have to be held accountable.

Gene Schmidt has been accused by some in our legal community of taking this too personally. His response to that is "DAMN RIGHT!" And if Gene Schmidt is taking it too personally that his daughter was murdered by a released sexual predator....then I am glad be-

cause I take it personally that he is now trying to protect my daughter. You should as well, because he's also trying to protect your's.

Gene Fox

7-2

**A Celebration of Grace
in the life of
Stephanie Rene Schmidt**

**August 2, 1993
11:00 a.m.**

Atonement Lutheran Church

Overland Park, Kansas

Stephanie Schmidt was born July 4, 1973. She died July 1, 1993. This service is conducted in her memory and in the promise of the resurrection.

Prelude

(The congregation is asked to read in unison those portions of the bulletin that are in *italic*)

Processional (The congregation stands)

Acoustical Guitar

Solo "Distant Shores"

Invocation In the name of the Father, and of the Son, and of the Holy Spirit. *Amen.*

Greeting

Blessed be the God and Father of our Lord Jesus Christ, the source of all mercy and the God of all consolation. He comforts us in all our sorrows so that we can comfort others in their sorrows with the consolation we ourselves have received from God. *Thanks be to God.*

Proclamation of the Promised Resurrection

Romans 6:3-5

When we were baptized in Christ Jesus, we were baptized into his death. We were buried therefore with him by Baptism into death, so that as Christ was raised from the dead by the glory of the Father, we too might live a new life. For if we have been united with him in a death like his, we shall certainly be united with him in a resurrection like his.

The Salutation

The Lord be with you.
And also with you.



706 West 42nd St., Suite 108
Kansas City, Missouri 64111
Phone: (816) 756-3113
Fax: (816) 756-2008
(Call First)

January 27, 1994

Steve Kirschbaum
PRESIDENT - WMO

Steve Lopes
PRESIDENT - KS

David Waxse
GENERAL COUNSEL

Dick Kurtenbach
EXECUTIVE DIRECTOR

Carla Dugger
ASSOCIATE DIRECTOR

Hon. Michael O'Neal, Chair
House Judiciary Committee
Room 426-S
State House
Topeka KS 66612-1587

Re: House Bill 2661

Dear Rep. O'Neal:

I am writing today as promised by David Orr during his testimony January 26 before the Judiciary Committee. I am including information supporting Mr. Orr's point that parts of both the current "Habitual Sex Offender Registration Act" and the amendments now before the committee violate due process.

Attached is the text of *Lambert v. California*, 355 U.S. 225 (1957), which concerns a woman penalized by the city of Los Angeles for not registering as a felon as required by city ordinance. The Court held that the registration provisions violated due process when applied to a person who had no knowledge of the duty to register.

Quoting the U.S. Supreme Court's holding, "Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process. Were it otherwise, the evil would be as great as it is when the law is written in print too fine to read or in a language foreign to the community." *Lambert* at 229, 230.

The application of this argument to persons convicted of crimes in other states who move to Kansas seems perfectly obvious. It would be difficult for them to become aware of the law requiring their registration. Also, such a requirement penalizes all persons convicted prior to the enactment of the legislation and as such violates the *ex post facto* provision of the Constitution.

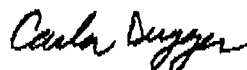
As you yourself counseled the family at yesterday's testimony, there is no guarantee that this law will stop crimes such as that perpetrated against Stephanie Schmidt. In fact, ACLU's contention as stated by Mr. Orr yesterday is that it may have no real affect at all, other than to make rehabilitation of some

House Judiciary
Attachment 8
1-26-94

Page two
ACLU
1/27/94

offenders much more difficult by ensuring they will be further hounded by society -- perhaps ensuring their return to old ways in lieu of their ability to integrate into society. It would be tragically ironic if such punitive measures result in any effect that is the opposite of what the proponents of HB 2661 desire.

Sincerely yours,



Carla Dugger
Associate Director

cc: Hon. Tim Carmody, Vice Chair
Hon. Jim Garner, Ranking Minority Member
Mr. David Orr

Testimony by Secretary of Corrections Stotts
submitted to the House Judiciary Committee on HB 2660
January 26, 1994

HB 2660 establishes procedures to notify employers of the criminal history of employees who have committed sexually violent offenses. The bill basically requires that sex offenders notify their probation or parole officer when they obtain employment, and that the probation or parole officer must then inform the employer in writing that the offender had committed a sexually violent offense.

Currently, the department works closely with the Attorney General and the county/district attorney victim-witness programs statewide to comply with statutory responsibilities for victim notification. The department by policy also provides notice to victims or witnesses of crimes committed by any inmate when such notice is requested. In addition to victim notification practices, the department is currently mailing reports each month to approximately 290 county and local law enforcement agencies listing all offenders under supervision by Department of Corrections parole staff in their respective counties. We also have worked with the Kansas Bureau of Investigation regarding implementation of the Habitual Sex Offender Registration Act which was approved during the 1993 legislative session. Moreover, offenders are expected to inform employers of felony convictions when required to do so on employment applications and the department currently informs employers or prospective employers of an offender's criminal history in certain circumstances. Also, information regarding an offender's crime of conviction, length of sentence, and certain other information is public and is routinely provided to employers, the media and others upon request.

The Department of Corrections is prepared to implement the notification procedures established by HB 2660 for affected offenders who are under the supervision of the department. However, the following comments and recommendations are offered.

1. While the department will make every effort to notify employers pursuant to the provisions of HB 2660, circumstances may arise--such as short-term job situations--when offender notice to staff is either not timely or not given as required. Establishment of a specific statutory requirement for probation and parole officers increases the state's potential liability in the event an officer does not give notice. We therefore suggest the following amendment to Section 7 of the bill, which is similar to language contained in existing statutes providing for victim notification:

"Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section."

Testimony on HB 2660....continued

2. We believe that there would be advantages, both operationally and in terms of reinforcing offender accountability, if the bill were amended to require the offender to directly notify the employer of his/her criminal record, with the department's role being that of follow-up to assure not only that reporting occurred but that the information supplied was both complete and accurate.
3. We suggest addition of an amendment to extend the bill's provisions to those offenders supervised by community corrections staff. According to current statute, community corrections placements are not considered as probation assignments.
4. We expect that the bill's provisions will tend to make it more difficult for sex offenders to get and maintain employment, and that some increase in re-offending rates and in revocation of post-release supervision--i.e. return to prison due to violation of release conditions--may result. To address this issue, we are considering alternatives for targeting assistance to this group of offenders in job-seeking efforts upon their release from prison.
5. Some consideration should be given regarding expectations of what employers will do with criminal history information once they receive it. While the intent of the bill is to further the public safety by sharing criminal history information on offenders who have committed sexually violent offenses, the bill does not address employers' obligations to notify employees, clients or others the offender may come into contact with during the course of employment. The primary effect of the bill may in fact be to serve as a deterrent to employers to hire sex offenders, which is the reason we expect employability of this group to become more difficult. This may shift some risks from the workplace but it does not necessarily increase public safety overall. In the final analysis, we have not yet identified a practical and effective way to provide notification to all persons who will or may encounter an offender who is released from incarceration.

TO: KANSAS HOUSE - JUDICIARY COMMITTEE
FROM: JIM BLAUFUSS - SCHMIDT TASK FORCE
RE: HOUSE BILL 2660 AND HOUSE 2661

Pedophiles and rapists can only be stopped by the State of Kansas. These people can not be stopped by their victims, they can not be stopped by their own families and they can not stop themselves.

Most sexual assaults have no witnesses and there is little or no evidence. How does a person prove rape? Some people tell women not to fight. Submitting to the attack might help their chances of living. In a trial, the jury wants to see photos of a badly bruised body or a dead body. If Stephanie Schmidt, killed in July by Donald Gideon, had lived, how would she have been able to prove that she had been raped?

Most victims do not report a rape. They do not dial 911. We are talking about a crime so heinous that the victims do not want anyone to know it happened and sometimes would rather be dead than live with the memory of the attack. During the sentencing hearing for Gideon, his attorney said the State of Kansas does not consider rape and sodomy as doing great bodily harm. Therefore, the sentence should not be as severe.

The Schmidt task force, formed by Stephanie's parents, Gene and Peggy Schmidt, found there are many sex offender treatment programs. This task force did not find a single treatment program that is effective. The fact that the State wants to spend money on these programs sends a false message that somehow there is a solution that the citizens of this state can feel secure.

We teach our children to not trust strangers. Most assaults are by men known by their victims. Most sex offenders repeat their crimes until they are caught. The only way to stop them is to lock them up and keep them from the people they will hurt. The rapes and murders involving sexual assaults that we see on the news daily are usually committed by men with a sex felony record.

Statistics show there will be 50 sexual assaults for every conviction. The cost of letting these people go free is much greater than locking them in prison.

The State of Kansas is the first and sometimes the only one who know who these people are. It is not realistic for each employer to do a crime check on everyone hired. This may not even be legal to do for most employers. The Schmidt task force wants the State to notify each employer when they have hired a convicted sex felon. This should be done for a 10 year period after they have served their sentence. Ten years is the length of time a person carries a bankruptcy on their record.

An armored car company does not want to hire a bank robber. They are able to do a criminal record check. Do our school districts know the history of the people teaching our children, cleaning the schools, coaching our children or driving the bus?

There is no evidence that a job will change the behavior of a sex offender. For a lot of offenders a job is the opportunity to find more unsuspecting victims.

The question is, do we want our mothers, wives, sisters and daughters to know when they are working with a sex offender? Do we want to know if the people who have access to our homes have a history of sexual assault?

These bills may cause some hardship for the convicted sex felon, but we know their many victims will live with the effects of the attack the rest of their lives.

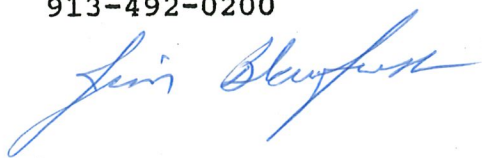
The Schmidt Task Force is asking our State Legislature to pass House Bill 2660--Notification to Employers and House Bill 2661--Registration of convicted sex felons.

We know there is no way to keep all sex offenders off our streets. These two bills will help protect the people that may become their next victim.

Jim Blaufuss
Member of the Schmidt Task Force

7919 Westgate Ct.
Lenexa, Kansas 66215

913-492-0200



January 22, 1994

Dear Gary Haulmark:

I am writing to express my support for the two bills that will be introduced on Wednesday January 26, 1994. That day will be exactly six months since the body of Stephanie Schmidt was found in a wooded area in Cherokee County. Stephanie Schmidt was a young woman who falsely believed that she was protected by this state's legal system. Her brutal death made many realize that our current law does not protect those that need protected.

I too have realized that our current law needs to be changed to start protecting the right people. I only wish I would have come to this realization before the life of my friend was taken. Do each and every one of us have to lose someone very special to us before we face the reality of what is happening? How many lives must be taken before society wakes up and becomes enraged by these slayings.

I am one of many who is scared to walk outside their door alone at night. Why should we have to live our lives in constant fear of who we might be working with or who might be residing next door to us. I believe the fear is because we do not know who these people are. If we were to know, we would feel less fear. We need to know who these people are rather than living in constant fear of who they might be.

These two bills would take a step in the direction of protecting the safety of the public. I am tired of turning on the TV and hearing of case after case of innocent lives being taken because these people put their trust into the wrong hands. These lives wouldn't have been wasted if these people would have known the jeopardy they were placing their lives in by trusting these people. I can tell the story of my friends senseless murder, but I can't change the law to start protecting people like my friend, but you can. There should be no more Stephanie Schmidts cases, and you can make the difference by taking advantage of the two bills introduced today. Thank you for your time.

Sincerely,

Kelli Gariglietti

Kelli Gariglietti

Dianne M. Farha
12705 Pawnee Lane
Leawood, Kansas 66209

January 25, 1994

Mr. Gary Haulmark
Topeka, Kansas

Dear Mr. Haulmark:

I am writing this letter on behalf of me and my family in support of the two bills which will be introduced to legislation on January 26, 1994. One is concerning the registration and notification law that rapists on parole be registered in the county in which they reside. The other is regarding the notification of the employer by registered letter of the background of these rapists.

I believe one of the big fallacies of our legal system is that it protects the rights of criminals who prey on innocent people while ignoring the rights of decent, law abiding citizens.

Perhaps one could argue that these criminals have "paid their debt to society" and should be given a chance to prove themselves. However, what about the potential victims of these criminals? Victims like Stephany Schmidt who was raped and murdered last summer. She was never given a chance to prove herself to society. She was only 20 when she became victimized by a rapist who was on parole.

Stephany and her rapist both had the same employer. Had Stephany's employer been notified of her rapist's background I am sure Stephany would still be alive today.

Certainly rapists can prove themselves in prison-- after all, who is there to rape, or would the victim of the rapist even report it? However, what about after they get out and are exposed to innocent young girls, children, etc., everyday? I certainly believe there should be a period of time when these criminals should have to prove themselves in society at their expense and not at the expense of innocent people--i.e. notification and registration.

Sincerely,

Dianne M. Farha

Dianne M. Farha