

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 2:00 pm on February 18, 2011 in Room 144-S of the Capitol.

All members were present except: Kay Wolf

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Lauren Douglass, Legislative Research  
Robert Allison-Gallimore, Legislative Research  
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Whitney Damron, City of Topeka  
Ed Klumpp, KACP, KSA, KPOA  
Kyle Smith, AG's Office  
Chief Ron Miller, Topeka Police Department  
John Rokos, Advanced Metals Recycling  
Chris Carroll, AT&T  
Former Representative John Faber, ABATE of Kansas, Inc.  
Tim Farr, ABATE of District 4 Representative  
Debra Stewart, ABATE of Kansas, Inc.

Others attending:

See attached:

Chairperson Colloton called the meeting to order and opened the floor for consideration of **HB 2329**. She called on Sean Ostrow, Office of the Revisor of Statutes, to refresh the Committee's memory of the bill. Mr. Ostrow stated the bill will create a new section allowing a person who has been adjudicated mentally ill to petition for relief from state and federal firearm prohibitions and would govern the contents of the person's petition for such relief as well as a court's duties in considering and granting the petition. The bill would also require courts to make expunged records and related information for adults and available to the KBI to complete a person's criminal history record information within the central repository or to provide information or documentation to the KBI to determine a person's qualification to possess a firearm.

**Representative Pauls made a motion to pass the bill out favorably for passage. Representative Moxley seconded.**

**Representative Pauls made a motion to cover 7-1-11. Representative Brookens seconded. Motion carried.**

**A discussion followed with Representative Brookens making a motion for an amendment to add on line 25, Page 1 "shall grant relief if such court determines by clear and convincing evidence". Representative Kelly seconded.**

A short discussion followed.

**Chairperson Colloton called for a vote on the Brookens amendment motion on the floor. A division vote was called for and the motion failed.**

**Representative Pauls moved to pass the bill out favorably as amended. Representative Meier seconded. Motion carried.**

Chairperson Colloton opened the hearing on **HB 2312-Regulated scrap metal; licensing scrap metal dealers; unlawful acts; criminal penalties**, and called on Sean Ostrow, Revisor of Statutes, to explain the bill and the amendments offered on the bill. Mr. Ostrow presented written copy of the amendments proposed by the Attorney General's Office. (Attachment 1) He stated the bill would create new sections of law to govern scrap metal dealers. It would provide that in order to purchase regulated scrap metal, a business would have to have a license for each place of business. The bill outlines the requirements for an application for licensure, the factors that would prohibit licensure, and circumstances allowing and

requiring a license be revoked. The bill also makes it unlawful for a scrap metal dealer to purchase wire or cable owned by a telephone, cable, electric, water or other utility provider when the sheathing has been removed, making identification impossible, and the dealer cannot use a form of payment other than \$35 worth of property, copper in any form for any amount, catalytic converters, and refrigeration condensing units and related parts.

Chairperson Colloton introduced Whitney Damron, representing the City of Topeka, to give his testimony as a proponent of the bill. Mr. Damron presented written copy of his testimony. (Attachment 2) Mr. Damron stated curtailing metal theft crimes has been of significant importance to the citizens of Kansas. Those responsible for these crimes have cost Kansans millions of dollars a year in damages, lost productivity, and increased risk to public safety. In closing, he stated the bill is intended to provide a framework for enhanced enforcement of metal theft laws that will increase the likelihood that violators will be caught, successfully prosecuted, and receive stiffer penalties for their efforts. Hopefully the legislation will serve as a deterrent and such crimes will be reduced accordingly.

Chairperson Colloton introduced Chief Ron Miller, Topeka Police Department, to give his testimony as a proponent of the bill. Chief Miller presented written copy of his testimony. (Attachment 3) Chief Miller stated the bill would provide the mechanism to assure better compliance of the existing scrap metal statutes and enhance the consequences to those persons committing these crimes. He went on to say that in many cases the cost to repair the facility where the metal is stolen from far exceeds the value of the metal itself. He referred the Committee to the pictures attached with his testimony showing damages done to businesses by the thieves while removing copper from cooling and heating units located on the roofs. In closing, he urged the Committee to pass this bill favorably to help the Topeka Police Department deter and investigate these crimes which cost Kansans dearly.

Chairperson Colloton introduced Ed Klumpp, KACP, KSA, and KPOA, to testify as a proponent of **HB 2312**. Mr. Klumpp presented written copy of his testimony. (Attachment 4) Mr. Klumpp stated the bill establishes a statewide licensing program for all scrap metal dealers in the state. It also modifies the statute requiring payment of scrap metals over \$50.00 be made by check in order to have good records. The bill was modeled by Wichita and has proven to be workable with scrap metal dealers. In closing, he urged the Committee to please support the bill.

Chairperson Colloton introduced Kyle Smith, Attorney General's Office, to give his testimony as a proponent of the bill. Mr. Smith presented written copy of his testimony. (Attachment 5) Mr. Smith stated explosive growth in theft of scrap metal, and the concurrent massive criminal damage to property that is often involved, has created a criminal nightmare and economic straight jacket throughout Kansas. The bill is a smart and effective way of addressing all aspects of the problem. In closing, he urged the Committee to support the bill.

Chairperson Colloton called on Sarah Fertig, Executive Director, Kansas Sentencing Commission, to give a report on the bed impact on prison beds if this bill is put into law. Director Fertig stated the Kansas Sentencing Commission estimates the passage of **HB 2312** would result in an increase between four to six adult prison beds in FY 2012 and increase between six to twelve adult prison beds by FY 2021.

Chairperson Colloton called the Committee's attention to the "written only" testimony of Kent Cornish, Kansas Association of Broadcasters, (Attachment 6), and Chris Carroll, Director of External Affairs, AT&T. (Attachment 7)

Chairperson Colloton introduced John Rokas, Advanced Metals Recycling, to give his testimony as a neutral party of the bill. Mr. Rokas presented written copy of his testimony. (Attachment 8) He stated Advantage Metals has six locations in Kansas and six locations in Missouri with over 300 employees. They buy and process over 500,000 GT's of ferrous and nonferrous material each year from businesses and individuals. He went on to say they support many of the measures included in this house bill but have concerns in several areas. He listed the concerns as follows:

1. They would like for additional language included allowing for transfer upon sale of business.
2. They feel that a company should have the ability to conduct business while the appeal process is taking place allowing for due process.
3. They would like for an exemption to be made for cash transactions made by ATM machine. They use ATM machines that record pictures of individuals while they are receiving the cash and they also have record of the individual's driver license. They would like to continue to pay cash in this manner for the convenience of their customers.

Upon the conclusion of Mr. Rokas' testimony, Chairperson Colloton opened the floor for questions from the Committee for the conferees.

A question and answer session followed.

Chairperson Colloton called for any others wishing to testify or speak on the bill. Being none, she closed the hearing on **HB 2312**.

Chairperson Colloton opened the hearing on **HB 2199-Right-of-way violations; increased penalties**, and called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill. Mr. Ostrow stated the bill was regulating traffic concerning certain right-of-way violations and increasing the penalties.

Chairperson Colloton introduced former State Representative John Faber, representing ABATE of Kansas, Inc., to give his testimony as a proponent of the bill. Mr. Faber presented written copy of his testimony. (Attachment 9) He stated the bill helps to address a critical concern to motorcycle riders across the state. If the right-of-way laws are violated and it causes great bodily harm or death the violator, if convicted, will be guilty of an unclassified misdemeanor increasing the penalties of present law.

Chairperson Colloton introduced Tim Farr, ABATE of Kansas, Inc. to give his testimony as a proponent of the bill. Mr. Farr presented written copy of his testimony. (Attachment 10) Mr. Farr stated he had lost friends that were killed while riding their motorcycles. He told of two instances, one of which he was injured. In closing, he stated if the penalties for right-of-way violations were more severe, he believes people would be more careful and take extra time to be sure it is clear before they pull onto a highway or street. The extra second or two taken to make sure the roadway is clear can mean the difference between going on with life and a fatality.

Chairperson Colloton introduced Debra Stewart, ABATE of Kansas, Inc., to give her testimony as a proponent. Ms. Stewart presented written copy of her testimony. (Attachment 11) Ms. Stewart stated she is very passionate about the bill because her 21 year old son was killed on his motorcycle by a negligent driver. She supports this bill and asked that the Committee pass it out.

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of the following:

Cassandra Reicher, ABATE of Kansas, Inc. (Attachment 12)  
Ray Thomas, ABATE of Kansas, Inc. (Attachment 13)  
Charles Jiminez, ABATE of Kansas, Inc. (Attachment 14)  
Barbara Evanhoe, Private Citizen (Attachment 15)

Chairperson Colloton called for anyone else to testify or speak on the bill. Being no others, she closed the hearing on **HB 2199**.

Chairperson Colloton called on Lauren Douglass, Legislative Research, to gather information on what other states are doing to address this issue and bring it back to the Committee before they take action on the bill.

Chairperson Colloton moved the Committee's attention to **HB 2319--Authorizing house arrest for certain misdemeanors and nongrid felonies and updating definitions**, and opened the floor for consideration on the bill. She called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill and the balloon offered. Mr. Ostrow explained the bill was authorizing house arrest for certain misdemeanors and nongrid felonies and also updating some definitions. The bill expands the underlying intended crimes of burglary and aggravated burglary to include domestic battery. Mr. Ostrow presented a written copy of a balloon, which is mostly a cleanup balloon that addresses the concerns of Representative Brookens. (Attachment 16) He reviewed the balloon for the Committee.

A discussion followed.

**Representative Goodman made a motion to approve balloon as amended. Representative Moxley seconded.**

A lengthy discussion followed.

**Chairperson Colloton called for a vote on the motion on the floor to approve the balloon as amended. Motion carried.**

**Chairperson Colloton recognized Representative Brookens. Representative Brookens stated he had**

another amendment to offer on Page 5, line 1, strike “on the record” and add “may, at the courts discretion”. Representative Kinzer seconded.

A discussion followed.

Chairperson Colloton called for a vote on the motion on the floor for the Brookens amendment. Motion carried.

A discussion followed regarding covering drug crimes with Representative Kinzer making a motion to add drug grid level 3 or above to the exceptions. Representative Brookens seconded.

A discussion followed.

Chairperson Colloton called for a vote on the motion on the floor to add “level 3 and higher to the exceptions”. Motion carried.

Representative Kinzer made a motion to pass the bill out favorably as amended for passage.

Representative Kelly seconded. Motion carried.

Chairperson Colloton called on Dave Hutchings, KBI, asking a question regarding a 5 to 4 vote on his bill. She asked if amending the bill to change the burden of proof to show clear and convincing evidence would interfere with the compliance? She told him the Committee went with the lesser language and did pass the bill out of committee. When the bill goes to the Senate, if permissible, they would like to offer the new language for the Senate to consider. Mr. Hutchings stated he would find out and let her know.

Chairperson Colloton moved the Committee's attention to **HB 2009-Defining the crime of home improvement fraud and providing penalties**, stating the bill was sent back to the Committee because of the language and not the prison bed count. All interested parties were involved with the input of the bill and there is a dispute between the contractors and the district attorneys. If that dispute cannot be resolved by Monday, the bill will be held for next year.

Chairperson Colloton moved the attention of the Committee to **HB 2138-Expanding crime of burglary to include entering to commit certain domestic crimes**, and opened the floor for consideration of the bill. She called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill to the Committee. Chairperson Colloton made a motion to pass the bill out favorably for passage. Representative Kinzer seconded.

A lengthy discussion followed with some concerns.

Representative Goodman made a motion to pass the bill out favorably for passage. Representative Cassidy seconded.

The discussion continued with Representative Brookens making a motion to table the bill until Monday. Representative Moxley seconded. Motion carried.

Chairperson Colloton moved the Committee's attention to **HB 2318-Amendments to the recodified criminal controlled substances provisions**, and called on Jason Thompson, Office of the Revisor of Statutes, to explain the balloon for the bill. Mr. Thompson presented written copy of the balloon. (Attachment 17) Mr. Thompson explained the balloon contains a couple of changes that add manufacturing and make many technical changes needed. He also stated the bill would need to be a substitute bill. He took the Committee through all the changes and technical cleanup of the balloon.

A lengthy discussion followed regarding the balloon on the bill.

Chairperson Colloton stated she is not intending to work **HB 2055--Eliminating certain information sharing requirements for district and county attorneys**. She announced the Committee would be hearing the ERO on Monday and after that the Committee would be taking action on bills. She stated if anyone had something that they wanted the Committee to consider on Monday to please let her know.

Chairperson Colloton adjourned the meeting at 2:45 pm with the next scheduled meeting to be on Monday, February 21, 2011 at 1:30 pm in room 144S.



DATE: 2-18-11

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[illegible]

**HOUSE BILL No. 2312**

By Committee on Judiciary

2-11

1 AN ACT concerning regulated scrap metal; relating to licensure for scrap  
2 metal dealers; unlawful acts; criminal penalties; amending K.S.A.  
3 2010 Supp. 50-6,109 and 50-6,111 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) On or after January 1, 2012, no business shall  
7 purchase any regulated scrap metal without having first secured a license  
8 for each place of business as herein provided. In case such place of  
9 business is located within the corporate limits of a city, the application for  
10 license shall be made to the governing body of such city. In all other  
11 cases, the application for license shall be made to the board of county  
12 commissioners in the county in which such place of business is to be  
13 located.

14 (b) A board of county commissioners shall not issue or renew a  
15 scrap metal dealer license without giving the clerk of the township where  
16 the place of business is to be located written notice of the filing of the  
17 application for licensure or renewal. The township board may, within 10  
18 days, file advisory recommendations as to the granting of such license or  
19 renewal and such advisory recommendations shall be considered by the  
20 board of county commissioners before such license is issued.

21 (c) The governing body of any city and the board of county  
22 commissioners shall not issue or renew a scrap metal dealer license  
23 without giving the sheriff, chief of police or director of all law  
24 enforcement agencies in the county written notice of the filing of the  
25 application for licensure or renewal. Each law enforcement agency may,  
26 within 10 days, file advisory recommendations as to the granting or  
27 renewal of such license and such advisory recommendations shall be  
28 considered by the governing body of the city or board of county  
29 commissioners before such license is issued.

30 (d) An application for a scrap metal dealer license shall be verified  
31 and upon a form prepared by the attorney general and shall contain:

- 32 (1) The name and residence of the applicant;  
33 (2) the length of time that the applicant has resided within the state  
34 of Kansas and a list of all residences outside the state of Kansas during  
35 the previous 10 years;  
36 (3) the particular place of business for which a license is desired;

1 (4) the name of the owner of the premises upon which the place of  
2 business is located; and

3 (5) a statement that the applicant has not within 10 years  
4 immediately preceding the date of making application been convicted of  
5 theft as defined in K.S.A. 21-3701, prior to its repeal, or section 87 of  
6 chapter 136 of the 2010 Session Laws of Kansas, theft of property lost,  
7 mislaid or delivered by mistake as defined in K.S.A. 21-3703, prior to its  
8 repeal, or section 88 of chapter 136 of the 2010 Session Laws of Kansas,  
9 theft of services, as defined in K.S.A. 21-3704, prior to its repeal,  
10 criminal deprivation of property as defined in K.S.A. 21-3705, prior to its  
11 repeal, or section 89 of chapter 136 of the 2010 Session Laws of Kansas,  
12 or any other crime involving possession of stolen property.

13 (e) Each application for a scrap metal dealer license to purchase  
14 regulated scrap metal shall be accompanied by a fee of not less than \$100  
15 nor more than \$400, as prescribed by the board of county commissioners  
16 or the governing body of the city, as the case may be.

17 (f) The board of county commissioners or the governing body of a  
18 city shall issue a license upon application duly made as otherwise  
19 provided for herein, to any scrap metal dealer engaged in business in such  
20 county or city and qualified to receive such license, to purchase regulated  
21 scrap metals.

22 (g) If an original license is granted and issued, the governing body  
23 of the city or the board of county commissioners shall grant and issue  
24 renewals thereof upon application of the license holder, if the license  
25 holder is qualified to receive the same and the license has not been  
26 revoked as provided by law. The annual license fee for such license,  
27 which shall be in addition to the fee provided by subsection (e), shall be  
28 not less than \$25 nor more than \$50.

29 (h) No license issued under this act shall be transferable.

**(i) Violation of subsection (a) is a Class A nonperson misdemeanor.**

30 New Sec. 2. (a) After examination of an application for a scrap metal  
31 dealer license, the governing body of the city or the board of county  
32 commissioners shall, if they approve the same, issue a license to the  
33 applicant.

34 (b) No scrap metal dealer license shall be issued to:

35 (1) A person who is not a citizen of the United States.

36 (2) A person who is not 18 or more years of age.

37 (3) A person who is not of good character and reputation in the  
38 community in which the person resides.

39 (4) A person who, within 10 years immediately preceding the date of  
40 application approval, has plead guilty to, been convicted of, released from  
41 incarceration for or released from probation or parole for committing,  
42 attempting to commit, or conspiring to commit a violation of **Section 1**, article 37 of  
43 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or

1 Sections 87 through 125 and subsection (a)(6) of section 223 of chapter  
2 136 of the 2010 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior  
3 to its repeal, or section 128 of chapter 136 of the 2010 Session Laws of  
4 Kansas, compounding a crime, K.S.A. 21-3807, prior to its repeal,  
5 obstructing legal process or official duty, K.S.A. 21-3808, prior to its  
6 repeal, falsely reporting a crime, K.S.A. 21-3818, prior to its repeal,  
7 interference with law enforcement, section 129 of chapter 136 of the  
8 2010 Session Laws of Kansas, interference with judicial process, section  
9 130 of chapter 136 of the 2010 Session Laws of Kansas, or any crime  
10 involving moral turpitude.

11 5) A person who, within the five years immediately preceding the  
12 date of application approval, has plead guilty to, been found guilty of, or  
13 entered a diversion agreement for violating the provisions of K.S.A. 50-  
14 6, 109 et seq., and amendments thereto, the laws of another state  
15 comparable to such provisions or the laws of any county or city  
16 regulating the sale or purchase of regulated scrap metal three or more  
17 times.

18 (6) A person who within the three years immediately preceding the  
19 date of application held a scrap metal dealer license which was revoked,  
20 or managed a facility for a scrap metal dealer whose license was revoked,  
21 or was an employee whose conduct lead to or contributed to such  
22 revocation.

23 (7) A person who makes a false statement on the license application  
24 or has made a false statement on a license application within the last three  
25 years.

26 (8) A partnership, unless all the members of the partnership are  
27 otherwise qualified to obtain a license.

28 (9) A corporation, if any manager, officer or director thereof, or any  
29 stockholder owning in the aggregate more than 25% of the stock of such  
30 corporation, would be ineligible to receive a license hereunder for any  
31 reason.

32 (10) A person whose place of business is conducted by a manager or  
33 agent unless the manager or agent possesses all the qualifications of a  
34 licensee.

35 (11) A person whose spouse would be ineligible to receive a scrap  
36 metal dealer license for any reason.

37 (12) A person whose spouse has been convicted of a felony or other  
38 crime which would disqualify a person from licensure under this section  
39 and such crime was committed during the time that the spouse held a  
40 license under this act.

41 (13) Any person who does not own the premises for which a license  
42 is sought, unless the applicant has a written lease for at least  $\frac{3}{4}$  of the  
43 period for which the license is to be issued.



1 (14) Any person for a business location not in compliance with the  
2 provisions of all zoning requirements, environment codes, or other  
3 applicable business requirements.

4 (d) (c) Scrap metal dealer licenses shall be issued either on an annual  
5 basis or for the calendar year as determined by the board of county  
6 commissioners or the governing body of the city.

7 New Sec. 3. (a) The board of county commissioners or the  
8 governing body of any city, upon five days' notice to the persons holding  
9 a license, may revoke or suspend the license for any one of the following  
10 reasons:

11 (1) The licensee has violated any of the provisions of K.S.A. 50-  
12 6,109 et seq., and amendments thereto, or any ordinance, resolution, or  
13 rules or regulations made by the board or the city, as the case may be;

14 (2) the employment or continuation in employment of a person if the  
15 licensee knows such person has violated, within the 18 months prior to  
16 the notice of suspension or revocation action, any of the provisions of  
17 K.S.A. 50-6,109 et seq., and amendments thereto, or the laws of another  
18 state comparable to such provisions, or any city or county ordinance,  
19 resolution, or regulation controlling scrap metal sale or purchase in  
20 Kansas or any other state; or

21 (3) there has been a violation of any laws of the state of Kansas,  
22 county resolution, or city ordinance regulating scrap metal which occurred  
23 on the premises or related to the conduct of the business.

24 (b) The board of county commissioners or the governing body of  
25 any city, upon five days' notice to the persons holding a license, shall  
26 revoke or suspend the license for any one of the following reasons:

27 (1) The licensee has fraudulently obtained the license by giving false  
28 information in the application therefore;

29 (2) the licensee has become ineligible to obtain a license under this  
30 act;

31 (3) the nonpayment of any license fees;

32 (4) permitting any criminal activity in or upon the licensee's place of  
33 business;

34 (5) the employment or continuation in employment of a person in  
35 connection with the receiving or purchasing of regulated scrap metal if  
36 the licensee knows such person has, within the preceding five years,  
37 plead guilty to, been convicted of, released from incarceration for or  
38 released from probation or parole for committing, attempting to commit,  
39 or conspiring to commit a violation of **Section 1**, article 37 of chapter 21 of the  
40 Kansas Statutes Annotated, prior to their repeal, or Sections 87 through  
41 125 and subsection (a)(6) of section 223 of chapter 136 of the 2010  
42 Session Laws of Kansas, perjury, K.S.A. 21-3805, prior to its repeal, or  
43 section 128 of chapter 136 of the 2010 Session Laws of Kansas,

1 compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing  
2 legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely  
3 reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with  
4 law enforcement, section 129 of chapter 136 of the 2010 Session Laws of  
5 Kansas, interference with judicial process, section 130 of chapter 136 of  
6 the 2010 Session Laws of Kansas, a violation of K.S.A. 2010 Supp. 21-  
7 36a03, 21-36a05, and amendments thereto, or any crime involving moral  
8 turpitude; or

9 (c) Within 20 days after the order of the board **denying**, revoking or  
10 suspending any license, the licensee may appeal to the district court and  
11 the district court shall proceed to hear such appeal as though such court  
12 had original jurisdiction of the matter. Any appeal taken from an order  
13 revoking or suspending the license shall not suspend the order of  
14 revocation or suspension during the pendency of any such appeal.

15 Sec. 4. Section 87 of chapter 136 of the 2010 Session Laws is  
16 hereby amended to read as follows: Sec. 87. (a) Theft is any of the  
17 following acts done with intent to permanently deprive the owner of the  
18 possession, use or benefit of the owner's property or services:

19 (1) Obtaining or exerting unauthorized control over property  
20 or services;

21 (2) obtaining control over property or services, by deception;

22 (3) obtaining control over property or services, by threat;

23 (4) obtaining control over stolen property or services knowing  
24 the property or services to have been stolen by another; or

25 (5) knowingly dispensing motor fuel into a storage container  
26 or the fuel tank of a motor vehicle at an establishment in which motor  
27 fuel is offered for retail sale and leaving the premises of the establishment  
28 without making payment for the motor fuel.

29 (b) *Except as provided in subsection (c)*, theft of:

30 (1) Property or services of the value of \$100,000 or more is a  
31 severity level 5, nonperson felony;

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1 agent of the dealer, to purchase any of the following items of regulated  
2 scrap metal property without obtaining proof that the seller is an  
3 employee, agent or person who is authorized to sell the item of regulated  
4 scrap metal property on behalf of the governmental entity, utility  
5 provider, railroad, cemetery, civic organization or scrap metal dealer:

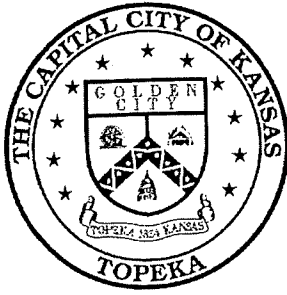
- 6 (1) Utility access cover;
- 7 (2) street light poles or fixtures;
- 8 (3) road or bridge guard rails;
- 9 (4) highway or street sign;
- 10 (5) water meter cover;
- 11 (6) traffic directional or traffic control signs;
- 12 (7) traffic light signals;
- 13 (8) any metal marked with any form of the name or initials of a  
14 governmental entity;
- 15 (9) property owned and marked by a telephone, cable, electric, water  
16 or other utility provider; **or where any such wire or cable has had the sheathing  
removed making ownership identification impossible;**
- 17 (10) property owned and marked by a railroad;
- 18 (11) funeral markers or vases;
- 19 (12) historical markers;
- 20 (13) bales of regulated metal;
- 21 (14) beer kegs;
- 22 (15) manhole covers;
- 23 (16) fire hydrants or fire hydrant caps;
- 24 (17) junk vehicles with missing or altered vehicle identification  
25 numbers;
- 26 (18) real estate signs; and
- 27 (19) bleachers or risers, in whole or in part.

28 (f) It shall be unlawful for any scrap metal dealer, or employee or  
29 agent of the dealer, to sell, trade, melt or crush, or in any way dispose of,  
30 alter or destroy any regulated scrap metal, junk vehicle or vehicle part  
31 upon notice from any law enforcement agency, or any of their agents or  
32 employees, that they have cause to believe an item has been stolen. A  
33 scrap metal dealer shall hold any of the items that are designated by or on  
34 behalf of the law enforcement agency for 30 days, exclusive of weekends  
35 and holidays.

36 (g) *It shall be unlawful for any scrap metal dealer, or employee or*  
37 *agent of the dealer, to pay for the following purchases by any means*  
38 *other than a prenumbered check drawn on a regular bank account in the*  
39 *name of the scrap metal dealer and with such check made payable to the*  
40 *person selling such property:*

- 41 (1) *All purchases of property from any person within a 24 hour*  
42 *period which exceeds \$50; and,*
- 43 (2) *all purchases of copper in any form for any amount, catalytic*





# CITY OF TOPEKA

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## TESTIMONY

House Corrections and Juvenile Justice  
Committee

2011 Session

Date 2-18-11

Attachment # 2-1

**TO: The Honorable Pat Colloton, Chair  
And Members of the House Corrections and Juvenile Justice Committee**

**FROM: Whitney Damron  
On behalf of the City of Topeka**

**RE: HB 2312 - An Act concerning regulated scrap metal; relating to licensure for  
scrap metal dealers; unlawful acts; criminal penalties.**

**DATE: February 18, 2011**

Good morning Madam Chair Colloton and Members of the Committee. I am Whitney Damron and I am appearing before you today on behalf of the City of Topeka in support of HB 2312, which would create a licensure structure of scrap metal dealers, require certain transactions to be paid for with a check and increase the penalties relating to certain metal thefts.

From memory, HB 2312 is the third time in the past five years the Legislature has been asked to consider either adopting or revising criminal penalties for metal theft. Metal theft, in both small and large amounts continues to be a significant problem in our state and we appear before you today asking for your assistance in enacting a regulatory framework combined with enhanced penalties that we believe will have a positive impact on this area of criminal activity.

By way of information, the City of Topeka included enhancement of metal theft penalties and enforcement in its 2011 legislative agenda due in large part to a number of recent thefts involving both public and private property worth hundreds of thousands of dollars. We sought out the assistance and support of other interested parties, including Ed Klumpp and the three law enforcement associations he works with in order to draft the bill that is before you today (Chiefs of Police, Kansas Sheriff's Association and Kansas Peace Officers Association). We have also circulated bill drafts and queries to the office of the Kansas Attorney General, several district attorneys, the League of Kansas Municipalities, Kansas Association of Counties, utilities, business interests and others.

We have modeled our proposal after an ordinance the City of Wichita has adopted, which requires licensure of scrap metal dealers and also imposes certain restrictions on scrap metal transactions. HB 2312 would not impact Wichita's ordinance, as more restrictive provisions would be allowed by cities and counties under the bill.

The City of Topeka contemplated a metal theft ordinance several years ago. However, since several scrap metal dealers are located outside the city limits, a decision was made not to pursue that course of action, since there would be different standards for transactions with metal dealers located within the city limits and those located outside the city limits. Similar problems exist throughout Kansas, which is why we believe it makes more sense to adopt standards applicable statewide with flexibility retained for local units of government to tailor local ordinances to address any specific areas of concern.

Our proposal attacks the metal theft problem on three fronts: First of all, we have developed a simple licensure scheme modeled after the cereal malt beverage (CMB) statutes; second, we require certain transactions to be paid for by check; and third, we have increased penalties on those who choose to violate these laws.

To briefly summarize the bill:

**New Section 1** requires scrap metal dealers to obtain a license from either the city or county in which they are located on a form prepared by the Kansas Attorney General. The original license fee is set by the licensing city or county of not less than \$100.00 nor more than \$400.00, with renewals of not less than \$25.00 nor more than \$50.00.

**New Section 2** sets out who can and who cannot obtain a scrap metal dealer license with restrictions and/or prohibitions on those who have committed certain property crimes within the past ten years, among other restrictions.

**New Section 3** sets out enforcement mechanisms for cities and counties for suspension or revocation of a license.

**Section 4** outlines increased penalties for the crime of metal theft and includes the cost to restore the site of the theft of property in determining the level of crime.

An unfortunate byproduct of metal theft oftentimes is the extensive damage the thief does during the commission of the crime, which costs far and away much more than whatever they might receive from selling stolen copper pipe, catalytic converters, HVAC units or other metals.

**Section 6** requires a scrap metal dealer to purchase scrap metal with a check for all transactions in excess of \$50.00 or transactions made within a 24 hour period from the same individual that exceed \$50.00. Also, all purchases of catalytic converters, copper and refrigeration condensing units must be made by check.

Current law requires the collection of certain information from the seller of more than \$50.00 in scrap metal (or \$30.00 if a catalytic converter). Modeled after the City of Wichita ordinance, Section 6 requires these transactions to also be paid by check, rather than cash.

#### *Why licensure of scrap metal dealers?*

Most scrap metal dealers operate within the confines of the law, but there needs to be some kind of enforcement tool to use against those who do not. A locally-issued license can provide law enforcement with a tool to insure compliance with state law. Scrap metal dealers who choose to be a willing accomplice with metal thieves risk losing their ability to remain in business.

*Why require payment by check?*

Collection of information over a period of time can assist law enforcement with tools necessary to identify, locate and prosecute violators of metal theft statutes, in particular repeat offenders. Requiring certain transactions to be paid for by check will necessarily require the purchaser to obtain certain information from the seller and create a paper trail available for review through the cashing of checks.

**Concluding Remarks.**

Curtailing metal theft crimes has been demonstrated to be of significant importance to the citizens of Kansas, as evidenced by the two previous enactments made by the Legislature and the attention the issue receives in media reports. Those responsible for these crimes cost Kansans millions of dollars a year in damages, lost productivity and increased risks to public safety.

HB 2312 is intended to provide a framework for enhanced enforcement of metal theft laws that will increase the likelihood that violators will be caught, successfully prosecuted and receive stiffer penalties for their efforts. Hopefully this legislation will serve as a deterrent and such crimes will be reduced accordingly. But if not, those committing these crimes will soon have to consider the fact they may now be sentenced to prison rather than probation.

On behalf of the City of Topeka, we thank you for taking the time to hear HB 2312 and ask for your favorable consideration. I would be pleased to stand for questions at the appropriate time.

WBD  
Attachments



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## Copper theft could cost city \$300K

BY COREY JONES

Created October 26, 2010 at 9:58pm

Updated October 26, 2010 at 11:33pm

A recent copper theft from one of Topeka's storm water pumping stations will cost the city hundreds of thousands of dollars, the Topeka City Council learned Tuesday evening.

City manager Norton Bonaparte said at Tuesday's council meeting he had been made aware earlier in the day of a recent copper theft from a Soldier Creek storm water pumping station, which is near the Little Russia area.

Bonaparte said the amount of copper vandals took and how it was done caused \$200,000 to \$300,000 in damage, which the city will be on the hook for because the structure wasn't insured.

"This is (a theft) that is very substantial for the city," Bonaparte said.

He said the pumping facility will be out of operation for six to nine months.

More information on the theft wasn't available Tuesday evening from law enforcement officials.

At a council meeting in February, Councilman John Alcala announced copper and brass were stolen from Garfield Pool, 1600 N.E. Quincy. The pool wasn't able to reopen this past summer because the city would have had to invest \$10,000 to \$15,000 to reinstall the stolen copper and brass components, only to take them out a year later for a pool replacement project.

Bonaparte said the city will continue to take actions to try and deter copper thefts.

"We are going to be working very hard at all of the city facilities to deter thefts," Bonaparte said.

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LJWorld.com

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## Second major copper theft in a month reported at Hamm Quarry

January 10, 2011

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Jefferson County Sheriff's investigators are looking into a second major copper theft in recent weeks at Hamm Quarry north of Lawrence.

Sheriff Jeff Herrig said officers believe the quarry was burglarized either late Saturday night or early Sunday morning. The incident is under investigation. Investigators suspect several hundred feet of copper wire was stolen from a conveyor belt at the landfill and quarry, which is just north of U.S. Highway 24-59.

Officers arrested an Oskaloosa man in December after a similar theft of 500 to 600 feet of wire from the conveyor belt.

Herrig said investigators believe more wire was taken during last weekend's burglary than the one in December. He said an old pickup truck with Hamm insignia on the side was also stolen.

It's suspected the truck was used to transport the copper wire.

Herrig asked anyone with information in the case to call the sheriff's office at 785-863-2351.

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Originally published at: <http://www2.ljworld.com/news/2011/jan/10/second-major-copper-theft-month-reported-hamm-quar/>

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Tuesday, Jan. 4, 2011

Posted on Wed, Mar. 10, 2010

## Wichita beefs up scrap metal laws to combat theft

BY BRENT D. WISTROM  
The Wichita Eagle

The City Council updated its scrap metal regulations Tuesday to keep up with increasingly crafty thieves who have torn through vacant homes, city parks and business rooftops in hopes of cashing in at recycling businesses.

But even as it passed, some questioned how much it will cut down on theft.

Harlan Hartstein, president of Wichita Iron and Metal Corp. Inc., said his business already checks IDs and works with police to prevent theft. He doesn't think the new regulations will do much more than make it harder for honest recyclers to deal in metals.

City Council members approved the move unanimously after some debate.

Mayor Carl Brewer praised the new law and called it only a beginning in the fight against metal theft.

Theft is not going to go away, he said, moments before the council approved the regulations.

Scrap metal theft rose sharply after 2000 as the value of the materials climbed.

In recent years, thieves have ripped brass valves from lawn sprinkler systems, including one that left a church's lawn flooded.

They've also torn apart vacant houses and city buildings, climbed utility poles to rip down wires and slid beneath cars to nab catalytic converters, including 11 from Red Cross vehicles in 2008.

Here is what the new regulations do:

- \* Require scrap metal sellers to show a photo ID or give a thumbprint before exchanging the materials for cash.
- \* Require sellers to sign affidavits to confirm where they got the scrap metal.
- \* Require dealers to be licensed, maintain records of specific transactions and turn over records at the request of law enforcement officials.
- \* Let law enforcement put holds on items with proprietary markings, such as Westar Energy.

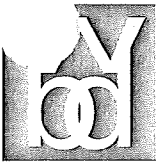
Several dealers said the law could hurt their businesses and opposed the new regulations.

Hartstein agreed with the vast majority of the regulations. But he targeted a provision that requires dealers to pay sellers in check, instead of cash. He said that will force some sellers who don't have bank accounts to give up to a 30 percent cut of their earnings at a check-cashing business.

"I just think we can do better for these people," he said.

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**ADDENDUM TO TESTIMONY**

TO: The Honorable Pat Colloton, Chair  
And Members of the House Corrections and Juvenile Justice Committee

FROM: Whitney Damron  
On behalf of the City of Topeka

RE: HB 2312 – Scrap Metal Legislation

DATE: February 18, 2011

Madam Chair and Members of the Committee:

As noted in my formal testimony presented to the Committee on behalf of the City of Topeka, we have circulated our bill draft and generally kept various interested parties apprised of our efforts to increase the regulation of scrap metal and increase penalties for certain metal thefts. Accordingly, a number of entities have asked me to convey their support for HB 2312 and the testimony I presented.

They include:

Black Hills Energy  
ITC Great Plains  
Kansas Electric Cooperatives, Inc.  
Kansas Electric Power Cooperative, Inc.  
KCP&L  
Kansas Municipal Utilities  
Midwest Energy, Inc.  
The Empire District Electric Company  
Westar Energy

When legislation for increased penalties for metal theft was first brought before the Kansas Legislature five years ago, it was the utility industry that was the chief advocate for specific statutes on this subject. As you can see from the list of supporters of this legislation, they remain very interested in the metal theft issue.

On behalf of the aforementioned utilities, we appreciate your consideration of this additional information.

WBD

CC: Dave Holthaus - Kansas Electric Cooperatives, Inc.  
David Martin/Whitney Damron - The Empire District Electric Company  
Kimberly Svaty - ITC Great Plains & Kansas Municipal Utilities  
Larry Berg – Midwest Energy, Inc.  
Mark Schreiber - Westar Energy  
Phil Wages – Kansas Electric Power Cooperative, Inc.  
Scott Jones – KCP&L  
Wes Ashton - Black Hills Energy

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# CITY OF TOPEKA

DEPARTMENT OF POLICE  
320 S. Kansas Ave., Suite 100  
Topeka, KS 66603-3640  
Tel: (785) 368-9551  
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www.topeka.org

An Accredited  
Law Enforcement Agency



Representative Colloton and Committee Members,

On behalf of the Topeka Police Department I thank you for allowing me the opportunity to speak to you about the importance of HB2312. Metal thefts are plaguing many cities in our state. While the existing statutes have proven beneficial in our investigations, we must find better answers. In Topeka, copper thefts alone increased in 2010 over 2009 by a rate that concerns citizens, elected officials and law enforcement.

| Crime                             | 2009 | 2010 |
|-----------------------------------|------|------|
| Burglaries involving Copper theft | 30   | 67   |
| Thefts of Copper                  | 47   | 131  |
| Attempted thefts of Copper        | 9    | 11   |

This bill will do two major things for us: 1) Provide the mechanism to assure better compliance of the existing scrap metal statutes found in KSA 50-6,109 et. seq. and; 2) enhance the consequences to those persons committing these crimes. Ultimately these will be tools law enforcement can use to deter as well as investigate these crimes. These are tools currently in use in Wichita by city ordinance and they have proven to be effective in responding to these crimes.

In many cases the cost to repair the facility where the metal is stolen from far exceeds the value of the metal itself. We must find ways to hold these criminals accountable for the total cost for the victims to restore their property. I have attached some photographs of crime scenes where these crimes have occurred.

Accountability of the scrap metal dealers through statewide licensing is critical to assuring they are keeping the records and fulfilling other requirements of the state law. Those laws were passed with the provisions to afford law enforcement the opportunity to quickly develop information and leads to aid in recovery of the stolen property and the identity of persons involved in the theft and disposal of the regulated metal.

Ed Klumpp and Whitney Damron are here and can explain the details of the bill. I am here today to express my support for this bill.

On behalf of the Topeka Police Department and all of Kansas law enforcement I urge you to pass this bill favorably to help us deter and investigate these crimes which cost Kansans dearly.

Ronald Miller  
Chief of Police  
Topeka Police Department

House Corrections and Juvenile Justice  
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Attachment # 3-1





New Air Conditioner Unit stripped on rooftop.



Multiple Air Conditioner Units stripped.





SRS Building



Water Pump Station Electronic Control Station and stripped water pumps as well.



**Kansas Association of  
Chiefs of Police**

PO Box 780603  
Wichita, KS 67278  
(316)733-7301



**Kansas Sheriffs  
Association**

PO Box 1853  
Salina, KS 67402  
(785)827-2222



**Kansas Peace Officers  
Association**

PO Box 2592  
Wichita, KS 67201  
(316)722-8433

**Testimony to the House Corrections and Juvenile Justice Committee**

**In Support of HB2312**

February 18, 2011

House Corrections and Juvenile Justice  
Committee

2011 Session

Date 2-18-11

Attachment # 4-1

Rep. Colloton and committee members,

The scrap metal theft problem in Kansas continues. Central air conditioning units have become a target. I recently heard an ad for a monitored residential alarm service on a Topeka radio station claiming they can even protect your outdoor air conditioning unit from theft. Copper remains the predominant target. Brass and even cutting catalytic convertors off of cars are also targeted metals. Here are some examples:

- In February 2010 thieves stole the copper and brass components from a public pool in Topeka. The damage resulted in \$10,000-\$15,000 of repairs required to reopen the pool. Due to other factors the pool was not open for use last summer.
- In October 2010 thieves stole the copper pipe and fittings from a storm water pump station in Topeka. The cost to repair was estimated to be \$200,000 to \$300,000.
- In January 2011 thieves stole \$200,000 of copper and brass from a Topeka custom metal fabricating company.
- In December 2010 and again in January 2011 thieves stole copper wiring from Hamm's Quarry in Jefferson County. The first time disabling their conveyor system.
- In January 2011 thieves stole \$30,000 worth of copper and brass from a Topeka Fire Station construction site. The thieves were apprehended due to information supplied by a scrap metal dealer.
- In January 2011 thieves stole \$7000 worth of stainless steel and copper pipe from a business in Lawrence.
- In May 2010 thieves struck a KU construction site three times stealing over \$3000 of copper wire.
- In June 2010 thieves stole the underground electrical wiring from a park in Tonganoxie rendering the lights on a soccer field and walking trail inoperative.
- In August 2010 thieves stripped copper from a closed industrial site in Douglas County. News reports also indicated Douglas County has had recent cases of copper wiring being stripped from farm field equipment.

Although the laws passed in 2007 and 2009 have proven beneficial we have found some dealers are not following those statutes. Some do not record all of the transactions as the statutes require. The current law requires the scrap metal dealers to keep a register of who they buy certain metals from when the purchase exceeds a minimum purchase price. This has produced good results in some investigations. According to the Topeka Capital Journal, one Topeka scrap metal dealer declared in 2009 a drop in their company's scrap metal purchases was attributed, ". . . to a new law requiring

sellers to show a driver's license." The Topeka Police Department was reporting a 44% drop in metal thefts at the same time. Late last year, a significant theft of metal from a commercial radio transmission tower site near Pittsburg was solved, and the stolen items were recovered, in large part to information supplied by a scrap metal dealer's actions and records.

However, we have some of the scrap metal dealers who fail to follow these rules. To combat this lack of compliance, some local governments have added additional scrap metal controls. Wichita and Kansas City have been the leaders in this area. Wichita instituted a licensing program for all scrap metal dealers in their city several years ago and they modified the licensing process in early 2010. Licensing has proven to be the tool needed in Wichita to gain scrap metal dealer compliance with the other provisions of the scrap metal laws. This has resulted in information being available to police to initiate investigations aimed at particular persons of interest. Licensing is one of the provisions proposed in HB2312.

The other side of the equation to addressing this problem is to strengthen the sentencing provisions for these types of theft. It is important to understand these cases are not easy to investigate and bring to prosecution. There are many obstacles including matching the scrap metal to a particular crime and matching the person selling the material to the actual theft. We will only address these crimes through regulation making it more difficult to sell the stolen metal without being identified. Even if we fail to connect the person selling the material to a particular crime, the mere fact of "almost" getting caught and facing police questioning will deter some of these criminals. But we also have to send a message that these thefts will not be tolerated. Our proposal also includes enhancements to the theft statutes.

So what exactly does this bill do?

First, and most importantly it establishes a statewide licensing program for all scrap metal dealers in the state. You can find this in Sections 1-3 of the bill. Our proposal follows the existing cereal malt beverage licensing process. We chose this method because there is not a state agency with a particular interest in the scrap metal businesses. This process establishes consistent statewide licensing criteria and sanctions. Our proposal follows the current Cereal Malt Beverage licensing process which has been in place for years and is proven to work. This avoids creating an entirely new process to apply to this licensing. The licenses are obtained from the cities or counties. The teeth this puts into the law is the possibility of having the license suspended or revoked if the business does not follow the scrap metal statutes.

Second, the theft statute is modified to do the following when the theft is of regulated scrap metal. (Starting on page 4, line 15) These amendments:

- Increases the felony theft penalties by one severity level above other thefts. (Page 6 lines 16-22)
- Establishes a minimum fine for misdemeanor theft of regulated scrap metal of twice the value of the stolen metal. (Page 7 lines 1-4)
- Retains a SL9 sentence for third or subsequent misdemeanor theft of regulated scrap metal without change. (Page 7 lines 4-6)
- Defines "value" as used in cases of regulated scrap metal as the higher of either the value of the stolen items or the cost to restore the site of the theft to its pre-theft condition. (Page 7 lines 13-17)
  - This is designed to address the much greater cost of replacing the stolen pipes, wiring, and equipment as compared to the value of the metal as scrap. An excellent example is found in a news article in the Lawrence Journal World in 2008, "A thief walked out of a North Lawrence home with less than \$10 worth of copper water pipes and left behind thousands of dollars in damage."

- Another news report in the Lawrence Journal World said of the theft of copper wire from irrigation equipment, "The thefts have cost farmers between \$4,000 and \$11,000 per incident."
- Another news report about the theft of copper wire from street lights said, "Thieves may get only \$50 to \$100 worth of copper, but repairing a streetlight can cost the city \$2,000 or more."

Third, the statute uses the Wichita model of requiring payment by check for the purchase of certain types of scrap metal in excess of \$50 which has proven effective in providing leads and evidence in metal thefts. (Page 10 lines 36 through page 11 line 1)

We believe we have incorporated into this bill the key elements proven effective in Wichita. We did not incorporate other concepts that they have found helpful. These include:

- A requirement certain metal must be retained for 72 hours in all cases.
- A requirement that any air conditioning condenser must have a tag showing the refrigerant has been removed by a person licensed to do so.
- Mandatory daily reporting to law enforcement of the purchase log.

It is important that the state law allow cities or counties to be more restrictive or to have broader ordinances or resolutions to regulate scrap metal sales. For example, Wichita has created a class of "special regulated scrap metal" that addresses local issues relating to the aircraft and other industry in their city. We believe this is more appropriate than trying to regulate those things statewide that do not have a statewide application.

We are not asking anything of the scrap metal dealers that has not been in use in Wichita and proven workable with their scrap metal dealers. The use of these standards statewide will stop the thieves from merely dealer shopping for one that is not licensed or not following the existing statutory requirements. Our proposal also addresses the sanctions against the thieves.

We strongly urge your support of HB2312 to help us address this continuing theft problem costing victims across our state hundreds of thousands of dollars in losses each year. Help us keep our businesses in business, our utilities to hold down costs, and your constituents from suffering huge expenses to repair damage from a theft which is often time many times the money the thief will gain.

Please recommend this bill favorably for passage.

Ed Klumpp  
 Kansas Association of Chiefs of Police, Legislative Committee Chair  
 Kansas Sheriffs Association, Legislative Liaison  
 Kansas Peace Officers Association, Legislative Liaison  
 E-mail: eklumpp@cox.net  
 Phone: (785) 235-5619  
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House Corrections and Juvenile Justice Committee  
In support of HB 2312  
Assistant Attorney General Kyle Smith  
February 18, 2011

Madam Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Derek Schmidt in support of HB 2312. The explosive growth in theft of scrap metal, and the concurrent massive criminal damage to property that is often involved, has created a criminal nightmare and economic straight jacket throughout Kansas.

HB 2312 is a smart and effective way of addressing all aspects of the problem. For the first time, the cost to return make the victim whole will be considered in setting the level of the offense. If there is criminal damage to property done, that can be charged as a separate offense. But in many of these cases, there are substantial expenses involved in rewiring or reconnecting the stolen property, outside of actual damage done to the property. The defendant should be punished base, not just on the few dollars of copper stolen, but the tens of thousands of dollars, sometimes hundreds of thousands of dollars that are needed to make the victim whole.

However the real solutions to the problem are new sections 1-3, creating licensing provisions for scrap metal businesses. By empowering the local county and cities to license and regulate these businesses, we will for the first time have an effective deterrent that will make the dealers enthusiastic partners in fighting metal theft. Temporary profits will have to be weighed against the potential of losing a license and thus all profits. And this approach will have a large impact on the crimes while having little impact on prison bed space.

There are a few measures that should be cleaned up, contained in the attached balloon.

- New Section 1 (a) prohibits a business from buying scrap metal without a license but it has no penalty or consequence for violation. The proposed amendment would be to add language, at Page 2, after line 29 adding language making violation of section (a) a class A nonperson misdemeanor.
- Section 2(b) lists a number of prior criminal convictions that would preclude a person from being licensed. Prior conviction for K.S.A. 50-6,109 (metal theft)

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within 5 years is a basis for denial, the balloon would add the new crime created in section 1.

- On Page 4 there is a typo in line 4, as there is no section (c), so section (d) is renumbered as (c).
- On Page 4, Section 3(b), line 39, again the new crime created in section 1 is added to the list of offenses for conviction of which prohibits a person from working at a licensed scrap metal dealership.
- On Page 5, Section 3, line 9, dealing with appeal to district court of revocation of a license, the word "denying" is added to include the original denial of the license, to comply with due process requirements.
- In almost all instances, utility and telephone cable will not show up at the scrap yard in its original marked and identifiable condition, but rather will have the sheathing removed and the rubber insulation burned off the copper wiring. For instance, telephone cable is immediately recognizable as it is the only cable a scrap yard sees that has 24 or 26 gauge twisted pairs of copper wire. On Page 10, Lines 15-16 we would propose:
  - (9) property owned and marked by a telephone, cable, electric, water or other utility provider, ***or where any such wire or cable has had the sheathing removed, making ownership identification impossible.***

On behalf of Attorney General Schmidt, I thank you for your consideration and efforts to address this pervasive, serious and growing problem. I would be happy to try and answer any questions.



Testimony on HB 2312  
Friday, February 18, 2011  
House Corrections Committee

Good Morning Madam Chair and members of the Committee. I am Kent Cornish, President/Executive Director of the Kansas Association of Broadcasters, representing nearly 280 radio and television stations across the state.

We are in full support of HB 2312 which would increase penalties for those found guilty of stealing precious metals and attempting to sell them to scrap dealers as well as dealers who fail to meet registration requirements. Our radio and television stations use enormous amounts of copper wiring in the transmission of their signals.

That transmission occurs through equipment located at tower sites, which generally are located in sparse rural areas of a community. Despite FCC required security such as fencing, lighting and alarms systems, thefts continue. In the past year I have received six reports of theft from members around the state – and there could be more. These varied from stealing a small copper line and some air conditioning units to over 150 feet of copper line at one location.

Replacement costs of these totaled nearly \$75,000. But just as devastating is the fact that several of the stations were knocked off the air because of the stolen wiring. The thieves have gotten bolder. In the case of the stolen air conditioning units, they broke in one night to steal the equipment and wiring, and the owners purchased a stronger pad lock only to have it cut the next night when the thieves returned to look for more.

Anything that can help deter this kind of criminal behavior, including stronger penalties, is encouraged by all broadcasters. Thank you for your time and consideration.

**Kent Cornish 785-235-1307 [kent@kab.net](mailto:kent@kab.net)**

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 2-18-11  
Attachment # 6



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Director  
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**Testimony of Chris Carroll, Director of External Affairs – AT&T  
Before the House Corrections Committee in Support of HB 2312  
February 18, 2011**

Madam Chair and Members of the Committee,

My name is Chris Carroll. I am the Director of External & Legislative Affairs for AT&T in Kansas, and I appreciate this opportunity to provide written testimony in support of House Bill 2312.

The steady rise in the market price of copper and other scrap metals over the last few years coupled with the state of the economy has led some people to extreme measures, pilfering things like catalytic converters from automobiles, stealing air conditioning units or other pipes and wires from homes or businesses, and even gutting from vacant houses or construction sites.

During the past several years the incidence of copper cable theft has been steadily increasing. Each year on an enterprise basis, AT&T loses millions of dollars to copper thieves who steal cable from company storage yards, or steal copper wiring and cables from communications towers. These costs include not only the replacement of the cable itself, but the many man hours spent repairing the telephone cable to restore service to those in affected areas. In Kansas, during the last two years alone the replacement cost for stolen copper was almost half a million dollars with nearly 8000 customers placed out of service.

The theft of telephone cable places the general citizenry at extreme risk because of the loss of the customer's ability to contact emergency 911 services. Thieves also place themselves in danger, often climbing utility poles where they could be killed or seriously injured.

AT&T continues to work with local, state, and federal law enforcement to apprehend those responsible for these thefts and asks that the legislature approve the passage of House Bill No. 2312 as a means of combating this very serious and growing problem.

I urge your support for House Bill 2312.

Thank you

Testimony on House Bill No. 2312 – 2/18/11

**Advantage Metals Recycling LLC**

Michael Glendon – VP Finance  
John Rakos – VP Commercial

Advantage Metals Recycling LLC is a wholly owned subsidiary of the David J. Joseph Company which is wholly owned by Nucor Corporation, the largest steel manufacturer in the U.S. and whose stock is traded on the NYSE. Advantage Metals has six locations in Kansas and six locations in Missouri with over 300 employees. We buy and process over 500,000 GT's of ferrous and nonferrous material each year from businesses and individuals. Our systems record pictures of every transaction, including the individual's driver license, the material, and the receipt of payment either check or from our ATM's.

We support many of the measures included in this house bill such as the concept of licensing and increased penalties for theft. However, there are several areas where we would like to see modifications and would like to sit down with bill sponsors to clarify and modify language. A few of the items we have concerns with are as follows:

1. ) New section 1

*(h) – No license issued under this act shall be transferrable.*

Would like for additional language included allowing for transfer upon sale of business.

2. ) New section 3

*(c) – Within 20 days after the order of the board revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal.*

We feel that a company should have the ability to conduct business while the appeal process is taking place allowing for due process. Advantage Metals has millions of dollars invested in operations within Kansas and concerned about language within the entire new section 3. We service major companies such as General Motors, Ford, UPS and if we were to temporarily lose our ability to conduct business we would severely impact their operations as well as our own.

3. ) Section 6

*(g) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to pay for the following purchases by any means other than a prenumbered check drawn on a regular bank account in the name of the scrap metal dealer and with such check made payable to the person selling such property:*

*(1) All purchases of property from any person within a 24 hour period which exceeds \$50; and,*

*(2) all purchases of copper in any form for any amount, catalytic converters, and refrigeration condensing units or related parts.*

We would like to include an exemption made for cash transactions made by ATM machine. Our ATM machines record pictures of individuals while they are receiving the cash and we also have record of the individual's driver license. We would like to continue to pay cash in this manner for convenience of customers. In addition, would like the 24 hour requirement removed as this will be extremely burdensome to administer. We can handle 300-500 transactions per day at each location and individuals could visit multiple times over the course of a day. Enforcement of this will be difficult as well.

*House Corrections +  
Juvenile Justice  
2-18-2011 attachment 8-1*

Testimony  
Corrections and Juvenile Justice  
ABATE  
John Faber  
HB2199

Thank you Chairman Colloton, Vice-chair Kinzer, Ranking Member Mccray-Miller and members of the committee. I am John Faber here today to represent ABATE of Kansas. ABATE represents motorcycle riders across the great state of Kansas. Monthly meetings are held by the State Committee in one of the 15 districts throughout the state. We have attended meetings in Goodland, Smith Center, Overland Park, and El Dorado, and look forward to being in Dodge City next month.

I would like to thank Chairman Colloton for hearing HB2199 today as I know how busy your committee is.

We bring before you today, HB 2199 a bill that we think helps address a critical concern to motorcycle riders across this great state and indeed nation. We have worked hard to make it fair and as you can see have incorporated in it some common sense legislation that doesn't "throw the baby out with the bath water." Many wanted tougher fines and penalties but we decided to just address those accidents that cause "serious injury" or death. Too many have been killed or maimed across this state with little or no consequence. This bill will make those that violate our right of way laws, hopefully proceed with a greater amount of caution, as they should.

If the committee would turn to the attachment I have provided I think you will recognize the grim facts as they relate to the amount of injuries and deaths these violations cause every year in Kansas. As a matter of fact many states are or have enacted legislation to address this very concern. One thing that would make this a better bill is violators could be subject to attending an awareness program but we thought we should keep this as simple as possible and at the same time address the problem.

Again, I would like to thank the committee and now madam chairman and members of the committee I will allow those that have been affected by right of way violations to tell you their stories and the reasons we think the law HB 2199 should be enacted.

Mr. Chairman, I will stand for questions.

# FACT SHEET

## Ten year accident comparison:

| YEAR | ROW Accidents | DUI Accidents | Distracted Driving* |
|------|---------------|---------------|---------------------|
| 2000 | 10,707        | 2,890         |                     |
| 2001 | 10,705        | 3,081         |                     |
| 2002 | 10,346        | 3,139         |                     |
| 2003 | 9,928         | 2,927         | 279                 |
| 2004 | 9,732         | 2,894         | 371                 |
| 2005 | 8,871         | 2,654         | 396                 |
| 2006 | 8,587         | 2,753         | 454                 |
| 2007 | 8,333         | 2,847         | 461                 |
| 2008 | 7,846         | 2,893         | 496                 |
| 2009 | 7,337         | N/A           | N/A                 |

Source: Kansas Department of Transportation, <http://www.ksdot.org/burTransPlan>

16 States (Arkansas, California, Georgia, Iowa, Louisiana, Maine, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Virginia, Washington, West Virginia, and Wisconsin) have recently passed increased ROW violations laws and legislation is pending in others.

## Ten Year Fatality Comparison

| Year | ROW Fatalities | DUI Fatalities | Distracted Driving* |
|------|----------------|----------------|---------------------|
| 2000 | 72             | 78             |                     |
| 2001 | 79             | 96             |                     |
| 2002 | 64             | 131            |                     |
| 2003 | 62             | 97             | 1                   |
| 2004 | 66             | 71             | 4                   |
| 2005 | 71             | 93             | 5                   |
| 2006 | 70             | 108            | 7                   |
| 2007 | 46             | 118            | 10                  |
| 2008 | 50             | 131            | 5                   |
| 2009 | 57             | N/A            | N/A                 |

Source: Kansas Department of Transportation, <http://www.ksdot.org/burTransPlan>

\*Distracted driving as measured by KDOT includes cell phone or "other electronic device" including DVD, radio, GPS, etc. Texting is not individually tracked.

# Contributing Circumstances

|    | Category           | Contributing Circumstance (top 40)                            | Frequency* | % Total |
|----|--------------------|---|------------|---------|
| 1  | DRIVER             | Inattention   | 20,129     | 26.3%   |
| 2  | DRIVER             | Failed to yield right of way                                  | 7,846      | 10.2%   |
| 3  | DRIVER             | Too fast for conditions                                       | 7,397      | 9.7%    |
| 4  | ENVIRONMENT        | Animal  | 6,764      | 8.8%    |
| 5  | DRIVER             | Followed too closely  | 4,272      | 5.6%    |
| 6  | DRIVER             | Disregard traffic signs, signals, markings                    | 3,262      | 4.3%    |
| 7  | DRIVER             | Under the influence of alcohol                                | 2,893      | 3.8%    |
| 8  | ONROAD             | Icy or slushy   | 2,646      | 3.5%    |
| 9  | DRIVER             | Improper lane change  | 1,843      | 2.4%    |
| 10 | DRIVER             | Made improper turn  | 1,763      | 2.3%    |
| 11 | DRIVER             | Avoidance or evasive action                                   | 1,750      | 2.3%    |
| 12 | DRIVER             | Reckless/Careless driving                                     | 1,704      | 2.2%    |
| 13 | DRIVER             | Improper backing  | 1,617      | 2.1%    |
| 14 | ENVIRONMENT        | Rain, mist, or drizzle  | 1,299      | 1.7%    |
| 15 | ONROAD             | Wet   | 1,173      | 1.5%    |
| 16 | ENVIRONMENT        | Falling snow  | 945        | 1.2%    |
| 17 | DRIVER             | Exceeded posted speed limit                                   | 856        | 1.1%    |
| 18 | DRIVER             | Other Distraction in or on vehicle                            | 832        | 1.1%    |
| 19 | DRIVER             | Fell asleep   | 672        | 0.9%    |
| 20 | DRIVER             | Wrong side or wrong way                                       | 663        | 0.9%    |
| 21 | ONROAD             | Snowpacked  | 654        | 0.9%    |
| 22 | ENVIRONMENT        | Sleet, hail, or freezing rain                                 | 529        | 0.7%    |
| 23 | DRIVER             | Did not comply - license restrictions                         | 461        | 0.6%    |
| 24 | DRIVER             | Ill or medical condition                                      | 457        | 0.6%    |
| 25 | DRIVER             | Improper passing  | 443        | 0.6%    |
| 26 | DRIVER             | Distraction - mobile (cell) phone                             | 394        | 0.5%    |
| 27 | ENVIRONMENT        | Strong winds  | 373        | 0.5%    |
| 28 | ENVIRONMENT        | Vision obstruction: glare from sun or headlights              | 350        | 0.5%    |
| 29 | DRIVER             | Aggressive/Antagonistic driving                               | 302        | 0.4%    |
| 30 | DRIVER             | Under the influence of illegal drugs                          | 290        | 0.4%    |
| 31 | ONROAD             | Debris or obstruction   | 277        | 0.4%    |
| 32 | VEHICLE            | Brakes  | 272        | 0.4%    |
| 33 | VEHICLE            | Tires   | 271        | 0.4%    |
| 34 | ENVIRONMENT        | Vision obstruction: building, vehicle, objects made by humans | 244        | 0.3%    |
| 35 | DRIVER             | Unknown   | 202        | 0.3%    |
| 36 | ATROAD             | Icy or slushy   | 192        | 0.3%    |
| 37 | VEHICLE            | Wheel(s)  | 150        | 0.2%    |
| 38 | VEHICLE            | Cargo   | 140        | 0.2%    |
| 39 | PEDESTRIAN/CYCLIST | Inattention   | 132        | 0.2%    |
| 40 | DRIVER             | Improper or no signal   | 128        | 0.2%    |

\*More than one Contributing Circumstance may be recorded per accident

House Corrections and Juvenile Justice  
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Attachment # 9-3



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## TESTIMONY

By  
Tim Farr  
ABATE of Kansas, Inc.

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Before the House Corrections and Juvenile Justice Committee  
The Honorable Patricia N. Colloton, chairman  
Friday, February 18, 2011 – Statehouse, Topeka, Kansas

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Good afternoon. My name is Tim Farr. I am the ABATE of Kansas District 4 Representative. I represent Osage, Shawnee, Jefferson and Brown counties of Kansas.

I have friends who were killed while riding their motorcycles. One instance occurred many years ago when Steve Oliver was riding northbound on what was Highway 75, now Topeka Boulevard, in south Topeka. He was approaching what was the Tractor Supply Store and as he drove past the entrance, a car pulled out and hit him. Another friend of mine was riding his motorcycle, again in Topeka, northbound on California Avenue at 21st Street. He was in the left-turn lane to turn west onto 21st. The traffic signal allowed him to proceed with his turn. As he made his turn, a dump truck, southbound on California, ran its red light, striking him.

I had an incident on South Topeka Boulevard several years ago. I was in the left southbound lane. A woman pulled out from what was the Howard Johnson motel just as I was approaching. She pulled into the right lane and as I came up next to her, she started moving into the lane I was in. She kept moving further to the left and I had no where to go as there was an 18-inch high island dividing the northbound and southbound traffic. As she got closer to me, I was able to kick the door panel of her car and she locked up her brakes and stopped. I got past her and when I reached a point where I could turn around, I went back. A police officer there and this woman told him that I was scaring her and the officer was ready to arrest me. Fortunately, there was a witness who saw what happened and I was not arrested.

If the penalties for right-of-way violations are more severe, I believe people would be more careful and take the extra time to be sure it is clear before they pull onto a highway or street. The extra second or two taken to make sure the roadway is clear can mean the difference between going on with life and a fatality.

I thank you for the time here today to speak on this subject and I hope you share the concerns of the motorcyclist and ABATE for their safety and welfare.

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TESTIMONY  
By  
Debra Stewart  
ABATE of Kansas, Inc.

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Before the House Corrections and Juvenile Justice Committee  
The Honorable Patricia N. Colloton, chairman  
Friday, February 18, 2011 – Statehouse, Topeka, Kansas

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First, I would like to say “thank you” for listening to what I have to say.

My name is Debra Stewart and I am very passionate about this bill because I lost my beloved 21-year-old son to a “negligent driver”. This driver was proven to be completely at fault and I feel she was slapped on the hand and let go. She is allowed to live her life as if nothing happened and only paid a small fine for a “failure to yield” ticket. She received NO points. She received NO license suspension. And, obviously, she received NO real fine for killing my son. She has never shown any remorse to me or my family for what she has taken from us. I, on the other hand, will never be able to look at life the same way again.

She totally changed my life. Every single day I am reminded of how precious life is. My son was a miracle to me. I was never supposed to have children. However, after many surgeries, God gave me the precious gifts of two sons.

Matt was my youngest child and he nearly died at birth. He was loved by everyone he met. Matt loved children and wanted to have many of his own and he would have been a wonderful father. It brings me great pain that I will never get to see that happen.

Andrew, my oldest son, is having a very difficult time even thinking of the loss of his best friend and brother. Until we so needlessly lost Matt, it was the three of us for most of Andrew’s and Matt’s lives. Andrew and I are so lost without our precious son and brother.

I can’t bear the thought that I will never get to see my son graduate from college, get married, have children and live the long life that he should have had. It has been almost a year since Matt was taken from me and I cry every day. I do not know how to go on without him. I know that I will survive, but it is very hard to live with the large hole this left in my heart.

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I am devastated and angry at the lack of justice that my son received for the loss of his life. I feel the punishment this woman received was no where near what it should have been. Was she ever tested for drugs and/or alcohol? Were her phone records ever checked? Was this her first offense? I was told by the District Attorney that it was found to not be a criminal offense and I would just have to let it go. I AM SORRY TO SAY THAT I JUST CAN'T "LET IT GO"! If a proper investigation has been conducted, the facts would have shown that it should have been considered a criminal offense.

Please make this law tougher and make these people be held responsible for their negligence.

I can't save my son, Matt, but I never want anyone to ever have to wake every day feeling the way that I will for the rest of my life! A large part of me died on that day. But this woman is enjoying her loved ones as we speak. This is not justice!

**Negligence.** Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances. BLACK'S LAW DICTIONARY 538 (abr. 5th ed. 1983).

Thank you again.

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## TESTIMONY

By  
Cassandra M. Reicher  
ABATE of Kansas, Inc.

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Before the House Corrections and Juvenile Justice Committee  
The Honorable Patricia N. Colloton, chairman  
Friday, February 18, 2011 – Statehouse, Topeka, Kansas

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Good afternoon. My name is Cassandra Reicher.

A car is like a gun. They don't kill, people kill. Therefore, it should be a privilege AND a responsibility to operate a vehicle, as is a gun. Along with that responsibility, there should be strict laws in place for people who abuse such privileges.

To take someone's life out of negligence, carelessness or irresponsibility while driving a car and receive a mere ticket is an outrage! For the family that suffers the loss of a loved one, nothing is enough.

However, just a ticket is not enough. Does this mean a person could turn around and commit the same offense the next day? Where is the justice? What is the consequence for abusing the privilege to drive? If a life is not worth more than a ticket, a small fine and court costs, what is it worth?

A person convicted of a right-of-way violation pays a minimal fine of around \$50.00 plus court costs. A person convicted of operating a motorcycle without a Class M license faces paying court costs, a fine of \$1,000 AND/OR six months imprisonment.

The consequences for a right-of-way violation need to be tough enough to make each one of us think and take the time to make sure we cannot cause harm or death to another person. I respectfully ask each of you to support this effort.

Thank you for your time and consideration.

Cassandra M. Reicher  
9421 South Hydraulic  
Haysville, Kansas 67060  
(316) 789-8897

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## TESTIMONY

By  
Ray Thomas  
ABATE of Kansas, Inc.

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Before the House Corrections and Juvenile Justice Committee  
The Honorable Patricia N. Colloton, chairman  
Friday, February 18, 2011 – Statehouse, Topeka, Kansas

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Kevin McVeigh. Gary Kroeker. Christopher Burkes. Three men who lost their lives due to the negligence of others. Three men who had nothing in common except how their lives were ended prematurely, and the people responsible for their deaths were fined an average of \$50.00.

On average, 57 people are killed in Kansas every year due to right of way violations. The maximum fine provided by state law is \$110.00, with the average fine being \$50. There is no increase in penalties for repeat offenders, no jail time, no license suspension, just a \$50.00 fine. That is not a deterrent, nor is it justice for the families of the victims. Far from justice, it is an insult.

The recently enacted law banning texting while driving calls for a minimum fine of \$60.00, which is more than the average fine for killing someone through negligence. Texting while driving has the potential to harm someone else. Killing someone is harming the victim as well as their families forever. Yet, the fine of \$50 is not a deterrent against this type of negligence.

When Kevin McVeigh was killed, I contacted the assistant district attorney for the case. His response was, "she clearly should not have made the turn. Having said that, her poor choice may have been negligent, but was not criminal." There we have it...it is not criminal to take someone's life in Kansas, as long as you say, "but I didn't see them."

I am here on behalf of ABATE of Kansas, with approximately 3500 members in the state. I am also here on behalf of the American Motorcyclist Association, with approximately 2700 members in this state. I am also here on behalf of the Motorcycle Safety Foundation with approximately 1200 members in Kansas. As well as the 1,000 people who signed the letters I have here today. 1,000 voters who encourage this committee to act favorably on this legislation.

As motorcyclists, we are very vulnerable to these actions, but this is not a motorcycling issue. Over a 15 year time span in Kansas when almost 1200 people were killed by right of way violations, only 7% of the victims were motorcyclists. These acts of negligence affect everyone. People in cars, pickups, campers, bicycles and pedestrians are all affected by right of way violations. AT 57 deaths per year, it is second

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only to drunk driving for fatalities on Kansas highways. The number of accidents each year surpassed alcohol involved accidents by almost a 3 to 1 margin.

We are asking for more penalties to bring some justice to the victims and their families. Suspension of licenses, substantial fines when this negligence causes serious injury or death. Increased penalties for repeat offenders. As Mothers Against Drunk Driving has shown, increasing penalties can raise awareness of these actions, and improve highway safety. Two neighboring states, Iowa and Oklahoma have recently enacted increased penalties for this particular type of negligent driving, as have 16 other states. We need to call attention to this action that is needlessly killing people in Kansas through sheer negligence.

In murder cases, the families are allowed to speak to the judge regarding sentencing, and give their views on how the guilty party should be treated. In right of way fatalities, the families have no input even though the victims are just as dead. We are asking this committee to give voices to those families, to provide some justice, and to set a level of legal penalties that will provide some deterrent to these types of fatalities.

The division of Budget has determined that there would be no negative fiscal effect from passing this bill. They also determined that the Department of Revenue has resources and staff to handle any implications of this bill with existing budget.

Kevin McVeigh, Gary Kroeker, Christopher Burkes as well of dozens of others have died needlessly. They are not just names on a police report, but people who died due to no fault of their own. Please, we ask you, enact this needed legislation to improve highway safety in Kansas.

Ray Thomas

11824 E Killarney St.  
Wichita, KS 67206  
316-260-5964

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## TESTIMONY

By  
Charles Jimenez  
ABATE of Kansas, Inc.

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Before the House Corrections and Juvenile Justice Committee  
The Honorable Patricia N. Colloton, chairman  
Friday, February 18, 2011 – Statehouse, Topeka, Kansas

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My name is Charles Jimenez and I am the Butler County Representative for ABATE of Kansas.

After preparing to go to work, dressing in my riding gear on a sunny day in 2001, I pulled out my thirty-five mile per gallon, 23,000 dollar motorcycle to go to work. My travel to work will be thirty five miles. As I travel ten blocks north and turned onto Central, the main traveled street in El Dorado, I passed the Summit light and traveled west to Wichita. The traffic was moderate on the four lanes with a center lane for turning. Ahead of me in the left lane was a box truck and I traveled in the right lane behind the truck. As the truck passed the entrance of the Quick Trip that was on my right, a car attempting to go to the Quick Trip proceeded across the west bound lanes. I saw him and he saw me. Then, trying to avoid an accident, I applied my brakes and so did he. As his bumper approached the side of my bike, I knew what the outcome would be. He hit the left side of my bike, laying it on his hood. Luck was in my favor because I did not have any serious injuries. The motorcycle was not as lucky. The accident left me without that transportation for about two mouths and I had to deal with a limp in my leg and a strain in my shoulder for a few mouths. The driver received a ticket amounting to a low fine. He might have caused my death or serious injury, preventing me from supporting my wife of many years and the children I am raising.

Another incident occurred when I was out for supper after a ten-hour day of work in 1982. That evening I went to a restaurant in Independence, Kansas. On the way back to the hotel that I was staying at, traveling on a wide two-lane road with intersection turn lanes, a car went into the turn area and veered into my lane as I approached. The driver locked up the brakes causing the car to stop in front of me and I struck the car in the passenger side door. This accident bruised my left side and did extensive damage to my bike. I received two tickets, one for passing on the right and one for following too closely. I had pictures to prove the location and skid marks of the accident. These charges were

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dropped after two court appearances and the person who caused the accident did not receive a ticket. I suppose I was on a bike and had no right to use the road.

On another occasion, I was running errands around town with my brother. I was traveling down a residential street approaching an intersection. I slowed to check the open intersection and proceeded through it. A car was traveling in the perpendicular direction, but did not slow down and almost hit me. Braking hard, my brother, who is 200 pounds, pushed up behind me and made controlling the bike difficult. The driver of the car braked hard to miss me in the intersection and gave a jester to the effect of "I am sorry". If the bike had gone down, the driver of the car would not receive a ticket because there was no contact and I had lost control of my motorcycle. If I would have hit him or he hit me, it would have been his fault because I was in the intersection first. This is no regard for right-of-way laws nor is it common courtesy.

Please pass this bill.

## STATEMENT FROM BARBARA EVANHOE

Gary Kroeker was a devoted husband, an incredible dad to his son and three step children, and a true friend to all who knew him. He had a lifelong passion for woodworking and blacksmithing, and was employed in the aircraft industry, building executive aircraft furniture. Gary played the banjo and dobro, and enjoyed the bluegrass festival in Winfield every year. Gary had been riding motorcycles since he was a teenager. He was a safe driver and had never been involved in an accident.

At around 5PM on November 8, 2006, my husband, Gary Kroeker was riding his motorcycle home from work on Highway 254 in Sedgwick County, when a teenage driver in a red pickup truck, turning left onto 254 from the stop sign on Rock Road, failed to yield the right of way, and failed to see Gary heading east.

The truck pulled out directly into Gary's path and struck his body and his motorcycle, sending him flying into the air, and causing deadly injuries. Forty minutes from the time of impact, Gary was pronounced dead from multiple blunt force injuries. His bones and internal organs were crushed and macerated on impact. His pelvis, arms and leg were fractured. His kidney was dislodged, his liver and pericardial sack were lacerated. He didn't stand a chance. There was no potential for recovery from such massive injuries.

At the time of the accident, I was at home, waiting for Gary to join me for dinner. A friend saw the accident on the news and called to say that if Gary wasn't home yet that I should drive over to the intersection. When I arrived, I saw the truck on the side of the road, and pieces of Gary's motorcycle everywhere. It looked as if an explosion had occurred. One of the state troopers took me to Wesley, where they had taken him, but I got there too late to see him alive.

Unless you have experienced the tragic and sudden death of a spouse or loved one, there is no way to describe the anguish and devastation it causes. With one unthinking act, my life and the lives of my children, Gary's co-workers and friends have been changed forever.

Gary and I were not just husband and wife—we were best friends. We were totally committed to one another, and enjoyed camping, playing music and traveling together. We were at the time of our lives when we were preparing for retirement. Saving and making plans to spend our Golden Years together. Now those Golden Years have been stolen from me. I have lost the love of my life, and more than half of the earning power for my family. My children have lost their beloved mentor, and my grandchildren will never know what a kind and loving man their grandfather was. There is no way to recoup what was taken from our lives that November night.

At present, there is no justice for this type of deadly assault against my husband. An assault waged by an inexperienced driver in an oversized vehicle who failed to yield the right of way or comply with the rules of the road.

I urge every member of this committee to take my story to heart, and to know that I am not the only one who has been devastated by such an act. I have no recourse. There is no existing way of bringing justice to this situation. However, with the proper legislation, there will be a way. A way that will hopefully

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make it evident to all drivers that it IS worth taking one extra moment to look, and look again before turning into oncoming traffic. It could make a life and death difference for a family like mine.

A the end of the day, the boy that killed my husband and changed my life forever was able to go home to his family. Gary went to the morgue. There is no justice in that.

Barbara Evanhoe

Towanda, Kansas.

## HOUSE BILL No. 2319

By Committee on Corrections and Juvenile Justice

2-11

*took place*

1 AN ACT concerning crimes, criminal procedure and punishment; relating  
2 to house arrest; amending sections 249 and 285 of chapter 136 of the  
3 2010 Sessions Laws of Kansas and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. ~~Section 249 of chapter 136 of the 2010 Session Laws of~~  
7 Kansas is hereby amended to read as follows: Sec. 249. (a) The  
8 court or the secretary of corrections may implement a house  
9 arrest program for defendants or inmates being sentenced by  
10 the court or in the custody of the secretary of corrections,  
11 except:

12 (1) No defendant shall be placed by the court under house arrest if  
13 found guilty of:

14 (A) Any crime designated as a class A or B felony in article 34 or 35  
15 of the Kansas Statutes Annotated, prior to their repeal;

16 (B) subsection (b) of section 81 of chapter 136 of the 2010 Session  
17 Laws of Kansas, and amendments thereto; or

18 (C) section 79 of chapter 136 of the 2010 Session Laws of Kansas,  
19 and amendments thereto;

20 (2) no inmate shall be placed under house arrest if such inmate's  
21 security status is greater than minimum security; or

22 (3) no inmate shall be placed under house arrest who has been  
23 denied parole by the parole board within the last 6 months. Any inmate  
24 who, while participating in the house arrest program, is denied parole by  
25 the parole board shall be allowed to remain under house arrest until the  
26 completion of the sentence or until the inmate is otherwise removed from  
27 the program.

28 (b) Prior to the placement of an inmate under house arrest, the court  
29 or secretary shall provide written notification to the sheriff and district or  
30 county attorney of the county in which any person under house arrest is to  
31 be placed and to the chief law enforcement officer of any incorporated  
32 city or town in which such person is to be placed of the placement of the  
33 person under house arrest within the county or incorporated city or town.

34 (c) House arrest sanctions shall be administered by the court and the  
35 secretary of corrections, respectively, through rules and regulations, and

K.S.A. 2010 Supp.  
12-4509 and

; also repealing  
K.S.A. 2010 Supp.

21-4603b and  
21-4704

Section 1. 12-4509  
See attachment

1 may include, but are not limited to, rehabilitative restitution in money or  
 2 in kind, curfew, revocation or suspension of the driver's license,  
 3 community service, deprivation of nonessential activities or privileges, or  
 4 other appropriate restraints on the inmate's liberty.

5 (d) The court shall inform the offender, and any other people  
 6 residing with such offender at the time the order of house arrest is  
 7 entered, of the nature and extent of such house arrest monitoring, and  
 8 shall obtain the written agreement of such offender to comply with all  
 9 requirements of the program.

10 (e) The offender shall remain within the property boundaries of the  
 11 offender's residence at all times during the term of house arrest, except as  
 12 provided under the house arrest agreement with such offender.

13 (f) The offender shall allow any law enforcement officer, community  
 14 corrections officer, court services officer or duly authorized agent of the  
 15 department of corrections, to enter such offender's residence at any time  
 16 to verify the offender's compliance with the conditions of the house  
 17 release. (1)

18 (g) The offender shall consent to be monitored by:

19 (1) An electronic monitoring device on such offender's person;

20 (2) an electronic monitoring device in such offender's home;

21 (3) a remote blood alcohol monitoring device;

22 (4) a home telephone verification procedure;

23 (5) radio frequency devices; or

24 (6) any combination of monitoring methods as the court finds  
 25 necessary. or the court

(g)(2) Radio frequency devices shall only be used if there is no available means of global positioning system technology in such location at such time.

26 (h) The secretary may contract for independent monitoring services.  
 27 Such independent monitoring service shall be able to provide monitoring  
 28 24 hours a day, every day of the year, and any other services as  
 29 determined by the secretary.

30 (i) As used in this section:

31 (1) "Electronic monitoring device" means an active global  
 32 positioning system-enabled device capable of recording and transmitting  
 33 an offender's location at all times. Such monitoring device may record or  
 34 transmit sound, visual images or other information regarding such  
 35 offender's location, via wireless communication; and

36 (2) "remote alcohol monitoring device" means a device capable of  
 37 continuously monitoring an offender's blood alcohol content via micro  
 38 fuel cell or deep lung tissue sample. Such monitoring devices shall be of  
 39 comparable accuracy to roadside breath alcohol testing devices utilized  
 40 by law enforcement, and shall have wireless transmission capabilities.  
 41 Such device may be used in conjunction with an alcohol and drug sensing  
 42 bracelet to monitor such offender's compliance with the terms of house  
 43 arrest.

address  
 Broken's  
 concerns

1 Sec. 2[3] Section 285 of chapter 136 of the 2010 Session Laws of  
2 Kansas is hereby amended to read as follows: Sec. 285. (a) The  
3 provisions of this section shall be applicable to the sentencing guidelines  
4 grid for nondrug crimes. The following sentencing guidelines grid shall  
5 be applicable to nondrug felony crimes:

6 (b) Sentences expressed in the sentencing guidelines grid for  
7 nondrug crimes represent months of imprisonment.

8 (c) The sentencing guidelines grid is a two-dimensional crime  
9 severity and criminal history classification tool. The grid's vertical axis is  
10 the crime severity scale which classifies current crimes of conviction. The  
11 grid's horizontal axis is the criminal history scale which classifies  
12 criminal histories.

13 (d) The sentencing guidelines grid for nondrug crimes as provided in  
14 this section defines presumptive punishments for felony convictions,  
15 subject to the sentencing court's discretion to enter a departure sentence.  
16 The appropriate punishment for a felony conviction should depend on the  
17 severity of the crime of conviction when compared to all other crimes and  
18 the offender's criminal history.

19 (e) (1) The sentencing court has discretion to sentence at any place  
20 within the sentencing range. In the usual case it is recommended that the  
21 sentencing judge select the center of the range and reserve the upper and  
22 lower limits for aggravating and mitigating factors insufficient to warrant  
23 a departure.

24 (2) In presumptive imprisonment cases, the sentencing court shall  
25 pronounce the complete sentence which shall include the:

26 (A) Prison sentence;

27 (B) maximum potential reduction to such sentence as a result of  
28 good time; and

29 (C) period of postrelease supervision at the sentencing hearing.  
30 Failure to pronounce the period of postrelease supervision shall not  
31 negate the existence of such period of postrelease supervision.

32 (3) In presumptive nonprison cases, the sentencing court shall  
33 pronounce the:

34 (A) Prison sentence; and

35 (B) duration of the nonprison sanction at the sentencing hearing.

36 (f) Each grid block states the presumptive sentencing range for an  
37 offender whose crime of conviction and criminal history place such  
38 offender in that grid block. If an offense is classified in a grid block  
39 below the dispositional line, the presumptive disposition shall be  
40 nonimprisonment. If an offense is classified in a grid block above the  
41 dispositional line, the presumptive disposition shall be imprisonment. If  
42 an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may  
43 impose an optional nonprison sentence as provided in subsection (q).

1 (g) The sentence for a violation of ~~section 48, and amendments~~  
2 ~~thereto, K.S.A. 21-3415, prior to its repeal~~, aggravated battery against a  
3 law enforcement officer committed prior to July 1, 2006, or a violation of  
4 *subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of*  
5 *Kansas*, and amendments thereto, aggravated assault against a law  
6 enforcement officer, which places the defendant's sentence in grid block  
7 6-H or 6-I shall be presumed imprisonment. The court may impose an  
8 optional nonprison sentence as provided in subsection (q).

9 (h) When a firearm is used to commit any person felony, the  
10 offender's sentence shall be presumed imprisonment. The court may  
11 impose an optional nonprison sentence as provided in subsection (q).

12 (i) (l) The sentence for the violation of the felony provision of  
13 K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010*  
14 *Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of*  
15 *chapter 136 of the 2010 Session Laws of Kansas*, section 223 *of chapter*  
16 *136 of the 2010 Session Laws of Kansas* and section 227 *of chapter 136*  
17 *of the 2010 Session Laws of Kansas*, and amendments thereto, shall be as  
18 provided by the specific mandatory sentencing requirements of that  
19 section and shall not be subject to the provisions of this section or section  
20 288 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
21 thereto.

22 (2) If because of the offender's criminal history classification the  
23 offender is subject to presumptive imprisonment or if the judge departs  
24 from a presumptive probation sentence and the offender is subject to  
25 imprisonment, the provisions of this section and section 288 *of chapter*  
26 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall  
27 apply and the offender shall not be subject to the mandatory sentence as  
28 provided in section 109 *of chapter 136 of the 2010 Session Laws of*  
29 *Kansas*, and amendments thereto.

30 (3) Notwithstanding the provisions of any other section, the term of  
31 imprisonment imposed for the violation of the felony provision of K.S.A.  
32 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010*  
33 *Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of*  
34 *chapter 136 of the 2010 Session Laws of Kansas*, section 223 and section  
35 *227 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
36 thereto, shall not be served in a state facility in the custody of the  
37 secretary of corrections, except that the term of imprisonment for felony  
38 violations of K.S.A. 8-1567, and amendments thereto, may be served in a  
39 state correctional facility designated by the secretary of corrections if the  
40 secretary determines that substance abuse treatment resources and facility  
41 capacity is available. The secretary's determination regarding the  
42 availability of treatment resources and facility capacity shall not be  
43 subject to review. *Prior to imposing any sentence pursuant to this*



1 subsection, the court shall consider ~~assigning the defendant to a house~~  
2 arrest program pursuant to section 249 of the 2010 Session Laws of  
3 Kansas, and amendments thereto.

on the record,

4 (j) (1) The sentence for any persistent sex offender whose current  
5 convicted crime carries a presumptive term of imprisonment shall be  
6 double the maximum duration of the presumptive imprisonment term.  
7 The sentence for any persistent sex offender whose current conviction  
8 carries a presumptive nonprison term shall be presumed imprisonment  
9 and shall be double the maximum duration of the presumptive  
10 imprisonment term.

11 (2) Except as otherwise provided in this subsection, as used in this  
12 subsection, "persistent sex offender" means a person who:

13 (A) (i) Has been convicted in this state of a sexually violent crime,  
14 as defined in K.S.A. 22-3717, and amendments thereto; and

15 (ii) at the time of the conviction under ~~paragraph~~ subsection (j)(2)  
16 (A)(i) has at least one conviction for a sexually violent crime, as defined  
17 in K.S.A. 22-3717, and amendments thereto, in this state or comparable  
18 felony under the laws of another state, the federal government or a  
19 foreign government; or

20 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,  
21 prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws  
22 of Kansas, and amendments thereto; and

23 (ii) at the time of the conviction under ~~paragraph~~ subsection (j)(2)  
24 (B)(i) has at least one conviction for rape in this state or comparable  
25 felony under the laws of another state, the federal government or a  
26 foreign government.

27 (3) Except as provided in ~~paragraph~~ subsection (j)(2)(B), the  
28 provisions of this subsection shall not apply to any person whose current  
29 convicted crime is a severity level 1 or 2 felony.

30 (k) (1) If it is shown at sentencing that the offender committed any  
31 felony violation for the benefit of, at the direction of, or in association  
32 with any criminal street gang, with the specific intent to promote, further  
33 or assist in any criminal conduct by gang members, the offender's  
34 sentence shall be presumed imprisonment. The court may impose an  
35 optional nonprison sentence as provided in subsection (q).

36 (2) As used in this subsection, "criminal street gang" means any  
37 organization, association or group of three or more persons, whether  
38 formal or informal, having as one of its primary activities:

39 (A) The commission of one or more person felonies; or

40 (B) the commission of felony violations of K.S.A. 2009 2010 Supp.  
41 21-36a01 through 21-36a17, and amendments thereto; and

42 (C) its members have a common name or common identifying sign  
43 or symbol; and

1 (D) its members, individually or collectively, engage in or have  
2 engaged in the commission, attempted commission, conspiracy to commit  
3 or solicitation of two or more person felonies or felony violations of  
4 K.S.A. 2009 2010 Supp. 21-36a01 through 21-36a17, and amendments  
5 thereto, or any substantially similar offense from another jurisdiction.

6 (l) Except as provided in subsection (o), the sentence for a violation  
7 of subsection (a)(1) of section 93 of chapter 136 of the 2010 Session  
8 Laws of Kansas, and amendments thereto, or any attempt or conspiracy,  
9 as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws  
10 of Kansas, and amendments thereto, to commit such offense, when such  
11 person being sentenced has a prior conviction for a violation of  
12 subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior  
13 to its repeal, subsection (a)(1) or (a)(2) of section 93 of chapter 136 of the  
14 2010 Session Laws of Kansas, or subsection (b) of section 93 of chapter  
15 136 of the 2010 Session Laws of Kansas, and amendments thereto, or any  
16 attempt or conspiracy to commit such offense, shall be ~~presumed~~  
17 presumptive imprisonment.

18 (m) The sentence for a violation of K.S.A 22-4903 or subsection (a)  
19 (2) of section 138 of chapter 136 of the 2010 Session Laws of Kansas,  
20 and amendments thereto, shall be presumptive imprisonment. If an  
21 offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H  
22 or 5-I, the court may impose an optional nonprison sentence as provided  
23 in subsection (q).

24 (n) The sentence for a violation of criminal deprivation of property,  
25 as defined in section 89 of chapter 136 of the 2010 Session Laws of  
26 Kansas, and amendments thereto, when such property is a motor vehicle,  
27 and when such person being sentenced has any combination of two or  
28 more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its  
29 repeal, or of criminal deprivation of property, as defined in section 89 of  
30 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
31 thereto, when such property is a motor vehicle, shall be presumptive  
32 imprisonment. Such sentence shall not be considered a departure and  
33 shall not be subject to appeal.

34 (o) The sentence for a felony violation of theft of property as defined  
35 in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and  
36 amendments thereto, or burglary as defined in subsection (a) of section 93  
37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments  
38 thereto, when such person being sentenced has no prior convictions for a  
39 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of  
40 property as defined in section 87 of chapter 136 of the 2010 Session Laws  
41 of Kansas, and amendments thereto, or burglary as defined in subsection  
42 (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and  
43 amendments thereto; or the sentence for a felony violation of theft of

property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary or aggravated burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas; or the sentence for a violation of burglary as defined in

8-91

1 subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of  
2 Kansas, and amendments thereto, when such person being sentenced has  
3 any combination of two or more prior convictions for violations of  
4 K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of  
5 property as defined in section 87 of chapter 136 of the 2010 Session Laws  
6 of Kansas, and amendments thereto, or burglary or aggravated burglary  
7 as defined in section 93 of chapter 136 of the 2010 Session Laws of  
8 Kansas, and amendments thereto, shall be presumed imprisonment and  
9 the defendant shall be sentenced to prison as provided by this section,  
10 except that the court may recommend that an offender be placed in the  
11 custody of the secretary of corrections, in a facility designated by the  
12 secretary to participate in an intensive substance abuse treatment  
13 program, upon making the following findings on the record:

14 (1) Substance abuse was an underlying factor in the commission of  
15 the crime;

16 (2) substance abuse treatment with a possibility of an early release  
17 from imprisonment is likely to be more effective than a prison term in  
18 reducing the risk of offender recidivism; and

19 (3) participation in an intensive substance abuse treatment program  
20 with the possibility of an early release from imprisonment will serve  
21 community safety interests by promoting offender reformation.

22 The intensive substance abuse treatment program shall be determined  
23 by the secretary of corrections, but shall be for a period of at least four  
24 months. Upon the successful completion of such intensive treatment  
25 program, the offender shall be returned to the court and the court may  
26 modify the sentence by directing that a less severe penalty be imposed in  
27 lieu of that originally adjudged within statutory limits. If the offender's  
28 term of imprisonment expires, the offender shall be placed under the  
29 applicable period of postrelease supervision. The sentence under this  
30 subsection shall not be considered a departure and shall not be subject to  
31 appeal.

32 (q) As used in this section, an "optional nonprison sentence" is a  
33 sentence which the court may impose, in lieu of the presumptive  
34 sentence, upon making the following findings on the record:

35 (1) An appropriate treatment program exists which is likely to be  
36 more effective than the presumptive prison term in reducing the risk of  
37 offender recidivism; and

38 (2) the recommended treatment program is available and the  
39 offender can be admitted to such program within a reasonable period of  
40 time; or

41 (3) the nonprison sanction will serve community safety interests by  
42 promoting offender reformation.

43 Any decision made by the court regarding the imposition of an

1 optional nonprison sentence shall not be considered a departure and shall  
2 not be subject to appeal.

3 (r) The sentence for a violation of subsection (c)(2) of section 48 of  
4 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
5 thereto, shall be presumptive imprisonment and shall be served  
6 consecutively to any other term or terms of imprisonment imposed. Such  
7 sentence shall not be considered a departure and shall not be subject to  
8 appeal.

9 (s) The sentence for a violation of section 76 of chapter 136 of the  
10 2010 Session Laws of Kansas, and amendments thereto, shall be  
11 presumptive imprisonment. Such sentence shall not be considered a  
12 departure and shall not be subject to appeal.

13 (t) (1) If the trier of fact makes a finding that an offender wore or  
14 used ballistic resistant material in the commission of, or attempt to  
15 commit, or flight from any felony, in addition to the sentence imposed  
16 pursuant to the Kansas sentencing guidelines act, the offender shall be  
17 sentenced to an additional 30 months' imprisonment.

18 (2) The sentence imposed pursuant to subsection (t)(1) shall be  
19 presumptive imprisonment and shall be served consecutively to any other  
20 term or terms of imprisonment imposed. Such sentence shall not be  
21 considered a departure and shall not be subject to appeal.

22 (3) As used in this subsection, "ballistic resistant material" means:  
23 (A) Any commercially produced material designed with the purpose of  
24 providing ballistic and trauma protection, including, but not limited to,  
25 bulletproof vests and kevlar vests; and (B) any homemade or fabricated  
26 substance or item designed with the purpose of providing ballistic and  
27 trauma protection.

28 Sec. 3.4 Sections 249 and 285 of chapter 136 of the 2010 Sessions  
29 Laws of Kansas are hereby repealed.

30 Sec. 4.5 This act shall take effect and be in force from and after its  
31 publication in the statute book.

32



1 misdemeanor, except ~~that~~ *as provided in subsection (b)(2).*

2 (2) Violation of subsection (a) is a nondrug severity level 9,  
3 nonperson felony, if the distributor is 18 or more years of age, distributing  
4 to a ~~person under 18 years of age~~ *minor* and at least three years older than  
5 the ~~person under 18 years of age~~ *minor* to whom the distribution is made.

6 (c) If any one of the following factors is established, there shall be a  
7 presumption that distribution of a substance was under circumstances  
8 which would give a reasonable person reason to believe that a substance  
9 is a controlled substance:

10 (1) The substance was packaged in a manner normally used for the  
11 illegal distribution of controlled substances;

12 (2) the distribution of the substance included an exchange of or  
13 demand for money or other consideration for distribution of the substance  
14 and the amount of the consideration was substantially in excess of the  
15 reasonable value of the substance; or

16 (3) the physical appearance of the capsule or other material  
17 containing the substance is substantially identical to a specific controlled  
18 substance.

19 (d) *A person who commits a violation of subsection (a) also may be*  
20 *prosecuted for, convicted of and punished for theft by deception.*

21 Sec. 7. K.S.A. 2010 Supp. 21-36a01, ~~21-36a05, 21-36a09, 21-36a10,~~  
22 ~~21-36a13 and 21-36a14~~ *are hereby repealed.*

23 Sec. 8. This act shall take effect and be in force from and after its  
24 publication in the statute book.  
25

21-36a03,

21-36a06,

and section 286 of chapter 136 of  
the 2010 Session Laws of Kansas

*Corrections & Juvenile Justice*  
*February 18, 2011*  
*Attachment 17*

**21-36a03. Unlawful manufacturing of controlled substances.** (a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Violation or attempted violation of subsection (a) is a drug severity level 2 felony, except that, violation or attempted violation of subsection (a) is a drug severity level 1 if that person has a prior conviction under such subsection, under K.S.A. 65-4159, prior to its repeal, or under a substantially similar offense from another jurisdiction. The provisions of subsection (d) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

(c) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed or certified drug treatment program.

(d) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

(e) The sentence of a person who violates this section or K.S.A. 65-4159, prior to its repeal, shall not be reduced because these sections prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to ~~such sections~~ their repeal, or K.S.A. 2010 Supp. 21-36a05, and amendments thereto.

**21-36a06. Unlawful possession of controlled substances.** (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a controlled substance analog thereof.

(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto;

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; or

(6) any substance designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 4 5 felony;

(2) violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b)(1) through (b)(5) is a drug severity level 4 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162 prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana or tetrahydrocannabinol as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Section 286 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 286. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for drug crimes. The following sentencing guidelines grid for drug crimes shall be applicable to felony crimes under K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, except as otherwise provided by law:

[GRID]

(b) Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

(A) Prison sentence;

(B) maximum potential reduction to such sentence as a result of good time; and

(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks ~~3-F, 3-G, 3-H or 3-I~~ 4-E, 4-F, 4-G, 4-H or 4-I, the court may impose an optional nonprison sentence as provided in subsection (q) of section 285 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(e) The sentence for a second or subsequent conviction of K.S.A. 65-4159, prior to its repeal, or K.S.A. ~~2009~~ 2010 Supp. 21-36a03, and amendments thereto, manufacture of any controlled substance or controlled substance analog shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in section 296 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, justify such a reduction in sentence. Any decision made by the court regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal.

(f) (1) The sentence for a third or subsequent felony conviction of K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and amendments thereto, shall be a presumptive term of imprisonment and the defendant shall be sentenced to prison as provided by this section. The defendant's term of imprisonment shall be served in the custody of the secretary of corrections in a facility designated by the secretary. Subject to appropriations therefore, the defendant shall participate in an intensive substance abuse treatment program, of at least four months duration, selected by the secretary of corrections. If the secretary determines that substance abuse treatment resources are otherwise available, such term of imprisonment may be served in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The secretary's determination regarding the availability of treatment resources shall not be subject to review. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

(2) Such defendant's term of imprisonment shall not be subject to modification under paragraph (1) if:

(A) The defendant has previously completed a certified drug abuse treatment program, as provided in K.S.A. ~~2009~~ 2010 Supp. 75-52,144, and amendments thereto;

(B) has been discharged or refused to participate in a certified drug abuse treatment program, as provided in K.S.A. ~~2009~~ 2010 Supp. 75-52,144, and amendments thereto;



(C) has completed an intensive substance abuse treatment program under paragraph (1);  
or

(D) has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1).

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(g) (1) Except as provided further, if the trier of fact makes a finding that an offender carried a firearm to commit a drug felony, or in furtherance of a drug felony, possessed a firearm, in addition to the sentence imposed pursuant to sections 282 through 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the offender shall be sentenced to:

(A) Except as provided in subsection (g)(1)(B), an additional 6 months' imprisonment;  
and

(B) if the trier of fact makes a finding that the firearm was discharged, an additional 18 months' imprisonment.

(2) The sentence imposed pursuant to subsection (g)(1) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) The provisions of this subsection shall not apply to violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a06 or 21-36a13, and amendments thereto.

# SENTENCING RANGE - DRUG OFFENSES

| Category       | A                   | B                 | C                               | D                 | E                      | F                    | G                  | H                 | I                       |
|----------------|---------------------|-------------------|---------------------------------|-------------------|------------------------|----------------------|--------------------|-------------------|-------------------------|
| Severity Level | 3 + Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony   | 3 + Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanors   | 1 Misdemeanor No Record |
|                | 204<br>194<br>185   | 196<br>186<br>176 | 187<br>178<br>169               | 179<br>170<br>161 | 170<br>162<br>154      | 167<br>158<br>150    | 162<br>154<br>146  | 161<br>150<br>142 | 154<br>146<br>138       |
| II             | 144<br>136<br>130   | 137<br>130<br>122 | 130<br>123<br>117               | 124<br>117<br>111 | 116<br>111<br>105      | 113<br>108<br>101    | 110<br>104<br>99   | 108<br>100<br>96  | 103<br>98<br>92         |
| III            | 83<br>78<br>74      | 77<br>73<br>68    | 72<br>68<br>65                  | 68<br>64<br>60    | 62<br>59<br>55         | 59<br>56<br>52       | 57<br>54<br>51     | 54<br>51<br>49    | 51<br>49<br>46          |
| IV             | 51<br>49<br>46      | 47<br>44<br>41    | 42<br>40<br>37                  | 36<br>34<br>32    | 32<br>30<br>28         | 26<br>24<br>22       | 23<br>22<br>20     | 19<br>18<br>17    | 16<br>15<br>14          |
| V              | 42<br>40<br>37      | 36<br>34<br>32    | 32<br>30<br>28                  | 26<br>24<br>23    | 22<br>20<br>18         | 16<br>15<br>14       | 14<br>13<br>12     | 12<br>11<br>10    | 10<br>9<br>8            |

| LEGEND                   |
|--------------------------|
| Presumptive Probation    |
| Border Box               |
| Presumptive Imprisonment |

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