

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on February 8, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Tom Witt, Chairman of the Kansas Equality Coalition  
Pedro Irigonegary, Counsel for the Kansas Equality Coalition  
Jon Powell, Chairman of the Kansas Equality Coalition of Hutchinson and Reno County  
Justin Edwards, Kansas County and District Attorneys Association  
Jennifer Roth

Senator Rob Olson

Others attending:

See attached list.

The Chairman reminded members of the committee and members of the audience of two of the Committee Rules:

- All cell phones are to be turned off, except cell phones of a physician
- Video-taping or recording of the committee meeting is not allowed without the prior approval of the Chairman

The Chairman opened the hearings on **SB 56 — Amending the crime of criminal sodomy.**

Jason Thompson, Staff Revisor, reviewed the bill.

Tom Witt, who requested introduction of the bill, provided testimony in support of **SB 56 (Attachment 1)**. He stated the Supreme Court found that criminalizing same-sex sodomy was a violation of the due process and equal protection provisions of the U.S. Constitution in *Lawrence v. Texas*, 539 U.S. 558 (2003). He stated that even though the current wording of the Kansas statute is not constitutional a person may be arrested for violating the statute and held for bail or arraignment until a judge reviews the case.

Pedro Irigonegary provided testimony in support of **SB 56 (Attachment 2)**. He stated that criminalizing same-sex sodomy was a violation of the due process and equal protection provisions of the U.S. Constitution. He added that the Kansas criminal sodomy law illegally permits wholesale discrimination against lesbian, gay, bisexual and transgendered people.

Jon Powell provided testimony in support of **SB 56 (Attachment 3)**. He expressed concern that the law as currently written will be enforced if it is not amended.

Senator Kelly asked, "What would happen if a person was arrested for criminal sodomy?"

Mr. Powell responded, "The person could be jailed until released by a judge or until the person posts bail."

Senator Haley asked, "Would the office of the repealer need a bill to accomplish this archaic and unconstitutional statute?"

Jason Thompson, Staff Revisor, responded, "Yes."

No testimony in opposition to **SB 56** was submitted.

The Chairman called the committee's attention to the fiscal note and the prison bed impact statement for **SB 56**.

## CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on February 8, 2011, in Room 548-S of the Capitol.

The Chairman closed the hearings on **SB 56**.

The Chairman opened the hearings on **SB 63 — Amending the crime of sexual exploitation of a child.**

Jason Thompson, Staff Revisor, reviewed the bill.

Justin Edwards, appearing for Mark Bennett, testified in support of **SB 63** (Attachment 4). He stated the bill would amend the crime of sexual exploitation of a child to include acts by an offender who believes that the child being enticed is less than 18 years of age.

Senator Bruce asked, “Isn’t the situation described a “mistake of fact” situation and, therefore, the offender should be charged with attempted sexual exploitation of a child?”

Mr. Edwards explained that the crime of sexual exploitation of a child is a severity level 5 offense that carries a higher penalty than the crime of the attempted sexual exploitation of a child, which is a severity level 7 offense.

Jennifer Roth, appearing as an individual, testified in opposition to **SB 63** (Attachment 5). She stated that current law already addresses such situations in the crime of the attempted sexual exploitation of a child. She suggested that the committee should tailor the fix by amending the crime of electronic solicitation. She believes the bill criminalizes people for possessing legal items. In addition, she believes the bill makes it illegal to “THINK” certain things about legal items and questions the constitutionality of the bill.

The Chairman called the committee’s attention to the fiscal note and prison bed impact statement for **SB 63**.

The Chairman closed the hearing on **SB 63**.

The Chairman opened the hearings on **SB 39 — Creating the classification of aggravated sex offender; creating additional penalties and restrictions for sex offenders.**

Jason Thompson, Staff Revisor, reviewed the bill.

Senator Olson, who sponsored **SB 39**, testified in support of the bill (Attachment 6). He stated that it was his intent to create a safety zone around schools and increase the scrutiny of sex offenders whose victims are under the age of 16.

Attached to Senator Olson’s testimony was written testimony in support of **SB 39** submitted by:

- Eddie Hamilton (Booking Form)
- City of Topeka, Resolution supporting the strengthening of state sex offender laws
- Larry Campbell, Olathe, Kansas
- Dena Thompson, President Somer Thompson Foundation
- Tammy Khalifeh
- Rana Khalifeh
- Michell Prothe, Olathe
- Donna Sibaai, Wichita
- Lesley Ramirez, Olathe Kansas
- Shane Wood
- Jim Skelton, Wichita

In addition to their written testimony submitted by Senator Olson, Michell Prothe and Lesley Ramirez rose to express support of **SB 39**.

The Chairman announced that the hearings on **SB 39** would be continued to a later date.

Meeting adjourned at 10:30 A.M. The next meeting is scheduled for February 9, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 8, 2011

[illegible]



***Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.***

www.KansasEqualityCoalition.org • 6505 E. Central #219 • Wichita, KS 67206 • (316) 260-4863 • fax (316) 858-7196

Testimony of Thomas Witt, Chair, Kansas Equality Coalition  
Senate Committee on the Judiciary  
In Support of SB56  
February 8, 2011

Good morning Mr. Chairman and members of the committee. I am here today to speak in support of SB56, and I thank you for the opportunity to do so.

My name is Thomas Witt. I am Chair of the Kansas Equality Coalition, which works to eliminate discrimination based on sexual orientation and gender identity. In the five years since we formed, we have organized eleven chapters around the state and have nearly 2000 members. Today we ask you to amend Kansas Statutes to remove the unconstitutional criminalization of gay and lesbian Kansans.

Beginning in 1961 and continuing through 2003, states began repealing their consensual sodomy laws. While most states enacted blanket repeals, a few states made a distinction between married and unmarried heterosexual couples, leaving in place criminal penalties for unmarried couples. In Kansas, the ban on consensual sodomy was repealed for all heterosexual couples, married or not. Only acts committed by members of the same sex remained against the law in our state, in effect making it illegal to be gay or lesbian in the State of Kansas.

As most of you are aware, in 2003, the Supreme Court of the United States, in the case of *Lawrence v Texas* (539 U.S. 558), found that criminalizing same-sex sodomy was a violation of the due process and equal protection provisions of the United States Constitution. In their 6 to 3 ruling, the majority struck down all state laws criminalizing consensual relationships, gay or straight.

Unfortunately, the State of Kansas still has this unconstitutional law on its books. As a practical matter, that means that we can still be arrested, charged, and held for bail or arraignment until a judge reviews the case. You may think that this is unlikely to happen, and you may be right. In at least one case, however, a senior law enforcement official made clear, in his words to an assembly of adult college students, that "...even to this day, homosexuality is a crime in Kansas."<sup>1</sup> That statement was made by Finney County Attorney John Wheeler in 2008, nearly five years *after* the US Supreme Court rendered such laws unenforceable. Mr. Wheeler is, incidentally, the President of the Kansas County and District Attorneys Association, so one would assume that his views on this matter carry significant weight.

That this law remains on the books is an offense to every gay and lesbian Kansan, and to every citizen of our state who believes in fair treatment under law. That top law enforcement officials are still citing this law as a means to threaten law-abiding Kansans with arrest and prosecution, and to justify discrimination against us, is an outrage.

In the very first Executive Order issued by his administration, Governor Brownback declared that "the growth of liberty" called for creation of the Office of the Repealer. The Repealer is charged with recommending immediate repeal of laws found to be "unreasonable, unduly burdensome, duplicative, onerous, and conflicting...[and] detrimental to the economic well-being of Kansas." This unconstitutional statute, the only continued purpose for which is to threaten and harass law-abiding Kansans with arrest and imprisonment, certainly meets the requirements laid out by our Governor.

I urge this committee to support SB56, and to strike this unconstitutional vestige of a less tolerant society from our statute books.

<sup>1</sup> Garden City Telegram, February 14, 2008

**WHEREAS**, the economic well-being of the great State of Kansas and the growth of liberty and economic opportunities for the citizens of Kansas and for Kansas businesses are major priorities of this Administration; and

**WHEREAS**, the citizens of Kansas and all persons doing business in the State of Kansas have a mutual interest in a system of government, laws, regulations, and other governing instruments that are reasonable, comprehensible, consistent, predictable, and minimally burdensome; and

**WHEREAS**, in furtherance of this Administration's constitutional duty to supervise and direct the executive departments and agencies of state government for the purpose of carrying out the laws, regulations, and other governing instruments of the State of Kansas, I have established a new common sense approach to the task of governing; and

**WHEREAS**, unreasonable, unduly burdensome, duplicative, onerous, and conflicting laws, regulations, and other governing instruments are detrimental to the economic well-being of Kansas; hinder the growth of liberty and opportunities for Kansans and Kansas businesses; and defy a common sense approach to governance; and

**WHEREAS**, there currently exists in Kansas certain laws, regulations, and other governing instruments that meet these criteria and should therefore be immediately repealed;

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby create within the Kansas Department of Administration a new office to be called the Office of the Repealer. The Office of the Repealer shall be directed by an executive officer to be named the State Repealer. The State Repealer shall be appointed by the Governor and shall serve at the pleasure of the Governor. The Secretary of Administration shall commit and make available to the Office of the Repealer such resources and personnel as may be required to carry out this Order at the discretion of the State Repealer.

The Office of the Repealer shall undertake as its sole task and charge the following duties:

1. The Office of the Repealer shall investigate the system of governance of the State of Kansas including its laws, regulations, and other governing instruments to determine instances in which those laws, regulations, or other governing instruments are unreasonable, unduly burdensome, duplicative, onerous, or in conflict.
2. The Office of the Repealer shall cause to be created at the earliest possible date a system for receiving public comment suggesting various laws, regulations, and other governing instruments to be considered for possible repeal by the Office of the Repealer. This system shall include an online portal for the receipt of such public comment.
3. When the Office of the Repealer shall determine that any such law, regulation, or other governing instrument meets the standard set forth in paragraph 1 above, the State Repealer shall cause a recommendation for either outright repeal or for modification to be delivered to the originating body of such law, regulation, or other governing instrument; for example, to the Legislature for laws and to the promulgating state agency for regulations. The recommendation shall set forth with specificity the justification for the requested repeal or modification. Any recommendation made by the State Repealer shall carry the full weight and force of this Administration.
4. The Office of the Repealer shall implement a tracking system to follow the action taken by any originating body on any recommendation made by the State Repealer in order to prepare regular reports to the Office of the Governor regarding the progress of repeal or modification.

The Office of the Repealer shall have the authority to determine and implement such internal policies, standards, and procedures as may be necessary for the orderly and efficient carrying out of its mission as set forth in this Order.

This document shall be filed with the Secretary of State as Executive Order No. 11-01 and shall become effective immediately.

Student, group offended by Wheeler's remark  
Published 2/14/2008 in the Garden City Telegram  
By EMILY BEHLMANN

A Garden City Community College student and an advocacy group leader took offense at recent statements from Finney County Attorney John Wheeler, who called homosexuality a crime, though Wheeler said he was simply presenting the facts about Kansas law.

The issue arose at a Jan. 30 presentation on campus at which Wheeler said he was asked to inform students of sex crimes in Kansas — "what is lawful and what is not" — as a measure of prevention.

The purpose of the presentation was to educate college-level students about the implications of interacting with minors, since people of various ages interact on the open campus, said college spokesman Steve Quakenbush.

According to an audio clip from the presentation, while providing a definition of sodomy Wheeler said "Sodomy is oral contact or oral penetration of female genitalia or oral contact of the male genitalia; oral or anal sexual relations or sexual intercourse between a person and an animal; ... Anal penetration, however slight, of a male or female by any body part or object is sodomy — so by that definition, I will tell you that even to this day, homosexuality is a crime in Kansas."

Sodomy with a person of the same sex or an animal is punishable by a \$1,500 fine, six months in jail or both, he told the group.

The talk and an accompanying PowerPoint presentation also defined sex offenses like rape, indecent liberties with a child, sexual battery and unlawful voluntary sexual relations (known as Romeo and Juliet laws), Wheeler said.

He said his explanations reflected the laws on the books in Kansas, which he is charged to uphold.

But GCCC student Kristie Stremel, who said she attended the presentation as one of many steps for getting involved on campus, said she couldn't believe she had heard a public official make such a comment.

Stremel, 33, said she has been open about her own homosexuality since age 19.

"I thought he misspoke, or this guy's got an agenda," she said. "It's just hurtful, and I feel discriminated against, quite frankly."

Since the presentation, she has heard fellow students on campus discussing whether homosexuality is legal, she said.

"I have some pretty tough skin," she said. "But for any young kid at college trying to come out and dealing with this, that is detrimental."

Stremel said she obtained a video of the presentation and showed it to Anne Mitchell, chairwoman of the southwest branch of the Kansas Equality Coalition. The group states that through education, support and advocacy, it works to end discrimination based on sex or gender identity.

Mitchell said she thought Wheeler's statements about homosexuality were "ill-informed" or that he was trying to say something for shock value. She said it was an incorrect statement of the law because the 2003 Supreme Court case Lawrence v. Texas rendered the same-sex sodomy law unenforceable.

Lawrence v. Texas arose after two Texas men were convicted of "deviate sexual intercourse" for engaging in sexual acts in one man's home. Police discovered the acts when they entered the home in response to a reported weapons disturbance.

In a 5-4 decision, the Supreme Court stated that the Texas statute making it a crime for two persons of the same sex to engage in sexual conduct violated their right to due process under the law, in effect rendering Texas' sodomy statute unconstitutional.

Wheeler said that the Kansas law specifically, however, has not been overturned in appellate courts, and it's still on the books.

"I think it may well not withstand constitutional muster," he said. "However, (sodomy statute) does by definition cover those acts. The language is self-explanatory."

Wheeler, first elected as county attorney in 1992, said his office has prosecuted sodomy cases related to forced sexual acts or sex with animals. However, no cases have been filed regarding consensual, of-age homosexual relations, he said.

Still, Mitchell said she wonders whether homosexuals would receive fair treatment in Wheeler's office.

She said coalition members likely will be encouraged to write letters or make calls to let people know of Wheeler's statements, and to let their views of opposition be known.

In response to Mitchell's comments, Wheeler said, "I'm surprised that such a well-intentioned presentation has been taken grossly out of context. Everyone is treated fairly in this office, and in my 16 years as county attorney I have never filed a homosexual case and will not unless it is a nonconsensual forced sexual act on another person."

Not all who attended the presentation found Wheeler's remarks regarding homosexuality to be offensive.

For instance, Doris Meng, a GCCC English instructor, said she interpreted the statements to be a statement of the law, and not a judgment of whether the law is right or a condemnation of homosexuals. The county attorney's job is to uphold the law, she said.

"I didn't take offense at it," Meng said. "I try to be pretty sensitive — we have a diverse population here."

MEMORANDUM

To: Kansas Senate Judiciary Committee  
The Honorable Tim Owens  
From: Pedro L. Irigonegaray  
Counsel, Kansas Equality Coalition  
Date: February 8, 2011  
Re: Senate Bill No. 56

Section 68 of Chapter 136 of the 2010 Session Laws of Kansas, which amended K.S.A. 21-3506 must be amended. Section 68(a)(1) states that criminal sodomy is "sodomy between persons who are 16 or more years of age and members of the same sex."

In *Lawrence v. Texas*, 539 U.S. 558, the United States Supreme Court determined that criminalizing same-sex sodomy was a violation of the due process and equal protection provisions of the United States Constitution.

Lesbians and gay men, as a matter of law, are entitled the same fundamental rights to privacy in their sexual lives with another adult as heterosexuals. Today in Kansas, our sodomy law illegally permits, allows and at times encourages, wholesale discrimination against lesbian, gay, bisexual and transgendered people.

In America today, lesbian, gay, bisexual and transgendered persons can no longer be considered criminals because they love others of the same sex. Moral grounds alone may not be used as a basis to deny people liberty or equal protection under the laws.

Governor Sam Brownback's Executive Order 11-01 state in part: "...the growth of liberty... for the citizens of Kansas ... are major priorities." "[A] new common sense approach to the task of governing..." "[U]nreasonable, unduly burdensome, duplicative, onerous and conflicting laws, regulations and other governing instruments are detrimental to the economic well-being of Kansas; hinder the growth of liberty and opportunities for Kansans... and defy a common sense approach to governance." "[T]here currently exists in Kansas certain laws, regulations, and other governing instruments that meet these criteria and should therefore be immediately repealed." I applaud our Governor's effort. It is clear by his Executive Order that he would suggest our amendment.

There is no legitimate reason to deny our request for an amendment, only bigotry, ignorance, insecurities, a complete disregard for justice and the rights of others, or the hate offered by the Rev. Phelps and those that follow him, could result in a no vote.

We all know that gay children are bullied, abused and mistreated. We know that adult gay persons are discriminated for no other reason than their sexual orientation. Only your willful ignorance can turn a blind eye to these problems and our United States Supreme Court.

As legislators, you each took an oath to protect, defend, and obey our Constitution; that oath demands a "yes" vote on our proposed amendment.

Senate Judiciary  
2-8-11  
Attachment 2

The power entrusted to you must be used wisely. I know what it is like to live in a nation where the rule of law was ignored by those responsible to create it and by those entrusted with its enforcement.

As counsel for Kansas Equality Coalition (KEC), I represent many Lesbian, Gay, bisexual and Transgendered people. They are our mothers, fathers, brothers, sisters, friends and neighbors and like me, many heterosexual men and women who stand together with our gay and transgendered population in an effort to ensure that the principle of equal protection of the laws for all Kansans become a reality.

If you vote no, I respectfully request that on the record you state the reason or reasons for your vote, please express clearly each fact you rely on to deny your fellow citizens equal protection. In particular please address the issue of why you believe you have a right as a State Legislator to ignore the rule of law from the United States Supreme Court.

Not to oppose bigotry is to endorse it.



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Testimony of Jon Powell, Chair  
Kansas Equality Coalition of Hutchinson and Reno County  
Senate Committee on the Judiciary  
In Support of SB56  
February 8, 2011

Good morning, Mr. Chairman and members of the committee. I am Jon Powell, chair of the Hutchinson/Reno chapter of the Kansas Equality Coalition.

As a former Reno County Sheriff's Deputy, I would like to offer testimony in support of SB56.

As a law enforcement officer, I took an oath to protect and serve the citizens of the State of Kansas by enforcing all Kansas statutes.

It was drilled into us at the Law Enforcement Training Center in Hutchinson, and by our Field Training Officers, that the Legislature made the laws and it was up to us to enforce them, hence why we were called law enforcement officers.

Just because a law might seem archaic, I did not have the ability to NOT enforce laws that were on the books. That would be a dereliction of duty, and in violation of my oath of service. We were allowed "officer discretion" in situations, but most of the time that was used when writing traffic citations. We were not able to use our discretion if we thought a law was unconstitutional. As long as a law was on the books, it was enforced.

For most misdemeanors, arresting the person involves taking them, to jail and making them post bond, or, if they don't have funds to post a bond, they would have to see the Judge at the next available time. On weekends, that could be up to 3 days.

How would you like to be arrested and held for a crime that is really not a crime—because the law that you broke has been determined to be unconstitutional by the highest court in the United States? I myself Mr Chairman would be on upset taxpayer and American. As a gay American, I find the current statute criminalizing same-sex relationships to be outrageous and offensive.

I urge this committee to vote in favor of SB56, and remove this unenforceable and unconstitutional law from Kansas Statutes.

Thank you for your time. I am willing to stand for questions.

Senate Judiciary  
2-8-11  
Attachment 3



Office of the District Attorney  
Eighteenth Judicial District of Kansas  
*at the Sedgwick County Courthouse*  
535 N. Main  
Wichita, Kansas 67203

Nola Foulston  
*District Attorney*

Marc Bennett  
*Deputy District Attorney*

January 21, 2011

**Testimony Regarding SB 63**  
**Submitted by Marc Bennett, Deputy District Attorney**  
**On Behalf of the Kansas County and District Attorneys Association**

Honorable Chair Owens and Members of the Senate Committee on Judiciary:

Thank you for the opportunity to address you regarding Senate Bill 63. On behalf of the Kansas County and District Attorneys Association, I would like to bring to your attention issues related to K.S.A. 21-3516/ section 74 of chapter 136 of the 2010 Session Laws of Kansas.

The proposal set forth in SB 63 proposes to add the language "or a person whom the offender believes to be a child under 18 years of age," to subsections (1) and (4) of K.S.A. 21-3516, Sexual Exploitation of child.

The legislature has taken steps in recent years to protect the children of Kansas from sexual predators operating on the internet by creating the crime of Electronic Solicitation under K.S.A. 21-3523, to cover defendants who entice or solicit children to commit an "unlawful sex act" as that term is defined by K.S.A. 21-3501(4).

Last fall, an online-suspect tested the waters by asking what he thought was an underage girl to send nude photos of herself before moving on to request that they actually meet for sex. This act could not be charged as Electronic Solicitation because asking for the photo (sexual exploitation) is not among the enumerated list of sex crimes set forth as "unlawful sexual act[s]." The most that could be charged in this situation was a severity level 5 person felony under K.S.A. 21-3516(a)(1) Sexual Exploitation of a Child, "... inducing, enticing or coercing ..." the child to provide the photo. In this case, because the "child" was actually an undercover officer, the only crime that could be charged was a severity level 7, Attempted Sexual Exploitation of a Child, because no "real" child existed.

Senate Judiciary

2-8-11

Attachment 4

The KCDA had initially suggested making a change to either K.S.A. 21-3501(4) or to Electronic Solicitation, however, after consulting with the Reviser's Office, who raised a McAdams-type concern, and further considering the possibility that such changes could be misapplied to underage "sexting" between age-mates, the KCDA proposes the fairly modest changes set forth in SB 63.

As proposed, the change would simply allow the situation set forth above to be charged as Sexual Exploitation of a Child, a Severity level 5 person felony. While that is a lower severity level than electronic solicitation, it would still allow the State to keep such acts at a level where the suspect would face no better than a border box, without opening the specter of concerns often raised about teen "sexting." Those who actually solicit specific sex acts listed as "unlawful sex act[s]" would still face the enhanced penalties available via Electronic Solicitation, while allowing the State to place even those who take the first, tentative steps toward the more serious act in a border box/ presumptive prison category.

Respectfully submitted,

Marc Bennett  
Deputy District Attorney  
Eighteenth Judicial District

Senate Judiciary Committee  
February 8, 2011  
Testimony of Jennifer Roth  
Opponent of Senate Bill 63

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Chairman Owens and Members of the Committee:

SB 63 would add to the crime of sexual exploitation of a child, currently found at K.S.A. 21-3516 (recodified in Sect. 74 of Ch. 136 of the 2010 Session Laws):

- (1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, *or a person whom the offender believes to be a child under 18 years of age*, to engage in sexually explicit conduct with the intent to promote any performance;
- ....
- (4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, *or a person whom the offender believes to be a child under 18 years of age*, knowing the character and content of the performance.

The penalty for violation of these subsections is a severity level 5 person felony if the child is 14 to 17 years old (or a severity level 7 person felony for an attempt) and an off-grid person felony if the child is under 14 (both attempts and completed offenses – this is part of Jessica's Law).

**I oppose SB 63 for two reasons:**

**This law criminalizes people for possessing legal items – the fact scenario to which this law would apply is to people who possess images/videos or view performances of overaged people but believe them to be underaged.** It is already illegal to possess images/videos or view performances of underaged people.

**This law makes it illegal to THINK certain things about legal items, which runs afoul of the Constitution.**

As of the writing of this testimony, I do not know if this bill comes about because of a case, another state's law, an incident somewhere, etc. Once I hear the background and the proponent(s), I will be in a better position to address the concerns I see with this language. Thank you for your consideration.

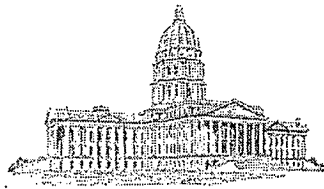
Sincerely,



Jennifer Roth  
[rothjennifer@yahoo.com](mailto:rothjennifer@yahoo.com)  
(785) 550-5365

Senate Judiciary

2-8-11  
Attachment 5



Senator Rob Olson  
23<sup>rd</sup> District

Statehouse 441-E  
785-296-7358

Robert.olson@senate.ks.gov

TO: Senate Judiciary Committee

Thank you for the opportunity to come before you and testify on behalf of SB 39 which strengthens the Kansas Sexual Offender Registry program put in place in 2006. This program was first instituted as a way to alert and protect members of the community from convicted sexual offenders and been a great success here in Kansas and around the country.

The key pieces of this bill are to create a new class of offender, create a "safety zone" around schools, and increase scrutiny of offenders whose victims were under 16 years of age.

The bill modified residency restrictions from the 2006 law creating a new category of offender to be added to the definition list in K.S.A. 22-4902. The new category would be called "aggravated sex offender." For an offender to qualify for this new category, at least one of the victims of the crime he or she is convicted of must be less than 16 years of age.

This new category of offender would be prohibited from residing within 2,000 feet of a licensed child care facility, registered family day care home, or USD or accredited school.

The bill would modify registry requirements for the new class, Aggravated Sex Offenders. The new requirements would force offenders to notify law enforcement within 24 hours of moving. Failure to register with the state would qualify under K.S.A. 22-4903 for a severity level 5, person felony.

Finally the bill would add a label to Kansas driver's licenses issued to Sexual Offenders. The new license would have an "Offender" label which would be color coded to indicate to law enforcement officers if the offender's victim was an adult or minor.

I strongly believe this bill will correct some critical lapses in current state law which will give Law Enforcement the tools necessary to protect our children.

Thank you again for the opportunity to testify before you today.

Senator Rob Olson

Senate Judiciary

2-8-11  
Attachment 6

ATTACHMENTS:

KCSO Booking Form.  
Victim name and address deletion form (CV 1)  
Copy of CPS Referral.  
Delgado's Apology Letter to CV-1.

NARRATIVE:

On 07-16-2009, at about 0800 hours, I received a CPS Referral from dispatch regarding sexual abuse on CV-1 by her friends father James Delgado.

At about 1230 hours, I responded to the Women's Center to obtain a statement from CV-1. Present at the Women's center was Karen Stone, who is a member of SART. CPS Worker Trina Brown, Intern Counselor Lorraine Beeson and CV-1's mother Tamara Khalifea. CV-1 told me the following:

CV-1 told me on 07/14/2009 she was staying the night at her friends house (633 E. Church Av.). She fell asleep with her friend on two mattresses pushed together in the living room of the house at about 0100 hours. CV-1 stated she was awakened by her friends father, James Delgado rubbing her back. At this time he began to rub her vagina and buttocks underneath her clothing. CV-1 told Delgado to stop however, he continued. She told him to stop again and this time Delgado stopped and left the living room.

CV-1 stated that Delgado had been drinking because she could smell it on his breath during the incident. I asked CV-1 if Delgado penetrated her vagina or buttocks. She said, "No." I asked her if Delgado's daughter was awakened during the incident. She said, "No." I asked CV-1 how close she was to Delgado's daughter during the incident. She said, "I was able to touch her."

CV-1 stated she woke up at about 0930 hours, in the morning and noticed there was a text message on her phone that was sent at 0700 hours, from Delgado. The message said "Have a nice day." CV-1 received another text message from Delgado at about 0930 hours. The message said, "I am sorry and to not say anything." CV-1 received a third text message from Delgado. The message said "Do you sort of like it" referring to the incident. I asked CV-1 if she saved the text messages from Delgado. She said, "I deleted them." CV-1 told me she left Delgado's house at about 1500 hours later that day.

CV-1 told Delgado's daughter about the incident. CV-1 told another friend about the incident. The friend contacted Delgado's daughter and told her again. CV-1 stated that Delgado's daughter confronted her father about the incident. Delgado put his head down and started to shake it.

CV-1 stated that she has known Delgado since she was in second grade and is really good friend's with his daughter. She told me she considers Delgado as a father figure because her father passed away. She has also stayed the night at Delgado's house on several occasions and nothing like this has happened before. CV-1 had no further information.

At about 1400 hours, Officer Gillette, Trina Brown and I responded to Delgado's residence (633 E.

Prepared By:

9905 HAMILTON, EDDIE

Date:

07/16/2009

Approved By:

6026 OBERGFELL, ROBERT

Date:

07/18/2009

6-2



## RIDGECREST POLICE DEPARTMENT

100 W CALIFORNIA AVE RIDGECREST, CA 93555 460 499-5100

09-2385

## NARRATIVE

Church) to obtain a statement. I contacted Delgado's wife who told me that Delgado was working in the field. I advised her that I needed to speak to Delgado regarding an incident and asked if he would meet us at the station. She told me she would call him and he would meet us at the police station.

At about 1500 hours, Delgado arrived at RPD. I walked Delgado to interview room A. Officer Gillette and I conducted the interview.

I asked Delgado if he knew why I wanted to talk to him. He said, "Because of the inappropriate touching of CV-1." I asked Delgado to tell us what happened. Delgado told us the following:

Delgado had received a "chilling" phone call from his daughter's friend regarding the incident involving CV-1. I asked Delgado to tell us about the incident. Delgado stated that CV-1 was staying the night with his daughter at his house. Delgado had been drinking and doing work around his house. He passed out on the couch and later woke up.

At this time he went and laid down on the mattress in the living room next to CV-1. He stated he was "spooning" with CV-1. I asked Delgado what spooning meant. He said, "I put my chest against her back and my arm around CV-1 chest area."

Delgado told me the next thing he knew he was in bed with his wife. Officer Gillette asked Delgado if he rubbed CV-1's breast's, vagina and buttocks. Delgado hesitated and said, "I don't know, I hope not." Delgado stated after he has been drinking he gets in bed with his wife. She tells him he starts putting his hands all over her. Delgado stated he doesn't know he's doing it.

We asked Delgado about text messaging CV-1 the day after the incident. Delgado said he was text messaging CV-1 about the incident. Delgado said he deleted the messages but said CV-1 told him about "Feeling wierd about the night before" Delgado would not go into details about the conversation he had with her.

Delgado continued to say he could not remember if he touched CV-1 in the manner as alleged. We told Delgado that we did not believe his story. At this time Delgado started crying and said, "I'am sick and I need help." I asked Delgado what kind of help he needs. He said, "Mental help and talk to a counselor."

We asked Delgado to tell us what really happened. Delgado stated he got into the bed next to CV-1 and put his arm around CV-1 and started to rub her. Delgado said he was rubbing "Everything in arms reach." We asked him what he meant by everything in arms reach. He said, "Her breasts, crotch and buttocks."

We asked if Delgado if he rubbed CV-1's vagina inside the clothing. He stated he did rub her vagina but did not penetrate. We asked if he was testing the waters by touching CV-1. Delgado said he was testing the waters but the "the second the wierd thing was brought up" he was done.

At this time Delgado was Mirandized and taken into custody. Delgado invoked his right's and no further questions were asked.

Prepared By:

9905 HAMILTON, EDDIE

Date:

07/16/2009

Approved By:

6026 OBERGFELL, ROBERT

Date:

07/18/2009

6-3

Honey I'm so sorry for what I  
did to you. You are a beautiful person  
with a good heart. You have a  
wonderful family and friends. I  
want you to know that none of this  
is your fault and I will get help.  
I love you, kid and your whole family.  
I hope that this all passes and  
someday the Khyfets will forgive me.

Love,

James

6-4

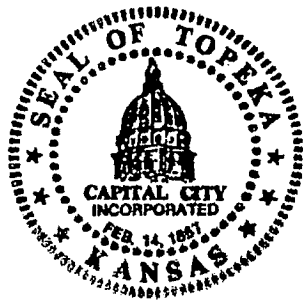
RESOLUTION NO. 8289

A RESOLUTION introduced by Councilmember Jack Woelfel supporting efforts to strengthen and enhance Kansas state law with respect to registered sexual offenders.


NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, that the City of Topeka strongly supports efforts to strengthen and enhance Kansas state laws with respect to registered sex offenders. Education, monitoring and enhanced community awareness to keep children as safe as possible at home, in neighborhoods and at school should be the goal of government, parents and all citizens. Effective and efficient provisions should be supported to better protect our children.

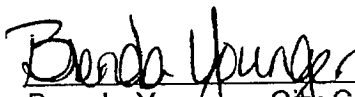
ADOPTED and APPROVED by the City Council September 14, 2010.

CITY OF TOPEKA, KANSAS



ATTEST:

  
William W. Bunten, Mayor

  
Brenda Younger, City Clerk

August 31, 2010

Dear Fellow Concerned Olatheans:

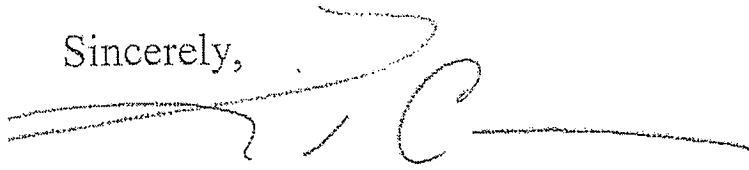
As you know, registered sexual predators living in our neighborhoods and near our schools is an issue I take extremely seriously. I have shared these concerns with my colleagues in the City Council, our delegation, and I have already visited with the O Police Chief.

In the coming weeks, we will be discussing the City's position relative to the state law when we address our State Legislative platform. The following language will be considered.

*The City of Olathe supports efforts to strengthen and enhance Kansas state law with respect to registered sexual offenders. That would include strengthening provisions designed to keep children as safe as possible, especially in neighborhoods and near schools. In addition, enhancements should ensure both state and local governments improved abilities to monitor offenders and ensure adequate community awareness offenders' whereabouts.*

I will keep you updated as we move forward.

Sincerely,



Larry Campbell  
Olathe City Council Ward 1

# The Somer Thompson Foundation

There are few things more important in this life than protecting our children from persons who would do them harm.

We are aware that placing restrictions upon those who have demonstrated their lack of respect for our children does not insure their safety. However, no one made these people commit their heinous act(s) against children in the past and it is our responsibility, as decent human beings, to do everything in our power to protect the innocents in our care from this evil among us.

Our statutes do allow us to dictate liberties to those who violate other laws, i.e., if you drive under the influence, your right to drive is suspended or revoked. In some states, we are also allowed to brand that persons vehicle to show the world that they are a previous offender. Why would we afford any less protection to our children.

We realize that not all sexual offenders can be painted with the same broad brush. There are those who are labeled sexual offenders even though they have never abused or molested a child. Unfortunately, there are those that have and we should not risk our children for their convenience. Dictating where they may or may not live is a small price to pay for acts they have already committed.

Having lived the horror that is having a loved one taken from this world because of one selfish persons' deed is not something anyone else should have to bear. As such, we would urge you to consider placing whatever restrictions upon those who have already violated the morality of the good people of this world.

Sincerely,

Diana Thompson

President

The Somer Thompson Foundation

## **Tammy Khalifeh's Letter**

My name is Tamara Khalifeh and I am the mother of Rana Khalifeh, now fourteen, who was molested by James Delgado at the age of thirteen. Having been in contact with residents of Kansas and especially among those involved with the association "Kansa rights 4 Kids", I feel compelled to share our story with you.

My husband became ill in 2003 with Multiple Myeloma, a blood related cancer, which also led to end stage renal failure requiring Dialysis 3 days a week. My daughter, Rana was friends with James Delgado's daughter Tristin, and as my husband's health continued to fail, the Delgado's became close friends to my entire family. James encouraged Rana to join a local soccer team he coached for. As time passed Rana also played basketball and softball, again on teams coached by James Delgado. As the girls aged, some of the sports were being coached by more experienced men, however James was always present at the practices and continued to have hands on drills with the girls. By girls I refer Rana and his two daughters, as well as other girls he had originally coached.

When Rana lost her father in April of 2003 James stepped in and offered love and support to Rana, She and Tristin became best friends and spent days at a time together, usually at the Delgado's home, including the night she was molested. This man whom my family loved and trusted, betrayed us in such a way that I find it hard to trust anyone again, especially with my children.

In July of 2009, Rana stayed the night with Tristin. The Delgado family had been under preparation for their move to Olathe, Kansas. Rana stated her and Tristin were laying on mattresses in the living room and James Delgado was laying on a sofa in the same room. He texted Rana asking if she wanted a back rub or massage. Rana refused, texting back to James that she was too tired to get up and was going to sleep. He texted back telling her there was always room on the couch next to him if she changed her mind. Rana then said she woke during the night finding James Delgado laying next to her on the mattress and rubbing her back and moving his hands down to her buttocks, inside her clothing. She moved away, turned over and tried to go to sleep again. She woke a second time to James hands on her stomach, then pushing inside her panties to rub her vagina. Rana pushed him away and told him to stop. He continued to grope her, touching her as Rana continued to push him away. When asked if said anything during this molestation, Rana stated he said her name over and over again, and told her to come closer to him. Eventually he stopped and after a time got up and walked to his room.

James Delgado's defense was that he was drunk and thought he was in bed with his wife, however there was absolutely no evidence to show that he was intoxicated, rather, as I have mentioned, that he was able to text Rana just prior to the incident. Rana testified that the following morning she received a text message from James asking if she "liked it", when she responded asking what he meant, he texted "last night".

My daughter stayed in their home until picked up by the mother of another friend for soccer practice. Only then did Rana find the courage to speak of her abuse with another friend. That evening, Rana called me and told me what had happened. She had also attempted to tell Tristin who called her a "liar". Picking Rana up that evening I found James wife there as well. She had brought Tristin to talk to Rana. Tristin told Rana her dad told them the truth, that what Rana said was true, and she was sorry she hadn't believed her.

Once James Delgado was arrested, he admitted everything to the police, however claimed "not guilty" at the pretrial. The following six months was frustrating as he and his lawyer filed continuations, until February of 2010 when the trial finally took place. All Rana and I ever wanted was some jail time, determined by the courts, and for him to have to register as a sexual offender.

To paraphrase what was required of the jury they had to find four elements to be true, he had to have done the act (he admitted to that on tape), the victim must be under fourteen years old (she was thirteen), he had to have shown an unusual sexual interest in her (texts, back massages), and he had to be consciously aware of what he was doing (not intoxicated). Twelve jurors found all four elements to be true.

As you can see the emotional betrayal of a friend and father figure has left us more wounded then the actual physical abuse. In Rana's "Vicim Impact Statement", she commented that she felt like she had lost her father for a second time. That this man has been watching my daughter, grooming her, sickens me. How as a mother could I not see what he wanted. Rana is a quiet and shy little girl. I believe James Delgado was counting on her trust in him to

continue to do what he attempted that night. His family were to be in Kansas during the summer, while he remained here in Ridgecrest. He would have had access to Rana without his family around. That is so frightening to me.

Now that I have told you our story, and I know it could have been so much worse, I would like to address the issue Kansas is now addressing. Should child molesters be allowed to live anywhere they choose, unrestricted? I think of it as a recovering alcoholic living across the street from a liquor store. He gets the urge to drink, walks across the street and when in minutes, has a drink. Suppose he lived many miles away. He would need to find his keys, get in his car, drive towards the store. Stopping at traffic signals and stop signs all the while having an inner battle to resist the temptation. That man, he may be able to turn around and head home, not buying and not drinking. Had that been a man fighting the urge to molest a child, a little boy or little girl would be free from assault. We may never know how many "close calls" there are. But to allow molesters to have easy access to children shows not only irresponsibility towards protecting our children, but also a lack of moral values. Politics should have no place in providing the safety of children from known molesters. As the parent of a very "close call", knowing things could have been so much worse, I cringe at the thought of men living close enough to watch children on a regular basis. Allowing them to be near schools, parks, and sports events is like handing that recovering alcoholic a drink, and telling him he can look at it, but not drink it.

My plea to you today, is to imagine that child is yours, and that man is watching her, he is holding her hand, offering a smile, bewitching her with his charm and sincerity. Because that is what they do. They bewitch us, they are getting close to us and all the while waiting, waiting for the right moment. Or for some, they are strangers who grab our children, without a thought, without remorse. Please look deep within yourself, for I do not seek to continue to punish the man who molested my daughter, but rather to ensure no other child is left in his care, where he can once again have the opportunity to follow through on an urge as he did with Rana.

Could your child be at risk? Should your political view override what your heart tells you? Please protect your children. That is all I ask.

Sincerely,

Tamara Khalifeh

### **Rana's Letter**

Hi. My name is Rana Khalifeh and I was molested by James Delgado. I do understand that Kansas is working on a law to make sure molesters do not live near schools. I think you should enforce that law. James Delgado was like a second dad to me, when he did that to me he made me lose a best friend and second family that I loved. If James lives near a school he may be able to do the same thing to another child as he did to me. I am working on forgiving him but it is so hard. James was a man I trusted and a man that I loved as a father, for him to do this was wrong! He should have no right to get close to another child again. I believe by enforcing this law Kansas would be saving kids from getting molested.

Sincerely,  
Rana Khalifeh

**Michell Prothe, Olathe, KS**

Subject: Introduction  
What is a True False Sense of Security?

Thank you Chairman Owens and Committee members for taking the time to consider this bill and allowing us to speak on its behalf today.

This testimony is a compilation of individual testimonies and concerns shared by many people in Kansas. A list of those who have contributed information to this testimony is in your packets. Our concerns come not only from us, they also stem from the almost 450 supporting members on our Kansas Rights 4 Kids Facebook page.

Briefly, I'll explain how our involvement with restricting child sex offenders came about:

This summer, James Delgado, a convicted child sex offender, moved to the Scarborough subdivision. He moved to a cul-de-sac a mere 208 feet from the Scarborough Elementary playground where most of our children go or have gone to school. He lived within the same cul-de-sac as some of our members and their families. While he was living next to the elementary school, Mr. Delgado was solely supervising adolescence without consent of some of the parents, who did not have knowledge of his previous crimes. This is where the controversy started, but it is not where it ends. He served as a spark to illuminate a problem that affects every neighborhood and every school and every child in Kansas. You will find a copy of the police report regarding the crimes Mr. Delgado committed in your packet.

I will only spend a minute on Mr. Delgado to help paint a picture of our story and at the end of the presentation you will hear from his victim via letter. There is also a heartbreaking letter from her mother in your packet. James Delgado was a community volunteer and youth coach in the state of California. In January of 2010, he was convicted of molesting his 13 year old daughter's best friend. He is a real deal child sex offender. He pled down from sexual battery of a child to annoying/molesting a child and served 120 days in jail in California. Upon release, he moved directly to Kansas to the cul-de-sac across from a school. Parents were outraged and sat in disbelief that he could be allowed to live so close to a school playground and interact with a new set of children where his crime was unknown to most neighbors. We were not actively notified he was even an offender. A single mom with a teenage daughter, who lived across from him, researched her new neighbor through the Family Watch Dog website and learned of his convictions. She then notified her neighbors.

What unfolded over the weeks that followed was research by a group of neighbors. We found out that Kansas does not restrict where convicted child sex offenders live and how they interact with children. As we talked to other neighbors, friends, and community leaders about this, the initial reaction was almost always the same. Nearly everyone falsely assumed that Kansas law restricts where and how child sex offenders interact with children of the community.

Our group of parents spoke to community leaders and political figures. We wrote letters to the media asking if they were aware that Kansas does not impose ANY restrictions. The community responded through incredible support of:

Senator Rob Olson

Olathe Councilmember/Former Mayor and State Representative Larry Campbell

Sedgwick County Commissioner/Former Wichita City Councilmember Jim Skelton,

Topeka Council Member Jack Woelfel and

The Topeka City Council.

You will find letters of support in your packets from these figures as well as a resolution of support to change child sex offender laws in Kansas that was passed unanimously by the Topeka City Council.

The Scarborough neighborhood story ended well. Kansas law enforcement and our local Dept of Corrections officers personally intervened in Mr. Delgado's case and he has been prevented from residing next to a school and his actions are now being monitored. Not all cases will end this way. The fate of Kansas children should not be left to chance and to persistence of neighbors and citizen groups.

We do not believe these types of child sex offender laws provide a false sense of security as some have suggested. We are not operating under the false pretense that the passing of this legislation guarantees that our children will not get sexually assaulted. But the chances will be decreased if we implement a healthy buffer zone between children, their parents and the people who have proven they harm innocent children. The real false sense of security comes from the fact that the majority of Kansans believe that these types of laws are already in place. Many of us had a false sense of security before we found out the truth. It is only now we know the true danger our children are currently in.

**Donna Sibaa**

**Wichita, KS**

Subject: Kansas is Surrounded by States with Child Sex Offender Legislation  
Child Sex Offenders Who Live By Schools and Attend Youth Events Are  
Not Strangers  
Child Sex Offender Tracking Issues  
The Somer Thompson Case

Thank you for listening to our concerns. I am going to address some of the issues we have encountered throughout this experience.

While I know child sex offender legislation is controversial for some I would like to talk about what may happen, if we do not pass child sex offender restrictions. Kansas is in a unique position; ALL of our surrounding states have legislation preventing access child sex offenders have to their children. Colorado, local municipalities have restrictions in place, including Denver and surrounding suburbs, in Missouri 1000 feet from schools and

child care facilities and 500 foot safety zones, Oklahoma 2000 feet from schools and child care facilities, Nebraska 500 feet from schools and child care facilities, Arkansas 2000 feet from schools and daycares, and Iowa 2000 feet from schools and parks for violent offenders and 300 feet "child safe zones." Kansas and Montana are the only 2 states in the U.S. that do not have any laws restricting child sex offenders from working in schools with children. Thank goodness our school districts conduct background checks for teachers and staff. However parents and volunteers at schools are free to come and go without anyone questioning their criminal history. If you were a convicted child sex offender fresh out of jail looking for a place to make new roots out of all these states which one looks most appealing? We need this legislation not only to help us protect our kids; we need it so we don't invite child sex offenders in to our borders.

A common issue we have read about is the contention that restrictions against child sex offenders do not keep offenders away from potential victims. People in my community, the Scarborough neighborhood, know from personal experience that a child sex offender who lives near a school and is allowed to frequent the playground and youth events is not a stranger to the children or parents. Children and parents see this offender's familiar face every day coming to and from school. He or she becomes an acquaintance or even a friend. This is especially true if the convicted child sex offender is seen, supervising neighborhood children who may or may not be a relative to him or her at the school playground. In a case like this the offender is viewed by parents and children at the very least as an acquaintance. These people do not fall in to the "stranger danger" category. People who live near schools and frequent areas where children gather are acquaintances and friends, NOT strangers. Acquaintance and friends account for 59% of sexual assaults against children.

Iowa and Florida have reported issues with tracking sex offenders; some are forced in to homelessness. Something no one has seemed to address yet is that both of those states not only have a state law, local municipalities also made laws banning sex offenders from city limits creating a housing issue. Also please think about how the laws were enforced? Most states that have child sex offender specific restrictions have not reported those types of problems. Kansas can do better.

I would like to also talk about the case of Somer Thompson in Florida. Enclosed in the packet is a letter from her mother and the Somer Thompson Foundation appealing for all of you to approve this legislation. The Foundation is actually asking for Florida to change their residency restriction to a mile radius. For those of you not familiar with the Somer Thompson case she was a 7 year old girl who was kidnapped, molested, and murdered while walking home from school. Her body was found 2 days later in a landfill. The person who is on trial for this heinous crime had pending child pornography charges against him that had not yet been prosecuted when Somer disappeared, he also lived in her school zone. Children she walked home from school with said Somer would stop and pet a small white dog at the home where her accused murderer lived. There is very little doubt that he did not commit this crime. Please do not wait for a Kansas child to be harmed before doing taking proactive measures. When a child goes missing who are the some of the first people law enforcement check up on? Convicted child sex offenders

who live near the victim or places the victim frequented. Why would they do that if the proximity of child sex offenders to children did not matter?

**Lesley Ramirez      Olathe, KS**

Subject:      Issues with Statistics  
                 There is Support for Child Sex Offender Restrictions  
                 What May Happen if Restrictions aren't Passed on a State Level

We all know there are statistics out there that say residency restrictions are not proven effective. Before making concrete decisions based solely on this data please take a close look at it. None of us are expert statisticians nor have the resources to hire experts but just with our layman eyes we found some pretty big issues with these studies by doing some research on our own.

1.      These studies that do not support restrictions against sex offenders do not exclusively pertain to child sex offenders who have offended against children 16 years of age and under; parts of this bill covers this specific population. Some go as far as to lump all sex offenders in to the statistics. That would have made sense at the time considering many states were doing the same when they were writing their original sex offender legislation. But there is no point in following a person who had crimes against an adult or "Romeo and Juliet" cases and whether their proximity to children effects whether they commit another crime.
2.      The time frame these studies were conducted was not long enough. Many experts say recidivism studies need to be conducted for 5-10+ years since rates only increase as the year's progress. The studies we have reviewed, the amount of time ranges from 15 months to the most amount of time at 6 years. Most were only conducted over 2-4 years, clearly not long enough as recommended to judge recidivism.
3.      The studies only focus on convictions. What about crimes that were never fully prosecuted or even reported? In the Wichita Eagle a recent article stated there are 440-515 incidents of child sex abuse reported each year. In 2009 only 128 were actually charged that's only 'charged' not convicted. When only 10% of child sex crimes are even reported, how can anyone rely completely on statistics to make such an important decision regarding our children's lives?
4.      As some studies state there is no correlation to where a child sex offender lives and their reoffense rates, there are also studies that say that child sex offenders choose to live closer to places where children gather than other types of sex offenders. A study in Arkansas concluded that child sex offenders choose to live closer to where children gather because of access to potential victims.

In 2006 when Kansas lawmakers considered residency restrictions they were deemed not best for Kansas based off research we consider irrelevant to this proposed bill. During this time the Judiciary on Committee report recommended with a representative from the Des Moines, Iowa Attorney General Office that Kansas adopts "safety zone" legislation and that recommendation was ignored. The Iowa County Attorney Association (who is quoted on the Kansas Department of Corrections website) has supported "child safe zones" since 2006. Iowa passed "safe zone" legislation this past year in addition to their 2,000 foot rule for violent predators. More recently during testimony with the Committee on Corrections and Juvenile Justice, Corrections Secretary Roger Worholtz stated that "safety zones" were worth looking in to. While "safety zones" are a very important part of the bill, they go hand in hand with residency restrictions. It does not make sense to put a limit on how close a child sex offender can loiter in regards to a school when they can live in a home backed up or across the street from that same school.

In conclusion if state legislation is not passed to put a buffer between children and child sex offenders we will be forced to start pushing for laws at the municipal level. Then we may end up in a situation like Florida or Iowa. This legislation needs to be at a state level, however, but in order to protect our kids we will do whatever it takes. Experts agree child sex crimes are crimes of opportunity, please ensure our children are not served up on a platter.

### **Shane Wood**

Subject: Personal Experience with a Child Sex Offender  
Child Sex Abuse Victim Statement

My name is Shane Wood. I have been a proud Kansan for most of my life. I am a former law enforcement officer, a current business owner and more importantly, a proud father of two.

In May of last year I found out that a new neighbor, convicted child sex offender James Delgado, moved in two doors down from my family in the cul-de-sac we've lived in for the last 10 years. We chose this house due to the fact that it was directly across the street from the school the school that my kids would attend.

Throughout our efforts to gather information about the current Kansas laws and try to understand why child sex offenders are allowed to live within such a short distance to where our children go to school and gather to play we were contacted by the mother of Delgado's victim Tammy Khalifeh.

Due to time constraints, I would like to paraphrase her letter to us. Tammy told us a story about how Delgado, a respected youth coach and member of their small Lawrence-sized community, stepped in to offer support when Tammy's husband passed away from blood related cancer. Since Tammy's daughter Rana and Delgado's daughter were best friends it seemed like natural fit. Considering Delgado had coached his daughter's teams and the

victim had been on most of them, no one thought anything of it. Tammy's letter goes on to say how, on the night of the assault, Rana spent the night at the Delgado's house. Without going in to the details of the assault, you can read them in the police report included in the packet, not only did an assault take place but he texted his victim not only to ask for her silence but to further ask if she liked it.

A letter from the victim's mother is also in the packet but I would like to read a note from Rana herself.

"Hi. My name is Rana Khalifeh and I was molested by James Delgado. I do understand that Kansas is working on a law to make sure molesters do not live near schools. I think you should enforce that law. James Delgado was like a father to me, he made me lose a best friend and a second family that I loved. If James lives near a school he may be able to do the same thing to another child as he did to me. I am working on forgiving him but it is hard. James was a man I trusted and a man I loved as a father, for him to do this was wrong! He should have no right to get close to another child again. I believe that enforcing this law Kansas would be saving kids from getting molested."

Sincerely,

Rana Khalifeh

Please understand this is bigger than James Delgado. This is about protecting our children the best we can.

One thing I failed to mention at the beginning of my story is that the day that I found out our new neighbor, a man I had yet to meet and a man who is a convicted child sex offender, had earlier that day taken my 12 year old daughter and her best friend, who happens to be Delgado's cousin, to a swimming pool without my knowledge or consent. I believed that the mother of my daughter's friend was to be the chaperone. This happened only days after his release. He also showed up to the softball fields every night to watch my daughter's team play ball under the false pretense that he is watching his cousin.

If this were a poker game, please tell me which one of you are willing to gamble with your child's innocence?



September 10, 2010

Ms. Carol O'Dell  
9468 E Skinner  
Wichita KS 67207

Dear Carol,

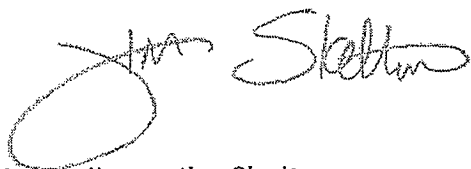
I wish to express my thanks for enlightening me about the issues regarding child sex offender laws and the work that *Kansas Rights 4 Kids* is undertaking. Our free society requires active citizens, and I wish to commend you and others involved in *Kansas Rights 4 Kids* for your time and effort to bring change within the scope of child sex offender residency laws. I am in full support of you and *Kansas Rights 4 Kids* bringing this issue to the State Legislature for review and action.

In my opinion it is very wrong for the State of Kansas to allow child sex offenders to live in close proximity to schools. This, in my view helps enable them to perpetrate their perversion. I believe the State of Kansas should conduct new research in the states surrounding Kansas to determine the effectiveness of such residency restrictions enacted since 2006. I am also highly concerned that Kansas is surrounded by states with child sex offender residency restrictions, and that the lack of restrictions here in Kansas could lend to a huge influx of child sex offenders from other states.

Events like in Olathe, when neighborhood parents had to notify the police that a child sex offender, who moved to Kansas from another state, was preying on youth at Scarborough Elementary, gave me great concern. This situation shows me that the State needs to ensure that a comprehensive system is in place to monitor child sex offenders. Allowing child sex offenders to live in close proximity to schools does not provide the margin of safety required by the public.

Please feel free to contact me anytime if there is an opportunity for me to show support to *Kansas Rights 4 Kids* as it would be an honor.

With Sincere Thanks,



Councilman Jim Skelton

JS:bf

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