



STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

Chairman Stephen Owens
House Corrections and Juvenile Justice Committee
Re: Senate Bill 73

Dear Representative Owens:

Thank you for the opportunity to submit my written testimony in support of Senate Bill 73. My name is Will Hurst, and I am an Assistant District Attorney in Johnson County. I have been prosecuting since 2007 and been with the Johnson County District Attorney's Office since 2011. I have supervised our Domestic Violence Unit since 2019.

K.S.A. 21-5807 defines the crime of Burglary. To briefly summarize the current status of the law, the crime of Burglary requires that the offender enter or remain within a home (or a variety of other structures) with the intent to commit a felony, theft, or sexually motivated crime. If the intruder does not have the intent to commit such an act, the crime is Criminal Trespass, a class B misdemeanor.

For all Kansans, our residence is a special place. It is a place where our families should feel safe and secure. When an intruder enters the home without permission, it can be an extremely terrifying event. I believe it is the Legislature's intent to enact strict penalties for such offenders not only to act as a deterrent for future behavior, but also to acknowledge the severity of the situation anytime an unwanted person enters a home.

I write in support of SB 73 as I have observed several situations where a criminal defendant should have faced a Burglary charge but a loophole within the statute shielded the defendant from the charge.

One example I can provide occurred this past year. A defendant was charged in Johnson County District court with Domestic Battery and Criminal Damage to Property against his ex-girlfriend in January of 2022. Despite a significant criminal history that included two felony convictions for weapon possession, the Defendant was given a signature bond and was allowed to sign himself out of jail the very next day. The conditions of his release prohibited him from contacting the victim.

Less than a month after his release, law enforcement was dispatched to the victim's home around 3:00 a.m. When officers arrived, they found both the victim and the Defendant inside the residence. The Defendant was immediately arrested. The victim told law enforcement that she was asleep in her bedroom when she woke up to the Defendant standing over her bed. She told the Defendant to leave and when he didn't, she called 911. It appeared to law enforcement that the Defendant had kicked in the front door of the residence.

The Defendant was initially charged with three counts – Aggravated Burglary, felony Stalking, and misdemeanor Criminal Damage to Property. As to the Aggravated Burglary charge, the State's theory was that the Defendant entered the victim's home with the intent to commit the felony crime of Stalking.

The crime of Stalking is controlled by K.S.A. 21-5427. Stalking can be a misdemeanor or felony, depending on several factors. The Defendant was charged with felony stalking while violating a protection order (his active bond conditions from his previous domestic violence case that ordered him not to contact the victim). Under the language in the statute, the version of Stalking committed by the Defendant can only be committed "recklessly." No other felony provision of the Stalking statute applied to the Defendant's actions.

In 2019, the Kansas Supreme Court reversed an Aggravated Burglary conviction under similar circumstances. *State v. Chavez*, 310 Kan. 421 (2019). In summary, the Court found that an offender could not enter a residence with the intention of committing the reckless crime of felony Stalking. In other words, the Court found that an individual could not intend to commit a reckless crime. Therefore, reckless felony Stalking could not be the underlying felony for a Burglary charge.

As to my 2022 example, because the Defendant did not commit any other theft, sexually motivated crime, or other felony while in the victim's home, the felony Stalking was the only possible underlying charge that would have supported the charge of Aggravated Burglary. Based on the holding in *Chavez*, the State of Kansas was forced to dismiss the charge of Aggravated Burglary against the Defendant.

This recent example is one of several others where the *Chavez* loophole allowed criminal defendants to escape accountability for what I believe should be a Burglary under Kansas law. By including the crimes of Domestic Battery and Violation of a Protection Order as potential underlying crimes for a Burglary, it will not only hold individuals like the above-mentioned Defendant accountable, but it will provide greater protection for victims of domestic violence in Kansas.

Thank you for the opportunity to address the committee. I look forward to appearing to testify in support of Senate Bill 73. If you have any additional questions or concerns, feel free to contact at 913-715-3072.

Sincerely,

William F. Hurst
IV, #23055

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