

**Senate Utilities Committee
February 16, 2021**

Senate Bill 172

**Testimony of the Kansas Association of Criminal Defense Lawyers (KACDL)
Presented by Bryan Cox
Neutral**

Dear Chairman Thompson and Members of the Committee:

The top-line summary of Senate Bill 172 is that it would create several new crimes and implement new penalties for those crimes. As the name would imply, critical infrastructure is important to protect. But, lurking beneath those good intentions, this bill as currently written would completely abandon fundamental rights of due process with regard to restitution. The committee should remove sub-section (f) of the proposed new K.S.A. 21-5818 to allow for proper consideration of restitution under the criminal restitution statute, K.S.A. 21-6604.

When a judge sentenced a convicted defendant for *any* crime in Kansas, a sentencing court is already required to order the defendant to pay restitution. K.S.A. 21-6604. The proposed sub-section (f) would set a different standard for restitution for the crimes created by this bill. This is problematic for a number of reasons: first, this language purports to make any person “arrested” for a violation of the statute liable for any damages to personal or real property, which would likely be unconstitutional as it would deprive an arrested individual of due process. Second, it purports to make liable any person or entity that paid an arrested individual, but provides no procedural mechanism to provide for a judicial determination—or any due process—to the accused accomplice. As this section currently reads, that presumption of innocence would be abandoned and the arresting police officer would become judge and jury of the question of whether someone should be liable for damages.

This entire subsection (f) attempts to duplicate law that already exists. In doing so, it fails to include the carefully considered and developed balances that the existing law has struck. Prosecutors and courts are obligated to consult victims of crime to obtain their input regarding whether they are seeking restitution. *See* K.S.A. 74-7333 (Kansas Crime Victims’ Bill of Rights). The Kansas Criminal Code already contains strong provisions that require a judge to order a defendant to pay restitution. K.S.A. 21-6604(b)(1) (mandating that courts “shall” order restitution). When such a restitution order is issued, it is a judgment against the defendant that extends even beyond the end of any sentence for that defendant. K.S.A. 21-6604(b)(2). Such restitution orders, under current statute, cannot even be released of record as normal civil judgments can be. K.S.A. 60-2403.

Sub-section (f) is a needless and damaging departure from well-established restitution law, and should simply be deleted.

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I thank the Chairman and all members of this Committee for the opportunity to testify today, and am happy to participate further in the consideration of this bill.

Sincerely,

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