

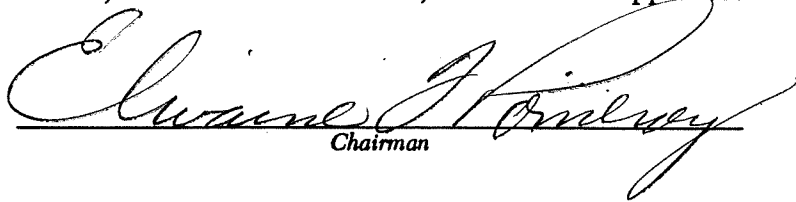
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 254 E, at the Statehouse at 3:45 ~~a.m.~~/p. m., on February 15, 19 79.

All members were present except: Senators Burke and Gaar

The next meeting of the Committee will be held at 10:00 a. m./~~p.m.~~ on February 16, 1979.

~~These minutes of the meeting held on xx, 19xx were considered, corrected and approved.~~


Chairman

The conferees appearing before the Committee were:

Ron Todd - State Department of Insurance

Staff present:

Art Griggs - Revisor of Statutes
Jerry Stephens - Legislative Research Department
Wayne Morris - Legislative Research Department

Senate Bill No. 266 - Code of procedure for municipal courts, notice to appear. Because the content of this bill had been included in Sub. for Senate Bill 154, the author of the bill, Senator Mulich, moved to report the bill adversely; Senator Allegrucci seconded the motion, and the motion carried.

Senate Bill No. 179 - Livestock running at large, taking by sheriff. Following committee discussion, Senator Gaines moved to amend the bill by striking section 2; Senator Simpson seconded the motion. During committee discussion, copies of the stray law were distributed; a copy is attached. Following committee discussion, the motion carried. Senator Gaines moved to report the bill favorably as amended; Senator Mulich seconded the motion, and the motion carried.

Products Liability Reporting - Mr. Ron Todd appeared before the committee to present a review of the products liability insurance reporting statistics and closed claims reported in accordance with K.S.A. 40-1130. A copy is attached hereto. Considerable discussion between Mr. Todd and members of the committee followed.

Senate Bill No. 188 - Jurisdiction of campus police. Following committee discussion, Senator Gaines moved to report the bill adversely; Senator Steineger seconded the motion, and the motion carried with Senators Hess, Parrish and Pomeroy voting "No".

Senate Bill 259 - Unlawful acts relating to certain utility services. Following committee discussion, Senator Allegrucci moved to report the bill adversely; Senator Mulich seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved by the committee on _____.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

2-15-79
P.M.

47-227, 47-228. [G. S. 1863, ch. 105, §§ 31, 32; R. S. 1923, 47-227, 47-228; Repealed, L. 1945, ch. 226, § 10; June 28.]

Source or prior law: L. 1861, ch. 83, §§ 27, 28.

47-229. Definitions. As used in this act: (a) "Domestic animals," shall include all domestic animals except dogs and cats.

(b) "Stray" or "strays" shall mean any domestic animal which is found running at large, contrary to law, or which may be found in any enclosure other than that of its ownership, and whose owner is not known in the community or whose owner cannot be found. [L. 1945, ch. 226, § 1; June 28.]

47-230. Taking up stray; notice, requirements; record of ownership and animal released, when; costs. Any person may take up any stray found upon his premises, or upon any public thoroughfare adjoining thereto, and he shall report such taking up to the sheriff of the county in which the stray is taken up within twenty-four (24) hours after the taking up of such stray. In giving such notice, the taker-up shall describe said stray to the sheriff by stating the kind of animal, color, weight, size, sex and age, the marks, brands or other distinguishing features of the animal, if any there may be, the place where the animal is kept and the address of the taker-up. The sheriff upon being given such notice shall notify the state livestock commissioner and the owners of all registered brands found on said animal. If the sheriff and the livestock commissioner or his duly authorized representatives find and establish the ownership of said animal, a record to that effect shall be kept, and said animal shall be then released to the established owner: *Provided*, That said owner has paid all costs accrued in said stray proceeding and has paid to the taker-up reasonable compensation for keeping and feeding said stray, as determined and agreed to by both the sheriff and the state livestock commissioner or his authorized representative, together with the cost for any damage which said stray may have caused. [L. 1945, ch. 226, § 2; L. 1947, ch. 297, § 1; L. 1951, ch. 310, § 1; L. 1965, ch. 329, § 1; L. 1970, ch. 205, § 1; July 1.]

Research and Practice Aids:

- Animals 61.
- Hatcher's Digest, Animals §§ 30, 31.
- C. J. S. Animals § 87 et seq.
- Notice, taking up stray, Vernon's Kansas Forms §§ 3291, 3292.
- Notice, sheriff's sale of stray, Vernon's Kansas Forms § 3293.

CASE ANNOTATIONS

Annotation to L. 1945, ch. 226, § 2:

1. Violation of section discussed in action brought under 21-533. *State v. Fry*, 173 K. 536, 542, 249 P.2d 929.

47-231. [L. 1945, ch. 226, § 3; Repealed, L. 1970, ch. 205, § 5; July 1.]

47-232. Certification to court where controversy between adverse claimants; af-

~~firm and disposition of sale proceeds.~~

fidavits; testimony; order determining ownership and disposition of sale proceeds. In the event that there are more than one claimant to any stray, and if a contest or controversy ensues as a result of adverse claimants, the sheriff shall certify the matter to the district court of the county in which the stray is taken up, and said court shall docket said matter in a proper docket supplied by the county. The claimants shall have ten (10) days following the date of the docketing of said matter to file affidavits in support of their several claims. The said court shall also have the right and authority to hear oral testimony at any reasonable time on notice to the claimants to determine the ownership of such stray. After any such hearing the said court shall enter a finding and order determining the ownership of said stray and directing the distribution of the proceeds from the sale of such stray animal.

History: K.S.A. 47-232; L. 1976, ch. 145, § 201; Jan. 10, 1977.

~~in probate court, Vernon's Kansas Forms § 3295.~~

~~Powers and functions of probate judges, Kansas Probate Law and Practice § 1745.~~

~~Sheriff's certificate to probate court, Vernon's Kansas Forms § 3294.~~

47-233 to 47-235. [L. 1945, ch. 226, §§ 5 to 7; Repealed, L. 1970, ch. 205, § 5; July 1.]

47-236. Care of strays. Any person taking up a stray as hereinbefore provided, shall feed and care for said stray and not injure or abuse it, and if any stray shall die while in the possession of the taker-up without fault of said taker-up, he shall not be responsible for said death or held liable for damages therefor. [L. 1945, ch. 226, § 8; June 28.]

Research and Practice Aids:

- Hatcher's Digest, Animals § 11.

47-237. Penalties for unlawful acts. If any person shall unlawfully take up any stray

or fails to comply with the provisions of this act or uses or works such stray before giving notice or shall drive the same on any premises for the purpose of unlawfully taking up the same, or shall keep the same out of the county when taken up more than five days at one time before sale, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment for not exceeding thirty days, or by both such fine and imprisonment. [L. 1945, ch. 226, § 9; June 28.]

47-238. Same; advertising stray by sheriff; delivery of animal to market; sale; conditions. After the sheriff has received notice of the taking up of any stray, and the ownership not having been established, the sheriff shall advertise such stray in the area where taken up, and shall cause the stray animal to be delivered to a public livestock market or to a terminal livestock market, and shall sell or cause said stray animal to be sold at such a market, to the highest bidder for cash: *Provided*, Such advertisement shall be at least seven (7) days before sale date, and such sale date shall be at least twenty-one (21) days after date the stray was reported to the sheriff. [L. 1970, ch. 205, § 2; July 1.]

Cross References to Related Sections:

Sale of diseased animals, see 47-607, 47-632, 65-620.

47-239. Same; publication notice for sale; contents; disposition of proceeds of sale; special stray fund; establishing of ownership within six months of sale. The notice for the sale of the stray shall be published for one (1) issue in a publication or publications having general circulation in the area where said stray was taken up, which notice shall describe the stray animal by stating the kind, sex, age, and brands. The notice shall not contain any statement as to the color of the stray animal, or as to any marks or other distinguishing features, and it shall not contain the name or address of the taker-up of such animal. Out of the proceeds from the sale of said stray animal, the sheriff shall pay the taker-up of such animal, reasonable compensation for his keeping and feeding of the same, and the sheriff shall pay all costs of the stray proceedings. Any proceeds remaining in the hands of the sheriff after payment of feeding and sale costs, shall be paid by him to the treasurer of the county in which the stray animal was taken up. Such funds shall be placed by the county treasurer in a special stray fund.

At any time prior to the expiration to six (6) months following the date of such deposit with the county treasurer, a claimant may appear before the sheriff and submit evidence of ownership of said stray animal. If such evidence is acceptable and satisfactory to the sheriff and to the state livestock commissioner or his authorized representative, for purpose of establishing ownership of said stray animal, the sheriff shall direct the county treasurer to disburse the remainder of the proceeds from the sale of said stray animal to said claimant.

Upon the expiration of a period of six (6) months following the receipt of deposit of proceeds from the sale of any stray animal, without any such directive having been received from the sheriff, the county treasurer shall pay the remaining proceeds to the livestock commissioner to be remitted, deposited and credited as provided by K. S. A. 1972 Supp. 47-417a, as amended. [L. 1970, ch. 205, § 3; L. 1973, ch. 2, § 17; July 1.]

Article 3.—HERD LAW

Cross References to Related Sections:

Fences, see ch. 29.

Stock running at large, see ch. 47, art. 1.

Law Review and Bar Journal References:

Act discussed in "The Kansas Law of Livestock Trespass," Robert C. Casad, 10 K. L. R. 55 (1961).

47-301. Orders directing what animals not allowed to run at large. The boards of county commissioners of the different counties of this state shall have power at any session after the taking effect of this act to direct by an order what animals shall not be allowed to run at large within the bounds of their county. [L. 1872, ch. 193, § 1; Feb. 29; R. S. 1923, 47-301.]

Research and Practice Aids:

Animals 49.

Hatcher's Digest, Animals §§ 16, 19, 28, 29.

C. J. S. Animals § 108.

CASE ANNOTATIONS

1. Evidence must show that herd law has been put in operation. *Wingrove v. Williams*, 6 K. A. 262, 265, 51 P. 52.

2. Wanton trespass not intended to be protected by herd laws. *Davis v. Wilson*, 11 K. 74, 82.

3. Act held valid; act including only certain townships held void. *Keyes v. Snyder*, 15 K. 143.

4. Swine at large in violation of law; death, no damages. *A. T. & S. F. Rld. Co. v. Hegwir*, 21 K. 622, 624.

5. Violation of herd law, no defense for railroad. *A. T. & S. F. Rld. Co. v. Riggs*, 31 K. 622, 624, 3 P. 305.

6. Act put in operation at will of county board.

21-3704. Theft of services. (1) Theft of services is obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or use of false token or device.

(2) "Services" within the meaning of this section, includes, but is not limited to, labor, professional service, public utility or transportation service, entertainment and the supplying of equipment for use.

(3) Theft of services of the value of one hundred dollars (\$100) or more is a class D felony. Theft of services of the value of less than one hundred dollars (\$100) is a class A misdemeanor.

History: K.S.A. 21-3704; L. 1978, ch. 120, § 30; July 1.

21-3701. Theft. Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(a) Obtaining or exerting unauthorized control over property; or

(b) Obtaining by deception control over property; or

(c) Obtaining by threat control over property; or

(d) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of one hundred dollars (\$100) or more is a class D felony. Theft of property of the value of less than one hundred dollars (\$100) is a class A misdemeanor.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

History: K.S.A. 21-3701; L. 1978, ch. 120, § 29; July 1.

2-15-79
P.M.

REVIEW OF
PRODUCTS LIABILITY INSURANCE
STATISTICS AND CLOSED CLAIMS
REPORTED IN ACCORDANCE WITH
K.S.A. 40-1130

FLETCHER BELL
COMMISSIONER OF INSURANCE

FEBRUARY 14, 1979

REVIEW OF PRODUCTS LIABILITY INSURANCE STATISTICS
AND KANSAS CLOSED CLAIMS

K.S.A. 40-1130 was enacted by the 1977 Kansas Legislature in an effort to obtain further information to aid in the study of products liability. This report discusses the implementation procedures and results of the first reporting period.

The law requires the reporting of data relative to company business and to closed claim information. Subsections (a) through (h) and (m) through (s) of Section 1 direct attention to premiums collected, reserves established and overall claim activity. Subsections (i) and (j) require the reporting of individual claims which resulted in (1) a final judgment in any amount; (2) a settlement in any amount; or (3) a final disposition not resulting in payment on behalf of the insured. For clarity, these results are presented in this review in two separate sections.

I. COMPILATION OF PRODUCTS LIABILITY INSURANCE STATISTICS

This department implemented procedures for the reporting of statistical information through Bulletins 1977-22 and 1978-2 (attachments I and II). These bulletins were sent to all companies authorized to write fire and/or casualty insurance in the State of Kansas. All companies receiving these bulletins were required to respond. However, as the law requires information from only those companies authorized to transact business in Kansas and writing products liability insurance, only these companies' responses have been included in the compilation of data.

This must be realized while reviewing the total dollar amounts collected for all lines of insurance. One hundred forty-seven (147) companies reported products liability business on a countrywide basis. Of these, 105 reported products liability business in Kansas.

The final compilation of data received is as follows:

States in Which Companies are Authorized to
Write Products Liability Insurance

<u>State</u>	<u>No. of</u> <u>Writers</u>	<u>State</u>	<u>No. of</u> <u>Writers</u>
Alabama -----	105	New Hampshire -----	85
Alaska -----	82	New Jersey -----	94
Arizona -----	105	New Mexico -----	111
Arkansas -----	117	New York -----	89
California -----	108	North Carolina -----	101
Colorado -----	124	North Dakota -----	115
Connecticut ----	82	Ohio -----	111
Delaware -----	93	Oklahoma -----	121
Florida -----	110	Oregon -----	108
Georgia -----	108	Pennsylvania -----	98
Hawaii -----	66	Rhode Island -----	89
Idaho -----	104	South Carolina -----	105
Illinois -----	126	South Dakota -----	118
Indiana -----	123	Tennessee -----	109
Iowa -----	121	Texas -----	122
Kansas -----	134	Utah -----	101
Kentucky -----	120	Vermont -----	87
Louisiana -----	106	Virginia -----	97
Maine -----	89	Washington -----	107
Maryland -----	96	West Virginia -----	92
Massachusetts --	88	Wisconsin -----	111
Michigan -----	107	Wyoming -----	96
Minnesota -----	118	Canada -----	6
Mississippi ----	109	District of Columbia -----	33
Missouri -----	132	Puerto Rico -----	13
Montana -----	106	Virgin Islands -----	8
Nebraska -----	122		
Nevada -----	94	TOTAL WRITERS -----	147

Total Premium Dollar Amounts Collected for all Lines of Insurance
Both Kansas and Countrywide

These figures are for only those companies
writing Products Liability.

	<u>Kansas</u>	<u>Countrywide</u> <u>(Including Kansas)</u>
1972	\$ 817,597,886	\$ 71,917,621,589
1973	903,493,770	75,999,212,984
1974	1,022,229,579	85,422,193,323
1975	1,136,628,180	94,323,699,612
1976	1,343,086,761	112,425,086,382
1977	1,611,883,402	131,982,775,101

Dollar Amounts Collected for Products Liability
Both Kansas and Countrywide for 1977

	<u>Kansas</u>	<u>Countrywide</u> <u>(Including Kansas)</u>
Monoline	\$10,448,997	\$ 817,375,272
Other than Monoline	3,052,989	368,665,935
Total	<u>\$13,501,986</u>	<u>\$1,186,041,207</u>

Monoline figures reflect amounts collected where coverage is provided for the products liability exposure specifically.

Other than Monoline figures reflect amounts collected from policies issued as a package which include premises and operations and cannot be considered as providing products liability coverage exclusively.

Dollar Amounts Collected for Primary and Excess Coverage
Both Kansas and Countrywide for 1977

	<u>Kansas</u>	<u>Countrywide</u> <u>(Including Kansas)</u>
Primary	\$12,436,166	\$1,091,995,623
Excess (Includes any products premium that provides coverage above primary underlying insurance)	<u>1,065,820</u>	<u>94,045,584</u>
Total	\$13,501,986	\$1,186,041,207

NOTE: The amounts indicated in the above charts reflect company responses with a variance of not more than + or - 5%.

Reserves

Of the total 147 companies writing products liability insurance in Kansas and/or Countrywide, all companies reporting advised that reserves are set for claims filed. Approximately 86% of the companies reporting set reserves for claims which have been incurred but not reported. The total reserves established for products liability claims countrywide in 1977 was \$1,016,191,545.

In response to a question regarding the treatment of reserves for Federal Income Tax purposes, companies indicated, where applicable, that loss reserves are treated as incurred losses and are used as a deduction from premiums earned to arrive at federal taxable income.

Securities

The total value of all securities held in investment portfolios as of December 31, 1977 was \$63,744,879,407.

Overall Claims Statistics

The following figures were compiled directly from the statistical reporting form and reflect Kansas closed claims only. Further information gathered from individual closed claim files are presented in Section II, Products Liability Closed Claims.

	<u>1976</u>	<u>1977</u>
Total Number of Suits Filed	97	100
Verdicts or Judgments for Defendants	28	26
Verdicts or Judgments for Plaintiffs	29	35
Total Awards to Plaintiffs (excluding plaintiff's attorney fees)	\$585,853	\$1,032,842
Total Amount Reserved at Time of Disposition (1977 only)		\$2,893,774
Total Initial Amount Reserved (1977 only)		\$2,442,607

II. PRODUCTS LIABILITY CLOSED CLAIMS

The following data is a compilation of all individual closed claim report forms received relating to Kansas closed claims only. The figures in this section differ from those indicated on lines 11 through 14 of the statistical composit report. This is due to the amendment of the reporting requiriements by the 1978 legislative session, effective March 1, 1978, which was also the date these reports were due. Originally, companies were required to report information on all 1976 and 1977 claims. This was amended to require reporting of only those claims closed from July 1, 1977 to December 31, 1977.

Distribution of Claims by Range of Payment

	1976		1977	
	<u># of Claims</u>	<u>% of Total</u>	<u># of Claims</u>	<u>% of Total</u>
No Payment	190	36.5%	248	32.9%
\$1 - \$9,999	325	62.4%	475	63.1%
\$10,000 - \$19,999	2	.4%	9	1.2%
\$20,000 - \$29,999			4	.5%
\$30,000 - \$39,999	1	.2%	6	.8%
\$40,000 - \$49,999	1	.2%	1	.1%
\$50,000 - \$59,999			1	.1%
\$60,000 - \$69,999			3	.4%
\$70,000 - \$79,999	1	.2%	1	.1%
\$80,000 - \$89,999				
\$90,000 - \$99,999			1	.1%
Over \$100,000	1	.2%	4	.5%
TOTALS	521	100.0%	753	100.0%

Distribution of Company Costs

	<u>1976</u>	<u>1977</u>
Total Cost Reported for Closed Claims	\$851,450	\$2,949,740
A. Defense Costs, Settlement Costs & Other Costs *	205,220	499,449
B. Total Paid in Settlements or Awards	646,230	2,450,291
C. Average Settlement Based on Claims Producing Payment to Claimant	1,952	4,852
D. Average Settlement Based on Total Number of Claims	1,240	3,254

* These figures include Loss adjustment, Interest Expense, Company Expense but exclude Settlements or Awards. It is important to note that many expenses which were incurred were not readily identifiable. For example, companies advised of employees salaries but dollar amounts were not given.

Date Of Incident to Date Claim Made

<u>Years</u>	<u>1976</u>		<u>1977</u>	
	<u># of Claims</u>	<u>%</u>	<u># of Claims</u>	<u>%</u>
Over Six Years	4	.8%	3	.4
Five - Six Years	0	0.0%	2	.3%
Four - Five Years	1	.2%	1	.1%
Three - Four Years	4	.8%	10	1.3%
Two - Three Years	30	5.8%	46	6.1%
One - Two Years	83	16.0%	125	16.7%
Under 12 Months	399	76.5%	566	75.0%
TOTAL	521	100.0%	753	100.0%

Claims Resulting in Settlements Over \$100,000

<u>Incident Giving Rise to Claim</u>	<u>Settlement</u>	<u>Defense Costs</u>	<u>Settlement Costs</u>	<u>Other Costs</u>
BI & PD - Product Gave Rise to Fire	\$100,000	\$22,687	\$7,175	0
PD - Gen. Product Malfunction	245,000	15,000	0	0
BI - Gen. Product Malfunction	298,000	15,738	0	0
PD - Product Gave Rise to Fire	250,000	10,742	0	0
BI - Gen. Product Malfunction	230,000	0	0	192

Distribution of Claims by Type of Incident

<u>Type of Incident</u>	1976		1977	
	<u># of Claims</u>	<u>% of Total</u>	<u># of Claims</u>	<u>% of Total</u>
BI & PD - Product Explosion	1	.2%	9	1.2%
BI - Product Explosion	8	1.5%	8	1.1%
PD - Product Explosion	8	1.5%	9	1.2%
BI - Food or Beverage	134	25.7%	156	20.7%
PD - Food or Beverage	6	1.2%	7	.9%
BI - Product Gave Rise to Fire	4	.8%	2	.3%
PD - Product Gave Rise to Fire	21	4.0%	39	5.2%
BI & PD - Product Gave Rise to Fire	7	1.3%	4	.5%
BI - General Product Malfunction	39	7.5%	69	9.2%
PD - General Product Malfunction	93	17.9%	116	15.4
BI & PD - General Product Malfunction	1	.2%	3	.4%
PD - Agricultural (Crop or Livestock)	35	6.7%	18	2.4%
BI - Cosmetic Preparation	0	0.0%	3	.4%
BI - Completed Operations	0	0.0%	3	.4%
PD - Completed Operations	62	11.9%	104	13.8%
BI or PD - Under Garage Liability Policy	83	15.9%	152	20.2%
BI or PD - Under Store-Keepers Liability Policy	8	1.5%	32	4.2%
BI - Drug or Pharmaceutical	0	0.0%	7	.9%
Other	<u>11</u>	<u>2.1%</u>	<u>12</u>	<u>1.6%</u>
TOTAL	521	100.0%	753	100.0%

CHIEF ASSISTANT
Patrick L. Connolly 268-7435

DOCKET & ASSIGNMENT
Paul W. Clark 268-7640

WARRANTS & COMPLAINTS
Larry D. Kirby 268-7293

APPEALS DIVISION
Stephen M. Joseph 268-7635

INVESTIGATIONS
Vallace C. Hanks 268-7585



CONSUMER PROTECTION DIVISION
Richard L. Schodorf 268-7921

CHECK DIVISION
Dietmar K. Caudle 268-7921

NARCOTICS DIVISION
Kiehl Rathbun 268-7176

FAMILY LAW
Gary Jarchow 268-7436

February 13, 1979

Senator Elwaine F. Pomeroy
 Chairman Senate Judiciary Committee
 Kansas State Senate
 State Capitol
 Topeka, Kansas 66612

Dear Senator Pomeroy:

Thank you again for returning my call one day last week.

The matter about which we spoke briefly is a situation we have found here in Sedgwick County and which exists in other counties based upon our conversation with other law enforcement and prosecuting officials.

The problem concerns the affidavits necessary to support a search warrant or an arrest. The problem arose in Wilbanks vs. State, (224 Kan. 66 at Page 75) where the Kansas Supreme Court held as follows:

"Arrest and detention are no less serious invasions of the rights of a citizen than are searches of a citizen's house, automobile, or place for rest. Warrants for arrest cannot be issued except upon probable cause. Statements to the contrary in our earlier cited cases notwithstanding, we now hold that a verified complaint couched in the language of a criminal statute, standing alone, is not sufficient to support a finding of probable cause and the issuance of an arrest warrant".

This of course overrules 100 years of case law whereby, a verified complaint charging an offense which stems from the language of an statute was sufficient to support a warrant for arrest.

In this particular jurisdiction, the probable cause is placed in an affidavit as a separate document and attached to the complaint/information for review by the Court prior to a warrant being issued for the arrest of the individual charged with the crime in the complaint/information. Once the case is filed, the complaint/information together with the supporting affidavit become a matter of public record for perusal by anyone who desires to do so.

Senator Elwaine F. Pomeroy
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From this comes the problem we have faced, and that is names of witnesses and victims have been published in the paper, and are available to friends of the defendant or defendant's themselves prior to arrest. Therefore, the victims and witnesses have been called, harassed and threatened by defendants or those interested in the outcome of the defendant's case. This of course creates an intolerable situation for an individual who was the victim of crime and upon doing his duty and reporting his observation to the police, finds himself the object of harassment.

As to the affidavit to support a warrant for search, the same problem could arise as mentioned above.

Viewed from the other side, it is obvious that should one's name with all the details of an arrest or search be available for public scrutiny this could be most embarrassing and could indeed ruin the reputation or career of an individual charged with a crime with a later finding or verdict of not guilty.

We do not argue with the law and feel that an arrest of an individual or a search of those places in which an individual might expect privacy, should not be conducted by the State without the appropriate probable cause. We do not argue with the proposition that a disinterested magistrate ought to make that determination. Our proposal would simply provide for the way in which those affidavits for probable cause are kept by the courts.

Our proposal would be as follows: an amendment to K.S.A. 22-2302 to provide the language substantially as follows:

Affidavits or sworn testimony in support of the probable cause requirement hereunder shall not be made available for examination without a written order of the court.

We would further propose an amendment to Chapter 22, Article 23 to read substantially as follows:

Search warrants, affidavits or sworn testimony in support of the probable cause requirement to support applications for search warrants hereunder provided for shall not be made available for examination without written order of the court.

We believe with these amendments the documentation would be available to the defendant or his counsel, the prosecuting attorney and the court, and could be available to anyone else with an order of the court.

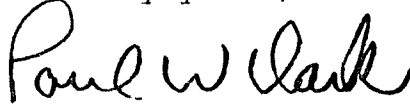
We respectfully request that the above committee which you chair, consider and propose for passage the above recommended statutory changes.

A representative of this office, a representative of the Wichita Police Department and the Sedgwick County Sheriff's Office will make themselves available to appear before the committee at the committee's convenience.

Senator Elwaine F. Pomeroy
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If we might be of any assistance to you whatsoever in this matter,
or in any other concerning Sedgwick County, please do not hesitate
to contact us.

Sincerely yours,

A handwritten signature in cursive script that reads "Paul W. Clark". The signature is written in dark ink and is positioned above the typed name.

PAUL W. CLARK
Assistant District Attorney

PWC:mrc