

Approved: 3-7-95
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 23, 1995 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Greta H. Goodwin
John Peterson
Kyle Smith, KBI
Phil Journey
Scott Hattrup
Doug Moshier, City of Wichita
Don Moler, League of Kansas Municipalities
Jim Kaup, City of Topeka
Gerald Beavers, Chief of Police
Lane Ryno, Emporia Police Department

Others attending: See attached list

The Chairperson stated there was not time to have hearings on **HB 2527** yesterday and apologized to Representative Goodwin and welcomed her to the committee and opened the hearing on **HB 2527**.

HB 2527 - Concerning cereal malt beverages; relating to revocation or suspension of a retailer's license.

Representative Greta H. Goodwin testified in favor of **HB 2527**, stating the Winfield Chief of Police sent a letter that statutes state that a licensee shall have his license suspended or revoked "for the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law".

Under the criteria for obtaining a license to sell cereal malt beverage, a person who, within two years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law shall not have the retailer's license issued.

The bill in Section 1 (10) would bring into line the same language that the licensee shall have his license suspended or revoked should that employer continue to employ a person who such licensee knows to have been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, which is the same language used in the issuing of a retailer's license. (See Attachment #1)

Staff gave a briefing on **HB 2527** stating that it would amend the statute in the cereal malt beverage laws so that a retailer could employ persons for employment if felony more than two years prior to employment.

Jim Conant, Department of Revenue, Division of Alcoholic Beverage Control, distributed liquor licensee employee qualifications. (See Attachment #2)

John Peterson, representing Pizza Hut, stated he supported **HB 2527**.

Representative Spangler moved and Representative Standifer seconded to strike "or continuation in employment" on lines 35 and 36. The motion carried.

Representative Standifer moved and Representative Ruff seconded to move **HB 2527** out as amended.

Representative Standifer withdrew her motion.

The Chairperson closed the hearing on HB 2527 and stated action would be taken at a later date.

HB 2539 - Concerning firearms; requiring certain criminal history record checks before certain transfers or sales; providing for amendment of criminal history records under certain circumstances; prohibiting certain acts and providing penalties for violations.

The Chairperson opened the hearing on HB 2539.

Lynne Holt, Staff, gave a briefing on HB 2539.

Kyle Smith, Kansas Bureau of Investigation, testified the KBI is in support of the concept of enabling instant criminal history record checks prior to gun purchases, the bureau does have concerns which the KBI would like to see this committee address.

First, would be the fiscal impact on the KBI. Operating an 800 number 7 days a week for 14 hours a day and having manual searches required by the limited number of computerized records at this point in time results in a predicted annual impact on the KBI budget of \$271,169 in the first year. Obviously, the KBI cannot absorb the requirements of this bill without additional appropriations. Second the KBI really has no place to physically place the personnel required in the existing building.

Mr. Smith stated the federal government is working toward a national computer records check and they are giving 100% grants which the KBI is working on. This would be a slower process, but there is a lot of grant money available for this. (See Attachment #3)

Phillip B. Journey, testified in support of HB 2539, stating the proposed legislation expands the use of background checks to all dealer firearm transactions. Contrary to the liberal views this bill is wanted. The key is that the computer system be placed on line and the federal mandates be taken off local law enforcement and placed at a state level where it belongs. (See Attachment #4)

Scott Hattrup, Lawrence, testified opposing HB 2539, in its present form stating the bill requires that a background check be performed on all prospective purchasers of firearms in Kansas. The bill would put a great administrative burden on the Kansas Bureau of Investigation as they are understaffed and under budgeted. (See Attachment #5)

The Chairperson closed the hearing on HB 2539.

The Chairperson opened the hearing on HB 2541.

Mary Galligan, staff, gave a briefing on HB 2541.

Phil Journey, testified in support of HB 2541, stating forty-one states have standardized their gun control laws in one form or another similar to this bill. Thirty-six of those states have passed preemption by statute and five have mandated standardization by judicial decree.

Kansas has a crazy patchwork quilt of City Ordinances due to the latitude given municipal governments under Kansas Home Rule. In Kansas there are crazy patchwork quilts of City Ordinances that are impossible to comply with. They are not centrally codified, conduct which is legal in the majority of state of Kansas, may be illegal in small areas due to this inconsistent statutory structure. (See Attachment #6)

Scott Hattrup, Lawrence, testified as a proponent for HB 2541, stating this legislation would eliminate the current patchwork quilt of local ordinances. HB 2541 would do away with arbitrary local laws. (See Attachment #7)

Doug Moshier, Senior Assistant City Attorney, City of Wichita, testified as an opponent for HB 2541, stating the City of Wichita's opposition to this bill is, first and foremost, directed against the bill's unprecedented attack on cities' home rule authority. The legislature has never, since the passage of the home rule amendment to the state constitution in 1961, attempted to preempt this authority by the mere fact of announcing its intention to do so. The legislature, has on numerous occasions in the last 24 years passed legislation which, by its terms and provisions, so occupies a field that it can be said to preempt that field. However, it has long been the law of this state that cities still had home rule authority in such instances. Cities could, in the face of such statutory preemption, adopt ordinances which did not conflict with state law. State law has also been long-settled that, in the area of police power regulation, cities could adopt enactments which were more restrictive than state law, even though such state law was uniform and of statewide concern. Such enactments are considered not to conflict with state law. (See Attachment #8)

Sgt. Lane K. Ryno, Emporia Police Department, KPOA Legislative Committee, testified as an opponent to **HB 2541**, stating it would hamper local Law Enforcement Agency's from handling problems dealing with firearms unique to their local jurisdictions. Different cities in the state have different problems dealing with firearms based upon the makeup of their own populations, and the beliefs or attitudes of the majority of their citizens. The problems dealing with firearms in Wichita, are different from those of Emporia's which are different from Salina's, which are different from those of Liberal, and etc..

Current law gives local governments the option and resources to address, and deal with their own problems dealing with firearms without interfering with other local jurisdictions. Passage of **HB 2541** being introduced is an attempt to standardize the firearms law in the state of Kansas. If **HB 2541** passes it would indeed standardize the firearms law throughout the state and the law would be the same in every community in the state. It is also true this would make it easier for people travelling from city to city with firearms to be familiar with the law. It is believed, however, the stripping of local governments of the authority to enact their own ordinances to address their own problems and needs of their citizens, is too high of a price to pay for the alleviation of an "inconvenience" of a few people who wish to transport firearms from one city to another. (See Attachment 9)

Gerald Beavers, Chief of Police, Topeka, representing the Kansas Peace Officers Association testified they strongly oppose **HB 2541** and **HB 2420**. Having been a Chief of Police in three different cities and 3 different states and each of these cities had their unique problems and don't want control, but sometimes we have to have some controls different from other cities. (No attachment).

After discussion, the Chairperson asked what the committee's wishes were on **HB 2420**.

Representative Packer moved and Representative Ballou seconded to move **HB 2420** out of committee favorably.

Representative Standifer moved and Representative Gilbert seconded a substitute motion to strike all of Section 8 on page 5.

Representative Packer opposed the amendment as it would poster into killing the bill. To allow weapons into schools does not take care of our children as Representative Standifer was testifying to on the House Floor today.

Representative Standifer stated there is no provision for persons to check at these places to see if we don't know they have a weapon. This will occur anyway and move my substitute motion.

Representative Ballou stated a lot of schools and courthouses do have gun checks.

The Chairperson asked for a vote on the substitute motion. Yeas - 3; Nays - 17. The motion failed.

Representative Gilbert requested to be recorded as voting "YES".

Representative Samuelson moved and Representative Standifer seconded a substitute motion on page 2, line 17, strike "appropriate training in firearms safety and; replace with "training, equivalent to that required for law enforcement officers pursuant to the Kansas law enforcement training act, in the use of firearms and training in" (See Attachment #12)

There was discussion as to how many hours of training a police officer is required and also the cost of the course and who would pay for the course. Without this information it was felt impossible to act upon this balloon. Representative Samuelson stated that information had been requested but it was not available due to a staff person being ill.

Representative Gilbert asked if action couldn't be brought up after that information was available?

Representative Packer stated there are a lot of courses available and find no problem with the way the language is written.

The Chairperson asked for a vote on Representative Samuelson's motion. A Division was called for: Yeas - 9; Nays - 12. The motion failed.

The Chairperson stated now back on the original bill to move it out favorably. A Division was called for: Yeas - 13 Nays - 8. The motion carried.

Representative Standifer and Representative Gilbert requested to be recorded as voting NO.

HB 2541 - State preemption and standardization of firearms regulation.

The Chairperson opened the hearing on **HB 2541**.

Don Moler, General Counsel, League of Kansas Municipalities, appeared as an opponent to **HB 2541**, stating the League of Kansas Municipalities by and through its member cities, opposed the state preemption of firearm regulation and the elimination of local laws regulating the use of firearms in the state. League records indicate that cities in Kansas have had the power to regulate firearms within their communities since at least 1863. Over the 132 years which have elapsed since that time we believe that cities throughout the state have acted reasonably and rationally on behalf of their citizens to regulate firearms in a responsible manner. **HB 2541** strikes at the very heart of home rule authority of cities in Kansas and is a complete contradiction and contravention of the historical nature of firearm control in Kansas. Proponents of this legislation disregard not only the home rule authority of cities and their responsiveness to their citizens, but disregard the illustrious history of the State of Kansas and the public policy decisions which have been made over the past 130 plus years to allow cities to regulate firearms within their geographical boundaries. (See Attachment #10)

Jim Kaup, City of Topeka, testified as an opponent to **HB 2541**, stating the City views this legislation as harmful not only to its existing powers of local self government, but also to its ability to protect the public safety. The City believes Home Rule must be preserved. By its direct assault upon Home Rule, HB 2541 proposes a much broader and serious threat than did **HB 2541** proposes a much broader and serious threat than did **HB 2420**. In one stroke, it would wipe out all local laws relating to "...sale, purchase, purchase delay, transfer, ownership, use, possession, storage in home or business, bearing, transportation, licensing, permitting, registration, taxation, or any other matter pertaining to firearms, components, ammunition or supplies." (See Attachment #11)

There was discussion as to how many hours of training a police officer is required and also the cost of the course and who would pay for the course. Without this information it was felt impossible to act upon this balloon. Representative Samuelson stated that information had been requested but was not available due to illness of one of the staff.

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The Chairperson asked for a vote on Representative Samuelson's motion. A Division was called for - Yeas - 9; and Nays - 12. The motion failed.

The Chairperson stated: back on the original bill to move out favorably. A Division was called for - Yeas - 13 and Nays - 8. The motion carried.

Representative Standifer and Representative Gilbert requested to be recorded as voting NO.

The meeting adjourned at 3:25 p.m. The next meeting will be March 6.

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: February 23, 1995

NAME	REPRESENTING
Myrtle Banks	Bethel College
Debra Schnabel	Bethel College
Sandy Mashui	Bethel College
Synda Goering	Bethel College
Monica Glad	" "
Den Moler	League of KS Man.
Paul Davis	Senator Hensley
GREG HANSEN	Sen Harrington
Wm Jennings Bryan Alexander	Here, KS
Phil S. Smith	KBI
Dwain Wakarworth	Division of the Budget
Tom Schauf	City of Lenexa
Drab Mable	City of Lenexa
Mark Asplund	Olathe Leadership
Jay Arhewston	Self Wichita KS.
Julie Wright	Wichita Eagle
Whitney Damron	Pete McMill & Associates
Phil Journey	KCTI TV-55 & KSAS
Al Thompson	315 Westwood, Topeka K.S.

GRETA H. GOODWIN
REPRESENTATIVE SEVENTY-EIGHTH DISTRICT
COWLEY & BUTLER COUNTIES

STATE CAPITOL—RM. 281-W
TOPEKA, KANSAS 66612-1504
DURING SESSION
(913) 296-7669
LEGISLATIVE HOTLINE
1-800-432-3924



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER:
AGRICULTURE
JUDICIARY
HEALTH & HUMAN SERVICES
JOINT COMMITTEE ON HEALTH CARE OVERSIGHT

**TESTIMONY BEFORE THE COMMITTEE
OF
FEDERAL AND STATE AFFAIRS
February 22, 1995**

House Bill 2527

Thank you for the opportunity to testify in support of H.B. 2527.

I have attached to my testimony a copy of a letter received from the Winfield Chief of Police in which he states it has come to light that our statutes state that a licensee shall have his license suspended or revoked "for the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law". This would indicate that if any person has been found guilty of the simple possession of beer underage, open container in a vehicle or even possession of beer in places where prohibited such as on a public street, that person could not work in a convenience store, grocery store, or anywhere beer is sold. We have many businesses in our town which employ high school students which would eliminate them being a grocery store checker, a convenience store clerk, etc. It is not our Police Chief's belief that the legislature intended this severe of a penalty for a minor violation.

Under the criteria for obtaining a license to sell cereal malt beverage, a person who, within **two** years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law shall not have the retailer's license issued.

*FISA
2-23-95
Atch #1*

I feel we probably have retailers in most all cities in the state who are ignoring the statute and many of which are not comfortable about that. The Police Department asked for an attorney general's opinion on this and the opinion basically stated that we would have to enforce the law the way it is written.

This bill in Section 1 (10) would bring into line the same language that the licensee shall have his license suspended or revoked should that employer continue to employ a person who such licensee knows to have been, within the preceding **two** years, adjusted guilty of a felony or of any violation of the intoxicating liquor laws of this state, which is the same language used in the issuing of a retailer's license.

I will stand for questions.

WINFIELD POLICE DEPARTMENT

812 Millington
Winfield, KS 67156

Ronald K. Gould, Chief of Police

Office (316) 221-3344

Fax (316) 221-1326

February 1, 1995

Representative Greta Goodwin
State Capitol, 281 West
Topeka, Kansas 66612

Dear Greta,

I missed you at our joint law enforcement-county attorney's legislative reception in Topeka last week. I did find out that you apparently are going to have a very busy session. I know it takes a tremendous amount of work and energy just to stay abreast of all the pending legislation and we truly appreciate your efforts in Winfield.

I won't burden you with my opinion on all the bills affecting law enforcement because I think you'll have ample opportunity to hear adequate testimony from law enforcement representatives on the crucial issues. I would certainly be glad, however, to visit with you about any particular bill if you need a law enforcement perspective.

I'm writing in particular at this time about a peculiarity in a state liquor statute that has come to light in Winfield. I'd like to bring to your attention K.S.A. 41-2708(a)(10). This statute concerns the licensing of businesses to sell cereal malt beverage. Section (a)(10) states that a licensee shall have his license suspended or revoked for "the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law." This, in fact, means that if any person has been found guilty of simple possession of beer underage, open container in a vehicle, or even possession of beer in places where prohibited such as on a public street, they could not work in a convenience store, grocery store, or anywhere beer is sold. I find it hard to believe that the legislature intended this severe a penalty for a minor violation and I believe it is just an oversight.

In support of this belief, I would like to direct you to K.S.A. 41-2703(b)(5), which gives the criteria for obtaining a license to sell cereal malt beverage. Section (b)(5) states that (b) No retailer's license shall be issued to: (5) "A person who, within **two years** immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States."

Representative Greta Goodwin

February 1, 1995

Page two

It does not seem reasonable to assume that there is a two year limitation on the licenseholder and yet there seems to be a lifetime ban on those who simply work for the licensee.

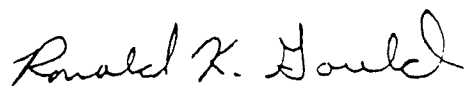
This may at first seem minor but it was brought to our attention by a retailer and we do not feel comfortable ignoring this statute and enforcing all the others. If we did, in fact, enforce this statute, there are many persons currently working in grocery stores and convenience stores who would lose their jobs. We asked for an attorney general's opinion and they basically stated that we would have to enforce the law the way it is written. I have enclosed a copy of that opinion for your reference.

I think that a more reasonable approach would be to limit the restriction for employees of license-holders to two years, or even better to eliminate it altogether for those employees who are not selling CMB for consumption on premises as in a tavern or bar.

I hope you'll have an opportunity to review this statute and make any suggestions you feel are warranted. If I can be of help in any way, please feel free to contact me at work or at home (221-5545 / 221-3089).

Thank you very much for your assistance.

Sincerely,



Ronald K. Gould
Chief of Police

RKG/reb

Encls. (3)

1-4

STATE OF KANSAS



Bernie Norwood, Director
4 Townsite Plaza Suite 210
200 S.E. 6th Street
Topeka, Kansas 66603-3512

(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

Liquor Licensee Employee Qualifications

<u>License Type</u>	<u>Background Restrictions</u>
Retail liquor stores	no felony conviction liquor convictions not addressed
Clubs/drinking est.	no felony conviction no liquor conviction in past two years
CMB licensee	no felony conviction no liquor conviction
<i>HB 2527 - Proposed</i> CMB licensee	no felony conviction in past two years no liquor conviction in past two years

F+SA
2-23-95
Atch #2



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
HOUSE BILL 2539
FEBRUARY 23, 1995

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to address the Committee on House Bill 2539. While the Kansas Bureau of Investigation is in support of the concept of enabling instant criminal history record checks prior to gun purchases, the bureau does have concerns which we would like to see this committee address.

First, would be the fiscal impact on the KBI. Operating an 800 number 7 days a week for 14 hours a day and having manual searches required by the limited number of computerized records at this point in time results in a predicted annual impact on the KBI budget of \$271,169 in the first year. Obviously, the KBI cannot absorb the requirements of this bill without additional appropriations. Second, we really have no place to physically place the personnel required in the existing KBI building.

The committee should also be aware of the the National Instant Criminal Background Check System (NICS) being created by the FBI. Last year the FBI received \$6,000,000 to initiate the NICS by federal firearms licensees, utilizing computers and the Triple I computer base. Substantial 100% grants are being authorized to the states to assist in the computerization of their criminal history record information and the KBI is actively pursuing that funding. Currently approximately 23% of our records are computerized.

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FISA
2-23-95
Atch #3

The point being that in three years there will be a computerized instant check system subsidized by the federal government with a broader, more complete data base to draw upon, than anything the KBI can do. I have attached a copy of a schematic as to how National Instant Criminal Background Check System is to work, but as noted above, this is in the drafting stage with a completion date of November 1998.

We would like to be able to do instant checks immediately, and not just for firearm purchases. If properly funded we will certainly carry out the will of the legislature with existing technology, but I think it is important that the options be before this committee. In fact, other types of record checks are also in need of this instant record check capability, such as licensed employees at day cares, hiring teachers and criminal investigations.

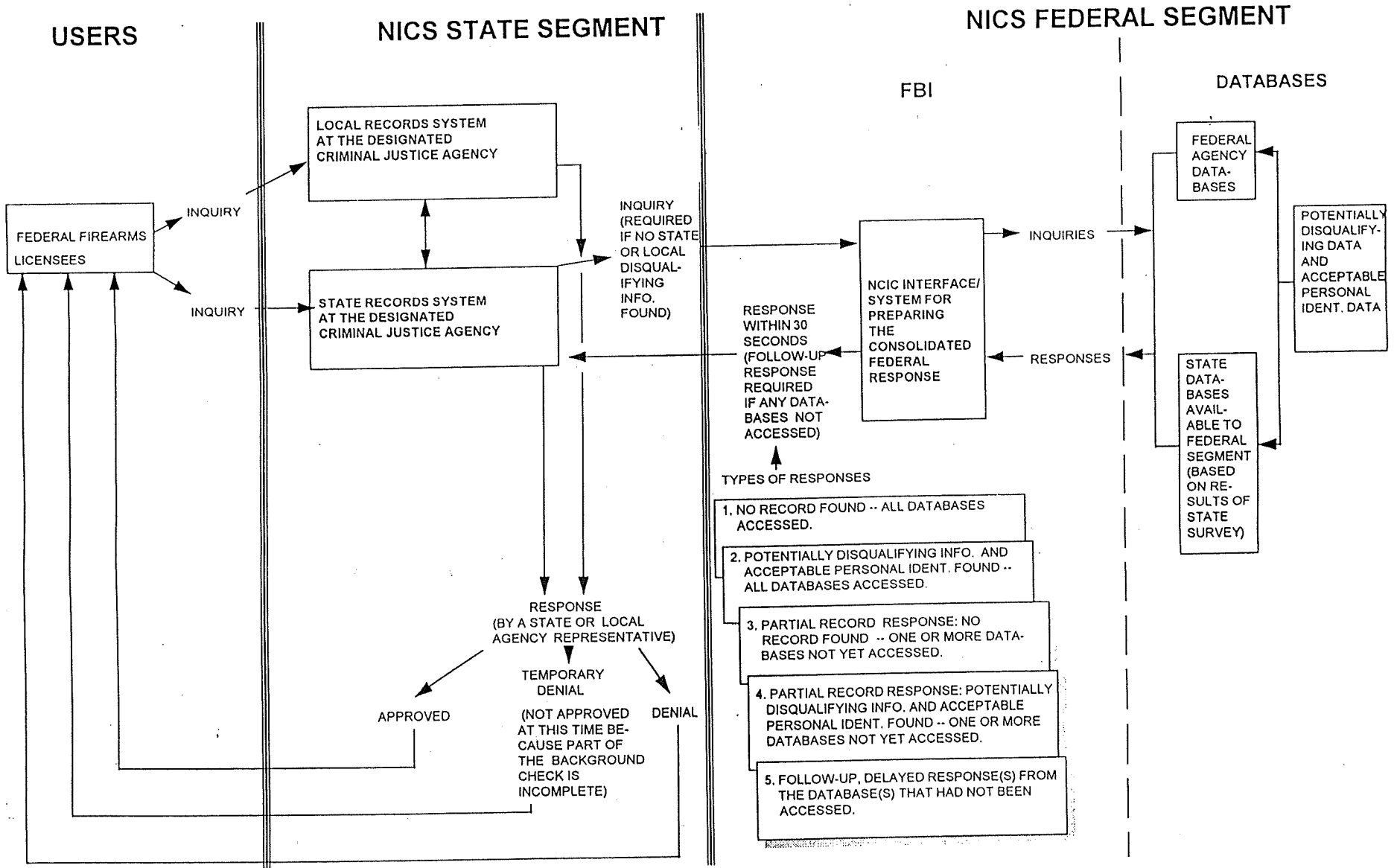
A secondary policy question is do we wish to set up gun purchases as the highest priority and fast track these record checks to the detriment of other record checks.

Finally, I believe the committee should be aware that HB 2539 would not replace the Brady required checks. Federal records are not included in HB 2539, and it contains exemptions, such as gun shows, which still necessitate a check of handguns under Brady. To the best of my ability I would be happy to stand for questions.

HB2539

3-2

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)



6-3

Phillip B. Journey

The instant check in HB2539 is required to be enacted by federal law. The proposed legislation expands the use of back ground checks to all dealer firearm trans actions. Contrary to the liberals views we want this bill.

Kansas has to my information has been receiving the US Department of justice grant money for implementation for years.

Recent polling done by Luntz- Weber Research showed that over 70% of those polled want a background check.

At the hearing last Thursday we heard law enforcement say what a joke Brady in its present form was. The key is that the computer system be placed on line and the federal mandate be taken off local law enforcement and placed at a state level where it belongs.

The waiting period how ever temporary is still a prior restraint on a fundamental unalienable right.

The instant check should eliminate the local waiting periods in place in many kansas communities.

those who support home rule abuses solely for the sake of maintaining their own power demonstrate their lack of trust and respect for the very people who allow them to exercise the power of government.

FISA
2-23-95
Atch #4

A. "INSTANT" CHECKS

One alternative to waiting periods is an "instant telephone check." The first state to enact such a check was Virginia; and Florida and Delaware have recently followed suit. When a Virginia gun dealer sells any handgun or certain long guns to a Virginia resident, the dealer calls a toll-free number at state police headquarters, to verify that the purchaser has no legal disqualification. If everything proceeds properly, the sale can be consummated with no more delay than a credit card check might entail.

Support of an instant check is widespread. Criminologists and legal scholars such as Gary Kleck, Don Kates, and Robert Cottrol who are generally skeptical of gun prohibition support the instant check system. Even big-city police chiefs who generally agree with Handgun Control, Inc., split from that group in preferring the instant check over a national firearms identification card.[171] The National Rifle Association also supported the instant telephone check in Virginia.

In terms of sorting out ineligible buyers, the instant check is just as effective as a 7-day waiting period, according to the Department of Justice Task Force, and for that reason is supported by Attorney General.[172] Unfortunately, in terms of preventing incorrect denials of the right to bear arms, the instant check is just as bad as the waiting period. Because the data quality for instant checks is, according to the Task Force, equivalent to that for a one or three week background check, only 84%-88% of applicants will be initially allowed to purchase if there were a national instant check. The unlucky remainder must go through a secondary verification process (such as submitting fingerprints at state police headquarters) that would take several weeks.[173]

Of course a criminal can evade an "instant" check just as easily as he can evade any other check. All he needs is a fake driver's license with another name. Since false social security and alien registration cards may sometimes be bought for as little as \$35,[174] and since those cards are usually sufficient to obtain a driver's license, the instant check is likely to be just as porous as longer checks. The instant check, therefore, like the waiting period, could be evaded by anyone with false identification.[175]

For the purchasers who are rejected initially, fingerprint checks might be required to verify their identity. It is estimated that, if the instant check were national and comprehensive, the FBI would need 395 new clerical employees and 8,000 more square feet of office space to process the fingerprint work.[176] Given the limited efficacy of any police permission system, it might be considered whether 395 additional FBI employees might be better employed at projects focused on criminals, rather than on law-abiding citizens.

An instant check will cost between \$7.07 and \$9.39 per purchase.[177] For a person buying a high-quality target pistol, the cost is hardly noticeable. For a poor person buying a \$40 used revolver for self-defense, the cost is considerable. The cost could be justified, if it yielded important benefits.

Significantly, the instant check is subject to the same problem of creating a gun and gun-owner registration system as is a waiting period. As the Task Force observes, "Any system that requires a criminal history record check prior to purchase of a firearm creates the potential for the automated tracking of individuals who seek to purchase firearms." [178] If a transaction number must be placed on the dealer gun sale form (to prove he made the check), and if the state retains its own record of transaction numbers, the record-keeping could easily be perverted into gun registration.

At the least, any instant check system should include protections to absolutely bar gun-owner record retention, and should specify that if computer or other failure prevents the police from approving the sale, the sale should be delayed no more than 24 hours.

The instant check is clearly preferable to a waiting period. The instant check uses the same criminal/mental data base as would a waiting period, and would therefore be equally effective in denying ineligible buyers. Because the large majority of sales would

be approved on the spot, abusive administrators would have much less of an opportunity to interfere with the right to bear arms. It is true that an instant check eliminates the "cooling off" feature of a waiting period; but as discussed above, the number of crimes that could be prevented by "cooling off" is very, very small. The loss to public safety from the elimination of the "cooling off" period is more than offset by allowing persons who need a gun for immediate self-defense to get one, and by substantially reducing the numbers of arbitrary denials of firearms purchases.

Testimony before the House Federal & State Affairs Committee

on H.B. 2539, presented February 23, 1995

Members of the Committee, my name is Scott Hattrup. I am a third-year law student at the University of Kansas School of Law. I am a life-long Kansas resident. I speak as one who has studied firearms laws in some detail.

House Bill 2539 requires that a background check be performed on ALL prospective purchasers of firearms in Kansas. I speak in opposition to the bill in its current form. This bill would put a great administrative burden on the Kansas Bureau of Investigation, which, as we have previously heard in testimony on H.B. 2420, is seriously understaffed and underbudgeted. If 2539 becomes law, the KBI will have to devote at least one, probably more, individuals to these background checks. Although I am not opposed to background checks in general, this particular bill, given the current state of criminal record-keeping in Kansas, would require a manual search of several different sets of records. The federal Brady Bill allows five days for such searches, recognizing the burden on states that do not have computerized record systems, or have systems that do not provide access to all the records required to be checked.

The remedy for this situation is technological. This bill needs to be run through the Appropriations Committee to have funding set aside for a state-wide computer system that can be accessed via computer modem over telephone lines. This solution would save the administrative expense and wasted law enforcement resources that would otherwise be expended on background checks for every Kansan who wishes to purchase a firearm. In the Winter 1993-94 issue of the Kansas Journal of Law and Public Policy, Senator Bob Dole called for a national computer system for these types of background checks. A copy of that article is attached to my testimony. Until Kansas devotes the funds required to establish such a system, the KBI and local law enforcement will work better with the spot-checking system currently in use.

FISA
2-23-95
Atch #5

The Brady Bill: It's Just Not Enough

Senator Bob Dole

The Brady Bill recently became the Brady Law in a celebrated White House signing ceremony. Unfortunately, this new law is not significantly different from the currently enforced law.

In the mid-1980s, two very different proposals were introduced in the U.S. Senate, both intended to reduce the number of firearms purchased by criminals. The Brady Bill, named after former Reagan Press Secretary Jim Brady, called for a seven-day waiting period prior to the purchase of a handgun. The second, the one I proposed, called for an instantaneous computer background check prior to the purchase of any firearm, whether a handgun or long gun. Although my proposal became law in 1988, it was never implemented. The Brady Bill recently became the Brady Law in a celebrated White House signing ceremony. Unfortunately, this new law is not significantly different from the currently enforced law.

The currently enforced law is the 1968 Gun Control Act. This law was enacted in response to the tragic murders of Bobby Kennedy and Martin Luther King, Jr. It prohibits the purchase or possession of firearms by convicted felons, fugitives from justice, drug users and addicts, persons adjudicated mentally incompetent, illegal aliens, persons dishonorably discharged from the military, and anyone who has renounced his or her United States citizenship. Prior to the purchase of a firearm, individuals complete a form stating that they are not members of these excluded categories — we have to take their word. The problem is that no system exists to check whether the information the applicant states on this form is correct.

Under the Brady Law, five business days will elapse between completing this form and taking possession of a handgun. Rifles and shotguns are not subject to this waiting period. Proponents of this approach *hope* the local police will search whatever information is available to them to determine whether

Bob Dole is a U.S. Senator from Kansas and the Republican Leader in the U.S. Senate.

the individual can legally purchase a handgun.

The very reason I back an instantaneous computer background check is the very reason the police check, if it is actually performed, will not work. The vast majority of felony conviction records are in the primary possession of state courts. Some of these records are kept in state-of-the-art computer systems, and some are filed in outdated paper systems. Fortunately, about half of the states are also enrolled in a federal computer system that tracks these records. These states represent areas in which about 75% of violent crimes occur. This system currently contains the names of over 18 million people.

My questions continue to be:

- (1) Why not check the federal computer system rather than relying on varying, often inadequate, state systems?
- (2) Why not run background checks every time any gun is purchased, instead of just handguns?
- (3) Why are we making available only the records of convicted felons? Why are we not making available the records of illegal aliens, dishonorably discharged military personnel, and

Why not check the federal computer system rather than relying on varying, often inadequate, state systems ? . . .

Why not run background checks every time any gun is purchased, instead of just handguns?

those persons, like John Hinkley, adjudged to be mentally ill?

There is no certainty under the Brady Law that these files will ever be available for the police or anyone else to check. There is no question that we have the technology to quickly compile these records in one place and then, at the time of purchase, run a computer check on the purchaser of any and all firearms from federally licensed dealers. When we purchase a meal, a sweater, or even a few gallons of gasoline with a credit card, the salesperson runs our credit card through a machine which calls a central computer to check on available credit. It is simple, effective, and instantaneous.

The same can be done for the purchase of firearms. State records can be upgraded. Department of Defense and Immigration and Naturalization Service files can be added to these records. States can collect the names of persons adjudged to be mentally incompetent. All of these can be added to the current federal computer system, which can be expanded to include all fifty states.

All of these steps are within easy reach. Can we really say that we are doing all we can to prevent firearms from falling into the wrong hands if we fail to take these small steps?

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ISSUE PAPER
GUN CONTROL STANDARDIZATION ACT

Forty-one states have standardized their gun control laws in one form or another similar to HB2541. Thirty-six of those states have passed preemption by statute and five have mandated standardization by judicial decree.

Today in Kansas we have a crazy patchwork quilt of City Ordinances due to the latitude given municipal governments under Kansas Home Rule. In Kansas we have now a crazy patchwork quilt of City Ordinances that are impossible to comply with. They are not centrally codified, conduct which is legal in the majority of state of Kansas, may be illegal in small areas due to this inconsistent statutory structure.

While the principle of government that is closest to the people works in some situations, such as zoning ordinances which subject citizens of the state of Kansas to penalties of up to one year in jail and up a \$2,500.00 fine, should clearly be the exception.

Examples of some of the stranger patches in the quilt of City Ordinances across the state of Kansas come from Wichita. While the state of Kansas has a well written prohibition of the possession of hand guns by minors, the city of Wichita chose to expand this concept to include BB guns, placing children in jeopardy of being adjudicated a juvenile delinquent and parents in jeopardy of being placed in custody for up to one year for the simple act of giving their child a BB gun for Christmas.

In the vast majority of the area of the state of Kansas, it is legal, for example, for individuals traveling upon the highways and

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streets to transport loaded firearms in their motor vehicles. This is particularly important for those traveling alone as law enforcement may be unavailable for as long as an hour. But in the city of Wichita, driving through town with a firearm in your motor vehicle becomes a crime punishable by up to one year in jail and a \$2,500.00 fine, once you cross the city line.

While Federal Law allows for this transportation of firearms in an unloaded condition locked in the trunk, there are no safeguards should an individual desire to have the firearm where it would be the most assessable for self-defense purposes.

While the new Federal Law and the Crime Bill prohibits the manufacturer of firearm magazines or clips with the capacity in excess of ten rounds in Wichita, it is illegal to sell any magazine that has any capacity in excess of twenty rounds. While Federal Law does not make the possession of magazines or the sale of magazines manufactured prior to that date illegal, the city of Wichita does.

If one of your constituents ran an ad to sell a firearm in, for example, the Kansas City Star, the Emporia Gazette, or any other periodical newspaper or magazine distributed in the city of Wichita without paying Wichita a \$20.00 tax and fulfilling the requirement of supplying name, address, telephone number, and personal description to law enforcement officers in the city of Wichita and to the publication, which would require the publication of their name and telephone number in the sales ad for the firearm. They would be subject to one year in jail and a \$2,500.00 fine under Ordinance section 5.88.015. The mayor claims that it will

not be enforced. That is no guarantee that it will not be discovered by some future administration. The risk for abuse is there for those who simply chose to use it.

While Federal Law mandates the transition from the Brady Bill's waiting period to the instant check system for the state of Kansas, cities such as Lawrence and Wichita have their own personal waiting periods in place. While the Brady Bill allows for a waiver for the waiting period for the purchase of a hand gun by an individual who has been threatened with harm or great bodily death, the city of Wichita and the city of Lawrence have refused to put such waivers in waiting periods.

Individuals from jurisdictions outside the city of Wichita are prosecuted nearly daily in Wichita Municipal Court for criminal violations of Wichita Municipal Ordinances which they were not aware of regarding firearms. They are subject to substantial fines, Court costs, penalties in addition to forfeiture of the personal property.

Standardization is not only good for the community but also for law enforcement. In that way, law enforcement officers will understand what their duties are when entering other jurisdictions in the state of Kansas. State recourse are available to research and draft legislation. On the whole state statutes are better, clearer and less likely open for abuse of interpretation.

Wichita gun ordinance mirrors state statutes

By Phillip B. Journey

Special to The Wichita Eagle

On Nov. 7, 1930, it was written in the Wichita Beacon: "Anti-gun laws never disarm the class of persons whom they are aimed — the criminals. They merely disarm the law-abiding citizens."

It was as true then as it is today. But the articles, editorials and cartoons in The Wichita Eagle in support of Wichita's new gun-control ordinance since its enactment have not accurately presented many of the facts. A pattern of inaccurately representing the legal effect of the adoption of the ordinance that will be submitted to the voters by referendum petition has become clear.

The referendum ordinance being circulated by petition would repeal existing city ordinances that are "more restrictive of an individual's right, privilege or ability to possess, transfer, sell, purchase, store, transport, rent or use a firearm," than the existing federal and state law. By Kansas Statutes Annotated (KSA) section 12-3013 regarding petitions, the City Council would be prohibited from passing an ordinance that is more restrictive than existing federal or state law for a decade unless another public referendum is held. Many of the ordinances that would be affected by the referendum need only be amended to follow state law to stay on the books. Regarding the few ordinances that would be voided by the referendum, the City Council need only place those ordinances on the ballot along with our petition ordinance and the voters could choose which to keep and which to throw out. Rather than tell the voters the truth about their options the City Council and The Eagle's editorial board choose to spread fear and half-truths. They choose to malign those genuinely concerned about the quality of their government rather than mend the many fences crashed as they rolled over the voters. They choose to use the very tactics they accuse those circulating the petitions of doing.

The referendum's intent

The Eagle editorial of March 26 stated, "Many of the folks carrying petitions around Wichita these days will tell you their sole aim is to repeal the City Council's latest gun-control ordinance . . . This is a lie." The fact that the referendum ordinance cuts a broad swath has never been hidden. It has always been called the "local pre-emption option." That fact has been pointed out to the media on several occasions by many of us, on the record, both before and after the approval of the petition's form by the Sedgwick County District Attorney's Office. It must not have been newsworthy until now.

The mayor and the editorial writers stated that if the referendum passes, "No longer would it be illegal for youngsters under 18 to carry handguns." The truth is that it is illegal under state law to transfer a handgun to a minor and has been for decades under KSA 21-4203. The truth is that the state version of the same law has passed both houses of the Kansas Legislature in slightly different forms and will be in effect prior to the vote on the local pre-emption option. A similar law will probably pass the U.S. Congress this session. The state and federal laws will be more clearly written than the Wichita ordinance, with more precise exceptions/defenses for hunting and target shooting.

The editorial stated that passage of the referendum would void ordinance section 5.88.035: "No longer would it be illegal to fire shots into an unoccupied building." Perpetrators would be prosecuted under state laws such as Unlawful Discharge of a Firearm, KSA 21-4217, which is discharging a firearm without the landowner's permission; Criminal Threat, KSA 21-2419, which is committing violence with the intent to terrorize another; or Criminal Damage to Property, KSA 21-3720, depending on the facts of the case.

The mayor stated, and editorial writers wrote, "No longer would it be illegal to draw a gun and aim it at another person." It is true that the ordinance pertaining to a misdemeanor drawing of a deadly weapon would be repealed. In this case, state law makes it a felony to point a gun at another under KSA 21-3410, Aggravated Assault. Assault, defined under the law, is intentionally placing another in reasonable apprehension of immediate bodily harm, KSA 21-3408. Aggravated Assault is a violation of 21-3408 with a deadly weapon. The same act would still be a crime known as a simple assault under Wichita City Ordinance 5.10.010. For the editorial board to so blatantly attempt to play upon the fears of citizens by ignoring state felony crimes and other municipal misdemeanors shows that they have little concern for the truth. They have a set of Kansas Statutes Annotated books on the same floor at The Eagle as their offices.

The mayor stated, and the editorial writers wrote, "No longer would it be illegal to discharge a firearm inside the city limits." They must not know about KSA 21-4217, which makes it a crime to do just that. They continued, "No longer would it be illegal for someone to strap on a loaded six-shooter and walk down the street or into a business." Perhaps they have never heard of the Gun-Free School Zones act. Draw a 1,000 foot circle around every school in the city, and there is not much space left to walk around in Wichita. Prohibiting the carrying of a loaded, un concealed firearm is only on the books of a few cities in the state. It is not a problem where such behavior is legal. It is the basic lack of faith in Kansans that is demonstrated by those who oppose the democratic process of referendum.

The Eagle wrote, "No longer could the city set tougher penalties for gun crimes than provided by state or federal laws." Having seen a number of alleged gang members being prosecuted in municipal court for possessing sawed-off shotguns when they could be in federal or state court being prosecuted for felonies would seem to point in a direction other than gun control for the solution to this crime problem.

Far cry from the Brady Law

While the proponents of the restrictions of the rights to keep and bear firearms have characterized the ordinance as a local version of the Brady Law, the city's ordinance is far broader than the law passed by the U.S. Congress. The federal waiting period applies only to handguns; the city waiting period applies to almost all firearms in section 5.88.015 (9). The waiting period in the Brady Bill is five days. The city waiting period has no maximum time limit, because no time limit is put on the police to conduct the background check. The Brady Law has an exception to the waiting period for individuals or their family members who have been threatened with great bodily harm. The city of Wichita has refused to enact the same exception. Perhaps they do not want you to protect yourself as each victim of gunfire is another excuse to destroy your freedom.

How many times have we heard those who advocate a ban on sale and possession of what they call "assault

COMMUNITY

Sign the petition if you want to vote on the gun-ordinance issue.

weapons" say that no one has a need for these firearms? They, in the same breath, promise to leave your sporting arms alone. Under the current interpretation of the new ordinance passed by the Wichita council, sections 5.88.015(1)(a), (b), (c) and (g), many sporting arms such as the Remington 7400 semi-automatic rifle and the Remington 1100 and 1187 semi-automatic shotgun are included in the restrictions on sales and purchasing. The most recent modification increasing the magazine capacity of the shotgun "assault weapon" definition in the ordinance does not change section (1)(g). This still puts these same sporting arms under the city waiting period as "assault weapons." While their words say one thing, their actions say the opposite.

Section 5.88.015 (9) would prohibit people from purchasing or selling a firearm, while under both federal and state law they would be allowed to do so. Under the city ordinance it would be illegal for you to purchase a handgun or semi-automatic long gun if you have been convicted of consuming a cereal malt beverage on the street at the River Festival twice in the last seven years. If you voluntarily committed yourself to an institution that gives psychiatric care for stress 20 years ago you would be unable to purchase a firearm legally. If you forget to pay a parking ticket, and a warrant is issued, you are unable to purchase a firearm. Sell a gun without permission and spend up to a year in jail.

The ordinance in section 5.88.015 (13) requires that sellers of firearms in periodicals distributed, circulated or displayed within Wichita, or broadcast by radio or television in Wichita include the name and the sales permit number of the seller. In theory they can arrest Kansas City, Haysville and Oklahoma City residents for not buying a Wichita sales permit and not displaying their name and permit number in the ad placed in a newspaper circulated in Wichita. Those who wish to sell firearms and reside outside of Wichita are now prohibited from advertising their personal property without buying a permit from Wichita's city hall. This demonstrates the council's lack of respect for the First Amendment rights of those who reside outside, as well as inside, Wichita. Sell a gun in the Daily Reporter without paying tribute to Wichita and spend up to a year in jail.

The Wichita ordinance that criminalizes the transportation of loaded firearms in section 5.88.010 (f) would be repealed by the referendum ordinance. The mayor and the editorial writers ignore state laws such as Aggravated Battery and homicide. What 5.88.010 (f) actually does is turn hundreds, if not thousands, of law-abiding citizens into unsuspecting criminals. Transporting a loaded firearm is legal throughout the state except for a few cities. I would rather give the good people of Kansas a fighting chance against crime than a false sense of security. Do what is legal in the state — transport a loaded firearm — in Wichita and spend up to a year in jail.

If you wish to be a federally licensed dealer and you fall into one of these classes of individuals that the city prohibits from purchasing or selling a firearm, you may also be denied a local license to be a gun dealer. The 300 or so dealers who are without storefronts in Wichita are out of business. These federally licensed dealers are not the evil gun peddlers who work hand in hand with drug dealers that some say. They are hobbyists who in the spirit of the entrepreneur are trying to turn their special knowledge and skill into a living that they enjoy.

If the local dealer's permit is denied, it may be reviewed by the council under section 5.88.015 (8). As members of the council have repeatedly said that this will not have a significant effect on crime and that their goal is to limit the flow of guns into their community, I have little doubt what their decisions will be. Sell a gun without permission from City Hall and spend up to a year in jail.

The mayor stated and The Eagle's editorial writers wrote, "No longer would parents who fail to keep guns in secure places inside their homes be subject to criminal penalties." Education has always been the answer for the accidental deaths of children. Education is why accidental deaths involving firearms and children are down 60 percent in the last 20 years. The drop in accidents is not because people are locking up their guns, making them unavailable for personal defense. The two recent tragedies involving kids and guns demonstrate that we would be better served by the editorial board reiterating its support for the introduction of the "Eddie Eagle" firearms awareness program in all schools than inhibiting the availability of arms to the law-abiding of Wichita. Lock up your firearm where it is of no use to protect yourself, or your family, or spend up to a year in jail.

Truth, authority and the petition drive

The head of the city's law department stated that the police oppose the referendum. Hundreds of Wichita police officers have expressed support for the referendum and/or signed the petition. A majority of them will sign the petition prior to filing. This will come to pass despite their fear of reprisals for exercising their freedom of speech. The Fraternal Order of Police recently voted to support the democratic process of this referendum. Speak out and you might get fired. Anybody see a pattern yet?

The editorial writers continue with, "No longer would the Wichita City Council be able to use home-rule authority ..." The point is that the council has abused that authority, evidencing their distrust of their constituency. The lack of trust and respect is now a two-way street between the council and the citizens. The fact is that had the referendum ordinance been written more narrowly, it would have been simple for the council to pass a similar gun-control ordinance after the vote legally. They again could choose to counter the desires of the people after the referendum vote, just as they did at the council meetings.

So decide for yourself who is telling you the truth as they know it and who is telling you only what they want you to know. Sign the petition if you want to vote on the issue. Edmund Burke, in 1784 stated, "The People never give [up] their liberties but under some delusion." Do not be deluded by their false arguments. Vote "yes" if you believe that government should still be of the people, by the people and for the people.

Phillip B. Journey is legislative chair and director-at-large of the Kansas State Rifle Association. He wrote this piece on behalf of The Kansas Second Amendment Society.

PETITION

ORDINANCE REGARDING GUN CONTROL

We, the undersigned legally qualified voters and electors of the City of Wichita, Kansas, pursuant to K.S.A. 12-3013, do respectfully request that the following Ordinance be passed by you as the Governing Body of the City of Wichita, Kansas, without alteration, or submitted without alteration by such Governing Body to a vote of the electors of the City of Wichita, as and within the time provided by law, for adoption or rejection, said Ordinance being as follows, to-wit:

Shall the following be adopted?

ORDINANCE NO. _____

An Ordinance relating to the rights of individuals to possess and obtain firearms within the City of Wichita, Kansas:

Be it ordained by the governing body of the City of Wichita, Kansas:

SECTION I: Any Ordinance heretofore enacted by the governing body of the City of Wichita, Kansas, which conflicts with the terms of this Ordinance is hereby repealed.

SECTION II: The City of Wichita shall have no Ordinance, Law or Regulation, which is more restrictive of an individual's right, privilege or ability to possess, transfer, sell, purchase, store, transport, rent or use a firearm, than the Kansas General Criminal Statutes, as set forth in the Kansas Statutes Annotated and Amendments thereto, or Federal Law, as set forth in the United States Code.

**ONLY RESIDENTS OF THE CITY OF WICHITA
CURRENTLY REGISTERED TO VOTE MAY SIGN THIS PETITION**

Sign your name as it appears on the Voter Registration Roles. Your writing must be legible. YOU MAY ONLY SIGN THIS PETITION ONCE.

I have personally signed this petition. I am a registered elector of the State of Kansas and of the City of Wichita, and my residence address is correctly written after my name.

SIGNATURE PRINTED NAME RESIDENCE ADDRESS DATE

1. _____
2. _____
3. _____
4. _____

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**5.88.030 Air rifles, pellet guns and BB
 guns—Carrying within the city.**

(1) It is unlawful for any person to carry an air rifle, pellet gun or BB gun on the streets, alleys or public places within the corporate limits of the city unless the air rifle, pellet gun or BB gun is dismantled or in a scabbard.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(3) In addition to the penalty for the violation of this section, the municipal court judge may, in his or her discretion, order such air rifle, pellet gun or BB gun forfeited to the city and disposed of pursuant to Section 5.88.010(7). Provided, however, any BB guns forfeited to the Wichita police department may, with the approval of the city manager, be donated to the Kansas Department of Wildlife and Parks for training purposes. (Ord. No. 41-910 § 3)

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4/9/93

ORDINANCE NO. 42-049

AN ORDINANCE CREATING SECTION 5.89.100 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PROHIBITING THE STORAGE OF FIREARMS WHERE A MINOR IS LIKELY TO GAIN ACCESS THERETO, AND THE PENALTY THEREFOR, AND PROVIDING FOR THE DISPOSITION OF SUCH FIREARMS BY FORFEITURE.

WHEREAS: The City Council finds that there exists the potential for children in the City of Wichita, Kansas to be accidentally killed or seriously injured by negligently stored firearms; and

WHEREAS, placing firearms within the reach or easy access of children is irresponsible, encourages such accidents, and should be prohibited; and

WHEREAS, it is the responsibility of firearms owners to ensure that their firearms do not fall into the hands of children who may be unaware that they are not toys or be unaware of the dangers posed by their discharge; and

WHEREAS, The City Council finds that it is in the interest of the public health, safety and welfare to take the legislative action necessary to protect the children of the City of Wichita;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1: Section 5.89.100 of the Code of the City of Wichita, Kansas, shall read as follows:

"(a) Negligent storage of firearms prohibited, minors gaining access a misdemeanor, exceptions and penalty. Any person who stores or leaves, on a premise or any location a loaded firearm,

or an unloaded firearm in close proximity to ammunition for it, where it is reasonably foreseeable that a minor may gain access to the firearm, shall keep the firearm in a securely locked box, locked safe, locked rack, locked hard case, locked soft case, locked drawer, locked cabinet or other locked container, or shall secure the firearm by installing a trigger lock or other similar device which prevents the normal function and discharge of the firearm. Such locking device shall be in addition to any built-in safety feature of the firearm. This section shall not apply when a firearm is lawfully being carried on a person's body or within such close proximity as to be under the person's immediate control.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor if, as a result thereof, a minor gains access to a firearm and possesses such firearm in violation of K.S.A. 21-4201 and any amendments thereto; K.S.A. 1992 Supp. 21-4203, 21-4203a, or 21-4204, and any amendments thereto; or Chapters 5.88 or 5.89 of the Code of the City of Wichita, Kansas, and any amendments thereto. This section shall not apply if the minor obtains the firearm as a result of an unlawful entry by any person.

(c) The following warning shall be conspicuously posted in every place of business where firearms are sold, "It is unlawful to leave a loaded firearm, or an unloaded firearm with ammunition for it nearby, if it is foreseeable that a minor may gain access

to the firearm." The letters in the sign shall be in block form not less than one inch in height.

(d) As used in this section, the term "minor" means any person under the age of 18.

(e) As used in this section, the term "firearm" means any loaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion, expanding gases or other combustion. Air rifles, air pistols and BB guns are included in this definition only if capable of expelling projectiles by the sudden release of compressed gas. This term shall not include a firearm which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841, et seq., and any amendments thereto.

(f) Any person who violates the provisions of this section shall, upon conviction, be punished by a fine of up to \$2500.00 or by imprisonment for up to one year, or by both such fine and imprisonment.

(g) In addition to the penalty for violation of the provisions of this section, it shall be the duty of the municipal court judge to order the forfeiture of any weapon seized as set forth in Subsection 5.88.010(7)."

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ORDINANCE NO. 41-967

AN ORDINANCE CREATING CHAPTER 5.89 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PROHIBITING THE POSSESSION OF FIREARMS BY MINORS UNLESS ACCOMPANIED BY A PARENT, STEPPARENT, GRANDPARENT OR STEPGRANDPARENT OR LEGAL GUARDIAN AND THE PENALTY THEREFOR, AND PROVIDING FOR THE DISPOSITION OF SUCH FIREARMS BY FORFEITURE.

WHEREAS, the repeated random violence involving the use of firearms by minors is a significant public safety concern of the City of Wichita; and

WHEREAS, recent shootings within the City of Wichita demonstrate that minors have used firearms either negligently or intentionally to inflict significant harm either to themselves or other residents of the City; and

WHEREAS, this conduct endangers the public safety of all residents of the City and requires the impositions of restrictions on the possession and use of firearms in this irresponsible manner; and

WHEREAS, the laws of the State of Kansas and the City of Wichita do not adequately restrict firearm possession by minors; and

WHEREAS, the City Council is cognizant of residents' rights regarding the possession of firearms and in an effort to balance these rights with the rights of residents to be safe and secure in their property and person, the Council finds and declares that the City of Wichita has a valid interest in the regulation of the use and possession of firearms by minors and further finds that minors

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should not have the opportunity to use or possess firearms unless with a parent, stepparent, grandparent, stepgrandparent or legal guardian, or during several specifically recognized circumstances or events.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1: Section 5.89.010 of the Code of the City of Wichita, Kansas, shall read as follows:

"Definitions. For the purposes of this chapter, the following terms shall have the meaning ascribed to them in this section:

(a) **"Minor"** means a person who is under the age of eighteen (18) years.

(b) **"Firearm"** means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion, expanding gases or other combustion. Air rifles, air pistols and BB guns are included in this definition only if capable of expelling projectiles by the sudden release of compressed gas. This term shall not include a firearm which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841, et seq., and any amendments thereto."

SECTION 2: Section 5.89.020 of the Code of the City of Wichita, Kansas, shall read as follows:

"Possession of a firearm by a minor prohibited, exceptions.

(a) Unless otherwise specifically provided herein, it shall be

unlawful for a minor to possess any firearm within the City of Wichita, except when the minor is in the presence of and under the direct supervision of a parent, stepparent, grandparent, stepgrandparent, or legal guardian.

(b) Any minor who is not in the presence of and under the direct supervision of his or her parent, stepparent, grandparent, stepgrandparent, or legal guardian may only possess a firearm in the City of Wichita under the following circumstances:

1. During a hunter education class held pursuant to K.S.A. 32-920 and conducted by a Kansas Hunter Education Instructor who is certified by the Kansas Department of Wildlife and Parks, provided said possession is under the supervision of the instructor;

2. During a firearms instructional or safety training class taught by an instructor certified by the National Rifle Association or other nationally recognized hunting, target or sports shooting organization, provided said possession is under the supervision of the instructor.

3. While transporting an unloaded firearm to and from an excursion for lawful hunting of game birds or animals provided:

(a) the minor is in possession of a valid hunting license, if said license is required by State or Federal law for the purposes of the hunting excursion; and

(b) the minor is in possession of a valid hunter education certificate issued to said minor; and

(c) the firearm, during transportation, is stored in a case, scabbard, or other container, or has a properly engaged trigger locking mechanism, and it is further stored in the

trunk area of the motor vehicle, or if the motor vehicle does not have a trunk, then the firearm is further stored in an area of the motor vehicle where it will not be readily accessible to the driver or passengers; and

(d) ammunition for the firearm is stored in a box or container separate from the firearm."

SECTION 3: Section 5.89.030 of the Code of the City of Wichita, Kansas, shall read as follows:

"Forfeiture of firearms possessed by a minor. Except as provided in 5.89.040, any firearm seized in connection with a violation of this chapter shall be destroyed by the chief of police whenever the weapon is no longer needed for evidence, or the same shall be forfeited to the Wichita Police Department. Any weapon forfeited to the Wichita Police Department shall be utilized by the police department or sold or traded to a federally licensed wholesale gun dealer for materials to be used by the Wichita Police Department. Proceeds from any such sale shall be used for law enforcement purposes by the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council."

SECTION 4: Section 5.89.040 of the Code of the City of Wichita, Kansas, shall read as follows:

"Stolen weapons. Any stolen firearm confiscated in connection with any violation of this chapter shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence."

Testimony before the House Federal & State Affairs Committee

on H.B. 2541, presented February 23, 1995

Members of the Committee, my name is Scott Hattrup. I am a third-year law student at the University of Kansas School of Law. I am a life-long Kansas resident. I speak as one who has studied firearms laws in some detail.

House Bill 2541 would preempt the field of firearms legislation in Kansas to statutes passed by the legislature. I support this bill because it will eliminate the current patchwork quilt of local ordinances which we currently have.

As an example of one such ordinance, I have attached Kansas City, Kansas, sections 22-126, 127, and 128. These sections require a permit to be issued by the Chief of Police before a handgun can be sold in the city. Issuance of such a permit is discretionary by the chief. Permits require three letters attesting to the applicant's good reputation, qualification to use a weapon, and specifying that the applicant has a need for such a weapon. In speaking with firearms dealers in Kansas City, Kansas, I have learned that there is also a \$150 license fee of some sort required to obtain this permit. These dealers have not sold a handgun within the city since this fee went into effect. However, many of their customers travel south a few miles into Johnson County, which has no such fee, and pick up newly purchased firearms which have been transferred to dealers there by the Kansas City, Kansas dealer.

Kansas City, Kansas has enacted a typical ordinance permitted under the current lack of state preemption. The ordinances passed are usually discretionary, and highly regressive. Low income individuals, who generally live in the areas of the highest crime rates, are not as likely to have three business or professional people write letters on their behalf that the Chief of Police will accept. Even if these individuals get the letters, the \$150 fee surely keeps some from purchasing firearms. These local ordinances are highly arbitrary and should not be permitted in a state that favors equal rights for all its citizens.

I support H.B. 2541, because it will do away with these arbitrary local laws.

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(4) Selling, giving or otherwise transferring any firearm to any person who, within the preceding ten (10) years, has been convicted of a crime to which this subsection applies, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime.

(b) Subsection (a)(4) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-2501, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(c) Unlawful disposal of firearms is a Class A violation.
(Ord. No. 65498, § 44, 1-4-90; Ord. No. 65833, § 18, 3-10-94)

Sec. 22-110. Possessing, carrying, or transporting concealed explosives.

(a) It shall be unlawful for any person to possess, carry or transport any explosives or detonating substance in a wholly or partly concealed manner.

(b) For the purposes of this section, explosives are defined as any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

(c) This section shall not apply to or affect parties who lawfully may possess, carry or transport such explosives.

(d) Possessing, carrying, or transporting concealed explosives is a Class B violation.
(Ord. No. 65498, § 45, 1-4-90)

Secs. 22-111–22-125. Reserved.

Part B. Pistol Permit

Sec. 22-126. Permit required.

(a) It shall be unlawful for any person to sell, loan for a consideration or give or purchase, borrow for a consideration or accept as a gift any pistol, revolver, or gun capable of propelling a metallic projectile, with a barrel less than nine (9) inches long or with the capacity of accepting a barrel of less than nine (9) inches long, unless the purchaser, borrower or person accepting the same has then and there a permit, dated less than ten (10) days prior to such sale, loan or gift, issued by the chief of police, authorizing such person to purchase or accept a pistol or revolver. Such permit must be retained by the vendor and returned to the chief of police or his designee with a complete description of the gun and within three (3) days of the sale.

(b) A person convicted of a violation of this ordinance is guilty of an unclassified violation.
(Code 1964, § 39-4; Ord. No. 39984, §§ 1–3, 9-14-55; Ord. No. 49557, § 1, 4-29-71; Ord. No. 57171, § 1, 11-22-77; Ord. No. 65498, § 46, 1-4-90)

Sec. 22-127. Application.

Each person desiring a permit to purchase or accept a pistol, revolver, or gun of any kind with a barrel less than nine (9) inches long shall apply to the chief of police for a permit, and the application shall contain the name, signature, address, age, height, weight, occupation, photograph and fingerprints of the applicant. In addition thereto, the application as set out above must be accompanied by three (3) letters of recommendation from business or professional people stating that the applicant has a good reputation in the community and is qualified to have the permit and that the applicant has a need for such a weapon.

(Code 1964, § 39-5; Ord. No. 39984, § 4, 9-14-55; Ord. No. 49258, § 1, 12-17-70; Ord. No. 65456, § 8, 8-17-89; Ord. No. 65498, § 47, 1-4-90)

Sec. 22-128. Issuance.

After fifteen (15) days, the chief of police may issue such permit required by this article to any person filing the proper application, except persons having been convicted of a crime involving violence or the use of firearms or the use or sale of controlled substances and upon obtaining a clearance from the F.B.I. identification division for the applicant.

(Code 1964, § 39-6; Ord. No. 39984, § 5, 9-14-55; Ord. No. 49258, § 2, 12-17-70; Ord. No. 65498, § 48, 1-4-90)

Secs. 22-129–22-145. Reserved.

ARTICLE VI. OFFENSES AGAINST PUBLIC MORALS*

DIVISION 1. GENERALLY

Sec. 22-146. Indecent exposure.

(a) It shall be unlawful for any person to expose in the presence or view of any person who is not the spouse of the offender and who has not consented thereto the following:

- (1) The person's genitals, pubic hair, penis, buttocks, vagina, anus.
- (2) Any portion of the areola of the female breast.

(b) Indecent exposure is a Class A violation.

(Code 1964, § 23-30; Ord. No. 63427, § 1, 10-13-81; Ord. No. 65498, § 49, 1-4-90)

State law reference—Lewd and lascivious behavior, K.S.A. 21-3508.

Sec. 22-147. Lewd and lascivious behavior.

(a) Lewd and lascivious behavior is:

- (1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or

*Cross references—Lewd conduct in places selling alcohol, §§ 4-110, 4-163; massage parlors, Ch. 20.

7-3

WICHITA

GARY E. REBENSTORF, Director of Law and City Attorney
DOUGLAS J. MOSHIER, Senior Assistant City Attorney



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202 - 1635
(316) 268-4681

February 23, 1995

Representative Gary Boston, Chairperson
House Federal and State Affairs Committee
Room 526-S
State Capitol Building
Topeka, Kansas

Re: Testimony in Opposition to H.B. No. 2541

Dear Representative Boston:

My name is Douglas J. Moshier and I am a senior assistant city attorney for the City of Wichita. I am here today on behalf of the City of Wichita to speak in opposition to H.B. No. 2541.

The City of Wichita's opposition to this bill is, first and foremost, directed against the bill's unprecedented attack on cities' home rule authority. The legislature has never, since the passage of the home rule amendment to the state constitution in 1961, attempted to preempt this authority by the mere fact of announcing its intention to do so. Certainly, this body has on numerous occasions in the last 24 years passed legislation which, by its terms and provisions, so occupies a field that it can be said to preempt that field. However, it has long been the law of this state that cities still had home rule authority in such instances. Cities could, in the face of such statutory preemption, adopt ordinances which did not conflict with state law. State law has also been long-settled that, in the area of police power regulation, cities could adopt enactments which were more restrictive than state law, even though such state law was uniform and of statewide concern. Such enactments are considered not to conflict with state law.

The provisions of H.B. 2541 would change this. First, the provisions of subsection (b) of the bill would mean that cities could pass no law affecting firearms (with the exception of zoning provisions and regulations pertaining to the discharge of firearms) until the state had acted to pass the same law. Second, cities could, in that case, only parrot the state law. They could make no changes which would make the city's law more restrictive than state law. This changes

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over twenty years of constitutional law and is contrary to the will of the people expressed when the home rule amendment was adopted in 1961. The provisions of that amendment provide that:

Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.

In addition to this significant dilution of cities home rule authority, adoption of this bill would also upset literally hundreds of ordinances, rules and regulations of cities throughout the state. Most of these are police power regulations which have little to do with what the proponents of this bill would consider "gun control". By way of example, in the City of Wichita the adoption of this bill would void existing regulations which:

1. Limit a person's ability to use the sidewalks to display and sell goods.
2. Require a license and payment of a business occupation fee for engaging in certain businesses and occupations.
3. Regulate shooting galleries.
4. Regulate advertising on the city streets by the use of PA systems and/or signs mounted on vehicles operating on the streets.
5. Define certain rules and regulations regarding conduct on the city's municipal airport properties.
6. Require licensing of private security personnel and restricts the circumstances under which they may carry firearms.
7. Regulate itinerant merchants.
8. Define certain rules and regulations regarding conduct in the city's parks.
9. Prohibit hunting in the city's parks.
10. Regulate miscellaneous sales, i.e. garage sales and estate sales.

None of these regulations are zoning ordinances and, therefore, under the bill they would not be excepted from the provisions of subsection (b). Thus, setting aside the administrative nightmare that instantaneous repeal of these and many more ordinances of the City of Wichita would wreak, the City of Wichita could reenact these regulations only if it took great care in each enactment to except expressly any activity which related to the "sale, purchase, purchase delay, transfer, ownership, use, possession, storage in home or business, bearing, transportation, licensing, permitting, registration, taxation or any other matter pertaining to firearms, components, ammunition or supplies." This is extraordinarily broad language and the ability of the City of Wichita to constitutionally reenact many of these police power regulations would be, at the least, subject to challenge by those who would be regulated when others who had any slight connection to firearms would not be.

Representative Gary Boston, Chairperson
February 23, 1995
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Finally, isn't it the basic concept of home rule and the recently popular concept of the right of the people to self-determination that police power regulation of these matters that mean little to the people of the state as a whole and, quite possibly, very much to the people of individual cities, should be decided where people think it matters? This bill doesn't even represent a case in which the legislature regulates and announces in that regulation that it knows best and that its regulations are intended to occupy the field. This bill is merely an announcement that the legislature knows best. There is no regulation or even a promise of regulation in the areas where it is announcing that cities will be forever barred from determining their own affairs. This is not how city residents saw their destiny in 1961 when the state constitution was amended and they were promised the "largest measure of self-government."

Very truly yours,



Douglas J. Moshier
Senior Assistant City Attorney

DJM:cdh

HOUSE OF REPRESENTATIVES

FEDERAL AND STATE AFFAIRS COMMITTEE

IN REFERENCE TO H. B. 2541

FEBRUARY 23, 1995

It is believed the passage of HB 2541 would hamper local Law Enforcement Agency's from handling problems dealing with firearms unique to their local jurisdictions. Different cities in the state have different problems dealing with firearms based upon the make up of their own populations, and the beliefs or attitudes of the majority of their citizens. The problems dealing with firearms in Wichita, are different from those of Emporia's, which are different from Salina's, which are different from those of Liberal, and etc..

It is believed local governments can best determine the problems unique to their own jurisdictions, and can best enact their own ordinances in an attempt to alleviate these problems. Passage of HB 2541 would take away the authority of local governments to do this. If HB 2541 were to become law, and a problem dealing with firearms was identified in a certain community, the only course of action would be state legislation. If this legislation failed to pass, the problem of the community would remain unaddressed. If the legislation did pass it would put undue restriction on another community for no apparent reason. This seems to be an unequitable solution. If the legislation is passed, or if it is defeated. A no win situation for the citizens of Kansas.

Current law gives local governments the option and resources to address, and deal with their own problems dealing with firearms without interfering with other local jurisdictions. Passage of HB 2541 would not only take this option away, but would also void existing law in which communities have all ready enacted to deal with their own unique set of problems.

It is believed the reason for HB 2541 being introduced is an attempt to standardize the firearms law in the state of Kansas. If HB 2541 passes it would indeed standardize the firearms law throughout the state and the law would be the same in every community in the state. It is also true this would make it easier for people travelling from city to city with firearms to be familiar with the law. It is believed, however, the stripping of local governments of the authority to enact their own ordinances to address their own problems and needs of their citizens, is too high of a price to pay for the alleviation of an "inconvenience" of a few people who wish to transport firearms from one city to another.

Based upon the above rational, the Kansas Peace Officer's Association would oppose the passage of HB 2541.

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Respectfully submitted for consideration:

A handwritten signature in cursive script that reads "Lane K. Ryno". The signature is fluid and connected, with a large initial 'L' and 'R'.

Sgt. Lane K. Ryno
Emporia Police Dept.
KPOA Legislative Committee



**League
of Kansas
Municipalities**

LEGAL DEPARTMENT · 112 S.W. 7TH TOPEKA, KS 66603 · TELEPHONE (913) 354-9565 · FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: House Committee on Federal and State Affairs

FROM: Don Moler, General Counsel

RE: Opposition to HB 2541

DATE: February 23, 1995

First of all the League would like to thank the Committee for allowing us to appear today in opposition to HB 2541. I cannot overstate how strongly the League of Kansas Municipalities by and through its member cities, opposes the state preemption of firearm regulation and the elimination of local laws regulating the use of firearms in our state. This is a fundamental question which the legislature should not undertake lightly. League records indicate that cities in Kansas have had the power to regulate firearms within their communities since at least 1863. Over the 132 years which have elapsed since that time we believe that cities throughout the state have acted reasonably and rationally on behalf of their citizens to regulate firearms in a responsible manner. HB 2541 strikes at the very heart of home rule authority of cities in Kansas and is a complete contradiction and contravention of the historical nature of firearm control in Kansas. Proponents of this legislation disregard not only the home rule authority of cities and their responsiveness to their citizens, but disregard the illustrious history of the State of Kansas and the public policy decisions which have been made over the past 130 plus years to allow cities to regulate firearms within their geographical boundaries.

The League has a long standing policy against any state preemption of the authority of cities to prohibit cities to regulate firearms. Specifically in the **1994-1995 Statement of Municipal Policy**, which was adopted by the membership of the League of Kansas Municipalities at its annual convention in October 1994, Section G-7 entitled **Firearms Regulation** states as follows:

"We oppose any legislative efforts to restrict or preempt local home rule authority to regulate firearms, including the possession or discharge of firearms in public places within cities."

This direct statement essentially represents the entire history of gun control in Kansas. Cities have been protecting their citizens since the state was founded and are expected to do that today.

In contrast, current state statutes controlling firearms are typically very broad in scope and limited in application. They essentially make it unlawful to: carry concealed weapons; give or dispose of a firearm to a person addicted to a controlled substance or who is a felon; remove or deface the identification marks of a firearm, unlawfully discharging a firearm upon or across the land of another; and possession of a firearm within the state capitol building. Most substantive regulation of firearms in Kansas is done at the local level. I suspect it would shock most Kansans that state law does not prohibit the carrying of an unconcealed

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weapon even today. Perhaps we are not as far away from Dodge City of the 1870's as we might like to think. We at the League believe cities have used their power reasonably, effectively and prudently in regulating guns within their boundaries. We would point out that if the citizens of a given city believe that a governing body has overstepped its bounds in the area of gun control, or any other area for that matter, they have the ability to remove that governing body from office at the ballot box and replace them with a governing body who will pass ordinances and other local regulations more to the citizenry's liking.

We believe that this legislation is simply an attempt by a few special interests to do away with effective gun control in Kansas. We should not deceive ourselves into believing that the State of Kansas is truly in the gun control business, it isn't. Most gun control regulation is and has been done at the local level since the beginning of statehood. We see no reason to change this long-standing policy which has served the state well for many, many years.

Finally, I would direct your attention to the handout which I have attached to my testimony which is taken from the 1866 Code of the City of Lawrence, Kansas, I have replicated the cover and pages 147 through 149. This is the general nuisance ordinance of the City of Lawrence which was approved on January 12, 1863. I thought that Sections 9 and 10 would be interesting and informative for the Committee today.

52.7
1-13

H. 152

CHARTER,

OTHER POWERS,

AND

ORDINANCES

CITY OF LAWRENCE,

COMPILED BY ORDER OF THE CITY COUNCIL.

SAMUEL KIMBALL, COUNCILMAN, }
R. V. BANKS, CITY ATTORNEY, } COMPILING COMMITTEE.

LAWRENCE:
KANSAS STATE JOURNAL STEAM POWER PRESS PRINT.
1886.

10-3

[No. 34.]

An Ordinance Relating to Nuisances.

- | | |
|-----------------------------|---------------------------------|
| 1. Deposit of dead animals. | 6. Removal of nuisances. |
| 2. Refusal to remove. | 7. Notice to abate. |
| 3. Privies. | 8. Bathing in the Kaw. |
| 4. Slaughter houses. | 9. Discharging firearms. |
| 5. Filth. | 10. Carrying concealed weapons. |

Be it ordained by the Mayor and Councilmen of the City of Lawrence :

SECTION 1. Any person who shall deposit, or cause to be deposited, any dead animal upon any ground within the limits of this city, shall be subject to a penalty of not less than five nor more than twenty-five dollars.

SEC. 2. Any person, the owner of any dead animal which shall be found lying upon any ground within the limits of this city, who shall neglect or refuse to remove the same within one day after notice to remove the same shall have been given by the marshal, shall be subject to a penalty of not less than five nor more than twenty-five dollars.

SEC. 3. The owner of any privy in this city, or the owner of any lot in this city, upon which any privy is or may be erected, which is or may become offensive to persons residing in the neighborhood, shall remove or cleanse, or cause the same to be removed or cleansed within five days after notice shall be served upon him by the city marshal to remove or cleanse the same; and any person who shall neglect or refuse to remove or cleanse any privy as aforesaid, shall be subject to a penalty of not less than five nor more than fifteen dollars.

SEC. 4. Any slaughter house which now is, or may hereafter be erected within the limits of this city, which is or shall become offensive to the inhabitants of the neighborhood, shall be removed out of the bounds of this city within ten days after notice shall be given to remove the same by the city marshal. Any person or persons, the owner or owners of any slaughter house, as above mentioned, who shall neglect or

refuse to remove the same within the time above specified, shall be subject to a penalty of not less than ten nor more than twenty-five dollars.

SEC. 5. Any person who shall deposit any excrement, or filth, or refuse, or any vegetable or animal matter, or any substance whatsoever, which is or may become offensive in any street or place within the limits of this city, shall be liable to a penalty of not less than two or more than ten dollars; and all persons who shall or may have deposited any excrement or filth, or refuse, or any vegetable or animal matter, as aforesaid, are required to remove the same within one day after receiving notice to remove the same, from the city marshal, under a penalty of not less than two nor more than five dollars.

SEC. 6. It shall be the duty of the city marshal, in all cases of nuisance committed under the provisions of this ordinance, where the offending party is not known, or cannot be found, to remove and abate, or cause to be removed or abated, all nuisances so committed within a reasonable time, at the expense of the city; and in all cases where such offending party is known or can be found, but who neglected or refuses to obey the provisions of this ordinance, the city marshal shall remove and abate, or cause to be removed and abated, such nuisances, at the cost and expense of the party so neglecting or refusing to abate or remove the same.

SEC. 7. The city marshal shall have authority to notify persons to abate and remove nuisances as described in sections two, three, four and five of this ordinance, only upon written complaint made of the existence and continuance of such nuisance, by two residents of the city.

SEC. 8. It shall be unlawful for any person between the hours of five o'clock, A. M., (forenoon) and sun set, to bathe in a state of nudity in the Kaw river within the limits of this city. Any person offending against the provisions of this section shall be fined not less than one dollar.

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SEC. 9. Whoever shall, within the city, discharge any fire-arms, except by permission of the mayor, or when mustered for drill or review, or otherwise acting under the command or by permission of some commissioned officer, or except when done in self-defense, or for the protection of gardens from destructive animals, shall be, upon conviction thereof, fined not less than five dollars.

SEC. 10. Any person who shall in this city have or carry concealed or partially concealed, upon his person, any pistol, bowie knife or other deadly weapon, shall, on conviction, be fined not less than one nor more than ten dollars: *Provided*, This section shall not apply to peace officers of the city or state. The carrying of a weapon in a holster, exposed to full view, shall not be deemed a concealed or partially concealed weapon under this section.

S. K. HUSON, Mayor.

Approved, January 12, 1863.

[No. 35.]

An Ordinance Amending "An Ordinance Relating to Nuisances."

Be it ordained by the Mayor and Councilmen of the City of Lawrence:

SECTION 1. That section seven of "An Ordinance relating to nuisances," approved, January 12, 1863, be and the same is hereby amended so as to read as follows: Section 7. The city marshal shall have authority and it shall be his duty to notify any and all persons whose duty it shall be so to do; to remove any nuisance or nuisances mentioned in said ordinance.

SEC. 2. That this ordinance shall be in force from its publication.

Approved, December 7, 1866.

Attest: W. H. R. LYKINS, Mayor.

H. O. SHOLES, City Clerk.



CITY OF TOPEKA

City Council
215 E. 7th Street Room 255
Topeka, Kansas 66603
Phone 913-295-3710

LEGISLATIVE TESTIMONY CITY OF TOPEKA

TO: Chairman Boston and Members, House Committee on Federal and State Affairs

FROM: Jim Kaup, City of Topeka

RE: **HB 2541; State Preemption of Local Government Regulatory Authority Over Firearms**

DATE: February 23, 1995

The City of Topeka appears today in opposition to HB 2541. The City views this legislation as harmful not only to its existing powers of local self government, but also to its ability to protect the public safety.

When this Committee held hearings earlier this session on HB 2420, the City offered testimony as to the general policy arguments against state preemption of local lawmaking authority. HB 2420 proposed to preempt local authority to regulate the carrying of concealed handguns.

In the City's testimony on HB 2420, you heard that Home Rule was extremely important to the City of Topeka and to all cities in Kansas. You heard that legal authority whereby locally-elected governing bodies could enact local laws necessary to meet local needs is fundamental to Home Rule. Home Rule is the most precious authority the City of Topeka has. Without it, the City cannot adequately protect the public's health, safety and welfare.

The City will not repeat its testimony regarding the defense of Constitutional Home Rule - we desire only to emphasize how strongly the City believes Home Rule must be preserved.

By its direct assault upon Home Rule, HB 2541 proposes a much broader and serious threat than did HB 2420. In one stroke, it would wipe out all local laws relating to "... sale, purchase, purchase delay, transfer, ownership, use, possession, storage in home or business,

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2-23-95
Atch #11

bearing, transportation, licensing, permitting, registration, taxation, or any other matter pertaining to firearms, components, ammunition or supplies."

Reminding this Committee of Topeka's Home Rule-based policy arguments presented to this Committee at its hearing on HB 2420 on February 16, 1995, the City desires to move on to offer some examples of the immediate and adverse consequences of HB 2541. Set out below are some of our more serious concerns regarding HB 254:

1. State Preemption vs. Joint State - Local Lawmaking Authority. In years past, the legislature has heard from some proponents for state preemption of weapons regulations that state regulation somehow necessitated the preemption of local lawmaking authority and the invalidation of all local laws presently on the books. The State's enactment of laws regarding sales or possession, etc. of firearms, does not require the State to simultaneously wipe out all existing local laws or to preempt future local lawmaking.

The tradition in Kansas with regards to firearm regulation is one of joint state-local lawmaking authority. This tradition has survived for well over 100 years.

Not only is this joint regulatory authority the tradition, the City of Topeka suggests that the present system of joint regulation works. Where and how has it failed? If there are failings, how would the public be better served by the wholesale invalidation of laws passed by locally-elected governing bodies?

2. Invalidation of Existing Local Laws. HB 2541 invalidates all existing city and county laws regarding the regulation of "firearms, components, ammunition and supplies." This Committee must recognize that one of the immediate consequences of enactment of HB 2541 will be a reduction in the number of, and nature of, firearm regulations across Kansas. While a great many local laws regarding firearms parallel provisions now in the Kansas statutes, other local laws have no comparable state law.

For example, the Topeka City Code (54-103) provides "[i]t shall be unlawful for any person, not a police officer in the execution of duty, to draw a pistol, revolver, knife, or any other deadly weapon upon another person." Brandishing a firearm has no state law counterpart.

The code also has regulations regarding licensure and regulation of private security guards (30-401).

3. State Preemption Could Result in Increased Firearm Regulations. HB 2541 could, ironically, lead to more governmental regulation of firearms than now exists, and more regulation than is necessary to protect the public's interest.

Preemption by the State results in one standard of governmental regulation for all the people of Kansas -- regardless of their local needs and conditions -- i.e. regardless of whether they want it or not.

Again, under the current system of state-local shared lawmaking authority, locally-elected governing bodies can fine-tune the appropriate level of regulation needed for their community, while operating within a general framework of State law. Under HB 2541, if the people of the City of Topeka want a mandatory waiting period for the purchase of handguns, they would have to successfully lobby the Kansas legislature for such a law, rather than their city council. If successful in appealing to the legislature, residents in every city of the State would have to live with the results -- regardless of whether such a law makes sense anywhere outside Topeka. In short, the preemption called for in HB 2541 may well result in more governmental regulation than would ever occur under our current system and tradition of shared state-local regulatory authority.

For another example, if the people in a city wanted a law prohibiting people from carrying shotguns into restaurants or movie theaters the only way such a law could take effect would be by means of the Kansas legislature -- enacting a uniformly applicable state law prohibiting the carrying of shotguns into theaters and restaurants in any city in the State.

For yet another example, should a single city in the State desire a law which creates the crime of the possession of a firearm within 100 feet of an alcoholic liquor establishment, that city would have to successfully lobby the legislature for such a uniformly applicable state law -- one which would apply even in communities which have never had a weapons "problem," whether in the proximity of such establishments or anywhere else.

4. Fiscal Note. HB 2541 has both state and local fiscal consequences. First, should the prohibition against "taxation" in line 23 indicate exemption of "firearms, components, ammunition and supplies" from local sales taxation and property taxation?

Second, the State will incur expenses in the form of new demands upon the district courts. At present, when a city has an ordinance which parallels a state law regarding the use of firearms, prosecution for that local offense will be before the municipal court. A clear consequence of HB 2541's invalidation of such city ordinances would be to push prosecution over into the jurisdiction of the county attorney as a state law violation to be prosecuted in district court. The City of Topeka is not aware of the number of local ordinances which would be invalidated by HB 2541. The Topeka Code shows a number of local laws which parallel statutory offenses -- such as altering or obliterating firearm serial identification numbers. However, with 627 cities in the State it is reasonable to conclude that thousands of prosecutions now being conducted in municipal courts will be forced into the district court system.

Action: The City of Topeka respectfully asks for Committee action to kill HB 2541.

ATTACHMENT A:

Excerpt from City of Topeka's Testimony on HB 2420, February 16, 1995

I. State Preemption of Local Authority

The City also objects strongly to HB 2420 because Section 11 proposes to prevent local lawmaking regarding the carrying of concealed weapons. It is ironic that in the midst of a legislative session filled with speeches about getting the federal government off the back of the State, and getting the State off the backs of Kansas local governments, that we have to debate a bill such as HB 2420. Make no mistake about it -- this bill is anti-local government, anti-Home Rule.

The City is a staunch defender of Constitutional Home Rule. We advocate the effective, lawful use of that power of self-government. Home Rule has been responsibly, and necessarily, used with respect to firearm regulation.

A. Home Rule in General.

Home rule is predicated on the assumption that matters of local affairs and government should be open to local solution and experimentation to meet local needs. Different communities will perceive a problem, such as gun control, differently and therefore adopt different measures to address the problem. Those local solutions should remain free from interference by those who disagree with the particular approach chosen by the people of a particular community.

The Kansas Home Rule Amendment does not prohibit the legislature from enacting laws relating to local affairs and government. The state and the City of Topeka may both legislate on the same subject. In the event of conflict between local law and state law, the state law prevails.

B. Home Rule Powers of Kansas Cities to Regulate Firearms.

Municipal regulation of firearms is well-recognized as a lawful exercise of the general police power, justified as protective of the general welfare. Such local regulation has been long-recognized as lawful in Kansas, preceding Home Rule by many years. For example, an 1887 decision of the Kansas Supreme Court, City of Cottonwood Falls v. Smith (36 Kan. 401) was one of the first cases upholding the power of cities to enact ordinances prohibiting the discharge of firearms within city limits.

One of the most detailed examinations of the Constitutional Home Rule Amendment by the Kansas Supreme Court dealt with this issue of city laws regulating firearms. The decision in that case, Junction City v. Lee, 216 Kan. 495 (1975), stands not only as controlling law on the scope and use of Constitutional Home Rule in Kansas, it also reveals the Court's sensitivity to the

need for the people, through their local governments, to be able to respond to local conditions and circumstances that demand local solutions:

The governing bodies of some cities may conclude they are sufficiently protected by the state statutes on weapons control but that is their business. Evaluation of the wisdom or necessity of the Junction City enactment of a weapons control ordinance more rigid than statutory law is not within our province, although the city fathers undoubtedly were aware of the fact that in situations where passions or tempers suddenly flare easy accessibility of weapons, whether carried openly or conceal, may contribute to an increased number of fatalities, and further that their own problem is rendered more acute by the presence of an adjoining military reservation from whence combat troops trained in the use of handguns and knives sometimes repair to the city during off-duty hours.

Samuel
F4SA
8-23-95
Atch # 12

1 the District of Columbia or the United States relating to controlled sub-
2 stances; or (C) adjudicated a juvenile offender by reason of a violation of
3 such act or similar law;

4 (6) does not chronically and habitually use alcoholic beverages to the
5 extent that the applicant's normal faculties are impaired. It shall be pre-
6 sumed that an applicant chronically and habitually uses alcoholic bever-
7 ages to the extent that the applicant's normal faculties are impaired if the
8 applicant has been, during the three years immediately preceding the
9 date on which the application is submitted, committed for the abuse of
10 alcohol or has had two or more convictions under K.S.A. 8-1567 and
11 amendments thereto, or under a similar law of any city, county, other
12 state or the District of Columbia;

13 (7) desires a legal means to carry a concealed weapon or firearm for
14 lawful self-defense;

15 (8) presents evidence satisfactory to the bureau that the applicant has
16 satisfactorily completed a personal protection course, approved by the
17 bureau, that includes ~~appropriate training in firearms safety and the use~~
18 of deadly force for lawful self-defense;

19 (9) has not been adjudged a disabled person under the act for ob-
20 taining a guardian or conservator, or both, or under a similar law of an-
21 other state or the District of Columbia, unless the applicant was ordered
22 restored to capacity three or more years before the date on which the
23 application is submitted; and

24 (10) has not been an involuntary patient pursuant to the treatment
25 act for mentally ill persons, or pursuant to a similar law of another state
26 or the District of Columbia, unless the applicant possesses a certificate
27 from a psychiatrist licensed to practice medicine and surgery in this state
28 that the applicant has not suffered from disability for three or more year
29 immediately preceding the date on which the application is submitted.

30 (b) The bureau may deny a license if the applicant has been convicted
31 of one or more crimes of violence, or adjudicated a juvenile offender by
32 reason of an act which would be a crime of violence if committed by ar
33 adult, within the three-year period immediately preceding the date or
34 which the application is submitted or may revoke a license if the license
35 has been convicted of one or more crimes of violence, or adjudicated :
36 juvenile offender by reason of an act which would be a crime of violenc
37 if committed by an adult, within the preceding three years.

38 (c) The cost of the personal protection course required by subsection
39 (a)(8) shall be paid by the applicant. The following shall constitute satis-
40 factory evidence of qualification under that subsection: (1) A photocop-
41 of a certificate of completion of an approved personal protection course
42 (2) an affidavit from the instructor, school, club, organization or group
43 that conducted or taught such course attesting to the completion of the

training, equivalent to that required for law
enforcement officers pursuant to the Kansas law
enforcement training act, in the use of firearms
and training in