

Approved: 3-27-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on March 14, 1995 in Room 514-S of the Capitol.

All members were present except: Senator Harris (excused)
Senator Feleciano (excused)
Senator Vancrum (excused)
Senator Brady (excused)
Senator Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:
Representative Rutledge
Bob Corkins, Kansas Chamber of Commerce and Industry
Amy Waddle, Office of Judicial Administration
Judge David McKesic, Wyandotte County
Charlene Satzler, Health and Environment, Office of Vital Statistics
Kyle Smith, Kansas Bureau of Investigation
Paul Shelby, Judicial Council

Others attending: See attached list

Chairman, Emert called the meeting to order and directed the Committee's attention to minutes for February 22, February 15, February 13 and February 7, plus February 28.

Moved by Parkinson, second by Reynolds. Motion carried to approve the minutes. Motion carried.

HB 2299--Giving worthless checks and causing an unlawful prosecution for worthless checks.

The Chair introduced Representative Rutledge, who explained the need for **HB 2299**. Representative Rutledge related a personal experience that brought attention to current loopholes in the law regarding collection on worthless post-dated checks. Representative Rutledge explained that collection processes cannot be initiated on a worthless check, if that check was postdated, even when it is deposited on the date written on the check. Acceptance of a postdated check by the payee can be used as a defense by the payor, stated Representative Rutledge by citing K.S.A. 21-3707. The payee by causing prosecution for a postdated check can be charged with a Class A misdemeanor. This bill will change the statute to read "It shall not be a defense to a prosecution if the check is postdated, unless such check, draft or order was presented for payment prior to the postdated date." This bill further changes K.S. 21-3709 to require that the check be presented before the postdated date in order to be prosecutable for "unlawful prosecution for worthless check." The consumer still has protection and the business community would benefit as this bill would discourage blatant abuses by those writing worthless postdated checks under current law. After checking with a number of small business owners across the state, Representative Rutledge, related that issue is a common problem. Representative Rutledge concluded that **HB 2299** would place the responsibility back on the writer of the check to make sure his or her check is good, and allows prosecution for worthless check if the payor does not make good. (Attachment 1)

In response to what the logic was when the current law was written, Representative Rutledge explained that after checking with the revisor, that at one time there was a feeling that postdated checks should not be

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allowed, and instead of penalizing consumers, the law was written to penalize business owners.

Bob Corkin, Director of Taxation for the Kansas Chamber of Commerce and Industry and also representing the Kansas Retail Council expressed support for **HB 2299**, and its attempt to rectify the unfairness of Kansas law which condones the practice of postdating checks. Mr. Corkin addressed the practice of "kiting" checks, when a person writes a check knowing that there are not sufficient funds to cover it, but anticipates depositing the necessary funds before the check is fully processed. By postdating a check, the payee can create a guaranteed safe harbor kiting period. Mr. Corkin stated that the inequity of current law lies with its failure to recognize the illicit purposes for which many checks are postdated. The law currently provides an affirmative defense to makers of postdated checks who may have done so with deceptive intent. Mr. Corkin related that the extra administrative and legal costs of these circumstances are burdensome and unjustifiable. Mr. Corkin contended that **HB 2299** is reasonable and an overdue solution to a problem which advocates and policy makers failed to identify when the relevant statutes were enacted. Mr. Corkin concluded that this bill can rectify that situation. (Attachment 2)

HB 2430--Marriage licenses may be computer generated.

Amy Waddle, OJA, testified in support of **HB 2430**, a bill which proposes to amend K.S.A. 1994 Supp. 23-107 to allow the Kansas district courts to computer generate marriage license forms. The proposed amendment states on lines 22-26,

"The secretary may approve the use of an automated system whereby the marriage license form is computer generated. In such instances, the court shall comply with prescribed specifications as set out by the secretary to ensure uniformity across the state."

Ms Waddle conveyed information regarding the method currently used, which is a pre-printed form that must be completed on a typewriter. After a meeting of the OJA urban court computer users group, it was suggested that the process could be streamlined in courts which already enter all required marriage license information in a court computer system. The OJA in conference with the Office of Vital Statistics, issues concerning document format, paper quality, license numbering, audit requirements and required statutory changes were discussed. It was suggested that a pilot court site be selected to work out the implementation details prior to proposing a legislative change. Shawnee County District Court was selected as the pilot site. On September 1, 1994, Shawnee County District Court began to produce the automated marriage licenses. All of the offices involved have been pleased with the results. The required statutory change is the proposed amendment to K.S.A. 1994 Supp. 23-107, **HB 2430**, drafted by the Office of Judicial Administration and reviewed/approved by the Office of Vital Statistics. The proposed legislation will allow courts that already track marriage license information on the computer to eliminate the unnecessary step of re-typing the same information on a manual form. (Attachment 3)

Charlene Satzler, Director, Office of Vital Statistics, appeared in favor of **HB 2430**. Ms Satzler stated that the automation of marriage registration system would have a positive effect on the Office of Vital Statistics and would improve the timeliness and accuracy of the data furnished via the marriage license form. Ms Satzler stated that the only concerns her office has pertained to format and data specifications to ensure uniformity across the state and across the United States. This purposed bill addresses this concern. Regarding the amendment, Ms Satzler stated that her office has no comment on that. (Attachment 4)

Judge David McKesic, Wyandotte County, testified in support of **HB 2430**. Judge McKesic related that he is the judge in the probate department in Wyandotte County where marriage licenses are obtained as is the practice urban areas. Judge McKesic addressed the first Section of **HB 2430** and stated that in discussing the automation of the marriage license form with the clerks in his department, it was agreed that automation would save the clerks time in typing it on the state's form. Judge McKesic related that the marriage license form is plain. Addressing Section 2 of the bill which provides that municipal court judges can perform marriage ceremonies, Judge McKesic stated that he had no problem with that. Judge McKesic discussed a concern with a law that relates to the marriage license, and referred to a handout of K.S.A. 20-360, (Attachment 5) that provides that if a district court judge preforms a marriage ceremony between the hours of 8 a.m. and 5 p.m. that the money goes to the state of Kansas. Judge McKesic's concern deals with where should the money go if a municipal court judge performs the ceremony during those hours? Would it go to the state of Kansas or to city governments or should the municipal court judges keep the money? Judge McKesic recommended that K.S.A. 20-360 should be amended to designate where the money from marriage ceremonies during hours of 8 a.m. to 5 p.m. should go. The second problem Judge McKesic posed was the question as to when are reasonable office hours since some courts meet during evening hours. Judge McKesic suggested difficulties in determining a time span for the collection of marriage ceremony fees.

The Committee asked Judge McKesic of his opinion on page 2 of the bill relating to who can do a marriage

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ceremony, line 3 Section C. In the opinion of Judge McKesic that is bad, but it is current law. Discussion regarding common law marriages being legal in Kansas. If this section were eliminated there would still be common law marriage. Questions regarding same sex marriage under Section C were discussed.

Motion by Senator Reynolds passed out favorably with only the changes for the automated systems, line 23-26, included in that motion deleting page 2, lines 3 through 7. -----current law that says who and who cannot declare themselves married.-----

Sec. 2 (c) The two parties themselves, by mutual declarations that they take each other as husband and wife, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties belong, may be married without an authorized officiating person.

Motion dies for lack of second.

Motion by Senator Parkinson to strike new section two entirely, report the bill favorably as amended. The bill will only have Section One. Second by Senator Rock. Motion carried. Bill to be carried by Senator Oleen.

HB 2445--Authorized interception of wire communications, cordless phones are now covered by the warrant requirements for a wiretap.

Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation, testified on behalf of Director Welch in support of **HB 2445**. Mr. Smith related that this bill is designed to bring state statutes into compliance with a change in the law. Last October US Congress passed the Digital Telephony Act and as part of the compromise process, it removed an exception that had previously existed for cordless radio telephones to the general rule of requiring warrants for electronic surveillance. **HB 2445** strikes that exception from state statute so it follows the federal law. (Attachment 6)

Questions regarding an amended order. Mr. Smith related that the amended order was requested by Representative Haulmark. Mr. Smith answered that his unofficial understanding was that the amendment concerned an area of gap in the firearms statutes modified last year. When a person committed one of the ten year type felonies, but did not have a weapon in his/her possession then that was not technically illegal, this closes that gap. Mr. Smith stated that the Attorney General and KBI have no position that amendment.

Jim Clark addressed the Committee regarding the House Firearms Amendment to **HB 2445** stating that there was a separate bill in the DA's office and Wyandotte County testified regarding a gap in the sentencing guidelines. Mr. Clark stated that this amendment would include those in possession of a firearm in the commission of a nonperson felony in the ten year prohibition after conviction of carrying a firearm. In the past this was the law, but when the statutes were changed last year there was an oversight regarding this area.

Jim Clark, County and District Attorneys Association provided written testimony in support of **HB 2445**, which eliminated the exemption of cordless telephones from the requirement of obtaining a court order to eavesdrop. This bill follows the changes in federal law and will help to inform law enforcement officials. (Attachment 7)

Motion to recommend this bill was deferred to allow time for the Revisor to read the floor amendment.

HB 2450--KBI send notice to FBI of expungement records; criminal history record information

Kyle Smith testified on behalf of Larry Welch and the KBI in support of **HB 2450**. Mr. Smith that this addresses two problems: a procedural problem with how expungement orders are submitted to the FBI, and a problem caused by improved technology in the dissemination of criminal history information. The first problem addressed by this bill is that the FBI will not accept expungement orders from the court. This bill will provide that the court sends everything to the KBI and the KBI then sends it to the FBI. Smith explained that the problem caused by improved technology involves existing language in K.S.A. 22-4707(c). Mr. Smith related the process involved in responding to criminal history checks and stated due to computerization certain responses can be obtain instantaneously, while others, where a record exists require more time. A concern exist regarding the implications of the variance in response time, that such variance could possibly be interrupted as divulging information. As the number of remote terminals increases this time lapse problem will increase. This is only a problem because of language contained in subparagraph (c) of 22-4707. Mr. Smith related that the KBI is requesting a policy decision be made and the language which prohibit confirming the existence of a record, even without disclosing the content, be removed from K.S.A. 22-4707. Mr. Smith concluded that removing the language will speed up administrative and licensing procedures. (Attachment 8)

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Paul Shelby offered written testimony in support of HB 2450.(Attachment 9)

During discussion, Kyle Smith stated that SB 238 amended the same section.

Motion by Senator Bond to amend HB 2450 to include "refusal to take a breathelizer or failure to register will result in a 60 day suspension of driving privileges. Second by Senator Bond. Motion carried.

Motion was made by Senator Bond, second by Senator Rock to move HB 2450 favorably as amended. Motion carried.

The Chair recommended that HB 2531, (Washburn Security Police Bill passed out 3-13-95) be pulled off the Consent Calendar and be amended as requested by Kyle Smith, to clean up language and also stating to cops if you have been diverted you can not be a cop. This request was originally made in HB 2440 then amended into HB 2391, which will not get a hearing.

Meeting adjourned.

The next meeting is scheduled for March 15, 1995.

STATE OF KANSAS

JOEL RUTLEDGE
SEDGWICK COUNTY
2645 S. WASHINGTON
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(316) 269-3455



REPRESENTATIVE, NINETY-EIGHTH DISTRICT
STATE CAPITOL
ROOM 278-W
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TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY
HB 2299

Thank you Mr. Chairman; members of the committee -

HB 2299, relating to worthless checks, is a bill that arose because of a personal experience of mine. While this bill's passage will not help solve my particular dilemma, it will help to prevent reoccurrence of the same problem.

Here's the background; my wife and I are small business owners; we own and run a mom-and-pop awards and trophies business. This past year, we produced yard signs and other printed goods for a number of campaigns. It just so happened that one of our customers was a candidate for the House in a Democrat primary in Wichita. He ordered late, we rushed the order, and he got them on time, and in great condition, I might add. But as he was picking them up, he said "i don't have the money in my campaign fund yet, but I need to get these signs out." I asked him when he'd have it, and he gave me a date. He said his dad would be giving him a large sum of money when a "commission" check came in about that date. I asked him to place a deposit, paying part of it, and then pay the remainder on that date. He said no, he'd rather write a postdated check for that date for the whole amount. I reluctantly agreed, and as I filled out the invoice, he said "can you write down 'post dated check' on the bottom of the receipt?" which I did. I called and left a message on his answering machine two days before the date to let him know I would deposit on that day. As you may be able to tell, on the date of the check, I deposited it. He called around 3:30 in the afternoon and said "there's no money in that account." I told him I'd already deposited it, and he should make a deposit to cover it. Of course, the check was returned NSF, and my bank informed me that they had redeposited. I called him and said "I thought you said you were going to cover that!" and he replied "Well, I don't have the money." I then suggested that he'd better find the money so that he could avoid another NSF charge! When the check bounced a second time, I called him

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and he said "Well I don't have the money". He asked me what I was going to do and I said I would be turning it over to the Check Center, a bad check collection company in Wichita. He then said "You can't do that." When I asked why not, he replied "It's a postdated check." I then said "so? what does that have to do with it?" I soon found out. After refusing to work with the Check Center and pay his debt, this person informed them that he had no money and had no intention of paying.

Some further background is necessary here. This person is a law student at K.U. I doubt that money is really a problem, and I believe that he knew from the beginning what I was about to find out: that you currently cannot prosecute for a worthless check if the check was postdated. Bear in mind, many small businesses accept postdated checks on a regular basis. When you write a check, dated for the first of next month to your mortgage company, and you mail it before that date so it arrives on the first, you've written a postdated check. I received a call from the Check Center, and they asked "Was that a post-dated check". I said "yes, why do you ask?" They replied "Because the person (who wrote you the check) has filed a countersuit against us and against you for 'unlawful prosecution of a worthless check'." Here's where the problem arose: Our present Kansas Statute 21-3707 states "It shall be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based...was postdated"! Not only that, but causing prosecution for a postdated check is a Class A misdemeanor!

Now, let's make this clear; if a person writes you a postdated check, and you accept it, you cannot prosecute them when the check is no good. And, if you do try to prosecute, you, not the writer of the check, are guilty of a misdemeanor! This bill will change the statute to read "It shall not be a defense to a prosecution if the check is postdated, unless such check, draft or order was presented for payment prior to the postdated date." It further changes KS 21-3709 to require that the check be presented before the postdated date in order to be prosecutable for "unlawful prosecution for worthless check." There are still protections, as you can see, for innocent consumers.

This bill very simply puts the responsibility back on the writer of the check to make sure his or her check is good, and allows prosecution for worthless check if the payor does not make good.

I would request your support, and I stand for questions.

Sure Check Brokerage

PROFESSIONAL COLLECTION SERVICES

141 South 4th Street • Box 1906 • Salina, Kansas 67402-1906 • (913) 823-1334

20 FEB, 1995

RE: Concerning H.B. No. 2299

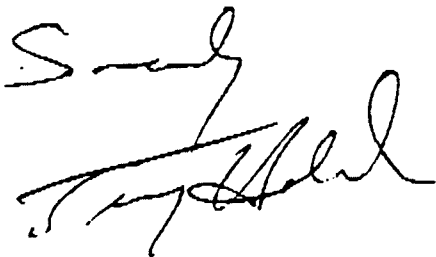
Dear Joel,

As a collection agency owner for the last 10 years, I agree with your proposed changes concerning post dated checks.

Those giving post dated checks as payment are promising that the funds will be available on the date placed on the check. When that check is presented on the date placed on the check and funds are not there, the check should be treated as any other NSF check and a prosecution remedy should be available to the payee.

The proposed changes certainly would benefit the business community and further, should help to discourage blatant abuses occurring now by using the current statute to escape prosecution. It is also my belief that specific remedies for prosecution of fraudulent "Stop Payment" check is long overdue in Kansas. There are, by virtue, of no statute for prosecution, an increasing number of disreputable consumers using the "Stop Payment" method to defraud businesses in this State. California has statutes providing recovery on this type of bogus claim.

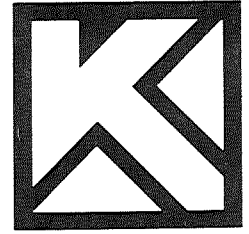
It is my belief that the changes proposed H.B. 2299 will be beneficial to businesses in this State and will help to close loopholes available to individuals playing confidence games.

A handwritten signature in cursive script, appearing to read "S. Smith".

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LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HB 2299

March 14, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Judiciary Committee

by
Bob Corkins
Director of Taxation

Honorable Chairman and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the opportunity to express our members support for HB 2299 and its attempt to rectify the unfairness of Kansas law which condones the practice of postdating checks. I also speak today on behalf of the Kansas Retail Council to convey their interest in correcting a persistent source of difficulty.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Most people are familiar with the tactic of "kiting" checks. It is when a person writes a draft with the knowledge his account is insufficient, yet he knows that by the time the payee and the payee's financial institution has fully processed the check he will have deposited the proper amount in his

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ccount to cover it. Postdating a check is frequently an extension of that strategy. By postdating a check, one can create a guaranteed safe harbor kiting period. We have no problem with this practice if the payee is made aware of the objective, but often the recipient of the draft is not.

The inequity of current law lies with its failure to recognize the illicit purposes for which many checks are postdated. Moreover, the law now provides an *affirmative defense* to makers of postdated checks who may have done so with deceptive intent. The extra administrative and legal costs which retailers are saddled with in these circumstances are burdensome and unjustifiable.

We believe that HB 2299 is a reasonable and overdue solution to a problem which advocates and policy makers failed to identify when the relevant statutes were enacted. The language of this bill acknowledges and allows for the postdating of checks when both parties are aware of that fact. Because those utilizing the practice legitimately will continue to receive protection under the terms of this bill, we see no drawbacks to this proposal and strongly encourage you to recommend it favorably for passage.

On behalf of KCCI and the Kansas Retail Council, I thank you for your time and consideration of this issue.

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Senate Judiciary Committee
March 14, 1995

Testimony of Amy Waddle
Office of Judicial Administration

Senator Emert and members of the Committee:

Thank you for the opportunity to testify in support of HB 2430, a bill which proposes to amend K.S.A. 1994 Supp. 23-107 to allow the Kansas district courts to computer generate marriage license forms. The proposed amendment states on lines 22-26, *"The secretary may approve the use of an automated system whereby the marriage license form is computer generated. In such instances, the court shall comply with prescribed specifications as set out by the secretary to ensure uniformity across the state."*

I'd like to provide you with some background on the proposed legislation. Currently, the Secretary of Health and Environment provides a pre-printed marriage license form to the district courts. The form must be completed on a typewriter. At a meeting of the OJA urban court computer users group, it was suggested that the process could be streamlined in courts which already enter all required marriage license information in a court computer system. In those courts, the form and the required information could be printed using laser printers. This would eliminate the need for court staff to enter the marriage license information in their computer and then re-type the information on the pre-printed state form.

The Office of Judicial Administration contacted the Office of Vital Statistics to determine if court printing of the marriage license was a viable option. There were several issues that had to be resolved including document format, paper quality, license numbering, audit requirements and required statutory changes. It was also suggested that a pilot court site be selected to work out the implementation details prior to proposing a legislative change. Shawnee County District Court was selected as the pilot site. Representatives from the Office of Judicial Administration, the Office of Vital Statistics and Shawnee County District Court met several times to resolve project issues. On September 1, 1994, Shawnee County District Court began to produce the automated marriage licenses. All of the

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offices involved have been pleased with the results of the pilot project.

For your information, I'd like to summarize briefly how the implementation issues were resolved:

Document Format - It was important to establish a standard format that would be followed by all district courts using the laser printer produced form. Shawnee County District Court staff developed a printer format that will duplicate the pre-printed form provided by the Office of Vital Statistics.

Paper Quality - Following the general requirements of K.S.A. 75-3517, all computer generated marriage licenses will be printed on acid-free paper having a minimum pH of 7.0 to insure archival quality.

License Numbering/Audit Requirements - The pre-printed forms provided by the Office of Vital Statistics included pre-printed license numbers. Courts that computer generate licenses will insure that the license number is automatically printed on the license and the number will include a 2 letter county code to further identify the site where the license was issued. The computer system will be able to generate an audit report of all licenses issues. This process has been approved by the Municipal Accounting Section of the Department of Administration.

Required Statutory Change - The proposed amendment to K.S.A. 1994 Supp. 23-107, HB 2430, was drafted by the Office of Judicial Administration and reviewed/approved by the Office of Vital Statistics.

The proposed legislation will allow courts that already track marriage license information on the computer to eliminate the unnecessary step of re-typing the same information on a manual form. In the future, this project could be expanded to include the electronic transfer of the marriage license index information directly from the courts to the Office of Vital Statistics. This would eliminate duplicate data entry for that office. On behalf of the Office of Judicial Administration, I urge the Committee to favorably pass HB 2430.

State of Kansas

Bill Graves



Governor

Department of Health and Environment
James J. O'Connell, Secretary

Testimony presented to

Senate Judiciary

by

The Kansas Department of Health and Environment

House Bill 2430

Recently the courts approached the Office of Vital Statistics (OVS) for approval to generate the marriage license, including the form, on a computer. OVS and Office of Information Systems staff from KDHE have been working closely with Judicial Administration and court personnel over the past year to develop an automated system that will make the marriage license registration process much more efficient and at the same time more accurate. The only concern that KDHE has with regard to generating the form pertains to format and data specifications to ensure uniformity across the state and across the United States. This proposed bill addresses this concern.

The automated marriage registration system would have a positive effect on the Office of Vital Statistics and would improve the timeliness and accuracy of the data furnished via the marriage license form because of edits, etc.

The amendment made in the House with regard to a municipal judge being authorized to officiate at a marriage ceremony has no impact on OVS.

We support H.B. 2430.

Testimony presented by:

Charlene Satzler, Director
Office of Vital Statistics
Center for Health and Environmental Statistics
March 14, 1995

mission under subsection (c) of K.S.A. 75-6501 as qualified to participate in the state health care benefits program, shall pay the employer's costs for enrolling such employees under the state health care benefits program. In the event a county elects the latter type of coverage, counties shall remit the employer and employee premiums to the Kansas state employees health care commission in accordance with the directions of the commission, and counties may adopt the same type payroll deduction plan for employee premiums as provided in K.S.A. 75-6506. The provisions of K.S.A. 75-6501 to 75-6511, inclusive, shall be applicable to such employees in the same manner as other persons eligible to participate in the state health care benefits program.

History: L. 1977, ch. 110, § 10; L. 1984, ch. 329, § 12; Aug. 1.

20-359. Certain district court officers and employees; fringe benefits; counties' duties. With regard to district court officers and employees whose salary is payable by a county, the county shall serve as fiscal and reporting agent and pay and provide for old age survivors and disability insurance contributions and income tax withholding. All payments made by a county to judicial department employees or on their behalf, shall be deemed to have been paid by the state of Kansas. Counties shall include district court officers and employees whose total salary is payable by the county in any employees' retirement, unemployment security, liability, workmen's compensation and surety bond coverage provided for county employees, and may prorate the costs therefor for district court officers and employees to the annual district court budget if the county has so provided in the district court budget.

History: L. 1977, ch. 110, § 11; L. 1978, ch. 108, § 10; Jan. 1, 1979.

Attorney General's Opinions:

Reimbursement for travel by district court employees. 80-32.

Public employer-employee relations act; application to judiciary and legislature. 87-181.

20-360. Performance of marriage ceremonies; disposition of honorariums. A judge of the district court may retain any honorarium received for such judge's services in performing a marriage ceremony, except when such services are performed between the hours of eight o'clock a.m. and five o'clock p.m. on a day when the court is regularly open for the conduct of business in which event such hon-

orarium shall be turned over to the clerk of the court for disposition pursuant to K.S.A. 20-2801, and any amendments thereto.

History: L. 1977, ch. 112, § 35; L. 1978, ch. 105, § 5; Jan. 1, 1979.

20-361. Compensation of certain district court personnel to be paid by state; pay plan for court reporters. (a) The state shall pay the salaries of all nonjudicial personnel of the district courts of this state, except for personnel enumerated in subsection (b) of K.S.A. 20-162 and amendments thereto, and no county may supplement the compensation of district court personnel paid by the state. For employees of the district court who were employees of such court on December 31, 1978, a full month's proportion of the employee's annual pay shall be paid for the state payroll period ending on January 17, 1979, notwithstanding that such period is shorter than the normal state payroll period; however, when any such employee terminates employment with the court such employee's termination compensation shall be reduced by an amount determined by subtracting the amount of compensation actually earned by such employee for service during the period commencing on January 1, 1979, and ending on January 17, 1979, from the actual amount of compensation received by such employee from the state for the payroll period ending on January 17, 1979, except that if such employee does not receive compensation from the county for time worked during the period commencing with the first day after the end of the last county payroll period which ended prior to January 1, 1979, and ending on December 31, 1978, the amount of the reduction in such employee's termination compensation shall be reduced by the amount of such compensation not received from the county. With regard to judicial and nonjudicial personnel of the district courts whose salary is payable by the state, the state shall provide for unemployment security coverage, employer contributions for retirement, workmen's compensation coverage, health insurance coverage and surety bond coverage.

(b) The supreme court shall establish a formal pay plan for court reporters serving district judges. Within the limits of legislative appropriations therefor, compensation of such court reporters shall be paid by the state in an amount prescribed by the pay plan established by the supreme court and no county may supplement the compensation of such court re-

porters. The plan shall detail each reporters position by classification, pay grade and pay step.

History: L. 1978, ch. 108, § 1; L. 1984, ch. 113, § 1; L. 1986, ch. 115, § 48; Jan. 12, 1987.

Attorney General's Opinions:

Tort claims act; liability of district court clerks for wrongful garnishment. 79-299.

Public employer-employee relations act; application to judiciary and legislature. 87-181.

20-362. Disposition of docket fees. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

(a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:

(1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A. 60-2001 and amendments thereto, during the preceding calendar month;

(2) a sum equal to \$10 for each \$30 docket fee paid pursuant to K.S.A. 61-2501 and amendments thereto; and

(3) a sum equal to \$5 for each \$10 docket fee paid pursuant to K.S.A. 61-2501 or 61-2704, and amendments thereto, during the preceding calendar month.

(b) To the board of trustees of the county law library fund, for deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

(c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to \$1 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170 and amendments thereto during the preceding calendar month for cases filed in the county.

(d) To the state treasurer, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to \$.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.

(e) To the state treasurer, for deposit in the state treasury and credit to the law enforcement training center fund, a sum equal to \$5 for each docket fee paid pursuant to K.S.A.

Senate Judiciary Attachments 14-95



LARRY WELCH
DIRECTOR

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



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY
IN SUPPORT OF HOUSE BILL 2445
MARCH 14, 1995

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation. I appear today on behalf of Director Larry Welch in support of HB 2445. This is a simple bill which brings our state statutes into compliance with a change in the law. The United States government, in what is commonly referred to as Title III, decided to preempt the field of electronic surveillance. Therefore, states may have statutes authorizing electronic surveillance, but those statutes cannot be broader than the federal statute.

Last October congress passed the Digital Telephony Act. As part of the compromise process, it removed an exception that had previously existed for cordless radio telephones to the general rule of requiring warrants for electronic surveillance. HB 2445 merely strikes that exception from our statute so it follows the federal law.

Failure to make these changes runs the risk of a local law enforcement agency not being aware of the federally mandated change and continuing to listen to or record cordless telephone conversations based on our statute. I would be happy to stand for questions.

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 2445

The Kansas County and District Attorneys Association supports HB 2445, which eliminates the exemption of cordless telephones from the requirement of obtaining a court order to eavesdrop. The bill follows changes in federal law, the Digital Telephony Bill of 1994, which under the doctrine of preemption, governs the activity in this area. The federal law was the result of compromise between law enforcement, telecommunications industry, and privacy advocates which gave law enforcement continued access to telephone communications through efforts of the telephone companies that they would not have had as a result of advances in technology.

KCDAA has sent notice to its members of the change in federal law, and how it overrules the Kansas Supreme Court case of State v. Howard, 235 Kan. 236 (1984). This bill is necessary, however, for two reasons:

- a) not all counties are members of KCDAA; and
- b) not all members read our notices.

Senate Judiciary
3-14-95
Attachment 7



LARRY WELCH
DIRECTOR

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



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF HOUSE BILL 2450
MARCH 14, 1995

Mr. Chairman and Members of the Committee:

On behalf of Director Welch and the Kansas Bureau of Investigation, I am pleased to have this opportunity to speak in support of HB 2450. The KBI requested this legislation to address two problems: a procedural problem with how expungement orders are submitted to the FBI, and a problem caused by improved technology in the dissemination of criminal history information.

Sections 1 and 2, amend the two expungement statutes; section 1 dealing with municipal expungements; section 2 dealing with district court expungements. The amendment is necessary because the FBI will not accept expungement orders directly from the courts. The changed language merely provides that the orders of expungement will go first to the KBI, which is the central repository for criminal history record information and then to the FBI to comply with their requirements. As a practical matter this is what is being done now, but only after a delay caused by courts trying to comply with the statute and send the expungement orders directly to the FBI.

The second problem is a little more complex although the solution is to simply strike one sentence from K.S.A. 22-4707(c). As the criminal history data base is computerized and the

technology involved in running criminal history checks evolves, we have run into a problem with existing statutory language that was designed for a slower process of people speaking directly with other people. As a brief background, let me explain that there are two broad groups of criminal history record information. "Conviction data", which refers to non-expunged criminal convictions where a person has been adjudicated beyond a reasonable doubt guilty of a crime; and everything else, such as mere arrests, which are lumped under the title "non-conviction data". Federal and state statutes and regulations allow access to conviction data upon a showing of need. Examples would be schools who wish to 'run' potential teachers, or with Health & Environment who checks potential licensees for daycares to make sure they have not been previously convicted of crimes involving abuse of children.

Non-conviction data, however, is much more strictly controlled and is generally available only for criminal justice purposes. For example, to a court for sentencing or for a law enforcement officer investigating a crime. Also, in this group are convictions which have been expunged. These are even more limited in distribution and can only be made available in those specific instances set out by statute.

When an inquiry comes in from a law enforcement agency for a record check, the officer will be advised as to both conviction and non-conviction data, but not the existence of an expunged record. If a licensing non-criminal justice agency makes inquiry for a record check, they will only be advised of either "no record" or of actual convictions, if they exist. If there are non-conviction or expunged records they will be told there is "no record". Some states such as Florida, have done away with the distinction and make everything but expungements public record.

At this point, approximately 23% of the Kansas criminal history records are

computerized. This leaves us with manpower-intensive hand searches in the cases where a record exists. However, particularly in the licensing area, 90%-95% of the time there is no record and that can be determined almost immediately. Due to the ever increasing demand and problems better left for the Appropriations Committee to address, these labor intensive procedures have resulted in delays in processing record checks. This in turn delays unnecessarily 90%-95% of the decisions being made by licensing and administrative agencies.

We have the capability of setting up remote computer terminals, which have the ability to check by name, date of birth or Social Security Number if a subject exists anywhere in our criminal history records. For most licensing purposes, be they liquor stores or daycare providers, 90% to 95% of those individuals will have no records. These checks can be done almost instantly and the administrative process greatly speeded up as well as the drain on our personnel greatly reduced.

The problem arises in the other 5%-10%, when such a remote terminal is used and a record located. The terminal will not identify the nature of the record, whether it is conviction data, non-conviction data or an expunged record, but only advises the party on the remote terminal that the record request can not be responded to at this time, but will be referred to the records division. A hand search will then be done of the individual identified and if there is conviction data that can be released that will be provided. If there is non-conviction data or expunged records, then it will be reported back to the inquiring agency as there being "no record" for that individual. It does not take a particularly astute person to realize that if they did not get a "no record" on the first try through the remote terminal, then after a review of those records, it is reported back to them there is "no record", that therefore there must be a non-conviction type record in existence.

Thus, by using these remote terminals we are forced, due to the limitations of our records and equipment at this point in time, to confirm the existence of some form of criminal history record information relating to a person, even though the nature and content of that record is not divulged. But, that is only a problem because of the prohibition against confirming the existence of a record without revealing its content contained in subparagraph (c) of 22-4707. A number of administrative agencies devoutly desire remote terminals. Currently, we only have one in operation with Alcohol Beverage Control of the Department of Revenue, which has a criminal justice division, so non-conviction data being divulged is not a problem. However, SRS, Health & Environment, Board of Education, and I am sure others, would like to streamline their licensing procedures and increase the safety of the public by running record checks on their licensees as soon as practical.

Therefore, we are requesting a policy decision be made and the language which prohibits confirming the existence of a record, even without disclosing the content, be removed from K.S.A. 22-4707. I hope I have made myself clear, but it is likely I need to stand for questions.

HB2450.1

House Bill No. 2450
Senate Judiciary Committee
March 14, 1995

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee, we appreciate the opportunity to discuss House Bill No. 2450 which relates to expungements.

Currently the Clerks' of the District Court sends a certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. All pursuant to K.S.A. 12-4516. When the federal bureau of investigation receives this order they return it to the clerk.

Now, the Kansas bureau of investigation has been designated the sole source contributor for expungement information for the federal bureau of investigation.

We support the amendment to K.S.A. 12-4516, Section One (e), page two of the bill, lines 25-27 and Section Two (f) page 6, lines 26-30 which would clarify the correct procedure for the Clerks' of the District Court.

We urge the committee to pass the bill favorably.

Senate Judiciary
3-14-95
Attachment 9