

Approved: May 23, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 14, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Ed Pugh - Excused
Representative Vince Snowbarger - Excused
Representative Doug Spangler - Excused
Representative Sabrina Standifer - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Jim Patton, 22nd Judicial District Court Judge
Jim Clark, Kansas County & District Attorneys Association
Helen Stephens, Kansas Peace Officers Association
Anne Spiess, Kansas Association of Counties
John Kuether, Professor Washburn University
Paul Morrison, Johnson County District Attorney
Elwaine Pomeroy, Kansas Collectors Association
Representative Dennis Wilson
Representative Shari Weber
Bud Grant, Kansas Retail Council
Carolyn Stergon, Johnson County Court

Others attending: See attached list

Hearings on **HB 2752** - court may impose as a condition of probation in felony cases confinement to a county jail for up to 180 days, were opened

Jim Patton, 22nd Judicial District Court Judge, appeared before the committee as a proponent to the bill. He stated that the proposed bill would allow greater local control for sentencing judges to allow greater punishment when determined necessary by the sentencing court and it would provide equal punishment for males and females. (Attachment 1).

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee in support of the bill. He believes that there is a demand for more alternatives, such as, allowing the punishment to be up to 180 days in confinement. (Attachment 2)

Helen Stephens, Kansas Sheriffs Association & Kansas Peace Officers Association, appeared before the committee as an opponent to the bill. She stated that the space for increased inmates in jail and the funding are not available. (Attachment 3)

Anne Spiess, Kansas Association of Counties, appeared before the committee as an opponent to the bill. She addressed the possible increase in property taxes that would occur if the courts are allowed to impose as a condition of probation confinement to a county jail for up to 180 days. (Attachment 4)

Hearings on **HB 2752** were closed.

Hearings on **HB 2743** - amendments to the elective share of surviving spouse statute, were opened.

John Kuether, Professor Washburn University, appeared before the committee as a proponent of the bill. He presented the committee with an explanation of the proposed bill and explained that this bill was mainly clean-up amendments. (Attachment 5)

Hearings on **HB 2743** were closed.

Hearings on **SB 299** - allowing county or district attorney to collect administrative handling cost from maker or drawer of bad checks & **HB 2845** - allowing county or district attorney to collect administrative fee for collection of worthless checks, were opened.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S-Statehouse, at 3:30 p.m. on February 14, 1996.

Paul Morrison, Johnson County District Attorney, appeared before the committee in support of **HB 2845**. He explained that this would allow a fee to be collected from the payee of the worthless check. This would allow the county to recoup some of the cost associated with the prosecuting and collection of the bad check. The monies that would be collected would go into the county general fund. (Attachment 6)

Representative Dennis Wilson, appeared before the committee as a proponent of the bills. He stated that these bills would allow district attorneys to collect on bad checks faster and more efficiently by allowing them to collect a penalty fee from the offender. (Attachment 7)

Representative Shari Weber, appeared before the committee as a proponent to the bills. She stated that many of these checks are written for amounts under \$25, causing more time and money to collect than the original check is worth. (Attachment 8)

Bud Grant, Kansas Retail Council, appeared before the committee in support of the bills. He stated that the civil recovery of worthless checks are working well, but there is the need at times for the district attorneys office to collect. These bills would simply allow the county to recover the cost of their time for collecting the worthless check. (Attachment 9)

Elwaine Pomeroy, Kansas Collectors Association, appeared before the committee in opposition of the bills. He stated that these bills would encourage district attorneys to prosecute persons giving worthless checks. There are currently statutes that allow a method for collection of worthless checks in civil actions. (Attachment 10)

Hearings on **SB 299 & HB 2845** were closed.

HB 2778 - county may be reimbursed for cost of sexual assault evidence collection kits

Representative Miller made a motion to report **HB 2778** favorably for passage. Representative Ott seconded the motion. The motion carried.

HB 2774 - supervision of persons conditionally released after finding of not guilty by reason of mental state

Representative Merritt made a motion to report **HB 2774** favorably for passage. Representative Mays seconded the motion. The motion carried.

HB 2793 - repeal of statute providing for houses to rent to employees of correctional institutions

Representative Miller made a motion to report **HB 2793** favorably for passage and be placed on the consent calendar. Representative Ott seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for February 15, 1996.



STATE OF KANSAS

22nd JUDICIAL DISTRICT
BROWN, DONIPHAN, MARSHALL, NEMAHIA COUNTIES

JAMES A. PATTON
DISTRICT JUDGE, DIV. 1
P.O. BOX 417
HIAWATHA, KS 66434
PHONE: 913-742-3522
FAX: 913-742-3506

MELODEE BRUNA, C.S.R.
OFFICIAL COURT REPORTER
CAROL J. GROTH
ADMINISTRATIVE ASSISTANT

February 14, 1996

Representative Michael O'Neal
Chairman Judiciary Committee
House of Representatives
Capitol Building
Topeka, KS 66612

RE: Amendment to Criminal Code

Dear Representative O'Neil:

After reviewing current criminal statutes, I offer the following proposed Amendment to K.S.A. 21-4610 for the following reasons.

Currently, for Felony cases which have a presumptive probation term, the Court has certain conditions of probation or suspended sentence which it may impose under K.S.A. 21-4610. A copy of that statute is attached to this letter for reference. Under the statute, the Court has the power to impose any conditions of probation deemed proper including, but not limited to those enumerated in Subparagraph 1-13.

I propose that the legislature amend Subparagraph 13 of K.S.A. 21-4610 to read as follows:

"(13) in felony cases, except for violation of K.S.A. 8-1567 and amendments thereto, be confined in a county jail not to exceed 180 days, which need not be served consecutively."

The amendment is proposed to allow greater local control for sentencing judges, to allow greater punishment when determined necessary by the sentencing Court, and to provide equal punishment for males and females.

At the present time, on most non-property crimes and other low level felonies, a sentencing Judge must grant some time of Community Corrections or Probationary release from incarceration

House Judiciary
2-14-96
Attachment 1

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02/15/96 THU 09:53 FAX 9137423506

BROWN CO DIST COURT

--- NM CO

003

Representative Michael O'Neal
RE: Amendment to Criminal Code
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upon sentencing. Under K.S.A. 21-4603d(a)(5), an additional condition of Probation or Community Correction Services can be assignment of a defendant to a Conservation Camp for a period not to exceed 180 days. Generally, admissions requirements to Labette County Conservation Camp are that the defendant be male, not older than 30 and having no prior person felonies or significant history of criminal activity. There is no conservation camp alternative for female defendants. Therefore, the possibilities of imposing sentences are unequal to male and female. If a female defendant were in the same criteria as far as age and prior record were concerned, she cannot be sentenced to any Conservation Camp as a condition of probation. Therefore, the male defendant has the argument of a violation of due process of law and equal protection of law.

The purpose of amending Subparagraph 13 of K.S.A. 21-4610, allows for substantial control at the local level. Very often, a violation of Probation or Community Corrections is in the nature of a technical violation which would not be deemed sufficient to revoke the Probation Status and commit the defendant to the penitentiary. The six (6) month limit would give greater flexibility to the sentencing judge to fashion a period of incarceration immediately after sentence such as 30 days to 60 days, and, then to release the defendant from further incarceration with the potential that minor breaches could be handled by further incarceration in the county jail. This would not place the defendants back in the penitentiary system, unless they committed substantial breaches of the conditions of Probation or Community Correction. This would also allow the sentencing judge a tool to provide greater punishment in the event it was a crime for which the circumstances merited additional jail time, but did not arise to a level of departure criteria from a presumptive probation sentence.

Flexibility in sentencing which is tailored to the needs of the State, the needs of the defendant and with due respect given to the rights of the victim, would be greatly enhanced by having up to 180 days within which to incarcerate the defendant. The flexibility in post-sentence incarceration would better meet the demands of the various jurisdictions for the balancing act between punishment and rehabilitation. Additionally, local control would aid greatly in obtaining payment of restitution, court costs and reimbursement to the Board of Indigent Defense Services before they are released from supervisory control of the Court Services Office and jurisdiction of the Court. Once a defendant leaves direct scrutiny of the sentencing authority, the defendant's motivation to make sure regular payments of court costs, restitution and reimbursement to the Board of Indigent Defense Services wanes. By capturing all

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BROWN CO DIST COURT

NM CO


004

Representative Michael O'Neal
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or the vast majority of these costs, the tax payer does not have to bear such a significant burden.

I recommend that you consider favorably for passage the Amendment to House Bill #2752 as it will further the interest of justice and the citizens of the State of Kansas.

Very truly yours,


James A. Patton
District Judge, Div. 1

JAP/cjg

OFFICERS

Paul J. Morrison, President
Nanette L. Kemmerly-Weber, Vice-President
William E. Kennedy, Sec.-Treasurer
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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 2752

The Kansas County and District Attorneys Association supports the provisions of HB 2752, which gives sentencing judges a more realistic alternative to incarceration by extending the period in which jail time may be imposed as a condition of probation.

Imposition of jail time as a condition of probation was a time-honored tool for sentencing judges as a means to get a defendant's attention without incurring the cost, and losing the flexibility, of sentencing to the custody of the Secretary of Corrections. This tradition came to a halt with the Kansas Supreme Court's decision in State v. Walbridge, 248 Kan. 65 (1990), when the Court held there was no statutory authority for imposing jail as a condition of probation. The Legislature responded by allowing such condition, but limiting it to a period of only 30 days. As a practical matter, this limitation has effectively eliminated the option as thirty days is simply ineffective as a condition. In many instances, a defendant has already done that much time prior to sentencing, and credit for time spent in jail eliminates the option altogether.

The demand for a more realistic time period, like other alternatives to imprisonment, is more critical under the Sentencing Guidelines Act, which reserves prison space to those convicted of violent and drug offenses, leaving most property crime offenses punishable by presumptive probation, even for repeat offenders. It is for this ever-increasing group of offenders that additional sentencing options, like 180 days confinement in the county jail, are needed.

KANSAS SHERIFFS ASSOCIATION
and
KANSAS PEACE OFFICERS ASSOCIATION

House Committee on Judiciary
House Bill #2752

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the Kansas Sheriffs Association and the Kansas Peace Officers Association.

This bill has caused considerable discussion and consternation among members of both organizations. In short, KSA and KPOA support the concept, but in reality the space for increased inmates or for longer incarceration is not there - nor is the funding -- for these reasons, we are opposing HB 2752.

County jail facilities across the state are at their capacity or close to it. Several counties, including Sedgwick, Johnson, Wyandotte, Sumner, Pawnee, and Douglas Counties presently have inmates at other jail facilities around the State. Stafford County has no jail so theirs are sent to Barton or Pratt County. Most other facilities of any size are near or at full capacity with their own inmates or "visitors". Saline County presently has inmates from Douglas, Wyandotte, and Johnson plus a few federal inmates. Same with Brown County. Barton County has inmates from Sedgwick, Johnson, Sumner, Pawnee, Stafford, plus their own. Reno is full -- with their own. Lyon County has a contract to take Johnson County inmates and is the only county I've talked with that has available space.

Counties receiving inmates from other jurisdictions are reimbursed for use of their facilities, something I cannot say is always being done if they house inmates sentenced per the sentencing guidelines. As you know, county jails are to be reimbursed for felony inmates sentenced per the guidelines. In past years, the legislature has not fully funded the jail reimbursement, so the funds were pro-rated - the paperwork involved for local units does keep some from applying for these funds.

In conclusion, for reasons of space and funding, we must ask that you do not pass HB 2752.

Thank you. I will stand for questions.

Peterson Public Affairs Group

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Topeka, KS 66604

phone 913-233-7050
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TO: House Judiciary Committee
Rep. Mike O'Neal, Chairman

FROM: Anne Spiess

DATE: Feb. 13, 1996

RE: HB 2752

The Kansas Association of Counties (KAC) and the Kansas County Commissioners Association (KCCA) are opposed to HB 2752. For a number of years we have appeared on this issue in opposition and continue to have the same concerns with the proposal.

The main concern is, of course, the increase in property taxes that would occur if the courts are allowed to impose as a condition of probation in felony cases confinement to a county jail for up to 180 days. Another concern is available bed space. Many counties have just built or are in the process of building new jails, so if this bill were to pass, these jails would already be inadequate.

We thank the Committee for the consideration of our concerns and urge that this bill not be passed. The KAC and the KCCA will resist having the local property taxpayer become the solution for the state's prison problems.

House Judiciary
2-14-96
Attachment 4

HOUSE JUDICIARY COMMITTEE
TESTIMONY OF JOHN KUETHER
HOUSE BILL ²⁷⁴³~~2473~~

February 14, 1996

K.S.A. 59-6a201(b)

(b) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants ~~unless there is proof of some other proportional ownership, legal or equitable.~~

Comment

The new language allows a rebuttal of the presumption of an immediate gift of a prorated share. It conforms the section to Kansas property law generally, as was explained by the Kansas Supreme Court in Walnut Valley State Bank and Trust Co. v. Stovall, 223 Kan. 459, 574 P.2d 1382 (1978).

K.S.A. 59-6a204

59-6a204. Decedent's net probate estate. The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead~~[.] or homestead allowance~~, family allowances and enforceable demands.

Comment

The amendment makes it clear that the homestead allowance, as well as the value of the homestead is not part of the augmented estate. Homestead is in addition to the elective share amount under both the old and the new of the elective share calculations. When the act was passed in 1994, K.S.A. 59-6a215 provided for either a homestead or for a homestead allowance. We neglected to mention both possibilities in this provision.

K.S.A. 59-6a205(a)(2)

(2) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent that such fractional interest passed by right of survivorship at the decedent's death to the surviving joint tenant other ~~[that]~~ than the decedent's surviving spouse.

Comment

The change merely corrects a typographical error by substituting "than" for "that."

K.S.A. 59-6a207(a)(1)(C)

(C) property that passed to the surviving spouse by reason of the decedent's death, but not including~~],~~ the spouse's right to homestead ~~or homestead allowance~~, family allowance, or payments under the federal social security system; and

Comment

As in the amendment to K.S.A 59-6a204, this make it clear that the elective share is in addition to the homestead or homestead allowances, and the statutory allowances. We neglected to mention the possibility of both types of possibilities in the 1994 act.

K.S.A. 59-6a215

59-6a215. Homestead allowance. (a) ~~[Where there is no homestead or the homestead is valued at less than \$25,000 a decedent's]~~ A surviving spouse is entitled to the homestead, or in lieu thereof the surviving spouse may elect to receive a homestead allowance ~~[not to exceed]~~ of \$25,000. ~~[If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$25,000 divided by the number of minor and dependent children of the decedent.]~~ The homestead or homestead allowance is exempt from and has priority over all demands against the estate. The homestead or homestead allowance is in addition to any share passing to the surviving spouse ~~[or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share]~~ by way of the elective share.

Comment

The amendments clarify that the surviving spouse is entitled to the homestead or a homestead allowance of \$25,000, at the surviving spouse's election.

Language relating to minor children in lines 3, 4, 5, 8, and 9 is stricken because only a surviving spouse has the right of election. The provisions for the minor children was accidentally pulled into the section from the intestacy homestead provisions.

K.S.A. 59-505

59-505. Same; half of realty to surviving spouse. Also, the surviving spouse shall be entitled to receive one-half of all real estate of which the decedent at any time during the marriage was seized or possessed and to the disposition whereof the survivor shall not have consented in writing, or by a will, or by an election as provided by law to take under a will, except such real estate as has been sold on execution or judicial sale, or taken by other legal proceeding; Provided, That the surviving spouse shall not be entitled to any interest under the provisions of this section in any real estate of which such decedent in his or her lifetime made a conveyance, when such spouse at the time of the conveyance was not a resident of this state and never had been during the existence of the marriage relation ~~provided further, the spouse's entitlement under this section shall be included as part of the surviving spouse's property under K.S.A. 59-6a207.~~

Comment

When the elective share was adopted, K.S.A. 59-505 was retained allowing the surviving spouse to receive one-half of any conveyance of realty during the marriage to which the surviving spouse did not consent. Because the surviving spouse has this protection, it is fair to account for any receipts under K.S.A. 59-505 in computing the elective share.

K.S.A. 59-2233

59-2233. ~~[Election to take under will or by intestate succession]~~ Notice of Right to Elective Share. ~~[Except where the court has previously determined the validity and binding consent to a will, when a will is admitted to probate]~~ Upon the appointment and qualification of

any administrator or executor, [the filing of a petition to determine descent] the filing of a petition for an order refusing to grant letters of administration or the filing of an affidavit pursuant to K.S.A. 59-618a, the court shall forthwith cause a copy of the will, if any, transmit to the surviving spouse a certified copy thereof, together with a notice statement to the surviving spouse stating: "Under K.S.A. 59-6a201 through 59-6a217, you might have [valuable rights to take a share of conveyances] a right to take a share of property owned by the decedent at death, in whole or in part, and of transfers of property made by the decedent prior to death," to be mailed to the surviving spouse. Such notice shall be mailed within 10 days of the qualification of the administrator or executor, [the filing of a petition to determine descent,] the filing of a petition for an order refusing to grant letters of administration or the filing of an affidavit pursuant to K.S.A. 59-618a. Proof thereof shall be by affidavit filed with the court. If such spouse has consented to the will, as provided by law, such consent shall control; otherwise such spouse shall be deemed to have elected to take under the testator's will unless such spouse shall have filed in the district court, within six months after the notice of the right to the elective share, an instrument in writing to take by the laws of intestate succession. If such spouse files an election before the inventory and valuation of the estate is filed, the election shall be set aside upon petition of the spouse made within 30 days after the filing of the inventory and valuation. For good cause shown, the court may permit an election within such further time as the court may determine, if a petition therefor is made within such period of six months.]

Comment

This section was amended to provide a more accurate description of the spouse's rights to transfers made by the decedent.

The reference to notice on the filing of a petition to determine descent was stricken since that would cause great uncertainty by potentially allowing the spouse to elect years after the decedent's death. K.S.A. 59-6a211 restricts the right to elect to six months following the date of the decedent's death, as did prior law.

Other language clarifies the procedure for notice.

The end of the old statute was stricken because the committee found these provisions unnecessary because they overlapped with K.S.A. 59-6a211.

OFFICE OF DISTRICT ATTORNEY
PAUL J. MORRISON, DISTRICT ATTORNEY

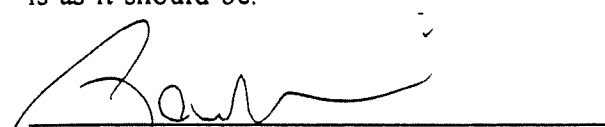
COMMENTS

RE: House Bill 2845

February 14, 1996

Check fraud is a serious criminal issue in this country. In a county the size of ours, thousands of dollars in bad checks are passed to merchants every day. It was recently estimated by the Jackson County, Missouri prosecutor's office that approximately four billion dollars in bad checks are written in Jackson County each year. The figure in Johnson County is probably not far from that.

The prosecutor's office is oftentimes the only viable resource for a merchant to use to prosecute and collect bad checks. Unfortunately, due to budgetary constraints, we're only able to scratch the surface of bad check prosecution. For example, in January of this year we took in 493 checks turned over to our office for prosecution. That is probably much less than one percent of the bad checks written in this county in that period of time. The administrative fee allowed for in House Bill 2845 will help counties recoup the costs of bad check prosecution and deploy more resources to that end. The fee will be paid by the passer of the bad check. This is as it should be.



Paul J. Morrison, District Attorney
Johnson County, Kansas

A:\LEGISLATION\HB2845.WP

House Judiciary
2-14-96
Attachment 6

KITING IN KANSAS

Bad-check writers flock to Johnson County

Johnson County has gained a reputation for being a good place for business, but at least one booming profession isn't giving merchants the type of boost they're seeking.

An 18-month-old crackdown on bad-check writers in Kansas City, Mo., appears to be sending more kilters to Johnson County, where state laws make prosecution more difficult.

"That's possible because bad-check writers are habitual communicators," said Carolyn Sturgeon, who heads the Johnson County district attorney's bad-check division. "They know the stores who ask for good I.D. and the ones who don't. They also know the ones who turn cases over to prosecutors and the ones that don't."

Seeking payment for bad checks in Kansas is more time-consuming and cost-prohibitive than in Missouri. As a result, fewer victims seek to recover losses and end up writing them off.

John Sullivan, director of the Jackson County prosecutor's bad-check unit, said Wal-Mart has been a prime beneficiary of the crackdown so far, collecting 20 percent more payment on bad checks.

On this side of the state line, the news isn't as good. Mary Maule, personnel manager with the Hy-Vee supermarket in Leawood, said her store is receiving about 20 percent more bad checks than it did a couple years ago. She attributed the increase to kilters scared away from Kansas City, Mo.

Hy-Vee loses between \$3,000 and \$7,000 a month on bad checks, Ms. Maule said. It quit having banks run bad checks through deposit twice to

reduce turnaround time and give thieves less time to disappear.

When Dennis Meiners opened his Apple Market in Overland Park last March, he immediately began having a problem with bad checks, many coming from Missouri. Shortly thereafter, he began issuing check-cashing cards and running first-time check cashers through the Telecheck computer. Telecheck charges 2 percent of the cost of a check, effectively taking away Meiners' small margin of profit on sales.

"People look for new business openings and commit fraud in them," said Mr. Meiners, whose family also operates four grocery stores in Missouri.

small percentage."

"We barely scratch the surface," he said.

Mr. Sullivan estimated that more than \$4 billion in bad checks are written in Jackson County each year.

However, Missouri law allows units like Mr. Sullivan's to seek restitution more aggressively and to make bad-check writers pay collection fees. For recovering a check worth \$9.99 or less, the prosecutor's office charges \$5. For checks up to \$99.99, the fee is \$10. For checks of \$100 and over, kilters are charged \$25.

Operating this way, which is basically like a collection agency, makes prosecuting more cost-efficient and saves victims the trouble and expense of hiring a private collection agency.

In the last 18 months, \$1,144,735 has been collected from bad-check writers in Jackson County, Mr. Sullivan said.

"Of all the counties in Missouri, we're the most active in collecting bad

something done."

There are several other aspects of Kansas law that make life easier on kilters and tougher on merchants.

Once a bad check is discovered, a victim must go through a series of steps to prosecute. The first is sending a certified, restricted-delivery letter to the kilter requesting payment. This costs \$4.95, plus standard postage. Missouri has no such requirement, allowing businesses to go straight to the prosecutor.

In addition, Kansas businesses can't charge bad-check writers more than \$10 for each check. Banks on both sides of the state line charge merchants a fee — usually between \$2 and \$6 — to process a bad check.

Factor in the time involved for a merchant to prepare to prosecute, and it's easy to see why many don't bother to seek payment.

"You have to ask if it's worthwhile," Ms. Sturgeon said. "Are the time and money worth it?"

One supermarket, Cherokee Sun Fresh in Overland Park, has decided it is. Jerry Peck, who is retired from full-time work, now spends 30 hours a week collecting bad checks for the grocery store.

Mr. Peck estimated that the store gets \$5,000 a month in bad checks, \$4,000 of which he is able to recover by making phone calls and writing letters.

Many businesses have outside collection services, a move that has greatly reduced hassles for entrepreneurs like Mike Heberger, owner of Mike's Olathe Liquor.

Mr. Heberger estimated that he takes bad checks worth \$1,200 a year. He pays \$330 a year to Checkcare Systems of Independence, Mo., which guarantees him the face value of the checks. Checkcare then attempts to collect and charges the bad-check writer a service fee.

—By Tom Perrin, staff writer

"You have to ask yourself if it's worthwhile.
Are the time and money worth it?"

— Carolyn Sturgeon, head of the district attorney's bad-check unit

"When I saw what was happening, I had to create a card system. I had Blue Springs and Peculiar, Mo., flocking in until I put in a restrictive policy. They were everyday customers."

In 1994, the Johnson County district attorney's office processed 5,365 bad checks worth \$671,322. Of that, the bad-check division collected \$215,437. More money was collected from cases that actually went to court, but those figures were not available.

Ms. Sturgeon wouldn't guess the total number of bad checks written in Johnson County in 1994, but District Attorney Paul Morrison said the amount processed represented "a very

checks," Mr. Sullivan said. "Nobody comes close. The only operation in the nation that comes close is the one in San Diego."

Kansas law prohibits prosecutors from operating this way. A bill that would have given prosecutors more latitude passed the Kansas Senate last year, but it died in the House.

Many prosecutors across the state opposed the bill, but Mr. Morrison supported it wholeheartedly.

"The bottom line is that it provides a service for people who are victimized," he said. "It would allow us provide more services, and that's why we're here. I hope someday they'll get

H.B. 2845

To: House Judiciary Committee Chairman Mike O'neal and other distinguished members

Fr: Representative Dennis Wilson, co-sponsor of H.B. 2845

Re: Testimony concerning H. B. 2845 (a bill concerning prosecution of worthless check writing)

Dear Chairmen O'neal:

Feb. 7, '96

We all know that defaulted checks are a risk of business and a major problem for merchants everywhere and, unfortunately, even in the state of Kansas. However, the real impediment for merchants is the process of trying to collect on bad checks efficiently and profitably.

Kansas merchants receive thousands of bad checks a year. They have basically two options in attempting to collect their money. First, since it is an illegal action (no matter how small the amount) , they can leave it with the county D. A.'s office to pressure or prosecute the offender. Although it usually takes very little pressure to collect from most offenders, there are so many cases that the D.A.'s office becomes backlogged and can't always handle them promptly because of their limited resources.

Secondly, merchants may go to a private collection firm which has the necessary resources. However, the force and influence of these private attorneys isn't the same as with a District Attorney, so often times they are not be able to collect the whole amount, much less enough extra to cover their fees.

This bill would allow and encourage county D. A.'s to collect on bad checks faster and more efficiently by allowing them to collect a penalty fee from the offender. This fee would allow them to hire the necessary staff. This is a legitimate activity for the public's attorney to be engaged in and so they ought to be allowed to do it as well as possible

This bill enjoys a lot of support. It was passed by the senate two years ago, although it died in the House. Both the K. C. C. I. and the N. F. I. B. support this measure as well as many legislators and county D. A.'s. Therefore, I hope you will look favorably on H.B. 2845 and pass it out of committee unamended.

THE KANSAS HOUSE

REPRESENTATIVE, 68TH DISTRICT
CENTRAL & SE DICKINSON, MORRIS &
NORTHERN LYON COUNTIES

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1-800-432-3924

Representative Shari Weber

Testimony for House Judiciary Committee - Hearing: February 14, 1996
Re: H. B. # 2845 - an act concerning crimes and punishment;
relating to giving a worthless check; administrative handling

Thank you for the opportunity to appear before the Committee today,
as a proponent of HB#2845.

In the 68th District I have had feedback from business owners in
regard to the growing problem of worthless checks issued to them for
goods and services. This 'cost of doing business' is not only a monetary
nuisance, but also takes valuable time to process and pursue prosecution.

I have also visited with members of the Eighth Judicial District about
the dramatic increase of worthless checks written and then prosecuted in
court. Many of these checks are written for amounts under \$25.00,
causing more time and money to collect than the original document was
worth. These complaints prompt me to advocate for the components of
HB#2845.

This bill will allow each county or district attorney who takes any
action under the provisions of this bill to collect from the payee in such
court action an administrative handling cost, thereby covering the costs
of additional staff and expenses incurred.

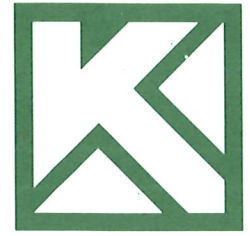
I ask that you give HB# 2845 your favorable consideration. Thank you.

A handwritten signature in cursive script that reads "Shari Weber".

House Judiciary
2-14-96
Attachment 8

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732
HB 2845

February 14, 1996

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Judiciary Committee

by
Bud Grant
Executive Director
Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Bud Grant and I appreciate the opportunity to appear before you today in support of HB 2845.

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.

Over the last ten years, the Kansas Legislature has been very responsive to the requests from the business community for assistance in addressing the problems of worthless checks. The reports I receive indicate that the civil recovery alternative is working well. At the same time, there remain instances where the need for the county or district attorney to intercede exists.

House Judiciary
2-14-96
Attachment 9

County and district attorneys are not debt collectors. Yet, giving a worthless check is a crime and the involvement of these offices in the process can be persuasive and conclusive. This bill offers some small reimbursement for the time expended by a city or county attorney, and places the cost of that reimbursement where it should be...with the writer of the worthless check.

On behalf of the Kansas Retail Council, I urge the Committee to support passage of HB 2845. I would be pleased to attempt to answer any questions.

REMARKS CONCERNING SENATE BILL 299 AND HOUSE BILL 2845
HOUSE JUDICIARY COMMITTEE
FEBRUARY 14, 1996

Thank you for giving me the opportunity to appear before your committee on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

We have concerns about these bills. These bills would encourage county and district attorneys to prosecute persons who give worthless checks. Criminal prosecutions always raise the possibility, however remote, of possible incarceration of the offender. Is it good public policy to allocate scarce jail or prison cells for this type of criminal offender, rather than for offenders who commit violent actions?

Why should prosecution for one particular crime result in administrative handling costs being collected, when prosecutions for other crimes do not result in the collection of administrative handling costs? Why should the legislature give any encouragement to the filing of criminal prosecutions for the giving of worthless checks when no such encouragement is given for the filing of prosecutions of any other crime?

Allowing county and district attorneys to collect administrative fees for the prosecution of worthless check cases would be an additional funding source so that more personnel can be added to the staffs of prosecutors to deal with worthless check cases. This type of legislation is designed to increase activity on the part of prosecutors to have criminal actions involving worthless checks.

It is especially unnecessary to encourage criminal prosecution for the giving of worthless checks because there are statutes presently on the books providing a method for the collection of worthless checks in civil actions, as

contrasted to criminal actions. For your information I am attaching copies of K.S.A. 1995 Supp. 60-2610 and K.S.A. 60-2611. As you can see from reading these statutes, a person who gives a worthless check is subject to considerable civil liability including: court costs; the costs of collection; reasonable attorney fees; plus the greater of either \$100.00 or damages equal to three times the amount of the check, but not to exceed \$500.00 more than the amount of the check.

Instead of encouraging criminal prosecutions for the giving of worthless checks, the legislature should encourage the pursuit of the civil liability method of dealing with worthless checks. Prosecutors should spend their limited time and energies on more serious crimes.

The civil liability approach is better designed for making the victims of this crime whole. A person who has received a worthless check wants the money the check was written for, and is far more interested in getting the money than seeing the writer of the check convicted of a crime. Criminal prosecution gets the money back to the victim only through the cumbersome process of restitution. Even where diversion is granted, court service officers would be involved in seeing the money was paid to the victim, and those court service officers are already overburdened. It is much better to leave the worthless check cases to the private sector, rather than encouraging prosecutors to become involved.

It is also interesting to compare the 1995 bill, Senate Bill 299, which placed a cap of \$10.00 on the administrative fee which could be assessed by the prosecutor, with the 1996 bill, House Bill 2845, which permits administrative fees of us to \$25.00. Is this an indication of future requested increases in fees?

Elwaine F. Pomeroy
For Kansas Credit Attorneys Association
And Kansas Collectors Association, Inc.

60-2610. Civil liability for worthless check. (a) If a person gives a worthless check, as defined by subsection (g), the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the costs of restricted mail and the service charge and the costs of collection, including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following:

(1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than \$500; or

(2) \$100.

The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check.

(b) The amounts specified by subsection (a) shall be recoverable in a civil action brought by or on behalf of the holder of the check only if: (1) Not less than 14 days before filing the action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check, the incurred service charge and the costs of restricted mail; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded. The written demand shall be sent by restricted mail, as defined by subsection (g), to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer and shall include notice that, if the money is not paid within 14 days, triple damages in addition to an amount of money equal to the sum of the amount of the check, the incurred court costs, service charge, costs of restricted mail and the costs of collection including but not limited to reasonable attorney fees unless the court otherwise orders, may be incurred by the maker or drawer of the check.

(c) Subsequent to the filing of an action under this section but prior to the hearing of the court, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal

to the sum of the amount of the check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check.

(d) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check.

(e) Any amount previously paid as restitution or reparations to the holder of the check by its maker or drawer shall be credited against the amount for which the maker or drawer is liable under subsection (a).

(f) Conviction of giving a worthless check or habitually giving a worthless check, as defined by K.S.A. 21-3707 and 21-3708 and amendments thereto, shall not be a prerequisite or bar to recovery pursuant to this section.

(g) As used in this section:

(1) "Giving a worthless check" means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent:

(A) With intent to defraud or in payment for a preexisting debt; and

(B) which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(2) "Restricted mail" means mail which carries on its face the endorsements "restricted mail" and "deliver to addressee only."

(3) "Service charge" means \$10, or subject to limitations contained in this subsection, if a larger amount is posted conspicuously, the larger amount. In no event shall the amount of such insufficient check service charge exceed \$30.

60-2611. Civil action to collect on check or order; reasonable attorney fees assessed as costs. In any civil action to enforce payment of or to collect upon a check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent, payment upon which such instrument has been refused because of insufficient funds or no account, the party prevailing on such cause of action shall be awarded reasonable attorney fees, such fees to be assessed by the court as costs against the losing party. The fees shall not be allowed unless the plaintiff offers proof during the trial of such action that prior to the filing of the petition in the action demand for payment of the check, order or draft had been made upon the defendant by registered mail not less than 14 days prior to the filing of such suit.