

Approved: Mar 10, 1997
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on March 6, 1997 in Room 519-S of the Capitol.

All members were present except: Cliff Franklin, Excused

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

Conferees appearing before the committee: Dale Finger, Associate Director, Kansas Bureau of Investigation
Representative Jim Garner
Steve Bukaty, Attorney, Kansas State Lodge of the Fraternal Order of Police
C. J. Bush, Kansas State Lodge, Fraternal Order of Police
Pete Fogerty, Kansas City Police Officer
R. S. "Steve" McKinzie, Kansas State Troopers Association
Scott Stone, Executive Director and Chief Counsel, KAPE
Wendy McFarland, ACLU
Don Moler, City of Topeka

Others attending: See attached list

The Chairman opened the hearing on **HB 2484 - KBI Authorizing Acceptance of Gifts and Grants**

Mary Torrence, Revisor of Statutes, gave a briefing stating the bill was requested by the Kansas Bureau of Investigation and provides for their receiving grants or gifts from any person, firm, association or corporation or the federal government and may enter into contracts or other transactions with any federal agency in connection therewith. The Bureau has received some money and was told that the Bureau did not have the authority to accept that money. The bill also provides that members of the Bureau can do background investigations at the request of the Governor and under the direction of the Director of the Bureau.

Dale Finger, Associate Director, Kansas Bureau of Investigation, a proponent for **HB 2484**, stated this bill made two changes in the statute that spells out the authority and responsibilities of the KBI. (1) Paragraph (c) grants the KBI general authority to receive and accept grants and gifts. This came up in conversation with the Department of Administration and they noted that unlike numerous other state agencies, the KBI did not have general grant authority, thus requiring gubernatorial or legislative action where a fund can be created and expenditures made from a grant. The KBI has aggressively pursued federal grants in carrying out its duties and this amendment would simplify the process and bring the KBI in line with other state agencies who are regularly involved in the acquisition and administration of federal grants. (2) Paragraph (d) addresses a long-needed clarification in the authority of the KBI. The KBI has conducted background investigations on numerous appointments through the Governor's Office for many years. However, nowhere in the law does it explicitly provide the authority to do so and particularly the authority to share with the Governor's Office criminal history record information. Paragraph (d) clarifies that authority to specifically authorize the sharing of criminal history information with the Governor's Office.

The KBI does have a balloon amendment for specific language for fingerprint background checks which is needed. (Attachment 1)

The Chairman closed the hearing on **HB 2484**.

The Chairman opened the hearing on **HB 2432 - Law Enforcement Officers Bill of Rights**.

Mary Torrence, Revisor of Statutes, gave a briefing on **HB 2432** stating this bill is a law enforcement officers' bill of rights. It was based on federal legislation from 1996 except for the provisions relating to hearings were not set out in the federal legislation because they left that up to the option of the state. The bill sets out certain rights of law enforcement officers who are subject to disciplinary action and those rights

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include notice of the investigation before the officer is interviewed and requirement of signed detailed statement by the complainant if the proceedings are initiated by a complaint. A requirement is that the investigation begin within 15 days after receipt of a complaint from outside the law enforcement agency. A requirement that the officer be given their findings and recommendations after the investigation is complete. There are certain requirements set out questioning of the law enforcement officer who is being investigated and this includes that the questioning has to be at reasonable hours and reasonable periods of time and the questioning has to take place in the office of the people conducting the investigation unless the officer requests that it be conducted elsewhere. The people at the questioning have to give notice of their name, rank and command. All questions that are asked must be asked by one person. The law enforcement officer being investigated must be informed of the nature of the investigation and threats of harassment or promises of rewards are prohibited.

Representative Jim D. Garner, testified in support of **HB 2432**, as it provides basic due process rights for police officers facing serious disciplinary action. This bill is based on, and is almost identical to the legislation proposed at the federal level. (Attachment 2)

Steve A. J. Bukaty, State Lodge Attorney for the Kansas State Lodge of the Fraternal Order of Police, testified as a proponent for **HB 2432**, stating numerous officers were not protected by collective bargaining agreements which contain the type of protections contained in this bill. Officers have suffered substantial discipline, and even loss of their employment, when there was little or no basis for the disciplinary action taken, because they had no right to a fair and impartial hearing or the type of investigation envisioned by the Act. (Attachment 3)

C. J. Bush, Kansas State Lodge, Fraternal Order of Police, testified as a proponent for **HB 2432**, stating law enforcement officers have one of the toughest jobs in the state. The legal protections afforded all citizens, including suspects and convicted criminals, from illegal and improper police procedures are provided by the U.S. Constitution and applicable Federal as well as state statutes. Rank-and-file police officers are sometimes subjected to abusive and improper procedures and conduct on the part of the very departments or agencies they serve. An officer's reputation, once tarnished by accusation, is almost impossible to restore. Five states currently have compulsory collective bargaining that address the issues of concern covered in the "Law Enforcement Officers' Bill of Rights." Eighteen states have been identified as having "Law Enforcement Officers' Bill of Rights" statutes which vary in scope. The Fraternal Order of Police strongly supports a "bill of rights" for law enforcement officers who are, in a surprising number of jurisdiction, denied their due process rights by police administrators and management in non criminal proceedings. (Attachment 4)

Pete Fogerty, Kansas City Police Officer, testified as a proponent for **HB 2432**, a 20 year patrolman with the Kansas City, Kansas Police Department, and in 1975 the members went on strike and as a result had a collective bargaining agreement in place. One of the provisions in this bill is in the collective bargaining agreement. Over the years there has been some modifications and fine tuning. These points in this bill are in our agreement just signed last month. The police officers need protection. (Attachment 5)

R. S. "Steve" McKinzie, Master Trooper with the Kansas Highway Patrol, testified in support of **HB 2432**, stating police officers, sheriffs deputies and state troopers were the public in a unique way. Every step of their service to the public can be scrutinized to a much higher degree than the average public servant. Protections are needed for these officers. (Attachment 6)

Scott Stone, Executive Director and Chief Counsel, Kansas Association of Public Employees, testified in support of **HB 2432**, stating KAPE represents nearly all state law enforcement, except for the Troopers, and also represents the Geary County Sheriff's Department. State employees already have most of the rights contained in this bill, but most city and county police have no such guarantees. This bill provided the same due process rights to all Kansas law enforcement officers. KAPE substantially concurs with the testimony given by the conferee representing the FOP and the Trooper's Association. The right to due process is a basic constitutional issue that should always be furthered and protected. The local law enforcement community has absolutely no protection from arbitrary management decisions. This bill provides universal guarantees to the employee and to the public, that police officers will receive due process and be treated fairly in disciplinary matters. (Attachment 7)

Wendy McFarland, American Civil Liberties Union, testified in support of **HB 2432**, stating this bill would create law that would protect a police officers rights. While supporting the stated purpose of the bill, two amendments are requested on page 2, lines 19 and 28. (Attachment 8)

Don Moler, General Counsel, League of Kansas Municipalities, testified opposing **HB 2432**, stating the League policy statement, found at section C-10 states: We oppose the enactment of legislation at the federal or state level granting special employment rights to police officers, commonly known as the 'police officers' bill

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of rights." Essentially **HB 2432** grants all police officers and sheriff deputies extensive additional rights which would make their discipline or discharge virtually impossible. A long laundry list of "minimum standards" would need to be met whenever a law enforcement officer is the subject of an investigation which could lead to disciplinary action. (Attachment 9)

The following testimony was distributed: Opponents: Sheriff Larry D. Bergstrom, Cloud County Sheriff's Department (Attachment 10); Police Chief Mike Watson, Wichita (Attachment 11); Larry Stevens, City Manager, City of Pittsburg (Attachment 12); Gary Meagher, City Administrator, City of Lindsborg, (Attachment 13); Steve Cox, Chief of Police, Leawood, Kansas and Chair, Legislative Committee, Kansas Association of Chiefs of Police (Attachment 14); Lee Doehring, Chief of Police, Leavenworth (Attachment 15); John L. Foster, Undersheriff, Johnson County Sheriff's Department (Attachment 16); and Jeffrey D. Herrman, Chief of Police, Ottawa (Attachment 17).

The meeting adjourned at 3:15 p.m.

The next meeting is scheduled for March 10, 1997.



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
DALE FINGER, ASSOCIATE DIRECTOR
KANSAS BUREAU OF INVESTIGATION
IN SUPPORT OF HOUSE BILL 2484
MARCH 6, 1997

Mr. Chairman and Members of the Committee:

I am Dale Finger, Associate Director of the Kansas Bureau of Investigation (KBI) and appear today in support of HB 2484. I would first like to thank Budget Director Gloria Timmer for her division's assistance in getting this legislation introduced. HB 2484 makes two changes in the statute that spells out the authority and responsibilities of the KBI.

Paragraph (c) grants the KBI general authority to receive and accept grants and gifts. This came up in conversation with the Department of Administration and they noted that unlike numerous other state agencies, the KBI did not have general grant authority, thus requiring gubernatorial or legislative action where a fund can be created and expenditures made from a grant. The KBI has aggressively pursued federal grants in carrying out its duties and this amendment would simplify the process and bring us in line with other state agencies who are regularly involved in the acquisition and administration of federal grants.

Paragraph (d) addresses a long-needed clarification in the authority of the KBI. The KBI has conducted background investigations on numerous appointments through the Governor's Office for many years. However, nowhere in the law does it explicitly provide the authority to do so and particularly the authority to share with the Governor's Office criminal history record

information. Paragraph (d) clarifies that authority to specifically authorize the sharing of criminal history information with the Governor's Office.

Attached to this testimony is a balloon amendment. After the initial draft of this amendment was created, we noted that for whole fingerprint background checks, the Federal Bureau of Investigation requires very specific language. This mandated language is included in the balloon amendment which I would request the committee adopt.

I want to thank this committee for addressing these problems and again acknowledge the assistance of the Department of Administration in general, and Budget Director Timmer in particular, in getting this legislation introduced so quickly once the problem was identified. I would be happy to stand for questions.

HOUSE BILL No. 2484

By Committee on Appropriations

2-18

9 AN ACT concerning the Kansas bureau of investigation; relating to the
10 powers, duties and functions thereof; authorizing acceptance of gifts
11 and grants; background investigations; amending K.S.A. 75-712 and
12 repealing the existing section.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 75-712 is hereby amended to read as follows: 75-
16 712. (a) It shall be the duty of the members of the bureau to make full
17 and complete investigations at the direction of the attorney general. Each
18 member of the bureau shall possess all powers and privileges which are
19 now or may be hereafter given to the sheriffs of the state of Kansas.

20 (b) The bureau shall be vested with the duty of acquiring, collecting,
21 ~~classifying, and preserving~~ acquire, collect, classify and preserve criminal
22 identification and other crime records, and the exchanging of said may
23 exchange such criminal identification records with the duly authorized
24 officials of governmental agencies, of states, cities and penal institutions.

25 (c) For purposes of carrying out the powers and duties of the bureau,
26 the director may request and accept grants or gifts from any person, firm,
27 association or corporation or from the federal government or any federal
28 agency and may enter into contracts or other transactions with any fed-
29 eral agency in connection therewith.

30 (d) Members of the bureau, at the direction of the director, may con-
31 duct background investigations at the request of the governor of Kansas.
32 ~~Reports of such background investigations, including criminal history, ac-~~
33 ~~cess information and intelligence information shall be made to the gov-~~
34 ~~ernor.~~

35 (e) Reports of all investigations made by the members of the bureau
36 shall be made to the attorney general of the state of Kansas.

37 Sec. 2. K.S.A. 75-712 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its
39 publication in the Kansas register.

appointee

← The bureau shall require the applicant to be fingerprinted and the fingerprints shall be submitted to the bureau and to the federal bureau of investigation for the identification of the applicant and to obtain criminal history record information including arrest and nonconviction data. Background reports may include criminal intelligence information and information relating to criminal and background investigations. Information received pursuant to this section shall be confidential and shall not be disclosed except to the Governor or members of the govern staff necessary to determine qualifications.

1-3

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TOPEKA

HOUSE OF
 REPRESENTATIVES

TESTIMONY IN SUPPORT OF HB 2432

Law Enforcement Bill of Rights

6 March, 1997

House Committee on Federal and State Affairs

COMMITTEE ASSIGNMENTS
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 INSURANCE
 COUNCIL ON THE FUTURE OF
 POSTSECONDARY EDUCATION
 KANSAS JUDICIAL COUNCIL
 CRIMINAL LAW ADVISORY COMMITTEE
 NCSL ASSEMBLY ON FEDERAL ISSUES—
 LAW AND JUSTICE COMMITTEE
 EX OFFICIO: KANSAS SENTENCING
 COMMISSION

Mr Chairman and Members of the Committee:

Thank you for holding hearings on HB 2432, and I appreciate this opportunity to testify in support of this bill. This bill is known as the "Law Enforcement Officers' Bill of Rights." It would provide basic due process rights for police officers facing serious disciplinary action.

This matter was brought to my attention a number of years ago by some police officers. At the time, there was a bill in the U.S. Senate to provide those due process protections. To date, no action has been taken at the federal level. Therefore, I, along with Representative Howell, decided that this is a matter that the state should look at and could adequately address, regardless of any action at the federal level.

HB 2432 is based on, and is almost identical to the legislation proposed at the federal level. Briefly, the key provisions to the bill are as follows:

- * A Definition section (Section 2)
- * The bill sets forth rights that a law enforcement officer shall enjoy if he or she is subject to a disciplinary investigation. The act does not apply to a criminal investigation of the officer or a general non-disciplinary performance review. (Section 3)
- * The bill specifies that a police officer has the right to engage in political activity off duty and also cannot be forced to engage in political activity. (Section 3)
- * Section 4 specifies the minimum standards of due process afforded an officer facing a disciplinary investigation, including a notice of the nature of the investigation, a requirement that

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questioning take place at a reasonable hour and proper place, that the questioning be conducted for a reasonable duration, that there be a single questioner who is properly identified, that there be no threats, harassment or promises to induce answers, that the questioning be recorded in full, that the officer is allowed counsel to be present and that at the conclusion of the investigation the officer shall be informed of the findings and any recommendations for disciplinary action.

* If the investigation results in a recommendation of disciplinary action, the officer is entitled to a hearing on the issues by a hearing officer or board, as provided for in Section 5. The hearing officer or board will determine if a violation of policy or rule did occur, and if so, it recommends the maximum penalty. Such decision may be appealed to court pursuant to the Kansas Administrative procedure act. (Section 5)

* The rights of the act do not apply to summary punishment (minor violations that do not result in suspension, demotion, dismissal or reduction in benefits) or emergency suspensions (Section 6 (a) and (b)).

* Generally, an officer should not be required to disclose information about the officer's personal property, income, assets, debts, or personal expenditures.

I believe it is important to provide a level of basic due process protection to officers facing disciplinary action because the officer's entire career is very much at stake. Increasingly, officers have earned degrees in Criminal Justice. If an agency dismisses an officer, the officer's career in law enforcement is pretty much over. Given the real and significant consequences of such actions, it is important that the decision is made in a proper manner and with adequate protections.

HB 2432 establishes fair and proper procedures for handling disciplinary actions against law enforcement officers. I ask the committee to give its favorable consideration to this bill.

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and Washington, D.C.
** admitted in Kansas and Missouri

ROBERT L. UHLIG (1929-1981)
RICHARD B. THOMPSON (1952-1981)

BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

STATEMENT OF STEVE A.J. BUKATY
IN SUPPORT OF HOUSE BILL NO. 2432

March 6, 1997

Ladies and Gentlemen of the Committee:

I wish to thank you for the opportunity to address you on an extremely important matter to all police officers in the State of Kansas, that is, The Law Enforcement Officer's Bill of Rights.

I have served as the State Lodge Attorney for the Kansas State Lodge of the Fraternal Order of Police for the past 16 years. I have represented police officers in every local FOP Lodge in the State during that time. I have negotiated dozens of collective bargaining agreements which contain numerous provisions protecting officer's rights, including provisions similar to those contained in House Bill No. 2432.

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I also, unfortunately, have represented numerous officers who were not protected by collective bargaining agreements which contain the type of protections contained in this Bill. They have suffered substantial discipline, and even loss of their employment, when there was little or no basis for the disciplinary action taken, because they had no right to a fair and impartial hearing or the type of investigation envisioned by the Act.

This Bill is extremely important to all law enforcement officers in the State. At the present time, there are two classes of citizens in law enforcement in this State. The first class consists of those who have the rights afforded by this Bill, because they are represented by an employee organization, usually the Fraternal Order of Police, which has been able to bargain on their behalf collective bargaining agreements which contain these rights and protections. Unfortunately, many of the officers throughout the State, have no such rights, and are clearly second class citizens.

I believe it is grossly unfair that officers of this latter category are, in fact, treated as second class citizens, and not even afforded the same rights as their city or county employers are required to afford to common criminals.

I will in my remarks to the Committee today give you several examples of such unfair treatment of police officers, of which I am personally aware.

This Bill in essence requires fair procedures for investigation of complaints against police officers, and fair and objective hearing procedures if police agencies want to discipline their police officers. These are not revolutionary concepts. For years, many police officers throughout this country have enjoyed such rights. It is past time that all police officers in the State of Kansas be accorded these rights.

It is my assumption that opponents of this Bill will naively contend that its passage will limit management's rights to management police departments. Nothing could be further from the truth. Nothing in this Bill will prevent a police department from disciplining an employee when it has cause to do so. It will simply require the employers to accord officers minimum due process during the investigation of complaints against the officers, and to accord them a due process hearing at which the employer will be required to show that there was some grounds for disciplining the officer. Quite frankly, that comports with the notions on which this country was founded.

Anyone who opposes this Bill will in essence be taking the position that police departments should not have to prove that

they have grounds to discipline police officers. That is contrary to the basic premises under which law enforcement is supposed to operate. Law enforcement certainly cannot charge criminals with crimes and obtain convictions without any evidence. Likewise, law enforcement agencies should not be allowed to discipline police officers without any evidence, and without being required to produce that evidence to a neutral hearing body. That is all this Bill seeks.

In further response to those who would contend that this Bill will limit the ability of police departments to operate, one needs simply to look at the police departments which already are subject to the types of safeguards set out in The Law Enforcement Officer's Bill of Rights. Kansas City, Topeka, Wichita, Coffeyville, Hutchinson, Shawnee County, and Wyandotte County, among others, already have collective bargaining agreements in place which accord most, if not all, of the rights set out in The Law Enforcement Officer's Bill of Rights. I have yet to see any of the sheriffs or police chiefs of those departments contend that they are not able to operate their departments. Quite to the contrary, having these procedural safeguards in place, sets out the rules so that everyone, from the police chief to the newest rookie patrolman, know what is expected of them, what the officer's rights are, and what the officer's and employer's obligations are. Far from hamstringing these departments, having such protections in place allows them to operate in a more efficient manner.

The lack of these rights also creates litigation between police officers and their departments. I will describe for the Committee during my oral presentation several cases which demonstrate the difference between those officers who have been disciplined and have had the opportunity to pursue hearings and those officers who have no such rights, and whose only remedy has been to sue in state or federal court. The latter incident results in lengthy, expensive litigation, whereas the arbitrations or grievance board hearings conducted pursuant to the aforesaid collective bargaining agreements, are relatively quick and inexpensive ways to resolve disciplinary issues.

The Legislature should also keep in mind that discipline, especially the ultimate disciplinary penalty of termination, has a far more draconian effect upon a police officer than it does on employees in other lines of work. A police officer who has been terminated by his or her agency, cannot realistically expect to gain other employment with another police department. Quite frankly, termination from your job as a police officer effectively ends your career in law enforcement.

Although it is rare, there are no doubt occasions on which a department has grounds to terminate an officer. However, given the devastating nature of such a termination, it is only fair and reasonable to require that the department be required to

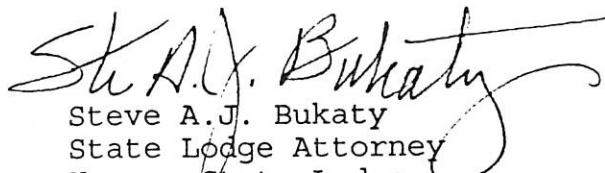
demonstrate to a neutral hearing board or arbitrator the evidence which demonstrated that it did have such cause for termination. If the agency is effectively going to end an officer's career, it should be required to comply with the basic notions of due process and produce evidence demonstrating the reasons upon which the termination was predicated. If the employer cannot do that, it should not be in a position where it can terminate officers. Otherwise, police departments are left in the position, which many currently enjoy, of being able to arbitrarily and capriciously discipline and terminate police officers, because they know they will never have to prove to anyone that they had grounds for the disciplinary action.

In summary, I strongly urge you to recommend passage of the Bill in its entirety. This legislation is long past due. It will inure to the benefit of all interested parties including the citizens of this State, police officers of this State, and police employers of this State. The Bill will result in better morale for police officers which will also translate into better service to the public.

On behalf of the thousands of police officers in the Fraternal Order of Police whom I represent, I wish to sincerely

thank you for the opportunity to make this presentation.

Sincerely,


Steve A.J. Bukaty
State Lodge Attorney
Kansas State Lodge
Fraternal Order of Police

TESTIMONY BY C.J. BUSH
KANSAS STATE LODGE
FRATERNAL ORDER OF POLICE

Chairman Boston, and members of House Federal and State Affairs
Committee,

Law enforcement officers have, arguably, one of the toughest jobs in the state. They alone are charged with keeping the streets and neighborhoods of this state safe from crime. Every day, police officers put their lives on the line--life and death decisions are in the job description. Because of the enormous responsibility that comes with a badge, law enforcement officers are held to a much higher standard of personal and professional conduct--as well they should be. Sometimes, however, this higher standard and increased visibility subjects police officers to false accusations from the criminal element and others in society who have no motivation in making these allegations other than to disrupt law enforcement activities.

The legal protections afforded all citizens, including suspects and convicted criminals, from illegal and improper police procedures are provided by the U.S. Constitution and applicable Federal as well as state statutes. Moreover, most law enforcement agencies also implement a wide array of departmental procedures that govern the conduct of their officers during traditional police activities. Unfortunately, rank-and-file police officers are sometimes subjected to abusive and improper procedures and conduct on the part of the very departments or agencies they serve. In some instances, the basic rights that most citizens or employees would take for granted are either denied or simply unavailable to police officers. In a startling number of jurisdictions throughout this state, law enforcement officers have *no* procedural or administrative protections whatsoever; in fact, they can be, and frequently are, summarily dismissed from their jobs without explanation. Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore.

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Officers subjected to investigation or interrogation with regard to internal or disciplinary matters (i.e. only *non-criminal* in nature) would be entitled to the following basic rights:

- * Law enforcement officers, except when on duty or acting in official capacity, have the right to engage in political activity;
- * Law enforcement officers shall, if disciplinary action is to be expected, be notified of the investigation, the nature of the alleged violation, and further, be notified of the outcome of the investigation and the recommendations made to superiors by the investigators;
- * Questioning of a law enforcement officer should be conducted at reasonable times, preferably while the officer is on duty unless exigent circumstances apply;
- * Questioning of the law enforcement officer should take place at offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location;
- * Law enforcement officers will be questioned by a single investigator, and he or she shall be informed of the name, rank, and command of the officer conducting the investigation;
- * Law enforcement officers cannot be threatened, harassed, or promised rewards to induce the answering of any question;
- * Law enforcement officers under investigation are entitled to have counsel or any other individual of their choice present at the interrogation;
- * Law enforcement officers are entitled to a hearing, notification in advance of the date of the hearing, access to transcripts and other relevant documents and evidence generated by the hearing. The officer is also entitled to be represented by counsel or another non-attorney representative at the hearing;
- * Law enforcement officer cannot be subject to retaliation for the exercise of these or any other rights under federal, state, or local law;
- * Law enforcement officers shall have the opportunity to comment in writing on any adverse materials placed in his or her personnel file.

It is also important to underscore what this legislation *does not* do. The bill does not apply to investigations involving criminal wrongdoing, nor would it protect the jobs of "bad cops" or officers unfit for duty. The bill also does not apply to allegations of minor violations of internal departmental rules or regulations, nor employment-related performance of officers, thus preserving the discretion of the individual department or agency in disciplining its employees. The measure does not afford police officers any greater rights than those possessed by other citizens; it simply reaffirms the existence of those rights in the unique context of the law enforcement community.

The Fraternal Order of Police strongly supports a "bill of rights" for law enforcement officers who are, in a surprising number of jurisdiction, denied their due process rights by police administrators and management in non criminal proceedings. The need for a minimum level of procedural protections for law enforcement officers accused of administrative wrongdoing, the gravity of potential harm to officers created by this lack of uniform safeguards, and the patently unfair disparity in rights afforded criminal suspects but not police officers are compelling reasons to enact the "Law Enforcement Officers' Bill of Rights." The Kansas State Lodge of the Fraternal Order of Police supports house bill 2432 introduced by Representatives Garner and Howel. The men and women behind the badge deserve the protections that this bill affords.

Information on Current States with Law Enforcement Officers' Bill of Rights Statutes

Five (5) States currently have compulsory collective bargaining that address the issues of concern covered in the "Law Enforcement Officers' Bill of Rights." They are as follows:

Connecticut
Massachusetts
New York
Ohio
Pennsylvania

In addition, eighteenth (18) States have been identified as having "Law Enforcement Officers' Bill of Rights" statutes which vary in scope. This list is by no means comprehensive, but a "work in progress" of the Legislative Committee. The States are as follows:

Arkansas	Kentucky	Nevada
California	Louisiana	New Mexico
Delaware	Maryland	Rhode Island
Florida	Minnesota	Virginia
Illinois	Missouri	West Virginia
Indiana	Montana	Wisconsin

The statutes in each State vary greatly in outlining what "rights" a law enforcement officer is due and what law enforcement officers are covered. The States listed above have *some* form of the Law Enforcement Officers' Bill of Rights.



**PRESENTATION TO CHAIRMAN BOSTON AND THE MEMBERS OF THE HOUSE
FEDERAL AND STATE AFFAIRS COMMITTEE.**

Chairman Boston and members of the Committee, thank you for giving me this opportunity to make this presentation to you today.

I am Pete Fogarty, I am a twenty (20) year patrolman for the City of Kansas City, Kansas. In 1975 my predecessors went on strike and as a result of that action we have had collective bargaining ever since.

That bargaining agreement contains the very rules and guidelines that House Bill 2432 has in it. Our contract has gone through some modifications and fine tuning, but for the most part we have enjoyed this protection for years. These procedures **HAVE NOT** inhibited the city, or the Police Chief from effectively operating the police department. If they had, the city would not have agreed to keep these provisions in our contract that they (the city) just finished re-negotiating.

I am just one example of why policemen need the Police Officers Bill of Rights. In December 1994 I was fired by the Police Chief of Kansas City, Kansas. He fired me for the same violation others had committed during his tenure as Police Chief, but they received suspensions ranging from three (3) to thirty (30) days. This man fired me not because of the alleged violation, but because I was the representative of the Union who had to go into his office and tell him every time he violated the contract during his reign as Chief from 1989-1995. We had a record number of arbitrations, grievances and unfair labor practices, of which we were successful over ninety percent (90%) of the time. This man took advantage of his administrative authority and retaliated against me for my union activity.

In another example a young officer had the misfortune of arresting the son of a very influential banker in KCK. This arrest turned into a brawl where several people were hurt, including the officer and the bankers' son. The banker used his political influence and the officer was fired.

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Because we both had the protection that the Police Officers Bill of Rights offers, we were both reinstated with little or no discipline.

The Police Officers Bill of Rights protects the officer from retaliation for union activity or from someone who would try to use their political influence to punish a police officer.

Everyday we go to work we know we could be called upon at a split second to risk our life for the public, for you, or for one of your loved ones. All we ask in return for this is some peace of mind to allow us to do our jobs knowing we have protection. Please give us the same consideration we have to give the criminals we deal with. I implore you to give us the rights and protection afforded under the Police Officer Bill of Rights. Thank you for your time.

Respectfully Submitted,
Peter J. Fogarty
Fraternal Order of Police #4



KANSAS STATE TROOPERS ASSOCIATION

House Committee

Federal & State Affairs

Chairman Boston

and members of the committee

Thank you for the opportunity to appear today. My name is R.S. "Steve" McKinzie, Master Trooper with the Kansas Highway Patrol. I am serving in my second term as President of the Kansas State Troopers Association, and in my sixteenth year with the Patrol.

Police officers, Sheriffs Deputies, and State Troopers serve the public in a unique way. Every step of their service to the public can be scrutinized to a much higher degree than the average public servant. Yet, when this occurs they are compelled to answer questions, file reports and provide evidence often without the advice of a trained representative or attorney. The Patrol has experienced the horrors of these tactics in past administrations. I must honestly add the current Patrol administration is well aware of the rules that must be followed.

The Kansas State Troopers Association maintains five trained labor representatives. These individuals can be called upon to assist troopers when questions are raised about their performance. We also publish a document "Troopers Rights in the disciplinary process". Every trooper is provided a copy to assist them in answering questions. The "Troopers Rights" was created due to past administrations that repeatedly violated employee rights. Certain protections are also provided in our Memorandum of Agreement.

Unfortunately, when these rights are violated, there is virtually nothing that can be done. Claims of harassment, intimidation, and threats of termination by supervisors is not unheard of.

Real protections are needed. Notably, a requirement that a complainant swear to the validity of the allegations, punishment for those that violate an officers rights, and most important a requirement for Law Enforcement Administrators to advise their officers of their rights at the beginning of an investigation.

Your consideration of this matter is greatly appreciated by the members of the Kansas State Troopers Association

**THE TROOPERS RIGHTS
IN THE
DISCIPLINARY PROCESS**

THIRD EDITION

1997

Master Trooper R.S. McKinzie

**I DO SOLEMNLY SWEAR OR AFFIRM,
THAT I WILL SUPPORT THE
CONSTITUTION OF THE UNITED STATES
AND THE CONSTITUTION OF THE
STATE OF KANSAS,
AND FAITHFULLY DISCHARGE THE
DUTIES OF MY OFFICE AS TROOPER
WITH THE
KANSAS HIGHWAY PATROL,
SO HELP ME GOD.**

YOUR RIGHTS IN THE DISCIPLINARY PROCESS

As a law enforcement officer, you are constantly exposed to the risk of lawsuits, criminal charges, and the potential for adverse disciplinary action by the Patrol. The more law enforcement activity in which you are involved, the more likely that you some day will be faced at least with an internal investigation.

You have some very specific rights during an internal investigation, indeed during any questioning by the Patrol. Since any internal investigation is potentially serious, it is important that you understand these right. If you agree to waive those rights, it is possible that your statements could be used against you in a criminal proceeding, in a lawsuit for damages, or by the Patrol to support a discharge or other discipline.

WHAT IS THE MOST IMPORTANT THING TO REMEMBER IF YOU ARE FACED WITH AN INTERNAL INVESTIGATION OR QUESTIONING BY A SUPERVISOR?

1. Call Your Association Representative!

Aside from an officer's responsibility to be truthful in all professional endeavors, the most important thing to remember if you are confronted with an internal investigation is to **CALL YOUR ASSOCIATION REPRESENTATIVE** before you answer any questions.

The need for a representative in an internal investigation is obvious: The statements which you make may have a very significant effect on your future. Those statements could make the difference between a filing by the County/District Attorney and not being prosecuted. Even if you feel that you are free from guilt, it makes common sense to get some advice from a qualified representative before you act. Understand your rights before you waive them.

Sometimes, an investigation may start less formally, with the questioning being conducted by your immediate supervisor. You are entitled to a representative to assist you if you believe that the questioning could lead to discipline. Even where the questioning is informal, the need for a representative is the same.

2. Do Not Answer Questions Unless You Are Ordered To Do So!

If you are ordered to answer questions by your supervisor or in the internal investigation process, you are granted certain protections against the use of your statements in a subsequent criminal proceeding. If you are not ordered to answer questions, and give a statement voluntarily, you lose all protections which would have existed if you were responding to the questions pursuant to an order. For these reasons, you should always make sure that you are ordered to answer questions, you should refuse to voluntarily give a statement.

The best way to solicit an order to answer questions is to ask the questioner, "Am I ordered to answer these questions?" or if applicable, "Am I ordered to give this statement?". If the response is that you are ordered to give the statement, you should immediately contact your Association representative. If the response is that you are not ordered to give a statement or answer questions, you should refuse to voluntarily give a statement.

3. Request To See The Charges Against You!

The third basic rule when you are facing questioning is to request that you be allowed to review the specific charges against you. This not only permits you to learn more about the nature of the incident the patrol is investigating, but also appries you of the seriousness of the investigation. **TAKE NOTES**

4. Request The Time Necessary To Review The Charges!

The fourth basic rule of thumb when you are facing questioning by a supervisor is that you should request a reasonable amount of time to review the charges and evidence, request time to retrieve all personal notes, reports, and information regarding the incident, and to consult with an Association and/or legal representative.

WHAT IF I THINK THAT I MIGHT BE CHARGED WITH HAVING COMMITTED A CRIME?

If the allegation against you alleges a criminal violation as opposed to an infraction of the Patrol rules and regulations, you should request the Association to refer you to an attorney rather than to a representative from the Association, who is a law enforcement officer. Although conversations between an accused officer and his Association representative are normally privileged, they may not be kept confidential if you admit committing a crime or if you are inconsistent between what you tell your representative and what you say under oath.

Except as noted above, a representative who is a law enforcement officer is better able to handle the vast majority of internal investigations than is the average attorney. Such a representative is skilled in the patrol's procedures and bureaucracy, and knows the type of discipline that is traditionally imposed for certain misconduct. A private attorney without experience in labor relations typically would not have such an understanding of our Patrol, and he might raise the level of confrontation unnecessarily.

WHAT ABOUT USE OF FORCE SITUATIONS?

If you have been involved in the use of force, you may have the right to consult with an attorney prior to giving an oral or written statement about the incident. Contact your Association representative immediately. Exercise your rights before giving a statement.

YOUR RIGHTS UNDER THE MEMORANDUM OF AGREEMENT AND THE ADMINSTRATIVE MANUAL OF OPERATIONS AND PROCEDURES

In addition to your general rights, the Memorandum of Agreement and/or the Patrol Manual of Administrative Operations and Procedures guarantees the following rights:

1. The right to be informed prior to any internal interviews whether you are a suspect or witness in the investigation.
2. The right to be informed of the specific nature of the investigation and the allegations against you.
3. The right to 24 hours notice of a PSU or other interview where the employer may impose an economic sanction upon you as a result.
4. The right to consult with the Association representative prior to the internal interview.
5. The right to an Association representative present at the interview.

6. The right to have the interview take place at patrol facilities (except where an emergency dictates that the interview take place elsewhere, or you voluntarily agree to hold the interview elsewhere. Under no circumstances shall the interview be conducted at the employee's home.
7. The right to have the interview conducted during your regular working hours, except for emergencies.
8. The right to have all interviews conducted under circumstances devoid of intimidation, abuse or coercion.
9. The right to reasonable intermissions during the interview for personal necessities.
10. The right to have all interviews limited in scope to activities, circumstances, events, conducts or acts which pertain to the incident and the subject of the investigation.
11. The right to electronically record the interview, regardless of the Patrols action. If the Patrol tape is subsequently transcribed, the employee is entitled to a complimentary copy of the transcript.
12. The right to have interviews and investigations concluded with no unreasonable delay.
13. The right to be advised of the result of the investigation and any future action to be taken on the incident.
14. The right, if you are charged with any patrol violations as a result of the internal investigation, to appear before and have a representative with you at a review board hearing.

Refer to the Policy and Procedure Manual
Administration, (ADM-07, 08)
M.O.A. 95-97, Article VII, Section 2 and 3
for more detailed information.

WHAT DOES THE REPRESENTATIVE DO?

Generally, a skilled representative (whether a law enforcement officer or an attorney) will take the following steps on your behalf:

1. **Obtain Information Before the Investigation** - Your representative will confer with you in an attempt to ascertain the nature of the investigation, and will attempt to obtain as much information as possible prior to your interrogation.
2. **Review the Accused Officers Facts** - Your representative will listen carefully to your statement of the facts pertinent to the investigation. The representative will attempt to refresh your recollection by using the knowledge gained about your case from other sources, and will probe your story to elicit additional details favorable to your case. Your representative may suggest that you revisit the scene of the events to refresh your recollection, that you collect related documents, or that you write out a detailed statement.
3. **Ascertain Possible Rule Violations** - Both you and representative should carefully review possible violations of patrol rules and procedures. If it appears you may have violated a rule, your representative will assist you in preparing a statement of your justification for that violation. Such justification might be based upon the following: (a) the action taken was consistent with your training; (b) supervisors had approved or had tolerated your behavior; (c) your acts were consistent with Patrol custom or practice; (d) you had no notice of the rule; or (e) unusual circumstances required you to act in a way that technically violated the rule.

4. **Arrange Interrogation Time and Location** - Your representative will be contacted by the Patrol and notified of the time for the interview (which would not give him time to prepare the forgoing), he will object to the premature interrogation, and may involve an Association attorney in an attempt to gain additional time (He will not refuse to let you be interrogated, however, because such a refusal could be interpreted as dischargeable insubordination). Your representative will also arrange for the interview to be recorded.
5. **Solicit An Order** - Your representative will advise you not to waive your Miranda rights, and you should submit to the interrogation only if you are ordered to do so by the Patrol, (Garrity). Once the internal investigator orders you to respond to questioning, and tells you that you may face disciplinary action including discharge if you do not answer the question, any statement which you make is "coerced" and can not be used against you to support a criminal case. Harman v. Forsenius, 380 U.S. 528.85 S. Ct. 1177.14 1.Ed.d50. "We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in the subsequent criminal proceedings of statements under threat of removal of office, and that it extends to all, whether they are policemen or other members of our body politic."
6. **Correct Your Statement** - Your representative will observe your interrogation. The extent to which your representative will be allowed to actively represent you is limited. At any time you feel uncomfortable, you may call for a break in the proceedings to confer with your representative. Immediately prior to the conclusion of the interview, call for a break. This will give you an opportunity to confer with your representative.
7. **Object To Specific Questions** - Your representative will be alert for questions in the interrogation which would result in a misleading answer. However, rather than "objecting" to a question, it is usually better for the representative to relay this observation to you during a break. Since on occasion, the Patrol may not allow the representative even the right to point out improper questions, you should be aware of the general categories they fall into. When the interrogation reconvenes, you should return to the record and restate your responses in as clear a manner as possible.

Unfair questions often fall into one of the following categories:

- (a) *Misstatements or Misquotes* - A question which misleads the accused officer by misstating facts (such as, "When did you stop beating your wife?" when you never beat your wife), or by misquoting the accused officer or another witness.
- (b) *Compound* - Questions which are compound (using "and" or some other conjunction), which might lead the officer to answer inappropriately to one of the portions of the question.
- (c) *Argumentative* - Questions which are unfairly argumentative ("Wasn't that a violation of Patrol policy?")
- (d) *Speculation* - A question which calls for the accused officer to speculate as to someone's state of mind, the possible outcome of an action, or some other hypothetical event
- (e) *Question Regarding an Available Document* - Questions which ask the officer the content of a written document without showing him the written document (Your memory of what appears on a written document is usually faulty, even when you are "sure" of what you wrote.) Take time to read it before answering.
- (f) *Privileged Information* - Questions which inquire into privileged areas, such as the accused officers conversations with his attorney, wife, his priest or pastor, his psychotherapist or his representative. Similarly, an accused officer should not be questioned about his Association

activities. In cases where there is a strong privacy interest (such as sexual relationships, medical records, financial records, or tax returns), the representative may wish to immediately telephone the Association's attorney for more aggressive enforcement of the officer's rights.

8. **Protect the Accused Officer from Offensive Language or Threats** - In rare situations, the representative may object to an interrogation where the investigator is making or implying threats or intimidation.
9. **The Accused Officer's Comfort** - The representative also must see that you are questioned at a time and place which would permit you to fully and accurately recall the facts of the incident. If you are tired or otherwise incapacitated, the interrogation should be rescheduled. If the Patrol refuses to reschedule the interrogation, the representative should make strenuous objections on the tape, and should periodically renew that request during the questioning. Throughout the interrogation, both you and your representative should exercise your right to take breaks to stay alert or to see to your personal needs.
10. **Bring Out Additional Details** - At the conclusions of the interrogation by the internal investigator, you should ask for a break, during which you can discuss your statement with you representative away from the internal investigator. Thereafter, the representative may ask the internal investigator to go back "on the record" so that you can make clarifying statements.
11. **Establish a Timetable** - Finally, you may inquire how long the investigation is expected to take, and when you will be notified of its outcome.

SEARCHES OF YOUR PROPERTY OR PERSON

You should never consent to a search of your private property or your person without consulting your representative. In the absence of consent, a search of your home or private vehicle without a search warrant may be a violation of your civil rights. Generally, however, you would not want to risk discharge for insubordination by disobeying a direct order to give an internal investigator access to such property. If you receive such an order, you should immediately contact your Association representative.

O'Conner ET AL v. Ortega 480 U.S. in part says, "The appropriate standard for a work place search does not necessarily apply to a piece of closed personal baggage, a handbag, or a briefcase that happens to be within the employer's business address".

WHAT DO I DO IF I AM INTERVIEWED AGAIN IN THE SAME INVESTIGATION?

All the advise given up to this point in this advisory applies to any re-interview. In addition, you should carefully review your tape recording of your previous interview, and you should be prepared to explain any differences between your earlier interviews and your new interview. If there are inconsistencies, the Patrol may attempt to discipline you for making false statements in the investigation. Take the record with you and refer to it often.

WHAT ABOUT DRUG SCREENING?

You are required to submit to drug screening pursuant to K.S.A. 75-4362, however such testing should not be voluntary.

Drug screening is a serious matter because, owing to the current "state of the art", drug test procedure an abnormal number of individuals whose urine or blood falsely test positive for the presence of drugs. If you are asked to submit to a drug screening, call your Association representative immediately.

WHAT DO I DO WHILE I AM WAITING FOR THE OUTCOME OF AN INVESTIGATION?

An internal investigation may be emotionally devastating to the accused officer. Most often, the officer is a conscientious individual who has committed his whole professional career to law enforcement. After an internal investigation is commenced, the officer may suddenly feel isolated, or perhaps have a perception that the Patrol has "turned" on him. That perception leads to insecurity, guilt, anger, or all three.

In some cases, an accused officer may become accident prone, lose sleep, experience unusual physical symptoms (upset stomach, chest pains, and the like), and have a change in appetite.

If you become involved in an internal investigation, recognize that you probably will have some or all of the foregoing symptoms. Those symptoms often require professional help, and you should seek such help through private sources or through your employee insurance plan. In some cases, the symptoms may be so severe that the accused officer should seek advise regarding workers' compensation or a disability pension. However, the first order of business is to maintain yourself as an effective individual during your internal investigation by obtaining appropriate medical treatment.

WHAT HAPPENS IF THE PATROL FINDS THAT I HAVE DONESOMETHING WRONG?

Most administrative discipline is accepted by the accused officer, or is resolved as a result of your Loudermill hearing (Officer, representative, and the appointing authority). In the event you wish to challenge the discipline, get in touch with an Association representative **immediately**. The appeal process has very specific time deadlines, the appeal will be waived, and all rights to appeal lost.

SHOULD I OFFER TO TAKE A POLYGRAPH?

NO. You should not agree or offer to take a polygraph in the absence of advice from your attorney or a qualified representative of the Association.

K.S.A. 75-744(e) requires Law Enforcement Officers to submit to polygraph examinations. It is noted however, that polygraphs taken under duress or non-voluntary examinations are at best only marginally valid. Never, under any circumstances agree to submit "voluntarily" to a polygraph examination.

WHEN AM I ENTITLED TO DOCUMENTS?

In answering questions regarding an incident, you will be able to answer more completely and more accurately if you have complete access to all of the Patrol's information prior to your interview. Often the alleged misconduct involves an incident which is months old, and which was similar to hundreds of

other incidents which the employee may have handled. As a result, the employee may be unable to give a detailed statement without information which would refresh recollection.

Therefore, you or your representative should always attempt to obtain the written complaint, the tapes or notes of any prior interviews by the Patrol, of any witness to the incident (such as arrest reports, booking slips, complaining arrestees' jail photo, radio logs, and the like).

Internal investigators often believe that an accused officer should be interviewed "cold" without an opportunity to refresh his recollection. Typically, an internal investigator will supply only the tapes or notes of prior statements made by the accused officer himself, rather than documents pertaining to other witnesses in the interrogation. You should always request access to all background information: if it is not provided you, at a minimum, the Employer's refusal to provide you with the information will be damaging to the Employer's later case attempting to sustain any discipline imposed.

ACCESS TO THE ASSOCIATION'S ATTORNEY

The Association has an Attorney to represent it in disciplinary matters involving the Patrol. If you wish to consult with the Association attorney, get in touch with your representative, who will make the necessary arrangements if appropriate.

THIS MATERIAL WAS PREPARED BY MASTER TROOPER R.S. MCKINZIE, USING A FORMAT DEVELOPED BY CECIL MARR. THE ADVICE CONTAINED HEREIN IS SUBJECT TO MODIFICATION, AND CHANGES IN THE PATROLS POLICY AND PROCEDURE MANUAL.

Third Edition January, 1997

TO ASSIST YOU OR ANSWER QUESTIONS, WE SUGGEST YOU CALL YOUR TROOP DIRECTOR OR THE REPRESENTATIVE NEAREST YOU:

JEFF COLLIER	1-316-223-6077	FT. SCOTT
TIM GARDNER	1-316-722-9058	WICHITA
ERIC HASKINS	1-316-723-2695	GREENSBURG
STEVE MCKINZIE	1-800-550-5782	KANSAS CITY
JACKIE MILLER	1-316-342-1565	EMPORIA



1300 South Topeka Avenue Topeka, Kansas 66612 913-235-0262 Fax 913-235-3920

TESTIMONY OF SCOTT A. STONE
Executive Director and Chief Counsel,
Kansas Association of Public Employees (KAPE)

Before the House Committee on Federal and State Affairs

March 6, 1997, 1:30 p.m.
State Capitol, Room 519-S

Testimony in support of HB 2432

My name is Scott A. Stone and I am the Executive Director and Chief Counsel for the Kansas Association of Public Employees (KAPE). Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today to voice KAPE's support for HB 2432.

I am here today representing KAPE and specifically, KAPE's law enforcement members. KAPE represents nearly all state law enforcement, except for the Troopers, and also represents the Geary County Sheriff's Department. State employees already have most of the rights contained in this bill, but most city and county police have no such guarantees. This bill provided the same due process rights to all Kansas law enforcement officers. KAPE substantially concurs with the testimony given by the conferee representing the FOP and the Trooper's Association.

The right to due process is a basic constitutional issue that should always be furthered and protected. The local law enforcement community has absolutely no protection from



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arbitrary management decisions. This bill provides universal guarantees to the employee and to the public, that police officers will receive due process and be treated fairly in disciplinary matters.

Due process contains such ideals as proper notice, the opportunity to be heard by an impartial adjudicator, the right to representation by counsel and the right to appeal. All of these concepts are contained in this bill and it deserves your serious consideration. I would like to urge the members of this committee to vote favorably for HB 2432.

Mr. Chairman, I would like to thank the members of this committee for their time and consideration on this matter. I would also be pleased to respond to your questions.

ACLU

American Civil Liberties Union

Wendy McFarland - Lobbyist
(913) 575-5749

TESTIMONY IN SUPPORT OF HB 2432 WITH A REQUEST FOR AMENDMENTS

THE AMERICAN CIVIL LIBERTIES UNION APPEARS TODAY IN SUPPORT OF HB 2432 WHICH WILL CREATE A LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS.

AS THE US SUPREME COURT RECOGNIZED IN FOLEY V. CONNELIE, "THE SENSITIVITY AND CENTRALITY OF THE POLICE FUNCTION IN CONTEMPORARY AMERICA CANNOT BE OVERSTATED."

WHAT IS OFTEN OVERLOOKED IS THE RIGHTS OF POLICE OFFICERS. THIS BILL WILL CREATE LAW THAT WILL PROTECT THOSE RIGHTS.

WHILE SUPPORTING THE STATED PURPOSE OF THE BILL, WE WOULD RESPECTFULLY PROPOSE TWO AMENDMENTS THAT WILL NOT DENY ANY ENTITLED RIGHTS BUT WILL SIMPLY ADDRESS THE RIGHTS OF THOSE THE POLICE SERVE TO PROTECT.

*ON PAGE 2, LINE 19, WE WOULD ASK TO STRIKE SECTION C AND REPLACE IT WITH THE FOLLOWING:

'EXCEPT WHEN ON DUTY OR ACTING IN AN OFFICIAL CAPACITY, NO LAW ENFORCEMENT OFFICER SHALL BE PROHIBITED FROM ENGAGING IN POLITICAL ACTIVITY AS LONG AS THE POLITICAL ACTIVITY DOES NOT INCLUDE MEMBERSHIP TO A SPECIFIC GROUP OR ORGANIZATION WHICH INCITES ITS MEMBERS TO CARRY OUT UNLAWFUL ACTS. IN ADDITION, NO OFFICER WILL BE DENIED THE RIGHT TO REFRAIN FROM ENGAGING IN ANY POLITICAL ACTIVITY.'

*ON PAGE 2, LINE 28, WE WOULD ASK THAT THE SENTENCE BEGINNING "NO INVESTIGATION BASED" BE STRICKEN AND REPLACED WITH:

'ANY INVESTIGATION BASED ON COMPLAINTS FROM OUTSIDE THE LAW ENFORCEMENT AGENCY WHERE THE COMPLAINANT IS EITHER ANONYMOUS OR IS KNOWN TO THE INVESTIGATING OFFICERS BUT CHOOSES NOT TO SIGN A DETAILED STATEMENT, MUST BE SUBSTANTIATED BY THE FINDINGS OF THE INVESTIGATION BEFORE DISCIPLINARY ACTION CAN BE CONSIDERED.'

THE AMERICAN CIVIL LIBERTIES UNION ASKS THAT THESE AMENDMENTS BE INCLUDED TO THIS VERY IMPORTANT LEGISLATION. LAW ENFORCEMENT OFFICERS MUST BE AFFORDED THE SAME CONSTITUTIONAL RIGHTS THEY ARE REQUIRED TO AFFORD OTHERS.

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League of
Kansas
Municipalities

Legal Department
300 S.W. 8th
Topeka, Kansas 66603
Phone: (913) 354-9565/ Fax: (913) 354-4186

LEGISLATIVE TESTIMONY

TO: House Federal and State Affairs Committee

FROM Don Moler, General Counsel

RE: Opposition to HB 2432

DATE: March 6, 1997

First let me thank the committee for allowing the League to appear today in opposition to *HB 2432, the Law Enforcement Officers' Bill of Rights*. The League policy statement, found at section C-10 states: "We oppose the enactment of legislation at the federal or state level granting special employment rights to police officers, commonly known as the 'police officers' bill of rights.'" Essentially HB 2432 grants all police officers and sheriff deputies extensive additional rights which would make their discipline or discharge virtually impossible. A long laundry list of "minimum standards" would need to be met whenever a law enforcement officer is the subject of an investigation which could lead to disciplinary action.

Some of the reasons we oppose HB 2432 include:

- Creates an Unfunded Mandate on local governments in Kansas.
- Provides that no investigation based on a complaint from outside the law enforcement agency could commence unless the complainant provided a signed, detailed statement. The investigation would have to commence within 15 days of the complaint and at the conclusion of the investigation the person in charge of the investigation would have to provide, in writing, the investigative findings and recommendation for disciplinary action.
- If disciplinary action is recommended, then the officer is entitled to a hearing conducted by a hearing board composed entirely of police officers from the officer's department or a professional arbitrator registered with the federal mediation and conciliation service or the American Arbitration Association and jointly selected by the officer and the employer.
- Allows the officer to decide if the hearing should be open to the public.

These examples represent only a few of the requirements contained within HB 2432 which a city or county would have to follow if this bill becomes law.

The League strongly opposes HB 2432 and we would urge you to reject it. Thank you for allowing the League to testify on this legislation.

Fed+State
3-6-97

Atch #9

[Handwritten initials]

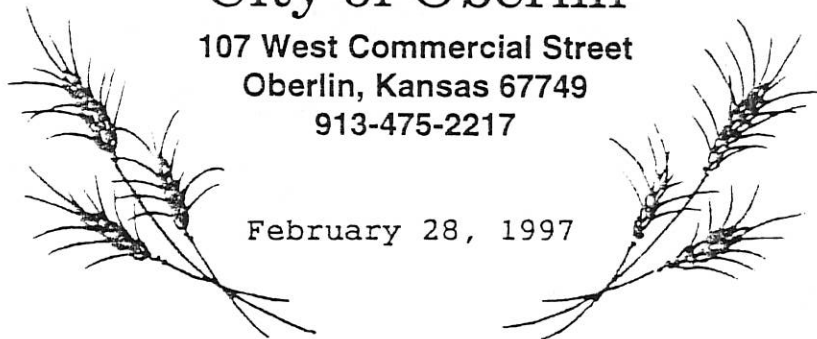
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City of Oberlin

107 West Commercial Street
Oberlin, Kansas 67749
913-475-2217

MAR - 4 1997

Preserving the Past
Building for the Future



February 28, 1997

Rep. John M. Faber
HC 2, Box 130
Brewster, Kansas 67732

Dear Representative Faber:

This Thursday, the House Federal and State Affairs Committee will be holding hearings on H.B. 2432, the Law Enforcement Officer's Bill of Rights. I am writing to urge your opposition to the unwise measure. This legislation does not benefit the local governments in your district.

At best, this legislation is another typical unfunded mandate, imposed by the Legislature, increasing costs of local governments without provision for raising revenue to pay the costs.

At worst, its a violation of the spirit, if not the letter, of Home Rule. Local governments have a much better understanding the needs of their community than the legislature does. The "one size fits all" approach which the Legislature must, perforce follow, is particularly inappropriate for many of the issues addressed in this legislation.

If the big urban police departments cannot protect the rights of their officers through the collective bargaining process, they should not be allowed to use the legislative process to impose their will upon hundreds of small cities and counties which have their own personnel procedures and protections.

Thank you for your consideration.

Sincerely yours,

Jerry J. Fear
City Administrator



City of Lawrence KANSAS

ju

CITY COMMISSIONERS
MAYOR
JOHN NALBANDIAN
COMMISSIONERS
BONNIE S. AUGUSTINE
JOLENE ANDERSEN
ALLEN LEVINE
BOB MOODY

MIKE WILDGEN, CITY MANAGER

CITY OFFICES 6 EAST 8th
BOX 708 66044-0708 913-832-3000
TDD 913-832-3205
FAX 913-832-3406

March 5, 1997

Representative Troy Findley
272-W State Capitol
Topeka, Kansas

**Re: House Bill 2432 - Mandated Disciplinary Procedures for
Law Enforcement Officers**

Dear Representative Findley,

The City of Lawrence opposes House Bill 2432 which is currently being considered in the House Federal and State Affairs Committee. HB 2432 would establish burdensome procedural and substantive requirements on the Lawrence Police Department, and other law enforcement agencies in the state, in its personnel practices.

The City of Lawrence has opposed this type of legislation at the federal level, and strongly argues that such legislation is also inappropriate as a state mandate as well. Our police officers as public employees enjoy substantial statutory and constitutional protections in their employment from arbitrary or inappropriate discipline procedures and decisions. HB 2432 would establish time-consuming and inappropriate statutory procedures -- and thus severe consequences for procedural violations -- which would make investigating and disciplining police officers difficult if not virtually impossible. We are not aware of any problems -- in Lawrence or elsewhere -- which necessitates the burdensome, costly and inefficient requirements of HB 2432.

We urge your opposition to HB 2432. Your attention to our concerns is appreciated.

Respectfully,

Mike Wildgen
City Manager



City of

Marysville



209 North Eighth Street
Marysville, Kansas 66508

Telephone
(913) 562-5331

Fax
(913) 562-2449

February 28, 1997

Representative Bruce Larkin
Room 272-W - State Capitol
Topeka, KS 66612

RE: HB2432

Representative Larkin:

On behalf of the Mayor, City Council and myself, we are asking you to oppose HB2432. This bill would in reality allow police officers to answer to no one but themselves and their peers. Having spent almost three decades in the municipal government field I know how important it is to have checks and balances, and methods to correct problems.

If you have any questions about our concerns please contact me. Thank you.

Sincerely,

Howard C. Parrott
City Administrator

HCP:nw

pc: League of Municipalities
Bruce Larkin/Baileyville Address

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9-4

City of Pittsburg

201 West 4th St. • P.O. Box 688 • Pittsburg, Kansas 66762-0688 • (316) 231-4100 • FAX (316) 231-0964

March 3, 1997

Representative Garry G. Boston, Chairman, Room 156-E
Representative Ray Cox, Vice-Chairman, Room 156-E
Representative Ruby Gilbert, Member, Room 281-W
House Federal and State Affairs Committee
State Capitol
Topeka, Kansas 66612

Dear Representatives Boston, Cox and Gilbert:

I'm asking you to oppose HB-2432, also known as the "Law Enforcement Officers' Bill of Rights". In addition to being an unfunded mandate, we're very concerned with this attempt to impose a questionable list of "minimum standards", which would have the practical effect of making it very difficult to discipline or discharge local law enforcement officers. Our Police Chief, Mike Hall, has over 27 years of law enforcement experience in the Pittsburg and Lawrence communities, and he is also strongly opposed to this legislation for the same reasons.

We believe our own local personnel policies and procedures are sufficient, and are working quite well. We strongly feel the management of local government personnel should remain a responsibility of local government, and we urge your opposition to this unnecessary legislation.

Thank you for your time in reviewing our concerns, and your interest is very much appreciated.

Sincerely,

THE CITY OF PITTSBURG



Larry Stevens
City Manager

LS:lp

cc: City Commissioners
Reps. Ed McKechnie and Bob Grant
Mike Hall, Chief of Police
Chris McKenzie, League of Kansas Municipalities

9-5

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G.D. McSPADDEN
(RETIRED)

COPY

March 4, 1997

MAR - 6 1997

VIA FACSIMILE - 913-354-4186 and
VIA FACSIMILE - 913-296-1153

Senator Greta Goodwin
State House
Topeka, KS 66612

Representative Judy Showalter
State Capitol, Room
Topeka, KS 66612

Dear Greta and Judy:

The League of Kansas Municipalities has sent me a summary of House Bill 2432. I don't know if there is a comparable Senate Bill, but in any event, I am send a copy of this letter to you, Greta. I certain believe in due process for teachers, city employees, etc, but it would appear that the requirements for disciplinary action for law enforcement officers in this bill are much too broad. I would urge your opposition to it.

Best wishes.

Very truly yours,



Warren D. Andreas

ANDREAS & MURET, L.L.P.

WDA:ts

SHARP, McQUEEN, McKINLEY, DREILING, MORAIN & TATE, P.A.

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 ALL OTHERS ADMITTED IN KANSAS

CHAS. VANCE
 (1904-1979)

H. HOBBLE, JR.
 (1909-1996)

March 6, 1997

Members of the House Federal and
 State Affairs Committee
 Attn: Chairman Garry Boston
 State Capitol, Room 156-E
 Topeka, Kansas 66612

Dear Representative Boston:

We are corresponding to advise you that we could not be more opposed to HB 2432. Our firm represents numerous Municipalities. As you are probably aware, absent a union contract, protection of this nature and scope is not provided to anyone employed by Municipalities (including City Managers). Frankly, we cannot imagine that such a Bill would even be seriously considered for this and other reasons, of a policy nature and otherwise, which we believe to be obvious. If you would communicate our strong opposition to the other Members, with our regards, we would be grateful. Thank you for your assistance.

Sincerely yours,

 Tammie E. Kurth

 Kerry E. McQueen

 Gene H. Sharp

 James H. Morain

 Shirla R. McQueen

 Michael P. Dreiling

 Rex A. Neubauer

 Rex A. Sharp

Representative Garry Boston
March 6, 1997
Page No. 2

Kevin D. Weakley

Arthur B. McKinley

Nels P. Noel

Wayne R. Tate

P:\WFWIN\TAMM11\CLTENTS\KURTH\BOSTON.LTR

House Bill #2432

Reference: Law Enforcement Officer's Bill of Rights
Hearing 3/6/97 1:30 p.m.
House, Federal and State Affairs
Room 519S

Sheriff Larry D. Bergstrom
Cloud County Sheriff's Department
(913)243-3636

In reference to the Law Enforcement Officer's Bill of Rights, as a supervisor and Sheriff for 4 years I think that the Labor Laws that applies to employees is sufficient at this time. This bill gives Officer's legislation that creates situations for small department that are almost impossible to follow through on such as:

Except while on duty or acting in an official capacity, no Law Enforcement Officer shall be prohibited in engaging in political activity or be denied the right to refrain from engaging in such activity. In the case of a Sheriff's Department, you may have a distraught employee, they could go out and say everything they want, running the administration down and particularly in a smaller type department this would cause a lot of chaos and disruption within the department. This could cause situations that the person in office would have considerable problems in even maintaining or running their office in an efficient manner. The employee could actually cause disruption on purpose to make their candidate look better and could cause the whole department to form sides even escalating the problem further.

No investigation based on the complaint from outside the Law Enforcement Agency may commence unless the complaint provide a signed detailed statement. Investigation based on complaint from outside agency shall commence within 15 days after receiving the complaint by the agency. People will not sign statements this day and age when they feel like officer's could retaliate against them. There is considerable thought on the streets that if they turn in a cop for something they consider as bad work performance or possible criminal considerations that they are going to have retaliatory steps taken against them by other Officer's and their friends. I have received phone calls in which they state, "I think you should be aware of this, but I don't want involved." That gives the supervisors a chance to start going out and checking out other things or talking to other people. I know in our cases if we cannot find concrete evidence of it, it's dropped. A lot of time criminal investigations start out a person being named and the situation. I believe the new law would give an Officer, particularly if they are a bad officer, a chance

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3-6-97
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to go out and intimidate the person through numerous ways and get the complaint dropped or maybe in the future not having a concerned citizen calling in a concern of the public.

Questioning of a Law Enforcement Officer shall be conducted a reasonable hour, preferably when the Law Enforcement Officer is on duty unless exigent circumstances otherwise require. Does this mean if an officer works at night he cannot ask him to come in and talk to you during your office hours. You're going to have to go out there and talk to them during their time. Anytime our department has talked to an Officer, they were paid for the time they were required to be in to talk about the situation. This would put a big strain on supervisors, particularly small departments having to make the time to get a hold of the officer at night, a lot of times you're short handed and that maybe may be the Officer out on the street anyway.

The Law Enforcement Officer under investigation shall be informed in writing of the nature of the investigation prior to questioning. Sometimes the cases are vague and an officer that is in charge of an internal affairs investigation can not come out and place the concern in writing because the situation may not be completely sure of the whole nature of the concern or allegation. As with any criminal case, sometimes you have just bits and pieces and you need to talk to the Officer. In doing this it's going to hinder any chance of talking to an Officer unless you have everything in a row and sometimes without talking to an Officer it's going to be impossible to get your information.

All questions of a Law Enforcement Officer with the investigation shall be recorded in full in writing or electronic device and shall be made available to the Officer under investigation. Does this mean that Departments are going to have to hire people to transcribe all these things so that they can use it in possible legal proceedings. This is going to be a undue hardship on small departments and possibly large departments because when the sergeant or higher up goes out to talk to a officer about something that is possible a concern they find out it is not that big of a deal and verbally reprimand the employee. Could that officer at that point in time say his rights were violated.

The Law Enforcement Officer under investigation will be entitled council or any other person of Officer's choice at any questioning of the Officer unless the Officer consents in writing to be questioned outside the presence of council. This is giving the Officer under investigation more rights as an employee then it does the criminal element when you have to read them their Miranda. They are a employee of that department and there some should be some expectations of the employer

having a chance to talk to people when there are problems without having to get lawyers involved. If the Officer under investigation has a lawyer you can be assured that I will have a lawyer there too.

I firmly feel that there are sufficient laws covering employee rights with the current labor standards and rights that are afforded the employee with them at this time. I feel that this law would just hinder departments throughout the State. I strongly encourage the committee to **oppose** House Bill 2432.

Sincerely,



Sheriff Larry D. Bergstrom
Cloud County Sheriff's Department



City of Wichita

Testimony

Regarding House Bill 2432

House Federal and State Affairs Committee

Delivered by Police Chief Mike Watson, City of Wichita
March 6, 1997

The City of Wichita and the Wichita Police Department are opposing House Bill 2432, commonly known as, The Police Officers' Bill of Rights. There are many reasons why this bill is unacceptable:

1. It creates an unfunded mandate.
2. It does not allow a complaint from outside the agency without the complainant providing and signing a detailed statement of the complaints. Even criminal complaints do not require this.
3. It allows officers to have legal counsel present at all questioning.
4. If disciplinary action is appropriate, the officer is allowed a hearing before a hearing board composed entirely of police officers from the officer's agency (or professional arbitrator).
5. The bill allows only the officer to decide if the hearing should be open to the public or to a limited audience determined by the officer.
6. The provisions of House Bill 2432 would apply to all law enforcement officers which would, in our jurisdiction include, Airport Security, substation clerks, and warrant officers of the Municipal Court. Other departments that do not currently staff and equip units to investigate complaints would be severely impacted.
7. Only one investigator could ask questions during an interview. They are asking for conditions that no other person, even in a criminal investigation, has the right to demand.
8. All interviews and hearings would have to be recorded in writing or by electronic means and a copy made available to the officer. In a department our size, with hundreds of investigations annually, the cost of equipment and supplies would be prohibitive.
9. An emergency suspension shall not affect on the health benefits of an officer. If the officer is suspended without pay the department cannot be forced to pay health insurance premiums.

This legislation is not acceptable for the numerous reasons indicated above, but in general terms it is not acceptable because law enforcement officers would have far more protection than others in regard to investigation into complaints of wrongdoing on their part. Officers are vested with powers of office that are naturally coercive in nature and the public has the right to know that the administrators that control and oversee the actions of officers have the tools necessary to "police the police" without unnecessary and overly protective regulations.

Officers are protected by the same rights as citizens in criminal matters. There is no evidence of a need for the so-called "rights" called for in House Bill 2432, except for a desire on the part of some to give officers immunity from and hamper the ability of departments to control unacceptable behavior and discipline officers.

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City of Pittsburg

201 West 4th St. • P.O. Box 688 • Pittsburg, Kansas 66762-0688 • (316) 231-4100 • FAX (316) 231-0964

March 3, 1997

Representative Garry G. Boston, Chairman, Room 156-E
Representative Ray Cox, Vice-Chairman, Room 156-E
Representative Ruby Gilbert, Member, Room 281-W
House Federal and State Affairs Committee
State Capitol
Topeka, Kansas 66612

Dear Representatives Boston, Cox and Gilbert:

I'm asking you to oppose HB-2432, also known as the "Law Enforcement Officers' Bill of Rights". In addition to being an unfunded mandate, we're very concerned with this attempt to impose a questionable list of "minimum standards", which would have the practical effect of making it very difficult to discipline or discharge local law enforcement officers. Our Police Chief, Mike Hall, has over 27 years of law enforcement experience in the Pittsburg and Lawrence communities, and he is also strongly opposed to this legislation for the same reasons.

We believe our own local personnel policies and procedures are sufficient, and are working quite well. We strongly feel the management of local government personnel should remain a responsibility of local government, and we urge your opposition to this unnecessary legislation.

Thank you for your time in reviewing our concerns, and your interest is very much appreciated.

Sincerely,

THE CITY OF PITTSBURG



Larry Stevens
City Manager

LS:lp

cc: City Commissioners
Reps. Ed McKechnie and Bob Grant
Mike Hall, Chief of Police
Chris McKenzie, League of Kansas Municipalities

Fed & State
3-6-97
Atch #12



The City of Lindsborg

Little Sweden, U.S.A

P.O. Box 70 • 101 South Main • Lindsborg, Kansas 67456

Phone 913-227-3355 • Fax 913-227-4128

March 3, 1997

Representative Garry Boston
State Capitol, Room 156-E
Topeka KS 66612

Dear Representative Boston:

It is my understanding that on March 6, 1997, the House Federal and State Affairs Committee will hold hearings on HB 2432, the Law Enforcement Officers' Bill of Rights. As the Chief Executive Officer for the City of Lindsborg, I want to express my strong opposition to HB 2432.

There are several reasons for my opposition to this bill. First, I believe that it creates an Unfunded Mandate for local governments. Second, it requires police officers to be treated differently from other employees during an investigation. It also gives the police officer more rights and protection than other employees, when disciplinary action is recommended.

I served as a police officer for 16 years and have heard many of the arguments for and against the Police Officers' Bill of Rights.

In conclusion, I want to express my concern that the passage of this bill in its current form will make it extremely difficult to discipline or terminate police officers that may be involved in misconduct, dishonesty, or other breaches of integrity.

Thank you for your attention.

Sincerely,

Gary Meagher
City Administrator

Fedi State
3-6-97
Atch #13



OFFICERS

THOMAS HAYSELDEN
President
Shawnee Police Dept.

REX TAYLOR
Vice President
Iola Police Dept.

ALVAN JOHNSON
Sergeant-At-Arms
Riley Co. Police Dept.

JOHN DOUGLASS
Treasurer
Overland Park Police Dept.

DOYLE KING
Executive Director
P O Box 780603
Wichita, KS 67278-0603

RONALD JACKSON
S.A.C.O.P. Representative
Newton Police Dept.

RON GOULD
Recording Secretary
KLETC

JAMES DENNEY
Immediate
Past President
K. U. Lawrence

**REGIONAL
REPRESENTATIVES**

GUS RAMIREZ
Region I
Johnson Co. Comm. College

SAM BUDREAU
Region II
Chanute Police Dept.

ROBERT RODRIGUEZ
Region III
Emporia Police Dept.

DICK HEITSCHMIDT
Region IV
Hutchinson Police Dept.

LYNN MENAGH
Region V
Norton Police Dept.

DOUGLAS MURPHY
Region VI
Kinsley Police Dept.

March, 1997

**TESTIMONY IN OPPOSITION TO HOUSE BILL 2432, "THE LAW
ENFORCEMENT OFFICERS' BILL OF RIGHTS."**

The Kansas Association of Chiefs of Police is strongly opposed to the enactment of H.B. 2432, the Law Enforcement Officers' Bill of Rights.

No police organization can be successful without a high degree of public trust and confidence. An essential component of earning and keeping that trust is to insure that police conduct is held to the highest possible standard and that police misconduct is not tolerated, whether the misconduct is rudeness, use of excessive force, or commission of a crime.

The Law Enforcement Officers' Bill of Rights appears to be an attempt to insure that officers receive fair treatment while under investigation and to protect them from the trauma of anonymous complaints. In fact, however, anonymous complaints may sometimes be the only way to uncover misconduct, and officers already enjoy many employment rights and privileges not available to private employees.

A hypothetical but accurate illustration: Imagine yourself to be a manager in a small manufacturing business. You have learned that one of your factory workers has committed a serious breach of company rules - theft, drinking on the job, misuse of sick leave, whatever. It makes no difference what the violation is, but the fact is you have clear evidence. You call that employee into your office and confront him with the evidence. He admits to the violation and offers an excuse, maybe good, maybe not so good. It may not even be the first time you're aware of his misconduct. You tell him that regardless of his explanation, clear-cut company rules have been violated and you are firing him.

At that point, your employee responds that the United States Supreme Court has clearly ruled in a number of cases that he has a *constitutional right* to continued employment in your place of business unless you grant him both substantive and procedural due process. He goes on to say that even when you have met those requirements he will sue you in federal court for violating his civil rights under some other provision of law.

As a private employer, how many of you would tolerate that kind of response to your firing an employee? Legally, you don't have to tolerate it at all. You escort the fired employee off the premises, mail him his final paycheck, and go on about your business. In fact, the whole concept probably seems absurd.

However, as a public employer, I live with that exact set of restrictions day in and day out. Public employees, including police officers, do have a recognized *constitutional right* to continued employment unless strict due process requirements are met, and all discipline of public employees must meet this test. One of my peers told me last week about firing an officer for insubordination in 1992. Last year, *four years later*, the employee exhausted his last appeal when the termination was found to be justified by a federal court.

On top of due process protections, many police officers have extra layers of protection through civil service plans or collective bargaining agreements.

The Law Enforcement Officers' Bill of Rights attempts to add one more set of requirements and therefore another set of obstacles in the path of public employers trying to regulate the conduct of their employees. It smacks of organized labor and the often adversarial relationship between employers and employees in such a setting. I firmly believe that management is labor's best organizer, and I work very hard to forge a team-oriented partnership in my department so that no one feels the need to find a voice or protection in a union. I have to say I resent the fact the legislature might literally force me into such an adversarial relationship.

Police officers are rightly held to higher standards of conduct than other citizens, because they wield tremendous power in our society in an environment where misuse or abuse of that power has severe consequences. I teach a class on professionalism in Johnson County's basic police academy, and I stress this very fact to recruit officers.

Police officers and police agencies must be held accountable to those who employ them - their communities. In many regards, the Law Enforcement Officers' Bill of Rights is a plain and simple attempt to evade accountability. In fact, some of my colleagues have labeled it the "rogue cop's bill."

That may be a little extreme. I am certain that you have heard horror stories about officers who were fired for doing their duty and arresting a drunk driver who happened to be the mayor's brother, or those who were abused by their employers in the course of an investigation into possible misconduct, or those who were placed in the very uncomfortable position of being questioned based on an anonymous complaint. I am also certain that a number of these stories are true. There are abusive employers; there are cities where ticketing the "wrong person" will get you in trouble; there are citizens who will falsely and maliciously make anonymous allegations.

Even without the Officers' Bill of Rights, there are many legitimate and effective ways to address these abuses without handcuffing good, fair employers. The public employee's unique employment rights are pretty much exclusively the results of litigation, and with a good, sound case no one needs to invest huge amounts in attorney's fees up front. The wrongs this legislation seeks to correct would never pass constitutional muster, and big damage awards are a great learning tool for those who are otherwise unwilling to comply with the law, good sense, and common decency.

Before the fact, officers have more tools than ever to protect themselves from unfounded allegations such as in-car video systems or even inexpensive miniature tape recorders.

Law enforcement agencies and their governmental entities incur unlimited potential legal - and financial - liability for the actions of their employees. Failure to train, failure to supervise, and negligent retention are all very real threats. I do not believe that the state should dictate disciplinary and employment policy for departments unless the state is also willing to accept all the liability for every officer in those departments. Authority and responsibility go hand-in-hand.

Collectively, we would be much better served if we devoted our time, energy, and resources to train employers and employees on their respective rights and responsibilities.

Thank you for your consideration.

Sincerely,



J. Stephen Cox
Chief of Police
Leawood, Kansas

Chair, Legislative Committee
Kansas Association of Chiefs of Police



March 3, 1997

The House Federal and State Affairs Committee
Statehouse
Topeka, KS 66612-1504

Dear Committee Members:

Please accept this letter stating my strong opposition to House Bill 2432 entitled "Law Enforcement Officers' Bill of Rights." A community's confidence in its police department is absolutely essential to the provision of law enforcement service and public safety. Essential in the maintenance of that confidence is the acceptance of, investigation of, and action on complaints of officer misconduct which may be received by any means. As chief of police, I feel strongly that one of my foremost responsibilities is dealing with allegations of police misconduct, utilizing comprehensive investigative techniques while balancing the rights and interests of the public and the employee. The provisions of this bill would heavily skew that balance to the employee, to the detriment of the community at large. Conversely, it is my belief that because of the power vested in police officers and their role and visibility in the community, their conduct and personal actions should be held to higher standards than other employees in the private or governmental sectors. This bill does the opposite by providing greater protection for police officers than for other employees. Police accreditation requires the acceptance and investigation of anonymous complaints from citizens.

Although there are a number of portions of this bill I object to, one of the more questionable items is the requirement that citizens provide a signed, detailed complaint against an officer. Citizens are often very reluctant to come forward and make a legitimate complaint against an officer. They often fear retaliation from the officer they complained against or by his or her co-workers. Most anonymous complaints received involve a cursory investigation which does not substantiate the allegation charged; however, on occasion, that anonymous complaint against an officer and subsequent investigation identify officer misconduct of the most grievous nature. Examples include: brutality, graft and corruption, racial discrimination and sexual misconduct. As written in H.B. 2432, the investigation of anonymous complaints would be prohibited and grievous acts

against the public we serve would be allowed to continue until someone with enough fortitude came forward to make a signed, detailed written complaint. Senate Bill 2432 would only exacerbate the existing public distrust of government at all levels.

Senate Bill 2432 also sets forth timelines and criteria for conducting investigations and the adjudication of disciplinary action. I strongly object to this. In the city of Leavenworth, employees, police officers and others are equally protected by our Civil Service ordinances. Employees enjoy a multi-tiered appellate review of disciplinary action invoked for misconduct. These include review by co-workers, the city manager, the Civil Service Board composed of representatives of the citizens, and ultimately, review by the District Court. These matters are handled as administrative between the employee and the employer. As such, legal representation from neither side is allowed until it reaches the Civil Service Board. The costs associated with imposition of hearing boards or arbitrators will be an unnecessarily expensive, state-mandated imposition on local government.

I strongly encourage you to vigorously oppose this bill and the mandates it poses. I think we are all looking to accomplish the same thing, and that is to provide quality governmental services by dealing fairly but firmly with the employees who provide those direct services. Police departments and officers should be soliciting citizen feedback regardless of content rather than making it more difficult for citizens to make a complaint.

If you have any questions about my position, please feel free to call me at 913-651-2260. I will also make myself available to testify at the committee hearing on March 6.

Sincerely,



Lee Doehring
Chief of Police

cc: Mark Pentz, City Manager
Steve Cox, K.A.C.P. Legislative Chairman

House Federal and State Affairs Committee

Testimony of:

**John L. Foster, Undersheriff
Johnson County Sheriff's Department**

Re: House Bill 2432

House Bill 2432 would seem to be consistent with our sense of fairness. After all, who would want to deny a law enforcement officer or anyone else, for that matter, a fair hearing concerning an accusation of any wrongdoing concerning rules and regulations. No one, of course.

Appointment as a police officer does not strip one of their due process rights concerning their property and liberty interest in their jobs. Those rights already exist; and in my opinion, by far the greatest majority of police agencies make every effort to ensure those rights.

My perception of this bill takes a somewhat different perspective. It may be coincidental, but it would appear that in states where a bill such as HB 2432 exists, there seems to be a high degree of police unionization. Now, there is nothing wrong per se with the union; however, I personally do not believe that the police service should be unionized. However, in my judgment, that is exactly what this bill is really about. That is not to say that those police agencies that are unionized have not accomplished significant advances; they have. My view is that those political subdivisions that have police unions deserve them. In most of those cases, the police departments have suffered from benign neglect over a protracted period of time.

This bill reminds me of the old story of the police officer, after having retired, visiting his police department a number of years later. And in discussion with the chief, observed that the police department had gone to two-man cars. And the chief said no, not really, the second person is the officer's attorney.—

In short, let those of us involved in police administration do our jobs. We are not the enemy of the rank and file police officer; quite the contrary. Most of us have spent a great part of our careers trying to improve the lot of the law enforcement officer in every respect.

This bill will do nothing but nurture the "us against them" mentality. The public deserves better.

I recommend that this bill be adversely reported.

Fed + State
3-6-97
Atch #16



OTTAWA POLICE DEPARTMENT

OTTAWA, KANSAS

JEFFREY D. HERRMAN
Chief of Police

To Protect and Serve

March 3, 1997

House Federal & State Affairs Committee

Dear Committee Members:

This letter is to show my strong disapproval of HB 2432, Law Enforcement Officers' Bill of Rights. The current proposed legislation would do a great injustice to the Kansas law enforcement community. As a police chief, I have sworn to defend the rights of all citizens of Kansas. These rights would certainly extend to the officers I employ. However, legislation such as HB 2432 would seriously hamper my investigations and my abilities to ensure I have the finest police officers available. Many investigations leading to the discovery of wrongdoing by an officer would be seriously hampered with the proposed restrictions that HB 2432 places on the department. Our citizens have the right to demand that only officers of the finest character are acting in the position of authority and trust.

On a number of occasions I have discovered wrongdoing by officers from an anonymous complaint, or by a person too afraid to come forward and make their identity known. This certainly did not change that the officer, in these instances, was completely in the wrong. To establish a formal pact of arbitration and mediation certainly does not serve the over all good for our Kansas citizens. I have spoken with several officers below the level of staff. They are in concurrence that this type of legislation is unwarranted.

Please review all aspects in your consideration of this bill. I feel you will find that it is not in the best interests of the state of Kansas citizens, nor of the police officers serving them.

If I can be of any additional assistance, please contact me.

Respectfully,

Jeffrey D. Herrman
Chief of Police