

Approved: February 14, 2000  
Date

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 8, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Clark Shultz - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Ward Loyd

Jim Kaup, City of Garden City

Elwaine Pomeroy, Kansas Credit Attorneys Association & Kansas Collectors Association

Hearing on **HB 2775 - abatement of common nuisance adding felonies committed by gang members to list of unlawful activities**, was opened.

Representative Ward Loyd explained that the language was taken from sentencing guidelines and that it would define the scope of the statute which would include felonies committed by gangs. Arizona & California have similar statutes which have both been upheld in the courts.

Jim Kaup, City of Garden City, appeared as a proponent of the bill. He stated that cities need this type of enforcement tool because gang activities has grown at an alarming rate. The proposed bill simply gives law enforcement another tool to eliminate gang activities. (Attachment 1)

Hearing on **HB 2775** was closed.

Hearing on **HB 2209 - wage garnishment, assignment of account, benefit entitlement restriction**, was opened.

Elwaine Pomeroy, Kansas Credit Attorneys Association & Kansas Collectors Association, appeared as the sponsor of the bill which deletes subsection d, regarding the prohibiting a judgement creditor from using wage garnishment to enforce any claim which has been assigned. (Attachment 2)

George Barbee, Kansas Association of Financial Services, did not appear before the committee but requested his written testimony be included in the minutes. (Attachment 3)

Hearing on **HB 2209** was closed.

### **HB 2601 - Increase Court of Appeals to 14 judges**

Representative Powell made the motion to report HB 2601 favorably for passage. Representative Loyd seconded the motion. Representative Powell commented that he chaired the Judicial Budget Committee last summer and they determined that the expansion of the Court of Appeals was long overdue. **The motion carried.**

### **HB 2450 - Judicial branch of state government, budget**

Representative Carmody made the motion to report HB 2450 favorably for passage. Representative Powell seconded the motion.

Representative Carmody made the substitute motion to include revisors technical changes. Representative Powell seconded the motion. The motion carried.

CONTINUATION SHEET

Representative Carmody renewed his motion to report HB 2450 favorably for passage, as amended. Representative Powell seconded the motion. The motion carried.

**HB 2596 - creating the crime of counterfeiting; relating to forfeiture**

Representative Pauls made the motion to report HB 2596 favorably for passage. Representative Lightner seconded the motion.

Committee members were concerned that the definition of "intellectual property" was too broad. Representative Gregory made the motion to insert that "intellectual property means any trademark, trade name or service mark, as such words are defined in K.S.A. 81-202." Representative Crow seconded the motion. The motion carried.

Representative Pauls made the motion to report HB 2596 favorably for passage, as amended. Representative Swenson seconded the motion. The motion carried.

**HB 2684 - one year time limitation on writs of habeas corpus**

Representative Pauls made the motion to report HB 2684 favorably for passage. Representative Rehorn seconded the motion.

Representative Pauls made the substitute motion to have manifest injustice be discretionary with the courts and include in subsection (f)(a) "or the United States Supreme Court". Representative Rehorn seconded the motion. This would give the District Courts some relief with their caseload. The motion carried.

Representative Pauls made the motion to report HB 2684 favorably for passage, as amended. Representative Swenson seconded the motion. The motion carried.

**HB 2772 - crime victims restitution; increasing amounts of compensation; allowing business & governmental entities to be compensated**

Representative Haley made the motion to report HB 2772 favorably for passage. Representative Ruff seconded the motion.

Members were concerned whether the bill included non-profit entities. Representative Carmody made the substitute motion to strike "business" on page 2, lines 38 & 40 to include the non-profit entities. Representative Gregory seconded the motion. Members were concerned that striking "business" would not allow business to request funds. With permission of the second Representative Carmody withdrew his motion.

Representative Carmody made the motion to use only the italicized language in section (p) lines 37-39 thru the period, so it would read appropriately. Representative Pauls seconded the motion. The motion carried.

Representative Carmody made the motion to amend on page 2, lines 38 & 40 to read "apply to any corporation, partnership, governmental or any other entity...". This would include all entities, profit or non-profit, business or non-business and entity being one that has a taxpayer identification number. Representative Pauls seconded the motion. The motion carried.

Representative Carmody made the motion to report HB 2772 favorably for passage. Representative Gregory seconded the motion. The motion carried. Representative Marti Crow wished to be recorded as voting no.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for Wednesday, February 9, 2000.



## LEGISLATIVE TESTIMONY

**TO:** Chairman O'Neal and Members, House Judiciary Committee  
**FROM:** Jim Kaup, on behalf of the City of Garden City  
**RE:** **HB 2775; Common Nuisances-Felony Activity by Gang Members**  
**DATE:** February 8, 2000

The 2000 State Legislative Policy Statement adopted by the City Commission of Garden City on December 28, 1999 provides:

“The City supports legislation to amend the common nuisance statute, K.S.A. 22-3901, to add to the list of property declared to be common nuisances property that is used to maintain and carry on gang-related activities.”

Like many communities in Kansas and across the nation, Garden City continues to face the problem of youth gangs. In order to deal effectively with this problem, we have engaged in a number of approaches, both proactive and reactive. The City has expanded the scope of its DARE program in the schools to focus even more attention on anti-gang education. In a cooperative program that involves the business community, private citizens, local law enforcement, and other municipal departments, we have significantly reduced the gang graffiti problem in Garden City through an aggressive approach to cleanup and by restricting the sale of spray paint to minors. The special “street gang unit” formed a few years ago in the Garden City Police Department continues to be highly active in identifying and investigating gang members, notifying parents, conducting surveillance, working closely with the schools through their administration and through the school resource officers assigned to them by the department, and arresting gang members on various criminal charges.

As a consequence of all of our efforts, the community has achieved notable success in the reduction of gang activity and the decline in the number of our youth being recruited into local gangs.

However, there is still much that needs to be done in Garden City. Of particular concern to us is what happens to the quality of life in a neighborhood when a particular residence becomes a focal point for gang activity. Such locations become the neighborhood headquarters for vandalism, burglary, drug trafficking, and just plain intimidation. The hard-working, law-abiding residents of the neighborhood are afraid for their safety, even while on their own property, and those residents fear for the influence this activity may have on small children in the neighborhood. The police respond as aggressively as possible when violations occur, but are often limited in what they can do. The community needs another option to address situations like this.

That is precisely what the City is asking for in House Bill 2775. We seek to expand the range of options available to us to combat gangs in our community, specifically by amending K.S.A. 22-3901 to enable the use of common nuisance statutes against gang activity. This legislation would add specified gang activity to the list of common nuisances. This would give local authorities the ability to file for injunctive and other relief currently provided for under K.S.A. 22-3901 *et seq.* Although new to Kansas, this method has been employed with some success by communities in other states, most notably in Arizona and California where similar laws have survived legal challenges.

It has been our experience in Garden City that complex community problems such as criminal gangs, substance abuse, and other related problems are best addressed on multiple fronts. We view this legislation as assisting us in this regard, by giving us another tool that we can utilize in our efforts to eliminate gang activity and keep the streets safe for our citizens. As such, the City of Garden City would like to convey its strong support for House Bill 2775.

We appreciate the sponsorship of this bill by our Representative, Ward Loyd. The City respectfully requests favorable action on HB 2775 by this Committee.

JMK:ag

# MEMORANDUM



TO: Jim Kaup

FROM: Captain Michael D. Utz, Investigations Division Commander

DATE: February 8, 2000

SUBJECT: Overview of Law Enforcement Response to Gang Activity in Garden City

I am currently assigned as the Investigations Division Commander for the Garden City Police Department and oversee the administrative duties of the Garden City/Finney County Street Gang Unit (SGU). The SGU is comprised of officers and detectives from the Garden City Police Department, the Finney County Sheriff's Office, the Holcomb Police Department and the Kansas Highway Patrol. The SGU also has one prosecutor from the Finney County Attorney's Office assigned to the SGU. The SGU was formed in June of 1996.

Garden City began to notice gang activity in the early 1990's, and as many cities in the Midwest perceived these juveniles as "wanna bee's". As time went by, gang activity within the Midwest grew, and the gang problem in Garden City was no different. Gang members who were committing drive-by shootings, rapes, robberies, burglaries, aggravated assaults and aggravated battery victimized the community of Garden City. In February of 1996, one of the worst case scenarios occurred. Members of a street gang in Garden City murdered a 34-year old family man with four children. Six gang members were ultimately convicted for their role in the murder.

Currently, there are approximately 39-documented criminal street gangs in Garden City. There are at least 375-documented criminal street gang members and at least 75-criminal street gang associates. Over the past three years the SGU has been doing an excellent job identifying gang members, and investigating cases involving gang members are ultimately arrested and prosecuted. Gang members usually do their criminal acts when other gang members accompany them. They also enjoy hanging out at certain locations where they will consume alcohol and drugs, discharge firearms into the air, engage in criminal damage, fighting, etc. Unfortunately, after we arrest them and they bond out, they return back to their hang out. This reduces the quality of life in the neighborhoods that they hang out at, as well as reducing the safety of the young children in the neighborhood. The Garden City Police Department, as well as the SGU have responded to and have successfully cleaned up neighborhoods after having to put special enforcement in the neighborhood for several weeks, if not months.

In the last three years the SGU has done an excellent job combating the criminal street gangs. With the current operation of the SGU, each officer is assigned a task coordinating gang activities with the schools, parole, probation, SRS, other law enforcement agencies, etc. They are also assigned to monitor various gang members and their activities.

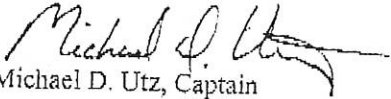
The SGU started a responsible retailer program with local retailers that sell spray paint. This program had the retailers voluntarily post signs that sale of spray paint to anyone under 18-years of age was unlawful, and also moved their spray paint displays to the front counters so they may be monitored by store employees. In 1996, there were over 250 reports of graffiti in Garden City, and there were only 25-reports of graffiti last year.

Once the SGU identifies a person as a member of a criminal street gang; an officer serves the parent of the gang member a letter notifying them that their child has been identified as a gang member. The overall consensus from most parents is that they were not aware of their child's activities in a gang.

There is no doubt that law enforcement in Garden City has taken every stride possible to curb activities by the criminal street gang. The SGU has found that any tool available to curb their criminal activities is another step in making our neighborhoods safe. Currently, the neighborhoods and streets are not controlled by any criminal street gang, but the next time they move into a neighborhood it would be advantageous to have additional laws to aid law enforcement in making the neighborhood safe again.

It is unfortunate that the current laws do not permit law enforcement and prosecutors to rid neighborhoods of criminal street gang activity that is disruptive and dangerous to the children in the neighborhood. We can not permit the criminal street gangs to hold our neighborhood hostage where the citizens are too afraid to come out on their front yard.

We would encourage you to support and pass the current bill on before you concerning adding the criminal street gang activities as part of the nuisance statute. We do appreciate your attention to this matter.

  
Michael D. Utz, Captain  
Investigations Division Commander

**REMARKS CONCERNING HOUSE BILL 2209**

**HOUSE JUDICIARY COMMITTEE**

**FEBRUARY 8, 2000**

Thank you for giving me the opportunity to appear before you in support of HB 2209 on behalf of the Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

Your committee introduced the bill; it was then assigned to the House Business, Commerce and Labor Committee, which passed it, and placed it on the consent calendar. The bill then was removed from the consent calendar, and during debate, a motion was made to re-refer the bill to your committee.

This bill will amend K.S.A 60-2310 to delete therefrom subparagraph d.

Subparagraph d prohibits a judgement creditor from using wage garnishment to enforce any claim which has been assigned. For instance, if ABC Company buys an account from a creditor, whether that account is already in judgment or not, ABC Company cannot thereafter enforce the account against the debtor by the use of wage garnishment.

Assignment of an account does not refer to the typical arrangement whereby a creditor places an account for collection with a collection agency or collection attorney. In that situation, the account has not been assigned. The original creditor still owns the account and any enforcement of the account must be brought in the name of the original creditor.

An account is assigned where value is given by the assignee and the actual ownership of the account is transferred from the original creditor to the assignee.

This is a common arrangement in commerce today, particularly in the banking and finance industry. Consumer debt created by credit cards, promissory notes and mortgages is bought and sold every day. It is not unusual for a mortgage to be sold several times before the borrower pays it off.

Another common practice is in the telephone industry, where the consumer receives a bill from one telephone company that includes charges from one or more other companies. As an example, I write a check each month for my telephone service at home to Southwestern Bell, who in turn forwards part of the money included in the total bill to my long distance carrier.

The proposed amendment is not designed to necessarily encourage this practice, but simply to recognize that the arrangement is common in the market place and to allow the purchaser of debt the same enforcement options as does the original creditor. The consumer is not deprived of any remedies as the assignee on consumer paper remains subject to all of the same defenses that would affect the original creditor.

I understand that in 1998, 25 billion dollars of debt was sold in this country. There was a great increase in the sale of debt in 1999, when it is estimated debt sales increased to 425 billion dollars. A personal experience that I had several months ago was with regard to my revolving credit account with J.C. Penney. I always pay the entire balance due each month. I was surprised to receive a notification that my account had been sold by J.C. Penney to a bank in Georgia.

Kansas is unusual in having this prohibition against wage garnishment for an assigned account. None of our surrounding states, Colorado, Iowa, Missouri, Nebraska, and Oklahoma have any such prohibition. We believe that Kansas should recognize current practices in the business community. We do not feel that Kansas should support debtors in failing to meet their



incurred obligations by providing them a safe-haven against wage garnishments in the commercial transactions which have been sold.

It is important to remember that the debtor owes the same debt regardless. The sale of the debt is simply a matter of the creditor trying to manage its own credit policies and control cash flow. In this age of commerce, paper is routinely sold to reduce operating costs, keep prices down and keep businesses afloat to employ people and continue to supply their goods and services. The cost of continuing to monitor and collect accounts causes creditors to sell off their paper. The debtor benefits by being able to purchase goods and services now, rather than later. The only difference to the debtor is to whom the check is written. The debtor pays no penalty.

Indeed, if there is any effect on the debtor by sale of discounted paper, it is that the debtor may be able to cut a **better** deal with the assignee than they could have with the original creditor.

The debtor has received the services or received the goods, or received money that has been borrowed. The debtors should be held responsible for the debts that they have incurred.

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

# Kansas Association of Financial Services

George Barbee, Executive Director

Jayhawk Tower, 700 SW Jackson, Suite 702

Topeka, KS 66603-3758

785/233-0555

Fax: 785/357-6629

---

## STATEMENT

DATE: February 8, 2000  
TO: House Judiciary Committee  
FROM: George Barbee  
RE: Rescinding Wage Garnishment Restrictions (HB-2209)

Mr. Chairman and members of the committee, I am George Barbee, the executive director of the Kansas Association of Financial Services (KAFS). This association is comprised of consumer finance companies serving Kansas through approximately 79 offices. KAFS supports House Bill 2209.

KAFS members are non-depository, market-funded consumer lenders. It is a common practice within the lending industry to purchase loans that have been implemented by other organizations. There are some remedies available to lenders when a loan is in default. Garnishment has not been one of those available for a purchased loan.

KAFS membership is made up of rather large financial service companies, such as Household Finance, Norwest, Associates, American General, and others. These companies are engaged in making consumer credit loans under the statutes, rules, and regulations of the Uniform Consumer Credit Code (UCCC). These companies enhance the consumer credit industry by offering alternatives to the consumer that create and maintain competition within the industry. These companies deserve the same protection of their investments in purchased loans as on those granted to companies for original loans.

We respectfully request your support of HB-2209.