

Approved

Date: *March 26, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:40 a.m. on March 22, 2001 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation (KBI)
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Patty Linsner-Hansen, Crisis Center, Great Bend
Tammy Rider, Battery Women's Task Force
Ron Nelson, Kansas Bar Association (KBA)
Kathy Olsen, Kansas Bankers Association
Sergeant Dan Hay, Topeka Police Department
Jeff Bottenberg, Kansas Sheriff's Association

Others attending: see attached list

Minutes of March 21st a.m. and p.m. meetings were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

The Chair informed Committee that **HB 2230** which has passed out of the Senate Judiciary Committee was currently being worked in the House where the provisions in the bill were being put into **SB 67**. He stated that Committee would continue a review of the bill next week in Conference Committee.

Sub HB 2077—concerning protection from abuse orders

Conferee Smith testified in support of **Sub HB 2077**, a bill which amends the protection from abuse law by changing the application of the definition of abuse to cover prohibited abusive acts between certain parties. The Conferee reviewed current law governing protection from abuse (PFA) which states that individuals who have no other legal option may get a PFA order. He discussed the difficulties law enforcement officers face when trying to verify PFA orders and stated these orders can be accessed 24 hours a day when entered into the National Crime Information Center (NCIC) database. He further discussed an amendment which makes the sheriff responsible for the accuracy of the NCIC entry and makes the court ensure the legal validity of the order. (attachment 1)

Conferee Barnett testified in support of **Sub HB 2077**. She deferred to the next conferee after distributing her written testimony. (attachment 2)

Conferee Linsner-Hansen testified in support of **Sub HB 2077**. She cited two abuse cases which illustrate the importance of enhancing the Protection From Abuse Act to include dating relationships. (attachment 3)

Conferee Rider testified in support of **Sub HB 2077**. She stated that many victims of abuse who need protection under the law cannot obtain it due to the current requirements for filing a PFA. She cited cases to support this statement and urged Committee to provide equitable protection to all persons in "romantic" relationships. (attachment 4)

Conferee Nelson testified in opposition to **Sub HB 2077**. He discussed PFA orders stating that when such orders are entered into NCIC there is potential for entry of incorrect records which may be difficult to remove at a later date. He further stated that the amendments provide opportunity for misuse of the system for filing of PFA actions and he objected to expanding the language to include persons in a "dating" relationship because of its subjective nature. He argued that current criminal law covers all of the acts that are addressed by this legislation. (attachment 5) Discussion followed.

HB 2296—concerning check forgery

Conferee Olsen testified in support of **HB 2296**, a bill which amends the forgery statute by delineating the penalty for first, second, and third or subsequent convictions. She stated that currently there are, in Kansas, only mild consequences for committing check forgery which makes this state open to people who make a living forging checks. She referenced a chart of surrounding states' forgery laws and detailed KBA's proposed amendments in **HB 2296** which provide for harsher penalties for persons who commit check forgery including fines, incarceration, and subjection to the forfeiture law. (attachment 6) She also referenced two newspaper articles on the subject of forgery in Kansas. (Journal-World, Lawrence, Kansas, Jan. 10, 2000, pp. 1A and 3A, and the Wichita Business Journal, Dec. 10, 1999) Lengthy discussion followed regarding the asset-seizure portion of the amendment.

Conferee Hay testified in support of **HB 2296**. He distributed samples of forged blank checks and discussed several check forgery case histories on file with the Topeka Police Department. He cited statistics which reveal the prevalence of this crime as well as the cost to citizens and merchants. (attachment 7)

Written testimony in support of **HB 2296** was submitted by Heartland Community Bankers Association. (attachment 8)

Conferee Bottenberg testified in opposition to **HB 2296**. He stated that the KSA supports enhanced penalties for forgery but feels that the mandate that repeat offenders spend time in a county jail instead of the DOC is not acceptable since county jails are already over-crowded and under-funded, a statement supported by detailed evidence he presented. (attachment 9) Discussion followed.

Written testimony in opposition to **HB 2296** was submitted by Michael Pepoon, Sedgwick County Courthouse (attachment 10) and Judy Moler, Kansas Association of Counties. (attachment 11)

The meeting adjourned at 10:33 a.m. There are no further meetings scheduled.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 22, 2001

NAME	REPRESENTING
Ron Nelson	Kansas Bar Assn
Paul Davis	KS Bar Assn.
KEVIN GRAMM	A.G.
Nancy Lindberg	AG
Terry Heidner	KDOT
Robbie Thompson	KDOT
Tammy Reid	YWCA Battered Women Task Force
Tiffany Smith	YWCA Battered Women's Task Force
Jim Schmitz	citizen
Marianne Schroer	"
Ellen Schroer	"
SC Berner	KCSOV
Patty Linsner-Hanson	Family Crisis Center
Laura Patzer	Family Crisis Center
John R. Waddell	Topeka Police Dept.
Sammy Hay	Topeka Police Dept
Kathy Olsen	Ks Bankers Assn
Chuck Stones	"
Sheila J. Walker	KDOR-DMV



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Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH
DIRECTOR OF PUBLIC & GOVERNMENTAL AFFAIRS
KANSAS BUREAU OF INVESTIGATION
IN SUPPORT OF HOUSE SUBSTITUTE FOR HB 2077
MARCH 22, 2001

Mr. Chairman and Members of the Committee:

I am pleased to be here on behalf of and in support of Substitute HB 2077. This legislation will add important improvements in the effectiveness of protecting children and adults from abuse.

Under current law, individuals who have no other legal option, such as a restraining order, may get a protection from abuse (PFA) order. This can be on a temporary basis until a hearing and then on a more permanent basis after both sides have been heard. Typically, the court orders an abuser to stay away from the victim. These orders are then given to the local police department. If another incident occurs, in theory, the police are aware of the order and the offender can be arrested for trespass or violating a protective order.

A problem arises when the perpetrator may claim that there has been an amendment or recall of such an order or where the incident occurs in a different jurisdiction. It is typically late at night, the courts are closed and the officers can't verify the PFA order. Fortunately, there is a solution to this problem already in existence. The National Crime Information Center (NCIC) is a database run by the FBI, which is available 24/7 to law enforcement officers through their dispatch. You have probably heard of NCIC where officers will check to see if there is an outstanding warrant for an individual or if a car is stolen during traffic stop. Within the NCIC there is a field for entry of protection from abuse orders. By having these PFA orders entered

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into NCIC, the ability to prove that a valid order is in existence would be immediately available to every law enforcement officer in the country.

The Office of Judicial Administration has requested a technical amendment which is attached to my testimony, to clarify that the sheriff will be responsible for ensuring the accuracy of the NCIC entry and the court of the legal validity of such orders.

Using NCIC has further importance in that under the Brady Law (when a person has a record check run prior to purchasing a firearm), the NCIC file is checked to see if there are outstanding restraining orders on the person. In Maryland, an unfortunate situation occurred where a woman was assaulted and obtained a PFA order. However, the local department put it into a state database rather than NCIC. The perpetrator applied to purchase a handgun and an NCIC check failed to show the existence of the PFA order. The purchase was approved and the woman was killed using that handgun. The heirs are now suing the department and the State of Maryland for failure to utilize the NCIC database.

The House also provided some definitions to be used in determining those persons who are covered by the Protection from Abuse act.

Many law enforcement agencies and counties are currently putting the PFA orders into the NCIC. This legislation merely expands that to make it a uniform practice throughout the state. This legislation would not only make the officer's job easier, it will, in fact, save lives. I urge your passage of House Substitute of HB 2077.

Thank you for your consideration. I would be happy to answer your questions.

Substitute for HOUSE BILL No. 2077

By Committee on Judiciary

2-13

AN ACT concerning protection from abuse orders; amending K.S.A. 60-3108 and K.S.A. 2000 Supp. 60-3102 and 60-3104 and repealing the existing sections.

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

New Section 1. (a) All emergency protection from abuse orders, temporary protection from abuse orders, protection from abuse orders, orders amending an existing protective order, other orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, or orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, shall be entered into the national criminal information center protection order file. A copy of these orders shall be delivered by the clerk of the court to the sheriff of the county where the order is issued or registered. The sheriff's office shall immediately enter the order into the national criminal information center and other appropriate databases after all mandatory identifiers are available. If the order is a foreign protective order, the sheriff's office shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order into the national criminal information center and other appropriate databases. Any modification of an order shall be forwarded immediately by the clerk of the court to the sheriff's office with jurisdiction to enforce the modified order. The sheriff's office ~~and the court~~ shall ensure the ~~validity and~~ accuracy of the entries of the orders.

and the court shall ensure the validity

(b) All orders which have been entered into the national criminal information center protection order file shall be cleared as an active record from the computer system when:

- (1) The order expires according to the terms of such order;
- (2) a Kansas court notifies the law enforcement agency which has jurisdiction over the entry of the order that such order has been dismissed; or
- (3) a foreign protective order has been invalidated by either a Kansas court or a foreign court with jurisdiction over such order.

(c) This section shall be part of and supplemental to the protection

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UNITED AGAINST VIOLENCE

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

Senate Judiciary Committee
HB 2077
March 22, 2001

Dear Chairman Vratil and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence strongly *support* HB 2077. This bill addresses several key areas: the issue of many victims who need protection, but do not meet the criteria for eligibility, and that of accessibility of information to law enforcement officers who are trying to enforce a protection order.

Protection From Abuse orders are sometimes the only tool available to both victims and law enforcement in trying to contain the violence of an abuser. Currently in Kansas a person is eligible for a protection order only if the abuser and the victim presently or have previously shared a household, have a child in common, or apply on behalf of a child. HB 2077 expands the criteria under which a person is eligible by including victims who have a dating relationship, but have not shared a home or a child.

Patty Linsner-Hansen from Great Bend will share with you cases where a PFA would have been key in keeping someone safe from an abuser but were denied access to that help because they did not meet the current statutory guidelines for eligibility

The other primary issue addressed by HB 2077 is that of requiring all PFA's be entered into NCIC. As you can imagine it is difficult for an officer to enforce an order after court hours when it is not clear that the order is valid or when the victim does not have a copy of the order available. Ultimately, when an order is not enforceable, the victim's safety is compromised. Having access to information about PFA's 24 hours a day, 7 days per week will greatly enhance the enforceability of these orders.

KCSDV urges you to favorably report HB 2077 out of committee.

Submitted by

Sandy Barnett
Executive Director

Sandy Barnett
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FAMILY CRISIS CENTER, INC.

*Emergency Services for Victims of
Domestic Violence and Sexual Assault*
24-Hour Crisis Line (620) 792-1885

P.O. Box 1543
1806 12th Street
Great Bend, Kansas 67530
Email: family.crisis@greatbend.com

Administrative Office (620) 793-1965
Administrative Fax (620) 793-1964
Shelter Office (620) 793-1966
Shelter Fax (620) 793-5519

Senate Judiciary Committee
3/22/01

Family Crisis Center, Inc. supports House Bill 2077.

One case illustration involved a nineteen year old woman who had been dating a man for six months. In the course of their relationship, his abuse of her included being choked to unconsciousness and threats to kill her if she left him. She was denied a PFA due to the eligibility requirements: she had not lived with him nor did she have a child in common with him.

In another case a forty year old woman who had been engaged to a man for 10 months was denied a PFA because she had not lived with him or have a child in common with him. The relationship started with subtle instances of control and escalated to beatings when she worked overtime and did not arrive at his house promptly. The engagement ended with his continued "watching her office after hours".

These cases illustrate how critical it is that the Protection From Abuse Act be enhanced to include dating relationships.

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Member Agency
United Way of
Greater Topeka

225 SW 12th Street
Topeka, KS 66612-1345
785-233-1750
FAX 785-233-4867

Battered Women Task Force
225 SW 12th St., Topeka, KS 66612
354-7927 (233-1730 after hours)
Toll Free (outside Topeka)
1-888-822-2983

Career Assistance Network
1129 Wanamaker Rd.
Topeka, KS 66604
273-5190

Girls-to-Girls
Mail To: 225 SW 12th St.
Topeka, KS 66612
1407 S.E. 6th Street
232-3027

Day Care

Kids-Quest

Robinson Middle School

Fitness/Recreation

Teen Pregnancy Prevention

Volunteer Program

Chairman Vratil and members of the Senate Judiciary
Committee,

I thank you for the opportunity to address you today. My name is Tammy Rider and I currently work for the YWCA Battered Women Task Force here in Topeka, Kansas, as the PFA Coordinator. In my work, I assist victims in obtaining Protection from Abuse Orders at the Shawnee County Courthouse.

One of the most difficult aspects of my job is the fact that many victims who clearly need protection under the law cannot obtain it due to the current requirements for filing a PFA. It is difficult to hear the stories of women and men who have suffered physical abuse and then have to send them away empty-handed because they have never lived with their abuser.

A large percentage of the people I have to turn away each day have been in longtime significant relationships which include physical abuse. Some are couples who have dated only a few times, and in that time have discovered that the person they are dating has a propensity for physical violence. Some of them, too many of them, are teenagers. As teens, they are still living at home with their parents, and not with the person who is abusing them, who many times is another teenager.

A family came to my office last week seeking help for their 16-year-old daughter. Their daughter had been in a relationship for nearly a year, and had recently revealed to her parents that she had been physically abused by her boyfriend. Her parents also suspected that she had been sexually assaulted. She was extremely frightened of breaking off the relationship, and her parents came seeking a protection order for her. I had to inform them that she did not qualify for one under the current Kansas law, since she had never lived with her boyfriend. They were extremely upset, saying that of course she had never lived with him -- she was still in high school.

Another woman came to me asking for a protection order against a man she had been dating on and off for several years. He was a well-respected member of the community, but recently had been leaving notes threatening her life. She had reported the incidents to the police, and they had advised her to

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obtain a restraining order. Again, because she had never lived with her boyfriend, and morally was opposed to doing so before marriage, she did not qualify for a protection order.

As the law now stands, persons who live together for one week or who have a one night stand resulting in a pregnancy are offered more protection than those who are in long-term relationships who maintain separate residences. I urge you to rectify this situation and provide the protection offered to a few to all those in significant romantic relationships.

Thank you for your time and attention. I would be happy to try to answer any questions you might have at any time.

Sincerely,

Tammy J. Rider

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TESTIMONY OF RONALD W. NELSON
Rose, Nelson & Booth, Overland Park, Kansas

Members of the Committee: Good morning. My name is Ronald W. Nelson. My practice is in Overland Park, Kansas. My law practice is devoted to domestic relations law, including divorce, parentage, child custody, and other areas of domestic relations law, both as an original action and post decree. My clientele is fairly evenly split between representation of men and women. I am a member of the American Bar Association Family Law Section, serving on the Custody Committee, the Kansas Bar Association, and I am a Fellow in the American Academy of Matrimonial Lawyers.

I am testifying today against House Substitute for House Bill 2077, which seeks to amend the Kansas Protection from Abuse Act in various ways. The Kansas Bar Association opposes this bill in its current form for a number of reasons. Although it must be stressed that protection of the victims of abuse is high priority of the bar, the statutory amendments this bill seeks to enact are not the way in which those matters should be handled. There are three ways in which we believe this bill inappropriate:

First, Section 1 of the Bill provides that all orders issued under the protection from abuse act shall be entered on the national criminal information center protection order file. This amendment is presumably so that law enforcement officials both inside and outside the state of Kansas know when a protection from abuse order is issued and they are better able to verify claims that a protection order has been issued and protect anyone who seeks their assistance in enforcing that order. However, although this section has a laudable purpose, we oppose this section because it is too broad and provides the potential for entry of incorrect records on the system.

The section provides that *all orders for protection* be entered. This includes orders that are granted *ex parte* without presentation of both sides of the issue to a judge (which includes both "emergency orders" and "temporary orders") and provides no means by which any of this information may be deleted from the system if any orders issued are later determined improperly granted. This also includes orders for protection which have been agreed to by the parties although there is no actual determination of abuse or the need for any such protection than the agreement of the parties. It should be noted that these kinds of orders are not recognized as valid orders under provisions of the federal Violence Against Women Act (VAWA). It should be noted that of the two appellate court cases decided in Kansas which interpret the Kansas Protection from Abuse statute, although a temporary order for protection from abuse was entered in both cases, the appellate courts ultimately decided that there was no basis for coverage of the acts alleged in those cases, and that no order *should* have issued. Inclusion of temporary or emergency orders does not provide any due process or other protections to the person against whom any such case may be filed and inserts potentially wrong and damaging information into a national database.

Additionally, this section provides that even the orders of "another jurisdiction which are entitled to full faith and credit in Kansas" shall be entered by the sheriff of the county on the national criminal information center protection order file. This provision also is fraught with problems. There is no way a sheriff can know what orders of another jurisdiction are entitled to "full faith and credit." Such a determination requires court intervention and determination.

This section, in effect, provides for a significant increase in information being placed in the national criminal information center database which is or may be erroneous subjecting innocent persons to serious consequences. The fact that records may be "cleared as an active record" if a court determines that matter improperly filed, does nothing to erase the harm that may have occurred.

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Section 2. This section inserts into the law troubling and ambiguous terms. The inserted language not only inserts ambiguous and difficult to understand language, but unduly expands the law and provides a very high opportunity for misuse of the system for filing of protection from abuse actions.

It is well known among the bench and bar that a significant minority of people who file petitions for protection from abuse under the current statute have other motivations than protection of themselves from physical or emotional abuse. Protection from Abuse actions are often used by a spurned lover or spouse in an attempt to gain advantage in a parentage case, in a divorce, or in other domestic relations matters. The protection from abuse action is known as a powerful weapon in the use against abusers. The Act provides a speedy remedy to remove an abuser from the parties' household, to obtain restraining orders against that person and to protect an abused person from possible injury, threat or death. The act also provides this same remedy against a person who has never committed any act for which remedy may ultimately lie under the act. Many attorneys have handled cases, and many judges hear cases, in which a protection action is filed for no other reason than that there is no charge for the filing, the person filing the action wants immediate action, and that person can think of no more effective way of dealing with conflict than filing a protection action. Because of the strength of this law, and its potential for misuse itself, there is a need for balance in considering any changes to the law or expansion of the people it protects.

There is a reason the legislature originally limited the beneficiaries of the protection from abuse act to persons who were married to each other, who were living together or who had a child of their relationship – that is because there is a close personal relationship which has caused the parties to have a regular, consistent and continuing contact with each other. Those persons have formed an attachment which, when disrupted by conflict, may very easily spill over into violence. Because of the continuing need for contact between those parties, criminal prosecution may not be desirable and some kind of contact is almost inevitable. Some kind of temporary order needs to be available that those people can rely upon in those situations which comes short of criminal allegations. These parties are going to have to have some contact again – whether it be because of the need for a divorce, exchange of property in a non-marital relationship, exchange of a child at regular intervals, or some other similar matter. As noted by our Supreme Court in *Paida vs. Leach*, 260 Kan. 292 (1996), “the principal purpose of the legislation was to provide relief for battered spouses or cohabitants.” The inclusion of a “dating relationship” as a sufficient relationship for the filing of a protection from abuse action dilutes the original purpose of the Act and inserts substantial potential for misuse.

There are also significant problems with the language used in the section regarding those persons to be protected. The section extends protection to “persons who are or have been in a dating relationship.” The section provides some attempted guidance to the courts on what to consider in determining whether a relationship “exists or existed.” Those “guides” are that the court should review (1) the nature of the relationship; (2) the length of time the relationship has existed; (3) the frequency of interaction between the parties; and (4) the time since the relationship ended. However, the section itself provides that *anyone* can obtain an order against a person whom he or she “had a social relationship of a romantic nature consisting of *one* or more dates.” Thus, although the court is directed to look at the nature of the relationship, the length of time the relationship has existed, and the frequency of interaction, the section itself specifies that only one “date” is needed to trigger the Act.

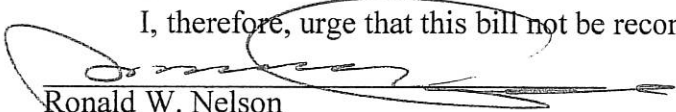
Further, the court is to “presume” a dating relationship existed if the plaintiff verifies that fact. What is a date? What is a dating relationship? Is an outing to the prom a date? Even if the two go together but never see each other at the prom and don't end up going home together? Is a chance meeting and catching a soda a “date?” Is it a “date” if a boy and girl go with a large group of large friends to Pizza Hut after a high school basketball game and sit next to each other,

making small talk and wishing for more? Under this bill, it *is* if one person says it is and wants an order for protection from abuse issued.

Not only that, but an order for protection from abuse can be filed by either of those two parties, at *anytime* after that one event – no matter what the context – not matter what the impetus, no matter how long after and no matter whether the parties ever again have a “date.” By merely having had contact that *one* of those two chooses to characterize as “romantic” and as a “date” that party can unleash the power of the protection from abuse act. This is so even though these parties may never again have contact and even though these parties may never again have reason for contact (unlike the situation in which the parties to the action have a minor child).

What then is the remedy for the kind of improper actions sought to be addressed? Those remedies already exist. First, all the acts that are sought to be addressed by this legislation as to people who have been in a “dating relationship” are covered by existing criminal laws. Undesirable touching, threatened or actual injury to another is covered by assault or battery laws. Sexual contact with a minor is covered by statutory rape, indecent exposure and indecent liberties statutes. Additionally, the Kansas appellate courts have already determined that in appropriate cases, the district courts may use their injunction powers to protect unrelated persons from continuing harassment. *Sampel v. Balberni*, 20 Kan.App.2d 527 (1995).

I, therefore, urge that this bill not be recommended for passage. Thank you.



Ronald W. Nelson
ROSE, NELSON & BOOTH
Suite 160
10990 Quivira Road
Overland Park, Kansas 66210
(913) 469-5300



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

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March 22, 2001

TO: Senate Committee on Judiciary

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: HB 2296: Check forgery

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2296**, which addresses the criminal action of check forgeries.

The KBA has been working with the Topeka Police Department's Financial Fraud Unit to develop possible solutions to the increasing number of check forgeries being experienced across the state. We have tried to be creative with our thinking in trying to find something that would truly serve as a deterrent to individuals thinking about committing check forgery. We have come up with what we believe is a reasonable solution.

This bill addresses check forgery in two ways:

- 1) We have proposed amendments to KSA 21-3710 to address the penalties for a check forgery convictions. Our proposal is to treat individuals who are repeatedly convicted of check forgery more harshly by requiring some jail time before probation can be granted.
- 2) We have proposed an amendment to KSA 60-4104 that would make check forgery subject to the provisions of the Kansas Civil Asset Seizure and Forfeiture Act.

The Penalty.

Current law provides that forgery is a severity level 8, nonperson felony. What we know and what the individuals who repeatedly are convicted of check forgery also know is that with this penalty, the person convicted of check forgery is subject to presumptive probation. This is true regardless of the number of times the person is convicted of this crime and regardless of the financial loss involved in the crime.

It is our intent by our amendments, to provide a possibility of real jail time being served for repeat offenders. The Committee will hear from another conferee that there are individuals who are able to make a living committing this crime. They have no fear of the consequences as there are virtually none. Unfortunately, the word gets around. There is evidence that people are bringing this way of life to Kansas because it is well known that this is a state where the penalty for forgery is relative mild.

I have attached a chart showing the laws of our surrounding states. As you can see, we are the only state that does not at least recommend some jail time for check forgeries. I have also attached some local articles that emphasize the fact that forgery is indeed, a problem in this state – and one that is escalating.

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HB 2296: Check Forgery

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Civil Asset Seizure and Forfeiture Act.

We believe that another reason this crime has become so popular is that technology advances have made it much easier. Software programs allowing law-abiding people to print their own checks are also purchased by those with other intentions. All the check forger needs once he or she has purchased the software is one stolen check, a computer, a printer and appropriate paper and they are in business.

We need to give law enforcement the ability to take away these tools in addition to not letting the criminals keep the fruits of their crime.

Conclusion.

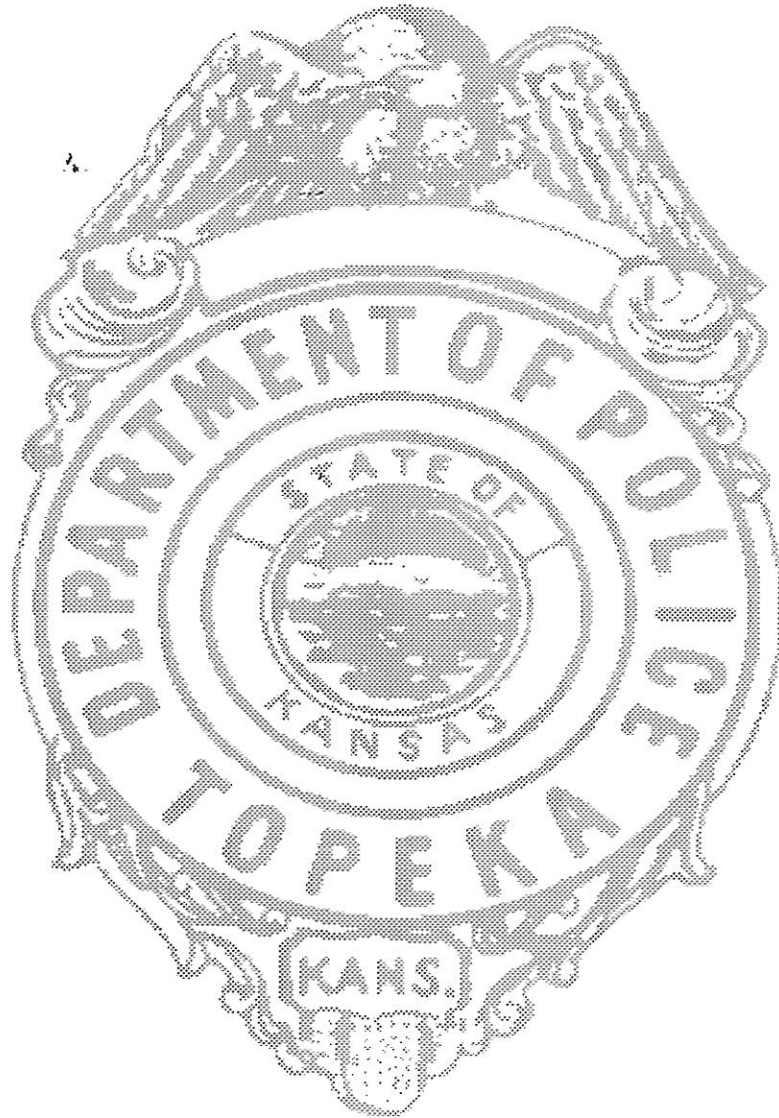
Forgery is a crime that affects a lot of innocent people. It affects the person whose check is stolen, the business that cashes the check and the bank where the check is drawn. The KBA has made it a priority this year to try to at least slow the professional check forger down with these two measures.

We are asking for your support in supporting the passage of **HB 2296**. Thank you for your time and attention.

CHART OF SURROUNDING STATES' FORGERY LAWS

STATE	PENALTIES
Oklahoma	<p>Forgery of a check is forgery is the second degree punishable by imprisonment for up to 7 years.</p> <p>Forgery is also subject to the "3 strikes, you're out" rule.</p>
Colorado	<p>If the check amount is from \$50-\$200: imprisonment in county jail for not less than 3 months nor more than 12 months; or a fine of not less than \$250 nor more than \$1,000; or both.</p> <p>If the check amount is \$200 or more: imprisonment in state penitentiary for not less than 1 year nor more than 5 years; or a fine of not less than \$1,000 nor more than \$15,000; or both.</p> <p>Upon third conviction: imprisonment in state penitentiary for not less than 1 year and not more than 10 years; or a fine of not less than \$2,000 nor more than \$30,000; or both.</p>
Missouri	<p>If the check amount is less than \$150: up to a \$500 fine; or 6 months in jail; or both.</p> <p>If the check amount is \$150 or more: up to a \$1,000 fine; or 1 year in jail; or both.</p>
Nebraska	<p>If the check amount is \$75 or less: Class I misdemeanor.</p> <p>If the check amount is between \$76 and \$299: Class IV felony.</p> <p>If the check amount is \$300 or greater: Class III felony.</p>

TOPEKA POLICE DEPARTMENT



Sgt Dan Hay

368-9036

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Bookkeeper

In December 1997, a bookkeeper for a company that operates statewide started siphoning money from the company's accounts. Over the next several years, he took more than \$250,000 dollars.

We were able to find that with proceeds from this money this person obtained real estate and vehicles in another state.

Under Kansas law we were unable to go after those assets, and this individual will receive probation for the crime. He will be able to retain those assets he purchased with ill-gotten monies.

Office Manager

An office manager for a medical clinic was able to pocket more then \$68,000 dollars over a two year period. The proceeds from that money went to pay off bills and other household furnishings.

Upon conviction this individual received a 12 month probation and was ordered to pay \$15,000 in restitution.

We were unable to seize any of the real property obtained via this crime.

Bank Teller

In 1999 a bank teller walked out of the bank with \$38,000 dollars. We were able to trace the money and found that the money was used as a down payment on a house. Part of the money was used to pay off some bills so that they were able to get a loan for the balance of the payment.

We were able to charge this person in Federal Court but we still were unable to recover those assets for the financial institution that suffered the loss.

Elderly

On July 4th, 2000 an 82 year old woman in Topeka was found by her neighbor. The woman had fallen in her home, and had been left laying there for two days developing compression blisters in her chest, stomach, arms, and legs which took a hospital stay, and over a month to heal. The health care worker hired to take care of the woman was found to be at the casino from June 29th to July 6th using the woman's checks and credit card for his source of money. Further investigation showed a loss from January 2000 to July 2000 on the woman's accounts totaling \$16,895.70. This case is still under investigation for 'mistreatment of a dependent adult' 21-3437 subsection(2) a class A person misdemeanor, and the non-person felonies of forgery, theft, and unlawful use of a credit card. (Under present sentencing guidelines this would fall to 13-15 months probation)

Lawyer

From 1997 until November 1999 a Topeka lawyer used his control over the accounts of 14 different clients for his financial advantage. The most devastating of these crimes involves five minors who had received monies upon the deaths of their parents, and one 95 year male subject trying to send funds overseas to family members. The attorney involved siphoned and shifted funds between eight different checking accounts that either belonged to him, or he was given control of by the court. The motive for the attorney stealing the money was to start his own nightclub business. His business failed. The victim's losses are listed as follows:

Minor[1] - loss = \$10,581.17

Minor[2] - loss = \$6,263.62

Sibling Minors[3,4,5] - loss = \$45,000.00

Elderly male = \$ 240,325.37

This case has been forwarded to the US Attorney's office for their consideration. To file this case with the State District Court would bring six charges of felony theft (five thefts at level 9, and one theft at level 7) under the present sentence guidelines this would fall under 19 to 23 months probation.

For each of the cases cited above there are hundreds more. In the City of Topeka for the year, 2000 there was a reported loss from citizens and merchants that exceeded **\$2,000,000 dollars**. The problem has become so prevalent that some agencies have done away with their financial crimes unit, because it is not worth investing the manpower for the results of the investigation. The Topeka Police Department is unable to work $\frac{3}{4}$ of the cases in this area due to volume and manpower requirements. Approximately 60% of the cases we work are by repeat offenders who are well acquainted with the system.

The impact to an individual that has had either their checkbook or their identity stolen lasts long after the case is closed. If their name gets into the credit bureau system for fraudulent activity, not of their own making, it takes a very long time to get it out of the credit bureau system. In some cases, this process will take years to completely cleanse itself.

The bigger retail stores have adopted the philosophy that it is not worth paying their employee to go to court when they cannot get their product back or their money back. They no longer report the crime and just absorb the loss as an operating cost.

The actual loss to citizens and merchants is considerably higher than what is being reported.

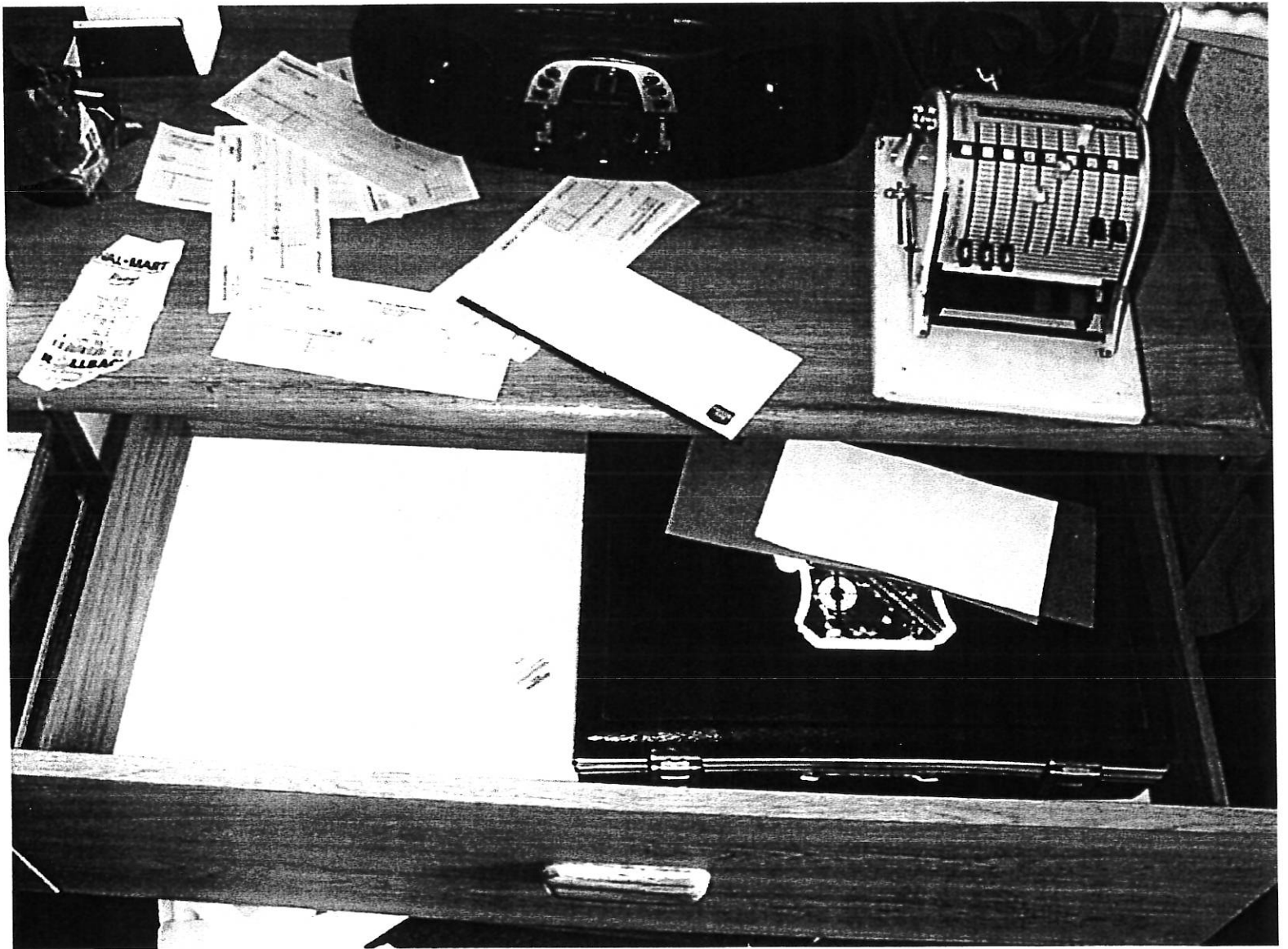
The pictures that are included in this packet are from a typical check making operation set up in a motel room.

The first picture that you see shows a scanner, monitor and typewriter on the table. Directly under the table is the hard drive for the computer and CD software used in the manufacturing of the checks. On the floor directly in front of the table is a printer with the business style checks in a position to be made. On the nightstand next to the bed is another printer that they were using to produce individual type of checks.

All the items show here were taken from business burglaries or from stolen rental trucks from people that were staying in Topeka motels as they were passing through Kansas.

In the second picture, you can see the checks that they were using to practice on to get the type set up correctly. Also pictured is a "Check Protector". This is used to stamp the checks to make them look more authentic. The "Check Protector" was also stolen in a burglary.





The ramifications from forgery ranges far wider then just the loss to the merchant that took the check or the bank that lost the money. These checks come from your house or your business. Several years ago, if your house or your business was broken into the thieves would take anything that was not nailed down. Now days they are after your computer and your check book. A blank personal check sells anywhere from 1-5 dollars on the street, and blank business checks go from 10-20 dollars on the street.

These checks are then cashed or traded for drugs, purchase vehicles, or used to set up accounts in other banks under the name of the person or business that had their checks stolen.

Interviewing forgery suspects is one of the easiest interviews to do. The repeat offenders know exactly what will happen to them and can tell you where they will fall in the presumptive probation chart. They readily confess their crime to try to keep down the bail when they are booked into jail. In most cases, this is the only jail time that they will receive.

In two separate drug raids, we found the attached documents on how to defraud banks and cheat retailers. These documents have made the rounds through the drug community and are common knowledge on the street.

1. GET NEW IDENTIFICATION COST APPROXIMATELY \$10.00
 - A. GO TO DMV
 - B. PUT A PHONEY ADDRESS ON IDENTIFICATION
 - C. GET A COMPUTER GENERATED NUMBER ON IDENTIFICATION (KDD - - - - -)

2. GO TO A NATION BANK, ANY WILL DO (MAKE YOU START ON
 - A. TELL LADY YOU WANT TO OPEN A CHECKING ACCOUNT
 - B. WHEN GIVING INFORMATION, GIVE A PHONEY PHONE NUMBER AND ADDRESS ON YOUR IDENTIFICATION.
 - C. GIVE THIS SSN 509 80 8699, MAKE SURE YOU HAVE THIS NUMBER COMMITTED TO MEMORY, SHE WILL ASK FOR IT AGAIN!
 - D. ASK TO HAVE CHECKS MAILED TO BANK, YOU ARE HAVING PROBLEMS WITH KIDS STEALING YOUR MAIL.
 - E. WHEN YOU GET YOUR ATM CARD, PICK AN EASY PIN NUMBER TO REMEMBER!
 - F. GIVE LADY \$25.00 TO OPEN ACCOUNT.

3. CHECK ATM CARD TO MAKE SURE IT IS ACTIVE.
 - A. GO TO ANY NATIONS BANK ATM MACHINE.
 - B. PUT IN CARD
 - C. PUT IN PIN NUMBER
 - D. PUSH BUTTON TO CHECK BALANCE. IT WILL SHOW YOU WHICH ONE TO PUSH.

4) MAKING FIRST DEPOSIT

- A. ON MONDAY, TAKE A BLANK STARTER CHECK (YOU WILL HAVE 8 OF THEM) AND GO TO ANY ATM BEFORE 2PM.

- B. Get ~~stack~~ Deposit envelope from the bin.
You will see them.
- C. Put on envelope the amount of deposit. This will be \$750.00!
- D. Put blank check into envelope and seal it. Make sure the check is Blank!
- E. Put ATM card into machine and put in your PIN number.
- F. Push Deposit when asked for selection.
- G. Put in amount of \$750.00
- H. Follow instructions on screen. Remember, this must be before 2 pm!
5. Next Deposit and ~~First~~ Withdrawal on Tues.
- A. Go to ATM in QT and withdraw \$500.00. Do before 2 pm. This is to be done on Tues!
- B. Go to a different ATM and follow the first steps for your next deposit. This one is for \$450.00
6. Next Deposit and 2nd Withdrawal. This on Wed.
- A. Follow above steps. Withdraw \$500.00 and then make a deposit for \$650.00. Do before 2 pm.
7. Next Deposit and 3rd Withdrawal. This on Thurs.
- A. Follow above steps. Withdraw \$500.00 and then deposit \$750.00. Do before 2 pm.
8. Next Deposit and 4th Withdrawal. This on Fri.
- A. Follow above steps. Withdraw \$500.00 and then deposit \$400.00. Do before 2 pm.

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9. Final Withdraw. This is on Sat.

A. Go to ATM and withdraw \$500.00 DO before 2 pm.

B. You should have approximately \$500.00 left over. Go to Walmart and buy some stuff use ATM CARD at the check out counter.

C. Once you do this, destroy CARD AND ALL REMAINING INFORMATION REGARDING YOUR ACCOUNT
You must do this!

10. Total amount of Deposits AND Withdrawals

A. Mon. \$750.00 Deposit First one

Tues. \$500.00 withdraw \$450.00 Deposit

Wed. \$500.00 withdraw \$650.00 Deposit

Thur. \$500.00 withdraw \$750.00 Deposit

Fri. \$500.00 withdraw \$400.00 Final Deposit

Sat. \$500.00 Final Withdraw

B. Total amount of withdraw \$2500.00

C. Total amount of Deposit \$3000.00

* REMEMBER *

All Deposits must be before 2 pm!

Do not go to any National Bank to make Deposits or Withdrawals. Go to QT to make Withdrawals and any other bank ATM to make Deposits
Do Not deviate from this Out Line!!!! DONT SPEND YOUR MONEY ALL IN 7-11

1. Get information on somebody (Soc. Sec. Number }
D. of Birth }
Full Name }

2. Make fake copy birth certificate

3. Send to BMG or Columbia House to receive a bill

4. Get I.D. made at D.M.V. or Washburn University

5. Get information ready 4 months before Xmas

6. Go to bank start checking account with \$500

7. Buy 2 or 3 boxes of checks

8. Tell Bank to start check numbers at 500

9. Draw \$475 out Friday before I start
Go thru drive thru to get money out of bank

10. Write checks for small shit Saturday morning till bank closes, then start writing for big shit till stores close Sunday night, Monday morning write for small shit till 10 o'clock a.m. then get rid ~~one~~ of all excess shit

11. When I'm going to start ~~write~~ writing be sure to only have fake I.D. on me + not any of my information

caution { 12. If store has me call some phone number don't freak out, call the number to verify that it's me writing the checks, they'll probably want to know my account number & bank name

13. ~~Code~~ Red ^{Alert} Code 1 & 2 get check back & leave

14. Dress Nice when I'm shopping
15. Practice writing on 1 book before I start at stores.

16. Always ask to write check's for over the amount of the check.

17 Start 2 checking accounts at different banks use 1 for 1 week at home, & the other to hit Lawrence up the following weekend

~~18 Fill Out Signature & date on check's before I go to the stores, write one checkbook's date for Saturday & the second checkbook for Sunday's date~~

look suspicious

Rent Ryder Truck Under Fake name with check
Rent Storage Unit under my name cash



Matthew S. Goddard, Vice President

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Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: Senate Committee on Judiciary

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 22, 2001

Re: House Bill 2296

The Heartland Community Bankers Association appreciates the opportunity to share our support for **House Bill 2296** with the Senate Committee on Judiciary.

House Bill 2296 increases the criminal penalties for forgery and subjects forgers to Kansas asset seizure and forfeiture laws. Specifically, the bill requires that on a first conviction for forgery a person be fined the lesser of \$500 or the amount of the forged instrument. Upon a second conviction for forgery, a person must be imprisoned no less than 30 days and fined the lesser of \$1,000 or the amount of the forged instrument. On a third or subsequent conviction for forgery, a person is imprisoned at least 45 days and fined the lesser of \$2,500 or the amount of the forged instruments.

HCBA realizes that there is a finite amount of space in our prisons and jails and that the incarceration of violent and dangerous criminals takes precedence over so-called "white collar" criminals, such as forgers. However, because of limited resources and the fact that the punishment for forgers is minimal, many law enforcement agencies will not investigate or prosecute forgery. As a result, Kansas offers an attractive "business environment" for forgers. This in turn hurts Kansas businesses that are victims of forgeries.

The year 2000 was actually not a bad year for HCBA members in terms of losses due to forgery. We estimate that HCBA's 16 Kansas members lost slightly over \$100,000 last year in forgery cases. According to a survey conducted by the American Bankers Association, 33 percent of check-related crimes in 1999 were either forged signatures or forged endorsements. The survey also reported that nationwide check fraud dollar losses at commercial banks in 1999 were \$679 million, up from \$512 million in 1997. Using the above numbers, total forgery losses for commercial banks in 1999 exceeded \$226 million.

In addition to providing jail time for convicted forgers, HB 2296 also subjects their equipment and the proceeds of the commission of their crime to forfeiture. While in years past forgers may have stolen checks or manipulated the writing on one, in 2001 they are just as likely to make their own checks using a home computer. HCBA estimates that half the losses attributable to forgery result from perpetrators stealing information off an innocent person's check and then, using that information, printing their own checks. House Bill 2296 will allow law enforcement to seize the tools of the trade for forgers.

We respectfully request that the Senate Committee on Judiciary recommend HB 2296 favorable for passage.

Thank you.

SERVING FINANCIAL INSTITUTIONS IN COLORADO, KANSAS, NEBRASKA, AND OKLAHOMA

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A Professional Corporation

Memorandum

TO: THE HONORABLE JOHN VRATIL, CHAIRMAN
SENATE JUDICIARY COMMITTEE

FROM: JEFFERY S. BOTTENBERG, LEGISLATIVE COUNSEL
KANSAS SHERIFFS' ASSOCIATION

RE: HB 2296

DATE: MARCH 22, 2001

Mr. Chairman, Members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Sheriffs' Association (the "KSA"). The KSA is comprised of approximately 2,100 members, both law enforcement and civilian personnel, that work in county sheriff offices throughout the state. We appreciate the opportunity to appear in opposition to HB 2296.

The KSA opposes HB 2296 with great reluctance and hesitation, as we strongly support enhanced penalties for forgery. However, to the dismay and opposition of the sheriffs and county commissions of this state, HB 2296 would mandate that repeat offenders spend time in a county jail, instead of the Department of Corrections. Therefore, if this bill becomes law, persons convicted of forgery that currently are sentenced to the Department of Corrections will instead be sentenced to the custody of the sheriff. Such a significant change in sentencing is an unfunded mandate of the worst kind.

Our jails are already over-crowded and under-funded. In fact many of our larger county jails more resemble Department of Corrections facilities than traditional county jails. For instance, the Johnson County taxpayers recently funded and built a new jail. However, due to the large numbers of offenders being housed in Johnson County, the jails are still over-crowded. As of yesterday, March 21st, Johnson County was holding 596 prisoners, even though it only had bed space for 534 prisoners. In order to relieve such over-crowding, the Johnson County Board of Commissioners must contract with other county commissions to house such prisoners. Last year, deputies from the Johnson County Sheriff's Office traveled over 400,000 miles transporting prisoners. The cost of holding such prisoners is borne by the taxpayers of Johnson County, Sedgwick County, Wyandotte County and the other counties with over-crowded jails.

One AmVestors Place
555 Kansas Avenue, Suite 301
Topeka, KS 66603
Telephone: (785) 233-1446
Fax: (785) 233-1939

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Last year Johnson County sent approximately 50 prisoners to the Department of Corrections for forgery convictions. Under the provisions of this bill, those prisoners, and probably several others due to the mandatory sentencing provisions, would have been sentenced to the custody of the Johnson County Sheriff. As noted above, Johnson County does not have room for such prisoners.

Further compounding the problems associated with HB 2296 is the fact that as of this January, the Department of Corrections has suspended payments to county sheriffs for housing Department of Corrections parole violators. This hardship is not only borne by the larger counties, but by all 105 counties in this state. Therefore, it is not an exaggeration to state that not only are many of our counties experiencing dangerous levels of over-crowding in their county jails, but also severe under-funding of such jails. It should be noted that the Kansas Sentencing Commission has stated that the fiscal effect of this bill on counties will be significant.

We are also concerned that HB 2296 does not specify a maximum jail time for persons convicted of forgery. For instance, the bill states that a person shall serve at least 30 days' imprisonment upon a second conviction and at least 45 days' imprisonment upon a third or subsequent conviction. Since the amended bill does not contain a maximum jail sentence, it would be possible for offenders to serve sentences of over one year in a county jail.

Again, I want to state that the Kansas Sheriffs' Association supports enhanced penalties for forgery. **However, we strongly believe that felons should spend time in Department of Corrections facilities and not county jails.** In light of this concern and the others articulated in my testimony, we respectfully urge that the committee not recommend this bill for passage in its current form. Please feel free to contact me if you have any questions or concerns.

Very truly yours,



Jeffery S. Bottenberg

JSB
Enclosure

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STATE OF KANSAS



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

January 22, 2001

Dear County Sheriff:

I am writing to notify you that it is necessary to suspend payments to all counties for reimbursement of costs incurred from housing parole violators until additional funding is authorized for this purpose by the 2001 Legislature.

For the current fiscal year, the amount appropriated to pay local jail costs is \$1,925,000. This amount has been utilized to pay costs carried over from the fiscal year that ended on June 30, 2000, as well as for costs incurred for the first quarter of this fiscal year. The payments made to date have exhausted the appropriated amount.

In his budget recommendations, the Governor included additional funding of \$1.0 million for local jail costs. The availability of these funds requires legislative approval.

Because any funding in addition to the current appropriation of \$1,925,000 will not be available until late April or early May after final appropriation bills are enacted by the Legislature, the department has no other option but to suspend further payments until that time. You should still continue to review and return the quarterly printouts which include the names of parole violators and the number of days confined in your county jail, so that payments can resume in the event additional funding becomes available. If you have any questions, please contact Dennis Williams at (785) 296-4838 or Jim Rowe at (785) 296-5347.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Simmons".

Charles E. Simmons
Secretary of Corrections

CES:DW:gs



GOVERNMENT RELATIONS

Sedgwick County Courthouse
525 N. Main, Suite 365
Wichita, KS 67203
Phone: (316) 383-7552
Fax: (316) 383-7946

Michael D. Pepoon
Director

TESTIMONY ON H.B. 2296
SENATE JUDICIARY COMMITTEE
By Michael D. Pepoon, Director of Government Relations
March 22, 2001

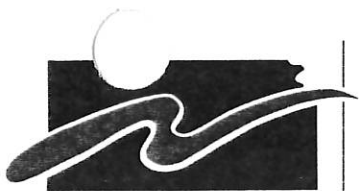
Honorable Chairman Vratil and members of the committee. I would like to offer written testimony in opposition to certain provision contained in H.B. 2296 on behalf of the Board of County Commissioners of Sedgwick County and Sedgwick County Sheriff, Gary Steed. Sedgwick County and Sheriff Steed are in favor of tougher laws relating to the crime of forgery. As such we strongly believe that persons committing such crimes should serve mandatory incarceration. But we strongly object to allowing these felons to serve their time in the county jail instead of in the custody of the Department of Corrections. While this bill has the fiscal result of decreasing the state prison population, it merely pushes these felons into our county jail that is already full of prisoners serving time or awaiting trial.

The taxpayers of Sedgwick County have invested a significant sum of tax dollars in the past decade building and expanding our county jail. Although exact figures are not available, it is not unrealistic to expect from between 30 to 50 new inmates a year would be incarcerated in the county jail as opposed to serving time with the Kansas Department of Corrections. This increase of prisoners in our county jail has the unfortunate result of creating an unfunded mandate for Sedgwick County and Sheriff Steed that would be a financial hardship for the citizens of Sedgwick County.

For the above stated reasons Sedgwick County strongly supports H.B. 2086.

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written



KANSAS
ASSOCIATION OF
COUNTIES

Kansas Association of Counties
Written Testimony
Before the Senate Judiciary Committee
HB 2296

By Judy A. Moler, General Counsel/Legislative Services Director
March 22, 2001

Chairman Vratil and Member of the Committee:

The Kansas Association of Counties is in opposition HB 2296 that would increase county jail time and serve to crowd already over crowded county jails. While the Kansas Association of Counties is not opposed to stricter sanctions on forgery, we do oppose the burden of such sanctions falling on county government.

We urge your defeat of this bill.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (785) 272-2585.

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email kac@ink.org

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