Approved: April 12, 2002
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 25, 2002 in Room 313-S of the Capitol.

All members were present except:
Representative Dean Newton - Excused
Representative Rick Rehorn - Excused

Committee staff present:
Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Representative Deena Horst
Ed Pavey, Director, Kansas Law Enforcement Training Center
Jennifer Rose, Assistant City Manger, Hutchinson
John Douglass, Chief of Police, Overland Park
John Foster, Kansas Sheriff's Association
Frank Denning, Chief of Police, City of Roeland Park
Dean Akings, Great Bend Police Department
Sandy Jacquot, League of Kansas Municipalities
Mike Taylor, City of Wichita
Bob Claus, Deputy Attorney General, Criminal Division
Jim Bush, Kansas Bar Association
Pedo Irigonegary, Kansas Trial Lawyers Association
Jeffrey McDade, Kansas Coalition on Death Penalty
Donna Schneweis, Amnesty International
Beatrice Swoopes, Associate Director Kansas Catholic Conference
Jane El-Koubysi, State Board of Indigent Defense Services
Bill Lucero, Murder Victims Families for Reconciliation
Lisa Nathanson, American Civil Liberties Union
Page Nichols, Kansas Association of Criminal Defense Lawyers

Hearing on **HB 2399 - Kansas offender registration; juvenile offender adjudicated of sex offenses must register,** was opened.

Representative Deena Horst appeared before the committee as the sponsor of the proposed bill. She stated that the change would require judges to order juveniles to register under the Kansas Offender Registration Act, if warranted. (Attachment 1)

Hearing on **HB 2399** was closed.

Hearing on **HB 2400 - In an adoption; the genetic parents shall have independent legal advice; an attorney can not represent the parents and the petitioner or child agency**, was opened.

Representative Deena Horst appeared as the sponsor of the proposed bill which would insure that both the biological parents and adoptive parents are informed of dual representation and give written consent of such an arrangement. (Attachment 2)

Hearing on **HB 2400** was closed.

Hearing on **HB 2802 - Kansas Law Enforcement Training Center Fund; increase on municipal court fee and remove sunset on district court fee**, was opened.

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 25, 2002 in Room 313-S of the Capitol.

Ed Pavey, Director, Kansas Law Enforcement Training Center, informed the members that the KLETC receives no funding from the general fund and that all their funding comes through docket fees. The current docket fees were established in 1992 for municipal courts and 1994 for district courts. The docket fees funding is to sunset on July 1, 2002. The bill would remove the sunset provision and allow an $1 increase in municipal & district court docket fees. With this increase, the KLETC could operate through 2005 without another increase. The increase would also allow an increase in training hours from 400 to 560. (Attachment 3)

Jennifer Rose, Assistant City Manger, Hutchinson, supported the proposed bill by stating that it is important that law enforcement officials keep up there skills and have continuous training so they can protect our communities. (Attachment 4)

John Douglass, Chief of Police, Overland Park, commented that as with anything, costs have become inflated and it is necessary to raise more fees in order to accomplish the same level of training. He wants every officer in the state to receive the same number of training hours. The KLETC is behind in the number of hours that are required to graduate from it. (Attachment 5)

John Foster, Kansas Sheriff's Association, also appeared in support of **HB 2802**. He reminded the members that not only do citizens benefit from the police receiving training, so do political subdivisions of the State. (Attachment 6)

Frank Denning, Chief of Police, City of Roeland Park, stated that even before September 11, 2001 law enforcement was changing. The proposed bill would simple let us keep pace with current society. (Attachment 7)

Dean Akings, Great Bend Police Department, estimated that seven out of ten Kansas officers are trained at the KLETC. (Attachment 8)

Sandy Jacquot, League of Kansas Municipalities, appeared before the committee in opposition to the bill due to the fact that large municipalities have their own training programs. Currently, agencies operating their own academies receive $.50 for every $2.00 sent to KLETC. It was her belief that none of the additional money raised by the court fee would go to the municipalities. She was also concerned about the additional hours that would be required and the hardship it would cause on small municipalities. (Attachment 9)

Mike Taylor, City of Wichita, suggested that the citizens of Wichita would not benefit from the increase in fees due to the fact that Wichita has its own police academy. (Attachment 10)

Hearing on **HB 2802** was closed.

Hearing on **HB 2986 - Anti-terrorism**, was opened.

Bob Claus, Deputy Attorney General, Criminal Division, gave the committee an overview of the proposed bill. (Attachment 11)

Jim Bush, Kansas Bar Association, appeared before the committee in opposition to the bill because many of the provisions are far reaching and would infringe upon constitutional rights. He supported strengthening the penalties for individuals who conduct terrorist activity as defined by federal law. (Attachment 12)

Pedo Irigonegary, Kansas Trial Lawyers Association, also believes that the definition of terrorism is broad and would lead to problems and that existing laws already deal with those who commit such acts. (Attachment 13)

Jeffrey McDade, Kansas Coalition on Death Penalty, expressed opposition to the expansion of the death penalty in section 14 of the proposed bill. While the provision might protect the citizens of Kansas, the death penalty is not a deterrent in any of these types of cases. (Attachment 14)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 25, 2002 in Room 313-S of the Capitol.

Donna Schneweis, Amnesty International, was opposed to section 14 of the bill due to the growing trend that some countries will not send criminals to other countries to be tried if they have established the death penalty. (Attachment 15)

Beatrice Swoopes, Associate Director Kansas Catholic Conference, stated that the death penalty shows signs of disrespect of human life. (Attachment 16)

Jane El-Koubysi, State Board of Indigent Defense Services, reported that they would need an increase in funding to defend these cases. (Attachment 17)

Bill Lucero, Murder Victims Families for Reconciliation, was concerned that it would slow the healing process for the victims and their family members. (Attachment 18)

Lisa Nathanson, American Civil Liberties Union, stated that no new statues need to be created because departure sentences could be tied to the Patriot Act. The "use of weapons of mass destruction" is not in Kansas law and would need to be added but Kansas already has law that to address such terrorism crimes. (Attachment 19)

Page Nichols, Kansas Association of Criminal Defense Lawyers, was in opposition to the whole bill, especially the roving wiretapping. (Attachment 20)

Hearing on **HB 2986** were closed.

The committee meeting adjourned at 6:30 p.m. The next meeting is scheduled for February 26, 2002.

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: eGOVERNMENT
MEMBER: HIGHER EDUCATION
K-12 EDUCATION
KANSAS FUTURES
FISCAL OVERSIGHT
JOINT COMMITTEE ON ARTS
AND CULTURAL RESOURCES

TESTIMONY FOR HB 2399

Chairman O'Neal and Judiciary Committee Members, thank you for agreeing to hear testimony on HB 2399.

The intent of HB 2399 is to give judges another option when sentencing juvenile sex offenders. It is my understanding that in the past, a few judges have required adjudicated juvenile sex offenders to register under the Kansas Offender Registration Act (KORA) but ONLY when the juvenile offender AGREED to be registered in lieu of some other punishment. Today, evidently, judges are not being allowed to require any adjudicated juvenile sex offenders to register because the law doesn't speak to such a possibility.

On November 23, 1999, a 16 year old who resides in Saline County plead guilty to aggravated indecent liberties that had been taken with his 6 year-old female cousin. As you will see within portions of court documents that have been included with the father's testimony, the judge felt that he wasn't able to require registration although he had initially determined the possibility of such action as a viable option in the adjudication of this young man.

As you can imagine the family of the young girl was traumatized by this event and at first dealt only internally with it, accepting the sentence until they saw their nephew not complying with the sentence and basically saying "Yes, I did it but what's the big deal?" [For example, the adjudicated juvenile evidently, according to the young girl's father, repeatedly sought out girls younger than 16, even though his sentence forbade him to be in their company.] In addition, when a newspaper article appeared regarding the death of a young girl who was killed by a young man who, as a juvenile, had been adjudicated for sex offenses, this family decided it was important to ask me to seek a change in the law. As explained earlier, this change in statute, is intended to allow

judges to include in their order for adjudicated juveniles, if warranted, registration under the Kansas Offender Registration Act.

Thank you again for taking time to hear testimony on the change to statutes as is proposed by HB 2399. I respectfully ask for your strong consideration of this change so parents of young children have an opportunity to be aware of those youth who may desire to do physical harm to them. It also seems fitting to place the judge in charge of the decision of whether registration under the Kansas Offender Registration Act (KORA) is appropriate, not the juvenile sex offender.

My 6-year-old daughter was sexually molested. To make this experience even more traumatic and difficult to comprehend – the molester was my 16-year-old nephew. To complicate matters even more, the molestations took place at the home of my mother – grandmother to both children.

Uriah plead guilty to aggravated indecent liberties and was found guilty of a 3rd degree felony. He was place on one year of intensive probation, 3 years of sex offender counseling and as part of his probation he was to have no contact with my little girl or any other female under the age of 16.

While Uriah was on probation he would visit my mother's home while my daughter was there visiting as well. (This was, of course, unbeknownst to his mother or myself). One of us would drive by and see his truck there. We would immediately take our daughter from the grandmother's home. Uriah would not make a move to leave. He knew he was in violation of his probation but it didn't seem to matter to him.

One day at my place of employment, a co-worker started a conversation with me and basically wanted to know "what Uriah's problem was." She explained that her 14-year old daughter had repeatedly turned down Uriah's requests for a date. He would not leave this young lady alone. (It was at this point I told my co-worker what Uriah had done to my daughter and warned her to be sure her own child stayed away from him.) According to my co-worker Uriah continued to bother her daughter and would not accept no for an answer. This harassment apparently didn't stop until this 14-year-old girl

told him that she was aware of what he had done to his cousin. Uriah apparently became very upset and directed this girl not to tell anyone and that it "was all a big lie". It was at this point he stopped requesting dates from her. Apparently to this convicted felon, a date with a 14 year old girl was somehow not in violation of his probation.

In addition to Uriah's blatant disregard for the previous 2 components of his probation he also applied for and received a deer-hunting permit. (So much for a convicted felon not owning/operating a firearm.)

Shortly after much of this occurred, Uriah and his family petitioned the court for early release from his probation. According to his court – appointed counselor he was completely ready to be released. If I hadn't been there to notify the court about the above breeches of his probation, Uriah would have gone scott free. The only consequences at this point would have been the conviction which – apparently – no one under normal circumstances would ever know about. During this hearing, the judge continued the probation, and sternly warned Uriah and his family of the seriousness of his original offense and the serious nature of breaking his probation.

Next came the hearing regarding our request the Uriah be listed on the KBI sex offender list. The Judge told us that he had done extensive research and learned that the law only allow judicated individuals to be placed on the list if they agree to do so as part of their sentencing or pea bargain. The Judges hands were tied. Since our offender hadn't agree – we learned that he wouldn't be listed.

My nephew clearly has little regard for the law. Apparently for him, and I suppose others like him, the real punishment is in what his peers and others think about him.

As parents, we protect our children from strangers and those we believe to be potentially dangerous. How many think to protect ourselves from our son's or daughter's friends from school? It is insidious to think some uninformed folks out there would innocently allow their son to invite Uriah over to spend the night (like regular folks do). What if the family has young children?

Even further, Uriah has been allowed to attend the same school as our child. (It is a consolidated K-12). Despite our best attempts to have him removed. If were hadn't informed the school authorities of Uriahs conviction they would have never known not only to watch over our child but all of the others as well.

Juvenile sex offenders need to be registered. Uriah needs to be registered. It is just one more small way for us to protect our kids.

Mike Jensen
Mike Jensen
5694 E K4 Hy
Gypsum KS. 67448
Phone 785 536 4620

IN THE DISTRICT COURT OF SALINE COUNTY, KANSAS
28TH JUDICIAL DISTRICT
STATE OF KANSAS

IN THE MATTER OF:

CASE NO. -

- -

TRANSCRIPT

This matter came on for hearing before the HONORABLE JEROME P. HELLMER, District Court Judge, at Salina, Kansas on January 18, 2001.

APPEARANCES:

The Petitioner:

Kristin Heck
Asst. Saline Co. Atty.
300 West Ash
Salina, Kansas 67401

The Respondent:

Karen Black
2035 E. Iron
Salina, Kansas 67401

underlined portions refer to the subj of HB 2399

THE COURT: Would you like to have at seat at counsel table, Mr. Jensen? Not to preclude counsel from responding. This matter commenced in this phase on October 13 of 2000, when the State had requested Mr. Name deleted —be registered as sexual offender. At that time, because as I have previously stated, we are bound to follow the Legislative enactment's. I asked the attorneys to brief this question, and that's a very common process, where the attorneys are required to find out what the law really is. The Statute is on the books. I don't think anyone disagrees that the Sexual Predator Act which is embodied in 22-4901 et. seq., in which I have again copied and again reviewed, is clearly on the books. The question became, what is the jurisdiction or the right of the Court to enforce that Act, when it involves a juvenile offender? And, so hence, the question comes back to the attorneys. The State of Kansas, you've asked the Court to do this, please provide me with some legal reasons, some justification as to why I have the authority to do that. Miss Black, on the other hand of course, as defense counsel, doing her

result of a very serious sexual offense under the Juvenile Code. The Court simply signed off on that journal entry. It was sent to the Kansas Bureau of Investigation. The Kansas Bureau of Investigation, however, sent to the Court a letter indicating that, "An initial offender registration from your Office has been received. After the initial processing was completed, the journal entry received, it was determined that the individual is not required to register in the State of Kansas." "The juvenile was convicted as juvenile and no information could be found indicating that he has to register as an offender." The KBI has taken the position that, quite frankly, they cannot register juveniles. Which was the primary thrust of the argument of the State of Kansas. The troubling aspects of this case for the Court are, that, and Mr. Jensen has said it quite well today, in spite of his obvious discomfort of being here, and having to recite these events over his daughter's violation again. That you folks were family at one point, trusted family. You were a godfather, apparently, to Mr. Name deleted and I did not know that. You would have trusted this

young man and the rest of his family to the umpped degree, as they would have you. Tragically, a act that is criminal in nature, not just wrong, happened, and Mr. Name Deleted is the person who ended up being adjudicated of that. The Court has publicly recognized that Mr. Name Deleted, had he been eighteen at the time of the offense, violated the laws --- the criminal laws of the State of Kansas. That, in and of itself, was the public vindication of your daughter being truly the victim, having had no part in this and having no wrong doing in this. You are right, Mr. Jensen, we can't simply take the eraser and wipe the chalk from the board and assume that your daughter won't have any other feelings, thoughts, or responses, as a result of that. We can believe that with appropriate therapy and treatment, that it can be overcome and can be dealt with. That is a burden, of course, that should not have been placed on this little child. She had no wrong doing. She is the victim in this case. From that juncture, it would appear, that the system has recognized that a wrong has been done, but we won't call it a crime. The Legislature

has defined the Juvenile Offender Code, under 38-1601 to be a civil code. And the Court and counsel have struggled in the recent years with where this has gone from the Legislature. On the one hand, we say this is a civil case, and we have two areas of the law that we deal with, one being civil, one being criminal. I would venture to say, that most of us lay people would look at this and say, "Civil has to do with property or money, it has to do with items, or maybe a car accident." "Criminal has to do with somebody killing someone, hurting someone, stealing something, something really bad that we all say shouldn't happen." The Legislature says that if you are under the age of eighteen, it's a civil issue. And while we recognize that the behavior of children can be bad and can be wrong, we stop short of calling it criminal, and we call it civil. And we ask the court systems to deal with the young people in some fashion that, hopefully, will defer future behavior. Will bring about an opportunity for the person to be punished for their wrongdoing. And, to somehow compensate the victim for the wrong done to

the victim. However, what the system has left us with, is a determination that under the statute, once I find, because we don't style this as we would if Mr Name deleted -were eighteen. Every other case, as you know at the other end of the hall we have murder trial going right now, it's the State of Kansas versus so-and-so. In this courtroom, it's always, In The Matter Of. A clear definitional difference between crime and civil wrongdoing. In the other courtroom, we go beyond a reasonable doubt. We have beyond a reasonable doubt in this courtroom. We have constitutional guarantees in the adult courtroom. We have some constitutional guarantees in this courtroom, but not all. We have no right to speedy trial. We have no right to jury trial in this particular arena. It can be discretionary with the Court on a jury trial, but it's not required, nor can I be appealed if I decide not to. We do not enter a finding of guilty in this courtroom, we find an adjudication. We accept the statement of the victim ---- or the perpetrator and say, we accept your statement that you did this, we know adjudicate you. It's not surprising that

daughter cries. My daughter comes to me. How do I answer her questions? How do I comfort her? What do I say? And to that, Mr. Jensen, I'm a father and a grandfather and I may wear a robe, but I don't have those answers. A counselor may, a professional may, but I certainly don't. After very carefully considering all of the matters before the Court and all of the evidence that's been presented, as well as the law that has been presented, and the individual research of the Court, I find I do not have the ability, at this point in time, to register Mr. Name deleted as a sex offender. Not that I don't somewhat agree with Mr. Jensen that it might have a salutatory effect. That, quite frankly, if we all had to wear a public symbol of our wrong doing for a period of time, we would all less likely, probably, venture into that behavior again. But that's not the code I have before me and that's not what I can do legally. And, again, if I just simply wanted to listen to the very rational arguments of the victim's father, this case would have been decided a long time ago. You'd have been registered and we would have been done. And,

as a matter of fact, apparently someone else thought that was good deal in the other case and did it, and the KBI says I can't do it. I don't know where that case is going to go. It may very well be on appeal at some point in time, but that's where it is now. The determination of the Court, Mr Name deleted does not in any way minimize the wrong doing. Does not minimize the decision of the Court by accepting your adjudication that, if you were eighteen, you would have committed a crime. It does not take away the pain and I've also been made aware by counsel, that there are other underlying issues that have been visited upon you. Quite frankly, I can't do anything about that. It's a public record. And so if others wish to expose you to that, I'm afraid that's just a price that ends up being paid. And maybe that's the sad substitute for a Court not having the jurisdiction to do what otherwise someone thinks might be the best thing to cause you from not doing that. The positive side is, Mr. Gusditus says, you are treatable, you are savable, and with that treatment and with that continued work on your part, there is

▼ SEXUAL PREDATOR CASE

Kristi's petition

Slain child's family wants juvenile sex offenders revealed

By KELLY KURT
The Associated Press

OILTON, Okla. — Kristi Blevins' impish smile greets every customer at the grocery store across the street from the abandoned home where she died.

The 7-year-old beams from a wallet-sized photograph taped to petitions at two registers. She smiles, too, at people getting fill-ups at gas stations down the road. Even in a grocery store in the next county, Kristi's wide-eyed grin stops customers who add their names to a growing list of signatures under her photo.

Since last week, Rhonda Blevins has counted more than 2,000 signatures on petitions backing a law she thinks could have saved her youngest child.

Blevins wants juvenile sex offenders included in an Oklahoma law that alerts the public to adult sex offenders in their midst. On a rented computer and the $50 printer she bought last week, she has cranked out more than 1,000 petitions and taped a photo of Kristi to each one.


KRISTI

"The kids come home, mom's sitting there working petitions. They go to bed, I'm working on petitions. If I didn't," says the 34-year-old mother of three other children, "I would probably be crying all the time."

On Aug. 19, she and her husband discovered that Kristi and a 12-year-old friend, who had been playing outside, were missing from their Oilton home.

Searchers found the two in an abandoned home. The 12-year-old had been raped. Kristi had been strangled. With them, police found Robert Rotramel, a 19-year-old with a juvenile record of detention for forcible sodomy.

Rotramel faces murder, rape and kidnapping charges. A preliminary hearing is scheduled Monday.

Others in Oilton say they knew about Rotramel's juvenile record — but not Blevins.

Her teen-age son worked at a bait shop owned by Rotramel's father. Sometimes Kristi and her other siblings visited the shop when Rotramel was there.

"If I would have known he was a sexual offender when he was a juvenile, my kids would not have had anything to do with him," Blevins said.

At Ballard's, the grocery just across the street from the murder scene, owner Kathy Ballard signed her name. A regular customer — Roy Rotramel — said he signed it, too.

"He deserves whatever he gets," Roy Rotramel said of his son. "I said he should never have been released."

State lawmakers say Blevins' petitions won't be the determining factor if juvenile violators are added to the state's Sex Offenders Registration Act.

Rep. Larry Ferguson said House staff members have already begun to investigate such laws in other states and that legislation to change Oklahoma's law likely will be introduced. But the petitions add impetus to that effort, he said.

Every state now has what is known as a Megan's Law, which requires convicted sex offenders to register with local police and community notification of their presence.

The law extends to juveniles in 21 states. The laws are named for Megan Kanka, a 7-year-old New Jersey girl who was raped and murdered in 1994 by a convicted sex offender who lived across the street from her.

▼ SCHOOL RESOURCE OFFICERS

Sacred Heart declines in-school officer

Uncertainty about

How much that would cost Sacred Heart — and Ell-Saline and [illegible] indicated a willingness to help [illegible] fund the extra

▼ AGRICU

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By The A

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TOPEKA

HOUSE OF
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AND CULTURAL RESOURCES

TESTIMONY FOR HB 2400

Chairman O'Neal and Judiciary Committee Members, I appreciate the opportunity to offer testimony on HB 2400.

The intent of HB 2400 is to insure that, in adoptions, the parent and the adoptive parents are both informed of dual representation and have given their written consent to such an arrangement.

As you may remember, we received several letters from a resident of Minneapolis, Kansas who was upset with the adoption laws of the state. I chose to address the issue of dual representation. While I believe that the benefits of dual representation for both parties is a positive, I also feel it is imperative that both parties are aware that they are being represented by the same individual. Confirming knowledge of such an arrangement and furthermore their agreement to dual representation would also tend to clarify any attempt to seek the return of a child to the birth parent(s) based on any perceived attempt at deception by either party regarding the issue of dual representation.

Thank you again for taking time to hear testimony on the change to statutes as is proposed by HB 2400. I respectfully ask for your consideration of this change to the statutes that would limit the potential of deception when dual representation is used in adoption cases.

Melinda Walmsley
PO Box 136
Minneapolis Kansas
67467
785-392-3178
11-20-00

Senators and Representatives

Why are their no guidelines of conduct for an attorney who is providing dual representation in adoptions. Prior to the signing, at least 12 hours after birth, the birth parents have 100% of the rights to the baby. The adoptive parents have NO rights, but they are the one paying the lawyers bill, so they are given priority in areas of conflict, despite the fact that they have no rights to the child. the attorney's reputation as a GOOD adoption attorney, depends on successfully securing the birth parents signature on adoption papers 12 hours after the babies birth. Consequently, their reputation and future income is improved if they fail to provide proper legal council to the birth parents, increasing the likelihood that the adoptive parents, who hire them, will get what they want.

For the attorney to have a private discussion with the birth mother, absent the influences of her parents and the potential adoptive parents, in order to establish if the girl is being pressured, or coerced into the adoption, protects the rights of the birth parent, but reduces the chances that the adoptive parents who have no rights to the child at that time, will get what they want. Certainly, such a meeting should be required, since only the birth parents have rights to the child when the decision is made to whether or not such a discussion should take place.

If the adoption in "Open" and visitation has been promised, the attorney should have an obligation to the birth parent to discuss with her the importance of a formal written visitation agreement. To simply avoid informing the birth parent of this option, violates the rights of the birth mother to proper, competent legal council, while giving priority to the wishes of the adoptive parents who have NO RIGHTS to the child when the decision to discuss this matter is made.

For the attorney to arrange for the final signing, at precisely 12 hours after birth, a week in advance, without giving consideration to the circumstances of the birth, which can't even be known a week in advance, clearly shows that the attorney is giving priority to the wishes of the adoptive parents, who still have no legal rights, over the rights of the birth parent. Any person who has been without sleep for more than 30 hours, will suffer from impaired physical, emotional and mental capacity. Throw in the stress of Labor and delivery, and it is inconceivable to assume that the young girl is capable of giving a free and voluntary consent, only 12 hours after the birth of her child. Any attorney who was truly representing the young girl, would most certainly advise her client to have a good night's sleep before making final a decision to allow her baby to be adopted. Any attorney who is only looking out for the interests of the adoptive family, would try to get the signing to take place as close to 12 hours after birth as possible.

How can you allow dual representation, without requiring the attorney to give any competent consideration to the rights of the birth parent, when only the birth parent has rights at the point in time when the attorney must make decision about what to discuss and do.

It's seems like common since that all of these conflicting interests should be required to be decided in favor of the party who actually has rights to the child, rather than deciding them based on who is paying the attorney's bill. Justice should not be bought. By allowing a single attorney to provide dual representation in adoptions, without requiring any minimum level of legal council towards the birth parent, you are authorizing the use of fraud and coercion against a teen-age mother who has already been under a tremendous amount of stress for the past 9 months. Currently, the only requirement of an attorney in dual representation cases, is that the birth mother knows that the papers she is signing relates to an adoption rather than the sale of a car or some other unrelated contract. The attorney is not required to tell her anything about her options, resources available to her, her rights to take additional time after her child's birth to consider the situation, or her need for a formal written visitation agreement. The attorney is legally permitted to decide every issue in favor of the paying clients who have no legal rights to the baby, without consideration to the rights and interests of the non-

paying client who has all the rights to the child clear up until the moment her signature is coerced onto final adoption papers, only 12 hours after birth.

Pre-birth consents are taken in order to falsely convince her that the consent is already valid, so by the time 12 hours rolls around, sleep deprived and crying, the young girl believes she has no choice but to sign again, totally against her will.

How can you allow this type of fraud to continue? How did America become a country where kidnapping babies is viewed as an acceptable legal practice.

Melinda Wadsworth

The University of Kansas
Kansas Law Enforcement Training Center
Hutchinson, Kansas

KLETC Funding:
2002 House Bill No. 2802

KLETC's History

In 1968 the Kansas Legislature established the Kansas Law Enforcement Training Center as the central law enforcement training facility and headquarters for all law enforcement training in Kansas. The training center is located on a former US Naval Air Station near the community of Yoder, Kansas, 12 miles southeast of Hutchinson. As part of its legislatively established mission, KLETC provides basic training to the overwhelming majority of municipal, county, and state law enforcement officers in Kansas (over 400 officers annually) and oversees, supervises, and monitors the training of the remaining officers at seven certified training academies operated and funded by local or state law enforcement agencies. In order to accomplish this task, KLETC employs 29 unclassified and classified personnel and utilizes contractual food, cleaning, and security services. Additionally, the Legislature in 1982 designated KLETC as the repository of law enforcement officer employment and training histories. KLETC's Central Registry now maintains and monitors the files of over 7,000 active and 14,000 inactive law enforcement officers.

KLETC's Present Financial Status

Since fiscal year 2001, annual expenses have exceeded annual docket fee revenue, and the costs continue to rise. KLETC just recently completed its long-term capital improvement program that began with a master plan approved by the Kansas Legislature in 1986. In 1998, KLETC's new 4-story, 32,500 square foot, 107-bed dormitory came on-line, and shortly after that KLETC's newly renovated instructor office building was completed. Additional buildings bring additional and increased costs. Utility costs and contractual services that provide for food service, cleaning, and security have increased along with salary and fringe benefit expenses. Together these items have increased nearly $721,000 since FY98 with no corresponding increases in funding. Moreover, KLETC is geographically isolated from the main campus of The University of Kansas so it receives no central service support. Facility maintenance, capital improvements, equipment expenditures, and catastrophic facility emergencies must all be funded from the KLETC budget.

Additional costs are associated with facility, technology, and equipment needs to fulfill KLETC's mandated mission. The size of the basic training class increased from 56 to 84 student officers. The increase resulted in 140 additional officers being trained annually. A new KLETC campus telephone operating system installed in March of 1999 added approximately $25,200 in costs annually. Technology plays an increasing role in law enforcement and training. To handle these changes, KLETC hired a technology coordinator in FY99. This position added $41,910 in costs annually. Distance learning via the Regent's Telenet 2 network is an example of a new technology that allows KLETC to reach officers throughout the state with a capacity of 20 simultaneous sites receiving instruction at any of 33 locations. Since Telenet 2's implementation in FY96, KLETC continues to provide a minimum of 24 two-hour sessions annually at a cost of nearly $20,000. Not all additional expenses are related to technology. KLETC continues to purchase and replace much-needed emergency vehicle driver-trainer vehicles and other training-related equipment.

The Kansas Law Enforcement Training Commission, a 12-member regulatory commission created by the Legislature and appointed by the Governor to oversee law enforcement training and certification, requested authority to employ its own full-time investigator beginning in FY99. A full-time investigator hired in FY99 now represents a salary and benefit commitment of $38,000. Projected investigative-related travel and Commission hearings mandated by the Kansas Administrative Procedures Act now require an additional operations fund commitment of $18,000 annually. The Legislature designated in KSA 74-5619 that all Training Commission expenditures related to carrying out its powers and duties must be paid from the "law enforcement training center fund."

Please see reverse side.

House Judiciary
Attachment 3
2-25-02

Nearly A Decade With No Increases

KLETC receives no funding from general fund revenue. Instead, the Legislature determined that court docket fees should be utilized to fund law enforcement training. In this way, general taxpayers are not asked to pay for law enforcement training; rather the financial burden falls upon those who violate the law. KLETC relies upon this legislatively designed "user tax" to fund constantly increasing salary and operating costs. The Legislature established the current remittance levels for docket fees in 1992 for municipal courts and 1994 for district courts. In short, KLETC operates today with remittance levels established 10 and 8 years ago, respectively.

KLETC's funding was last before the Legislature in 1998. At that time, KLETC did not request an increase in docket fee remittances, instead KLETC asked to retain $1 of the district court remittance level that was scheduled to "sunset" in the following year. Rather than eliminate the "sunset" provision, the Legislature extended the "sunset" date to July 1, 2002.

Proposed Legislation

The bill currently before the Legislature would revise the funding provisions in both the district court and the municipal court docket fee remittance. The bill would repeal the sunset provision found in KSA 20-362(e) that takes effect July 1, 2002 for the district court docket fee, allowing KLETC to retain the present level of $9. Based upon historical averages, if KLETC's remittance level falls from $9 to $8, KLETC would lose a projected $200,000 in annual funding. The bill also increases the docket fee remittance level for municipal courts found in KSA 12-4117(a)(2) effective July 1, 2002. Again based upon historical averages, this additional $2 would generate a projected $570,000. Current projections reflect that the retention of the district court docket fee level and the increase in the municipal court docket fee level would allow KLETC to operate until FY 2006 with no additional increases.

Why Target the Municipal Courts?

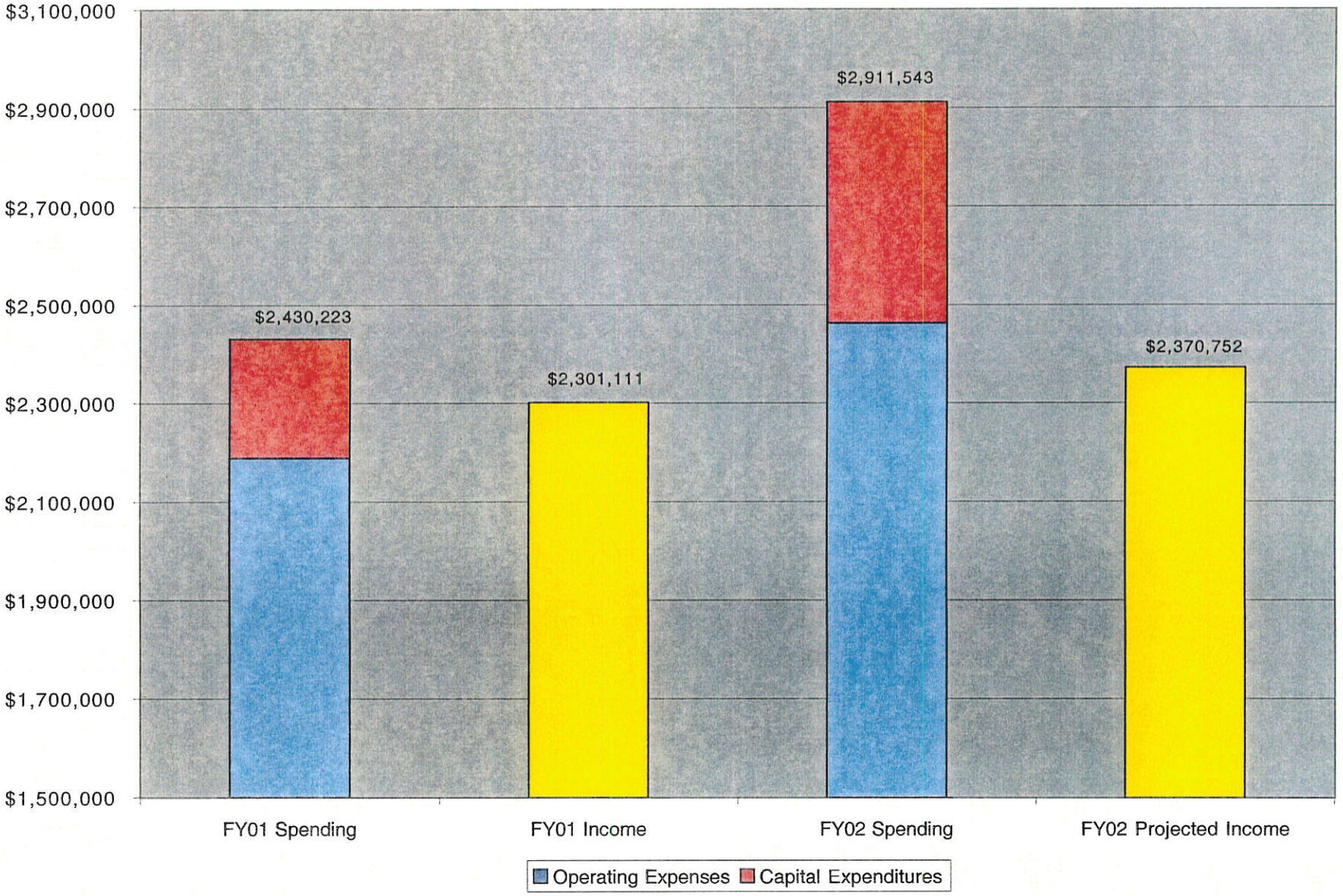
Based upon current remittance levels, the district court docket fee provides $1.8 million dollars annually, and the municipal court docket fee provides $570,000 annually. Based upon the records from 1998 through 2001, which are typical training years, almost 51% of the officers trained at KLETC are employed by municipal law enforcement agencies. During that same period, municipal court docket fee revenue accounted for only 24% of KLETC's total budget. Even assuming the remittance level is increased from the municipal court (and the district court remittance level is maintained), the municipal court docket fee would only provide 39% of KLETC's total annual revenue. The disparity between revenue provided and services required appears to make the municipal court the most equitable source for the additional funding.

KLETC Funding Benefits the Entire State

The Legislature established KLETC's mission in KSA 74-5603 to develop and improve law enforcement "throughout the state." KLETC recognizes this statewide focus as one of its most important mandates. During FY 2001, KLETC provided basic training programs to officers from law enforcement agencies representing 85 counties, specialized training or continuing education programs to officers representing 81 counties, and interactive distance learning via Telenet 2 to officers representing 43 counties. In summary, KLETC provided training to law enforcement personnel representing 97 of Kansas' 105 counties during FY2001. While this mission is critical for top quality law enforcement throughout the state, this mission requires adequate resources and staff time. KLETC cannot fulfill its mandated mission without additional funding. If additional funding is not provided beginning in FY2003 then the state's central training facility established by the Legislature will be forced to reduce or eliminate programs/services and will be faced with depleting contingency funds set aside for catastrophic facility, equipment and operational emergencies.

February 22, 2002

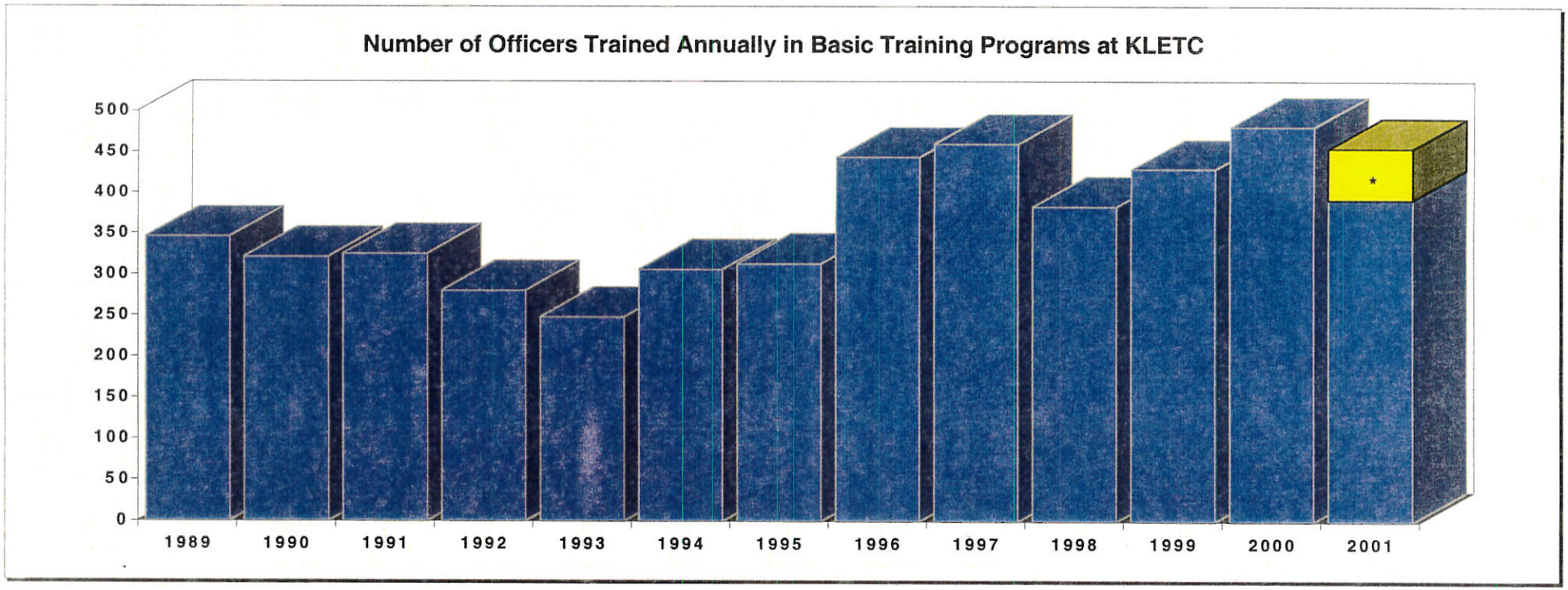
Kansas Law Enforcement Training Center
Spending vs. Income
FY 01 - FY 02



12/17/01

The University of Kansas
Kansas Law Enforcement Training Center
Hutchinson, Kansas

1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
346	321	325	280	248	306	313	444	460	383	429	481	392



*Decrease in FY2001 number is due, in part to Basic Class #165 which began in FY01 and ended in FY02. Therefore, the numbers for that class will be reflected in the FY02 annual rep

THE UNIVERSITY OF KANSAS

KLETC

Providing comprehensive, progressive, quality training and support for Kansas law enforcement

KANSAS LAW ENFORCEMENT TRAINING CENTER

KLETC FUNDING ISSUES

What Kansas Law Enforcement Administrators Are Saying....

Chief Oren K. Skiles, Arkansas City Police Department..."*As Police Chief in Arkansas City, I would support retaining the current $9.00 remittance level from District Court for the Kansas Law Enforcement Training Center and increasing from $2.00 to $4.00 effective July 1, 2002, the Municipal court docket fees, that money going to the Law Enforcement Training Center. I have always found that our officers were trained by professional, dedicated instructors at the Law Enforcement Training Center and would not want that level of training to decrease because of inadequacies of funding. Because of the staff, equipment and technology needed to adequately train these police officers, we must provide the Kansas Law Enforcement Training Center with funding to carry out their mandated mission.*"

Chief Ronald Miller, Kansas City Police Department..."*An issue of concern involves KLETC funding. I am concerned that the district court collection of the $9 remittance fee, which supports the State Academy, and our satellite academy, would be adversely affected by the district court sunset provision found in KSA 20-362...Similarly, it is my perspective that most officers trained by the KLETC are municipal police officers benefiting from our municipalities in Kansas and it seems fair that most revenue should be derived from this source. I support efforts to increase the municipal court docket remittance fee from $2 to $4. These two reasonable suggestions would positively impact law enforcement in Kansas and allow adequate planning in the years to come.*"

Chief Frank Denning, Roeland Park Police Department..."*The foundation for future qualified and skilled officers is formed at KLETC. The funding requests, if adhered to, will ensure only the best for Kansas. The partnership established by KLETC and the law enforcement community remains strong. By removing the sunset provision and increasing the municipal court docket fee remittance level to $4 will guarantee the commitment KLETC has, and that is to provide the best possible trained law enforcement officers for this great state. KLETC has clearly demonstrated to everyone concerned about fiscal responsibility that no funding requests would be made if there were not needs. This is the right and necessary thing to do. "Let's roll".*

Director William M. Watson, Riley County Police Department..."*KLETC needs funding to support the increase in basic academy training hours and its numerous other training programs. They have thoroughly researched alternatives and I support their proposal to increase Municipal court docket fee from $2 to $4. No one likes to see fees increased, but the likely impact on law enforcement training if not properly funded is unacceptable...I cannot emphasize enough the importance of quality training in law enforcement today. You cannot compare the level of responsibility and accountability our officers face daily to any other profession. The liability of not providing the necessary training is unacceptable. We must be willing to provide the resources and funding needed to support KLETC's training mission.*"

Chief Ellen T. Hanson, Lenexa Police Department..."*In response to your proposal to increase KLETC operating revenue by repealing the sunset provision of the statute governing district court docket fees and seeking an increase in municipal court docket fees, I again offer my support...In this time of shrinking budgets and shrinking revenues, it would be less than responsible to require new or expanded programs without a way to pay for them.*"

Chief Dean Akings, Great Bend Police Department..."*Training that is provided by the Kansas Law Enforcement Training Center is vital to the safety of our citizens and our officers. I strongly support the $9.00 and $4 municipal court docket fee funding for KLETC. Costs are elevating in all areas of government and there needs to be special attention given. Let's don't put a price tag on the safety of our officers and citizens. It's the right thing to do!*"

Chief John G. Simmons, Lansing Police Department..."*I absolutely and without reservation support and endorse KLETC's initiatives to increase revenue...you continue to creatively and expertly manage a finite budget; however, you simply cannot continue to provide this high level of training without securing additional revenue. I fully support the following initiatives: (1) Repeal the district court sunset provision found at K.S.A. 20-362(e), allowing KLETC to retain the current $9 remittance level. (2) Increase of municipal court docket fee remittance levels found at K.S.A. 12-4117(a) from $2 to $4 effective 7/1/02.*"

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Chie[illegible]es D. Hill, Salina Police Department..."Rather than use tax dollars, it is only right that KLETC continues to be funded persons who violate the law. Therefore, we favor 1) increasing the municipal court docket fee to $4.00, and 2) repeal of the district court sunset provision found at K.S.A. 20-362(e), to ensure that KLETC is adequately funded, now and in the future...Thank you for the significant contributions you and your staff make to Kansas' law enforcement community."

Chief Raymond L. Smee, Goodland Police Department..." The Goodland Police Department is very pleased to support...KLETC's fund increase...Financial stability for KLETC is an important goal for the institution to achieve because it literally effects each and every citizen in the State of Kansas. It is a great benefit to the Kansas tax payer that this program is entirely funded by the fees remitted by the courts and not funded through higher taxes. Being a police department representing a municipality, we support the increase paid to KLETC from the municipal court fees."

Chief Dick Heitschmidt, Hutchinson Police Department...I want to express my support of the continued use of court docket fees as the revenue source for KLETC. I do support the repeal of the sunset provision in K.S.A. 20-362(e) and the increase in remittance found in K.S.A. 12-4117(a)(2)...Shifting the burden of funding KLETC from the violator to the general public, I believe, is unacceptable....Maintaining the District Court docket fee and increasing the defendant's court cost in Municipal Court are the best ways to meet the (funding) needs of KLETC."

Chief Kevin D. Cavanaugh, Fairway Police Department..."It is a tribute to Kansas law enforcement officers and the staff at the Kansas Law Enforcement Training Center that we have thus far been able to provide a high standard of service to the citizens of Kansas. The current docket fee remittance levels for district courts contains a sunset provision which must be repealed in order for funding to continue at the current level of $9 or face the prospect of losing $200,000 in annual income. In addition, the municipal court docket fee remittance level needs to be increased from $2 to $4...Making these changes will assure that the Kansas Law Enforcement Training Center can fulfill its mandated mission of providing the highest quality of basic training for the officers who serve in the many law enforcement agencies across our great state for the foreseeable future."

Chief Michael J. Heffron, Emporia Police Department..."I firmly agree that the criminal and traffic violators in Kansas should continue to fund the academy through docket fees from county and municipal courts...I know docket fees have increased considerably in many courts across Kansas, and I am surprised to see that your funding has not increased in conjunction with the rise in fees. If there is anything I can do to assist you in your current endeavors, please let me know."

Chief Charles F. Grover, Prairie Village Police Department..."If increasing funding to raise the entire level of professionalism of law enforcement in the State of Kansas is necessary, I would be supportive of that endeavor. I am well aware that in training, quality equates to funding...The job of a law enforcement officer is today's society is much more complex than just ten years ago. If we as a profession are going to continue to provide an excellent quality of service to the communities we serve, the need for better trained officers is paramount."

Chief Jeff Herrman, Ottawa Police Department..."I support your efforts to improve the quality of Kansas law enforcement by increasing the basic training curriculum requirements and to pay for those improvements by repealing the district court docket fee sunset provision and increasing the municipal court docket fee remittance by $2.00...Making violators pay for law enforcement training has been an excellent solution to financial needs and should be continued. A $2.00 increase in municipal court docket fees to meet the increased needs for the coming years would make good sense and have little effect on the general public."

Chief David Mayfield, Marion Police Department..."I am expressing my support of (1) repeal the sunset provision regarding district court docket fees of $9.00 and (2) to increase municipal court docket fees from $2.00 to $4.00...It is apparent that to continue to provide the equipment, staff and student needs to train our officers from across the state, the funding must be in place...We must strongly support revenue assistance to the Kansas Law Enforcement Training Center in order to turn out the best trained law enforcement officer we can."

Chief Kenneth Sissom, Merriam Police Department..."I know the center depends, in part, on funds that come from the court docket fees. The continued high level of police training may be at stake. Without this funding, your center may be forced to scale back needed efforts or look for other funding sources from taxpayers. Let the violators help to share this burden through the court docket fees."

Chief Lee Doehring, Leavenworth Police Department..."Please accept my strong endorsement of the (funding) initiatives currently being pursued by the Kansas Law Enforcement Training Center...the assessment of the court docket fees, both in the district court and the municipal court, have been a very successful means of funding the critical training services provided throughout the state without putting an additional burden on individual communities or the taxpayers as a whole. It is only appropriate that those offenders who engage and consume the law enforcement resources of the communities pay for the training of those same individuals who provide those services."

Commissioner Ronald Pickman, Kansas Law Enforcement Training Commission..."I strongly support the use of docket fees to fund KLETC operations...The ability to assess the costs of training law enforcement officers to the very people that utilize a large majority of the officers' time is a unique and extremely fair way to fund this training...The funding provided by docket fees to support the Kansas Law Enforcement Training Center alleviates the burden of how training will be accomplished for many, if not all agencies across the State."

Chief Michael O. Hall, Pittsburg Police Department..."In my opinion, the key factor for the future of our next generation of Kansas law enforcement officers is their Kansas Law Enforcement Training Center education...I strongly encourage and give my full backing to repealing the district court sunset provision. Furthermore, increasing the municipal court docket fees from two dollars to four dollars is very reasonable. It seems logical and appropriate that those who use police and court services bear the cost of educating our law enforcement officers."

Chief James R. Hawkins, Garden City Police Department..."*The Garden City Police Department strongly supports the retention of the current $9.00 district court docket fee remittance and the increase of the municipal court docket fee remittance from $2.00 to $4.00. In order to maintain the high standard of training communities have come to expect for the law enforcement officers who serve them, funding for that training must rise to the level where it can meet 21st Century law enforcement technological demands.*"

Chief Randal D. Wilson, Maize Police Department..."*It is imperative that you and your staff be provided the resources you will need to help our new officers prepare for their responsibilities...Because tax revenues have dropped in recent years creating a number of funding hardships for state agencies, I also agree that the funding vehicle already in place, i.e. court docket fee remittances, is the most logical way to proceed...It is essential that you continue to be given the resources you will need to maintain the standards of training that have been established, and come to be expected, through your organizations' work through the years. The high quality of officers that have received their training through KLETC attests to the success of your efforts.*"

Chief Robert H. Circle, Dodge City Police Department..."*I fully support increasing our state's municipal court docket fees from $2 to $4 effective July 1, 2002. In addition, I support KLETC retaining the current $9 per district court docket fee by repealing the district court sunset provision found in K.S.A. 20-362(e)...Due to the importance of KLETC to our law enforcement community, it is absolutely essential your organization is adequately funded to accomplish its mission...I have been and always will feel that our traffic and criminal offenders, opposed to the law abiding citizens, should fund our state's law enforcement training center to the greatest degree possible.*"

Chief Ed Klumpp, Topeka Police Department..."*We support the continuation of this funding from District Court docket fees at the present level or higher and increasing the Municipal Court docket fees by a minimum of $2...All training is dependant upon adequate funding. Poor funding inevitably results in poor training, or training not completed. The current source of funding via court costs provides funding for law enforcement training paid for by those whose actions lead to the number of officers certified. It is not only a proper source but it provides funding without burdening the law-abiding taxpayers.*"

Chief Michael L. Hauschild, Derby Police Department..."*KLETC has provided the maximum and quality training for young men and women entering in their law enforcement profession with limited dollars...Members of the Derby Police Department give strong support for the increased funding for KLETC.*"

Chief Ray D. Classen, North Newton Police Department..."*I would support the proposal to repeal the sunset provision of K.S.A. 20-362(e) and allow the District Court docket fee to remain at $9. In addition, I would support increasing the Municipal Court docket fee from $2 to $4. You have done an incredible job of maintaining and advancing the excellent training of our law enforcement personnel in the state of Kansas. Keep up the good work!*"

Chief Sam Burdreau, Chanute Police Department..."*I feel that if there is a cost effective way to insure yourself against liability, dollars expended toward education, in my opinion, are proactive rather then reactive...We must maintain our facilities and the staffing necessary to accomplish this task. I believe it to be sound fiscal management to assess part of this expense to those who are using the service, and I see no immediate issue in the municipal court remittance level increasing from $2 to $4 if required to do so.*

Chief Vernon (Sonny) Ralston, St. John Police Department..."*I feel that the Legislature was very wise when they approved the docket fees as funding for the KLETC knowing that the people violating the law would be the ones paying for the excellent training that our officers receive from the KLETC. The sunset provision fee found in K.S.A. 20-362(e) must be repealed to allow KLETC to retain the $9.00. I am very supportive in the increase of the municipal docket fee from $2.00 to $4.00 which would continue to provide the KLETC with quality instructors, programs and up-to-date equipment that is necessary to properly train our officers in this state.*"

Chief George F. Capps, Park City Police Department..."*I would like to say that I strongly support that the violators of the criminal and traffic laws continue to fund KLETC's mission...I fully support all efforts to repeal the sunset provision found in K.S.A. 20-362(e) in order to maintain the current level of funding. Also, in order to ensure the future of the Kansas Law Enforcement Training Center I support the initiative to increase the municipal docket fee from $2 to $4 effective July 1, 2002...To shortchange the training academy or place the burden of funding on the state general fund is, in my opinion, not an option.*"

Sheriff Richard W. Barta, Shawnee County Sheriff's Department..."*the law enforcement community counts on KLETC a great deal. To accomplish the lofty goal of improving law enforcement to appropriate levels, (KLETC) funding must be created and even accelerated. I support the repeal of KSA 20-362(e) (sunset provision) and increasing the (municipal court docket fee) funding from KSA 12-4117(a) to meet KLETC immediate future needs.*"

Sheriff Buck Causey, Barton County Sheriff's Office..."*As Sheriff of Barton County, I have a great interest and have been tracking the funding issues for the Kansas Law Enforcement Training Center...As Sheriff, I am a strong supporter of continuing the District Court docket fee and increasing the Municipal Court docket fee. Like everything in our society, the operation (costs) of KLETC continue to rise...The violators of Kansas laws should continue to help support KLETC...September 11, 2001 was a huge reminder of the importance of well-trained law enforcement officers and emergency personnel.*"

Sheriff Troy M. Thomson, Norton County Sheriff's Department..."*I am supportive of two actions that need to be taken, not only to maintain, but to increase the quality of law enforcement that is demanded from the citizens that we serve...The first would be to repeal the sunset provision found at K.S.A. 20-362(e). The second is to increase the municipal docket fee remittance level found at K.S.A. 12-4117(a) from $2 to $4...We in Kansas should be thankful to have the high quality of training that is being offered at our training academies throughout our state, but the only way to maintain this level of training is to fund the academies at a level in which they can operate.*"

Sher[illegible]ger L. Mongeau, Rooks County Sheriff's Office..."*The Rooks County Sheriff's Department strongly supports continued court docket fee which helps fund the KLETC. Without this funding, the Training Center would not be able to provide the outstanding training that our officers need in order to provide the citizens of our county with the high level of service which they expect. It is imperative that this funding be continued...I would like to offer you my continued support of KLETC and its training programs and funding.*"

Sheriff Loren W. Youngers, Morton County Sheriff's Department..."*I am in support of the needed funding that you will attempt to obtain through the increase in court docket fees...The docket fee is a viable way to fund such an endeavor without burdening hat already stretched tax base.*"

Sheriff Sandy Horton, Crawford County Sheriff's Department..."*In regards to the critical issue of KLETC funding—as you know, it is imperative that we maintain our current level of quality training as provided by you and your staff at KLETC. And quite frankly, if that means an increase in the Municipal Court docket fee and repealing the sunset provision for the District Court docket fee, then I strongly feel it should be done.*"

Sheriff Donald L. Wilson, Lane County Sheriff's Office...*I feel that the Kansas Law Enforcement Training Center is committed to providing Kansas Law Enforcement Officers high quality training as well as ensuring that the training be cost efficient. In an effort to show my support, I am requesting that the Kansas Law Enforcement Training (Center) be allowed to retain the current $9.00 remittance fee from the district court and that the municipal court docket fee be increased from $2.00 to $4.00 effective 07/01/2002.*"

Sheriff Ken Lippert, Osage County Sheriff's Office..."*The present municipal docket fees only cover about 24% of the cost of training Kansas law enforcement officers. It would only seem fair that the municipal docket fees should be raised to cover more of the cost of training the officers sent for training by the cities of our state...We are asking that the municipal court fee of $2.00 be raised to $4.00 to cover the increase in expenses incurred in law enforcement training.*"

John R. Fletcher, Russell County Sheriff's Office..."*I am in full support for the continuing use of the $9 docket fee for the KLETC...I am in full support of the repealing of the sunset clause and the increase of the Municipal docket fee. As a graduate of the KLETC and having sent numerous officers through the KLETC, I feel the training that is received has helped to improve the professional nature of the State of Kansas law enforcement and hope to see more good improvements to make Kansas a safer place to live and work.*"

Sheriff John L. Foster, Johnson County Sheriff's Office..."*No adequate training program can be undertaken at any level of government unless it is properly funded...It is time for the funding process to be reexamined. It must be understood that the cost of training in law enforcement is no different than the cost of doing business in any other endeavor. It is reasonable to accept that the cost concerning personnel, technology, etc. will increase and therefore, we should look at the docket fee system and increase those fees appropriately.*"

Sheriff Gary E. Steed, Sedgwick County Sheriff's Department..."*Sufficient KLETC funding is critical to our healthy law enforcement in Kansas and the high quality of service provided to our communities...These are challenging times for our society as a whole and law enforcement agencies in particular...The Kansas Law Enforcement Training Center is a critical component to providing law enforcement officers in Kansas with the knowledge and support necessary for the safety and security of our communities.*"

Sheriff Vernon Chinn, Pratt County Sheriff's Office..."*I strongly support the current $9.00 docket fee funding for KLETC. Training cannot be sacrificed in the name of economics. Considering that violators of the criminal and traffic laws pay for law enforcement training, this is a fair way to fund KLETC...Increasing demands are being put on law enforcement. Law enforcement is also facing increasing liability issues.*"

Sheriff Glen Kochanowski, Saline County Sheriff's Office..."*If KLETC is to continue functioning at its current level or improve, I believe the $9.00 District Court docket fee has to remain unchanged, repeal the sunset provision provided in K.S.A. 20-362(e) and increase the municipal court docket fee as found in K.S.A. 12-4117(a)(2) from $2.00 to $4.00 per case...KLETC is a vital link in the law enforcement chain in Kansas. Without proper funding, KLETC curbs its ability to provide quality training and the citizens of our state are denied the quality of law enforcement protection they deserve.*"

Sheriff Bethany F. Popejoy, Hamilton County Sheriff's Office..."*As a state-wide training facility, KLETC is challenged to train officers who hail from departments of all sizes and technological levels...The utilization of the docket fee is an innovative and unique funding resource for KLETC that should be renewed to continue throughout its existence...This increase would not impose a significant hardship to any group of individuals; however, the benefits would significantly enhance the outstanding services that KLETC already provides to the law enforcement community and the State of Kansas...I sincerely support the care and attention that you and your staff dedicate to the law enforcement community, as well as the services you have continually provided that shape the future of law enforcement within the State of Kansas.*"

Sheriff Lamar Shoemaker, Brown County Sheriff's Department..."*I strongly support the municipal court docket charge of $4.00 to assist in funding. Speaking as a past chief of police and now sheriff, I have worked with both court systems and believe this measure will "close the gap" on funding between district and municipal court.*"

Sheriff Curt Bennett, Dickinson County Sheriff's Office..."*The current funding needed to pay these costs is not adequate and needs to be amended now...I wish to offer my thanks to the staff at KLETC for all the training given to my deputies that serve Dickinson County. Thank you for your top notch training and good luck at the academy. Be assured of my support for KLETC and your staff.*"

She[illegible]net J. Harrington, Elk County Sheriff's Office..."*I support KLETC in the efforts to ask that the district court su[illegible] provision found at KSA 20-362(e) be repealed. Also, the municipal court docket fees should also allow KLETC to collect $4.00, instead of $2.00. Since KLETC trains more municipal officers than it does county deputies, then it seems only right that the municipal courts have their fees raised to assist KLETC in the funding to train their officers...To enable our law enforcement officers in Kansas to provide the best protection to our citizens, we, as a state and as law enforcement administrators must see that the needed training is provided. I support the Kansas Law Enforcement Training Center and the Kansas Law Enforcement Training Commission.*"

Director Larry Welch, Kansas Bureau of Investigation..."*Training is the cornerstone of professionalism and professionalism is the foundation of our criminal justice system. We have no other option. For the fiscal stability of Kansas law enforcement training, it is vital that the Kansas law enforcement community seek repeal of the district court docket fee sunset provision and the increase of the municipal court docket fee remittance level from $2.00 to $4.00.*"

Superintendent Don Brownlee, Kansas Highway Patrol..."*High-quality training is an essential component of effective law enforcement. Meeting that challenge requires sufficient and adequate funding to keep training on the cutting edge of law enforcement...In order to provide this professional training, we must adequately fund basic law enforcement officer training. Funding for the Kansas Law Enforcement Training Center (KLETC) is, fittingly, not paid out of tax funds but funded solely through court costs paid by traffic and criminal offenders. With the increase in the minimum training curriculum, the state must explore avenues to provide additional funding for basic law enforcement training...I appreciate the hard work that you (KLETC) have put into delivering professional law enforcement officers who are responsive to the needs of their communities and to the citizens of Kansas.*"

Chief Charles Clark, Shawnee Police Department...."*It is critical that KLETC receive adequate funding to fulfill its legislatively mandated mission ... The district court sunset provision found at KSA 20-362(e) must be repealed, allowing KLETC to retain the current $9 remittance level. I also support the plan to increase the municipal court remittance level from $2 to $4. Passing these costs along to violators across the state seems to be an intelligent way to provide basic training to our police officers.*"

Chief John Douglass, Overland Park Police Department, and President, Kansas Association of Chiefs of Police..."*The Kansas Association of Chiefs of Police voted unanimously as a Board, and again as a General Membership to support the Kansas Law Enforcement Training Center in the following efforts: Repeal the district court sunset provision as provided for in KSA 20-362(e) and leave the district court docket fee remittance level at $9; and increase the municipal court docket fee remittance level as provided for in 12-4117(a) from $2 to $4, effective 7/1/02. The Kansas Association of Chiefs of Police strongly urges the Kansas Legislature to support the above efforts and to allow the Kansas Law Enforcement Training Center to continue to provide contemporary and timely training to Kansas law enforcement.*"

Kevan Lager, President, Kansas State Lodge Chapter of the Fraternal Order of Police..."*The Kansas Fraternal Order of Police is an organization that represents over 2,500 rank and file officers in uniform and believes only the best should be provided for professional law enforcement. It is for this reason, and without reservation, the Kansas Fraternal Order of Police supports the Director of the KLETC and his request for an increase in funding. Any and all assistance should be granted to aid in his successful operation of the KLETC.*"

Darrell Wilson, Executive Director, Kansas Sheriffs' Association..."*The Kansas Sheriffs' Association (KSA) supports KLETC's funding initiatives, specifically to repeal the district court docket fee sunset provision and to increase the municipal court docket fee remittance from $2 to $4. Adequate funding is critical to the Center's ability to provide quality, comprehensive training and support to the Kansas law enforcement community.*"

Al Thimmesch, Executive Director, Kansas Peace Officers' Association...*KLETC provides high quality, essential training to law enforcement officers throughout the state. In addition to basic training, KLETC provides critical and timely continuing education. When terrorists struck New York, KLETC had already been providing training to law enforcement as first responders to weapons of mass destruction. Since the attacks, KLETC increased the number of classes available for response to terrorism. Without the elimination of the sunset provision in the district courts and an additional $2 remission from the municipal courts, KLETC's ability to provide basic and continuing training to the law enforcement officers of the state will be in jeopardy. The Kansas Peace Officers' Association (KPOA) strongly supports KLETC in its request for additional funding.*"

Kansas Law Enforcement Training Commission, through resolution, adopted on October 5, 2001....

WHEREAS, the district court sunset provision found at KSA 20-362(e) takes effect July 1, 2002, reducing the remittance level from $9 to $8; and

WHEREAS, if the district court sunset provision were allowed to take effect, the Kansas Law Enforcement Training Center would face $200,000 annually in lost revenue; and

WHEREAS, even with the district court sunset provision repealed, the Kansas Law Enforcement Training Center will only be able to operate through Fiscal Year 2003 without additional funding; now therefore

BE IT RESOLVED that the Kansas Law Enforcement Training Commission urges the Kansas Legislature to repeal the district court sunset provision found at KSA 20-362(e), leaving the district court docket fee remittance level at $9; and

BE IT FURTHER RESOLVED that the Kansas Law Enforcement Training Commission urges the Kansas Legislature to increase the municipal court docket fee remittance level as set by KSA 12-4117(a)(2) from $2 to $4, effective July 1, 2002.

Jennifer Rose,
Asst. Hutchi
City Man

Judiciary Committee
Room 313 South
February 25, 2002, 3:30 p.m.
Legislative Testimony
HB 2802

I want to thank you for allowing me to testify on behalf of House Bill 2802. My name is Joe Palacioz, City Manager of Hutchinson, Kansas since 1989 and I have been in municipal service for 32 years.

Throughout this time I have noticed the following:

1. Law enforcement profession has increasingly been call to resolve complicated societal issues. The law enforcement officer wears many hats - from enforcement officer, to coach, and many times a referee through mediation means.

2. Also, the law enforcement officer must keep pace with modern technology and computer age criminal activities.

3. Finally, the law officer must be concerned about the newest responsibility of addressing homeland security issues in a viewpoint that we have not been accustom to in America.

These issues and basic law enforcement skills require training that all law enforcement officials need on a continuous basis. Training needs to up updated on a frequent basis to meet the challenges in our communities. Specifically, the training curriculum must be changed to reflect the changing and expanding role of our law enforcement officers.

It is paramount that such needs are met. It is paramount that the state's central training facility, the Kansas Law Enforcement Training Center (KLETC), has adequate funding to fulfill it's mandated mission. It is paramount that sufficient law enforcement training is available for our Kansas cities and counties.

The passage of House Bill 2802 allows cities and counties to meet their local needs and new challenges that American communities are facing. Collaboration is important with state agencies such as KLETC. Networking is important as well as establishing common training curriculums for our law enforcement community. It is important to confront the challenges with the training tools necessary to fulfill the public safety mission of our communities.

The City of Hutchinson and I support the district court docket fee of the $1 sunset proposal be extended.

The City of Hutchinson and I support the additional $2 increase proposal in municipal court docket fees to support the KLETC operations (effective 07-01-02).

Joe J. Palacioz, City Manager
PO Box 1567: City Hall
Hutchinson, KS 67502
Phone: (620) 694-2610
e-mail: joep@hutchgov.com

House Bill #2802

Chief John M. Douglass
Overland Park Police Department
12400 Foster
Overland Park, KS 66213
(913) 327-6935

Mr. Chairman and Members of the Judiciary Committee:

Again, I find myself provided the opportunity to testify before this Committee on a piece of pending and important legislation, House Bill #2802.

I am here today representing the Kansas Association of Chiefs of Police, Johnson County Police Association, the City of Overland Park, and the Overland Park Police Department in support of this Bill. Each of the organizations that I represent strongly believes the training of local law enforcement officers is of paramount importance to the safety of the officer and the communities they serve. The $2.00 addition to municipal court costs is both necessary and keeping with the increased costs incurred in training. As costs become inflated over time, it eventually becomes necessary to raise fees to accomplish the same level of training. This Bill would provide such revenue for the Kansas Law Enforcement Training Center.

Please understand that the Johnson County agencies are clearly in support of this Bill, in spite of the fact that the increase will not directly affect those agencies. The Johnson County Regional Academy provides training for those organizations and would see no increased revenue from this Bill. You might be tempted to wonder why then we are in such strong support. The truth is that for once the people and organizations of Kansas are acting more in support of what is good for the entire state than what is good regionally. We all recognize that this money is sorely needed if we are to continue providing quality law enforcement training for the majority of the state's law enforcement officers.

This money will be used to continue the excellent education received by these officers through the Kansas Law Enforcement Training Center. In adopting this legislation you are providing these officers with the training necessary to do their jobs effectively, serve their communities efficiently, and return home safely every day to their families. We strongly urge passage of this Bill.

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Testimony of Sheriff John Foster
Representing the Johnson County Sheriff's Office
and the Kansas State Sheriff's Association
Testifying in support of HB 2802 before House Judiciary

Mr. Chairman and Members of the Committee:

My name is John Foster, Johnson County Sheriff and I am here today to support House Bill #2802.

High quality law enforcement training is an investment in high quality service to the citizens of Kansas. Law enforcement is a study of the dynamics of change. These changes are initiated by the process of action, by legislative activity, judicial decision, or improved methodology.

The beneficiaries are not only the citizens but the various political subdivisions of the state of Kansas. Law enforcement organizations are charged with the protection of public assets and quality training is a vehicle to that end. When legal action is initiated against police departments or Sheriff's offices or any other law enforcement organizations in the state, one of the first documents requested by plaintiff's attorney, will be the training record or records of the officer or officers involved in any legal action. Quality training is one of the best defenses that any political subdivision has. You have heard or will hear opponents of this legislation saying it is too costly and they cannot afford it. The fact is, it does not cost, it pays!

This legislation is a win - win situation, there are no losers. The citizens are better served, the political subdivisions are better protected and all of this can be done without raising taxes. If this isn't a good deal, I don't know what is.

KANSAS PEACE OFFICERS ASSOCIATION
AND
KANSAS SHERIFFS' ASSOCIATION

House Bill 2802
Funding issues for Kansas Law Enforcement Training Center
Presented by: Chief Frank Denning, City of Roeland Park, Kansas

The role that law enforcement plays in the State of Kansas has changed. These changes were occurring before September 11, 2001 and change will continue. KLETC and Kansas Law Enforcement Administrators have recognized these changes and almost all agree that education and comprehensive training are part of the solution. Meeting these demands now and for the future of a safe Kansas requires funding to maintain the expanded training needs for Kansas Police Officers.

The proposed funding increases will ensure only the best for Kansas. Citizens around this Great State should expect knowledgeable and professional police response and service. If they live in Scott City, Kansas or Overland Park, Kansas people should have quality trained individuals capable of making the complex decisions required of today's police personnel. Anything less than that are unacceptable.

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The Director of KLETC has clearly demonstrated to everyone concerned about fiscal responsibility that no funding requests would be made if there were not needs. The "users" of the criminal justice system fund this. KLETC is responsible to establish this critical underpinning of additional police training and the legislative governing body is accountable to their constituency to support the needed funding in the manner it is proposed.

It has been said that cities will be adversely affected by this funding increase because officers will have to train longer. The additional training amounts to twenty days! What is the price we are willing to pay for inadequate training? What do we tell the Kansas Citizen that they have to accept less than the best?

The challenges and the needs are evident. Please demonstrate the courage that KLETC has, move forward for Kansas Law Enforcement, and approve the requested funding. It is the right and responsible thing to do.

I stand for questions.

Respectfully

GREAT BEND POLICE DEPARTMENT
1217 WILLIAMS
GREAT BEND, KANSAS 67530
www.greatbendks.net
(620) 793-4120

Testimony for House Bill No. 2802

Chairman O'Neal and Members of the House Judiciary Committee, My name is Dean Akings, Police Chief for the City of Great Bend. I am here to give support to House Bill No. 2802. As a Department Head for the City of Great Bend, I understand the ever-increasing problem of running a department with increasing expenditures and revenues that are not able to keep up.

Great Bend Police Officers are the seven out of every ten Kansas officers trained by the Kansas Law Enforcement Training Center. We depend upon the Kansas Law Enforcement Training Center to provide the most up-to-date law enforcement basic training and continuing education for our officers. The City of Great Bend pays only mileage and a salary to our officers who attend KLETC. The City of Great Bend has not the revenue nor the expertise to run a law enforcement training center and we wish to commend the Kansas Law Enforcement Training Center for the outstanding job they do in training our public servants. The Great Bend Police Department participated in the KLETC 2001 Law Enforcement Officer Job Task Analysis Study. In a nutshell, the studies showed we need to increase the 400 hour academy to 560 hours to cover the learn objectives that correlate with the tasks identified in the study. Our agency experiences the problems that other departments find themselves in trying to find and retain certified police officers. The academy is training an average of 400 officers a year which shows the turnover experienced in the law enforcement profession in Kansas.

KLETC just recently completed a fifteen-year phased construction and renovation master plan. KLETC now has several new buildings on line and annual operating costs continue to rise. Salaries, benefits, utilities, contractual services such as cleaning, food service, security, laundry all continue to increase. KLETC has provided interactive distance learning to 33 sites across Kansas. It has been necessary for KLETC to increase its class size from 56 to 84 student officers to meet the demand for basic training. Our officers are trained in judgmental, decision/making skills on the academy's F.A.T.S. machine. Our officers also receive hands-on drivers training in emergency and pursuit driving skills.

The legislature has previously determined that the court docket fees is a mechanism to be used for funding KLETC; that KLETC is operating today on fee levels set in 1992 for municipal court and 1994 for district court. Those revenues generated are not sufficient at this time.

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Over 50% of the officers trained at KLETC are from municipal police agencies, yet municipal court docket fee revenue only accounts for about 24% of KLETC's annual revenue. The $2.00 increase would provide a projected $570,000 annually.

I would support the increase in municipal court docket fees. Municipal courts must contribute these docket fees for the benefit of everyone in our state. Every jurisdiction needs to have quality trained law enforcement officers. Senior citizens account for 18.6% of Great Bend's population and the majority of them are on fixed incomes. Additional taxing at the state or local level for law enforcement training would have a severe impact. It makes sense that those who violate the law pay for law enforcement training in Kansas. It's a user - fee. I am currently filling five patrol positions for our department and will need to have them certified in the very near future and by adding an additional $2.00 to the municipal court docket fee will ensure that our officers receive the necessary training to protect our community.

We owe it to our officers to provide the best training possible, we owe it to our citizens a feeling of security and protection. House Bill No. 2802 would help law enforcement accomplish this mission.

Thank you for allowing me the opportunity to express my views. Your support of House Bill No. 2802 would greatly be appreciated.

Dean Akings

Dean Akings
Chief of Police
Great Bend, KS 67530

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: House Judiciary Committee

FROM: Sandra Jacquot, Director of Law/Legal Counsel

DATE: February 25, 2002

RE: Opposition to HB 2802

Thank you for the opportunity to appear today on behalf of the League of Kansas Municipalities in opposition to HB 2802. The portion of the bill of interest to the League would increase the municipal court docket fee remittance to various programs by $2.00, from $7.00 to $9.00. The purpose of the fee increase is to fund an increase in the required training hours for law enforcement certification from the current 400 hours to 560 hours. This would bring to $4.00 the amount of the fee that goes to the Kansas Law Enforcement Training Center (KLETC). The League opposes this change.

Currently, our largest municipalities have their own training academies that exceed the required KLETC training hours. Several other municipalities pay to have their officers attend one of the municipal academies. Agencies operating their own training academies receive a total of $.50 for each $2.00 sent to KLETC to help defray the cost, but the city bears the majority of the cost. None of the additional $2.00 proposed to be collected for KLETC would go to the municipalities operating academies. The result of this additional assessment is that the municipal courts generating the bulk of the fees to support KLETC do not receive the benefit. Municipal court fines are substantially the result of traffic violations. Thus, those individuals violating the traffic laws in the large municipalities will be paying the freight to train law enforcement officers from other cities.

The second concern for the League is that many of our smaller municipalities cannot afford to pay for their recruits to attend an additional month of training without having the services of the officers. It is currently a hardship for some municipalities to have recruits gone for 10 weeks, much less 14 weeks. The proposed increase in the fee is the direct result of KLETC increasing the number of hours required for an individual to become a certified law enforcement officer. K.S.A. 74-5604a specifies that the training not be less than 320 hours and K.S.A. 74-5603(b) allows the director of KLETC to determine the curriculum. Thus, the director believes it is not necessary to establish the number of hours constituting the basic training program by rules and regulations which would allow for public comment, or by statutory amendment which would require a hearing, but by merely informing cities of the new requirements. Even the Law Enforcement Training Commission believes that the appropriate method to

set the minimum number of hours should be through statutory amendment. (See the attached Resolution in Support of Increased Training Hours) It is clear, that the Legislature expressed its intent on the number of training hours by statute and the KLETC should not be allowed to circumvent that intent by merely adopting a policy.

The League strongly urges this Committee to report this bill unfavorably. In addition, the League believes the Legislature should look at the grant of authority to the KLETC to unilaterally implement a policy to increase the number of training hours. Thank you again for allowing me to testify on behalf of the League of Kansas Municipalities in opposition to HB 2802.

KANSAS LAW ENFORCEMENT TRAINING COMMISSION

RESOLUTION IN SUPPORT OF INCREASED TRAINING HOURS

WHEREAS, during 2000 and into 2001, the Kansas Law Enforcement Training Center conducted Kansas' largest and most comprehensive law enforcement task analysis study in order to validate its basic training curriculum; and

WHEREAS, 1152 officers representing 207 agencies of all sizes and geographic locations throughout Kansas were surveyed as part of the task analysis study, and

WHEREAS, law enforcement agencies completed and returned ninety-six percent of the surveys sent, a percentage far greater than any other state that has undertaken such a project with the same nationally-recognized consultant, thus enhancing the validity of the study, and

WHEREAS, the study identified learning objectives based upon the frequency of task performance and criticality of training as determined by entry-level law enforcement officers and supervisors throughout the state,

WHEREAS, the task analysis study identified nearly 960 general learning objectives as necessary for a basic training curriculum, nearly 200 of which are not being addressed in the current curriculum; and

WHEREAS, KSA 74-5604a sets the requirement for law enforcement basic training at "not less than 320 hours;" and

WHEREAS, KSA 74-5603(b) gives the Director of the Kansas Law Enforcement Training Center the authority to determine "the curriculum of the [basic training] program, subject to such changes and modification as are directed by the law enforcement training commission;" now therefore

BE IT RESOLVED that the Kansas Law Enforcement Training Commission has determined that the number of basic training hours must be increased to encompass a new basic training curriculum as developed by the Director of the Kansas Law Enforcement Training Center; and

BE IT FURTHER RESOLVED that the legislature expressed its intent regarding the number of basic training hours required to certify a law enforcement officer and the appropriate method for expanding the curriculum beyond the current level is through statutory amendment; and

BE IT FINALLY RESOLVED that the Kansas Law Enforcement Training Commission urges the Kansas Legislature to amend KSA 74-5604a to set the basic training program at "not less than 560 hours" for all classes beginning after September 1, 2002.

APPROVED this 5th day of October, 2001 by the Kansas Law Enforcement Training Commission at an open meeting whose date, time and location were published in the Kansas Register.

THE KANSAS LAW ENFORCEMENT TRAINING COMMISSION

Darrell Wilson, Chairperson

TESTIMONY

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Phone: 316.268.4351 Fax: 316.268.4519
Taylor_m@ci.wichita.ks.us

House Bill 2802
State Mandated Increase in Municipal Court Fees

Delivered February 25, 2002
House Judiciary Committee

The City of Wichita has serious concerns about the fiscal impact House Bill 2802 will have on citizens who must go to Wichita Municipal Court. House Bill 2802 proposes a $2 increase in the state mandated portion of court costs, but Wichita Citizens will not receive any use of the fees or the benefit of the services those fees fund.

Wichita Municipal Court is the largest local court in the state and therefore will pay more to fund the Local Law Enforcement Training Center than any other city, even though the Wichita Police Department has its own Police Academy and does not use the Law Enforcement Training Center.

Wichita Municipal Court charges costs of $38. Here's the breakdown:

- $23.50 Court operations
- $7.50 State mandated court costs.
- $7.00 City Domestic Violence Programs and the Public Defenders Program.

As you can see, Wichita Municipal Court already charges more in state mandated fees than it charges for local public safety and court programs which directly benefit city residents. Wichita Municipal Court collects about $3-million annually in court costs. Of that amount, about $500,000 is collected for and sent to the State.

The City of Wichita works hard at keeping Municipal Court costs reasonable. Increasing the State mandated fees by an additional $2 puts an unfair burden on the Wichita citizens who use Municipal Court, without returning a tangible benefit.

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State of Kansas
Office of the Attorney General
120 S.W. 10th Avenue, 2nd Floor, Topeka, Kansas 66612-1597

Carla J. Stovall
Attorney General

Main Phone: (785) 296-2215
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ROBERT CLAUS, DEPUTY ATTORNEY GENERAL
OFFICE OF ATTORNEY GENERAL CARLA J. STOVALL
BEFORE THE HOUSE JUDICIARY COMMITTEE
TESTIMONY ON HOUSE BILL 2986

February 25, 2002

Chairperson O'Neal and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall in support of House Bill 2986. My name is Robert Claus and I am the Deputy Attorney General for the Criminal Division of the Office of the Attorney General.

The updates and additions to the Kansas criminal code contained in the twenty-six substantive sections of House Bill 2986 address issues that many of us probably would have seen as unnecessary as little as six months ago. However, the tragic events of September 11, 2001, changed our world forever. The facts are clear that brutal terrorist attacks and highly organized terrorist networks do not just exist in the movies; they are real and they are here.

The federal government has already taken a number of important steps towards protecting our country from further terrorist attacks, but on the state level we also have a responsibility to work to provide greater protection for Kansas citizens. Each state in our nation has a legal and ethical duty, to properly respond to those criminal activities and issues that arise within its borders. Relying solely upon the federal government is not appropriate and is not a solution. In order to defend and protect the people of our state cooperation between federal, state and local law enforcement agencies is essential. As you are aware, there have been several pieces of legislation introduced during the 2002 legislative session intended to allow our state and local agencies to better respond to and hopefully prevent terrorist actions. In House Bill 2986 Attorney General Stovall has identified a number of specific amendments and additions to Kansas criminal statutes that can be adopted by the Kansas legislature to allow Kansas law enforcement authorities to be more effective partners with federal law enforcement agencies. A summary of the provisions of House Bill 2986 follows:

House Bill 2986

New Sec. 1. For the first time this section would create a crime of "terrorism" under the Kansas code. As evidenced by the use of hijacked planes on September 11, this crime must be broadly defined to cover unexpected means of spreading terror.

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New Sec. 2. This section defines the term "weapon of mass destruction" to include nuclear, radiological, biological and chemical weapons capable of causing death or serious injury. It also creates a new severity level 1, person felony crime to manufacture/possess/deliver such weapons.

New Sec. 3. Creates a new Kansas felony crime related to the actual use of weapons of mass destruction: If a weapon of mass destruction is actually used to injure a person then it is an off-grid person felony.

New Sec. 4. Creates a new Kansas felony to apply to placing a weapon of mass destruction in public or private mail or parcel service for delivery. This new crime is a severity level 1, person felony.

New Sec. 5. Creates a new crime regarding the making of a false terroristic threat. Making a false report or communication that causes a person to believe a weapon of mass destruction is located at any place or structure would be a severity level 3, person felony.

New Sec. 6. This section creates a new crime of perpetrating a hoax regarding a weapon of mass destruction. It would be a severity level 3, person felony. Plus, the court may order restitution including costs of all consequential damages from a hoax (i.e. lost earnings, cost for emergency services responding, etc.) As we learned in the anthrax scare, some people are willing to exploit such tragedies by imitating true terroristic activities.

New Sec. 7. Adopts federal language to protect privacy by creating an offense for the unlawful interception or disclosure of intercepted information. The new crime will be a severity level 7, nonperson felony. Also clarifies exceptions for business and law enforcement authorities as to what are covered activities.

New Sec. 8. Expands the crime of money laundering to include crimes of terrorism. This would allow the financial infrastructure of such organizations to be discovered and accounts "frozen." The range of penalties for this offense are tied to the dollar value of the proceeds of crime involved.

Sec. 9. As has been done federally, modern technology will be used to track persons convicted of crimes created by Sections 1 - 6 and requires those offenders to submit DNA samples to be registered with the national CODIS databank.

Sec. 10. Like murder, this section would establish that there is no statute of limitation for prosecuting the new crimes of terrorism, criminal use of a weapon of

mass destruction and criminal injury of another by use of a weapon of mass destruction.

Sec. 11. Amends K.S.A. 21-3301, the Attempt statute, to specify the sentence for a conviction to attempt to commit the crime of terrorism, as defined in Section 1, will be an off-grid felony.

Sec. 12. Amends K.S.A. 21-3302, the Conspiracy statute, to specify the sentence for having engaged in a conspiracy to commit the crime of terrorism, as defined in Section 1, will be an off-grid felony; the sentence for having engaged in a conspiracy to commit the crime of causing death or serious injury to another by the use of a weapon of mass destruction will be a nondrug severity level 1 felony.

Sec. 13. Amends K.S.A. 21-3303, the Solicitation statute, to specify the sentence for solicitation to commit the crime of causing death or serious injury to another by the use of a weapon of mass destruction will be a nondrug severity level 1 felony.

Sec. 14. Amends K.S.A. 21-3439, the Capital Murder statute, to add the intentional and premeditated killing of a person in furtherance of the crime of terrorism, as defined by Section 1, and the intentional and premeditated killing of a person by use of a weapon of mass destruction, as defined by Section 2, to the list of offenses that qualify for prosecution and sentencing as Capital Murder.

Sec. 15. Amends K.S.A. 2001 Supp. 21-4706 to specify that the crimes of terrorism, as defined in Section 1, attempted terrorism and the crime of causing death or serious injury to another by the use of a weapon of mass destruction created in Section 3 are off-grid crimes and shall carry a sentence of imprisonment for life.

Secs. 16 and 17. Due to the essential need for quick action, these sections update K.S.A. 22-2502 and K.S.A. 22-2503 on search warrants to allow for the use of electronic communication, such as e-mail and satellite transmissions.

Sec. 18. Amends K.S.A. 22-2514, the definitions statute for criminal procedure related to obtaining a court authorized wiretap. This change in law would also make it clear that a search warrant that has been lawfully issued by a judge is sufficient to access e-mail and other stored electronic transmissions.

Sec. 19. Amends K.S.A. 22-2515 to add the crimes of terrorism, as defined by Section 1, criminal use of a weapon of mass destruction, created by Section 3, and computer crime to the list of crimes for which a court may approve a wiretap.

Sec. 20. Amends K.S.A. 22-2516 to allow law enforcement authorities to target with a court ordered wiretap the individual committing the crimes, not just a particular phone. This will negate efforts by terrorists to use multiple phones to avoid detection. This change would allow for a statewide wiretap order and the process is simplified to obtain wiretap orders sought for preventing terrorism or conspiracy to commit terrorism.

Sec. 21. Amends K.S.A. 22-2518 to add a provision specifying that individuals who furnish good faith information or assistance to authorities conducting a wiretap in accordance with a court order or request for emergency assistance shall not be held civilly liable for providing the information or assistance.

Secs. 22 and 23. Amends K.S.A. 22-2527 and K.S.A. 22-2528 to expand the current pen register language to include newer technology such as cellular telephones and networks. Also authorizes cellular telephone companies and other communication providers to assist with pen registers/trap trace activities.

Sec. 24. Amends K.S.A. 22-2529 to clarify the definition of "pen register" and "trap and trace device" in light of new technology.

New Sec. 25. Allows for the emergency use of a pen register or trap and trace device by law enforcement officials when there is not time to acquire a regular court order and the emergency situation involves the immediate danger of death or serious bodily injury to a person or organized crime activities. Among other restrictions, retroactive approval must be requested within 48 hours.

Sec. 26. Amends K.S.A. 2001 Supp. 22-3101 for the purpose of expediting the investigation of suspected terrorist activities, and hopefully prevent them, by giving Kansas prosecutors the same subpoena authority to investigate crimes of terrorism as they currently have in narcotic cases.

As can be seen, House Bill 2986 contains important legislative steps focused primarily on strengthening the ability of the Kansas law enforcement community to investigate and prosecute those individuals who would plan, fund or carry out terrorist attacks.

In addition to the provisions of House Bill 2986, Attorney General Stovall requested, and this committee has introduced, two additional bills related to responding to incidents of terrorism. House Bill 2984 would assist victims of terrorist or war-related attacks by allowing the victims expedited access to any life insurance benefits to which they may be entitled. House Bill 2984 would also waive health insurance policy provisions requiring prior approval in disaster situations resulting from an act of war or an act of terrorism when medical care is received for injuries resulting from such acts. House Bill 2983 would designate the Adjutant General for the State of Kansas as a member

of the Governor's cabinet in recognition of the critical nature of the duties of the position. In light of the point we are at in the legislative session and the common nature of the bills, Attorney General Stovall requests the committee amend the language of House Bills 2983 and 2984 into House Bill 2986. Such an amendment would allow the committee to consider these ideas in concert and would make expeditious use of the legislature's time and resources.

In conclusion, the updates and additions to Kansas law included in House Bills 2986 will provide Kansas law enforcement authorities with tools they need to properly investigate and prosecute terrorist criminals and those who support them. The provisions of House Bills 2983 and 2984 would also provide victims of terrorist attacks with much needed assistance. On behalf of Attorney General Stovall I urge you to support House Bill 2986 and recommend the bill favorably for passage.

KANSAS BAR ASSOCIATION
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LEGISLATIVE TESTIMONY

February 25, 2002

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM: JAMES L. BUSH, PRESIDENT

RE: HOUSE BILL 2986

Chairman O'Neal of Members of the House Judiciary Committee:

My name is Jim Bush and I serve as President of the Kansas Bar Association. The Kansas Bar Association appears before you today in opposition to the enactment of House Bill 2986 and to suggest several alternative proposals. The provisions of House Bill 2986 have been carefully reviewed by a number of our members that serve on the KBA Criminal Law Section Executive Committee, Legislative Committee and Board of Governors. Several of these members have also reviewed the federal "Patriot Act" in detail. All of these individuals, including myself, have concluded that many of the provisions contained in this bill are very far reaching and are likely to infringe upon the constitutional rights of Kansas citizens.

The atrocities of September 11th have caused our federal, state and local law enforcement agencies to scrutinize their current procedures and step up efforts to ensure that another attack of this magnitude never occurs. We fully understand that as state elected officials, you may also want to examine our current criminal laws regarding terrorist activities and make appropriate amendments to also ensure that another September 11th attack doesn't occur in Kansas. The Kansas Bar Association supports strengthening our criminal statutes to deal with this situation, however, we strongly suggest that House Bill 2986 is not the answer.

I would like to highlight just a few of the areas that demonstrate the overbreadth of this legislation. In Section 1 of the bill, the proposed definition of "terrorism" actually is broader than how the federal Patriot Act defines terrorism. Such a definition would likely cover a situation where a high school student throws a smoke bomb into a school board meeting. Is this the type of activity we intend to cover? I don't believe so. The KBA supports prosecution of people who commit acts of civil

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disobedience when their acts result in property damage or place people in danger. However, such behavior is already illegal and those who commit crimes can already be adequately prosecuted. Such crimes are not "terrorism." Legislation should not turn ordinary citizens or even ordinary criminals into terrorists.

Section 20 of the bill proposes to allow the use of so-called "fill in the blank" warrants and roving intercept warrants. Normally, court orders for surveillance or search name the "place to be searched." If information seized from that place suggests that a search of another place is warranted, a law enforcement official must apply for a new order or warrant. To prevent forum shopping by law enforcement agents, the judge having jurisdiction over the place to be searched usually authorizes the search. This section permits a judge to issue an order that does not name the place the register or trap will be served. It is limited only to the boundaries of Kansas. Law enforcement agents fill in the places at which the order can be served. This seriously marginalizes the role of the judge. Law enforcement obtains the equivalent of a blank warrant. The statewide breadth also insulates law enforcement from court challenges. If a small internet service provider (ISP) in Liberal thinks the KBI is illegally viewing content based on a pen register order issued in Wyandotte County, it would have to come to Wyandotte County to challenge the over-broad order or to challenge actions inconsistent with the order.

As you are aware, much of House Bill 2986 is a codification of the federal Patriot Act into state law. Is this necessary? Case law is very clear that state and local law enforcement officials have the ability to make arrests for violations of federal law. See, e.g., *United States v. Swarovski*, 551 F.2d 40 (2nd Cir., 1977); *United States v. McCoy*, 517 F.2d 41 (7th Cir., 1975); *United States v. Janik*, 723 F.2d 537 (7th Cir., 1983); and *United States v. Taylor*, 797 F.2d 1563 (1986). If there is a question as to this authority, the coordination problems this bill purportedly addresses can be solved by explicitly giving Kansas law enforcement officials the authority to arrest individuals for federal crimes.

Furthermore, the Kansas Bar Association would support the adoption of enhanced penalties for individuals who conduct terrorist activity as defined by the federal law. We see this a much more common sense approach to dealing with the issue of protecting our citizens from terrorist activity then trying to expand the reach of the federal Patriot Act.

This committee will consider dozens of bills this legislative session. I must say that there is probably no other piece of legislation that deserves more careful deliberation than House Bill 2986. This legislation goes far beyond simply codifying federal law into our state statutes. It contemplates serious issues of constitutional law and invites intrusions into our cherished 4th amendment rights. I urge you to reject the approach of this bill.

I would be happy to entertain any questions you have. Thank you!

KANSAS TRIAL LAWYERS ASSOCIATION
Lawyers Representing Consumers

TO: Members of the House Judiciary Committee

FROM: Pedro Irigonegaray, President
Kansas Trial Lawyers Association

RE: 2002 HB 2896

DATE: Feb. 25, 2002

Chairman O'Neal and members of the House Judiciary Committee; thank you for the opportunity to appear before you today in opposition of HB 2896. I am Pedro Irigonegaray, a practicing Topeka attorney and president of the Kansas Trial Lawyers Association. I am here today on behalf of our members and the clients they represent.

This bill, while laudable in its intent to make terrorism a crime, it is too broad and over-reaching. It vastly expands law enforcement's current authority.

This bill creates the off-grid crime of "terrorism," which is broadly defined to include *"the commission of, the attempt to commit or conspiracy to commit any felony with the intent to intimidate or coerce a civilian population, influence the policy of a unit of government or affect the conduct of a unit of government."* This language is vague and overbroad. This language does not clearly define "a civilian population," a "unit of government" and what "intent to . . . influence" or "intent to . . . affect" might mean.

One particularly troublesome aspect of this statute is the breadth of its reach. It appears that it could easily be applied to nonviolent acts of civil disobedience. While such acts may be fairly subject to the criminal law, the imposition of a life sentence (which is unavoidable upon conviction of an off-grid crime) for such acts is surely unwarranted and possibly unconstitutional.

Finally, the vague nature of the statute in combination with its harsh penalty will surely have an unnecessarily chilling effect on political activism, association, and speech. Crimes intended for prosecution under this statute are likely covered elsewhere in the criminal law, and are better left for prosecution under existing statutes.

If such legislation is necessary, then we suggest thorough and thoughtful consideration of the definitions, its broad implications and potential unintended consequences.

Thank you for the opportunity to express our concerns and we urge you to oppose this bill.

Terry Humphrey, Executive Director
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HOUSE BILL 2986
HOUSE JUDICIARY COMMITTEE
February 25, 2002

Mr. Chairman and members of the committee, my name is Jeff McDade and I appear today before the Committee on behalf of the Kansas Coalition Against the Death Penalty to speak in opposition to Section 14 of House Bill 2986. This section seeks to expand the use of capital punishment in the state of Kansas. According to HB 2986, when when weapons of mass destruction are used in the intentional killing of another human being, it shall be classified as Capital Murder. **The Kansas Coalition Against the Death Penalty (KCADP) stands in opposition to any attempt to expand the death penalty in Kansas.**

As a board member and registered lobbyist of the KCADP, and as a criminologist who has taught and researched crime and criminality for many years, I wish to address a few specific issues surrounding these sections of HB 2986. This bill has been proposed by the Attorney General as a means of protecting the citizens of Kansas against possible acts of terrorism. I would like to address the provisions relating to capital punishment in light of their possibility for increasing the safety of Kansans.

First, **who are the terrorists** that we are trying to deter through our use of capital punishment and **what are their motives**? Criminologists, among others, have been trying for years to answer those questions. Numerous explanations and theories have been proposed. Those who study acts of terrorism appear to agree upon a few key points that are relevant to the bill before this committee. Terrorist's actions are governed by a set of ideological beliefs. These beliefs are usually focused upon some concept of a "just cause" which in turn provides the justification for their use of violence and their dehumanization of their victims. This belief system in turn allows for the removal of feelings of guilt for their actions. Their **"self-sacrifice," usually in the form of suicide attacks**, for the cause outweighs any guilt that might arise as a result of the harm they cause and.

We have all seen the media pictures of the terrorists acts committed world-wide. From the bombings of the Marine barracks in Beirut to the events of September 11 in New York City to the daily pictures from Palestine, we have seen what kind of violence can be committed by individuals willing to sacrifice themselves through suicide for their beliefs. Can anyone in this room today truly argue that the threat of the death penalty for the crime of terrorism will in any way deter violent acts by these individuals? **The suicide bomber has already committed himself to die for his cause, the death penalty is irrelevant.** American society has also already watched as one domestic terrorist, Timothy McVeigh, committed his act in a state which has used the death penalty quite frequently in the last 25 years. Not only was he not deterred, but he went to his death still believing and publicly stating his belief in the justness of his "cause." And, there are more than a few fringe elements in our society today that consider the man a martyr and a hero.

Considering the motives of the terrorists and those who support them, the next question that arises is whether or not **the use of capital punishment against a terrorist** that Kansas might be lucky enough to catch and be able to bring to trial **might actually increase the danger** to the citizens of our state. The following paragraph from a recent report is instructive in this regard and has been included in its entirety.

Rather than serve as an effective deterrent against terrorism, the death penalty actually can stimulate further terrorist acts in some cases. **Jessica Stern, a terrorism expert and former member of the National Security Council, has warned that the execution of terrorists can play right into their hands, as such executions can "turn criminals into martyrs, invite retaliatory strikes, and enhance the public relations and fund-raising strategies of our enemies."** The risk of provoking retaliatory strikes must be considered when dealing with organized terrorist groups. It is true that imprisoning such terrorists is not risk-free, as terrorist groups might hold American citizens hostage until their colleagues are released. Still, as Stern notes

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other countries experienced in counter-terrorism have concluded that imprisoning terrorists is the better option in the long run. For example, the United Kingdom voted to repeal the death penalty in Northern Ireland on the basis that **executing terrorists only increased violence and put soldiers and police at greater risk**. Israeli judges also never sentence terrorists to death. Executing terrorists further can provide them with valuable propaganda opportunities. Attorney General John Ashcroft recognized this when he banned personal interviews with Timothy McVeigh, stating, "I do not want anyone to be able to purchase access to the podium of America with the blood of 168 innocent victims." But banning interviews does not completely eliminate this effect. Sentencing hearings and executions themselves present spectacles that draw attention, and potentially incite outrage, around the globe.[1]

The most frequently cited justification for the existence of the death penalty is its deterrent effect. The fear of being executed is supposed to deter individuals from committing murder. The American Society of Criminology has only made one National Policy statement in its history. "On the basis of an extensive analysis of the data, it approved the statement that there is no evidence that the death penalty deters crime."[2] Similar macro-level analysis of the research on the deterrent effect of the death penalty have been carried out and reached the same conclusions. **"More than a century of experience and more than 200 pieces of research lead to an inescapable conclusion: The death penalty does not deter potential murderers."**[3] All of this research has dealt with the application of the death penalty to the "common crime" of murder, not to the murders committed in a time of war or to terrorism. More than forty years ago, Arthur Koestler made a statement that is as true today as it was then. "The defenders of capital punishment are well aware that the statistical evidence is unanswerable. They do not contest it; they ignore it."[4]

The events of September 11 have alerted all of us to the need to assess our laws to make sure that they are up to date and provide for the public safety. I want to stress that the **inclusion of the death penalty** for the acts of terrorism in this bill **will do nothing to increase the safety of the citizens of Kansas** or of American citizens around the globe. **On the contrary, it could conceivably serve to incite retaliation and increase the risk of harm to our citizens from those who sponsor terrorism**. In a recent USA Today article, Russell-Johnston of the Council of Europe was quoted as saying, **"What is the purpose of executing people who are willing to die? If anything, such executions risk having the opposite effect; creating martyrs out of criminals."**[5] And, we run the risk of creating another generation of young believers ready to follow in the footsteps of those who have been executed and become the next martyrs for the "cause."

Submitted by Jeffrey R. McDade, Ph.D., lobbyist for the **Kansas Coalition Against the Death Penalty**. Telephone 785-231-1010, ext. 1609 or e-mail jrm99f6@networksplus.net for further information.

1. Mather and McPhie. 2001. *State Death Penalties for Acts of Terrorism: Unneeded and Counterproductive to the National Campaign.* American Civil Liberties Union.

2. November/December 2001. *The Criminologist*, Vol. 26, No. 6.

3. Costanzo, Mark. 1997. *Just Revenge.* St. Martin's Press. p. 103. See also Harries and Cheatwood, 1997, *The Geography of Execution,* pp. 11-12 and 107-108; Bedau, 1997, *The Death Penalty in America,* pp. 152-155.

4. Koestler, A. 1957. *Reflections on Hanging.* p. 57.

5. Ellen Hale. 10/02/01. "Death Penalty could affect extradition to U.S." *USA Today.*

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HB 2986
Testimony to House Judiciary Committee
February 25, 2002

Mr. Chair and Members of the Committee, my name is Donna Schneweis. I am here to speak with you today on behalf of Amnesty International, a non-partisan worldwide human rights organization.

The events of September 11 did not leave the Amnesty family untouched. Our US headquarters is in New York. Among the dead at the World Trade Center was the father of one of our staffers. Our staff, volunteers, and members knew others who suffered because of the attack. We were reminded of the need for public safety, and for ways of holding accountable those who commit such crimes.

Despite our first hand exposure to the grief and suffering of September 11, Amnesty opposes section 14 of HB 2986 which would expand the definition of capital murder to include deaths resulting from acts of terrorism or from use of a weapon of mass destruction.

Amnesty opposes the death penalty without reservation, believing it is a violation of Articles 3 and 5 of the Universal Declaration of Human Rights. Article 3 is the right to life. Article 5 is the right to freedom from cruel, inhuman, degrading, treatment or punishment. I wish to address my remarks today to those of you who are undecided or who may even think this expansion of the law makes sense.

The reality is that IF a terrorism related murder were ever to be prosecuted at the state level, the possibility of a death penalty could actually delay the prosecution of the accused if they were arrested in another country.

It is now a standard part of practice of many abolitionist nations to refuse to extradite suspects to jurisdictions with the death penalty, until assurances are given that the death penalty will not be sought. The European Union Charter of Fundamental Rights states: "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment." Article 19(2). [Member states of the EU are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, United Kingdom.] Countries as diverse as Australia, Panama, Angola, and Azerbaijan have statutes or other rules that prohibit extradition of a person at risk of the death penalty unless assurance has been made that the death penalty will not be sought.

A brief review of cases from the last five years shows ever more clearly how many countries will not extradite until an assurance is given that the death penalty will not be sought.

1997--Connecticut promised to not seek the death penalty in order to get Beth Ann Carpenter released from Ireland to face capital murder charges.

February 2001--The Supreme Court of Canada in a unanimous decision ruled that before two Canadian citizens could be extradited to the state of Washington, Canadian authorities had to obtain a guarantee that the death penalty would not be sought. Ten years before, this Court in a similar case, did not require such a guarantee.

March 2001--James Kopp, a suspect in the killing of a doctor at a NY state clinic was arrested in France. US Attorney General John Ashcroft tried unsuccessfully to get France to send Kopp back without a no-death penalty promise. "Unfortunately, in order to ensure that Kopp...is brought to justice in America, we have had to agree not to seek the death penalty." (Statement of John Ashcroft, June 7, 2001)

May 28, 2001--The Constitutional Court of South Africa ruled against government officials who handed over Khalfan Khamis Mohamed, a Tanzanian, to the US on charges related to the 1998 bombing of the Embassy in Tanzania. The officials handed him over without a guarantee that thedeath penalty would not be sought. The Court found them in error. A co-conspirator in this crime, Mamdouh Mahmud Salim, who was arrested in Germany, was sent to the US only after the US promised Germany they would not seek the death penalty.

September 2001--Fabio Ochoa Vasquez was extradited to the US from Columbia to face drug kingpin charges. The head of the Drug Enforcement Administration indicated "as part of that extradition, he will not be subject to the death penalty."

November 2001 news reports indicated that Spain would not send to the US eight al-Qaeda members as long as they faced the prospect of a death penalty.

It is not just the United States that faces problems because of its use of the death penalty. In November 2001, a prosecutor from the Ministry of Foreign Affairs in Thailand termed it "doubly difficult" to get extradition of suspects because of the death penalty issue.

However well intentioned this section of the bill is, having terrorist acts be subject to the death penalty may well delay prosecution. So, for practical reasons as well as fundamental human rights reasons, we urge you to not allow Section 14, the death penalty expansion provision, to become law.

Thank you.

For more information on the death penalty and extradition issues, see
"No return to execution--The US death penalty as a barrier to extradition".
It is available online at http://web.amnesty.org/ai.nsf/Index/AMR511712001
This document was the primary resource for this testimony.

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February 25, 2002

Chairman Mike O'Neal
House Judiciary Committee

I am Beatrice Swoopes, Associate Director of the Kansas Catholic Conference, the public policy arm of the Catholic Bishops of Kansas. Thank you for this opportunity to give testimony in opposition to **H.B 2986**.

After the alarming events of September 11, the United States Conference of Catholic Bishops issued a message entitled: **Living with Faith and Hope after September 11.** I'd like to share a few thoughts from this document that relate to today's discussion.

> After September 11, we are a wounded people... We share loss and pain, anger and fear, shock and determination in the face of these attacks on our nation and all humanity.
>
> As criminal and civil investigations proceed and essential security measures are strengthened, our government must continue to respect the basic human rights of all persons...
>
> In our work and communities...we should use our voices to protect human life, to seek greater justice and to pursue peace as participants in a powerful democracy.

H.B. 2986 is a response to the tragic events of September 11. We share with our fellow Kansans pain and fear. However, we do not see expansion of the death penalty as provided in Section 14 of this bill as a way to respect the basic human rights of all persons. Therefore we are "using our voice" to speak in opposition to this bill.

Since the mid-seventies the U.S. Catholic Bishops have opposed the death penalty. Our Kansas Bishops join in this opposition. While visiting St. Louis in 1999 Pope John Paul II called capital punishment "cruel and unnecessary" to keep society safe. A few months after the Pope's visit, the U.S. Catholic Bishops issued a statement entitled: **A GOOD FRIDAY APPEAL TO END THE DEATH PENALTY.** The following quote from this document summarizes their rationale.

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> Increasing reliance on the death penalty diminishes us and is a sign of growing disrespect for human life. We cannot overcome crime by simply executing criminals, nor can we restore the lives of the innocent by ending the lives of those convicted of their murders. The death penalty offers the tragic illusion that we can defend life by taking life.

The Kansas Catholic Conference is opposed to expanding the definition of capital murder in Kansas as a remedy for possible terrorism in our state. This opposition is consistent with our commitment to the value and dignity of all human life.

Testimony on HB 2986

February 25, 2002

Good Afternoon Chairman O'Neal, Representatives and Staff:

My name is Jana El-Koubysi and I serve as assistant director for the State Board of Indigents' Defense Services. We are the state agency that provides legal defense and all of the costs associated with legal defense to indigent persons charged with capital murder. We appear before you today to offer testimony regarding the costs of capital defense so that you may be mindful of this as you consider this bill.

Four men have been convicted of capital murder in Kansas since the re-enactment of the death penalty. The trial alone of each has cost well into six figures. The first appeal, that of Gary Kleypas, resulted in the Kansas Supreme Court decision that the case must be retried on the penalty phase. The costs of the first appeal, the retrial, the Petition for Certiorari to the US Supreme Court and the second state appeal will approach $1,000,000.

Our system of justice has been compared to a three legged stool- the courts, the prosecution and the defense being the three legs of that stool. Each leg will have its own costs. The cost to the Court and to the prosecution are in addition to what I have outlined.

At the conclusion of the Timothy McVeigh case, Judge Richard Mache released the cost of that case. The figure was roughly six million dollars. And McVeigh had waived his rights of appeal-this was the trial only.

Ordinarily, the matters contemplated by this bill would be handled by the federal government. But with legislation of state law, there is a possibility that the matter would fall to the state. There are grossly insufficient funds to pay the expense.

Murder Victims Families for Reconciliation
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Testimony in Opposition to House Bill 2986
House Judiciary Committee
25 February 2002

Mr. Chairman and members of the Committee:

I am Bill Lucero, State Coordinator of Murder Victims Families for Reconciliation and a lobbyist of 25 years opposing the death penalty in this state. Certainly there are none amongst us who haven't been touched by the tragic events of 11 September. All Kansans deserve protection from terrorists, as unlikely an event as that seems.

Unfortunately, expanding the death penalty to include murder in the commission of a terrorist attack, could be likened to painting a target on the state's back. As we have witnessed around the world, most terrorists are so committed to their cause that to draw attention to it through an act of martyrdom could actually invite such an attack rather than deter it.

More important, however, is the concern we should have about victims' families. When the Kansas Supreme Court vacated the death sentence of Gary Kleypas in December, the Williams family felt stunned and betrayed. Afterall, they were told countless times that they would not be able to heal until Kleypas was executed. Now, they are told that his execution (providing that another jury delivers a death sentence) may be as far as 8 to 15 years off. And barring a volunteer execution, no other prisoner is likely to be executed before the Kleypas decision gets ironed out.

So I ask you, which scenario would you prefer if you were to be a family member of a murder victim: to begin the healing process immediately with the knowledge that your loved one's killer is behind bars for a minimum of 50 years **or** to have to be faced with press conferences for perhaps decades about the possibility of an execution that may never take place?

Now before you, Mr. Chairman, remind me to keep my comments germane to 2986, I will close with the comments of Amber Amundson whose husband, Craig Scott Amundson, of the United States Army, lost his life in the Pentagon on 11 September: "To those leaders [who would seek revenge], I would like to make clear that my family and I take no comfort in your words of rage. If you choose to respond to this incomprehensible brutality by perpetuating violence against other innocent human beings, you may not do so in the name of justice for my husband. Your words and imminent acts of revenge only amplify our family's suffering, deny us the dignity of remembering our loved one in a way that would have made him proud, and mock his vision of America as a peacemaker in the world community." Her words are wonderful reminders to us all that this expansion provision is not necessary. Thankyou for your attention.

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ACLU
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TESTIMONY IN OPPOSITION TO HB2986

(PRESENTED BY LISA NATHANSON)

This bill is, in great part, a civil libertarian's nightmare. Certain sections of this bill fly in the face of the rights and freedoms guaranteed by both the Kansas and United States Constitutions, including the Fourth Amendment right to be free from unreasonable search and seizure, the right to privacy, the right to due process, and the right to equal protection under the law.

Most of the provisions of this bill, aside from their questionable constitutionality, are also unnecessary. The federal government has already created new, ambiguously defined, over-encompassing laws that are directed at terrorism, and that are virtually indistinguishable from the provisions contained in this bill. Why would the state engage in the futile effort of making the same mistake? Moreover, most of the actions criminalized by HB2986 are already crimes, both at the state and federal level. Injuring or killing people by whatever means are criminally punishable acts under current law. Trying to create new, more severely punished, crimes based on vague definitions that impute an intent to commit terrorism treads on the due process and equal protection clauses of the Constitution. If you absolutely have to provide for enhanced punishment for terrorism-related criminal acts, the legal and more practical way to do so would be through sentencing departures.

New Section 7 authorizes the Attorney General to conduct electronic surveillance without a warrant or court order simply by certifying in writing that "no warrant or court order is required by law, [and] that all statutory requirements have been met." What about the constitutional requirements? The same new section also authorizes the warrantless interception of certain computer communications. Once again, the Fourth Amendment cannot help be offended by the extension of such authority to the government without any contemporaneous judicial review.

New Section 8 poses different, but equally substantial constitutional problems. The language used in this section to criminalize the possession of proceeds "known to be derived from the crime of terrorism" is so vague and confusing as to present serious due process-related problems. By all appearances, this section criminalizes the possession of

terrorism-derived proceeds without requiring conviction of any crime involving terrorism as a pre-requisite—this sounds a little like pre-conviction forfeiture, and it is unconstitutional.

The provisions of this bill that establish a "terrorist registry" are similarly vague and troublesome. What does "[n]otwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act" mean? If sounds frighteningly over-inclusive.

Because we oppose capital punishment in all circumstances, we naturally oppose the extension of the government's use of homicide as punishment. Furthermore, the provisions of this entire bill are so vague that a strong argument can be made that due process will not permit the imposition of a death sentence for such ambiguous reasons.

Section 19 slips a couple of words into existing law that make all the difference in the world, as far as the constitutionality of the resulting provision. By authorizing the government to obtain authority for electronic eavesdropping on an *ex parte* basis, the bill eliminates constitutional protections that must be afforded to a defendant in a criminal case. This authority is not even limited to cases in which prosecution has not yet been initiated and, by its terms, would even apply in a situation in which the person who is the subject of the surveillance is represented by counsel in the matter.

Section 20 only makes things worse, from a constitutional perspective. It allows an application for a search warrant to omit information about the nature, place, or suspected individual if suspected terrorism is involved. It allows issuance of a search warrant without probably cause if suspected terrorism is involved.

And new Section 25 authorizes the government to spy on us with impunity by installing phone taps without any approval, authority, review, or probable cause. Apparently all that is required is suspicion that need not be justified to anyone.

Civil liberties are more fragile in times of international strife. When a nation feels insecure, when the people worry about their safety, and when the country responds with military action, the often tenuous balance between perceived safety and liberty is tipped. Before we respond with the types of actions that are embodied in HB2986, should we not first make certain that effective use has been made of the current, constitutionally legitimate, methods of gathering intelligence?

Let us not relinquish our precious freedom to terrorists.

Kansas Association of Criminal Defense Lawyers
Founded 1988
P.O. Box 2656, Topeka, KS 66601-2656
Tel/Fax (913) 246-4806

February 25, 2002

To: The Kansas House Judiciary Committee
From: The Kansas Association of Criminal Defense Lawyers
Submitted by Paige A. Nichols
Re: Senate Bill No. 594, relating to terrorism and wiretaps

The Kansas Association of Criminal Defense Lawyers is opposed to Senate Bill No. 594 in its entirety as overbroad, unnecessary, and subject to abuse. The following testimony will address Sections 1 and 18 of the bill.

Section 1, creating the new crime of terrorism

I. This section transforms any felony (including an attempt or conspiracy to commit a felony) into an off-grid person felony if it is committed with one of three specific intents:

1. to intimidate or coerce a civilian population;

2. to influence the policy of a unit of government; or

3. to affect the conduct of a unit of government.

II. This section is vague and overbroad, and threatens to chill First Amendment rights.

A. The section is overbroad insofar as it includes within the definition of terrorism nonperson felonies of all levels. Felonies that are themselves nonviolent but that might conceivably be committed with the intent to influence the policy or affect the conduct of a unit of government – thereby being transformed into off-grid person felonies – include:

1. Bribery, K.S.A. 21-3901.

2. Criminal destruction of property, K.S.A. 21-3720.

3. Felony theft, K.S.A. 21-3701.

4. Incitement to riot, K.S.A. 21-4105.

5. Perjury, K.S.A. 21-3805.

6. Altering a legislative document, K.S.A. 21-3713.

7. Making a false writing, K.S.A. 21-3711.

8. Attempting to influence a judicial officer, K.S.A. 21-3815.

9. Sedition, K.S.A. 21-3802.

B. This section easily brings within its reach acts of civil disobedience. Operation Rescue, Environmental Liberation Front, and World Trade Organization protesters have all engaged in activities that would, under this law, subject them to prosecution as terrorists and expose them to life sentences. We do not oppose prosecution of people who commit acts of civil disobedience when their acts result in property damage, place people in danger, or otherwise violate the law. But such behavior is already illegal and those who commit such crimes can already be adequately prosecuted.

C. The dictionary definition of terrorism is "[t]he unlawful *use or threatened use of force or violence* by a person or an organized group against people or property with the intention of *intimidating or coercing* societies or governments, often for ideological or political reasons." American Heritage Dictionary (4th ed. 2000). People who engage in nonforceful and/or nonviolent behavior with the intent to influence government without intimidation or coercion are not terrorists by any ordinary definition.

III. This section is not necessary.

A. There is no indication that the creation of a new crime of terrorism is necessary to prevent, investigate, or prosecute terrorist acts in Kansas. Existing state crimes adequately cover the field regarding acts that might be considered state terrorism (particularly given the felony-murder rule), and existing federal law is sufficient to combat national or international terrorism.

IV. This section fails to include narrowing provisions included in the federal definition of domestic terrorism, even after the USA PATRIOT Act amendments. *See* 18 U.S.C. § 2331(5), as amended by Pub.L. 107-56 § 802(a)(1).

A. The federal definition of terrorism limits its coverage to "acts dangerous to human life" when committed with one of the following three specific intents (narrowing language omitted from the Kansas proposal is italicized):

1. to intimidate or coerce a civilian population;

2. to influence the policy of a government *by intimidation or coercion*; or

3. to affect the conduct of a government *by mass destruction, assassination, or kidnapping*.

V. The classification of terrorism as an off-grid person felony with a mandatory life sentence may violate the Eighth Amendment.

A. Kansas judges apparently have no authority to impose downward departures for offgrid crimes. Thus a person who commits a nonviolent felony with the intent to influence the policy of a unit of government will be subject to a mandatory life sentence even if the felony does not result in death, injury, or even the risk of injury.

Section 18, creating broad authority for roving wiretaps

I. This section allows courts to give prosecutors unmonitored fill-in-the-blank wiretap orders "for the purpose of preventing acts of terrorism or any conspiracy to commit acts of terrorism."

II. Roving wiretaps violate the Fourth Amendment's mandate that "[n]o warrants shall issue but upon probable cause, supported by Oath or affirmation, *and particularly describing the place to be searched*, and the persons or things to be seized." *See* Tracey Maclin, *On Amending the Fourth*, National Law Journal (November 12, 2001) (attached).

III. State roving wiretaps are beyond the limited wiretapping authority provided to the states by federal law. This was the conclusion reached by the Legislative Counsel of California, leading to the deletion of a roving wiretap provision in an anti-terrorism bill proposed in California last month. *See* Letter from Thomas J. Kerbs, Deputy Legislative Counsel (January 14, 2002) (attached).

IV. This section fails to provide even minimal protections against abuses, such as:

A. Approval by the attorney general and the county or district attorney where the application is being sought;

B. Curbs on forum-shopping, such as a requirement that the order be signed by a judge having jurisdiction over the location of the facilities from which the communication is to be intercepted;

C. A showing that the targeted person has a purpose of thwarting interception by changing facilities;

D. A showing that specification of the location is not possible or practical;

E. A requirement that the order be limited to interception only for such time as it is reasonable to presume that targeted person is or was reasonably proximate to the instrument subject to interception;

F. A requirement that interception not begin until the place where the communication is to be intercepted is ascertained by the person implementing the order; and

G. Mandatory interim reports to the issuing judge specifying the nature and location of facilities where interception has been undertaken.

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On Amending the Fourth
Another grave threat to liberty
Tracey Maclin
The National Law Journal

November 12, 2001

Justice Thurgood Marshall wrote that "grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure."

To justify the enactment of sweeping anti-terrorism legislation after the Sept. 11 terrorist attacks on our country, President George W. Bush and Congress would have us believe that the freedoms protected by the Fourth Amendment of the U.S. Constitution are too costly to endure.

Among the many provisions included in this legislation is the power to conduct "roving" wiretaps. A roving wiretap permits electronic surveillance of an individual rather than a specific telephone, cell phone or computer terminal. But a wiretap that follows a person instead of a phone is at odds with the text and history of the Fourth Amendment, which requires that a judicial warrant particularly describe the place to be searched and guarantees all people the right to be free from unreasonable searches and seizures by the government.

WHY IT SAYS WHAT IT SAYS

The second clause of the Fourth Amendment states: "No Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The warrant clause requires greater precision for a search than for a seizure. The requirement that a search warrant particularly describe the place to be searched was designed to bar multiple-specific search warrants that identified the target or object of a search or arrest, but authorized many places to be searched.

The Framers were well aware of the dangers associated with multiple-specific search warrants. In 1706, for example, colonial officials used such warrants to search every home in New Hampshire. The First Congress also recognized that particularity was an essential safeguard to prevent the issuance of general search warrants. The Collection Act of 1789 limited federal search warrants to single structures.

By requiring probable cause and particularity, the Framers of the Fourth Amendment intended not only to bar general searches, but also to ensure that lawful searches be restricted to a single place. Roving wiretaps contradict the text of the Fourth Amendment, which plainly demands singularity of "place" for search warrants.

The U.S. Supreme Court has recognized that the particularity requirement is not a quaint ideal that is inconsistent with modern law enforcement needs. The Court has explained that the probable cause and particularity requirements ensure that a police search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.

Yet, Attorney General John Ashcroft insists that roving surveillance does not violate the Fourth Amendment. He argues that roving wiretaps do not eliminate the particularity requirement for search warrants; roving wiretaps merely substitute particularity of person for particularity of place.

One might argue that a wiretap that follows the person rather than a particular phone better protects privacy than a traditional search warrant because when the government obtains a traditional warrant to monitor the telephones of a particular location, all the conversations that occur at that particular location will be subject to surveillance. Under the new law, the government contends that it will focus only on the conversations of the target.

But if the government can assign the wiretap to the person so that it can gain intelligence from a person who uses multiple telephones or changes cellular phones, then the conversations of all people using those devices will be overheard. For example, if the government suspects that a particular target uses different pay phones at Boston's Logan Airport, then the government would have the power to wire all the public telephones at Logan Airport and the discretion to decide which conversations to monitor.

HIGH COURT PRECEDENT

The Supreme Court has already recognized that particularizing the target of a government search or seizure violates the privacy rights of third parties who are subjected to unreasonable governmental intrusion while officers look for their target or evidence of criminal conduct.

In *Steagald v. U.S.* (1981), the Court ruled that an arrest warrant for a particular individual could not be used as lawful authority to search the home of a third party not named in the warrant. Recalling the Framers' experience with general warrants, which often specified an offense, and left to the discretion of the officer the decision as to which persons to arrest and which places to search, the *Steagald* Court concluded that the arrest warrant in that case suffered from a similar flaw: It specified only the target of the search and left police with the discretion as to which particular homes to search.

An additional constitutional problem with roving wiretaps is expanded law enforcement discretion. Although a judge will review the government's initial application for a roving wiretap, when, where and how often monitoring will occur is left to the FBI's discretion. The telephone conversations of hundreds of people who expected those communications to be private will be overheard, even though the government can show probable cause for just a single individual.

Moreover, if federal agents are given the authority to monitor all the computer equipment a single person may use, the e-mail messages of thousands of individuals will be subjected to government search. These results cannot be reconciled with the text or history of the Fourth Amendment. Indeed, the amendment was intended to check, and not expand, police power and discretion.

The battle over the new anti-terrorism law has been described as a struggle between civil liberties and law enforcement that the authorities have won. This description is only partially accurate. The reality is that Congress and the president have amended the protections provided by the Fourth Amendment without the consent of the people, as required by the Constitution.

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Legislative Counsel of California

January 14, 2002

Honorable Carl Washington
2136 State Capitol

INTERCEPTION OF COMMUNICATIONS - #24812

Dear Mr. Washington:

QUESTION

Would a state statute authorizing "roving wiretaps" be valid?

OPINION

A state statute authorizing "roving wiretaps" would be invalid as beyond the limited wiretapping authority provided to the states by federal law.

ANALYSIS

Federal law prohibits the unauthorized interception of wire and other private communications[1] and the use of illegally intercepted communications (18 U.S.C. Sec. 2511). This prohibition applies to all persons, including employees and agents of the United States, or states, or political subdivisions (18 U.S.C. Sec. 2510(6)). However, federal law provides a procedure for the legal interception by specified government agents of wire, oral, or electronic communications (18 U.S.C. Sec. 2510 and following). In general, that law permits interception only pursuant to a court order, or in an emergency with prompt application for a court order (18 U.S.C. Secs. 2516, 2518).

The federal law permits a state to issue court orders "in conformity with section 2518 of this chapter" for wiretaps relating to certain crimes, including any "crime dangerous

[1] The federal law includes interception of oral communications, not in issue here.

to life, limb, or property, and punishable by imprisonment for more than one year" if the crime is designated in an applicable state statute (18 U.S.C. Sec. 2516(2)). Any state-authorized wire interception not in conformity with Section 2518 of the United States Code (hereafter Section 2518) is barred by this federal law (*U.S. v. Tortorello* (2d Cir. 1973) 480 F.2d 764, 772; *U.S. v. Van Horn* (N.D. Neb. 1984) 579 F.Supp. 804, 810).

California law currently authorizes law enforcement to intercept electronic communications pursuant to a court order (Ch. 1.4 (commencing with Sec. 629.50), Pt. 1, Title 15, Pen. C.). California law does not now authorize "roving wiretaps" (see subd. (d), Sec. 629.50, and subd. (c), Sec. 629.52, Pen. C.).

As used here, "roving wiretaps" are orders to intercept communications from one or more persons without specifying any communications equipment to be intercepted (see Goldsmith, "Eavesdropping Reform: The Legality of Roving Surveillance" (1987) Ill. L.R. 401). These are authorized under federal law, but are treated differently from other wiretaps. The authority to apply for them is limited in subsection (11) of Section 2518.[2]

Section 2518 authorizes wiretaps in various circumstances, as follows:

> "§2518. Procedure for interception of wire, oral, or electronic communications.
>
> "(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter[3] shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:
>
> "(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;
>
> "(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the

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[2] The U.S.A. P.A.T.R.I.O.T. Act (P.L. 107-56), signed into law October 26, 2001, added certain terrorist crimes to the list of federal crimes for which interceptions of communications could be ordered, but did not affect the aspect of the wiretapping law at issue here.

[3] 18 U.S.C. Sec. 2510 and following.

person, if known, committing the offense and whose communications are to be intercepted;

"(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

"(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

"(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

"(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

"(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

"(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that—

"(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

"(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

"(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

"(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

"(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify—

"(a) the identity of the person, if known, whose communications are to be intercepted;

"(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

"(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

"(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

"(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

* * *

"(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

"(a) an emergency situation exists that involves—

"(i) immediate danger of death or serious physical injury to any person,

"(ii) conspiratorial activities threatening the national security interest, or

"(iii)conspiratorial activities characteristic of organized crime, that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

"(b) there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

* * *

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

"(iii) the judge finds that such showing has been adequately made; and

"(iv) the order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

* * *" (Emphasis added.)

To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it (*People v. Benson* (1998) 18 Cal.4th 24, 30). Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive (*Consumer Product Safety Com. v. GTE Sylvania, Inc.* (1980) 447 U.S. 102, 108).

In clear language, subsection (11) of Section 2518 authorizes only federal officials to apply for a roving wiretap. We think it equally clear that this was intentional, as other portions of the same section authorize a broader group, including state officials, to apply for

other kinds of wire interception authority. Under subsection (1) of Section 2518, general authority for wire interception is provided to "investigative or law enforcement officers," who are defined to include officers of "any State or political subdivision thereof" (18 U.S.C. Sec. 2510(7)). Similarly, under subsection (7) of Section 2518, emergency authority extends to these same officers if designated by the "principal prosecuting attorney of any State or subdivision thereof." In contrast, when using the phrase "investigative or law enforcement officers" in the context of the roving wiretap authorization, subsection (11) of Section 2518 limits that authority by referring to "federal investigative or law enforcement officers" (emphasis added).

In support of this conclusion is the legislative history of the 1986 amendments to the interceptions of communications provisions, which provide the authority for roving surveillance. In the Senate Report from the Committee on the Judiciary concerning language that was to become this law, the committee discusses the 1986 addition of the roving surveillance provisions, noting that "only a limited list of Federal officials can apply for [this] special order" (Sen. Rep. No. 99-647, 2d Sess. (1986), reprinted in 1986 U.S. Code Cong. & Admin. News, at p. 3585). This is especially significant because state authority for wiretapping was virtually coextensive with the federal authority until the 1986 act added these roving surveillance provisions.[4]

For these reasons, it is our opinion that a state statute authorizing "roving wiretaps" would be invalid as beyond the limited wiretapping authority provided to the states by federal law.

Very truly yours,

Legislative Counsel

By
Thomas J. Kerbs
Deputy Legislative Counsel

TJK:emb

[4] Aside from the specification of criminal charges for which interceptions of communication were authorized, and the level of authority within prosecution ranks required to make or authorize an application for an order, we identify no significant difference in the pre-1986 federal provisions authorizing state and federal communications interception orders.