

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on March 17, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Donovan (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department  
Lisa Montgomery, Office of the Revisor of Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Chris Wilson, Kansas Building Industry Association  
Barbara Conant, Kansas Trial Lawyers  
Mike Taylor, City of Wichita  
Jay Hinkel, Asst. City Attorney, Wichita  
Sandy Jacquot, League of Kansas Municipalities  
Representative Bonnie Huy  
Blaise Plummer, City of Emporia  
Judge Eric Yost, 18<sup>th</sup> Judicial District, Sedgwick County  
Marsha Spangler, Clerk of the District Court, 18<sup>th</sup> Judicial District, Sedgwick County  
Jeanne Turner, Chief Clerk, 5<sup>th</sup> Judicial District, Emporia  
Kathy Porter, Office of Judicial Administration  
Michael Pepoon, Director Government Relations, Sedgwick County  
John Todd, Wichita citizen  
William T. Davitt, Wichita Citizen  
Jeff Bottenberg, Kansas Sheriff's Association (written only)

Others attending: see attached list

**HB 2294 - Construction defects; contractors right to cure prior to filing a civil action; criminal penalties**

Chairman Vratil opened the hearing on **HB 2294**. Chris Wilson, Director of Government Affairs for Kansas Building Industry Association (KBIA), testified in support of **HB 2294**. She explained that the bill came about in part as a result of concerns regarding construction defect claims and how best to resolve them. She said that the National Association of Home Builders (NAHB) was addressing the issue of construction defect litigation and the resulting effect on general liability insurance. **HB 2294** is based on NAHB model legislation. Ms. Wilson stated KBIA modified the national model bill for Kansas, requested introduction of **HB 2294**, and worked extensively with the Kansas Trial Lawyers Association (KTLA) on the bill. She said KBIA requested numerous agreed-upon amendments, resulting in **Substitute for HB 2294**. (Attachment 1)

Barbara Conant, Director of Public Affairs for the Kansas Trial Lawyers Association, spoke in support of **Sub HB 2294**. She stated that KTLA opposed **HB 2294** as introduced, but by working with the KBIA they substantially amended **HB 2294** to meet KBIA members' goals with the legislation and, at the same time, protect the interest of consumers. (Attachment 2)

The Chairman closed the hearing on **HB 2294**.

**Final Action on:**

**SB 243 - Uniform controlled substances act schedule IV substances**

Chairman Vratil reviewed **SB 243**, and said that Senator Schmidt had an amendment he would like to offer. Senator Schmidt explained that he had requested a prison bed impact for his proposed amendment from the Kansas Sentencing Commission. (Attachment 3) He stated his amendment clarified the law in light of a case from the Court of Appeals, *State v. Frazier*, which held that a person was guilty of violating the drug paraphernalia statute, which is a level 4 drug crime, rather than possession of ingredients used to make methamphetamine. Senator Schmidt explained the bed impact report as it related to his proposed amendment.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 17, 2003 in Room 123-S of the Capitol.

Senator Schmidt moved to amend **HB 2317** into **SB 243**, seconded by Senator Umbarger, and the motion carried.

Senator Schmidt made a motion to recommend **SB 243** favorably as amended, seconded by Senator Umbarger, and the motion carried.

**SB 197 - Alcoholic beverages; furnishing to and consumption by persons under age 21**

Chairman Vratil called the Committee's attention to **SB 197** to be worked for final action. Senator O'Connor distributed a proposed balloon amendment, and explained the changes she was requesting. She stated that the amendment reinserts stricken language and basically goes back to current law that allowing a parent to give 3.2 cereal malt beverage to the parent's own child in the parent's own home and under supervision. The balloon also added a new section 3 regarding unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage. (Attachment 4)

Senator O'Connor moved to adopt the amendment to **SB 197**, seconded by Senator Oleen. The Chair clarified the changes called for in the proposed amendment. Committee discussion followed. Chairman Vratil called for a vote on the motion to amend. The motion failed.

The Chair referred the Committee back to the bill for further consideration, and discussion. Senator O'Connor made a motion to amend the bill by reinstating the language that was deleted on page 1, line 18; page 1, lines 35 through 37, and page 2, lines 35 through 39. The motion was seconded by Senator Schmidt, and the motion to amend carried.

Senator O'Connor moved to pass **SB 197** out favorably as amended, seconded by Senator Goodwin, and the motion carried.

**HB 2133 - Municipal courts collecting fines and court costs**

Chairman Vratil opened the hearing on **HB 2133**. Mike Taylor, Government Relations Director, City of Wichita, testified in support of **HB 2133**. Mr. Taylor stated that the City of Wichita was requesting this legislation to help Wichita Municipal Court, and all Municipal Courts in Kansas, more effectively deal with the growing problem of delinquent fines. He explained that the bill requests that Municipal Courts be allowed the same authority for collecting unpaid fines as District Courts by 1) converting those debts into civil judgments and 2) requiring delinquent defendants to pay the cost of the collection fee as well as the fine. Mr Taylor added that more effective tools such as garnishment then could be used to collect those debts. (Attachment 5)

Jay C. Hinkel, Assistant City Attorney for the City of Wichita, testified in support of **HB 2133**, and offered a technical amendment. He stated the amended bill, submitted with his written testimony, incorporates the text which passed the House, and places it in the appropriate sections of the existing municipal code. He said the proposed changes would not be mandatory; a municipality would be required to take affirmative action to accept this authority and adopt the related procedures. He added that if the municipality were to accept this opportunity, it would also be accepting the burden of handling the work load associated with that choice, and would not place that work upon the district courts, county sheriffs, or any other office or agency. (Attachment 6)

The Chairman paraphrased what this amendment would do, and Senator Oleen stated there was quite a bit of history on this issue and asked if the staff would furnish the history covering this matter.

Sandy Jacquot, Director of Law/Legal Counsel, League of Kansas Municipalities, spoke in favor of **HB 2133**, and stated that they supported the substitute language presented by the City of Wichita's amendment. (Attachment 7)

Representative Bonnie Huy testified in support of **HB 2133**, and offered a balloon amendment. This amendment strikes subsection (c) lines 3 through 8 on page 2 of the bill. Representative Huy stated that she was against a Municipal Court being given more powers to collect a bad debt than the collection powers given to a citizen, private business, or a district court. (Attachment 8)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 17, 2003 in Room 123-S of the Capitol.

Blaise Plummer, Emporia City Attorney, appeared in support of **HB 2133**, and stated that Municipal Court fines serve as punishment and a deterrent for ordinance violations. He added that if fines go uncollected, the ends of justice will not be met. It is unfair to the majority of citizens, who pay their fines, court costs and restitution, to let defendants slide because the defendants are not able to pay amounts owed. Mr. Plummer testified that this bill provides a tool to convert fines, court costs and restitution to a civil judgment, and to utilize the existing limited actions procedures in district court to execute on the judgment. (Attachment 9)

Judge Eric Yost, 18<sup>th</sup> Judicial District, testified on behalf of the judges in Sedgwick County, and said the judges were not taking a position regarding collection of unpaid fines and costs. Judge Yost stated the judges were concerned that if the bill was not amended, it would result in a doubling of the civil lawsuit caseload in Sedgwick County. If **HB 2133** was amended so that the City of Wichita assumed the costs of the city's own collection work, the judges would not object to the bill. (Attachment 10)

Marsha Spangler, Clerk of the District Court, testified in opposition to **HB 2133** because of the impact the bill would have of the workload on the Clerk of the District Court's Office. (Attachment 11)

Jeanne Turner, Chief Clerk, 5<sup>th</sup> Judicial District, Emporia, testified in opposition to **HB 2133** on behalf of the Kansas Association of District Court Clerks and Administrators. Ms. Turner said that the bill would allow any debt, over 180 days old, owed to municipal courts to become a judgment and be filed for collection in the district courts. Ms. Turner added that since cities are exempt from paying filing fees, no revenue would be generated for the State. She suggested municipal courts be allowed to contract with a collection agency just like the district courts are able to do if necessary. (Attachment 12)

Kathy Porter, Office of Judicial Administration, testified in opposition to **HB 2133**, and expressed her concerns the workload it would put on the clerks and judges throughout the state. She referred the Committee to page 2, paragraph 2, of her written testimony addressing the debt collection contracts into which the Attorney General is authorized to enter. Ms. Porter also pointed out paragraph 3, page 2, of her testimony the language addresses payment of money in civil cases. No parallel language could be found for debts owed to the district courts. This is a policy issue for the Legislature to decide. (Attachment 13)

Michael Pepoon, Director Government Relations, Sedgwick County, spoke in opposition to **HB 2133**, and on behalf of the Board of County Commissioners of Sedgwick County and Sedgwick County Sheriff, Gary Steed. Mr. Pepoon stated that the Commissioners and the Sheriff were concerned with the effect the increase of authority would have on the workload of the Sedgwick County Sheriff's Department and the County budget. (Attachment 14)

John Todd, Wichita, appeared before the Committee to oppose **HB 2133**. Mr. Todd was against extending greater debt collection authority to the City of Wichita's Municipal Court, and allowing them to add on collection fees before solving other issues involving the court. He recommended that the Committee defeat **HB 2133** as it is written, and replace it with the language in **HB 2334** that was considered in the 2001 legislative session. The later bill would provide for the direct election of Municipal Court judges by the people. (Attachment 15)

William Davitt, Wichita, testified in opposition of **HB 2133**, and spoke about the corruption in the Wichita Municipal Court and its branch called Environmental Court. (Attachment 16)

Written testimony was submitted by Jeff Bottenberg on behalf of the Kansas Sheriff's Association in opposition of **HB 2133**. (Attachment 17)

Chairman Vratil closed the hearing on **HB 2133**.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is March 18, 2003.



## SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mon., March 17, 2003

NAME	REPRESENTING
Jeff Bo Henberg	Kansas Ske. Pts Assn
Trista Curzydlo	KS Bar Assn
Jay Hinkel	City of Wichita
Mike Taylor	City of Wichita
Sandra Jacquot	LKM
Rep Bonnie Huy	Dist 87
ERIC R. YOST	Dist. Ct.
Mike JERASING	KCDAA
Michael L. White	KCDAA
Brenda Harmon	KSC
Mike Pepoon	Sedwick County
Jeanne Turner	KADCCA
Marsha Spangler	Sedwick Co.
Kathy Parker	Medical Branch
Ellen House	Sedwick County
Lori Alvarado	SRS/AAPS
Bob Longmu	KDOR/ARL
Chris Wilson	KS Building Industry Ass'n
BILL YANEK	Kansas Assn of REALTORS







# LEGISLATIVE TESTIMONY



2206 SW 29th, Terr., Topeka, KS 66611 ♦ 785-267-2936 Fax 785-267-2959 ♦ E-mail: [chris@agresources.com](mailto:chris@agresources.com)

## STATEMENT OF KANSAS BUILDING INDUSTRY

### TO THE SENATE JUDICIARY COMMITTEE

SENATOR JOHN VRATIL, CHAIR

REGARDING H.B. 2294

MARCH 17, 2003

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Government Affairs for Kansas Building Industry Association. KBIA is the statewide professional and trade organization of the home building industry, with approximately 1800 members. We appreciate the opportunity to come before you today in support of H.B. 2294.

H.B. 2294 came about in part as a result of concerns regarding construction defect claims and how best to resolve them. Rep. Merrick previously introduced legislation to address construction defects through a statutory warranty. Our industry did not support that bill, and Rep. Merrick admonished us to work on something we could accept to address this issue.

At the same time, the National Association of Home Builders was addressing the issue of construction defect litigation and the resulting effect on general liability insurance. NAHB members nationwide were facing significantly increased premiums with increased deductibles or self-insured retentions for their general liability insurance and even having difficulties obtaining general liability insurance. Part of the reason for this trend has been the impact of an increased level of construction defect litigation. NAHB established a General Liability Insurance Task Force, which made its report in September, 2002. That report included the recommendation to states to seek construction defect claim legislation. H.B. 2294 is based on the NAHB model legislation.

Also, last year, bills addressing this issue were passed in California, Washington, and Minnesota. The NAHB model bill is based on legislation passed in those three states, especially Washington.

We modified the national model bill for Kansas and requested the introduction of H.B. 2294. After working extensively with the Kansas Trial Lawyers Association on the

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Attachment 1-1

bill, we requested numerous agreed-upon amendments, resulting in Substitute for H.B. 2294.

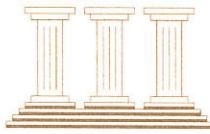
The approach of this bill is in the spirit of alternate dispute resolution, to have the homeowner/claimant notify the builder of alleged construction defects prior to filing a claim. The builder will then have an opportunity to inspect the home and to offer to make repairs, if warranted. H.B. 2294 sets up a process for that communication to occur, which hopefully will resolve many of these claims without the filing of a lawsuit.

General liability insurance companies have told NAHB that this type of legislation will have positive effect on the pricing and availability of general liability insurance to our members, especially if passed in multiple states in a region. Missouri is also considering this type of legislation during this session. At least 13 states have a proposed bill this year.

Thank you for the opportunity to come before you in support of Substitute for H.B. 2294. We would be glad to respond to questions at the appropriate time.

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KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the Senate Judiciary Committee

FROM: Barb Conant  
Kansas Trial Lawyers Association

RE: 2003 Sub. HB 2294 / Construction defects; rights to cure

DATE: March 17, 2003

Chairman Vratil and members of the Senate Judiciary Committee. Thank you for the opportunity to submit comments regarding Sub. HB 2294. My name is Barb Conant, director of public affairs, for the Kansas Trial Lawyers Association. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to offer comments in support of Sub. HB 2294.

KTLA opposed HB 2294 as introduced. However, we have been pleased to work with the Kansas Building Industry Association in substantially amending HB 2294 to meet their members' goals with this legislation and at the same time, protect the interests of consumers. We have assisted in crafting the amendments that they offer today. With the adoption of those amendments by the House Judiciary Committee, KTLA does not oppose the bill. We would like to express our appreciation to the Kansas Building Industry Association for their willingness to work with us in crafting compromise language.

Thank you for the opportunity to express our support for Sub. HB 2294.

Senate Judiciary  
3-17-03  
Attachment 2-1

*Terry Humphrey, Executive Director*



State of Kansas

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman  
District Attorney Paul Morrison, Vice Chairman  
Barbara S. Tombs, Executive Director

March 13, 2003

Senator Derek Schmidt  
State Capitol, Room 143-N  
Topeka, KS 66612

Dear Senator Schmidt:

In response to your request for a prison bed impact for the proposed amendment, I have included a copy of the impact with this correspondence. I have listed below responses to your questions relating to the *State v. Frazier* that could be addressed with the data the Commission has available. The Commission's sentencing database is designed on a fiscal year time frame. Although data can be analyzed for partial year time frames, comparative analysis of partial year data to a previous complete year will not accurately reflect any trend changes.

1. No offenders sentenced under KSA 65-7006 were released from prison as of June 30, 2002. The Kansas Court Appeal's decision on Frazier case was handed down on March 15, 2002 and Kansas Supreme Court's denial to hear the case was issued on July 11, 2002. As of December 31, 2002, 25 offenders sentenced under KSA 65-7006 had been released from prison. Of the 25 offenders released from prison, 14 were released and placed on postrelease supervision, 4 offenders were released and paroled to a detainer, 2 offenders were released due to their sentences expiring and 4 offenders were released and re-sentenced to probation. One offender was released from prison on an appeal bond. These releases resulted in 25 prison beds becoming available as of December 31, 2002.
2. During FY 2002, 90 offenders were sentenced under KSA 65-7006, of that total, 30 offenders received nonprison sentences representing downward dispositional departure at sentencing. The remaining 60 offenders (66.7%) were sentenced to prison receiving an average sentence of 80 months<sup>1</sup>.

Of the 60 offenders receiving prison sentences, 50 (83%) received sentences representing downward durational departures. The data would

<sup>1</sup> Length of sentence is based on DOC's FY 2002 admission file.

indicate that all but 10 offenders out of the 90 received either a downward dispositional or durational departure, resulting in a shorter sentence than designated by the sentencing grid.

During FY 2002, of the total 90 offenders sentenced, 89 offenders were sentenced as drug severity level one, with the exception one offender who received a drug level 4 sentence, which may be attributed to sentencing occurring after the March 15<sup>th</sup> *Frazier* decision.

3. During the first 8 months of FY 2003 (July 2002 to February 2003), 88 offenders have been sentenced under KSA 65-7006, which reflects an increase of 54.4% (31 offenders) when compared with the 57 offenders sentenced during the first 8 months in FY 2002. Of that total 88 offenders sentenced, 81 (92%) received drug level 4 sentences and 7 (8%) of the offenders were sentenced as drug level 1 offenders.

Of the 81 offenders sentenced on drug level 4, 60 offenders (74%) received nonprison sentences with a 15 months average underlying prison sentence. Twenty one offenders received presumptive prison sentences averaging 24.6 months in length. The remaining 7 offenders who were sentenced on drug severity level 1 received nonprison sentence with an average underlying prison sentence of 44 months, indicating both downward dispositional and downward durational departures at sentencing.

All 81 offenders sentenced in the first eight months of FY 2003 regardless of whether they were sentenced on drug severity level one or four received sentences shorter in length than would have been designated under K.S. A. 65-7006.

4. The decision of *Frazier* case has resulted in two direct impacts on prison population: prison admission and length of sentence.
  - Prior to the decision of *Frazier* case, 66.7% of offenders sentenced under KSA 65-7006 were incarcerated. After the *Frazier* decision, 24% of the offenders under KSA 65-7006 were sentenced to prison.
  - Prior to the *Frazier* decision, the average length of sentence imposed was 80 months. After the *Frazier* decision, the average length of sentence imposed was 24.6 months.
5. Based on FY 2002 data, (pre-*Frazier* data), the 60 offenders were sentenced to prison with an average sentence of 80 months and factoring in 15% good time credit, 60 prison beds would be required for the first year. The bed space impact would double (120 beds) in the second year, triple (180 beds) in the third year, quadruple (240 beds) in the fourth year



and reach nearly five times (280 beds) in the fifth year. After the fifth year, the bed space requirement stabilizes if admissions remain the constant at (60 offenders each year).

If admissions increase by 1.5% each year (the annual growth rate factored into the projection model), prison bed requirements will increase to 61 beds in the first year, 123 beds in the second year, 186 beds in the third year, 246 beds in fourth year, 306 beds in the fifth year and 381 beds by the end of the ten-year forecasting period. This is the bed space required under scenario one of the impact of HB 2317, which reflects no change in the pre-*Frazier* sentencing practices.

6. After the *Frazier* decision, 24% of the offenders under KSA 65-7006 were sentenced to prison with an average sentence of 24.6 months. Based on the same data in FY 2002, that 24% will result in 22 offenders being sentenced to prison for an average of 24.6 months and factoring in 15% good time credits, those 22 offenders would need 22 prison beds for the first year and 38 prison beds in the second year. At that point the prison bed requirements stabilize, if admissions remain constant. If admissions increase by 1.5% each year as programmed into the projection model, prison bed requirements increase to 40 beds in the second year and 45 beds by the end of the ten-year forecasting period. This is the prison bed requirements under *Frazier* decision.
7. To date, the Sentencing Commission has not received any sentencing journal entry forms for offender who has been sentenced for a new felony after being released from prison as a result of *Frazier* decision<sup>2</sup>.
8. When sentencing data is entered into the sentencing database the offense with the longest sentence imposed is considered the primary or controlling crime and that offense that is used in standard prison bed impact analysis. Prison takes precedent over nonprison sentences. Thus if the data indicates that 90 offenders were sentenced for possession of precursor drugs, then for those 90 offenders that sentence was the longest or the controlling sentence. Consecutive and concurrent sentences are indicated and entered but the offense for which longest sentence imposed is recorded as primary.
9. During FY 2002, 12 offenders sentenced under KSA 65-7006 (considered the primary offense) 9 offenders received consecutive sentences and 1 offender received a concurrent sentence. During the first 8 months of FY 2003, 11 offenders sentenced under KSA 65-7006 had consecutive sentences, 3 offenders receiving concurrent sentences and 1 offender

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<sup>2</sup> By crosschecking both names and case numbers of offenders released from prison under KSA 65-7006, the Commission found no offenders sentenced for a new felony or revoked to prison as of December 31, 2002.

receiving both concurrent and consecutive sentences. Concurrent or consecutive cases of the above offenders include any cases filed or sentenced in the same county or other counties.

10. During FY 2002, 14 offenders whose primary offense was manufacturing controlled substance (KSA 65-4159) had an additional conviction under KSA 65-7006 and received concurrent sentences for the two convictions
11. During the first 8 months of FY 2003, 17 offenders whose primary offense was a conviction under KSA 65-7006 had at least one additional conviction under KSA 65-7006. In addition of those 17 offenders, two offenders were convicted of 2 additional charges of the offense under KSA 65-7006 and one offender was convicted of 3 additional charges under KSA 65-7006.

Of the 17 offenders, the primary offense for 11 of the offenders was manufacturing controlled substance (KSA 65-4159), 2 offenders had a primary offense of possession of drugs with intent to sell (KSA 65-4161), 3 had the primary offense of possession of drugs (KSA 65-4160) and one had a primary offense of possession of paraphernalia (KSA 65-4152).

Regardless of the designated severity level for a specific offense, whether it is primary or controlling is dependent on the length of actual sentence imposed. Since convictions under K.S.A. 65-7006 resulted in significant numbers of downward departures both dispositional and durational, sentences for those specific convictions were primary only when the sentence imposed was longer than other sentences imposed when multiple convictions were present.

12. The trends of methamphetamine laboratory seizures are not quantified and factored into the projection model, although changes in any sentencing trend are examined and adjustment made when necessary by the Consensus Group. Projections are based on sentencing trends which is a vastly different measurement than laboratory seizures. There is no direct correlation between the number of labs seized and offenders sentenced under K.S.A. 65-7006 as indicated in the sentencing data presented below. Sentencing data focuses on the type and length of sentence imposed at the time of conviction.

13. Sentencing trends under KSA 65-7006 are as follows:

- In FY 2001: 16 offenders were sentenced under KSA 65-7006
- In FY 2002: 90 offenders were sentenced under KSA 65-7006, representing a 462.5% increase between FY 2001 and FY 2002

- First 8 months of FY 2003: 88 offenders were sentenced under KSA 65-7006, representing a 54.4% increase when compared with sentences in the first 8 months in FY 2002 (57 offenders).
- The declining trend of methamphetamine laboratory seizures at this time could not be quantified into prison beds until sentencing trend indicate declines in the number of offenders sentenced for this specific offense.

I hope the information provided answers your questions. One of the difficulty in determining any significant trend under a new offense category, such as K.S.A. 65-7006, is that you really need four to five years of data to be able to allow for the lag time between the passage of a new law and the implementation of that law to identifying the typical or usual sentencing pattern for an offense. With this specific offense, the *Frazier* decision came down three years after the law went into affect, changing the sentencing structure before it had the opportunity to show any pattern of stabilization.

If you have any questions about the information or would like any additional clarification, please feel free to contact me.

Sincerely,



Barbara Tombs  
Executive Director

Enclosure





State of Kansas

**KANSAS SENTENCING COMMISSION**

Honorable Ernest L. Johnson, Chairman  
District Attorney Paul Morrison, Vice Chairman  
Barbara S. Tombs, Executive Director

**MEMORANDUM**

**To:** Senator Derek Schmidt  
**From:** Barbara S. Tombs  
Executive Director  
**Date:** March 13, 2003  
**RE:** Prison Bed Impact on Proposed Amendment

**IMPACT ON PRISON ADMISSIONS:**

- Increase by an estimated: **61 to 100 by the end of FY 2004 and 70 to 114 additional admissions by the end of FY 2013.**
- Potential to increase but cannot quantify
- Decrease by an estimated:
- Potential to decrease but cannot quantify
- Remain the same

Note: The impact on prison admissions is based on sentencing data from FY 2002 and the first six months of FY 2003 reflecting both pre and post Fraizer sentencing data trends. This data was used to project the number of sentences imposed as well as the proportion of prison and non-prison sentences imposed. Pre-Fraizer, offenders convicted for possession of precursor drugs were sentenced on drug severity level one. Post-Fraizer possession of precursor drugs were sentenced on drug severity level four. During FY 2002, 90 offenders were sentenced for the crime of possession of precursor drugs on drug severity level one and during the first six months of FY 2003, 50 offenders had been sentenced possession of precursor drugs. Even though severity level one is a presumptive prison severity level, previous data indicates that approximately 35% of the offenders sentenced for this offense that receive a drug severity one sentence involve dispositional departures to a presumptive nonprison sentence. In projecting the impact on admissions, three scenarios are presented indicating yearly admissions to prison ranging from 90, 125, and 150 with a 65% proportion sentenced to prison and the remaining 35% receiving a nonprison sentence. Presented below is the projected increase in admissions.

### Prison Admissions Impact

June of Each Year	Scenario #1 90 (65%)	Scenario #2 125 (65%)	Scenario #3 150 (65%)
2004	61	82	100
2005	62	83	101
2006	63	85	103
2007	64	86	104
2008	65	87	106
2009	66	89	107
2010	67	90	109
2011	68	91	110
2012	69	93	112
2013	70	94	114

#### IMPACT ON OFFENDER POPULATION LEVELS:

- have impact on offender population- **require 61 to 100 additional prison beds by the end of FY 2004 and 381 to 612 additional prison beds by the end of FY 2013.**
- have the potential to impact offender population as noted below.
- have minimal or no impact on offender population.
- have impact but cannot be quantified with data available.

Note: The additional prison beds required are the result of two factors the increase in admissions outlined above and the average length of sentence imposed of 80 months indicated in the sentencing data from FY 2002. Although the average sentence imposed of 80 months (6.7 years) represents a downward durational departure and is significantly less than the 138 to 204 months range of sentences on drug severity level one, it is still a sentence length that has a notable impact on prison beds due to the volume of yearly sentences imposed. Presented below are the assumptions, data findings and prison bed impact for the changes proposed in this bill.

#### KEY ASSUMPTIONS

- The target inmates as defined in this bill include any persons who are convicted of the crime under K.S.A. 65-7006.
- Projected admission to prison is assumed to increase by an annual average of one point five percent. Bed space impacts are in relation to the baseline forecast produced in September 2002 by the Kansas Sentencing Commission.

- Percentage of target inmate sentences served in prison is assumed to be 85 percent, which is consistent with the official projections released in September 2002.
- A violation of the Statute # K.S.A. 65-7006 is designated as a drug severity level 1 felony.
- Based on FY 2002 sentencing data, 65% of the offenders convicted of the crime under the Statute # K.S.A. 65-7006 are projected to receive a prison sentence with an average length of 80 months.

### **Prison Bed Scenarios**

- **Scenario One:** It is assumed that 90 offenders will be convicted under K.S.A. 65-7006 and 65% of the offenders will receive prison sentences.
- **Scenario Two:** It is assumed that 125 offenders will be convicted under K.S.A. 65-7006 and 65% of the offenders will receive prison sentences.
- **Scenario Three:** It is assumed that 150 offenders will be convicted under K.S.A. 65-7006 and 65% of the offenders will receive prison sentences.

### **FINDINGS**

- During FY 2002, 90 offenders were convicted under K.S.A. 65-7006 and 60 of the offenders were sentenced to prison with an average length of sentence of 80 months. All 90 offenders were sentenced as drug severity level 1. During the first 6 months of FY 2003 (July 1, 2002 to December 31, 2002), there were 50 offenders convicted of possession of precursor drugs. Thirty-nine of the offenders were sentenced as drug level 4 offenders and 11 were sentenced as drug level 1 offenders.
- **Scenario One:** If 90 offenders each year are convicted under K.S.A. 65-7006 and 65% receive presumptive prison sentences by the year 2004 there will be 61 prison beds needed and by the year 2013 a projected 381 prison beds will be required.
- **Scenario Two:** If 125 offenders each year are convicted under K.S.A. 65-7006 and 65% receive presumptive prison sentences by the year 2004 there will be 82 prison beds needed and by the year 2013 a projected 561 prison beds will be required.
- **Scenario Three:** If 150 offenders each year are convicted under K.S.A. 65-7006 and 65% receive presumptive prison sentences by the year 2004 there will be 100 prison beds needed and by the year 2013 a projected 612 prison beds will be required.

### **Prison Bed Impact**



June of Each Year	Scenario #1 90 (65%)	Scenario #2 125(65%)	Scenario #3 150(65%)
2004	61	82	100
2005	123	165	201
2006	186	250	304
2007	246	331	400
2008	287	380	466
2009	306	420	514
2010	339	458	555
2011	359	482	581
2012	370	499	603
2013	381	516	612

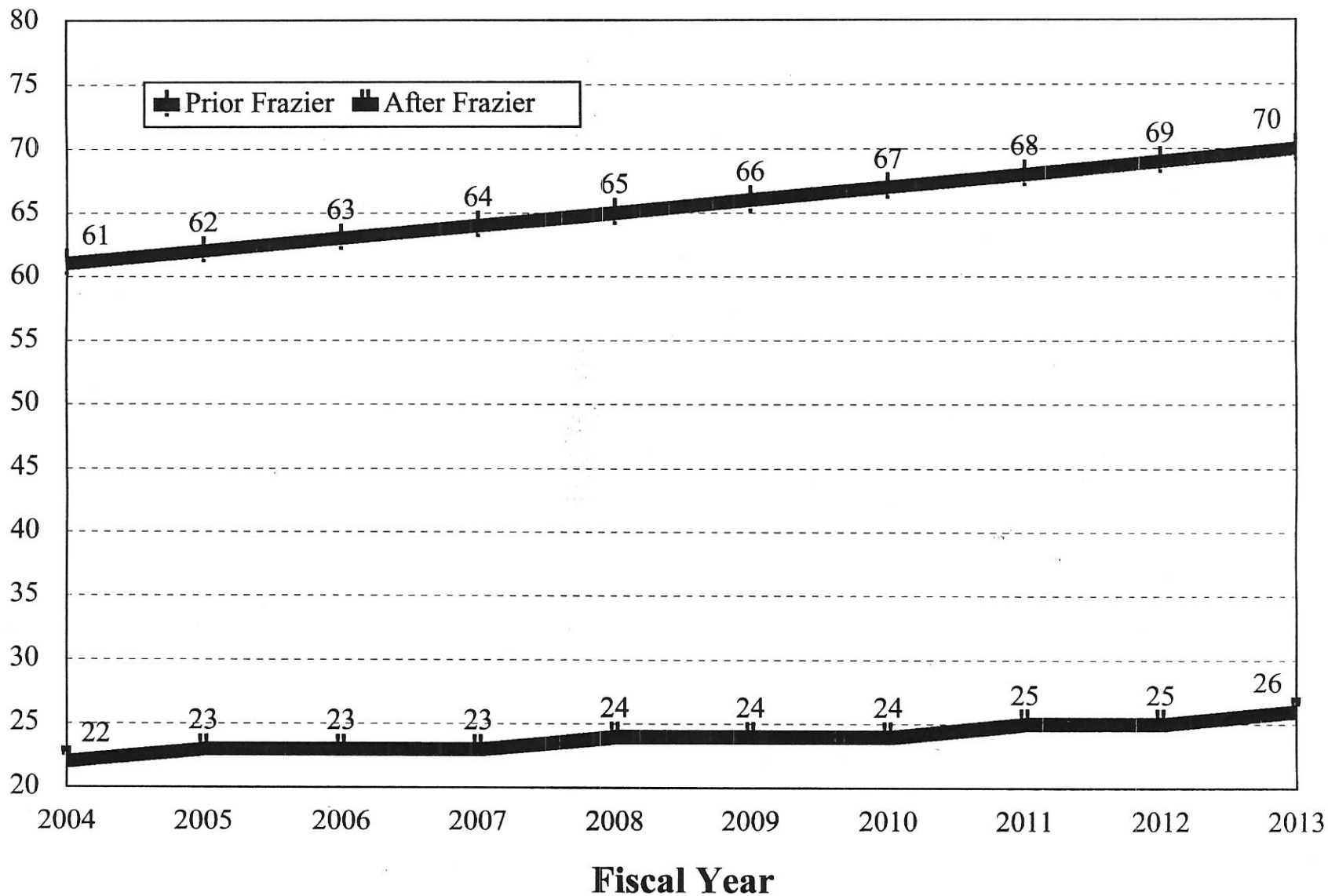
**SUMMARY OF HB 2317 IMPACT:**

- The impact of this bill will result in 61, 82 and 100 additional prison admissions by the year 2004 and 70, 94 and 114 additional prison admissions by the year 2013 respectively under the different admission scenarios described earlier.
- The impact of this bill will also result in the need 61, 82 and 100 prison beds by the year 2004 and 381, 516 and 612 additional prison beds required by the year 2013 respectively under each different scenario outlined above.

# PRISON ADMISSION ASSESSMENT

3-10

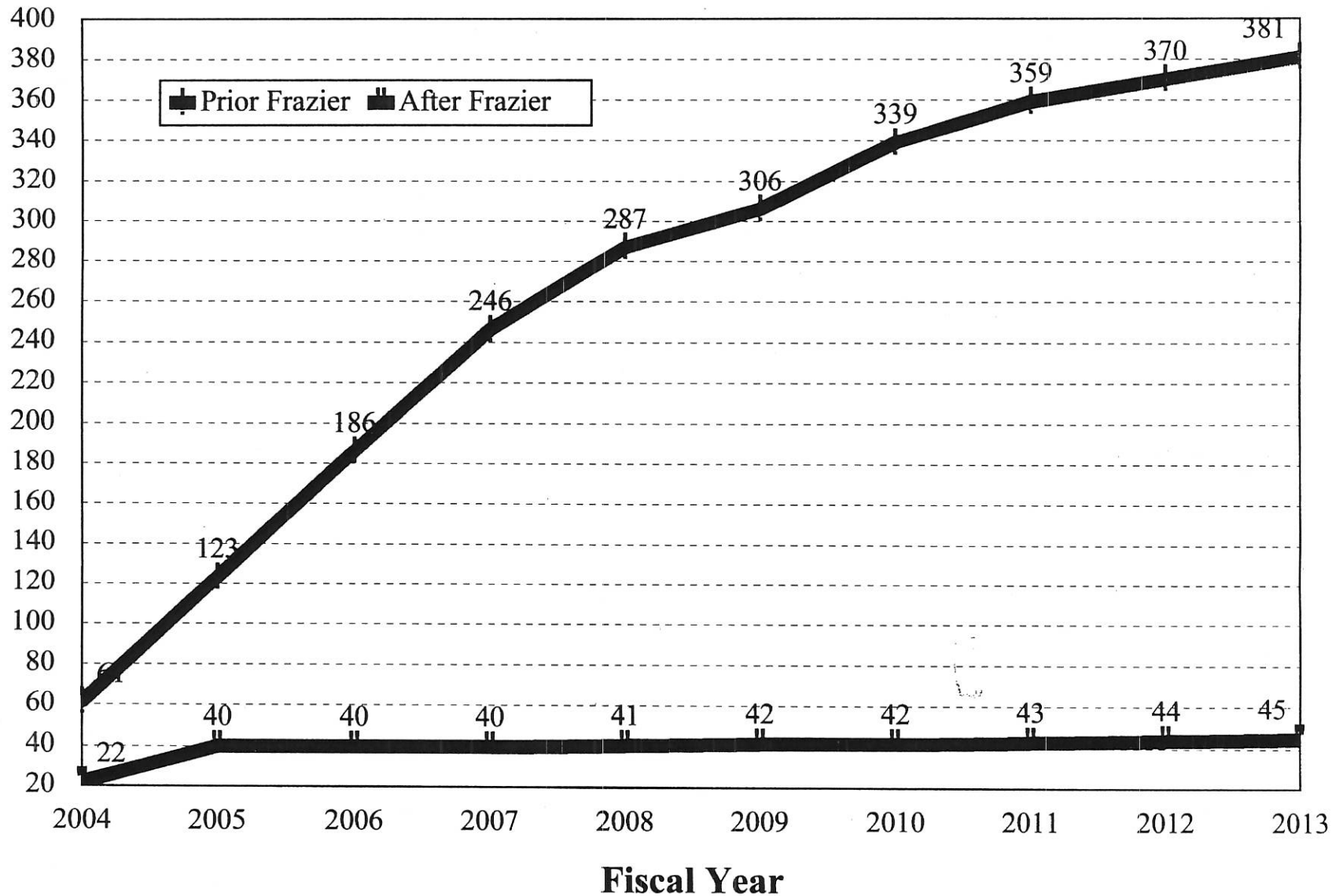
## PRIOR AND AFTER FRAZIER CASE



# PRISON BED SPACE ASSESSMENT

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## PRIOR AND AFTER FRAZIER CASE



# SENATE BILL No. 197

By Committee on Federal and State Affairs

2-11

AN ACT concerning alcoholic beverages; concerning minors; amending  
K.S.A. 2002 Supp. 21-3610 and 41-727 and repealing the existing  
sections.

crimes, criminal procedure and punishment;  
relating to

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

Section 1. K.S.A. 2002 Supp. 21-3610 is hereby amended to read as follows: 21-3610. (a) Furnishing alcoholic liquor or cereal malt beverage to a minor is directly or indirectly, selling to, buying for, giving or furnishing any alcoholic liquor or cereal malt beverage to any minor.

(b) ~~Except as provided by subsections (d) and (e),~~ Furnishing alcoholic liquor or cereal malt beverage to a minor is a class B person misdemeanor for which the minimum fine is \$200.

Reinsert stricken language

(c) As used in this section, terms have the meanings provided by K.S.A. 41-102, 41-2601 and 41-2701, and amendments thereto.

(d) It shall be a defense to a prosecution under this section if: (1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; (2) the defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and (3) to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

~~(e) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward.~~

Reinsert stricken language

Sec. 2. K.S.A. 2002 Supp. 41-727 is hereby amended to read as follows: 41-727. (a) Except with regard to serving of alcoholic liquor or cereal beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under 21 years of age shall possess, consume, obtain, purchase or

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1 attempt to obtain or purchase alcoholic liquor or cereal malt beverage  
2 except as authorized by law.

3 (b) Violation of this section by a person 18 or more years of age but  
4 less than 21 years of age is a class C misdemeanor for which the minimum  
5 fine is \$200.

6 (c) Any person less than 18 years of age who violates this section is a  
7 juvenile offender under the Kansas juvenile justice code. Upon adjudication  
8 thereof and as a condition of disposition, the court shall require  
9 the offender to pay a fine of not less than \$200 nor more than \$500.

10 (d) In addition to any other penalty provided for a violation of this  
11 section: (1) The court may order the offender to do either or both of the  
12 following:

13 (A) Perform 40 hours of public service; or

14 (B) attend and satisfactorily complete a suitable educational or training  
15 program dealing with the effects of alcohol or other chemical substances  
16 when ingested by humans; and

17 (2) *upon a first conviction of a violation of this section, the court shall*  
18 *order the division of vehicles to suspend the driving privilege of such*  
19 *offender for 30 days. ~~The court shall order that for any offender who has~~*  
20 *~~not been issued a driver's license by the division prior to sentencing of~~*  
21 *~~the offender for a violation of this section, the division shall not issue such~~*  
22 *~~offender a driver's license for 30 days~~ Upon receipt of the court order,*  
23 *the division shall notify the violator and suspend the driving privileges of*  
24 *the violator for 30 days whether or not that person has a driver's license.*

25 (3) *Upon a second conviction of a violation of this section, the court*  
26 *shall order the division of vehicles to suspend the driving privilege of such*  
27 *offender for 90 days. Upon receipt of the court order, the division shall*  
28 *notify the violator and suspend the driving privileges of the violator for*  
29 *90 days whether or not that person has a driver's license.*

30 (4) *Upon a third or subsequent conviction of a violation of this section,*  
31 *the court shall order the division of vehicles to suspend the driving priv-*  
32 *ilege of such offender for one year. Upon receipt of the court order, the*  
33 *division shall notify the violator and suspend the driving privileges of the*  
34 *violator for one year whether or not that person has a driver's license.*

35 (e) ~~This section shall not apply to the possession and consumption of~~  
36 ~~cereal malt beverage by a person under the legal age for consumption of~~  
37 ~~cereal malt beverage when such possession and consumption is permitted~~  
38 ~~and supervised, and such beverage is furnished, by the person's parent~~  
39 ~~legal guardian.~~

40 (f) Any city ordinance or county resolution prohibiting the acts pro-  
41 hibited by this section shall provide a minimum penalty which is not less  
42 than the minimum penalty prescribed by this section.

43 (g) (f) This section shall be part of and supplemental to the Kansas

Reinsert stricken language and reletter the remaining subsections accordingly

1 liquor control act.

2 Sec. 3. K.S.A. 2002 Supp. 21-3610 and 41-727 are hereby repealed.

3 Sec. 4. This act shall take effect and be in force from and after its  
4 publication in the statute book.

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Sec. 3. (a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is permitting a person's premises to be used in such a manner that results in the possession or consumption therein of alcoholic liquor or cereal malt beverages by persons under the age of 21.

(b) A person is deemed to have permitted such person's premises to be used in violation of this section if such person knew or should have known that such use would occur or failed to control access to either the premises or to the alcoholic liquor or cereal malt beverage contained therein.

(c) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a class B nonperson misdemeanor. In addition to any term of imprisonment which may be imposed, the minimum fine for such violation is \$200.

(d) As used in this section, terms have the meanings provided by K.S.A. 41-102, and amendments thereto, except for the purposes of this section, "premises" means a residence, land, building, structure or room owned, occupied or procured by such person;

(e) This section shall be a part of and supplemental to the Kansas criminal code.

And by renumbering the remaining sections accordingly.



# ***TESTIMONY***

City of Wichita

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## **House Bill 2133 Delinquent Municipal Court Fines**

**Delivered to  
Senate Judiciary Committee  
March 17, 2003**

The City of Wichita supports House Bill 2133. The City of Wichita is requesting this legislation to help Wichita Municipal Court, in fact all Municipal Courts in Kansas, more effectively deal with the growing problem of delinquent fines. The number of people who fail or outright refuse to pay fines after being found guilty of an offense in Wichita Municipal Court has reached alarming levels and is increasing. The Kansas House of Representatives has recognized the severity of this situation and passed the HB 2133 by a vote of 112-8.

House Bill 2133 requests that Municipal Courts be allowed the same authority for collecting unpaid fines as District Courts by 1) converting those debts into civil judgments and 2) requiring delinquent defendants to pay the cost of the collection fee as well as the fine.

If Municipal Court orders were given the same treatment that District Court orders have under current law, the Municipal Court order could automatically be converted to a civil judgment, giving Court officials more effective tools, such as garnishment, to collect those debts.

There are more than 114,000 Municipal Court orders where the fines have not been paid. It is much simpler and less burdensome to enforce Municipal Court orders that are automatic civil judgments than it is to litigate each order to obtain a civil judgment.

While the Municipal Court does not exist to produce revenue, there is a significant financial component to this problem. Despite efforts to work out payment plans with defendants and despite the use of a collection agency, the total amount of delinquent fines still owed Wichita Municipal Court totals nearly \$22-million. Realistically, we estimate about \$12-million of that amount could be collected. Given cuts in promised state funding and pressure to not raise taxes, being able to collect more of the money we are already owed, is a significant solution.

From 1998 through 2002, Wichita Municipal Court sent more than 115,000 cases to a collection agency for processing. Those cases amounted to \$27.6-million in delinquent fines. The average collection rate is about 20% or \$5.5-million. Under agreement with the collection agency, Municipal Court pays a fee of 22% of the money collected, which totaled \$1.2-million.

Under House Bill 2133, the defendant who owes the delinquent fine would pay the full amount of the fine and, in addition, the fee which must be paid to the collection agency. In simple terms, here is how it would work. If the delinquent amount owed the court is \$100, the collection agency now keeps \$22 and sends \$88 to the court. Under House Bill 2133, the delinquent defendant would pay \$122, with the full \$100 fine going to the court and the additional \$22 going to the collection agency as the cost of its fee. All this does is make the person who owes the delinquent debt pay the cost of having to collect it.

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Current state law allows Districts Courts to include collection fees as part of the total collection process, but the Municipal Court Procedure Act is silent on this issue. Municipal Courts should have the same authority to recoup the costs of collection as the District Courts.

In closing, I want to make these observations:

- The magnitude of this problem is probably surprising to many who think of Municipal Courts in a much more limited way. Many Municipal Courts are small or even part-time operations. Wichita Municipal Court however, has five appointed judges and 23 pro-tem judges. In any given year, the Court handles more than 200,000 cases including traffic infractions, driving under the influence, petty theft, prostitution, drug violations and domestic violence. Judges also hear cases dealing with Health, Fire, and Central Inspection violations. Wichita Municipal Court is the largest limited jurisdiction court in the state. If State and Local laws are to be respected, and if the Court system is to be viewed as fair and impartial in its administration of justice, there must be a more effective way to deal with people who flaunt the law and the rulings of the Court. HB 2133 does that.
- There may be concern by some members of the Legislature about doing anything which gives the appearance of raising fees or taxes. House Bill 2133 does not impose new fees, it simply makes those who owe the court, who owe society for a violation of the law, responsible for paying the full cost of that debt. And the simple fact is, it does not at all affect people who accept their responsibilities and meet their obligations. It only affects people who have been found guilty of breaking the law and then fail or refuse to live up to those responsibilities.
- Nothing in state law prevents Municipal Courts from taking these cases to District Court and filing actions to have the owed amount converted to a civil judgment. For each case, it would take a significant amount of legal paperwork and a minimum of six months to obtain a civil judgment. In Wichita alone, this will initially generate thousands of new litigation cases; going forward, hundreds of new cases will be filed each year. The end result will be a significant burden on district court judges, staff, and budgets. We do not want or intend to put this kind of burden on District Court or County Sheriff's who would have to serve process on such cases. That's why we are asking for your help, cooperation and support of HB 2133.
- Finally, since HB 2133 passed the House, new concerns have arisen from District Court and some County Sheriff's about the impact this would have on their operations. As a result, we have worked out a compromise designed to eliminate any burden or additional work for District Courts or County Sheriff's. That compromise would allow certain Municipal Courts to set-up a procedure for civil judgments "in-house", thus avoiding any impact on District Courts. That procedure will be presented in testimony from the City of Wichita Legal Department.

### Wichita Municipal Court Delinquent Fines

Year	Number of Cases Sent to Collection Agency	Dollar Amount Sent to Collection Agency	Dollar Amount Collected by Collection Agency	Dollar Amount Paid to Agency by the City	Total Dollar Amount to be Collected
1998	52,709	\$7,802,892	\$ 828,136	\$178,250	\$ 6,974,756
1999	10,916	\$3,746,873	\$ 966,426	\$214,246	\$ 9,755,203
2000	17,915	\$5,758,590	\$1,054,492	\$234,813	\$14,459,301
2001	14,063	\$4,740,028	\$1,456,106	\$321,040	\$17,743,223
2002	18,963	\$5,560,701	\$1,292,080	\$283,892	\$21,959,073
<b>Totals</b>	<b>114,566</b>	<b>\$27,609,084</b>	<b>\$5,597,240</b>	<b>\$1,232,241</b>	<b>\$21,959,073</b>

Overall Collection Rate: 20%

**Questions and Answers  
about  
How House Bill 2133 Would be Work**

**What percentage of people found guilty in Wichita Municipal Court actually go delinquent?**

This statistic is variable, depending on how "delinquent" is defined. In the recent past, the City of Wichita has employed a definition that has become more restrictive over time. Currently, Wichita Municipal Court accounts are sent to a collection agency when they are inactive for 45 days. This means no payment of any kind, despite payment agreements to the contrary. The delinquency rate under these terms stands at monthly rates ranging between 60% and 74% over the last three years.

**What steps would Wichita Municipal Court use to collect delinquent fines?**

The Wichita Municipal Court uses every effort to collect owed fines through voluntarily compliance before ever turning the cases over to collection. Converting cases to civil judgments would be the last and final action. First, the court works with offenders through the probation process and Court Compliance Unit. If someone can't pay the full amount all at once, payments can be made. Only when someone refuses to work out an arrangement for paying their debt is the case turned over to the collection agency. The final step for those offenders who continue to ignore their obligation and defy the Court would be civil judgment.

**What type of civil judgment is being sought? Could the City attach liens on property?**

The current state statute (K.S.A. 75-719) is silent on this issue, but House Bill 2133 would make these a Chapter 61 judgment. This is in line with the typical practice for other debt collection actions. A Chapter 61 action does not create a lien on real estate or any other property. The defendant would additionally have a right to assert most defenses and request a trial for that purpose by contesting the propriety of a garnishment or attachment. This protection is available in its current form through legislation passed last year at L. 2002, Ch. 198.

**What time period would Wichita Municipal Court use before going to collection agency?**

Currently the Municipal Court turns delinquent cases over to collection at 45 days. However, HB 2133 as amended by the House, would not allow cases to be turned over to collection until 180 days. This is of concern to the City of Wichita Municipal Court. The success in collecting the delinquent fines is much greater if the collection agency begins working the case at 45 days. Waiting 180 days will make collection more difficult and could increase the number of cases which would ultimately be sent to the civil judgment collection process.

**What time period would Municipal Court use before going to civil judgment collection?**

The current statute for districts courts is silent on this issue as well. The City proposes curing this concern by delaying civil judgment collection until after the Municipal Court case is complete, including any term of probation for the affected defendant. During any period of probation, which could last from 6 months to 2 years, the court, through the assigned probation officer (or the Court Compliance Unit in Wichita) would attempt to collect the monetary obligations of the court order. After the completion of the case, the criminal file would be closed and the civil collection process would begin. This will give the defendant ample opportunity to satisfy the judgment before civil collection is



undertaken. This process is more defendant-friendly than the practice used in districts that currently make use of the authority granted at K.S.A. 75-719.

**How will record of payment to the collection agency be coordinated with the court and police to prevent someone who has already paid from being arrested?**

This potential would be eliminated if, as suggested above, there is complete separation between criminal enforcement and subsequent civil collection process. Once the criminal case is complete, with or without payment of the debts owed to the court and the restitution ordered, the defendant is no longer subject to arrest. Any suspension, once issued by the State, must be reinstated by the State. Driving prior to receipt of the reinstatement notice from the State is unlawful.

**Is suspension of a drivers license and collection of a delinquent debt a double penalty?**

This question mixes the concept of pre-judgment enforcement of the court's procedural requirements with post judgment enforcement of the court's final order entered after an evidentiary hearing. A defendant's driver's license is suspended by the Kansas Department of Revenue BEFORE CONVICTION at the request of any municipal or district court only for individuals who do not respond to the court dates set on the original ticket or by subsequent intermediary order of the court. Once the dilatory person responds to the Court, completes the court process and pays a \$50 reinstatement fee TO THE STATE, the driver's license is re-instated, whether the case is disposed of by a dismissal, an acquittal, or a finding of guilt. This suspension has nothing to do with guilt or innocence, but rather with recognition of and adherence to the authority of the Court. It is not a double penalty, as it is assessed only against those few persons who flaunt the authority of the Court. The suspension, and its attendant reinstatement fee, is a penalty for disobeying the rules of the court, while a fine AFTER CONVICTION is the penalty for disobeying the rules of the road or the legislatively imposed rules governing social interaction (crimes). If a driver's license is suspended at this point, it is because the legislative body has determined that such a suspension is an appropriate punishment for the offense, and is properly imposed for the safety of the motoring public. We cannot simply suspend a license to induce payment. This would be only marginally effective, as demonstrated by the large number of drivers who choose to drive without a license, without insurance, or even having had their license suspended by prior court action. More importantly, this would also constitute an impermissible use of criminal sanctions affecting the defendant's liberty interests solely to enforce a purely financial obligation.

**Which District Courts use this authority and what are their procedures?**

Douglas, Harvey and McPherson Counties use their court trustee's offices. Douglas County attempts a voluntary payment plan, and then if unsuccessful, does a wage garnishment or wage assignment to satisfy the judgment. Geary County is planning to institute collections based on the Douglas County model. Sedgwick County pursues collection in conjunction with probation supervision. In Harvey County, the case is not turned over for collection until the completion of probation. Wyandotte County has used this authority in the past, but the private collection attorney who had contracted for the work let the contract lapse as unprofitable. Apparently, other district courts have had trouble finding law firms interested in bidding for the collection work, and the statute was amended to allow the District Court Trustee to handle the collections. The Attorney General has approved a 33% collection fee, figured on the entire unpaid balance subject to collection, as an add-on to be collected by the court.

# *TESTIMONY*

**Date:** March 17, 2003

**To:** Senate Judiciary Committee

**From:** Jay C. Hinkel, Assistant City Attorney  
City of Wichita, Kansas

**Subject:** *Technical Amendment Offered in Support of HB 2133*

The changes to the bill presented to this committee address issues raised by or anticipated from other conferees. The amended bill incorporates the text which passed the House, and places it in the appropriate sections of the existing municipal code.

The change in approach, which all other changes merely implement, is transfer of civil collection of debts owed to the court to the municipal court itself. Collectively these changes follow the pattern used by existing statutes to have criminal district court debts enforced by the civil division of the same court. The limited proposed changes to the municipal court's jurisdiction and procedure would be available for its use only. The City would collect unpaid restitution directly with its other debts. No private person or other legal entity would have the ability to seek redress through this limited authority. The proposed changes explicitly incorporate the procedures from chapter 61 courts of limited civil jurisdiction.

The proposed changes would not be mandatory; a municipality would be required to take affirmative action to accept this authority and adopt the related procedures. The status quo would remain unless a municipality would choose to undertake the collection of its court's unpaid obligations. If it were to accept this opportunity, it would also be accepting the burden of handling the work load associated with that choice, and would not place that work upon the district courts, county sheriffs, or any other office or agency.

Senate Judiciary

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Attachment 6-1

**HOUSE BILL No. 2133**

By Committee on Corrections and Juvenile Justice

1-30

Section 1. K.S.A. 12-4104 is hereby amended to read as follows:

Section 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court.

(b) *The municipal court of each city of the first class may exercise jurisdiction to enforce all debts owed to the court utilizing the civil remedies and procedures found in article 20 of chapter 61 of the Kansas Statutes Annotated.*

Section 2. K.S.A. 12-4106 is hereby amended to read as follows:

12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt committed in court or for failure to obey process issued by such municipal judge, in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; ~~and discharge accused persons.~~ , *and*

6-2

*enforce debts owed to the court as authorized by this act.*

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for class A and B misdemeanors under Kansas criminal statutes is forwarded to the Kansas Bureau of Investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

Section 3. K.S.A. 12-4108 is hereby amended to read as follows:

12-4108. (a) The governing body of each city may provide for the office of clerk of the municipal court. The municipal judge shall appoint such clerk or if no clerk is provided for, the judge shall also serve as clerk. The clerk shall issue all process of the court, administer oaths, file and preserve all papers, docket cases and set same for trial and shall perform such further acts as may be necessary to carry out the duties and responsibilities of the court. The clerk shall receive, account for and pay to the city treasurer monthly all fines and forfeited bonds paid into the court.

(b) The clerk of the municipal court, or the municipal judge if no clerk is appointed, within 10 days after selection, and before entering upon the duties of office, shall execute to the city such bond as the governing body may require, which shall be approved by the governing body, and filed in the office of the city clerk, conditioned for the faithful performance of the duties required of such clerk by law, and for the faithful application and payment of all moneys that may come into such clerk's hands in the execution of the duties of the office. The city shall pay the cost of such bond.

*(b)(c) The clerk of the municipal court is authorized to enter into contracts in accordance with this section for collection services for debts owed to the court or restitution owed under an order of restitution. The cost of collections shall be paid by the defendant as an additional court cost in all criminal and traffic cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant's failure to pay the court a debt or restitution. Any fine, penalty, or any part of any fine or penalty assessed by a municipal court which remains unpaid shall be a debt due and owing to the municipality ~~and, as such, may be collected in accordance with applicable law.~~ Such debts shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases.*

*(e) (d) Each contract entered pursuant to this section shall provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection as provided in this section, and shall not exceed 33% of the amount collected. The cost of collection shall be paid from the amount collected,*



but shall not be deducted from the debts owed to courts or restitution.

~~(d)~~(e) On and after July 1, 2003, any city of the first class is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

~~(e)~~(f) Contracts entered as provided in this section shall provide for the payment of any amounts collected to the clerk of the municipal court for the court in which the debt being collected originated, after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the municipal court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

~~(f)~~(g) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract, the clerk shall then distribute amounts collected as provided in this section as follows: (1) ~~All~~ **When collection services are utilized pursuant to subsection (b), all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt; or**

(2) **when collection services are utilized pursuant to subsection (d), all amounts shall be paid to the beneficiary under an order of restitution designated to receive such restitution, except that where the beneficiary has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312, and amendments thereto, all amounts shall be paid to the board until the board's subrogation lien is satisfied.**

~~(g)~~(h) Whenever collection services are being utilized against the same debtor

*pursuant to both subparagraphs (g)(1) and (g)(2), any amounts collected by a **any** contracting agent shall be first applied to satisfy debts owed to the court as provided under subsection (g)(1). Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy debts owed to pursuant to an order of restitution as provided under subsection (g)(2).*

~~**(h)(i) Any collection for debt or restitution may be enforced pursuant to the code of civil procedure for limited actions.**~~

*(i) The collection services authorized by this section shall not be utilized until the debt or restitution remains unpaid for more than ~~180~~ 45 days.*

Section 4. K.S.A. 12-4109 is hereby amended to read as follows:

12-4109. Each city shall provide at the expense of the city a suitable courtroom for the municipal court, together with all necessary supplies and records. Municipal court shall be held at such time and places designated by ordinance. *If the court of any city of the first class elects to utilize the civil procedure and remedies authorized by this act for collection of debts owed to the court, a record of such proceedings shall be maintained.*

Section 5. K.S.A. 12-4112 is hereby amended to read as follows:

12-4112. No person shall be assessed costs for the administration of justice in any municipal court case, except for witness fees and mileage as set forth in K.S.A. 12-4411 and any amendments thereto, for the assessment required by K.S.A. 41-4116 for the training, testing and continuing judicial education of municipal judges, *court costs created under city home rule authority, and assessments for debts owed to the court.*

Section 6. K.S.A. 12-4113 is hereby amended to read as follows:

12-4113. (a) "Appearance bond" means an undertaking, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions of the undertaking.

(b) "Accused person" means a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance.

(c) "Arraignment" means the formal act of calling the person accused of violating an ordinance before the municipal court to inform the person of the offense with which the person is charged, to ask the person whether the person is guilty or not guilty and, if guilty, to impose sentence.

(d) "Arrest" means the taking of a person into custody in order that the person will appear to answer for the violation of an ordinance. The giving of a notice to appear is not an arrest.

(e) "Bail" is the security given for the purpose of insuring compliance with the terms of an appearance bond.

(f) *"Beneficiary under an order of restitution" means the victim or victims of a crime to whom a municipal court has ordered restitution be paid.*

~~(f)~~(g) "City attorney" means any attorney who represents the city in the prosecution of an accused person for the violation of a city ordinance.

~~(g)~~ (h) "Complaint" means a sworn written statement, or a written statement by a

law enforcement officer, of the essential facts constituting a violation of an ordinance

(i) *"Contracting agent" means a person, firm, agency or other entity who contracts as provided in this act to provide collection services.*

(j) *"Cost of collection" means the fee specified in contracts as provided in this act to be paid to or retained by a contracting agent for collection services. Cost of collection also includes any filing fee required under K.S.A. 60-4303, and amendments thereto, or administrative costs prescribed by the clerk of the municipal court.*

(~~h~~)(k) *"Custody" means the restraint of a person pursuant to an arrest.*

(l) *"Debts owed to the court" means any assessment of court costs, fines, fees or moneys expended by the municipality in providing counsel and other defense services to indigent defendants or other charges which a municipal court judge has ordered to be paid to the court, and which remain unpaid in whole or in part. Such debts include any interest or penalties on such unpaid amounts as provided for in the judgment or by law and the cost of collection when collection services of a contracting agent as provided in this section are utilized.*

(~~i~~)(m) *"Detention" means the temporary restraint of a person by a law enforcement officer.*

(~~j~~)(n) *"Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof.*

(~~k~~)(o) *"Notice to appear" is a written notice to a person accused by a complaint of having violated an ordinance of a city to appear at a stated time and place to answer to the*

charge of the complaint.

(p) "Subpoena" is a process issued by the court to cause a witness to appear and give testimony at a time and place therein specified.

(q) "Ordinance traffic infraction" is a violation of an ordinance that proscribes or requires the same behavior as that proscribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8- 2118 and amendments thereto.

(r) "Warrant" is a written order made by a municipal judge directed to any law enforcement officer commanding the officer to arrest the person named or described in it.

(s) "Ordinance cigarette or tobacco infraction" is a violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79- 3321 and amendments thereto.

Section 7. K.S.A. 12-4601 is hereby amended to read as follows:

12-4601. (a) An appeal may be taken *from a conviction of a municipal ordinance*

to the district court in the county in which said municipal court is located:

- (a) By the accused person in all cases; and
- (b) By the city upon questions of law.

The appeal shall stay all further proceedings upon the judgment appealed from.

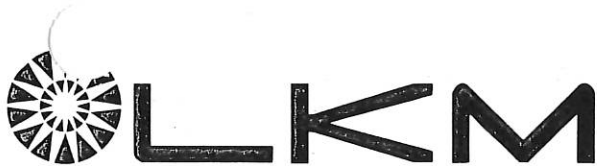
(b) *An appeal may be taken from the civil remedies utilized by the municipal court to collect debts owed to the court to the district court in the county in which said municipal court is located as provided in Article 21 of Chapter 61 of the Kansas Statutes Annotated. For purposes of such appeal, the municipal court judgment shall be considered to be a judgment by a district magistrate judge.*



Section 8. The provisions of this act shall be part of and supplemental to the Kansas Code of Procedure for municipal courts.

Section 9. K.S.A. 12-4104, 12-4106, 12-4108, 12-4109, 12-4112, 12-4113 and 12-4601 are hereby repealed.

Section 10. This act shall take effect and be in force from and after its publication in the statute book.



League of Kansas Municipalities

TO: Senate Judiciary Committee  
FROM: Sandy Jacquot, Director of Law/Legal Counsel  
DATE: March 17, 2003  
RE: HB 2133

I want to thank you on behalf of the League of Kansas Municipalities for the opportunity to testify in favor of HB 2133. This bill would convert delinquent municipal court fines to civil judgments and assess the cost of collection to the defendant when the court contracts with a collection agency. In addition, the bill would allow the victim to which restitution had been ordered to use the contracting collection agency to attempt to collect any unpaid restitution.

For some of our larger municipal courts, collection of delinquent fines and court costs is an ongoing concern. Contracting with a collection agency is often the most efficient means of collecting fines and court costs, but the end result is that the city bears the cost of collection. This bill would shift the burden to the defendant who has chosen not to pay the fine rather than the taxpayers of the city at large.

There has been some opposition to this bill just recently, because of the concern that it could increase district court caseloads. The City of Wichita is proposing substitute language that should address those concerns. The League supports HB 2133 and urges the committee to report the bill favorably for passage.

Senate Judiciary  
3-17-03  
Attachment 7-1

*STATE OF KANSAS*

**Bonnie Huy**  
Representative, 87th District  
1142 S. Gouverneur Ct.  
Wichita, Kansas 67207  
(316) 685-7958



**Capitol Building**  
Room 110-S  
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***HOUSE OF REPRESENTATIVES***  
***87<sup>TH</sup> DISTRICT***

Chairman Vratil and committee members, I appreciate the opportunity to introduce a balloon amendment to HB 2133. On page 2 striking subsection (c) lines 3 through 8 that assesses a collection fee not to exceed 33% of the total debt collected.

Why should a Municipal Government be given more powers to collect “bad debt” than a citizen or private business?

If someone fails to pay me the \$100 that he owes me, I can take him to Small Claims Court, which is comparable to Municipal Court (a court of no record) and obtain a judgment. I must bring the debtor back before the Court to determine if they have the ability to pay. However, if he can't pay, my only recourse is to file the paperwork every few years through the District Court to keep the judgment current. Should the debtor ever decide to correct his errant ways and purchase or sell real property, the judgment shows up and the Title Company will require payment of the debt - not a simple process for the private citizen.

If a private business or citizen turn a debt over to a collection agency, that agency's collection fee is subtracted from the amount owed.

Granting government the power to collect the fine plus up to a 33% collection fee is bad policy and at no time should a Municipal Government be given more “collection” powers than that of a private citizen or business.

If the committee passes HB 2133, I'd ask for your support in passing the bill with the balloon amendment.

Senate Judiciary  
3-17-03  
Attachment 8-1

HOUSE BILL No. 2133

By Committee on Corrections and Juvenile Justice

1-30

10 AN ACT concerning municipal courts; relating to collection of fines and  
11 court costs.

12

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

14 Section 1. (a) As used in this section: (1) "Beneficiary under an order  
15 of restitution" means the victim or victims of a crime to whom a municipal  
16 court has ordered restitution be paid.

17 (2) "Contracting agent" means a person, firm, agency or other entity  
18 who contracts as provided in this section to provide collection services.

19 (3) "Cost of collection" means the fee specified in contracts as pro-  
20 vided in this section to be paid to or retained by a contracting agent for  
21 collection services. Cost of collection also includes any filing fee required  
22 under K.S.A. 60-4303, and amendments thereto, or administrative costs  
23 prescribed by the clerk of the municipal court.

24 (4) "Debts owed to the court" means any assessment of court costs,  
25 fines, fees or moneys expended by the municipality in providing counsel  
26 and other defense services to indigent defendants or other charges which  
27 a municipal court judge has ordered to be paid to the court, and which  
28 remain unpaid in whole or in part. Such debts include any interest or  
29 penalties on such unpaid amounts as provided for in the judgment or by  
30 law and the cost of collection when collection services of a contracting  
31 agent as provided in this section are utilized.

32 (b) The clerk of the municipal court is authorized to enter into con-  
33 tracts in accordance with this section for collection services for debts  
34 owed to the court or restitution owed under an order of restitution. The  
35 cost of collections shall be paid by the defendant as an additional court  
36 cost in all criminal and traffic cases where the defendant fails to pay any  
37 amount ordered by the court and the court utilizes the services of a con-  
38 tracting agent pursuant to this section. The cost of collection shall be  
39 deemed an administrative fee to pay the actual costs of collection made  
40 necessary by the defendant's failure to pay the court a debt or restitution.  
41 Any fine, penalty, or any part of any fine or penalty assessed by a munic-  
42 ipal court which remains unpaid shall be a debt due and owing to the  
43 municipality and, as such, may be collected in accordance with applicable

8-2

8-2

1 law. Such debts shall be a judgment against the defendant which may be  
2 enforced as judgments for payment of money in civil cases.

3 (c) ~~Each contract entered pursuant to this section shall provide for a~~  
4 ~~fee to be paid to or retained by the contracting agent for collection serv-~~  
5 ~~ices. Such fee shall be designated as the cost of collection as provided in~~  
6 ~~this section, and shall not exceed 33% of the amount collected. The cost~~  
7 ~~of collection shall be paid from the amount collected, but shall not be~~  
8 ~~deducted from the debts owed to courts or restitution.~~

9 (d) On and after July 1, 2003, any beneficiary, under an order of  
10 restitution entered by a court, is authorized to utilize the collection serv-  
11 ices of contracting agents pursuant to this section for the purpose of  
12 collecting all outstanding amounts owed under such order of restitution.

13 (e) Contracts entered as provided in this section shall provide for the  
14 payment of any amounts collected to the clerk of the municipal court for  
15 the court in which the debt being collected originated, after first de-  
16 ducting the collection fee. In accounting for amounts collected from any  
17 person pursuant to this section, the municipal court clerk shall credit the  
18 person's amount owed in the amount of the net proceeds collected and  
19 shall not reduce the amount owed by any person by that portion of any  
20 payment which constitutes the cost of collection pursuant to this section.

(d)

21 (f) With the appropriate cost of collection paid to the contracting  
22 agent as agreed upon in the contract, the clerk shall then distribute  
23 amounts collected as provided in this section as follows: (1) ~~All~~ **When**  
24 **collection services are utilized pursuant to subsection (b), all**  
25 **amounts shall be applied against the debts owed to the court as specified**  
26 **in the original judgment creating the debt; or**

(e)

27 (2) **when collection services are utilized pursuant to subsection**  
28 **(d), all amounts shall be paid to the beneficiary under an order of resti-**  
29 **tution designated to receive such restitution, except that where the ben-**  
30 **eficiary has received recovery from the Kansas crime victims compensa-**  
31 **tion board and such board has subrogation rights pursuant to K.S.A.**  
32 **74-7312, and amendments thereto, all amounts shall be paid to the board**  
33 **until the board's subrogation lien is satisfied.**

34 (g) Whenever collection services are being utilized against the same  
35 debtor pursuant to both subparagraphs (f)(1) and (f)(2), any amounts  
36 collected by a any contracting agent shall be first applied to satisfy debts  
37 owed to courts as provided under subsection (f)(1). Upon satisfaction of  
38 all such debts, amounts received from the same debtor shall then be  
applied to satisfy debts owed to pursuant to an order of restitution as  
provided under subsection (f)(2).

41 (h) **Any collection for debt or restitution may be enforced pur-**  
42 **suant to the code of civil procedure for limited actions.**

43 (i) The collection services authorized by this section shall not

8-4

1 **be utilized until the debt or restitution remains unpaid for more**  
2 **than 180 days.**

3 ~~(h)~~ (j) The provisions of this act shall be part of and supplemental to  
4 the Kansas code of procedure for municipal courts.

5 Sec. 2. This act shall take effect and be in force from and after its  
6 publication in the statute book.





SENATE JUDICIARY COMMITTEE  
WRITTEN TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2133  
March 17, 2003

Members of the Senate Judiciary Committee:

I am writing in strong support of HB2133. Municipal court fines serve as punishment and a deterrent for ordinance violations. If the fines go uncollected, the ends of justice will not be met. It is unfair to the majority of citizens who pay their fines, court costs and restitution to let defendants slide due to the inability to collect the amounts owed.

The indigent are offered community service as an alternative sentence due to their inability to pay. The collection efforts in municipal court, in my opinion, are directed at those defendants who promise the judge that they will pay, but who ultimately fail and refuse to honor their promise even though they are able to pay.

A key feature of HB2133 is the provision of paragraph 2(b) which provides:

**"Such debts shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases."**

The legislature has already given this authority to district courts to convert a fine and court costs to a civil judgment in two statutes: K.S.A. 22-3425(2) and K.S.A. 22-3801. Municipal courts should be given the same authority.

HB2133 also benefits victims by allowing them to use the services of a contract agent to collect restitution, including the costs of collection. Municipal Court Judges will continue to hold defendants accountable for their fines, costs and restitution. HB2133 provides a tool to convert fines, court costs and restitution to a civil judgment, and to utilize the existing limited actions procedures in district court to execute on the judgment.

Sincerely,

Blaise Plummer  
City Attorney

Senate Judiciary  
3-17-03  
Attachment 9-1

WRITTEN TESTIMONY OF JUDGE ERIC R. YOST  
18<sup>th</sup> Judicial District

House Bill 2133

Senate Judiciary Committee

March 17, 2003

Chairman Vratil & Committee Members:

Thank you for the opportunity to testify in regard to HB 2133. The judges of the 18th Judicial District (Sedgwick County) are not taking a position as to the City of Wichita's stated objective regarding collection of unpaid fines and costs. Our concern is with the manner in which that objective would be achieved under the bill as currently written.

Unless this bill is amended, it will result in a doubling of the civil lawsuit caseload in Sedgwick County. If only a third of Wichita's active cases get filed in district court pursuant to the provisions of this bill, the result would be approximately 15,000 new cases. Such an increase would translate into 45,000 clerk hours to process the paperwork for those cases---since most collection cases result in multiple 'order in aid' and garnishment hearings. An increase in clerk hours of that magnitude would necessitate the hiring of between 20-25 FTE's in the clerk's office.

We are respectfully suggesting that this bill be amended so that the City of Wichita---rather than the State General Fund, which currently funds the court clerks' offices around the State---would assume the cost of this endeavor. The most practical way to do that would be to simply extend to Wichita the jurisdiction it needs to file such cases within their own courts.

If HB 2133 is amended so that the City of Wichita will assume the costs of their own collection work, we have no opposition to it. Without such an amendment, however, we must oppose its passage.

Senate Judiciary

3-17-03  
Attachment 10-1

House Bill 2133  
MUNICIPAL COURTS; RELATING TO COLLECTION OF FINES AND COURT  
COSTS

TESTIMONY

By: Marsha Spangler, Clerk of the District Court

Mr. Chairman and Members of the Committee

Thank you for the opportunity to appear before you today to speak on House Bill 2133.

The impact of this bill would be monumental to the Clerk of the District Court's Office. We currently process an average of 26,000 Limited Action cases a year in Sedgwick County. I have provided you with a handout of what is involved in processing a Chapter 61 Limited Action Case and would like to go over it with you now.

In 2002 the clerk's office in Sedgwick County processed over 20,000 garnishments and over 19,000 Order in Aids.

The City of Wichita has indicated that they foresee filing around 15,000 cases with our court. With our current workload and the time it takes to process a case another 15,000 cases a year would be an impossible task for us with our current staffing. The city is exempt from paying filing fees so the state will not see any benefit from this.

The District Court does not have automatic judgments on any of our cases. If the City were to have automatic judgments then it would seem feasible that they be able to enforce those judgments through their own court and not the district court.

Thank you for your time and attention regarding this testimony and I would be happy to answer any questions you may have.

Senate Judiciary  
3-17-03  
Attachment 11-1

## CLERK STEPS IN WORKING CHAPTER 61 CASES

For each Chapter 61 case filed, a clerk must do the following:

1. File stamp petition upon receipt of docket fee.
2. Determine amount in controversy and verify correct filing fee.
3. Assign case number and enter on all pleadings.
4. Receipt money.
5. Index Case.
6. Enter pleadings on appearance docket.
7. Set hearing date.
8. Prepare summons - sign, seal and date.
9. Issue copies to sheriff for service - 1 copy of each pleading for service on each defendant and 1 copy for return of service.
10. For every return of service the clerk must file stamp make and send a copy to the plaintiff - in addition to entering it on the appearance docket.
11. If no service was made on the first summons, then an alias summons can be issued to attempt service on the defendant again.
12. Case is heard on date scheduled, or a continuance can be granted, extending the hearing to a later date.
13. If the case is heard on the date scheduled, either judgment can be entered, or the case can be dismissed.
14. Clerk files the Journal Entry of Judgment or Dismissal and mails a copy of the Journal Entry/Dismissal to the defendant and enters it on the appearance docket.
15. Appeal time of 10 days begins - Defendant can appeal case within 10 days.
16. If no appeal, then plaintiff can proceed with collecting the judgment by way of a garnishment.
17. Request for Garnishment is filed, either by a wage garnishment or non-wage garnishment. (Statute allows 1 wage and 1 non-wage or 2 non-wage garnishments to be issued in a 30 day period per defendant.)
18. Order of Garnishment is sealed and dated and entered on the appearance docket by the clerk.
19. Garnishment forms have to be taken apart - a set of forms are to be prepared for the garnishee and 1 for the sheriff to make a return on.
20. Issue copies of the Order of Garnishment, Answer of Garnishee, and Instructions to sheriff for service on Garnishee and 1 return copy of the Order of Garnishment that will be filled out returned to the court.
21. When Return of Garnishment is received, the clerk file stamps, enters on appearance docket, makes a copy and mails to plaintiff. File the pleading in the court file. This is the end of the clerks' duties on a wage garnishment until it is released or satisfied.

22. Answer of Non-Wage Garnishment is filed with the clerk. It is file stamped, entered on the appearance docket and updates the defendant address if necessary. Make 2 copies, one for the plaintiff and one for the dependant.
23. Mail copy to plaintiff and defendant.
24. Complete Certificate of Service
25. If a Request for Hearing is received from the defendant, then a hearing will need to be set within 10 working days.
26. When the attorney receives a copy of the Answer from the clerk, an Order to Pay In is filed for the clerk to issue to the Garnishee. The Pay Order cannot be issued until the 10 day appeal time has run. This requires the clerk to monitor and hold the Pay Order for 10 days before mailing to garnishee.
27. Money is received from the garnishee and receipted in the case. A check is then issued to the plaintiff.
28. If the Garnishee does not have the entire amount owed, additional non-wage garnishments are filed every 30 days, and the whole process is then repeated.
29. In addition to garnishments an Order to Appear in Aid of Execution may be issued. Most of the above steps would be followed. These hearings attempt to collect resources other than payroll and bank accounts.



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**KANSAS ASSOCIATION OF DISTRICT COURT  
CLERKS AND ADMINISTRATORS**

*Jeanne Turner, Chief Clerk  
5th Judicial Dist, Emporia*

House Bill No. 2133  
**MUNICIPAL COURTS -COLLECTION OF FINES & COURT COSTS**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators in opposition of House Bill No. 2133. This bill is in regard to municipal courts and relates to the collection of fines and court costs.

As a mid-sized court, I have some real issues with this proposed bill. This bill would allow any debt owed to municipal courts over 180 days old to become a judgment and be filed for collection in the district courts. Since cities are exempt from paying filing fees, no revenue would be generated for the State. However, as clerks, we would have to enter the information, create the case, issue process, and proceed as with any other limited civil case. There would be numerous aids in executions and garnishments filed, which would have to be processed, sent to the sheriff's office for service, and the returns logged in after service. All of the cases involving aids in executions would have to be put on the calendar for hearing.

Currently, the district courts can turn unpaid accounts over to a collection agency. My suggestion would be to allow the municipal courts to do the same things. By allowing them to contract with a collection agency, this would by-pass the district courts. We currently do not have the staff to take on these additional cases which could number in the hundreds or possibly thousands.

Thank you for allowing me the opportunity to appear before you today on this bill. I would be glad to answer any questions you may have.

---

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State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>

Topeka, Kansas 66612-1507

(785) 296-2256

March 17, 2003

### Testimony in Opposition to HB 2133 Senate Judiciary Committee

Kathy Porter  
Office of Judicial Administration

As introduced, HB 2133 would allow municipal courts to enter into debt collection contracts similar to those district courts are authorized to enter into for the collection of fines and costs that have been ordered, but which offenders have not paid. While some of these provisions raise issues I will discuss later, the Judicial Branch's primary concern is with Section 1(h), which was added by the House Judiciary Committee when worked this bill.

The language at issue provides that "[a]ny collection for debt or restitution may be enforced pursuant to the code of civil procedure for limited actions." What this means is that unpaid traffic tickets become judgments against the defendants (Section 1[b]), and that municipal courts may then file in the district court for hearings in aid of execution, garnishments, and other post-judgment relief. Municipal courts would pay no docket fee for these services of the district court, because K.S.A. 60-2005 exempts the state and all cities and counties from payment of the docket fee.

I have attached a copy of the fiscal note for HB 2200, a bill with the same provisions as the amendment at issue. Allowing only 30 minutes of work per case, which in retrospect seems extremely conservative given the fact that multiple hearings in aid and garnishments could issue from each case, an additional twelve trial court clerk positions would be needed statewide. The bill includes no mechanism to fund these positions. If this bill is enacted into law, I will ask that funding for these positions be included in the Omnibus Appropriations Bill.

When this amendment was added by the House Judiciary Committee, I contacted City of Wichita officials to discuss this issue, and Chief Judge Richard Ballinger has also had several contacts with city officials. I have attached a letter that I wrote to Mr. Mike Taylor about this issue. He assured me that the city wanted to adopt its own post judgment remedies similar to those found in Chapter 61, and I suggested language that would accomplish this goal. Subsequently, city officials stated that this was not their goal, and that they do indeed want the district courts to provide the work involved in collecting municipal judgments. I would encourage the city to pursue a means to collect their own judgments in a manner that does not involve additional work for district courts.

Senate Judiciary

3-17-03

Attachment 13-1

While the underlying municipal court collection contract issue are of less concern to the Judicial Branch, I would point out that this language differs in several aspects from the language included in K.S.A. 2002 Supp. 75-719, the statute authorizing debt collection contracts for the district courts. A copy of that statute is attached.

K.S.A. 2002 Supp. 75-719 authorizes the Attorney General to enter into debt collection contracts for debts owed to courts or for restitution that is owed. Having the Attorney General as the central contracting party not only takes advantage of that office's expertise in contract drafting and negotiating contracts, but it also ensures that a procurement negotiating committee has properly solicited and reviewed bids for the collection contracts. Under the provisions of HB 2133, Section 1(b), the clerk of the municipal court is authorized to enter into these municipal contracts.

A second provision that differs from the language of 2002 Supp. 75-179 is found in Section 1(b), providing that unpaid fines and penalties are debts due and owing to the municipality, and that such debts "shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases." No parallel language could be found for debts owed to the district courts. This appears to make unpaid fines default judgments against the offenders. I could not locate language affording an opportunity to challenge or set aside the judgment. While this is a policy issue for the Legislature to decide, I would point out that no parallel provision applies to the district courts.

I am at a loss as to the reference in Section 1 (a)(3) to "any filing fee required under K.S.A. 60-4303." That statute pertains to the fee for filing a judgment of restitution. Restitution is not included within the definition of "debts owed to the courts" in Section 1(a)(4). Moreover, K.S.A. 60-2005 exempts the state and all cities and counties from payment of the docket fee. That same section also appears to authorize "administrative costs prescribed by the clerk of the municipal court." However, the cost of debt collection is already authorized elsewhere in the bill.

I would urge the Committee not to recommend this bill favorably. Thank you for your consideration of these issues.

KP:mr

## 75-719

### Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 7.--ATTORNEY GENERAL

**75-719. Collection of debts owed to courts or restitution; duties of attorney general; contracts for collection.** (a) The attorney general is authorized to enter into contracts in accordance with this section for collection services for debts owed to courts or restitution owed under an order of restitution. On and after July 1, 1999, the cost of collection shall be paid by the defendant as an additional court cost in all criminal, traffic and juvenile offender cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant's failure to pay court debt and restitution.

(b) As used in this section:

(1) "Beneficiary under an order of restitution" means the victim or victims of a crime to whom a district court has ordered restitution be paid;

(2) "contracting agent" means a person, firm, agency or other entity who contracts hereunder to provide collection services;

(3) "cost of collection" means the fee specified in contracts hereunder to be paid to or retained by a contracting agent for collection services. Cost of collection also includes any filing fee required under K.S.A. 60-4303 and amendments thereto or administrative costs prescribed by the attorney general pursuant to rules and regulations; and

(4) "debts owed to courts" means any assessment of court costs, fines, fees, moneys expended by the state in providing counsel and other defense services to indigent defendants or other charges which a district court judgment has ordered to be paid to the court, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law. Debts owed to courts also includes the cost of collection when collection services of a contracting agent hereunder are utilized.

(c) (1) Contracts authorized by this section may be entered into with state or federal agencies or political subdivisions of the state of Kansas, including contracts for participation in the collection program authorized by K.S.A. 75-6201 *et seq.* and amendments thereto. Such contracts also may be entered into with private firms or individuals selected by a procurement negotiation committee in accordance with K.S.A. 75-37,102 and amendments thereto, except that the attorney general shall designate a representative to serve as the chief administrative officer member of such committee and that the other two members of such committee shall be designated by the director of purchases and the judicial administrator.

(2) Prior to negotiating any contract for collection services, this procurement negotiation committee shall advertise for proposals, negotiate with firms and individuals submitting proposals and select among those submitting such proposals the party or parties to contract with for the purpose of collection services.

(3) The attorney general may adopt rules and regulations as deemed appropriate for the administration of this section, including procedures to be used in the negotiation and execution of contracts pursuant to this section and procedures to be followed by those who utilize collection services under such contracts.

(4) For purposes of this section, the agencies, firms or individuals with whom contracts are entered under this section shall be known as contracting agents. The attorney general shall publish a list of the contracting agents for use by courts or beneficiaries under orders of restitution who desire to utilize the collection services of such agents.

(5) Each contract entered pursuant to this section shall provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection hereunder, and shall not exceed 33% of the amount collected. The cost of collection shall be paid from the amount collected, but shall not be deducted from the debts owed to courts or restitution.

(d) Judicial districts of the state of Kansas are authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding debts owed to courts. Subject to rules and orders of the Kansas supreme court, each judicial district may establish by local rule guidelines for the compromise of court costs, fines, attorney fees and other charges assessed in district court cases.

(e) Any beneficiary under an order of restitution entered by a court after this section takes effect is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

(f) Contracts entered hereunder shall provide for the payment of any amounts collected to the clerk of the district court for the court in which the debt being collected originated, after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the district court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(g) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract hereunder, the clerk shall then distribute amounts collected hereunder as follows:

(1) When collection services are utilized pursuant to subsection (d), all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt;

(2) when collection services are utilized pursuant to subsection (e), all amounts shall be paid to the beneficiary under the order of restitution designated to receive such restitution, except where that beneficiary has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312 and amendments thereto, in which case all amounts shall be paid to the board until its subrogation lien is satisfied.

(h) Whenever collection services are being utilized against the same debtor pursuant to both subsections (d) and (e), any amounts collected by a contracting agent shall be first applied to satisfy subsection (e) debts, debts pursuant to an order of restitution. Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy subsection (d) debts, debts owed to courts.

**History:** L. 1996, ch. 195, § 1; L. 1997, ch. 181, § 25; L. 1999, ch. 131, § 16; July 1.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center

301 SW 10<sup>th</sup>

Topeka, Kansas 66612-1507

(785) 296-2256

February 28, 2003

Mr. Mike Taylor  
City Hall, 13<sup>th</sup> Floor  
455 N. Main  
Wichita, Kansas 67202

Dear Mr. Taylor:

Thank you for discussing HB 2133 with me. As I stated, my concern is that the bill and the House Committee amendments do not accomplish your stated goal, which is to allow municipal courts to adopt their own procedures for post-judgment enforcement, including garnishment. You stated that it is not your intent to file any post-judgment motions in the district court. I can assure you that, with current staffing, the Sedgwick County Clerk of the District Court could not handle the volume that would result from Wichita Municipal Court post judgment filings.

My primary concern is with Section 1(h), which provides that "[a]ny collection for debt or restitution may be enforced pursuant to the code of civil procedure for limited actions." The Code of Civil Procedure for Limited Actions is found at K.S.A. 2002 Supp. 61-2901 *et seq.* K.S.A. 61-2902 provides for commencement of actions by "[f]iling a petition with the clerk of the district court."

Although you do not intend this consequence, I believe that current language of the bill could result in district court filings either in your judicial district or in any other judicial district within the state.

Rather than the language cited above, I would suggest the following or a similar provision:

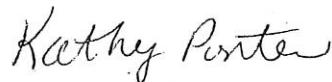
Municipal courts may adopt post-judgment procedures patterned after the Code of Civil Procedure for Limited Actions (K.S.A. 61-2801 *et seq.*).

Mr. Mike Taylor  
February 28, 2003  
Page 2

In addition, I would question the reference to the "filing fee required under K.S.A. 60-4303" in Section 1(3). Because you do not intend to use the district court for post judgment remedies, there would be no need to reference the Chapter 60 filing fee statute.

I would also advise that you request the opinion of a revisor in this matter. I would be happy to discuss this issue with you further at your convenience.

Sincerely,



Kathy Porter  
Executive Assistant to Judicial Administrator

KP:mr





State of Kansas

Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

February 18, 2003

To: Duane A. Goossen  
Director of the Budget

From: Jerry Sloan  
Budget and Fiscal Officer

Re: HB 2200

HB 2200 would allow municipalities to file judgments for fines owed for violations of municipal ordinances with the district court for purposes of collection. Presumably most of the collections would be done by garnishment.

Because municipalities are exempt from docket fees and the Judicial Branch emergency surcharge, no revenue would result from these increased filings, but the volume of work, particularly in urban areas, would increase. The exemption from charge for the filing would likely increase the municipalities' motivation to file these judgments with the district court, even those that might be collectable with modest effort.

The only statistics we have available on municipal cases are those traffic violations for which municipalities send \$.50 of their collections to the state to fund municipal judges and clerks education. During FY 2002 458,365 of these cases were terminated. 106,244 of these were dismissed and another 4,497 were diverted. Thus, the potential from these cases for which collections could be expected is 337,624, which would indicate we would have an anticipated \$168,812 in receipts. During FY 2002, \$156,783 was generated which indicates 24,058 cases did not result in collection. It is reasonable to assume these cases would be sent to the district court for purposes of collection.

Another area in which municipalities do not collect 100% of fines is parking. The number of parking violations in which the fine remains outstanding is not available, but it could be a significant number. It is reasonable to expect these cases, as well as the fines which are not easily collectible, would be turned over to the district court so that execution could issue. A conservative estimate of all cases that could be sent to the district court is 50,000.

In addition to the filing of the judgement itself, subsequent filings would presumably be made on each case, with the attendant mailings, etc., for garnishment or other collection processes.

An estimate on the amount of time spent on each case by a trial court clerk is 30 minutes. Thus, the additional work statewide is 25,000 hours or the equivalent of 12 FTE. The cost of these positions is \$340,584. It is likely most of these positions would be needed in the urban areas, although some might be required in mid-sized courts where larger cities with active municipal courts are.

JS:mr



## GOVERNMENT RELATIONS

Sedgwick County Courthouse  
525 N. Main, Suite 365  
Wichita, KS 67203  
Phone: (316) 660-9378  
Fax: (316) 383-7946  
[mpepoon@sedgwick.gov](mailto:mpepoon@sedgwick.gov)

**Michael D. Pepoon**  
Director

**TESTIMONY HB 2133**  
**SENATE JUDICIARY COMMITTEE**  
**MARCH 17, 2003**

Chairman Vratil and members of the committee, I appreciate the opportunity to present written testimony in opposition, in part, to HB 2133, as amended, on behalf of the Board of County Commissioners of Sedgwick County and Sedgwick County Sheriff, Gary Steed. HB 2133 is a bill that would grant municipalities greater authority to collect delinquent municipal court fines and enforce collection of such debts under the Code of Civil Procedure for Limited Actions. Our only concern with the bill is what effect this increase of authority will have on the workload of the Sedgwick County Sheriff's Department and the County budget.

Sedgwick County supports the City of Wichita's efforts to introduce legislation to make it easier and more cost effective to collect past due fines and court costs. Although to a much smaller degree, Sedgwick County has the same problem collecting county court fines and costs. We also have no problem with provisions in the bill that would make unpaid fines and penalties a debt to the municipality and allowing such debts to become a judgment to be enforced as judgments for payment of money in civil cases. There is also merit in allowing cities to charge back the cost of collection as an administrative fee to a defendant. Why should the taxpayers of a city bear the cost of unpaid fines and the additional cost of collecting these fines? But we oppose provisions in the bill that would create an additional cost to the Sedgwick County Sheriff's Department and Sedgwick County without adequate and appropriate provisions for funding this increase in cost.

The City of Wichita has testified in previous hearings that there are over 114,000 outstanding fines they would be attempting to collect by using collection agencies or attorneys. It is impossible to estimate at this time how many of these cases would initially end up being filed in the district court, but to give you an idea of the potential magnitude of this increased workload, in 2002 the Sheriff's Department served just over 130,000 papers for the entire year. The Sheriff's Department has lost several officers who have been called up for active duty because of the conflict in Iraq. Furthermore, due to budget cuts from the State, the Sheriff is being asked by the County to reduce his staff by ten positions by the end of 2003. It is a sheriff's duty by law to serve civil process. So any significant increase in papers to be served would require reassigning staff to handle this increased workload and could ultimately result in officers being pulled from away from the more important function of providing public safety. Thank you for your consideration of this important issue.

Senate Judiciary  
3-17-03  
Attachment 14-1

John R. Todd  
1559 Payne  
Wichita, Kansas 67203  
(316) 262-3681

March 17, 2003

Members  
Senate Judiciary Committee  
State Capitol  
Topeka, Kansas 66612

Subject: **OPPOSTION TO HOUSE BILL #2133** (Municipal Courts)

Dear Committee Members:

My name is John Todd. I am a licensed real estate broker and I live in Wichita. I am here to speak as a private citizen, and as an opponent of House Bill #2133.

In my opinion, it is wrong to extend greater debt collection authority to the city of Wichita's Municipal Court, and particularly allow them to tack on collection fees, before solving other issues involving the Court.

I have enclosed several Wichita Eagle articles that describe a class action lawsuit that was filed on behalf of nearly 7,400 indigent defendants who were incarcerated in the Sedgwick County jail from 1997 to 2000 by the Wichita Municipal Court because they were too poor to pay their fines. "Lawyers said many of those were low-income, and 86 percent were black." In May of 2002 the city of Wichita settled the suit, paying out a little over \$9 million dollars without admitting guilt. In our modern world how can a city essentially operate a "debtor's prison" and get by with it? Since this case never made it to the state Supreme Court many legal issues and questions will remain unanswered, and deserve the attention of the legislature. Since Municipal Court is not a court of record, none of the proceedings are recorded. Can a citizen receive due process of law in a Municipal Court? What happens when a city ordinance is unconstitutional because it singles out poor people? How does the "home rule" authority enjoyed by cities play into this? Are Municipal Courts more interested in collecting money than

Senate Judiciary

3-17-05  
Attachment 15-1


with dispensing justice? It appears to me that the Municipal Courts need a major overhaul before you give them greater authority.

The problem with the Wichita Municipal Court lies in the fact that there is no separation of powers between the legislative branch (the City Council), the executive branch (the City Manager who is appointed by the City Council), and the judiciary branch where the Judges are appointed by the City Council. Until recently the Municipal Court Judges worked directly "under contract" for the City Council. I understand they now work under an ordinance that subjects them to periodic job performance evaluation reviews by the City Council. That doesn't sound like a free and independent judiciary to me.

I would recommend that you defeat HB#2133 as it is written, and replace it with the language in HB#2334 that was considered in the 2001 legislative session that would provide for the direct election of Municipal Court Judges by the people. This would be a good start to what needs to be meaningful Municipal Court reform.

Thank you for allowing me to speak. I would be glad to answer questions.

Thanks,



John R. Todd



# The Wichita Eagle

www.kansas.com

TUESDAY  
MAY 7, 2002 ■ 50 CENTS

## Council to vote on inmates' settlement

BY HURST LAVIANA  
The Wichita Eagle

The Wichita City Council will be asked today to approve an out-of-court settlement in a class-action lawsuit filed on behalf of nearly 7,400 people who were jailed for not paying Wichita Municipal Court fines.

Wichita lawyer Jack Focht, who represents the city in the case, said terms of the agreement will not be released until it has been approved by the council. He said the city admits no wrongdoing in the settlement.

Gary White of Topeka, one of the lawyers representing the plaintiffs, also declined to provide details.

"There isn't anything I can talk to you about today," he said Monday. "We're basically in agreement that we're not going to discuss this with the press at this point."

In the lawsuit, lawyers for the former inmates said that 7,351 people were locked up for a total

### ARK RIVER STUDY ALSO ON AGENDA

The Wichita City Council will decide today whether to pay for a study to determine how much it would cost to make Arkansas River water drinkable. 1B

## COUNCIL

From Page 1A

of 148,537 days over a three-year period on Wichita's "time to pay" docket.

The suit contended that Municipal Court judges routinely jailed indigent defendants without holding hearings to determine their ability to pay.

The case involved people jailed between July 31, 1997, and March 9, 2000. Lawyers said many of those were low-income, and 86 percent were black.

The lawsuit was filed in July 1999 on behalf of David Reinschmidt, who argued that the city denied him his right to due process by jailing him for not paying \$500 in fines.

In June 1998, a Sedgwick County judge ordered the release of more than 70 jail inmates who owed city fines because he thought the practice was unconstitutional.

The Kansas Supreme Court later ruled that the judge did not have the authority to release the inmates but did not address the issues of whether the practice was constitutional.

The group's lawyers argued that their clients were entitled to as much as \$17.7 million in damages for the time they spent in jail.

Lawyers for the city countered that the calculations were flawed and did not offer a realistic figure for the wages lost by the defendants while sitting in jail.

Reach Hurst Laviana at 268-6499  
or hlaviana@wichitaeagle.com.

Please see **COUNCIL**, Page 3A



# The Wichita Eagle

www.kansas.com

WEDNESDAY  
MAY 8, 2002 ■ 50 CENTS

## City pays millions to settle lawsuit

■ Wichita will pay \$2.7 million in a suit alleging that enforcement of some unpaid court fines violated thousands' constitutional rights.

BY RON SYLVESTER AND JEAN HAYS  
The Wichita Eagle

The city of Wichita has agreed to pay \$2.7 million to settle a class-action suit accusing Municipal Court judges of violating the legal rights of more than 7,000 citizens.

The City Council approved a total package Tuesday worth \$6.2 million for people who were found in contempt of court, sent to jail, subject to strip searches or ordered into a city work program for not paying traffic or misdemeanor fines. The proposal includes the city's forfeiture of \$3.5 million in unpaid fines.

"Those were fines the city was unlikely to collect anyway," City Attorney Gary Rebenstorf said.

According to an official statement released Tuesday, "The city of Wichita admits no wrongdoing but is agreeing to settle the case to save taxpayers the cost of a lengthy trial."

The city paid more than \$270,000 over three years fighting the lawsuit, which charged the court with violating Wichita residents' rights to due process and equal protection under the law.

The cost of such a civil trial ranges from \$25,000 to \$50,000, according to local legal experts. The length of this trial would have been about five days, according to court documents.

"It was something that had to be done, so we did it," said Bob Martz, the only member of council who would comment. "I guess it was fair. There are always questions on both sides of the issue. Is it right? Is it fair? It was something that had to be done."

Each plaintiff will get \$115, plus a payment of between \$150 and \$500, depending on how much time they spent in jail. Most spent between 10 hours and 120 hours in the Sedgwick County Jail.

## LAWSUIT

From Page 1A

Sedgwick County District Judge Paul Clark now must sign off on the settlement in a hearing scheduled for this morning.

Members of the class certified in the suit will then be notified by mail and have the chance to comment in writing before final approval this summer.

Plaintiffs' lawyers have declined to comment until after the court's initial approval.

Usually in civil lawsuits, a plaintiff's lawyer can collect about half the proceeds. The city reports that its settlement includes \$1 million in plaintiffs' lawyer fees. That will be split between two law firms.

The city released most of the details about the suit in a news release titled, "City Settles Lawsuit Filed by Municipal Court Scofflaws."

Rebenstorf defended the use of the term "scofflaws" to describe the plaintiffs. The word means "one who treats the law with contempt."

"These are people who would not pay their fines," Rebenstorf said Tuesday.

But the lawsuit maintained that plaintiffs could not pay their fines because they were poor.

The suit claimed that Municipal Court judges found them in contempt of court without proper hearing or legal counsel and sent them to jail or forced them into work release.

The suit revolved around the city's "time-to-pay docket" from 1997 to 1999. People with outstanding traffic and misdemeanor fines were sometimes ordered to appear in court and either pay their fines or be jailed. Many ended up behind bars for offenses that normally wouldn't draw jail time, the suit says.

That's what happened to David Reinschmiedt, who became the central plaintiff in the class-action suit.

Between 1994 and 1997, Reinschmiedt collected fines of \$347 and \$202, respectively, for driving while intoxicated and petty theft. On Jan. 8, 1999, he was arrested and held on "pay before release" status.

By jailing people who were too poor to pay the fines and not giving them proper hearings before finding them in contempt, the suit charged that Wichita violated residents' 14th Amendment right under the U.S. Constitution, protecting their due legal process and equal rights under the law.

Kathy Horst was ordered to spend

a month in a work program to pay off her fines.

Horst was one of 121 people sent to work release in June 1999, court papers show. Horst received \$5 for each hour she worked and received a brochure saying she could be arrested if she didn't show up. She worked in the program for 30 days.

The suit also said the city passed at least five ordinances to support the time-to-pay docket that exempt-

ed the city from some two dozen state laws.

The Municipal Court hears about 26,000 cases a year. The court collected an average of \$16.6 million a year in fines from 1997 to 1999, according to a computer analysis case files obtained by The Eagle.

The city did away with the time-to-pay docket in 1999 and made the work program voluntary.

The city now turns over any

unpaid fines to a collection agency after 30 days.

Julie Wright Connolly, chief judge of the Municipal Court, said no one currently sitting on the city bench was involved in implementing the time-to-pay docket.

"It was just something we all kind of walked into," Connolly said. "What we did more than anything we worked for the demise of the time-to-pay docket."

15-4

# LOCAL & STATE

1B  
THURSDAY  
MAY 9, 2002

The Wichita Eagle

## Case against city nears end

■ David Reinschmiedt says a \$9 million class-action settlement with jailed Wichita Municipal Court defendants ends a long struggle to defend his constitutional rights.

BY RON SYLVESTER  
The Wichita Eagle

David Reinschmiedt said it wasn't a tough decision to let his city fines of \$500 go unpaid.

"It was either pay the fines and live on the street or pay the rent and stay off

the streets," said Reinschmiedt, the main figure in a class-action lawsuit against the city of Wichita that came a step closer to resolution Wednesday.

Reinschmiedt, who receives just over \$500 a month in disability income, received an order from Municipal Court to go to jail and stay there until he paid

the fines. He sued, along with 7,111 other people in one of only two court cases of its kind in the nation. It likely will be finalized next month.

Sedgwick County District Judge Paul Clark gave preliminary approval Wednesday to a settlement package valued at more than \$9 million.

That's \$3 million more than originally announced after the City Council passed the measure Tuesday. But those preliminary figures from the city didn't count the cost of erasing thousands of

arrest records.

The Wichita case claimed that from 1997 to '99, people were wrongfully sent to the Sedgwick County Jail on a "pay before release" basis to settle fines for traffic violations and misdemeanors. Others were put into a city program forcing them to work off their fines at the rate of \$5 an hour.

In both cases, plaintiffs said their rights to due process and equal



Rathbun represented plaintiffs in the suit.

Please see CASE, Page 8B

### CASE

From Page 1B

protection under the law had been violated.

The 7,111 class members recognized in the lawsuit will receive notification by mail in the coming weeks of damages. In the settlement, the city agrees to pay each \$115 and between \$150 and \$500 for the time they spent in jail.

Those payments alone will cost the city \$2.9 million, according to court papers filed Wednesday.

The settlement also includes provisions for the city to waive \$3.5 million in fines assessed against the plaintiffs from 1997 to 1999.

The city also agreed to wipe out the arrest records of people jailed on the so-called "time to pay" docket from 1997 to 1999. Both sides agree that if each individual had to go to court and expunge those records it would cost \$250 each — or an additional \$2.9 million for all of them.

That brings the total settlement value to \$9.3 million.

"To me, the settlement has been arrived at in a diligent manner and is fair, adequate, reasonable and just," Clark told the parties.

Notice will go out to each individual how much they can expect to receive in the May 13 mail. Each of the plaintiffs will have until mid-June to file any objec-

tions in writing, before Clark considers final approval.

Lawyers representing the city had little comment during Wednesday's hearing. But city officials had said a day earlier that they admitted no wrongdoing and that settling the case was in the best interest of the city.

But the plaintiffs' lawyers, who had stayed silent until Wednesday's settlement hearing, took exception afterward to the city's reference to their clients as "scofflaws" in a news release issued Tuesday. A "scofflaw" is a person who shows contempt for the law.

The plaintiffs' lawyers were Kiehl Rathbun of Wichita and L.J. Leatherman and Gary White of Topeka.

"My feeling is, it shows further contempt by the city for its citizens, who were arrested and held unconstitutionally," White said.

City Attorney Gary Rebenstorf had characterized those bringing the suit as unwilling to pay their fines.

Rathbun said the clients were simply too poor to pay.

"These aren't people who wouldn't pay their fines — these are people who couldn't pay their fines," he said.

For Reinschmiedt, Wednesday signaled that his three-year fight is nearing an end.

After Reinschmiedt filed the suit in 1999, the city did away with the "time to pay" docket and the "pay before release" jailing.

15-5

(Testimony of William T. Davitt before the Kansas Senate  
Judiciary Committee on Monday, March 17, 2003)

Thank you for this opportunity to visit about the  
corruption in Wichita Municipal Court and its branch called  
Enviromental Court.

And then I will offer my solution.

Several months ago, I saw a Wichita City Official  
announce on television that they were going to try to PUSH through  
the legislature a bill that will help them use a collection  
agency to collect their Municipal Court fines. Another city  
official recently stated in the Eagle that he is not going  
to retire - gonna' keep on working as long as he is having FUN.

Wichita City Officials do not deserve any help from the  
legislature. They do not come before this legislature with  
clean hands. Wichita City Officials absolutely refuse to  
follow the law and thumb their noses at the Kansas Judicial  
Council.

FIRST: The Kansas Judicial Council has prepared THE  
KANSAS MUNICIPAL COURT MANUAL so practice will be uniform in  
all Municipal Courts across Kansas.

It calls for seperate tables for counsel, chair for  
the witness, and a public address system. Wichita Enviromental  
Court does not have any of these things. The manual declares  
that the court should NOT be located in a police station or

Senate Judiciary

3-17-03

Attachment 16-1

sheriff's office or any location which would suggest the court is an arm of law enforcement. Wichita City Officials thumb their noses at the Kansas Judicial Council and locate Wichita Enviromental Court in a police squad room in a police sub station with a 3 by 5 foot gold and blue banner behind the judge reading: "Wichita Police Department." See attached page 2-5 of manual.

No telephone, no drinking water, no toilet facilities available to defendants. Two large signs on the door that opens into the hall that leads down to police locker room read: "This area for police officers only." By forcing defendants to hold their kidneys and hold their bowels, Wichita City Officials are thumbing their noses at the natural laws of Almighty God. That's the way they have their fun.

SECOND: Pages in this book show that Wichita City Officials locked **SEVEN THOUSAND CITIZENS** in jail, violating their constitutional rights to due process, costing taxpayers **NINE MILLION DOLLARS** to settle the class action. No accountability. No city employee lost his job. Y That's the way they have their FUN. CRUEL.

THIRD: The Wichita Enviromental Court refuses to follow criminal procedure as set out in the law books.

FOURTH: Several years ago, clerk of criminal division of Sedgwick County District Court told me that a large number of phone calls came in exclaiming that they had been convicted

of something minor in Municipal court like speeding - but the collection agency that the city hired to collect the fine had stated in the court file that their conviction was for something very serious like aggravated battery or armed robbery. That's the way the collection agency has its FUN. FIFTH: When you walk into the Wichita Municipal Court look around. The prosecuting attorney, the witnesses who will testify against you - police officers and city inspectors - and the judge who will hear the case are all working for the same boss, the city manager. You don't have a chance.

SOLUTION: Pass a law requiring a city the size of Wichita (that will get the League of Municipalities off of your back .....let them go right on appointing their judges if that is what they want) to let the people elect their Municipal Court judges. That will make the judges free and independant of the City Manager. Stop his FUN.

In Nazi Germany 6 million Jews were put to death because Hitler controlled the courts. When you don't have free and independant courts you don't have any way to enforce your rights.

CONCLUSION: Please kill this bill and send a message to Wichita City Officials that this legislature is not going to help them collect their fines until they stop THUMBING their noses at the law and the Kansas Judicial Council.

Respectfully submitted,

*William T. Davitt*

William T. Davitt, Attorney At Law, 1205

Bitting Avenue, Wichita, Kansas 67203 Cell phone 871 2135

16-3

arranged in such a way as to facilitate the orderly transaction of business in the court.

The courtroom should be located in a well-kept, accessible building. City hall or some other public building is a good location. If possible, it is suggested that it not be located in the police or sheriff's offices or in any location which would suggest the court is an arm of law enforcement.

As a minimum, there should be at least one table large enough to accommodate the defendant and the prosecution and defense attorneys. It is better to have separate tables for prosecution and defense. There should be a table or desk for the judge and a chair for witnesses. There should be a place for observers to be seated in the courtroom as well.

The courtroom should be large enough to accommodate the people who are due to appear on any particular day so no one will have to stand in line to get into the court. It should either be small enough that all can hear or there should be a public address system employed. The courtroom need not be elaborate, but it should be both functional and reasonably attractive. There should be a United States flag and a Kansas State flag in the courtroom if possible. While the degree of formality with which the court proceedings are conducted is a matter for the court to determine, the judge should keep in mind that both the physical appearance of the court and the procedure followed should enhance respect for the court. The traditional trappings of the court room—the elevated bench, the gavel, the flags, the robe, the bailiff and the ceremony—are designed for the psychological purpose of contributing to a well-ordered court and making sure that confidence in the administration of justice is not undermined. Many people will have contact with municipal court who will never appear in another court. Their whole outlook toward the court and the judicial system in general may depend on their observation of the municipal court.

## 2.08 OFFICES

If possible, the court clerk's office should be separate from the courtroom but close enough to facilitate the orderly transaction of business. The clerk should have ample space for file cabinets to hold court records. If possible, the prosecutor's files should not be kept with the other court records. This is because before trial the judge should not see police records and other documents which might be in the prosecutor's file. Furthermore, the court's records are public, but the prosecutor's records are not. Therefore, it is advisable for the prosecutor to have a separate office and filing system.

The judge should have an office or other work area near the courtroom which has access to state statute books and city ordinances.



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## Memorandum

**TO:** THE HONORABLE JOHN VRATIL, CHAIRMAN  
SENATE JUDICIARY COMMITTEE

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

**RE:** HB 2133

**DATE:** MARCH 17, 2003

Mr. Chairman, Members of the Committee: My name is Jeff Bottenberg and I am submitting this testimony in opposition to HB 2133 on behalf of the approximately 2,100 members of the Kansas Sheriffs' Association ("KSA").

KSA opposes HB 2133 in its present form, because the bill would allow municipalities to enforce the collection of debts pursuant to the code of civil procedure for limited actions. By allowing such method of collection, the contracting collection attorneys will be able to utilize the services of the sheriff to serve process in the original action, as well as to serve future garnishments and liens if a judgement is obtained. Although we understand the need for municipalities to collect delinquent fines, the current version of HB 2133 would impose an un-funded mandate on the county sheriff and the county taxpayers.

For instance, using the figures provided by the City of Wichita, if the approximately 100,000 outstanding fines were filed in district court, the Sedgwick County Sheriff would see an increase of over 88% of cases filed from the previous year. Such a large volume would easily overwhelm the Sheriff Department's Civil Service Division and require additional hiring or reassigning of staff to handle the increased number of papers. Such volume would also impose an un-funded mandate on the county court staff. The ultimate cost for such services would be born by the taxpayers of Sedgwick County.

While we oppose HB 2133 in current form, we would support such bill if HB 2293, which will be heard tomorrow, is enacted into law. HB 2293 would allow the sheriff to charge \$10 for every person to be served in a civil case, and would generate significant taxpayer savings. We will further explain the benefits of HB 2133 in detail tomorrow.

Senate Judiciary

3-17-03

Attachment 17-1

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

Thank you very much for the opportunity to submit testimony in opposition to HB 2133, and please do not hesitate to contact me if I may be of further assistance.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'JB' followed by a stylized name.

Jeff Bottenberg

JSB