

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Tuesday, March 2, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley (A)
Senator Edward Pugh - Left at 10:06 a.m.
Senator Greta Goodwin - Arrived at 9:42 a.m.
Senator Lana Oleen - Arrived at 9:43 a.m.
Senator Les Donovan (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Tom Drees, Kansas County & District Attorneys Association
Chief James Hill, Salina Police Department
Greg Schauner, Sedgwick County Sheriff's Department
Kyle Smith, Kansas Bureau of Investigation
Jeff Bottenberg, Legislative Counsel, Kansas Sheriffs' Association
Doug Smith, Kansas Collectors Association and the Kansas Credit Attorneys Association
Jim Clark, Kansas Bar Association

Others attending: See attached list.

Sub HB 2049 - Creating the office of district attorney in judicial districts that vote for approval

Chairman Vratil opened the hearing on **Sub HB 2049**, and announced that there were no proponents appearing to testify in support of the bill. Tom Drees, testified, on behalf of the Kansas County & District Attorneys Association (KCDAA), in opposition to **Sub HB 2049**.

Mr. Drees stated that his Association was in support of creating a state-wide district attorney system, but opposed this particular bill because it does not appropriately address the needs of a state-wide system. He explained the concerns with the proposed legislation as detailed in his written testimony. (Attachment 1) Mr. Drees said that this bill may be a good way to start the dialogue necessary to achieve such a system in Kansas. He added that a study of the Kansas Judicial System including the makeup of the 31 districts, the allocation of District Judges and court service officers within the state; the creation of a district attorney system state-wide that is adequately funded; and a discussion concerning lay magistrate judges should be looked at by the Legislature. He concluded that the KCDAA respectfully requested the Legislature to look at the issues he pointed out in his written testimony as part of a legislative study to improve the Kansas Judicial System and prepare it for the 21st century.

Following considerable Committee discussion and questions, the Chairman closed the hearing on **Sub HB 2049**.

SB 432 - Applicants to be law enforcement officers required to disclose criminal records; KLETC allowed to request any expunged records; KLETC central registry include report on terminated officers

Chairman Vratil opened the hearing on **SB 432**. Chief James Hill, Salina Police Department, testified in support of **SB 432**. He shared several cases of abuse by police officers. He said the examples illustrated the potential and real hazards faced by police administrators when hiring officers who have been employed by other law enforcement agencies, when all past information is not made available. Chief Hill explained that in Kansas, and throughout the nation, it was not uncommon for law enforcement officers accused of misconduct to resign, either before they are formally charged, or at some point in time before the disciplinary process is concluded. He added that if these officers then apply for law enforcement

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Tuesday, March 2, 2004, in Room 123-S of the Capitol.

positions with another agency, prior allegations of misconduct may not surface. (Attachment 2)

Greg Schauner, on behalf of Sheriff Gary Steed, Sedgwick County Sheriff's Department, spoke in favor of **SB 432** as it relates to termination reports. He said there is no mechanism in place to obtain reliable information regarding a person's status at termination, aside from information given voluntarily from the previous employer. (Attachment 3)

Kyle Smith, Kansas Bureau of Investigation and on behalf of the Kansas Law Enforcement Training Commission (KLETC), testified in support of **SB 432**. He stated that the proposed legislation was designed to help ensure the quality and integrity of Kansas law enforcement officers. (Attachment 4)

Following Committee discussion and questions, the Chairman closed the hearing on **SB 432**.

Final Action:

HB 2154 - Construction contracts; indemnification agreements

Chairman Vratil called for discussion and final action on **HB 2154**. He stated that most of the interested parties had agreed on amendatory language which was distributed to Committee members. Chairman Vratil explained the bill, and said it had been worked on since the last legislative session. (Attachment 5)

Senator Umbarger made a motion to adopt the proposed language, seconded by Senator O'Connor, and the motion carried.

Senator Umbarger moved to pass **HB 2154** out favorably as amended, seconded by Senator Goodwin, and the motion carried.

HB 2293 - Sheriff's fee for service of process

Chairman Vratil opened the hearing on **HB 2293**. Jeff Bottenberg, Legislative Counsel for the Kansas Sheriffs' Association (KSA), testified in support of **HB 2293**. He said the bill was introduced by the House Judiciary Committee last year at KSA's request, and gave the bill history. He stated that the KSA, the Kansas Credit Attorneys Association, and the Office of Judicial Administration have worked together to draft a mutually acceptable bill, in the form of a balloon amendment attached to Mr. Bottenberg's written testimony. He outlined the major points of the balloon amendment in his written testimony. (Attachment 6)

Doug Smith, representing the Kansas Collectors Association, Inc. and Kansas Credit Attorneys Association, submitted written testimony in favor of **HB 2293**. (Attachment 7)

Jim Clark, Kansas Bar Association, submitted written testimony in opposition to **HB 2293**. (Attachment 8)

Following brief Committee discussion, the Chairman closed the hearing on **HB 2293**.

Minutes of the January 27 and 28 meetings were presented for approval. Senator O'Connor made a motion to approve the minutes as written, seconded by Senator Umbarger, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 a.m.

The next scheduled meeting is March 3, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues, March 2, 2004

NAME	REPRESENTING
Samuel R. Hubbel	KS RR A
Bob Toffan	Ks Contractors Association
John Cassidy	KDOT
Thomas J. Drees	Kans. Co. & Dist. Attys Assoc.
John M. Settle	KCDAA
Kyle Smith	KBI
JAMES D. HILL	SALINA POLICE DEPARTMENT
Doug Smith	Ks. Credit Attorneys Association
Larry Zimmerman	KS Credit Attorneys Association
Al Meigs	HEIN LAW FIRM
Scott Heidner	KI Consulting Engineers
Wendy Matthews	KAPPA
Wendy J. Deo	KRMCA
STEVE KEARNEY	KCDAA
Whitney Damon	KS Bar Assn.
Emily C. Johnson	Ben Allen
Eric J. Bond	Joe Atkins
JEREMY S BARCLAY	KDOC
Jeff Battenberg	KSA

SENATE JUDICIARY COMMITTEE GUEST LIST

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DATE: Tues, March 2, 2004

NAME	REPRESENTING
GREG SCHAUNER	SG. CO SHERIFF
Ray Willk	KADOR - D of V
Kathy Price	Judicial Branch

OFFICERS

Gerald W. Woolwine, President
Christine Kenney, Vice-President
Thomas J. Drees, Secretary/Treasurer
Steve Keamey, Executive Director
John M. Settle, Past President



DIRECTORS

Edmond D. Brancart
Douglas Wittenman
Thomas Stanton
David Debenham

Kansas County & District Attorneys Association

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Topeka, Kansas 66604
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TESTIMONY OF THOMAS J. DREES, SECRETARY/TREASURER OF THE KANSAS COUNTY AND DISTRICT ATTORNEYS ASSOCIATION AND ELLIS COUNTY ATTORNEY IN OPPOSITION TO SUBSTITUTE FOR H.B. 2049

March 2, 2004

Senate Judiciary Committee, Sen. John Vratil, Chairman

Background Information.

I am currently the Secretary/Treasurer of the Kansas County and District Attorneys Association Board of Directors. I have served as a prosecutor in Kansas for nearly fifteen years. I am the current elected Ellis County Attorney and am completing my second term. (population 27,500). From 1997 through 2000, I was also the elected Trego County Attorney (population 3,300) holding both titles and prosecuting in both counties at the same time.

KCDAA Position.

The Kansas County and District Attorneys Association is opposed to the substitute for H.B. 2049 because this bill does not appropriately address the needs of a statewide district attorney system in Kansas. However, the Kansas County and District Attorneys Association is strongly in favor of the formation of a District Attorney system throughout the State.

Concerns with the Proposed Legislation.

I. All or nothing approach allows small populated counties to determine issue.

New Section 1 requires each county commission in the district to approve the proposal or 5% of each county in each district to petition for the vote. Then, each county in the district must vote to approve it or all counties in the district remain under the county attorney system. This issue may very well fail as small counties are inclined to vote no feeling they will lose control over their local office. The large counties who already have full-time prosecutors may tend to vote no because they do not wish to share their resources with smaller counties.

II. Fifteen hours per week in each county seat.

New Section 2(e) requires the district attorney to spend 15 hours a week at each county seat. Some of our smaller counties (less than 3,000 population - 11 counties) may not need 15 hours per week of a full-time prosecutor being in the county. The allocation of time for the district attorney and assistant district attorneys to spend in each county should be at the discretion of and direction of the District Attorney.

Senate Judiciary
3-2-04
Attachment 1

III. Criminal prosecution versus county counseling.

New Section 3(f) adopts the district attorney statutes (K.S.A. 22a-101 through 108). 22a-104(a) requires the District Attorney to perform all duties of the County Attorney. Thus, District Attorneys would have the same statutory requirements as K.S.A. 19-701 through K.S.A. 19-724. K.S.A. 19-703 requires the county attorney to prosecute all civil suits in which the county is a party or is interested. This may create a lot of conflict within each judicial district as counties often have conflict with their neighboring counties. Current Kansas Judicial Districts are set up so that neighboring counties are part of the same judicial district. If the District Attorney is required to advise all counties within the judicial district, this may create a potential for conflict among the counties.

Each county should have the option to maintain its own county counselor to deal with the civil aspect of the county. Local problems are best solved by local individuals who can advise what is in the best interest of the county, not just if it is legal. Also, the population is much more likely to vote for a district attorney system that separates criminal prosecution from county counseling. The citizenry is more apt to approve a district attorney system where the District Attorney is responsible for criminal prosecution only. Further, K.S.A. 19-716 requires the County Attorney in counties of less than 70,000 population to approve each voucher. Nine judicial districts have five or more counties which would make attending the Monday county commission meetings nearly impossible.

IV. Salary.

K.S.A. 22a-105 sets the salary for District Attorneys as the same for a District Judge. New section 4 would keep the current six District Attorneys at judge's pay and the newly created 25 District Attorney's at 80% of the District Judge's pay. District Judges across the state are paid the same because they do the same work. District Attorney's across the state would also do the same work. It is illogical to pick an arbitrary figure of 80% for 25 out of 31 judicial districts. Further, one of the current District Attorney's is Reno County (population 64,790). There are five judicial districts that would be created with a greater population than Reno County. Further, small judicial districts (less than 50,000 in population - 11 districts) face additional problems with a lack of referral resources that tends to make prosecuting more difficult. Judicial Districts with more than four counties (9 districts) have additional challenges of supervising an office that may be as far as 120 miles away - (4 hour round trip by car). The pay should be uniform.

V. Inter-local Agreements.

New Section 2(g) would require an inter-local agreement for newly created judicial districts. A board is to be created with all counties within the district having equal representation. Once again, this allows a small populated county to dictate to a large populated county as to budget and expenditures. The State may need to determine a funding mechanism to allocate the budget to be raised by the local counties much in the same manner as community corrections statewide is allocated. It may be more palatable if the State paid for the District Attorney and the combined District counties to fund all other personnel and non-salary budget items. The ongoing problem that currently exists is that small counties tend to grossly under fund their local attorney offices to the point that some offices may go unfilled in the next election cycle. The goal of a statewide district attorney system is to have a full-time professional prosecutor representing the state in criminal prosecution, as well as an adequately funded office. This would allow

the District Attorney to focus their attention on prosecution, not to creating a budgetary coalition within the counties. The proposed legislation would continue to allow the small populated counties to under fund the prosecution office in their district.

VI. Implementation.

The current bill could be voted on at the next general election (2004) but could not take effect until the county attorneys elected in 2004 complete their terms, January 2009. Why rush this bill through now

when an improved proposal could be voted on in 2006 (Governor's election), and still take effect January 2009. There simply isn't enough time this election cycle to adequately disseminate the information necessary for the voters to make an informed decision this fall. Let's take the time to do the bill right.

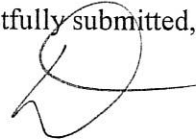
VII. Future Proposal.

The Kansas County and District Attorneys Association is excited about the possibility of a district attorney system in Kansas. H.B. 2049 may be a good way to start the dialogue necessary to achieve such a system in Kansas. However, a study of the Kansas Judicial System including the makeup of the 31 districts, the allocation of District Judges and court service officers within the State; the creation of a district attorney system statewide that is adequately funded; and a discussion concerning lay magistrate judges should be looked at by the Kansas legislature. The KCDA respectfully requests the legislature to look at these issues as part of a legislative study to improve the Kansas Judicial System and prepare it for the 21st century.

Conclusion.

For the reasons cited above, the Kansas County and District Attorneys Association respectfully requests the Senate Judiciary Committee withhold approval of substitute for H.B. 2049.

Respectfully submitted,



THOMAS J. DREES
Secretary/Treasurer
Kansas County and District
Attorneys Association

JUDICIAL DISTRICTS

1. Current District Attorney Judicial Districts

Judicial District	No. of Counties	Names (Population)	Total District Population
District # 3	1	Shawnee (169,871)	169,871
District # 7	1	Douglas (99,962)	99,962
District #10	1	Johnson (451,086)	451,086
District # 18	1	Sedgwick (452,869)	452,869
District # 27	1	Reno (64,790)	64,790
District #29	1	Wyandotte (157,882)	157,882

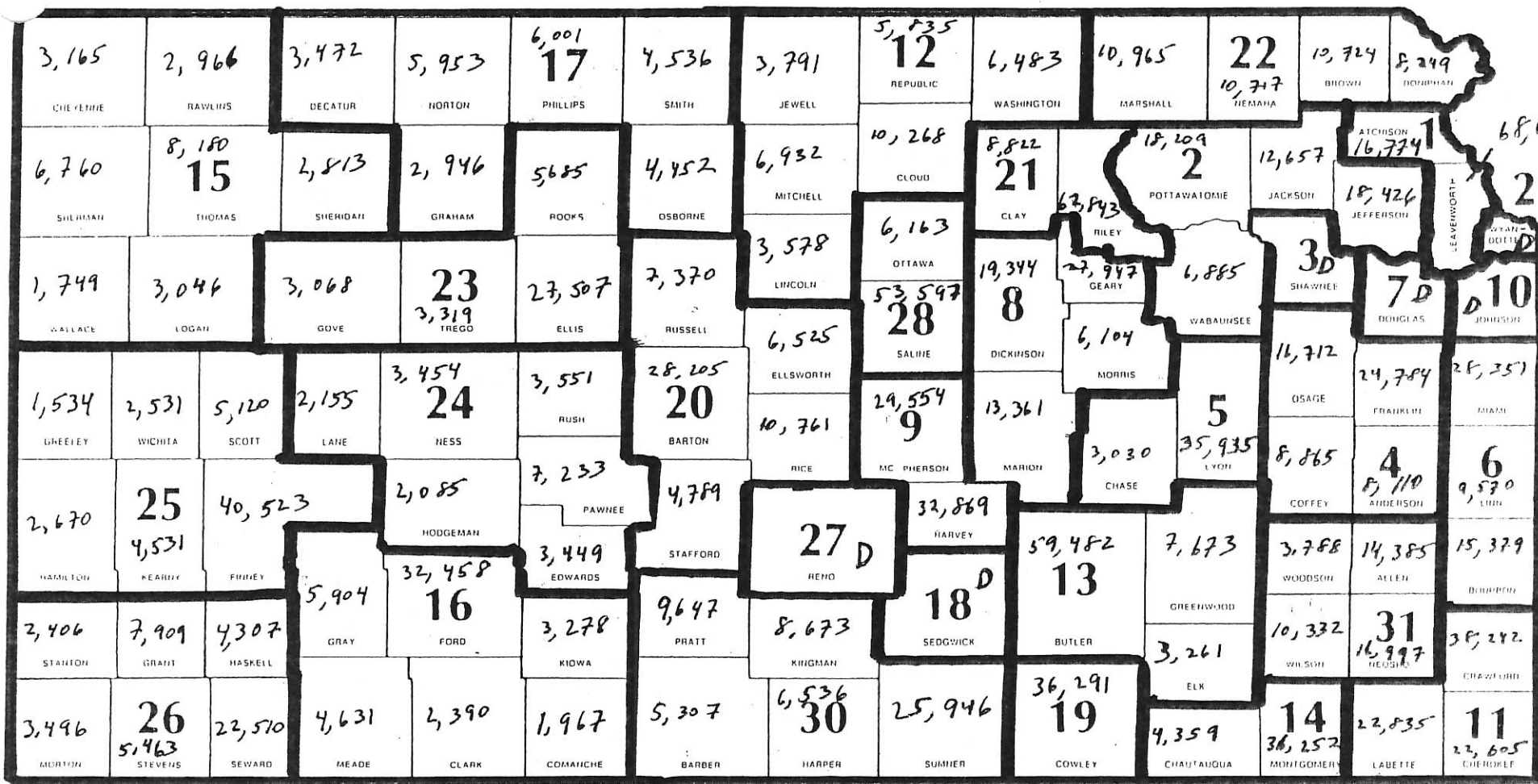
2. Current County Attorney Judicial Districts

District # 1	2	Atchison (16,774) Leavenworth (68,691)	85,465
District #2	4	Pottawatomie (18,209) Jackson (12,657) Wabaunsee (6,885) Jefferson (18,426)	56,177
District #4	4	Osage (16,712) Franklin (24,784) Coffey (8,865) Anderson (8,110)	58,471
District #5	2	Lyon (35,935) Chase (3,030)	38,965
District # 6	3	Miami (28,351) Linn (9,570) Bourbon (15,379)	53,300
District #8	4	Dickinson (19,344) Marion (13,361) Geary (27,947) Morris (6,104)	66,756
District #9	2	McPherson (29,554) Harvey (32,869)	62,423
District #11	3	Crawford (38,242) Labette (22,835) Cherokee (22,605)	83,682

Judicial District	No. of Counties	Names (Population)	Total District Population
District # 12	6	Jewell (3,791) Mitchell (6,932) Lincoln (3,578) Republic (5,835) Cloud (10,268) Washington (6,483)	36,887
District # 13	3	Butler (59,482) Greenwood (7,673) Elk (3,261)	70,416
District #14	2	Chautauqua (4,359) Montgomery (36,252)	40,611
District #15	7	Cheyenne (3,165) Rawlins (2,966) Sherman (6,760) Thomas (8,180) Sheridan (2,813) Wallace (1,749) Logan (3,046)	28,679
District # 16	6	Gray (5,904) Ford (32,458) Kiowa (3,278) Meade (4,631) Clark (2,390) Comanche (1,967)	50,628
District # 17	6	Decatur (3,472) Norton (5,953) Phillips (6,001) Smith (4,536) Graham (2,946) Osborne (4,452)	27,360
District # 19	1	Cowley (36,291)	36,291
District # 20	5	Barton (28,205) Russell (7,370) Stafford (4,789) Ellsworth (6,525) Rice (10,761)	57,650
District # 21	2	Clay (8,822) Riley (62,843)	71,665
District #22	4	Marshall (10,965) Nemaha (10,717) Brown (10,724) Doniphan (8,249)	40,655
District #23	4	Rooks (5,685) Gove (3,068) Trego (3,319) Ellis (27,507)	39,579
District #24	6	Lane (2,155) Ness (3,454) Rush (3,551) Hodgeman (2,085) Pawnee (7,233) Edwards (3,449)	21,927

Judicial District	No. of Counties	Names (Population)	Total District Population
District # 25	6	Greeley (1,534) Wichita (2,531) Scott (5,120) Hamilton (2,670) Kearney (4,531) Finney (40,523)	56,909
District # 26	6	Stanton (2,406) Grant (7,909) Haskell (4,307) Morton (3,496) Stevens (5,463) Seward (22,510)	46,091
District # 28	2	Ottawa (6,163) Saline (53,597)	59,760
District # 30	5	Pratt (9,647) Kingman (8,673) Barber (5,307) Harper (6,536) Sumner (25,946)	56,109
District #23	4	Woodson (3,788) Allen (14,385) Wilson (10,332) Neosho (16,997)	45,502

Kansas Judicial Districts (31)

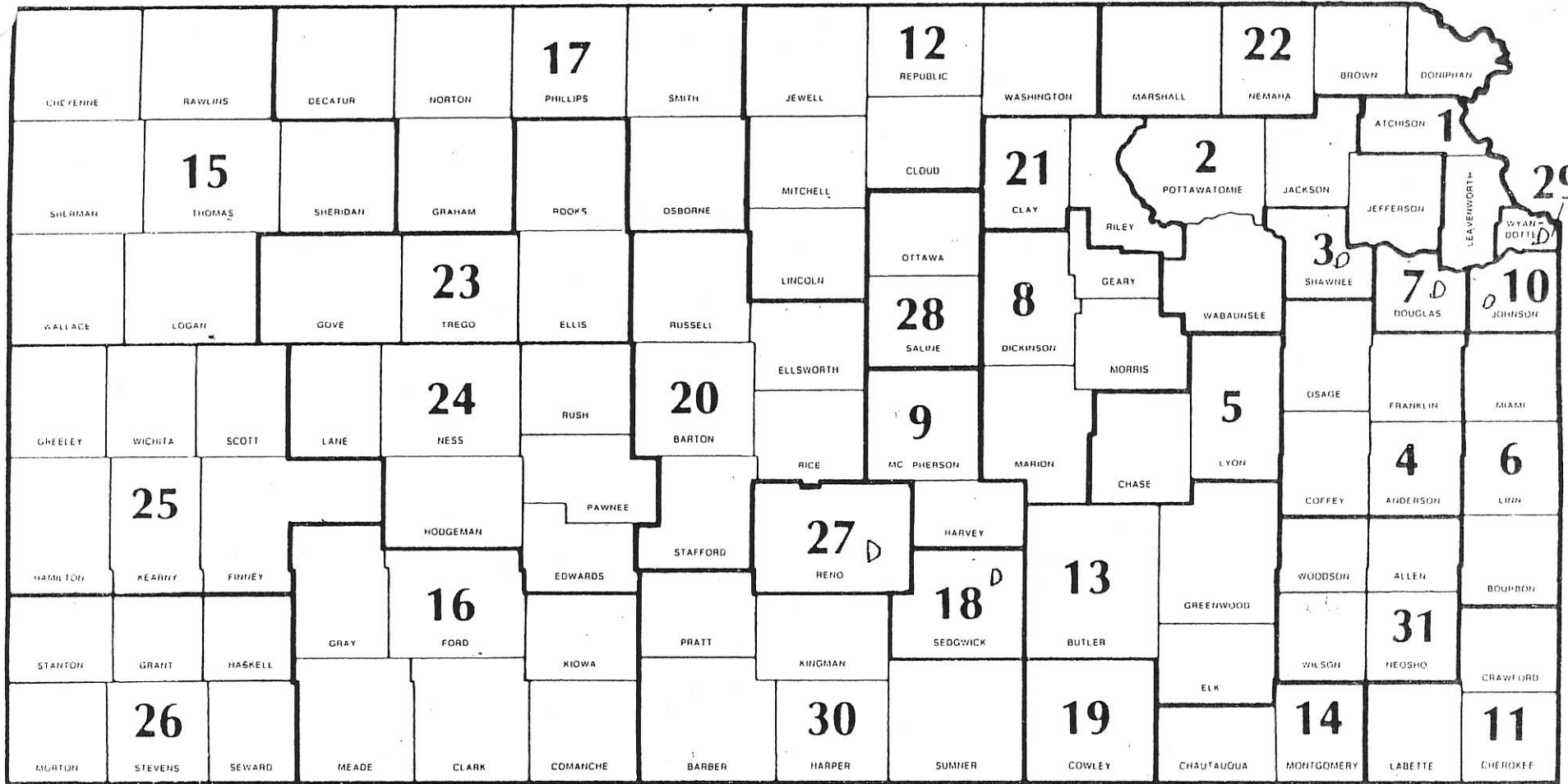


Districts Population. (# of Counties)

- 1. 85,465 (2)
- 2. 56,177 (4)
- 3. 169,871 (1)
- 4. 58,471 (4)
- 5. 38,965 (2)
- 6. 53,300 (3)
- 7. 99,962 (1)
- 8. 66,756 (4)
- 9. 62,423 (2)
- 10. 451,086 (1)
- 11. 83,682 (3)
- 12. 36,887 (6)
- 13. 70,416 (3)
- 14. 40,611 (2)
- 15. 28,679 (7)
- 16. 50,628 (6)
- 17. 27,360 (6)
- 18. 452,869 (1)
- 19. 36,291 (1)
- 20. 57,650 (5)
- 21. 71,665 (2)
- 22. 40,655 (4)
- 23. 39,579 (4)
- 24. 21,927 (6)
- 25. 56,909 (6)
- 26. 46,091 (6)
- 27. 64,790 (1)
- 28. 59,760 (2)
- 29. 157,882 (1)
- 30. 56,109 (3)
- 31. 45,502 (4)

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Kansas Judicial Districts (31)



1-8-

TABLE 1.

The 2000 U.S. Census data afford an opportunity to understand more about the 105 counties in Kansas.

County	2000		Land Area (sq. mi.) & Rank	Pop. Density (pop./sq. mi.) & Rank	County	2000		Land Area (sq. mi.) & Rank	Pop. Density (pop./sq. mi.) & Rank				
	Pop. & Rank					Pop. & Rank							
Allen	14,385	35	503	97	28.6	30	Lyon	35,935	15	851	42	42.2	16
Anderson	8,110	51	583	86	13.9	46	Marion	13,361	36	943	20	14.2	44
Atchison	16,774	32	432	102	38.8	18	Marshall	10,965	38	903	23	12.1	50
Barber	5,307	70	1134	6	4.7	84	McPherson	29,554	18	900	24	32.8	23
Barton	28,205	20	894	30	31.5	25	Meade	4,631	73	978	18	4.7	83
Bourbon	15,379	34	637	79	24.1	31	Miami	28,351	19	577	87	49.1	14
Brown	10,724	40	571	93	18.8	38	Mitchell	6,932	56	700	69	9.9	52
Butler	59,482	9	1428	1	41.7	17	Montgomery	36,252	14	645	75	56.2	12
Chase	3,030	93	776	50	3.9	87	Morris	6,104	63	697	70	8.8	55
Chautauqua	4,359	77	642	77	6.8	68	Morton	3,496	83	730	53	4.8	82
Cherokee	22,605	26	587	85	38.5	19	Nemaha	10,717	41	719	59	14.9	41
Cheyenne	3,165	90	1020	15	3.1	95	Neosho	16,997	31	572	92	29.7	28
Clark	2,390	100	975	19	2.5	102	Ness	3,454	85	1075	9	3.2	93
Clay	8,822	47	644	76	13.7	48	Norton	5,953	65	878	37	6.8	69
Cloud	10,268	43	716	65	14.3	43	Osage	16,712	33	704	68	23.7	32
Coffey	8,865	46	630	80	14.1	45	Osborne	4,452	76	893	32	5.0	79
Comanche	1,967	103	788	48	2.5	101	Ottawa	6,163	62	721	57	8.5	57
Cowley	36,291	13	1126	7	32.2	24	Pawnee	7,233	55	754	51	9.6	53
Crawford	38,242	12	593	84	64.5	10	Phillips	6,001	64	886	35	6.8	70
Decatur	3,472	84	894	30	3.9	88	Pottawatomie	18,209	30	844	44	21.6	35
Dickinson	19,344	28	848	43	22.8	33	Pratt	9,647	44	735	52	13.1	49
Doniphan	8,249	49	392	103	21.0	36	Rawlins	2,966	94	1070	13	2.8	99
Douglas	99,962	5	457	101	218.7	5	Reno	64,790	7	1254	3	51.7	13
Edwards	3,449	86	622	81	5.5	75	Republic	5,835	67	716	65	8.1	60
Elk	3,261	89	648	74	5.0	78	Rice	10,761	39	727	55	14.8	42
Ellis	27,507	22	900	24	30.6	27	Riley	62,843	8	610	82	103.0	7
Ellsworth	6,525	60	716	65	9.1	54	Rooks	5,685	68	888	33	6.4	72
Finney	40,523	11	1300	2	31.2	26	Rush	3,551	82	718	61	4.9	81
Ford	32,458	17	1097	8	29.6	29	Russell	7,370	54	885	36	8.3	58
Franklin	24,784	24	574	90	43.2	15	Saline	53,597	10	720	58	74.4	8
Geary	27,947	21	384	104	72.8	9	Scott	5,120	71	718	61	7.1	66
Gove	3,068	91	1071	12	2.9	97	Sedgwick	452,869	1	1000	16	452.9	3
Graham	2,946	95	898	26	3.3	92	Seward	22,510	27	640	78	35.2	21
Grant	7,909	52	575	89	13.8	47	Shawnee	169,871	3	550	94	308.9	4
Gray	5,904	66	869	39	6.8	67	Sheridan	2,813	96	896	28	3.1	94
Greeley	1,534	105	778	49	2.0	104	Sherman	6,760	58	1056	14	6.4	73
Greenwood	7,673	53	1140	5	6.7	71	Smith	4,536	74	895	29	5.1	77
Hamilton	2,670	97	996	17	2.7	100	Stafford	4,789	72	792	47	6.0	74
Harper	6,536	59	801	45	8.2	59	Stanton	2,406	99	680	71	3.5	90
Harvey	32,869	16	539	95	61.0	11	Stevens	5,463	69	728	54	7.5	63
Haskell	4,307	78	577	87	7.5	64	Sumner	25,946	23	1182	4	22.0	34
Hodgeman	2,085	102	860	41	2.4	103	Thomas	8,180	50	1075	9	7.6	61
Jackson	12,657	37	657	72	19.3	37	Trego	3,319	87	888	33	3.7	89
Jefferson	18,426	29	536	96	34.4	22	Wabaunsee	6,885	57	797	46	8.6	56
Jewell	3,791	79	909	22	4.2	86	Wallace	1,749	104	914	21	1.9	105
Johnson	451,086	2	477	99	945.7	2	Washington	6,483	61	898	26	7.2	65
Kearny	4,531	75	870	38	5.2	76	Wichita	2,531	98	717	63	3.5	91
Kingman	8,673	48	864	40	10.0	51	Wilson	10,332	42	574	90	18.0	39
Kiowa	3,278	88	722	56	4.5	85	Woodson	3,788	80	501	98	7.6	62
Labette	22,835	25	649	73	35.2	20	Wyandotte	157,882	4	151	105	1,045.6	1
Lane	2,155	101	717	63	3.0	96							
Leavenworth	68,691	6	463	100	148.4	6							
Lincoln	3,578	81	719	59	5.0	80							
Linn	9,570	45	599	83	16.0	40							
Logan	3,046	92	1073	11	2.8	98							
					Total		2,688,418		81,815				
					Average		25,604		779				32.9

**Testimony of Salina Police Chief James Hill,
March 2, 2004,
before the Committee on Judiciary,
In support of Senate Bill No. 432**

Dateline NBC called them "Gypsy Cops." In a program aired November 24, 1992, the news program reported its visit to a city in Florida, where two police officers were charged with the homicide of a man who had been struck with a metallic flashlight and died after being subdued with a "choke hold." Although both officers were acquitted, Dateline traced their backgrounds prior to this incident through four states and eight different law enforcement agencies. Based in part on Dateline's findings, the Florida Criminal Justice Standards and Training Commission initiated decertification proceedings against both officers.

This case represents an extreme example, but it illustrates the potential and real hazards faced by police administrators when hiring officers who have been employed by other law enforcement agencies, when all past information is not made available. In an article written for *The Police Chief* magazine, the official publication of the International Association of Chiefs of Police, a nationally prominent attorney cited the need for federal legislation to address the problem, and referred to this haphazard police hiring practice as passing the grenade.

In Kansas, and throughout our nation, it is not uncommon for law enforcement officers accused of misconduct to resign, either before they are formally charged, or at some point in time before the disciplinary process is concluded. Moreover, most municipalities and other government employers are reluctant to provide separation information, other than dates of employment, even concerning officers who were terminated or left their employment while being investigated for misconduct that may have resulted in termination. If these officers then apply for law enforcement positions with another agency, as many do, prior allegations of misconduct may not surface.

This is problematic for police administrators, who strive to hire only the most qualified individuals to occupy positions of significant authority and public trust.

Typically, if an officer misrepresents the true reasons he left a former employer, those facts surface only after he is accused of misconduct with his present employer. This is unacceptable and is certainly not in the public interest.

The termination reporting provisions, as proposed in Senate Bill No. 432, would serve to minimize this problem. It would require that the agency head report the circumstances under which an officer resigned or was terminated, and that this information shall be made available to any law enforcement agency to which the terminated officer later applies for a police position. It also would also serve to immunize from potential liability the administrator and/or agency who discloses information pertaining to the termination.

Police officers are official representatives of government who are required and trusted to work within the law, and law enforcement is a calling that demands that only persons of excellent character occupy the position of public trust. As immediate past president of the Kansas Association of Chiefs of Police, I felt the frustration voiced by a number of colleagues who discovered too late, after the misconduct, that they hired officers that would have been ineligible for employment if all background information had been available to them. The provisions contained in Senate Bill No. 432 will help these administrators, and all Kansas law enforcement administrators, make informed hiring decisions.

Public safety is the most fundamental of government responsibilities, and government at every level owes this mandatory reporting and disclosure to its citizens.

Thank you.

Senate Judiciary

3-2-04

Attachment 2



SEDGWICK COUNTY, KANSAS

SHERIFF'S OFFICE
GARY STEED
Sheriff

141 WEST ELM * WICHITA, KANSAS 67203 * TELEPHONE: (316) 383-7264 * FAX: (316) 383-7758

TESTIMONY Before the Senate Judiciary Committee March 2, 2004

Honorable Chairman Vratil and members of the committee:

Thank you for the opportunity to testify today in support of Senate Bill 432 – specifically Section 2 as it relates to termination reports. I am the Sheriff of Sedgwick County, and this year marks my thirtieth anniversary as a law enforcement officer. Additionally, I chair the Kansas Sheriff's Association legislative committee and am a member of the Kansas Law Enforcement Training Commission. I am appearing on behalf of Sedgwick County and the Sedgwick County Sheriff's Office to offer support for this legislation.

As part of our hiring process, prospective employees are subjected to a thorough background investigation. Through this investigation, we examine many aspects of each applicant; to include contacting former employers. By contacting these employers, we try to gather information as to the applicant's abilities, attitude, reliability, work ethic, and other factors as they apply in the work environment. Unfortunately, it is becoming increasingly difficult to get this type of information. Citing fears of potential lawsuits or other legal actions, many employers will only confirm dates of employment and release no other information.

Law enforcement agencies, like other employers, are not immune from hiring the occasional person who is sub-par or who displays less than desirable characteristics. If such a person is dismissed or resigns from employment at one agency and applies at another, there is currently no mechanism in place to obtain reliable information regarding the person's status at termination, aside from information given voluntarily from the previous employer. As stated earlier, this

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Attachment 3

information is often hard to obtain. If the proposed legislation is enacted, the termination reports will provide valuable insight into those applicants who have been dismissed (sometimes repeatedly) for poor performance or misconduct, and who travel from agency to agency for periods of employment.

Once again, I support this bill, and believe that it will provide one more tool at our disposal to ensure that law enforcement agencies throughout the state maintain the highest caliber of employees with which to serve the public.

Gary E. Steed
Sedgwick County Sheriff



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Testimony
Kansas Law Enforcement Training Commission
SB 432 Enhancing Law Enforcement Integrity

Kyle G. Smith
Before the Senate Judiciary Committee
March 2, 2004

Chairman Vratil and Members of the Committee,

On behalf of the Kansas Law Enforcement Training Commission (KLETC), I appear in support of SB 432. This legislation is designed to help ensure the quality and integrity of Kansas law enforcement officers.

KLETC is the agency in charge of licensing law enforcement officers in Kansas. The commission is made up of law enforcement professionals from various backgrounds across the state and they strive to ensure Kansas law enforcement officers meet the highest standards of professionalism. SB 432 will assist in that effort.

Section one amends the Kansas expungement statute, K.S.A. 21-4619, to KLETC to access expunged records for purposes of issuing commissions and disciplinary action. Kansas law prohibits a convicted felon from serving as a law enforcement officer, even if the conviction is expunged. It only makes sense that the Commission be able to check those qualifications. Currently the Commission is dependant on its investigator having access to such records, but his authority to then share that with the commission isn't perfectly clear. Section one should help in identifying unqualified applicants for a law enforcement commission.

Section two is adapted from Texas law and amends part of the law enforcement training act to require documentation of why employment as a law enforcement officer is terminated. The purpose of this legislation would be to enable other law enforcement agencies that are considering hiring that officer to be accurately apprised of the circumstances as to why the officer left. Unfortunately, some agencies are reluctant to divulge problems with an employee that led to the firing or termination, normally out of fear of litigation. By requiring the information be available to potential new employers, this legislation will keep 'bad cops' from drifting from one agency to another without their previous bad acts being discovered. Agencies contemplating hiring such an officer will have access to this essential information and public safety will be better served.

Thank you for your time and consideration. I'd be happy to answer any questions.

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3-2-04
Attachment 4

AMENDED HOUSE BILL NO. 2154

AN ACT concerning construction contracts; relating to indemnification provisions.

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

Section 1. (a) When used in this section:

(1) "Construction contract" means an agreement for the design, construction, alteration, renovation, repair or maintenance of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line, appurtenance, or other improvement to real property, including any moving, demolition or excavation; provided, however, that no deed, lease, easement, license or other instrument granting an interest in or the right to possess property shall be deemed to be a construction contract even if the instrument includes the right to design, construct, alter, renovate, repair or maintain improvements on such real property.

(2) "Damages means personal injury damages, property damages or economic loss.

(3) "Indemnification provision" means a covenant, promise, agreement or understanding in connection with a construction contract that requires the promisor to hold harmless, indemnify or defend the promisee or others against liability for damages.

(b) An indemnification provision in a construction contract or other agreement (including, but not limited to, a right of entry) entered into in connection with a construction contract, which requires the indemnitor to indemnify the indemnitee for the indemnitee's negligence is against public policy and is void and unenforceable.

(c) This act shall not be construed to affect or impair the contractual obligation of a contractor or owner to provide railroad protective insurance or general liability insurance.

(d) This section applies only to indemnification provisions entered into after the act takes effect.

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

Senate Judiciary

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Attachment 5

Polsinelli | Shalton | Welte

A Professional Corporation

Memorandum

TO: THE HONORABLE JOHN VRATIL, CHAIRMAN
SENATE JUDICIARY COMMITTEE

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

RE: HB 2293

DATE: MARCH 2, 2004

Mr. Chairman, Members of the Committee: my name is Jeff Bottenberg and I appear today on behalf of the Kansas Sheriffs' Association ("KSA") which is comprised of approximately 2,100 members, both law enforcement and civilian personnel, that work in county sheriff offices throughout the state. We appreciate the opportunity to testify in support of HB 2293, which was introduced by the House Judiciary Committee last year at our request.

HB 2293 would amend current law to allow the sheriff to charge a fee for the service of papers related to civil actions. By way of background, in 1974 the Legislature amended K.S.A. § 60-2001 to prohibit the sheriff from charging the district courts for service of process. Such legislation also prohibited service of process fees from being taxed as court costs.

HB 2293 repeals such prohibition on the charging of service of process, and also allows the courts to tax as costs the fees for in-state service, which may be recovered by the prevailing

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Attachment 6

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

party. We believe that such steps are prudent, fiscally sound measures that will allow the counties to recoup some of the costs of serving process.

We are pleased to state that the KSA, the Kansas Credit Attorneys Association and the Office of Judicial Administration have been able to work together to draft a mutually acceptable bill, which is in the form of a balloon amendment in front of you. The major points of the balloon amendment are as follows:

1. The service of process fee is reduced to \$5.
2. The fee for serving more than one defendant at the same location is still \$5.
3. If an alias service needs to be issued, the original fee will suffice.
4. The persons requesting service shall provide proper payment to the clerk who shall forward the service to the sheriff.
5. The prevailing party may recover the expenses of a private process server.
6. The bill clarifies that no fee shall be charged for service of a PFA or PSA.
7. The sheriff may not charge the state for serving tax warrants.
8. All service of process fees will be deposited in the county general fund. Such amendment is consistent with the recommendation on this bill by the Special Committee on Judiciary.

HB 2293 will help ease the burden of the escalating costs of serving process. I have attached to my testimony the written testimony of Sedgwick County Sheriff Gary Steed, who outlines the precise reasons that this bill is needed. I think that it is worth noting that last year the Sedgwick County Sheriff's Office had to leave positions open which were assigned to the service of fugitive arrest warrants and court security and patrol work in order to fill vacancies to serve process.

Thank you very much for the opportunity to testify in support of HB 2293, and please do not hesitate to contact me if I may be of assistance with this or any other matter.



SEDGWICK COUNTY, KANSAS

SHERIFF'S OFFICE

Gary E. Steed
Sheriff

141 WEST ELM * WICHITA, KANSAS 67203 * TELEPHONE: (316) 383-7264 * FAX: (316) 660-3248

TESTIMONY Before the Senate Judiciary Committee March 2, 2004

Honorable Chairman Vratil and members of the committee, I appreciate the opportunity to testify on the need to have Sheriff's Departments throughout Kansas able to charge fees for the service of Civil Process. I am the Sheriff of Sedgwick County and have been in law enforcement for the past twenty-five years. I am appearing on behalf of Sedgwick County and the Sedgwick County Sheriff's Department in support of HB 2293.

The proposed change to the existing law has become necessary for the following reasons:

1. Existing revenues generated by the filing of new cases does not cover the cost of the service provided at the taxpayer's expense.

Based on 2002 figures it is estimated that the portion of the docket fees collected at the time new court documents are filed pays less than half the overall cost for the service of court documents within the 18th Judicial District. A total of 37,408 new actions were filed. \$340,682 from these filings along with \$40,148 received for out of state papers was deposited in the Sedgwick County General Fund. During that year over 130,000 court documents and orders were served at a cost of over \$890,000. Based on these figures the taxpayers of Sedgwick County paid service of process costs of just over \$509,000, which is over 70% of the total cost.

2. Fees charged for the service of Civil Process can be passed on to the judgment debtors without limiting access to the legal system.

Under existing procedures any costs incurred in the course of obtaining a civil judgment can be passed on to the losing party as part of the judgment.

3. If the fee of \$5.00 per paper proves to be excessive then alternatives exist.

Private process servers charge an average fee ranging from \$25 to \$35 per paper. Any attorney may serve process under existing law.

4. Kansas is the only state in the region that does not charge for each paper served by local Sheriff's.

Sheriff's departments in the surrounding states charge \$15.00 and up for each paper served by their deputies.

5. The proposed legislation will encourage stakeholders in the legal system to use services provided at public expense in a more effective manner.

The charging of a nominal fee for each paper served will result in persons filing papers for service to insure that service information such as addresses are correct, duplicate papers for the same court appearance are not filed and other practices that tend to overload the system are discouraged.

6. The revenue generated by this legislation will allow resources currently allocated for the service of civil process to be redirected toward the law enforcement mission.

During 2003 it was necessary to leave positions open which were assigned to the service of fugitive arrest warrants, court security and patrol work, in order fill vacancies to serve civil process. This shift in staffing was due in part to the rapid increase in papers filed for service and also the budget impact of the 9-11-01 attacks on state and local governments. The revenue received for serving these papers will allow Sedgwick County to fund new positions and fill existing positions by making the service of civil process nearly self sufficient.

Session of 2003

HOUSE BILL No. 2293

By Committee on Judiciary

10. AN ACT concerning fees for services by sheriffs; amending K.S.A. 28-
11. 110, **and** 28-170 ~~and 28-172a~~ and K.S.A. 2002 Supp. 60-2001 and 60-
12. 2003 and repealing the existing sections

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

15. Section 1. K.S.A. 28-110 is hereby amended to read as follows: 28-
16. 110. The sheriffs of each county in the state shall charge for the services
17. required by law to be performed by them the following fees:

18.	Serving or executing and returning any writ, process, order or notice, or _____	[Delete]
19.	tax warrant , including a copy of the same, whenever a copy is required	
20.	by law, except as otherwise provided, for the first person \$1.00 \$10.00 _____	[\$5.00]
21.	For each additional person50 10.00 _____	[Delete]
22.	Serving warrants and making return thereof	1.00
23.	Making arrests as law enforcement officer	1.00
24.	Serving order of attachment, arrest or replevin and returning same	2.00
25.	Making levy under execution	2.00
26.	Appraisal of property	2.00
27.	Return of "no property found"	2.00
28.	Return of "not found" each person 1.00 _____	[Delete]
29.	Approving and returning undertaking bond or recognizance	1.00
30.	Advertising property for sale	2.00
31.	Offering for sale or selling property.....	2.50
32.	Taking inventory of personal property, each day	10.00
33.	Sheriff's deed and acknowledgment, to be paid out of the proceeds of the	
34.	sale of real estate conveyed.....	5.00
35.	Issuing certificates of sale and recording same	2.00
36.	Summoning talesman, each50
37.	The sheriff shall charge, for witnesses whose attendance is procured un-	
38.	der attachment and who are unable to pay their fare, actual expenses and	
39.	mileage in an amount set in accordance with K.S.A. 75-3203a, and amend-	
40.	ments thereto, and rules and regulations adopted pursuant thereto. The _____	[Delete]
41.	sheriff shall charge, for miles actually and necessarily traveled each way	
42.	in serving or endeavoring to serve any writ, process, order, venire, notice	
43.	or tax warrant, mileage in an amount set in accordance with K.S.A. 75-	

5-1

6-9

1. ~~3203a, and amendments thereto, and rules and regulations adopted pur-~~
2. ~~suant thereto. No mileage shall be charged when the distance does not~~
3. ~~exceed one mile. All fees provided by this section, except those expressly~~
4. ~~given to the sheriff, are to be paid into the county general fund. If the~~ [, process, order or notice
5. writ contains the names of more than one person, no mileage shall be
6. taxed or allowed and no person shall be required to pay any mileage unless [fee
7. at the time of making returns the sheriff makes and files with the returns,
8. or as a part thereof, a statement showing the distance actually and nec- [Delete
9. ~~essarily traveled in making service on the first person named by the sheriff~~
10. ~~and the distance actually and necessarily traveled from the place of mak-~~ [Delete
11. ~~ing the first service to the place of making service on the second person~~
12. named by the sheriff and so on for each person served. If more than one
13. process is served in the same case or on the same person, not requiring
14. more than one journey from the office, the sheriff shall charge mileage [a fee
15. for one service only. If more than one process for the same person, or in
16. the same case, is issued and is in the hands of the sheriff at one time, it
17. shall be the duty of the sheriff to make service of the processes, if possible,
18. on the one trip. Except as provided by K.S.A. 19-269, and amendments [Where service is not affected or timely return made pursuant
19. thereto, the sheriff shall be reimbursed for the necessary transportation to K.S.A. 60-312 or K.S.A. 61-3005, no fee shall be taxed or
20. and board expenses incurred while serving under requisition made by the allowed on subsequent alias, writ, process, order or notice as
21. governor. required to effect service and the return of service.
22. Sec. 2. K.S.A. 28-170 is hereby amended to read as follows: 28-170.
23. The docket fee prescribed by K.S.A. 60-2001 and amendments thereto
24. ~~and the service of process fee~~ shall be the only costs assessed for services [and the fees for service of process,
25. of the clerk of the district court and the sheriff in any case filed under
26. chapter 60 of the Kansas Statutes Annotated. For services in other matters [or chapter 61
27. in which no other fee is prescribed by statute, the following fees shall be [, except that no fee shall be charged for an action filed under
28. charged and collected by the clerk. Only one fee shall be charged for each K.S.A. 60-3101 et seq., and under K.S.A. 60-31a01 et seq.,
29. bond, lien or judgment: and amendments thereto.
30. For filing, entering and releasing a bond, mechanic's lien, notice of
31. intent to perform, personal property tax judgment or any judgment
32. on which execution process cannot be issued..... \$5
33. For filing, entering and releasing a judgment of a court of this state
34. on which execution or other process can be issued 15
35. For a certificate, or for copying or certifying any paper or writ, such
36. fee as shall be prescribed by the district court.
37. The fees for entries, certificates and other papers required in
38. naturalization cases shall be those prescribed by the federal government
39. and, when collected, shall be disbursed as prescribed by the federal gov-
40. ernment. The clerk of the court shall remit to the state treasurer at least
41. monthly all moneys received from fees prescribed by subsection (a) or
42. or received for any services performed which may be required by law.
43. The state treasurer shall deposit the remittance in the state treasury and

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1. credit the entire amount to the state general fund.
 2. (c) In actions pursuant to the Kansas code for care of children (K.S.A.
 3. 38-1501 *et seq.* and amendments thereto), the Kansas juvenile justice
 4. code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treat-
 5. ment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the
 6. act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments
 7. thereto) or the care and treatment act for mentally ill persons (K.S.A.
 8. 2000 Supp. 59-2945 *et seq.* and amendments thereto), the clerk shall
 9. charge an additional fee of \$1 which shall be deducted from the docket
 10. fee and credited to the prosecuting attorneys' training fund as provided
 11. in K.S.A. 28-170a and amendments thereto.

12. (d) In actions pursuant to the Kansas code for care of children (K.S.A.
 13. 38-1501 *et seq.* and amendments thereto), the Kansas juvenile justice
 14. code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treat-
 15. ment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the
 16. act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments
 17. thereto) or the care and treatment act for mentally ill persons (K.S.A.
 18. 2000 Supp. 59-2945 *et seq.* and amendments thereto), the clerk shall
 19. charge an additional fee of \$.50 which shall be deducted from the docket
 20. fee and credited to the indigents' defense services fund as provided in
 21. K.S.A. 28-172b and amendments thereto.

22. ~~Sec. 3. K.S.A. 28-172a is hereby amended to read as follows: 28-~~
 23. ~~172a. (a) Except as otherwise provided in this section, whenever the pros-~~
 24. ~~ecuting witness or defendant is adjudged to pay the costs in a criminal~~
 25. ~~proceeding in any county, a docket fee shall be taxed as follows:~~

26. On and after July 1, 1998:

27. Murder or manslaughter.....	\$164.50
28. Other felony	146.00
29. Misdemeanor.....	111.00
30. Forfeited recognizance	62.50
31. Appeals from other courts	62.50

32. (b) (1) ~~Except as provided in paragraph (2), in actions involving the~~
 33. ~~violation of any of the laws of this state regulating traffic on highways~~
 34. ~~(including those listed in subsection (c) of K.S.A. 8-2118, and amend-~~
 35. ~~ments thereto), a cigarette or tobacco infraction, any act declared a crime~~
 36. ~~pursuant to the statutes contained in chapter 32 of Kansas Statutes An-~~
 37. ~~notated and amendments thereto or any act declared a crime pursuant~~
 38. ~~to the statutes contained in article 8 of chapter 82a of the Kansas Statutes~~
 39. ~~Annotated, and amendments thereto, whenever the prosecuting witness~~
 40. ~~or defendant is adjudged to pay the costs in the action, a docket fee of~~
 41. ~~\$54 shall be charged. When an action is disposed of under subsections~~
 42. ~~and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and~~
 43. ~~amendments thereto, whether by mail or in person, the docket fee to be~~

1. ~~paid as court costs shall be \$54.~~

2. ~~(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$54 shall be charged. When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$54.~~

10. ~~(e) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.~~

14. ~~(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.~~

31. ~~(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be \$3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and \$2 of any bond so forfeited shall be regarded as court costs.~~

42. Sec. 4. 3. K.S.A. 2002 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) *Docket fee*. Except as otherwise provided by law, no

8-9

6-9

1. case shall be filed or docketed in the district court, whether original or
2. appealed, without payment of a docket fee in the amount of \$105 to the
3. clerk of the district court.

4. (b) *Poverty affidavit in lieu of docket fee.* (1) Effect. In any case where
5. a plaintiff by reason of poverty is unable to pay a docket fee, and an
6. affidavit so stating is filed, no fee will be required. An inmate in the
7. custody of the secretary of corrections may file a poverty affidavit only if
8. the inmate attaches a statement disclosing the average account balance,
9. or the total deposits, whichever is less, in the inmate's trust fund for each
10. month in (A) the six-month period preceding the filing of the action; or
11. (B) the current period of incarceration, whichever is shorter. Such state-
12. ment shall be certified by the secretary. On receipt of the affidavit and
13. attached statement, the court shall determine the initial fee to be assessed
14. for filing the action and in no event shall the court require an inmate to
15. pay less than \$3. The secretary of corrections is hereby authorized to
16. disburse money from the inmate's account to pay the costs as determined
17. by the court. If the inmate has a zero balance in such inmate's account,
18. the secretary shall debit such account in the amount of \$3 per filing fee
19. as established by the court until money is credited to the account to pay
20. such docket fee. Any initial filing fees assessed pursuant to this subsection
21. shall not prevent the court, pursuant to subsection (d), from taxing that
22. individual for the remainder of the amount required under subsection (a)
23. or this subsection.

24. (2) *Form of affidavit.* The affidavit provided for in this subsection
25. shall be in the following form and attached to the petition:
26. State of Kansas, _____ County.

27. In the district court of the county: I do solemnly swear that the claim set forth in the
28. petition herein is just, and I do further swear that, by reason of my poverty, I am unable to
29. pay a docket fee.

30. (c) *Disposition of docket fee.* ~~The docket fee and the service~~
31. ~~of process fee shall be the only costs assessed in each case for services~~
32. ~~of the clerk of the district court and the sheriff. For every person to be~~
33. ~~served by the sheriff after the initial filing of the case, the clerk of~~
34. ~~the district court shall collect \$10 in accordance with K.S.A. 28-~~
35. ~~110, and amendments thereto. On a monthly basis, of the service~~
36. ~~of process fee: (1) Five dollars shall be submitted to the county~~
37. ~~treasurer for deposit in the county treasury and credited to a sher-~~
38. ~~iff's service of process fee fund. Expenditures from such fund shall~~
39. ~~be approved by the sheriff of such county and used for the ex-~~
40. ~~penditures incurred in service of process. The board of county com-~~
41. ~~missioners shall provide adequate funding to the sheriff's depart-~~
42. ~~ment and such funds shall not be used to supplant or reduce the~~
43. ~~amount of moneys received by the sheriff's department from the~~

[fees. The docket fees and the fees for service of process

[the persons requesting service of process shall provide proper payment to the clerk and the clerk of the district court shall forward the service of process fee to the sheriff in accordance with K.S.A. 28-110, and amendments thereto. The service of process fee if paid by check or money order shall be made payable to the sheriff.

[Such service of process fee shall be submitted by the sheriff at least monthly to the county treasurer for deposit in the county treasury and credited to the county general fund.

6-10

1. ~~county general fund; and~~
 2. ~~(2) Five dollars shall be remitted to the state treasurer in ac-~~
 3. ~~cordance with the provisions of K.S.A. 75-4215, and amendments~~
 4. ~~thereto. Upon receipt of each such remittance, the state treasurer~~
 5. ~~shall deposit the entire amount in the state treasury to the credit~~
 6. ~~of the district court administration of service of process fee fund~~
 7. ~~which is hereby created. Expenditures from such fund shall be~~
 8. ~~made upon warrants of the director of accounts and reports issued~~
 9. ~~pursuant to vouchers approved by the chief judge of the judicial~~
 10. ~~district where such county is located and used for the expenses~~
 11. ~~incurred in administering the collection of the service of process~~
 12. ~~fee. The board of county commissioners shall provide adequate~~
 13. ~~funding for the clerk of the district court's office and such funds~~
 14. ~~shall not be used to supplant or reduce the amount of moneys~~
 15. ~~received by the clerk of the district court's office from the county~~
 16. ~~general fund. The docket fee shall be disbursed in accordance with~~
 17. ~~K.S.A. 20-362 and amendments thereto.~~

18. (d) *Additional court costs.* Other fees and expenses to be assessed as
 19. additional court costs shall be approved by the court, unless specifically
 20. fixed by statute. Other fees shall include, but not be limited to, witness
 21. fees, appraiser fees, fees for service of process ~~outside the state~~, fees for
 22. depositions, alternative dispute resolution fees, transcripts and publica-
 23. tion, attorney fees, court costs from other courts and any other fees and
 24. expenses required by statute. All additional court costs shall be taxed and
 25. billed against the parties as directed by the court. ~~No sheriff in this state~~
 26. ~~shall charge any district court in this state a fee or mileage for serving any~~
 27. ~~paper or process.~~

28. Sec. 5. 4. K.S.A. 2002 Supp. 60-2003 is hereby amended to read as
 29. follows: 60-2003. Items which may be included in the taxation of costs
 30. are:

31. (1) The docket fee as provided for by K.S.A. 60-2001, and amend-
 32. ments thereto.

33. (2) The mileage, fees, and other allowable expenses of the sheriff ~~or~~ _____ [,
 34. other officer ~~incurred in the service of process outside of this state or in~~ _____ [or private process server
 35. effecting any of the provisional remedies authorized by this chapter.

36. (3) Publisher's charges in effecting any publication of notices author-
 37. ized by law.

38. (4) Statutory fees and mileage of witnesses attending court or the
 39. taking of depositions used as evidence.

40. (5) Reporter's or stenographic charges for the taking of depositions
 41. used as evidence.

42. (6) The postage fees incurred pursuant to K.S.A. 60-303 or subsec-
 43. tion (e) of K.S.A. 60-308, and amendments thereto.

6-11

1. (7) Alternative dispute resolution fees shall include fees, expenses
 2. and other costs arising from mediation, conciliation, arbitration, settle-
 3. ment conferences or other alternative dispute resolution means, whether
 4. or not such means were successful in resolving the matter or matters in
 5. dispute, which the court shall have ordered or to which the parties have
 6. agreed.

7. ~~(8) The mileage and fees of a private process server incurred in the~~ [Delete
 8. ~~service of process or in effecting any of the provisional remedies author-~~
 9. ~~ized by this chapter.~~

10. ~~(9) Such other charges as are by statute authorized to be taxed as~~ [(8)
 11. costs.

12. Sec. ~~6~~ 5. K.S.A. 28-110; **and** 28-170 ~~and 28-172a~~ and K.S.A. 2002
 13. Supp. 60-2001 and 60-2003 are hereby repealed.

14. Sec. ~~7~~ 6. This act shall take effect and be in force from and after its
 15. publication in the statute book.

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REMARKS CONCERNING HOUSE BILL NO. 2293

SENATE JUDICIARY COMMITTEE

MARCH 2, 2004

Thank you for the opportunity to present remarks on House Bill No. 2293 on behalf of the Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

As you may recall, our groups strongly opposed House Bill No. 2293 during the 2003 Legislative session. We are here today to offer our support for the compromise language submitted to the Committee.

We met several times with the Kansas Sheriffs Association and outlined our concerns. We were able to jointly work out issues and have reached agreement on language you see before you today.

We understand that Sheriff's departments are suffering due to the lack of revenue and county commissions are having a difficult time meeting the budget needs of county government. We believe that this language strikes a fair balance. We hope it raises additional money to meet the needs of the Sheriffs, without creating an impediment to those seeking to enforce their rights through the judicial system.

We hope that you find this cooperate effort acceptable and urge you to favorably consider the suggested amendments.

Thank you again for your time this morning.

Douglas E. Smith
For Kansas Collectors Association, Inc.
And Kansas Credit Attorneys Association

Senate Judiciary
3-2-04
Attachment 7



**KANSAS BAR
ASSOCIATION**

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Testimony in Opposition to
HOUSE BILL NO. 2293

Jim Clark, Legislative Counsel, Kansas Bar Association
March 2, 2004

The Kansas Bar Association opposes HB 2293, which imposes an increased fee for service of process. The opposition is based on two policy positions held by the Kansas Bar Association:

1. The Kansas Bar Association supports a uniform and equal docket fee; and
2. The Kansas Bar Association supports modification of the distribution of docket fees to include only court-related funds.

By essentially raising the docket fee for service of process, as well as for each additional person served, the effect of the bill is to render the docket fee both non-uniform and unequal. By allowing the service of process funds to go to the county sheriff, the bill no longer funds court-related funds. Instead, the bill uses a docket fee to subsidize county funding of the sheriff's department.

For both stated reasons, the Kansas Bar Association opposes HB 2293, and urges the Committee to take no action on the bill.

Senate Judiciary
3-2-04
Attachment 8