

Approved: 11-23-05 Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 P.M. on February 1, 2005 in Room 241-N of the Capitol.

All members were present except:

Kathe Decker- excused
Mike Peterson- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Becky Krahl, Kansas Legislative Research
Reagan Cussimano, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Randall Hodgkinson
Tom Drees, Kansas County & District Attorneys Association
Mark Welch
Elizabeth Gillespie
Commissioner Denise Everhart, JJA
David Price
Representative Peggy Mast
Michael Williams, Emporia Police Department

Others attending:

See attached list.

Randall Hodgkinson, appeared before the committee to request a bill introduction that would add to the definition of "legal holiday" found in KSA 60-206. (Attachment 1)

Representative Owens made a motion that this request should be introduced as a committee bill. Representative Godeau seconded the motion. The motion carried.

Tom Drees, Ellis County Attorney, appeared before the committee to request bill introductions: (Attachment 2)

1. KSA 21-4625, clarification of aggravating circumstances.
2. KSA 60-472, clarify procedures for admission of photographs.
3. KSA 45-221, certain records not required to be open, separation of open and closed information
4. KSA 22-3211, language to clarify the unavailability of a witness.

Representative Owens made a motion that these requests should be introduced as a committee bills. Representative Crow seconded the motion. The motion carried.

Chairman Loyd asked for a committee bill be introduced that KSA 21-3520 include community corrections officers and court service officers.

Representative Loyd made a motion that this request should be introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

HB 2062 – Creating the office of district attorney in judicial districts that vote for approval.

Chairman Loyd opened the hearing on HB 2062.

Representative Jim Ward appeared before the committee in support of the bill. (Attachment 3) The bill allows multi county Judicial Districts to convert from the County Attorney system to the District Attorney method of prosecution upon a successful vote of the people within the Judicial District and provides for the electorate of a Judicial District to determine which system best represents them as a method of criminal prosecution.

Tom Dress, Ellis County Attorney, appeared before the committee neutral on the bill, suggesting it does not appropriately address the needs of a statewide District Attorney system in Kansas. (Attachment 4) Mr. Dress requested the bill be referred for an interim study and/or Judicial Council study to gather the necessary information.

Chairman Loyd closed the hearing on HB 2062.

HB 2081 – Requiring county jail officers to complete basic course of training.

Chairman Loyd opened the hearing on HB 2081.

Mark Welch, appeared before the committee in favor of the bill. (Attachment 5) Kansas had at one time jail standards and then did away with them, part of the jail standards addressed jail officer training. This bill addresses the need for properly trained staff and sets minimum standards of training for jail officers working in Kansas Jails. Language was offered to grandfather in those jail employees hired prior to the effective date of this act.

Elizabeth Gillespie, provided information as neutral. (Attachment 6) The Kansas Jail Association officially supports the intent of the bill but has questions regarding its implementation for smaller jails. For the successful implementation of local detention training standards as established in this bill, the State should provide the resources necessary for the smaller jails to comply.

Randy Rogers, Kansas Sheriff's Association, appeared before the committee in opposition of the bill. (Attachment 7) The Association is not necessarily opposed to standards being set for corrections officer, however the bill would not create uniform standards across the state. This bill puts the responsibility back on the Sheriff's without providing any funding or support.

Chairman Loyd closed the hearing on HB 2081.

HB 2034 – Judicial Review and Civil Enforcement of Agency Actions.

Chairman Loyd opened the hearing on HB 2034.

Jerry Ann Donaldson, Legislative Research, provided the committee a briefing on the Kansas Administrative Procedure Act. (Attachment 8) Administrative procedure guiding agencies is generally simpler and less formal than judicial procedure, and allows individuals to resolve their disputes in a less cumbersome and less expensive way than by a trial in court. Administrative actions are adjudicatory in nature.

In 1997, the office of Administrative Hearings (OHA) within the Department of Administration was established for the purpose of conducting administrative hearings for the Department of Social and Rehabilitation Services. The 1997 Interim Special Committee on Judiciary, recommended after a study of the centralized office concept, that the administrative hearings officers of all state agencies covered by KAPA be transferred to OAH in the Department of Administration.

Legislative Post Audit (March 2001) entitled "Centralized Administrative Hearings: Reviewing the Advantages and Disadvantages" was conducted. As a result of the Post Audit, action was taken by the OAH. SB 141 was enacted in 2004 which extended the responsibility for conducting administrative hearings for nearly all state agencies over a five year phase in schedule beginning July 1, 2005 and concluding July 1, 2009. On that date the OAH will be abolished and a separate free standing agency the Office of Administrative Hearings will be established.

Denise Everhart, Commissioner, Juvenile Justice Authority, testified in favor of the bill. (Attachment 9) The bill proposes to modify KSA 77-603 to exempt the Juvenile Justice Authority (JJA) from the act for judicial review and civil enforcement of agency actions (KJEA), KSA 77-601 et seq., but only as to those actions concerning the management, discipline or release of persons in the custody of the commissioner.

David Price, appeared as a proponent on the bill and stated that a separate committee is needed on Judicial Review and civil enforcement agency actions. (Attachment 10). The judicial system and civil enforcement agency actions are needed to repair the damage created by a broken system.

Chairman Loyd closed the hearing on HB 2034.

HB 2087 – Identify theft, defrauding for any benefit, not just economic.

Chairman Loyd opened the hearing on HB 2087.

Representative Peggy Mast appeared as a proponent on the bill. Identity theft is becoming a growing problem in the nation. (Attachment 11) Amended language was offered. (Attachment 12)

Kyle Smith, on behalf of the Kansas Peace Officers Association, provided written testimony in support of the bill. (Attachment 13)

Kevin Graham, Assistant Attorney General provided written testimony in support of the bill. (Attachment 14)

Michael Williams, Deputy Chief of Police, Emporia, appeared before the committee in support of the bill. (Attachment 15) Requested to change the definition to be amended to read “any” benefit. This change would enable law enforcement to have adequate means to deal with persons possessing false identification.

Chairman Loyd closed the hearing on HB 2087.

Information was provided by Juvenile Justice Authority in response to a request from the committee regarding juvenile offenders and methamphetamine. (Attachment 16)

The meeting was adjourned. The next meeting is February 2, 2005.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 2-1-05

NAME	REPRESENTING
JEREMY S BARCLAY	DOC
RANDAL L HODGKINSON	N/A
ELIZABETH GILLESPIE	SHAWNEE COUNTY / KJA
CORNE A. THOMPSON	KDHE
Donna Calabrese	KDHE
Mark Gleeson	Judicial Branch
Joshua Welch	Garden City
Geremy Welch	Garden City
Jonathan Welch	Garden City
Jacqueline Welch	SELF
Mark Welch	SELF
MICHAEL F. WILLIAMS	EMPORIA POLICE DEPT.
BRYAN A CASKEY	SECRETARY OF STATE
Randy L. Rogers	Kansas Sheriffs Association
Jeff Bottborg	Kansas Sheriffs' Ass'n
David Martin Rice	General Security Services Corp.
Kathy Olsen	Ks Bankers Assn.
Denise Ewenhart	JJA
Wade H. Bowie, Jr	JJA
BILL MISKELL	JJA
Brenda Harman	KSC
Julia Butler	KSC
Bryan Bengam	Re Intern - Rep. Davis

700 Jackson, Suite 900
Topeka, KS 66603

January 18, 2005

Honorable Ward Loyd
Chairman, Corrections and Juvenile Justice Committee
Kansas House of Representatives
Room 427-S
300 S.W. 10th
Topeka, KS 66612

RE: Proposed amendment in re time computation

Dear Chairman Loyd:

I am an appellate public defender working here in Topeka, although this letter and proposed amendment is forwarded on my own behalf and these views do not necessarily reflect the position, if any, of the Board of Indigent Defense Services in this matter.

I am specifically writing to bring your attention to a problem we occasionally encounter in our appellate practice, although it is not unique to appellate practice or a criminal practice. Under the current version of K.S.A. 60-206, when computing legal deadlines involving a period of time less than 11 days, and for purposes of filing deadlines “intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.” In 2003, in *City of Lawrence v. McCormick*, 275 Kan. 509, 66 P.3d 854 (2003) the Kansas Supreme Court construed this statute to not include “observed” holidays, but only actual holidays. For example, this last year, Christmas and New Years fell on Saturday. Pursuant to the order of the Supreme Court, the Court observed Christmas and New Years on December 24 and December 31, respectively. Similarly, the Court observes Veteran’s Day and the day after Thanksgiving as court holidays. Although one would think that the days that the state courts are closed would be legal holidays for purposes of computing legal deadlines, *McCormick* holds to the contrary. This introduces some confusion to attempting to calculate deadlines.

This could simply be rectified by adding to the definition of “legal holiday” found in K.S.A. 60-206. The current provision states that “‘Legal holiday’ includes any day designated by the congress of the United States, or by the legislature of this state.” I would propose that you add to this definition “or observed as a holiday by order of the supreme court.” This would address the problem and make the law regarding computing of time consistent with what most

practitioners assumed until *McCormick*.

I do not think this amendment would any substantial fiscal impact, but would just clarify that court holidays are holidays for purposes of legal deadlines.

Sincerely,

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Douglas Witteman, Vice President
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February 1, 2005

Chairman Loyd and Members of the House Corrections & Juvenile Justice Committee

The Kansas County & District Attorneys Association would request the following bill introductions:

- 1) Amendments to 21-4625, aggravating circumstances. Clarification of aggravating circumstances involving heinous, atrocious or cruel behavior.
- 2) Amendments to 60-472, photographs of property wrongfully taken; use in prosecution, procedure; return of property to owner. Clarify procedures for admission of photographs. This request is being made following the courts decision in *State v. Mayes* (summary of opinion is attached).
- 3) Amendments to 45-221, Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. The amendment would add language to include "confidential personal information" of individuals, contained in court records to the statute.
- 4) Amendments to 22-3211, Depositions. Language to clarify the unavailability of a witness.

Our suggested amendments are attached. Thank you for this opportunity to appear before your committee and we would ask for introduction of these bills.

Sincerely,

Tom Drees, President
Ellis County Attorney

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

- (1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.
- (2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.
- (3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.
- (4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.
- (5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.
- (6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.
- (7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.
- (8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.
- (9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.
- (10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:
 - (A) Is in the public interest;
 - (B) would not interfere with any prospective law enforcement action;
 - (C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

....

(48) Confidential personal information of individuals, contained in court records, who are victims of crimes charged in a criminal action brought by the State of Kansas. As used herein, "confidential personal information" includes but is not limited to an address, telephone number, driver's license or state identification card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number.

21-4625. Same; aggravating circumstances. Aggravating circumstances shall be limited to the following:

(a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.

(b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.

(c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(d) The defendant authorized or employed another person to commit the crime.

(e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(f) The defendant committed the crime in an especially heinous, atrocious or cruel manner. ***A finding that the victim was aware of such victim's fate or had conscious pain and suffering as a result of the physical trauma that resulted in the victim's death is not necessary to find that the manner in which the defendant killed the victim was especially heinous, atrocious or cruel. In making a determination that the crime was committed in an especially heinous, atrocious or cruel manner, any of the following conduct by the defendant may be considered sufficient:***

(1) Prior stalking of or criminal threats to the victim;

(2) preparation or planning, indicating an intention that the killing was meant to be especially heinous, atrocious or cruel;

(3) infliction of mental anguish or physical abuse before the victim's death;

(4) torture of the victim;

(5) continuous acts of violence begun before or continuing after the killing;

(6) desecration of the victim's body in a manner indicating a particular depravity of mind, either during or following the killing; or

(7) any other conduct in the opinion of the court that is especially heinous, atrocious or cruel.

(g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.

(h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

60-472. Photographs of property wrongfully taken; use in prosecution, procedure; return of property to owner. In any prosecution for a crime involving the wrongful taking of property, photographs of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property had been introduced as evidence. ~~Such photographs shall bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property taken, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer and the photograph identified by the signature of the photographer. Upon the filing of such photograph and writing with the law enforcement authority or court holding such property as evidence, such property may be returned to the owner from whom the property was taken.~~

**CRIMINAL
STATE V. MAYES
SEDGWICK DISTRICT COURT - REVERSED AND REMANDED
NO. 89,990 - MOTION TO PUBLISH GRANTED SEPTEMBER 9, 2004**

For full text of this opinion, go to
<<http://www.kscourts.org/kscases/ctapp/2004/20040109/89990.htm>>.

FACTS: Mayes convicted of felony theft for stealing merchandise from J.C. Penny's. On appeal he claimed trial judge unfairly prompted and assisted the State during examination of witnesses. He also claimed that jury should have been instruction on lesser charge of attempted theft, that photographs of stolen items should not have been admitted, and that dispute over value of stolen property required instruction on misdemeanor theft.

ISSUES: (1) Judicial misconduct, (2) Jury instruction on attempted theft, and (3) admission of photographs

HELD: No judicial misconduct. Trial judge assisted the prosecutor several times during trial, but did not display any partiality or bias that would have influenced the jury.

Under facts, no error in not instructing jury on lesser-included offense of attempted theft. Mayes had unauthorized control over the stolen clothing by the time he left the store, and intended to permanently deprive J.C. Penny's of this property.

Photographs should not have been admitted. No compliance with K.S.A. 60-472, and a foundation for their admission was not otherwise established. *State v. Shoemaker*, 228 Kan. 572 (1980), is factually distinguished. Error was not harmless because photographs were necessary to determine specific items stolen, which was necessary to compute total value to support felony theft. However, evidence was sufficient to sustain a conviction for misdemeanor theft. No need to further address whether instruction on misdemeanor theft was required. Case is reversed and remanded for re-sentencing for misdemeanor theft.

BILL NUMBER: SB 58 ENROLLED
BILL TEXT

PASSED THE SENATE AUGUST 25, 2004
PASSED THE ASSEMBLY AUGUST 12, 2004
AMENDED IN ASSEMBLY JUNE 29, 2004
AMENDED IN ASSEMBLY JUNE 16, 2004
AMENDED IN SENATE JANUARY 15, 2004
AMENDED IN SENATE JANUARY 5, 2004
AMENDED IN SENATE APRIL 30, 2003
AMENDED IN SENATE APRIL 22, 2003
AMENDED IN SENATE MARCH 20, 2003

INTRODUCED BY Senators Johnson, Alpert, Battin, Florez, Knight, McPherson, and Speier

(Coauthors: Assembly Members Bates, Benoit, Campbell, Cogdill, Daucher, Dutton, La Malfa, Longville, Maddox, Mountjoy, Nakanishi, Pacheco, Plescia, Spitzer, Strickland, and Wyland)

JANUARY 15, 2003

An act to add Section 964 to the Penal Code, relating to police reports, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 58, Johnson. Police reports: confidentiality.

Existing law provides Californians with a right of privacy. Existing law regulates the dissemination of personal information held by government agencies. Existing law exempts courts from the provisions of the California Public Records Act and permits a court to seal records and redact information from them.

This bill would require the district attorney and the courts in each county to establish a mutually agreeable procedure, as specified, to protect confidential personal information, as defined, regarding any witness or victim contained in a police report, arrest report, or investigative report that is submitted to a court by a prosecutor in support of a criminal complaint, indictment, or information, or by a prosecutor or law enforcement officer in support of a search warrant or an arrest warrant.

By requiring local prosecutors to establish a procedure with the courts for protecting the confidentiality of personal information in reports submitted to court, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as

22-3211. Depositions.

- (1) If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the witness' testimony is material and that it is necessary to take the witness' deposition in order to prevent a failure of justice, the court at any time after the filing of a complaint or indictment may upon motion of a defendant and notice to the parties order that the witness' testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.
- (2) If a witness is committed for failure to give bond to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may order that the witness' deposition be taken. After the deposition has been subscribed the court may discharge the witness.
- (3) The prosecuting attorney may apply to the court for an order authorizing the prosecuting attorney to take the deposition of any witness for any of the reasons and subject to the limitations stated in subsection (1). Upon the filing of such application, the court shall set the matter for hearing and shall order the defendant to be present at such hearing. If, upon hearing, the court determines that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the witness' testimony is material and that it is necessary to prevent a failure of justice, the court may authorize the prosecuting attorney to take the deposition of the witness.
- (4) If the crime charged is a felony, the prosecuting attorney may apply to the court for an order authorizing the prosecuting attorney to take the deposition of any essential witness. Upon the filing of such application, the court shall set the matter for hearing and shall order the defendant to be present at such hearing. If, upon hearing, the court determines that the witness is an essential witness, the court shall authorize the prosecuting attorney to take the deposition of the witness in the county where the complaint or indictment has been filed. Upon application, the court may order that a deposition taken pursuant to this subsection be videotaped.
- (5) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.
- (6) A deposition shall be taken in the manner provided in civil actions. The court, upon request of the defendant, may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.
- (7) Whenever the court authorizes the taking of a deposition, other than a deposition upon written interrogatories, the court shall make a concurrent order requiring that the defendant be present when the deposition is taken. If it appears that the presence of the defendant may be coercive to the witness whose deposition is to be taken, the court shall order that the deposition be taken before a judge.
- (8) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that:

~~(a) The witness is dead;~~

~~(b) the witness is out of the state and the witness' appearance cannot be obtained, unless it appears that the absence of the witness was procured by the party offering the deposition;~~

~~(c) the witness is unable to attend or testify because of sickness or infirmity; or~~

~~(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena or other process.~~

(a) unavailable as a witness, including situations where the witness is (1) exempted on the ground of privilege from testifying concerning the matter to which his or her statement is relevant, or (2) disqualified from testifying to the matter, or (3) unable to be present or to testify at the hearing because of death or then existing physical or mental illness, or (4) absent beyond the jurisdiction of the court to compel appearance by its process, or (5) absent from the place of hearing because the proponent of his or her statement does not know and with diligence has been unable to ascertain his or her whereabouts. But a witness is not unavailable if the judge finds that his or her exemption, disqualification, inability or absence is due to procurement or wrongdoing of the proponent of his or her statement for the purpose of preventing the witness from attending or testifying, or to the culpable neglect of such party.

Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering party to offer all of it which is relevant to the part offered, and any party may offer other parts.

(9) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(10) As used in this section, "essential witness" means a prospective witness in the prosecution of a felony who is an eyewitness to the felony or without whose testimony a conviction could not be obtained because the testimony would establish an element of the felony that cannot be proven in any other manner.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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TOPEKA

ASSISTANT MINORITY LEADER

COMMITTEE ASSIGNMENTS

CORRECTIONS AND JUVENILE JUSTICE
JUDICIARY
LEGISLATIVE BUDGET
BASE REALIGNMENT CLOSURE
RECODIFICATION, REHAB. AND RESTORATION
PROJECT COMMITTEE
JOINT COMMITTEE ON CORRECTIONS AND
JUVENILE JUSTICE OVERSIGHT

TESTIMONY OF REPRESENTATIVE JIM WARD
ON BEHALF OF HB 2062 BEFORE
HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

I am a former Assistant District Attorney for Sedgwick County. I was privileged to handle every type of case which can arise in such an office from traffic to murder, juvenile to consumer protection. I am here today to request your support for HB 2062.

HB 2062 allows multi county Judicial Districts to convert from the County Attorney system to the District Attorney method of prosecution upon a successful vote of the people within the Judicial district.

Currently, Kansas law provides that in those Judicial Districts that are wholly comprised of one county, there shall be a District Attorney with assistants to prosecute criminal cases. Those counties are the five largest counties in Kansas of Sedgwick, Johnson, Wyandotte, Shawnee, and Douglas. In multi county Judicial Districts each county has a county attorney for prosecution of criminal cases.

This bill provides for the electorate of a Judicial District to determine which system best represents them as a method of criminal prosecution.

HB 2062 provides two methods for placing this proposition on the ballot. One is through resolutions from Boards of County Commissions within a Judicial District. The other method provides for a public petition of not less than 5% of the qualified electors of the judicial district. Said 5% must have at least 2% from each county within the judicial district.

Upon a successful vote which is defined as a majority of the electors within a Judicial District, the District Attorney system will be adopted for that Judicial District. The DA will then be elected at the next general election. The various county attorneys within the Judicial District shall remain in office until that election and the swearing in of the newly elected District Attorney.

There are provisions which provide for cost sharing between the counties, appoint of assistants and office space.

I request this committee report House Bill 2062 to the House favorably. I stand for questions.

OFFICERS

Thomas J. Drees, President
Douglas Witteman, Vice President
Edmond D. Brancart, Secretary/Treasurer
Steve Kearney, Executive Director
Gerald W. Woolwine, Past President



DIRECTORS

Thomas Stanton
David Debenham
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3

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TESTIMONY OF THOMAS J. DREES, PRESIDENT OF THE KANSAS COUNTY AND DISTRICT ATTORNEYS ASSOCIATION AND ELLIS COUNTY ATTORNEY, IN OPPOSITION TO H.B. 2062; FAVORING AN INTERIM STUDY AND/OR JUDICIAL COUNCIL STUDY TO DETERMINE THE NEED FOR A DISTRICT ATTORNEY SYSTEM

January 27, 2005

House Committee on Corrections and Juvenile Justice, Rep. Ward Loyd, Chairman

Background Information.

I am currently the President of the Kansas County and District Attorneys Association Board of Directors. I have served as a prosecutor in Kansas for fifteen years. I am the current elected Ellis County Attorney (population 27,500) and just began my third term of office. 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 H.B. 2062 in its current form 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 studying the need for, and creating a proposed District Attorney system, if necessary. An interim study and/or Judicial Council study would be a good mechanism to gather the necessary information.

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 vote may very well fail as small counties are inclined to vote NO believing they will lose control over their local office; and 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. Sixty hours per month in each county seat.

New Section 2(e) requires the district attorney's office to spend 60 hours a month at each county seat. Some of our smaller counties (less than 3,000 population - 11 counties) may not need 60 hours per month 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.

III. Criminal prosecution versus county counseling.

New Section 2(f) adopts the district attorney statutes (K.S.A. 22a-101 through 107). K.S.A. 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 of H.B. 2062 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 funded 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. 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, instead of creating a budgetary coalition within the counties. The proposed legislation creates an extensive board and another layer of government to determine funding of the District Attorney's Office, as the only control the proposed board can exert is budgetary. 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 (2006) 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), if necessary, and still take effect January 2009.

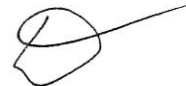
VII. Future Proposal.

H.B. 2062 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 KCDAA respectfully requests the legislature look at these issues as part of a legislative study to improve the Kansas Judicial System and prepare it for the 21st century. Let's use the summer/fall of 2005 to gather the appropriate information and put together the proposed legislation for 2006 (ready for vote in November 2006, if necessary) that will adequately address the needs of a statewide District Attorney system.

Conclusion.

For the reasons cited above, the Kansas County and District Attorneys Association respectfully requests the House Committee on Corrections and Juvenile Justice withhold approval of H.B. 2062 at this time, and explore the creation of a District Attorney system as part of a comprehensive review of the entire Kansas Judicial system.

Respectfully submitted,



THOMAS J. DREES
President, Kansas County and District
Attorneys Association & Ellis County
Attorney

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

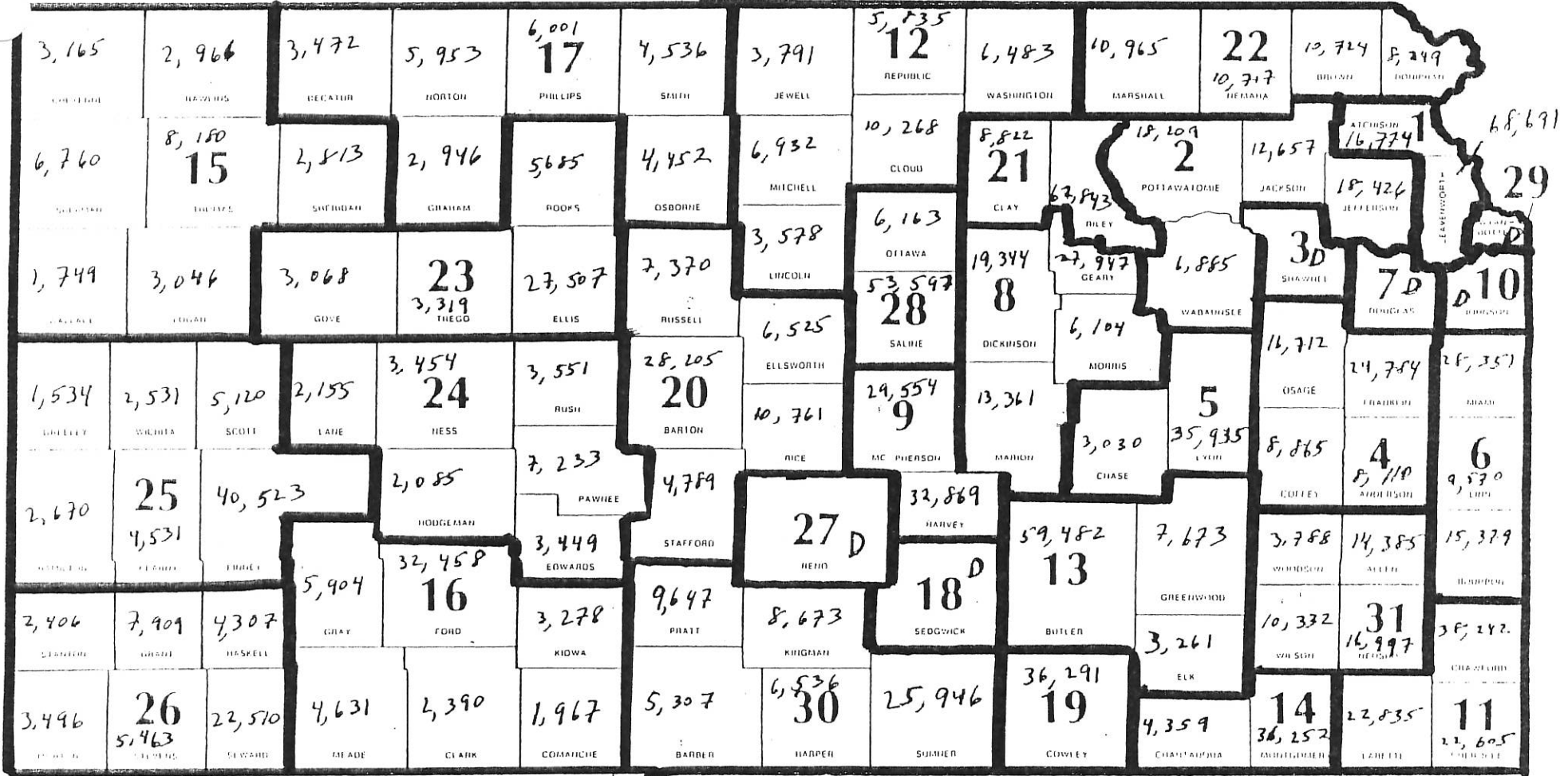
District # 1	2	Atchison (16,774) Leavenworth (68,691)	85,465
District #2	4	Pottawatomie (18,209) Jackson (12,657) Wabaunsee (6,885) Jefferson (18,426)	56,177
District #4	4	Osage (16,712) Franklin (24,784) Coffey (8,865) Anderson (8,110)	58,471
District #5	2	Lyon (35,935) Chase (3,030)	38,965
District # 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)

17



Districts Populations. (# of Counties) = Current Dist. Atty. Office.

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

TABLE 1.

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

County	2000 Pop. & Rank		Land Area (sq. mi.) & Rank		Pop. Density (pop./sq. mi.) & Rank		County	2000 Pop. & Rank		Land Area (sq. mi.) & Rank		Pop. Density (pop./sq. mi.) & 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	Total	2,688,418		81,815			
Lincoln	3,578	81	719	59	5.0	80	Average	25,604		779		32.9	
Linn	9,570	45	599	83	16.0	40							
Logan	3,046	92	1073	11	2.8	98							

HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

TESTIMONY IN SUPORT OF HOUSE BILL No. 2081

February 1, 2005

Mr. Chairman and Members of the Committee:

My name is Mark Welch and I come before you today as a concerned citizen, Jail Administrator, certified jail manager, board member of the American Jail Association, member of the American Correctional Association and on behalf of the good people who work in Kansas Jails. I am a proponent of House Bill No. 2081.

Kansas is a unique state, which at one time had jail standards and then did away with jail standards. Today, Kansas is one of a few remaining states that do not have jail standards.

Part of those jail standards addressed jail officer training. The purpose of House Bill No. 2081 is in part to address the need for properly trained staff and to set minimum standards of training for jail officers working in Kansas Jails.

Working in a jail is not what the movies and television portrays it to be and it's certainly not just locking people up anymore. Today's jail officers deal with all of what their counterparts on the streets deal with and then some. Besides dealing with the whole gamut of offender types, jail officers deal with mental health issues and medical issues on a 24-hour a day, seven days a week schedule.

How can jail officers deal with these issues and other mandates in a consistent manner? Through training. And what guides this training? At the present time nothing, there are no Kansas jail training standards in place. Training, if being done, is basically left up to each individual jail operated in the state.

The passage of this bill will address the basic training needs in a consistent manner by setting a minimum training standard for all jail officers throughout the State of Kansas.

Thank you, for allowing me to testify on behalf of House Bill No. 2081 and at this time I would be happy to try and answer any questions the committee may have.

HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

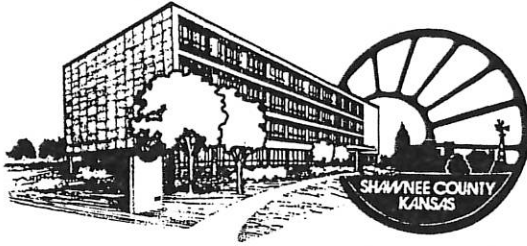
PROPOSED AMENDMENT TO HOUSE BILL No. 2081

Amendment;

Re-number current Sec. 2. to Sec. 3.

Add new Section 2 as follows;

Sec. 2. Section 1. (a) Shall not apply to persons employed as a jail officer prior to the effective date of this act.



Shawnee County
Department of Corrections

501 S.E. 8th Street - Topeka, Kansas 66607

Elizabeth Gillespie, Director

Adult Detention Facility - 501 SE 8th - Topeka, Kansas 66607 - (785) 291-5000 - FAX (785) 291-4924
Youth Detention Facility - 401 SE 8th - Topeka, Kansas 66607 - (785) 233-6459 - FAX (785) 291-4963

DATE: February 1, 2005

TO: Honorable Members
House Committee on Corrections and Juvenile Justice

FROM: Elizabeth Gillespie, Director
Shawnee County Department of Corrections

SUBJECT: **Testimony Regarding House Bill No. 2081**

I am testifying today to provide information to you regarding House Bill 2081. While I applaud the Committee's efforts to set standards for the training of local detention staff in Kansas, I believe that some changes are needed to make the bill more applicable to all jails. I have also spoken with the President of the Kansas Jail Association, Dwayne Wright, who asked me to convey the KJA's position on this bill. The KJA officially supports the intent of the bill but has questions regarding its implementation for smaller jails.

There are few, if any, sheriffs and jail administrators in Kansas that disagree with the importance of training for staff. Most of us recognize the need to establish standards for such training. The 60 hours of initial or basic training, 16 hours of annual in-service training, and the courses specified in this bill are reasonable requirements for some of the jails in Kansas.

The largest jails and some of the medium-sized jails in Kansas already provide training for their officers. For instance, the Shawnee County Department of Corrections has a staff development unit that consists of four full-time training officers and several field-training officers. Upon hire, each new corrections officer immediately receives 40 hours of focused orientation training from training staff. This week is followed by a three-week period of field training. Within the officer's first year of employment, the officer participates in an additional 120 hours of training in the Basic Corrections Officer Academy. Following the initial year of employment, each corrections officer receives at least 40 hours of training annually.

My concern is that there are 100 jails in Kansas. Based upon my membership in the Kansas Jail (KJA) and my knowledge of jails in Kansas, only about 10% to 15% of these

jails will be able to readily meet the requirements of this bill. The small jails simply do not have the resources necessary to provide this training to their staff. The Kansas Sheriffs' Association continues to provide training in Salina for local detention staff a few times each year, but it is difficult for the small jails to free new staff from their duties long enough to attend the training. This training also comes with the cost of travel to and lodging within Salina. There are some corrections officer correspondence courses available on the national level, but these too can be costly and are not always applicable to smaller operations. Most recently, the KJA has been formed and has begun providing regional training sessions for jail staff. The Association's goal is to bring jail administrators together to learn from each other and to establish basic standards for jails. KJA cannot, however, at this time provide all of the training needed. The KJA as an organization wants to support the development of training standards for jails but also recognizes the difficulties that smaller jails face in providing such training to their staff.

In conclusion, I believe that for successful implementation of local detention training standards as established in this bill, the State should provide the resources necessary for the smaller jails to comply. Also, if the Committee decides to move the bill forward, I am requesting that the Committee consider lengthening the 6-month requirement for completion of initial instruction to 12 months. In Shawnee County, we have found that 12 months is more logistically friendly than 6 months. The juggling of work and training schedules can be extremely difficult, and the 12-month period has worked successfully for us. The KJA also supports this change. I also request that the term "jail administrator" be used interchangeably with the term "sheriff." There are at least two jails in Kansas that are not administered by the county's sheriff. For example, Shawnee and Jackson counties each place jail management responsibilities within the county's Department of Corrections.

I appreciate your time today and will be happy to answer any questions.

EG:eg

Kansas Sheriffs Association

P.O. Box 1853
Salina, Kansas 67402-1853
785-827-2222
Fax 785-827-5215

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Sheriff Steve Bundy
Rice County - Alternate

Sheriff Marvin Stites
Linn County - Dist. #8

Sheriff Sandy Horton
Crawford County - Alternate

Re: HB2081, county jail standards
Committee: House Corrections and Juvenile Justice

Dear Committee,

I come before you today on behalf of the Kansas Sheriff's Association. The Kansas Sheriff's Association would oppose this bill. We do so for many reasons that I will try and outline to you.

Currently the Kansas Sheriff's Association hosts 2 training classes annually. The training classes are a 40-hour basic corrections officer class. The Sheriff's Association is committed to ensuring that jailers are trained and better prepared to do their jobs. Recently a new organization was formed, that organization is the Kansas Jail Association. The Kansas Sheriff's Association is supporting this new association, financially as well as publicly. We are currently working with the new association to provide training opportunities throughout the state of Kansas for jailers.

We are not necessarily opposed to standards being set for corrections officers, however this bill would not create uniform standards across the state. This bill puts the responsibility on the shoulders of Sheriff's without providing any funding or support.

Many questions need to be answered before we enact legislation that we will have to abide by in the future. How will training records be maintained, who will pay for the training, who determines the standards (need uniformity throughout the state).

Many sheriff's offices throughout the state are struggling everyday to simply provide services to the citizens they serve and do not have the necessary resources available to provide training, records management, budgetary dollars for the training, etc.

We would ask that this bill not be passed and allow Sheriff's to continue to work to increase training opportunities for jailers in Kansas.

Sincerely,



Randy L. Rogers
Coffey County Sheriff
President Kansas Sheriff's Association

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Rm. 545N-Statehouse, 300 SW 10th A.
Topeka, Kansas 66612-1504
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kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

February 1, 2005

To: Corrections and Juvenile Justice Committee
From: Jerry Ann Donaldson, Principal Analyst
Re: The Kansas Administrative Procedure Act

Administrative law deals with actions that arise out of agencies, and for the purpose of hearings by state agencies. Generally, agencies are charged with executing action to further legislative policies and purposes. These powers are typically delegated by statute. Administrative procedure guiding agencies is generally simpler and less formal than judicial procedure. One of the purposes of administrative remedies is to allow individuals to resolve their disputes in a less cumbersome and less expensive way than by a trial in court. In addition, administrative actions are adjudicatory in nature. An adjudicatory hearing is a proceeding before an administrative agency in which the rights and duties of the person involved are adjudicated after notice and opportunity to be heard.

A Revised Model State Administrative Procedure Act was drafted in Kansas in 1961 and revised in 1981. According to the 1981 revision, the Model Act applied to all agencies not expressly exempted and, further, warned that it created only procedural rights and imposed only procedural duties. A procedural act does not create substantive legal rights. Such substantive legal rights can exist only by statute, by the agency's rules and regulations, or by some constitutional command.

The Kansas Administrative Procedure Act (KAPA), was enacted in 1984, was effective on July 1, 1985, and is codified in the Kansas statutes at KSA 77-501 *et seq.* Under KAPA, The object is to conduct a fair and impartial hearing for a person who contests a state agency action that has impacted their legal rights. The Judicial Review and Civil Enforcement Act (KJRA) was enacted as a companion piece of legislation and is found in the Kansas statutes at KSA 77-601 *et seq.* The Kansas Judicial Council was actively involved with the enactment of KAPA and recommended that KAPA apply to all state agencies. The Council also recommended that KJRA be enacted as the appeal act for all agency actions. These Acts were enacted in a more restrictive fashion. In fact, a long-time champion of KAPA and KJRA is Professor David Ryan of the Washburn University School of Law, who suggested that KAPA should have been called the Kansas Administrative Trial Type Hearing Act for Selected State Level Agency Functions.

Consistency of agency action has been cited as a major purpose of an administrative procedural act. Along the same lines of reasoning, fairness is often mentioned as a major purpose of KAPA since the same rules apply to the parties who shall be given full opportunity to proceed under the Act. Further, Professor Ryan has stated that the most significant improvement of KAPA over prior provisions governing administrative law is the exclusion of most agency bias provisions when independent hearing examiners are used.

In 1997, the Office of Administrative Hearings (OAH) within the Department of Administration was established for the purpose of conducting administrative hearings for the Department of Social and Rehabilitation Services. During the 1997 Interim the Special Committee on Judiciary, after a study of the centralized office concept, recommended that the administrative hearing officers of all state agencies covered by KAPA be transferred to OAH in the Department of Administration.

A Legislative Post Audit (March 2001) entitled "Centralized Administrative Hearings: Reviewing the Advantages and Disadvantages" was conducted. According to the report, proponents of centralized administrative hearings indicate that such a measure would promote both fairness and the perception of fairness by eliminating the conflict of interest that exists when a hearing officer works for the agency that is party to the proceeding. Efficiency of operation and economic feasibility were also cited as reasons for the centralized hearing mechanism. Opposition to the measure was noted by the concern that hearing officers will become generalists without adequate technical expertise in particular subject matter areas.

As a result of the Post Audit, action was taken by the OAH that included:

- Handling cases on a timely basis;
- Establishing an equitable system of billing;
- Beginning to report estimated income from all sources in the OAH budget; and
- Ensuring that participants involved in the hearing process are aware of OAH's independence from the Department of Social and Rehabilitation Services.

In 2004, SB 141 was enacted which extended the responsibility for conducting administrative hearings, for nearly all state agencies, to the Office of Administrative Hearings, Kansas Department of Administration, over a five-year phase-in schedule beginning July 1, 2005 and concluding July 1, 2009. Further, on and after July 1, 2009, the OAH will be abolished and a separate free-standing agency, the Office of Administrative Hearings, will be established.

The following is the schedule for expansion to include hearings from the following agencies:

Year One (July 1, 2005)

Department of Health and Environment
Department of Social and Rehabilitation Services
Juvenile Justice Authority
Kansas Animal Health Department
Kansas Department on Aging
Kansas Insurance Department
Kansas Public Employees Retirement System
Kansas Water Office

Year Two (July 1, 2006)

Emergency Medical Services Board
Emergency Medical Services Council
Kansas Human Rights Commission

Year Three (July 1, 2007)

Kansas Department of Wildlife and Parks
Kansas Lottery
Kansas Racing and Gaming Commission
Pooled Money Investment Board
State Treasurer

Year Four (July 1, 2008)

Agriculture Labor Relations Board
Board of Adult Care Home Administrators
Department of Human Resources
Department of Revenue
State Conservation Commission
State Corporation Commission

Year Five (July 1, 2009)

All other KAPA hearings, which includes those from the Secretary of State, the Insurance Department, and other miscellaneous boards.

Those agencies excluded are: the State Board of Pharmacy, Kansas Dental Board, State Board of Veterinary Examiners, Behavioral Sciences Regulatory Board, State Board of Cosmetology, Kansas Real Estate Commission, Real Estate Appraisal Board, State Board of Mortuary Arts, Kansas Board of Barbering, Board of Nursing, Kansas Board of Examiners in Fitting and Dispensing of Hearing Aids, Board of Examiners in Optometry, State Board of Healing Arts, Kansas State Banking Board, State Department of Credit Unions, Office of the Securities Commissioner of Kansas, and State Board of Technical Professions. Agencies listed above will continue to be allowed to use hearing officers in their respective agencies. Special procedures apply to the State Department of Agriculture.

9




KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Representative Ward Loyd, Chair
House Committee on Corrections and Juvenile Justice Oversight

FROM: Denise L. Everhart, Commissioner 

DATE: February 1, 2005

SUBJECT: Testimony on HB 2034

Mr. Chairman and members of the Committee, I appear before you today in support of House Bill 2034.

HB 2034 proposes to modify K.S.A. 77-603 to exempt the Juvenile Justice Authority (JJA) from the act for judicial review and civil enforcement of agency actions (KJRA), K.S.A. 77-601 *et seq.*, but only as to those actions concerning the management, discipline or release of persons in the custody of the commissioner.

The proposed amendment to K.S.A. 77-603 is identical to an existing exemption for the same purpose pertaining to the Department of Corrections. The need for HB 2034 at this time relates to a series of pending regulations promulgated by JJA complying with the legislature's intent that regulations be written to govern the conduct and discipline of juvenile offenders committed to the Commissioner's custody. See, *e.g.*, K.S.A. 2003 Supp. 75-7024 and K.S.A. 76-3203.

Unless HB 2034 is enacted, any offender dissatisfied with the outcome of disciplinary proceedings may be expected to routinely seek review of the agency action before the district court. JJA facility operations will be adversely affected by having to divert personnel and resources during the normal business day to transport offenders and provide security at hearings before the district court. This will also disrupt educational and treatment plans of those offenders involved and, in all probability, indirectly impact other offenders whose education and treatment plans are in consonance with those of the absent offenders.

Similarly, there may be a budgetary impact on local communities since a juvenile offender's attorney of record continues as the offender's attorney for all purposes related to the case. See K.S.A. 38-1606(b). While generally institutional disciplinary proceedings do not demand or otherwise require counsel be available to the offender, see Wolff v. McDonnell, 418 U.S. 539

Juvenile Justice Authority
Testimony on HB 2034
February 1, 2005

(1974), judicial review of final disciplinary orders pursuant to the KJRA may be viewed as legal activity related to or associated with the underlying juvenile case, especially to the extent that a disciplinary penalty involves the loss of good time. To the extent that is so, there may be an impact on the workload of the attorney of record of those offenders who seek judicial review.

This bill does not completely foreclose an offender's access to the courts on matters related to disciplinary proceedings, as an offender would still have the ability to challenge a disciplinary conviction by seeking a writ of habeas corpus pursuant to K.S.A. 60-1501, *et seq.*

There would be negligible budget impact on JJA in particular or the state in general if HB 2034 were enacted.

However, if the proposed legislation is not enacted, it is expected that juvenile offenders will seek judicial review of adverse disciplinary findings and orders arising out of any class I or class II disciplinary violations that were unsuccessfully appealed within the established agency appeals process. Such appeals could have a substantial budgetary impact on the agency, whose legal counsel would be required to appear and defend the action in the venue in which the disciplinary proceedings occurred. Additionally, costs will be incurred in the transportation and security of the juvenile offender who are required to appear in district court to testify in any proceedings held in the judicial review action.

The Juvenile Justice Authority requests your favorable consideration of House Bill 2034.

I will be pleased to respond to any questions of the Committee.

Dear Ladies & Gentlemen of the committee;

My Name is David martin Price
President of both
GSSC / General Security Services Corporation
IFFOC / Independent Federal Fund Oversight Committee

I am here representing the voice of the people of the state of Kansas

I am a proponent of this House Bill 2034.

I, will educate you on the knowledge I have on why I believe a separate committee on Judicial Review and civil enforcement agency actions. We have found out that we have a broken judicial system and civil enforcement agency actions are needed to repair the damage created by our broken system. I, myself have filed many complaints on Judges, prosecutors, attorneys, who blatantly violate either ethics or laws, with no avail. We have recently discovered that we have had judges perjure themselves and make statements that just because he did not like the way our attorney filed paper work, he dismissed the case even though it had merits, in sworn testimony. We have had judges that have violated adoption laws to now realize that they are on adoption boards which make millions of dollars. We have a disciplinary administrator covering for adoptions and going after attorneys that challenge illegal adoptions.

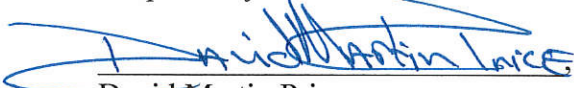
This system is too convenient, with conflicts of interest written all over it. We need checks and balances within our system and this is why. My son would not be in Colorado right now if the laws were followed and monitored properly. If these checks and balances were in place this would have been stopped as soon as my complaints had reached this independent committee. I would have not had to file an U.S. ex rel case against the whole state of Kansas for conspiracy to cover up illegal acts as in case 04 3372, which is now in the 10th Circuit court. I would ask you to review this case as a perfect example on line since I do not have the funds to print out 35 copies each.

I believe in our system and also I am an optimist and believe to learn knowledge from our mistakes is to improve, as well as, better our system. I myself have taken something bad from the nightmare I had went through and turned it into something positive. I have now dedicated my life to assisting others with formatting and research of pro se legal work. I believe that we need to teach more people about our laws, as well as, educate them in our legal system. These courts are using our ignorance to profit off of. I am also in the process of writing a book titled Truth,

Justice, and the American Way, not here in the U.S.A. today, which will explain it all. Because a change is not only needed, but required to protect those who do not have the knowledge to protect themselves within our system.

We need a committee to monitor these individuals who we put in these positions. As it stands now, we have the fox monitoring the hen house. My question is, who monitors the fox? We have judges making decisions from the bench not as law dictates. This was proven in the School Budget with the Honorable Bullock, when he wanted to shut schools down. Why would we even need a legislature to write laws, if judges are making their own laws from a bench? Maybe our forefathers were hasty in their decision to create a government, which is separate but equal? It is so difficult to understand how our forefathers knew that we would need people to monitor, the very same people we put in those positions, and now, most of all reality sets in as a true example. I thank you for your time and inconvenience and letting me explain my story and reasoning with this House Bill. I apologize if I had done anything wrong in my testimony or if I had inadvertently violated any rules I was unfamiliar or unaware of. If you have any questions or need more information, in greater detail, I will be willing to spend time at your convenience, please feel free to contact me at any time.

Respectfully Submitted,



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11

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TOPEKA
—
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: HEALTH & HUMAN SERVICES
UTILITIES
SOCIAL SERVICES BUDGET

TESTIMONY ON HOUSE BILL 2087

FEBRUARY 1, 2005

Mr. Chairman and members of the committee; thank you for the opportunity of appearing before you today to address a problem that has long been realized as something that needs addressing. Identity theft is becoming a growing problem in our nation and since 911, it has demanded our attention.

I recently saw some statistics that stated that Kansas experiences between 17 and 30 victims per 100,000 residents per year. The largest type of identity theft that is reported is through the use of a credit card. This accounts for 42% of the victims of identity theft.

I will not take up a lot of your time. I deeply appreciate the law enforcement and prosecuting attorneys who want to see us address this issue to help them be more effective in prosecution and early intervention.

There will also be an amendment that will be offered to expand the bill that is before you to address issues that are related to the very security of our state and nation. I feel that this amendment may help us to deal with identity theft in a thorough manner and in one bill. It will also save you some hearing time!

With that, Mr. Chairman, I stand for questions.

HOUSE BILL No. 2087

By Representative Mast

1-20

9 AN ACT concerning crimes and punishment: relating to identity theft
10 amending K.S.A. 2004 Supp. 21-4018 and repealing the existing
11 section.

and vital record fraud

s

K.S.A. 21-3830 and

12
13 *Be it enacted by the Legislature of the State of Kansas:*

Section 1 → attached

14 ~~Section 1.~~ K.S.A. 2004 Supp. 21-4018 is hereby amended to read as
15 follows: 21-4018. (a) Identity theft is knowingly and with intent to defraud
16 for ~~economic~~ any benefit, obtaining, possessing, transferring, using or
17 attempting to obtain, possess, transfer or use, one or more identification
18 documents or personal identification number of another person other
19 than that issued lawfully for the use of the possessor.

Sec. 2

20 (b) "Identification documents" ~~means the definition as~~ provided in
21 K.S.A. 21-3830, and amendments thereto.

has the meaning

22 (c) Identity theft for economic benefit is a severity level 7, person
23 felony. Identity theft for non-economic benefit is a class A, nonperson
24 misdemeanor.

25 (d) This section shall be part of and supplemental to the Kansas crim-
26 inal code.

27 Sec. 2. K.S.A. 2004 Supp. 21-4018 is hereby repealed.

are

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

K.S.A 21-3830 and

Section 1. K.S.A. 21-3830 is hereby amended to read as follows: 21-3830.

(a) Dealing in false identification documents is reproducing, manufacturing, selling or offering for sale any identification document which:

(1) Simulates, purports to be or is designed so as to cause others reasonably to believe it to be an identification document; and

(2) bears a fictitious name or other false information.

(b) As used in this section, "identification document" means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, birth, **death, marriage and divorce** certificates, social security cards and employee identification cards.

(c) Dealing in false identification documents is a severity level 10, nonperson felony.

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

Vital records identity fraud related to birth, death, marriage and divorce certificates is:

(1) Willfully and knowingly supplying false information intending that the information be used to obtain a certified copy of a vital record;

(2) making, counterfeiting, altering, amending or mutilating any certified copy of a vital record:

(A) Without lawful authority; and

(B) with the intent to deceive; or

(3) willfully and knowingly obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another for any purpose of deception a certified copy of a vital record.

(e) Vital record fraud for any benefit is a severity level 9, non-person felony.

(f) The prohibitions in subsection (a) and (b) do not apply to:

(1) A person less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage, as defined in K.S.A. 9-1599, and amendments thereto;

(2) a person less than 18 years of age who uses the identification documents of another person to acquire:

(A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and amendments thereto;

(B) a periodical, a videotape or other communication medium that contains or depicts nudity;

(C) admittance to a performance, live or film, that prohibits the attendance of the person based on age; or

(D) an item that is prohibited by law for use or consumption by such person.

(g)



12

Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Kansas Peace Officers Association

Testimony in Support of HB 2087
Before the Senate Judiciary Committee
Kyle G. Smith
On behalf of the Kansas Peace Officers Association
February 1, 2005

Chairman Loyd and Members of the Committee,

On behalf of the Kansas Peace Officers Association we would urge your passage of HB 2087. While normally thought of as a means of committing fraud, identity theft can have other motives and other victims than just the financial ones.

Whether the intent is to gain access to restricted information or 'merely' to destroy an ex-spouses credit rating, the harm to the victim can be equally devastating. Even in a financially motivated case of identity theft, the person whose identity has been stolen can be as much or more of a victim than the merchant or institution who suffered the economic loss. Loss of credit rating, legal expenses, embarrassment, difficulty in getting loans and employment frequently are experienced by the person whose identity was usurped – even though some other 'victim' suffered the loss of 'economic benefit'. One of our best special agents was almost not hired because our background check revealed extensive problems – all of which turned out to be the result of identity theft.

Identity theft is probably the fastest growing crime in Kansas and we need to keep our law updated to meet this evolving threat.

Thank you for your attention and I would be pleased to stand for any questions.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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February 1, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
Written testimony in support of House Bill No. 2087

Dear Chairman Loyd and Members of the Committee:

Thank you for allowing me to submit testimony regarding HB 2087. This timely piece of legislation proposes to amend the language of K.S.A. 2004 Supp. 21-4018 to allow for a criminal charge of Identity Theft to be filed in cases where the offender has committed an act of identity theft for reasons other than to seek economic benefit. Under the bill, crimes of Identity Theft committed for non-economic benefit reasons would be charged as a class A, nonperson misdemeanor.

For an example of a situation where the proposed new type of Identity Theft crime might be applied, consider a situation where there has been a break-up in a friendship or romantic relationship. If one of the parties had access to identifying information about the other person (Social Security number, credit card numbers, etc.) that individual could utilize that identifying information for the purpose of harassing or embarrassing the victim by signing the victim up for unwanted magazine subscriptions or other potentially embarrassing products or services (pornographic magazines or websites, memberships in disreputable or expensive clubs, etc.) Such actions would certainly be unwanted, hurtful and perhaps very expensive to the victim, but would not be of economic benefit to the offender, thus those actions could not result in a charge of Identity Theft under the current wording of the statute. The amendment proposed in HB 2087 would address those situations and provide for an appropriate misdemeanor sentence for the offense.

On behalf of Attorney General Phill Kline, I encourage the Committee to support HB 2087 and to recommend the bill favorably for passage.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

Kevin A. Graham
Assistant Attorney General
Criminal Division



Michael J. Heffron, Chief of Police

Michael Lopez, Deputy Chief of Police

Michael Williams, Deputy Chief of Police

February 1, 2005

Ref: House Bill No. 2087
By: Representative Mast

Once again we stand before this committee asking for the enactment of changes to the identity theft statute on House Bill No. 2087. Identity theft, an ongoing criminal activity, continues to expand based on the ready availability of false documents. As you are aware, the use of the internet continues to be the preferred means, although not the only avenue, to access information used to obtain false documents such as drivers licenses, social security cards, birth certificates and identity cards. These documents are in turn used to obtain employment, commit forgery, obtain prescriptions, health services and various other illegal activities. The bottom line is a continued loss of time and revenue to the individuals, businesses, cities and ultimately the state of Kansas.

As it stands now, the bill states that identity theft is a means to obtain "economic" benefit. We are asking this definition be amended to read "any" benefit. This change would enable law enforcement to have adequate means to deal with persons possessing false identification.

Michael F. Williams, Deputy Chief


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KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

DATE: February 1, 2005

TO: Representative Ward Loyd, Chair
House Committee on Corrections and Juvenile Justice Oversight

FROM: Denise L. Everhart, Commissioner 

SUBJECT: Requested information regarding juvenile offenders and methamphetamine

I am attaching one page of information regarding juvenile offenders involved with the use, sale, or manufacture of methamphetamine who were admitted to the Larned Juvenile Correctional Facility Residential Substance Abuse Treatment Unit between June 19, 2003 and June 29, 2004.

I am providing this information in response to questions you asked during our overview presentation on January 26, 2005. I believe this information is responsive to those requests.

We are also in the process of completing a response to the questions you asked regarding the JJA FY 2005 and FY 2006 budgets during that same overview presentation. I anticipate that I will be able to provide you with that response by Friday, February 4, 2005.

Please let me know if I may provide any additional information on these or any other matters.

Attachment: Methamphetamine Data (1 page)

DLE:wpm

Methamphetamine Data:
Offenders admitted to LJCF/RSAT between the dates of 5-19-03 and 6-29-04.

County	Age	Race
Finney	17	H
Butler	17	W
Ford	18	H
Anderson	18	W
Barber	16	W
Barton	16	W
Bourbon	18	W
Butler	18	W
Butler	16	H
Butler	18	W
Coffey	17	W
Finney	18	H
Finney	16	W
Gray	16	W
Johnson	18	B
Johnson	18	B
Labette	16	W
Leavenworth	16	W
Montgomery	16	W
Montgomery	15	W
Pottawatomie	18	W
Reno	17	W
Reno	17	W
Saline	16	W
Scott	15	W
Sedgwick	18	W
Sedgwick	18	H
Shawnee	21	B
Shawnee	18	H

Meth use	Meth sales	Meth manf
no	no	no
yes	no	no
no	no	no
yes	no	no
no	no	no
yes	yes	yes
yes	no	no
yes	yes	yes
yes	yes	no
yes	no	no
yes	yes	yes
no	no	no
no	no	no
yes	no	no
no	no	no
yes	yes	yes
yes	yes	no
no	no	no
no	no	no
yes	no	no
no	no	no
no	no	no
yes	no	no
yes	no	no
yes	no	no
yes	yes	yes
yes	no	no
no	no	no
yes	no	no

10% Black 62% yes 24% yes 17% yes
 20% Hispanic
 70% White

Average Age is 17 years old

Classes that address the effects of all drugs and alcohol: Disease Model, Values, and Relapse Prevention. In these classes offenders are educated on the effects of drugs and/or alcohol on their values, their family, their physical and mental health, and their community. Also discussion on the triggers and warning signs for relapse, counseled in preparing a relapse prevention plan, and where to go for help and/or support in the community.