

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 8, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused
David Haley- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Jay Hinkel, City of Wichita
Mike Taylor, Unified Government of Wyandotte County
Erik Satorius, City of Overland Park
Sandy Jacquot, League of Kansas Municipalities
Jim Clark, Kansas Bar Association
Debbie Rosacker, Assistant Director, State Board of Indigents' Defense Services
Vernon Chinn, Pratt County Sheriff
Kevin Graham, Assistant Attorney General
Kyle Smith, Special Agent, Kansas Peace Officers

Others attending:

See attached list.

Chairman Vratil opened the hearing on Sub HB 2113.

Sub HB 2113 Municipal court collecting fines and court costs

Proponents:

Jay Hinkel, Attorney with the City of Wichita, testified in support of the bill. Mr. Hinkel asked the Committee to help the Wichita Municipal Court more effectively collect on the growing problem of delinquent fines. Mr. Hinkel testified that there were \$28.7 million in delinquent fines and the collection rate is only 20 percent, or \$5.75 million, through collection agencies which charge a 19.5 percent fee. By converting the unpaid fines to civil judgements, the Municipal Court would save approximately six months and a significant amount of paperwork on each civil judgement, and would not burden the District Courts. Chairman Vratil asked that Mr. Hinkel find out how much revenue is generated from fines that are paid. (Attachment 1)

Mike Taylor, Public Relations Director for The Unified Government of Wyandotte County, testified in support of the bill. Mr. Taylor stated that the collection of fines owed is a fairness and equity issue, that people who break the law should pay the fines. Mr. Taylor stated he would like to see the original language put back in the bill so that municipalities can require the payment of collection costs from individuals who refuse to pay their fines. Chairman Vratil questioned what the compliance rate was for Wyandotte County. Mr. Taylor was not sure but offered that of the revenue collected through collection agencies was comparable to those of Wichita, at between 15 percent and 20 percent. (Attachment 2)

Erik Satorius, City of Overland Park, Kansas, stated that his written testimony was sufficient to express the City's message to the Committee. Chairman Vratil questioned Mr. Satorius about the percent of fines that were collected. Mr. Satorius stated he estimated that 90 percent of all fines are paid, and the City of Overland Park does not have a high compliance problem. Mr. Satorius stated the City wanted to encourage the Committee to reinstate the original language in the bill so that municipalities may require individuals to pay the collection costs. (Attachment 3)

Sandy Jacquot, League of Kansas Municipalities, testified in support of the bill. The League is also supportive

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 8, 2005, in Room 123-S of the Capitol.

of adding in the original language into the bill so that the cost of collection would be assessed from the individual who had not paid the fine. (Attachment 4)

Chairman Vratil stated that the House amendment took out the provisions that would have allowed the cost of collections in criminal and traffic cases. He questioned whether civil cases could be added, and Representative Huy, a guest at the meeting, stated that this was originally her amendment and would be open to adding civil cases.

Senator Betts asked if the total revenues paid to the City of Wichita from fines could be provided to the Committee. Mr. Hinkel stated he could find out the amount and provide it.

Chairman Vratil closed the hearing on Sub HB 2113 and opened the hearing on HB 2129.

HB 2129 Compensation for attorneys representing indigent defendants, \$80 per hour

Proponents:

Jim Clark, Kansas Bar Association Legislative Counsel, testified in support of the bill. Mr. Clark stated that the current hourly rate of \$50 has not been increased since 1988, and is inadequate especially when compared with appointments to criminal cases in federal court at \$90 per hour. (Attachments 5 & 6)

Senator Schmidt stated in his county, Montgomery County, they have a public defender that earns around \$45,000 annually. Senator Schmidt questioned whether it may be more financially wise to consider having public defenders in other counties. Mr. Clark responded that in small counties it wouldn't work because there may not be enough cases to support such a system. Senator Journey also stated that county attorneys may be paid at a lower rate, but they also are provided with health benefits, retirement benefits, an office, secretary, and all the things private attorneys have to provide for themselves. Additionally, Senator Journey stated that there are caps, regardless of the number of hours worked on indigent cases, and an attorney is limited on how much may be collected.

Chairman Vratil questioned if anyone had a proposal for where the money should come from to pay the hourly rate difference and noted that the fiscal note was \$3.2 million dollars.

Debbie Rosacker, Assistant Director with the State Board of Indigents' Defense Services, stated that written testimony was provided by Pat Scalia, Executive Director. Ms. Rosacker stated that the Board was concerned that if the hourly rate was not increased, they might be subject to legal action and could be mandated to increase fees. Ms. Rosacker noted that in the Stephans case, the Kansas Supreme Court suggested that the Board of Indigents' Defense consider the overhead cost of attorneys to determine a payment rate that would not be confiscatory. Ms. Rosacker stated that if they had to open additional public defender officers across Kansas, it could cost up to \$6 million dollars, which is more than the \$3.2 million they are asking for. (Attachment 7) Senator Journey asked if Ms. Rosacker could provide the Committee what the reimbursement rates are. Ms. Rosacker stated that the rates depend on what is ordered by the judge, but she would try to provide some information.

Written testimony was submitted by Chief Judge Thomas Tuggle, Kansas District Judges Association. (Attachment 8)

Chairman Vratil closed the hearing on HB 2129 and opened the hearing on HB 2180.

HB 2180 Inherently dangerous felonies

Proponents:

Vernon Chinn, Pratt County Sheriff, testified on behalf of the Sheriffs Association in support of the bill. He stated that suspects fleeing in a car are like a 4,000 pound speeding bullet, and the officer never knows in advance just how it is going to end when suspects are pursued. (Attachment 9)

Kevin Graham, Assistant Attorney General, testified in support of the bill. Mr. Graham stated that if an

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 8, 2005, in Room 123-S of the Capitol.

individual flees from the police and there is a crash and someone dies, there are basically three options on what could be charged: reckless second degree murder, involuntary manslaughter, and homicide. The charge depends on the level of negligence or intentional "add acts" when the party flees. Mr. Graham gave an example: the lights come on behind an individual and the individual hits the gas and all he is doing is speeding; he runs into the car in front of him and someone dies as a result. There is case law in the state that indicates that this is a vehicular homicide, a Class A misdemeanor, as there was only one violation, speeding. If there are multiples, such as driving in and out of traffic swerving, the individual cuts someone off and hits a person on the side of the road, the charge might be a little higher, involuntary manslaughter. If there are numerous dangerous acts, swerving in and out, hitting several cars and a police officer, perhaps then the charge would be second degree murder. And finally, with a conviction on this charge, the individual would get prison time. The bill would give due punishment if an individual is "fleeing and eluding" and hits someone, as they will be looking at least involuntary manslaughter; if the individual gets to "felony fleeing and eluding" with multiple traffic violations and a death, then the individual is looking at felony murder, or first degree murder, with a twenty-year to life sentence. (Attachment 10)

Chairman Vratil questioned Mr. Graham regarding the bed space impact report, which is 3-9 additional beds in 2006, and 23-35 additional beds for 2015. The Chairman stated that the impact was similar to the impact of SB 179, but when the two impact reports are added together, they are fairly substantial figures. The Chairman asked Mr. Graham if he could have one or the other bill passed, which one would it be. Mr. Graham stated they are both good bills and deserve to be passed, that these are people who should not be on the street.

Kyle Smith, Special Agent for the Kansas Bureau of Investigation, testified on behalf of the Kansas Peace Officers Association. Mr. Smith stated that by placing the crime of "flee and elude" as a serious crime that may cause death, the savings in lives, injuries and property clearly justify the relatively small prison bed impact. (Attachment 11)

Written testimony was submitted by R. Michael Jennings, Kansas County & District Attorneys Association. (Attachment 12)

Chairman Vratil closed the hearing on HB 2180.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 9, 2005.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/8/05

NAME	REPRESENTING
KEVIN GRAHAM	AG
JIM CLARK	KBA
Debbie Rosacker	BIDS
Richard Benson	private practice lawyer
Richard T. BARTOW	Attorney
Andrew Davidson	private practice attorney
Kevin Bone	KTLA
VERNON CHINN	PRATT COUNTY SHERIFF
Jeff Bottenberg	KANSAS SHERIFFS ASSN
Patti Biggs	KSC
Julia Butler	KSC
Brenda Harmon	KSC
Lance Wash	OTA
Bill MISKELL	JIA
Kyle Smith	



Jay Hinkel,
Attorney, City of Wichita

TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351

Substitute for House Bill 2113 Delinquent Municipal Court Fines

March 8, 2005

The City of Wichita supports House Bill 2113. The City of Wichita is requesting this legislation to help Wichita Municipal Court more effectively deal with the growing problem of delinquent fines. The number of people who fail or outright refuse to pay fines after being found guilty of an offense in Wichita Municipal Court has reached alarming levels and is increasing.

House Bill 2113 originally requested that Municipal Courts be allowed similar authority for collecting unpaid fines as District Courts by 1) requiring delinquent defendants to pay the cost of the collection fee as well as the fine and 2) converting those debts into civil judgments. These are two different aspects of the problem. The amended version of Substitute for House Bill 2113 removes the first of these provisions. The amendment shifts the cost of collecting a judgment from the dilatory defendant who committed the violation to the general taxpayer.

There are more than 143,000 Municipal Court orders where the fines have not been paid. It is much simpler and less burdensome to enforce Municipal Court orders that are automatic civil judgments than it is to litigate each order to obtain a civil judgment. This format would not require the involvement of the District Courts in the vast number of these cases.

While the Municipal Court does not exist to produce revenue, there is a significant financial component to this problem. Despite efforts to work out payment plans with defendants and despite the use of a collection agency, the total amount of delinquent fines still owed Wichita Municipal Court totals nearly \$29-million. Realistically, we estimate about \$16-million of that amount could be collected. Given cuts in promised state funding and pressure to not raise taxes, being able to collect money we are already owed is a significant solution.

From 1998 through 2004, Wichita Municipal Court sent over 140,000 cases to a collection agency for processing. Those cases amounted to \$28.7-million in delinquent fines. The average collection rate is about 20% or \$5.75-million. Under agreement with the collection agency, Municipal Court pays a fee of 19.5% of the money collected, which totaled \$1.1-million year-to-date.

Municipal Courts should have the same authority to recoup the costs of collection as the District Courts.

- The magnitude of this problem is probably surprising to many who think of Municipal Courts in a much more limited way. Many Municipal Courts are small or even part-time operations. Wichita Municipal Court however, has five appointed judges and 23 pro-tem judges. In any given year, the Court handles more than 200,000 cases including traffic infractions, driving under the influence, petty theft, prostitution, drug violations and domestic violence. Judges also hear cases dealing with Health, Fire, and Central Inspection violations. Wichita Municipal Court is the largest limited jurisdiction court in the state. If State and Local laws are to be respected, and if the Court system is to be viewed as fair and impartial in its administration of justice, there must be a more effective way to deal with people who flaunt the law and the rulings of the Court. HB 2113 does that.
- There may be concern by some members of the Legislature about doing anything which gives the appearance of raising fees or taxes. House Bill 2113 does not impose new fees, and has not done so in

Senate Judiciary

3-8-05

Attachment 1

any of the forms considered by the Legislature this session.

- Nothing in state law prevents Municipal Courts from taking these cases to District Court and filing actions to have the owed amount converted to a civil judgment. For each case, it would take a significant amount of legal paperwork and a minimum of six months to obtain a civil judgment. In Wichita alone, this will initially generate thousands of new litigation cases; going forward, hundreds of new cases will be filed each year. The end result will be a significant burden on district court judges, staff, and budgets. We do not want or intend to put this kind of burden on District Court or County Sheriff's who would have to serve process on such cases. That's why we are asking for your help, cooperation and support of HB 2113. Under the terms of this bill, Municipal Courts would have limited jurisdiction to handle these cases without any burden on District Courts.

**Wichita Municipal Court Delinquent Fines Placed with the
Collection Agency**

Year	Number of Cases Sent to Collection Agency	Dollar Amount Sent to Collection Agency	Dollar Amount Collected by Collection Agency	Dollar Amount Paid to Agency by the City	Total Dollar Amount to be Collected
1998	52,709	\$7,802,892	\$ 828,136	\$178,250	\$ 6,974,756
1999	10,916	\$3,746,873	\$ 966,426	\$214,246	\$ 9,755,203
2000	17,915	\$5,758,590	\$1,054,492	\$234,813	\$14,459,301
2001	14,063	\$4,740,028	\$1,456,106	\$321,040	\$17,743,223
2002	21,625	\$6,343,370	\$1,479,852	\$325,217	\$22,606,741
2003	1,273*	\$383,326*	\$903,332*	\$198,733*	\$22,074,541
2004	25,108*	\$7,427,825*	\$749,742*	\$146,970*	\$28,748,973
Totals	143,609	\$36,202,904	\$7,438,086	\$1,619,269	\$28,748,973

* 2003 numbers reflect a decrease in dollars collected and in the number of cases sent to the collection due to the implementation of a new computer system. Third quarter 2004, computer programs were complete and cases electronically forwarded to the collection agency.

Overall Collection Rate: 20.5%

Questions and Answers about How House Bill 2113 Would Work

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

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

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

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

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

The current state statute (K.S.A. 75-719) is silent on this issue for district courts, but House Bill 2113 would make these a Chapter 61 judgment for municipal courts. This is in line with the typical practice for other debt collection actions. A Chapter 61 action does not create a lien on real estate or any other property. The defendant would additionally have a right to assert most defenses and request a trial for that purpose by contesting the propriety of a garnishment or attachment. This protection is available through legislation passed in 2002.

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

Currently the Municipal Court turns delinquent cases over to collection at 45 days. The success in collecting the delinquent fines is much greater if the collection agency begins working the case at 45 days. Waiting 180 days will make collections more difficult and could increase the number of cases which would ultimately be sent to the civil judgment collection process.

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

The current statute for districts courts is silent on this issue as well. The City proposes curing this concern by delaying civil judgment imposition until the debt or restitution remains unpaid for more than 180 days. This will give the defendant ample opportunity to satisfy the debt before civil court collection is undertaken.

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

This potential would be eliminated if, as suggested above, there is complete separation between criminal enforcement and subsequent civil collection process. Once the criminal case is complete, with or without payment of the debts owed to the court and the restitution ordered, the defendant is no longer subject to arrest. For traffic cases, any suspension, once issued by the State, must be reinstated by the State. Driving prior to receipt of the reinstatement notice from the State is unlawful. Municipal courts neither impose nor release these restrictions. This practice would not change.

Is suspension of a driver's license and collection of a delinquent debt a double penalty,

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

Wichita Municipal Court

Facts and Figures

- Wichita Municipal Court is the largest limited jurisdiction court in the state. Wichita Municipal Court has 5 appointed judges and 23 pro-tem judges. Court sessions run five days a week from 8AM to 7PM.
- In any given year the Municipal Court judges see nearly 200,000 cases.
- In 2004, there were 33,526 new court cases and 114,238 citations filed. The Court issued 21,754 warrants and suspended 5517 driver's licenses for individuals who either failed to appear in court or failed to comply with a citation or criminal complaint.
- Every day about 1800 people appear in the Clerk's Office. The Clerk's Office receives about 1000 phone calls each day. Docket Clerks prepare approximately 800 cases each day for the court dockets while other clerks create court paperwork on about 750 new cases each week.
- Judges hear cases involving traffic and health infractions, misdemeanor cases involving Driving Under the Influence, Criminal cases such as petty theft, prostitution, drug violations and domestic violence.
- An environmental judge, working at neighborhood courts set up in various locations around the city, hears cases dealing with Health, Fire, and Central Inspection violations.
- A Court Administrator and a staff of 77 full-time and 3 part-time employees oversee Municipal Court.
- The Probation Office assists judges in defendant evaluation, prisoner monitoring, and probationer monitoring.
- Approximately 1362 clients report each month to the Probation Office. These numbers have decreased over the past few years due to the implementation of an evaluation tool that stratifies the reporting needs of defendants
- The Probation Office conducts approximately 194 risk/needs assessments each month.
- Probation Officers also conduct over 163 Pre-Sentence Investigations each month to aid the judges in sentencing. Additionally, the Probation Office manages defendants placed on Community Service as well as give information and instruction to individuals needing drug and alcohol education/treatment. They also process court-ordered restitution to victims.
- The annual budget for Wichita Municipal Court is approximately \$5,700,000.



Testimony

Unified Government Public Relations
701 N. 7th Street, Room 620
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director 913.573.5565
Don Denney, Media Relations Specialist 913.573.5544

House Bill 2113 Delinquent Municipal Court Fines

**Delivered to
Senate Judiciary Committee
March 8, 2005**

The Unified Government of Wyandotte County/Kansas City, Kansas strongly supports House Bill 2113. This legislation will help all Municipal Courts in Kansas more effectively deal with the growing problem of delinquent fines. The number of people who fail or outright refuse to pay fines after being found guilty of an offense in Municipal Courts has reached alarming and unacceptable levels.

HB 2113 gives Municipal Courts the same legal ability to collect fines that District Courts already have. District Courts already have the authority to convert delinquent debts into civil judgments and require delinquent defendants to pay the cost of the collection fee as well as the fine.

While Municipal Courts do not exist to produce revenue, there is a significant financial component to this problem. Given cuts in state funding and pressure to not raise taxes, giving local governments the tools needed to collect more of the money they are already owed, is a significant solution.

But more importantly, there is a critical law and order issue here. If people realize, as many already have, that there is no real consequence for breaking the law because they can get away with not paying the fines, then what incentive is there to follow the law in the first place?

There is also a significant fairness and equity issue. It is grossly unfair for some people to accept their punishment and pay their fine, while others who are found guilty thumb their noses at the court and their fellow citizens and get away with not accepting their punishment and not paying their fine.

While House Bill 2113 is a positive step, the House amended the bill in a way which makes the measure far less effective and fair than it could be. Delinquent defendants should be required to pay the cost of the collection fee as well as the fine. I would urge this committee to change the language back to the original wording and intent.

In the name of law and order, in the name of fairness and equity and in the name of financial responsibility, The Unified Government urges you to approve House Bill 2113.

Senate Judiciary

3-8-05

Attachment 2



913-895-6100 • Fax: 913-895-5003
www.opkansas.org

City Manager's Office

Testimony Before
The Senate Judiciary Committee
By Erik Sartorius
Regarding
House Bill 2113, Municipal Court Fines

March 8, 2005

The City of Overland Park appreciates the opportunity to offer testimony in support of House Bill 2113, which would allow municipal courts to convert unpaid fines into civil judgments.

Our municipal court system works very well, and the vast majority of people who interact with the court pay their fines. We also understand there are times when fine cannot be paid, and our court has flexibility to allow individuals to work off their fine in lieu of payment.

However, there is a third group of people who utilize the courts, individuals who can afford to pay their fines but simply refuse. Allowing us to convert their fines to civil judgments, as provided in House Bill 2113, would give us a useful tool in addressing such offenders.

House Bill 2113, as originally drafted, guided municipal courts' use of collection agencies. Fees assessed by the agencies for collecting delinquent fines were to be limited to 33% of the fine amount. Of equal importance was the fact that these costs were to be paid by the offender, rather than the taxpaying public. It makes little sense for tax money to be used to pay a collection agency, as the collection agency would not be needed if offenders paid their fines. We believe that this provision provides fairness for taxpayers.

Curiously, the House deleted provisions authorizing municipalities to require the payment of collection costs from individuals who refuse to pay their fines. The City encourages the Senate to reinstate the original language of the bill. Taxpayers as a whole should not be forced to carry the burdens of individuals who flout the law.

The City of Overland Park asks that you return House Bill 2113 to its original form and recommend it favorably for passage.

Senate Judiciary

3.8.05

Attachment 3



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

League of Kansas Municipalities

TO: Senate Judiciary Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: March 7, 2005

RE: HB 2113

I want to thank you on behalf of the League of Kansas Municipalities for the opportunity to testify in favor of HB 2113. This bill would allow municipal courts to set up a procedure to collect delinquent municipal court fines as a civil judgment. The original bill, before amended by the House, would have allowed the cost of collection to be assessed to the individual who had not paid the fine. This provision was amended out of the current version. The League is supportive of adding this language back into the bill.

For some of our larger municipal courts, collection of delinquent fines and court costs is an ongoing concern. This bill would provide municipal courts the flexibility to attempt recovery of some of the delinquency owed the courts. There has been some opposition to this bill in the past, because of various views held about the function of municipal courts. The simple fact is that these fines are due and owing to the municipality, they have been lawfully imposed and this bill will aid cities in the collection of such fines. The League supports HB 2113 and urges the committee to report the bill favorably for passage.



KANSAS BAR
ASSOCIATION

**Testimony in Support of
HOUSE BILL NO. 2129**

Presented by James W. Clark, KBA Legislative Counsel

Senate Judiciary Committee

Tuesday, March 8, 2005

The Kansas Bar Association appears in support of **House Bill 2129**, which establishes a statutory rate of \$80 per hour for attorneys assigned to provide legal services for indigent defendants in criminal cases.

Not only is the current hourly rate of \$50/hour inadequate, especially when compared with appointments to criminal cases in federal court (\$90/hour); but the rate does not reflect any increase since 1988. In comparison, salaries for staff public defenders, while not adequate, have at least reflected some kind of cost of living increase over the same period of time, as have salaries for prosecutors, judges, legislators and other state government employees. For a true comparison of the plight of attorneys assigned to indigent defense cases with other state employees, we should imagine a scenario where all state government employees and officials are paid at the level they were in 1988. While such a scenario might solve the current fiscal problems facing our state, I would suggest that at such compensation levels many of those currently in the service of state government, including some in this room, would not be here today. To complete the picture, we should then imagine that all expenses, including employee salaries, utilities, office equipment, and even malpractice premiums of those attorneys who accept court appointments in criminal cases have been rolled back to the 1988 level. In such a scenario, I would not be here, and indeed, **HB 2129** would not be before this Committee today.

However, as vivid as our imaginations might be, the reality is that payment for court appointed attorneys has not kept pace with the rate of inflation, nor has it even kept pace with the cost of living raises of other state-funded services. Because the rate for assigned counsel remains frozen at the 1988 level, an increasing number of attorneys refuses to accept indigent defendant cases. Ultimately, indigent defendants will suffer from either inadequate representation, or, in a worst-case scenario, have their cases dismissed for lack of representation. Neither option is acceptable.

The Kansas Bar Association urges this committee to report the bill favorably.

* * *

Senate Judiciary

3-8-05

Attachment 5

Submitted by
Jim Clark

**Testimony for Senate Judiciary Committee
House Bill 2129**

House Bill 2129 proposes to amend the hourly rate paid to court appointed counsel in felony cases to \$80 from its present \$50.

The United States Supreme Court and the Kansas Supreme Court have repeatedly held that the United States Constitution requires that all those charged with felony crimes who cannot afford counsel must be furnished defense counsel by the State before the State can deprive them of their freedom. The State cannot deprive one of his or her liberty without a court proceeding and an attorney on both sides of the dispute. Prosecutors are provided by the State. The defense lawyers are provided either by appointed or retained private counsel or public defenders. If defense counsel, and the tools to defend, are not provided in felony defense the ultimate result to the State is delay, reversals on appeal with consequent retrials, or lack of action, impacts that are costly and foster delay.

In 1988 the current system of State provided indigent defense counsel was adopted following the Kansas Supreme Court decision in *State ex rel Stephan v. Smith*, 747 P.2d 816, 242 Kan. 336 (1987). Although there were a number of issues considered in that case the one that is relevant for today's hearing relates to the requirement of reasonable compensation for defense counsel.

The rate that emerged after the Stephan case and the companion case of *Board of County Commissioners of Osage County v. Burns*, 242 Kan. 544, 747 P.2d 1338 (1988), was \$50 per hour.

Senate Judiciary
3-8-05
Attachment 6

17 years have passed. Unfortunately, as we are all aware dollars in 1988 were worth considerably more than dollars today.

I sought out information that would address the effect passage of time has had on this pay rate. A CPA provided information. His letter is attached. It is short and succinct. Considering inflation and the general cost of doing business \$50 an hour pay in 1988 would be worth \$31.66 in 2003. Relatively speaking appointed attorneys are getting paid roughly the same as pre-Stephan rates today. Looked at another way, \$50 purchase power in 1988 would require \$78.96 in 2004. It is simply time to increase the pay rate.

The Board of Indigents' Defense Services conducted a statewide survey of appointed counsel and reached a conclusion that \$40 per hour was the overhead figure for law offices currently. That figure does not consider actual pay to the attorney. That means that to open an office and operate it without income to the lawyer \$40 each hour is required. Currently the income to the average lawyer in these cases would thus be \$10 an hour. The BIDS request is to raise the rate paid attorneys to \$80 per hour. We respectfully request that you favorably support the request. Thank you.

Yours very truly,

By: 
Edward G. Collister, Jr.

EGC/ers

Member
American Institute of
Certified Public Accountants

DEAN O. RADCLIFFE
CERTIFIED PUBLIC ACCOUNTANT
3311 CLINTON PARKWAY COURT
LAWRENCE, KANSAS 66047
PHONE (785) 842-7289

Member
American Institute of
Certified Public Accountants

February 16, 2005

Mr. Edward G. Collister
3311 Clinton Parkway Court
Lawrence, Ks. 66047

Dear Ed:

Per your request I have researched the Consumer Price Index-All Urban Consumers. The index stood at 120.5 on December 31, 1988 and at 190.3 on December 31, 2004.

To put this in laymen's terms:

It would take \$78.96 to buy the same basket of goods in 2004 that you could get for \$50.00 in 1988.

\$50 pay in 1988 would be worth \$31.66 in 2004

I hope this give you the information you needed.

Sincerely,



Dean O. Radcliffe

6-3

NARRATIVE INFORMATION - DA 400

DIVISION OF THE BUDGET
STATE OF KANSAS

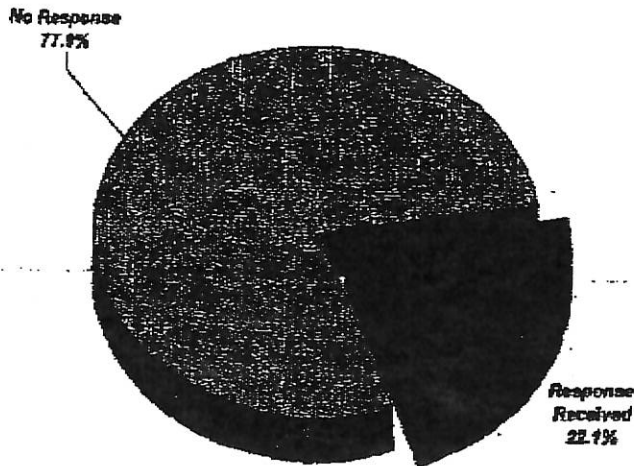
AGENCY NAME: Kansas State Board of Indigents' Defense Service
 AGENCY NUMBER: 328-00 FUNCTION NO. 01
 PROGRAM TITLE AND NUMBER: AID TO INDIGENTS DEFENSE
 SUBPROGRAM TITLE AND NUMBER: AGENCY SUMMARY - 42000

The results are compiled in the charts below. Following the median, overhead for assigned counsel is \$40 per hour. Therefore, the current hourly payment of \$50 per hour allows them only \$10 per hour compensation for a professional service. This is not a fair rate of compensation and is arguably confiscatory.

To avoid the wholesale resignation of our assigned counsel throughout the state and to avoid a lawsuit for fair compensation, we request an increase in the hourly rate to \$80 per hour. This hourly rate would allow \$40 per hour compensation after overhead. This reflects a yearly increase over the past 16 years of 3.88%. The rate paid to assigned counsel in federal court is \$90 per hour.

The cost of this enhancement is substantial - \$4,000,000. Compared to the cost of the alternative, however, this is cost effective.

Survey Responses



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KATHLEEN SEBELIUS, GOVERNOR

PATRICIA A. SCALIA, EXECUTIVE DIRECTOR

STATE BOARD OF INDIGENTS' DEFENSE SERVICES

Testimony in support of Senate Bill 2129

Submitted by
Debbie ROSACKER

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to offer testimony in support of this bill. This is a matter of Constitutional law and public policy. The Sixth Amendment requires the appointment of counsel for poor persons who stand accused. It must be the public policy of this state to provide competent counsel by paying an appropriate amount for a professional service. This can only be accomplished by increasing the hourly fee paid to counsel assigned to defend poor persons accused of felonies.

The State Board of Indigents' Defense Services provides the Sixth Amendment right to counsel through the work of public defenders and assigned counsel. Assigned counsel are used in geographic areas where it is more cost effective than opening a public defender office. However, it has been necessary to open three public defender offices due to the lack of local attorneys who were willing to perform services as assigned counsel at the low hourly rate. These cities are Liberal, Chanute and Independence.

It will be necessary to open additional public defender offices as fewer attorneys are willing to accept appointments at the \$50 per hour rate currently paid. Without the assistance of assigned counsel, we would be forced to open public defender offices in Kansas City, Leavenworth, Westmoreland, Ottawa, Pittsburg, El Dorado, Concordia, Smith Center, Norton, Colby, Hays, Larned and Dodge City. A low estimate of the cost of establishing those offices is \$6,000,000. The cost of this bill is \$3,200,000. The agency budget mirrors that amount, \$3,200,000, in our request for supplemental funds. It is vital that we maintain a panel of assigned counsel.

To maintain a panel of assigned counsel, it is necessary to increase the hourly rate paid. Assigned counsel have been paid \$50.00 per hour since 1987. The hourly rate was raised to \$50.00 from the previous \$35 per hour rate as a result of the Stephans case. In its decision on that case, the Kansas Supreme Court suggests that the Board of Indigents' Defense consider the overhead cost of attorneys to determine a payment rate that would not be confiscatory. We followed the Supreme Court's suggestion by conducting a survey of our assigned counsel in 2003.

The survey determined that the median overhead cost statewide is \$40 per hour. At that overhead rate, our assigned counsel receive only \$10 per hour for a professional service. To avoid the wholesale resignation of our assigned counsel throughout the state, we request an hourly rate increase to \$80 per hour.

Senate Judiciary
3-8-05
Attachment 7

Rec'd 3/10/05
put in 3-8

KANSAS DISTRICT JUDGES' ASSOCIATION

Post Office Box 423
Concordia, Kansas 66901

Hon. Thomas M. Tuggle, President
Hon. Daniel P. Love, Secretary

Hon. Ernest L. Johnson, Vice President
Hon. Robert J. Fleming, Treasurer

March 10, 2005

Senate Judiciary Committee

Written Testimony in Support of 2005 HB 2129
Chief Judge Thomas Tuggle
President, Kansas District Judges Association

The Kansas District Judges Association (KDJA) Executive Board generally supports measures intended to provide adequate legal representation for indigent criminal defendants on a statewide basis, and specifically supports HB 2129 as an effort to provide a level of reimbursement that will help to provide an adequate pool of attorneys from which appointments may be made.

The absence of a pool of attorneys interested in serving as defense counsel may result in consequences such as the inconvenience and expense of trial delays, or may impose a burden on judges to exert considerable time and effort in an attempt to find assigned counsel for a particular case. The ultimate consequence of an inadequate pool of attorneys willing to serve as assigned counsel is the dismissal of a case if counsel cannot be appointed so that a trial may proceed within the required time frame.

The ability to provide competent counsel for criminal defendants is a cornerstone of our criminal justice system. The KDJA Executive Board appreciates your consideration of HB 2129.

Sincerely,


Thomas M. Tuggle

TMT/jr

Senate Judiciary
3-8-05
Attachment 8

Testimony on House Bill 2180, by Pratt County Sheriff Vernon Chinn
March 8, 2005
Senate Judiciary Committee, Chairman Sen. Vratil

I come before you today to ask for your support of this bill, which is a major concern to me as a sheriff. Probably only those who have suffered at the hands of ones who run from law enforcement, really understand the pain and cost of it all.

As a law enforcement officer and even as sheriff I have had my share of fear. I've taken guns and other weapons from suspects intending harm to myself or others. I've kicked doors into armed methamphetamine labs and dodged drunk drivers coming head on into me on the highway. However, I've never experienced fear like that of a suspect speeding away from me in the middle of the night, not knowing where this is leading. From my first traffic stop to now, I always wonder as I approach the vehicle, "is this the traffic stop that will keep me from going home to my family?" Will I live beyond this stop? When the suspect speeds off, everything goes through your mind. Your knees sometimes literally knock together, to the point you are embarrassed at your fear, you sweat, your heart races, and you know your career and life is on the line. Will it end in a shoot out, as some have, with you alone, miles from back up at times? Is there a kidnapped child in the vehicle, a battered bleeding spouse, a fleeing felon from a shocking crime scene or numerous other possibilities?

As more and more restrictions are put on law enforcement, there is less fear of running with everything to gain. For the violator, his only concern is escape, without thought or concern of others. These are not for the most part, teenagers, living in a "Dukes and Hazards" mind set. We are talking about criminals who are committing felonies, fleeing the scene of that crime or trying to avoid capture of a warrant, without any thought of the officer's life that is pursuing them, or the life of anyone else.

The officers who have been killed or injured putting out tire deflating devices, or setting up roadblocks are simply trying to protect the public. The public that has been killed and injured by reckless fleeing drivers had no choice in the circumstances that harmed and killed them. These acts are already a felony and I am just asking that you add them to the list of inherently dangerous felonies, listed in KSA 21-3436. Is there really any difference in going around tire deflating devices and killing an officer in the process, than breaking into a home to steal, and causing a death or setting a fire that results in a death? I don't believe so.

I ask that you consider those who have lost loved ones to these absurd acts and increase the penalty for these criminals that chose to endanger others, even to the point of killing, just so they can escape the penalty of whatever felony they have committed.

Please support this bill. Thank you for your time.

Senate Judiciary
3-8-05
Attachment 9



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

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March 7, 2005

SENATE JUDICIARY COMMITTEE
Testimony in Support of
House Bill No. 2180

By
Kevin A. Graham
Office of the Attorney General

Dear Chairman Vratil and Members of the Committee:

Thank you for allowing me to appear and offer testimony in support of HB 2180. In Section 1, HB 2180 amends the crime of Involuntary Manslaughter (found at K.S.A. 2004 Supp. 21-3404) to add acts of "fleeing or attempting to elude a police officer" to the list of acts which may support the charge of Involuntary Manslaughter if a death occurs. Section 2 of HB 2180 would add "fleeing or attempting to elude a police officer" to the list of Inherently Dangerous Felonies (found at K.S.A. 2004 21-3436.) This bill is designed to allow for appropriately severe levels of punishment for individuals who would engage in the obviously extremely risky and dangerous actions of fleeing or attempting to elude a police officer.

Section 1 of the bill specifically provides for an offender to be charged with the crime of Involuntary Manslaughter in the event the driver of a motor vehicle willfully fails or refuses to bring such driver's vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police officer and the offender's conduct results in an a person being killed. This section specifically references incidents of "fleeing and eluding" as defined in subsection (a) of K.S.A. 8-1568. This charge would apply in cases where the offender was given a "visual or audible signal to bring the vehicle to a stop" and the police officer in question was "in uniform, prominently displaying such officer's badge of office" and the officer's vehicle or bicycle was "appropriately marked showing it to be an official police vehicle or police bicycle." The crime of Involuntary Manslaughter is a severity level 5, person felony, which carries a presumptive prison sentence, however, if the defendant is a first time offender his/her sentence under the Kansas Sentencing Guidelines Act would fall in a "border box" and thus the defendant may receive a non-prison sentence.

Section 2 of the bill addresses situations where the offender's actions while "fleeing and eluding" are even more serious and pose even more of a threat to other drivers.

pedestrians, law enforcement officers and others. In the type of cases that would be impacted by Section 2 of the bill, the offender will not only have engaged in an act of "fleeing and eluding" but done so in a manner that rose to a felony level under K.S.A. 8-1568. The statutory factors that give rise to an act of fleeing and eluding becoming a felony include: The offender "(1) Commits any of the following during a police pursuit: (A) Fails to stop for a police road block; (B) drives around tire deflating devices placed by a police officer; (C) engages in reckless driving as defined by K.S.A. 8-1566 and amendments thereto; (D) is involved in any motor vehicle accident or intentionally causes damage to property; or (E) commits five or more moving violations; or (2) is attempting to elude capture for the commission of any felony. . . ." Certainly an offender who commits acts that meet the felony requirements of K.S.A. 8-1568 has chosen to act in a way that any reasonable person would know to pose extreme danger to others. The substantive effect of adding crimes under K.S.A. 8-1568(b) to the list of Inherently Dangerous Felonies found at K.S.A. 2004 Supp. 21-3436, is that if the offender's highly dangerous conduct results in the death of another person, the offender could then be charged with the crime of Felony Murder and face a sentence of 20 years to life in prison.

HB 2180 is intended to impose stronger, appropriate punishments for individuals who cause the death of another person while attempting to flee or elude a law enforcement officer. The bill creates two separate punishment levels that could be imposed based on the facts of an individual case, with the more severe punishment (life imprisonment) available for offenders who engage in the most hazardous/riskiest conduct. The elevated punishment levels sought under the bill are intended to serve multiple purposes, including: (1) Protect other drivers, pedestrians and passengers; (2) protect Kansas law enforcement officers; (3) deter offenders from attempting to flee or elude a law enforcement officer; and (4) appropriately punish offenders whose extremely dangerous conduct has taken the life of another person.

On behalf of Attorney General Phill Kline, I encourage the Committee to support HB 2180 and to recommend the bill favorably for passage.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Kevin A. Graham
Assistant Attorney General
Director of Governmental Affairs

Kansas Peace Officers Association

Before the Senate Judiciary Committee
In Support of HB 2180
Kyle G. Smith, Special Agent
Kansas Peace Officers Association
March 8, 2005

Chairman Vratil and Members of the Committee,

I appear today on behalf of the men and women who belong to the Kansas Peace Officers Association. People who have sworn to try and maintain our safety at risk of their own. HB 2180 recognizes one of the most dangerous situations, to both citizens and officers, that is faced everyday in Kansas, persons attempting to flee and elude apprehension.

While firearms are obviously deadly weapons, experience has shown that more deaths and injuries are caused by thousands of pounds of steel, glass and rubber being driven recklessly by persons trying to avoid capture than from firearms. Knowing this, agencies and officers are regularly torn between the horns of a terrible dilemma – to try and catch a criminal and put the public, and themselves at risk, or to let the criminal go to endanger the public in a different, but possibly equally, or more dangerous way.

By placing the crime of 'flee and elude' in its appropriate place as a serious crime that can cause death, it is hoped that suspects will be deterred from risking serious criminal penalties when confronted with possible apprehension. Even if the deterrence from fleeing happens in a fairly small percentage of cases, the savings in lives, injuries and property clearly justify the relatively small prison beds involved.

Thank you for your time and attention. I would be happy to try and answer any question.

Senate Judiciary

3-8-05

Attachment 11

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March 8, 2005

Sen. Vratil, Chair,
Senate Judiciary Committee
Statehouse, Topeka

Dear Senator Vratil and Members of the Committee,

I am writing in support of H.B. 2180. This bill makes fleeing and eluding a police officer an inherently dangerous felony. This recategorization has the benefit of fully according with reality. It creates liability for First Degree Murder when a death is produced during the commission of the crime. To fail to acknowledge this reality is to fail to protect Kansans who are exposed to the risk of death created by those who chose to flee the police. While there will be some bed-space impact, we submit the fiscal note overstates consequences of enactment by alluding to new construction. The note also unjustifiably fails to include a cost-benefit analysis or other assessment of the whether the amendment is worth the cost.

Sincerely,

R. Michael Jennings, ADA
Chair, KCDAAs Legislative Committee

Senate Judiciary
3-8-05
Attachment 12