

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on February 5, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Mike Peterson- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes

Jason Long, Office of the Revisor of Statutes

Julian Efird, Kansas Legislative Research Department

Dennis Hodgins, Kansas Legislative Research Department

Carol Doel, Committee Assistant

Conferees appearing before the committee:

Jordan Austin, National Rifle Association

Ed Brancart, Wyandotte County District Attorney

Oren Long, Private Citizen

Judge Richard Smith, Kansas District Judge Association

Judge Steven Tatum, Kansas District Judge Association

Judge James Fleetwood, Kansas District Judge Association

Judge Blaine Carter, District Magistrate Judge, 2nd Judicial District

Others attending:

See attached list.

The meeting scheduled for February 4, 2009, was cancelled.

Chairman Neufeld opened the floor for introduction of proposed legislation and recognized Rep. Sharon Schwartz who requested a bill concerning the appropriation of water..

Rep. Swenson moved the acceptance of the conceptual bill with a second by Rep. Olson. Motion carried.

Rep. Schwartz also requested a bill concerning the use of controlled substances endangering children.

Rep. Grant moved the acceptance of the conceptual bill with a second by Rep. Benlon. Motion carried.

Rep. Bethell requested a bill concerning background checks in nursing homes.

Rep. Ruiz moved the acceptance of the conceptual bill with a second by Rep. Heubert. Motion carried.

Rep. Fund moved the introduction of bill related to private detectives with a second by Rep. Swenson. Motion carried.

Rep. Kelly requested the introduction of a bill regarding the employment security law.

Rep. Brunk moved the acceptance of the conceptual bill with a second by Rep. M. Holmes

Cindy Hermes, Kansas Insurance Department, requested the introduction of a bill regarding long term care partnership exchange.

Rep. Ruiz moved the acceptance of the conceptual bill with a second by Rep. Brunk. Motion carried.

Tony Scott, representing CPA requested a bill that would amend the Kansas Accountants statutes.

Rep. Bunk moved the acceptance of the conceptual bill with a second by Rep. Olson. Motion carried.

Rep. Swenson moved the acceptance of a bill concerning caps on worker's compensation with a second by

CONTINUATION SHEET

Minutes of the House Federal And State Affairs Committee at 1:30 p.m. on February 5, 2009, in Room 143-N of the Capitol.

Rep. Ruiz. Motion carried.

Chairman Neufeld opened the hearing on **SB 19 - Concealed weapons; U.S. attorneys, county and district attorneys and assistants.**

Mike Heim, from the Office of the Revisor, gave an overview on **SB 19.**

Ed Bankhart, addressed the committee on behalf of Jerome Gorman, office of the District Attorney, Twenty-Ninth Judicial District of Kansas, as a proponent of **SB 19.** Mr. Bankhart related that they favor the concept of authorizing prosecuting attorneys to carry concealed firearms at any place and any time. He further stated that they favor a policy statement within the law that such prosecutors have minimum mandatory firearms training and favor drafting the law to not limit a district or county attorney from establishing employment policies that further regulate the use of firearms by prosecuting attorneys. (Attachment 1)

Oren Long, retired law enforcement officer, addressed the committee in agreement with the passage of **SB 19.** Mr. Long stated that retired law enforcement personnel holding a valid concealed carry permit shall be exempt from restrictions placed upon non-retired law enforcement concealed carry permit holders. Mr. Long termed this as “the common sense approach.” He further stated that retired law enforcement are pre-trained.. experienced in the law, and know “shoot/don’t shoot” rules and can easily enhance public safety for free. (Attachment 2)

Jordan Austin representing the National Rifle Association stood before the Committee to report the NRA is neutral to the legislation proposed by **SB 19.**

The Chair recognized Richard Smith, Chief Judge of the 6th Judicial District, as an opponent of **SB 19** who asked that the committee view **SB 19** very cautiously and requested that if the legislation was passed that it be amended to reflect that none of the changes in the criminal statutes be construed to change the well stated public policy in the Personal and Family Protection Act. He further stated that as to courthouses and courtrooms, judges should maintain ultimate authority to determine who may carry a firearm. (Attachment 3)

Judge Stephen Tatum, 10th Judicial District, Johnson County, opined as an opponent of **SB 19** saying that as a former prosecutor for fifteen years and a Judge for fifteen years, he can think of no good reason for prosecutors to carry concealed weapons in the Johnson County Courthouse. He related that Johnson County has a good security system and that if this bill were to be passed, he would request that courthouses with good security and safety procedures be allowed to opt out. (Attachment 4)

Next to address the committee in opposition of **SB 19** was Chief Judge James Fleetwood, Eighteenth Judicial District, Wichita, Kansas. Judge Fleetwood is concerned with the legitimate safety concern of creating a breach in the security of the courthouse now well established and maintained by the sheriff and courthouse security if this legislation were to be passed. The Judge further stated that he feels that **SB 19** would created very real and unnecessary perils for those with legitimate business within the courthouse. (Attachment 5)

Judge Blaine Carter, District Magistrate Judge, Second Judicial District, Alma, Kansas appeared before the committee as an opponent to **SB 19.** Judge Carter stated that his concerns are the same as those voiced by the other judges appearing to testify before the committee. Judge Carter’s association requests that the committee provide for the continuation of the current rule that judges should remain in control of what firearms, if any, may be allowed in a courtroom and who may be in possession of the same while they are in court. (Attachment 6)

Written testimony as proponents of **SB 19** was submitted by Senator Derek Schmidt, (Attachment 7) and Thomas Stanton, Deputy Reno County District Attorney. (Attachment 8)

With no other person wishing to appear on **SB 19**, Chairman Neufeld closed the hearing.

The Chair appointed a subcommittee of Rep. Knox, Carlson, and Ruiz to further study **SB 19**

CONTINUATION SHEET

Minutes of the House Federal And State Affairs Committee at 1:30 p.m. on February 5, 2009, in Room 143-N of the Capitol.

The next meeting will be held on Monday, February 9, 2009.

Meeting adjourned at 2:30 p.m.

House Federal and State Affairs
Guest list

Date 2-5-09

Name

Organization

Dimitry Hermes

KID

Rob Mearcy

Keenan Assoc.

Wigh Keck

Hein Law Firm

Oren Long

Citizen

MARK BOBANYAK

CAPITOL STRATEGIES

Whitby Jam

IS Ba Assn



Office of The
DISTRICT ATTORNEY

JEROME A. GORMAN

Twenty-Ninth Judicial District of Kansas
Wyandotte County Criminal Justice Complex
710 North 7th Street, Suite 10 - Kansas City, Kansas 66101-3051
Telephone: 913-573-2851

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January 14, 2009

Chairman of the House Corrections and Juvenile Committee
Kansas State Capitol
300 S.W. 10th Street
Topeka, Kansas 66612

RE: Written testimony with respect to SB 19

Senators:

Prosecuting attorneys are sometimes in an awkward position – treated as not quite civilian, yet not quite police.

Meanwhile, prosecuting attorneys are heavily involved in holding dangerous criminals to account for their crimes. A career prosecutor may be involved with successive generations of career criminals – with desperate, violent, grudge-holding convicted felons – and with relatives, criminal associates, and other sympathizers to the same criminal defendants. These involvements accumulate. Sometimes they fester in the minds of the societal element who would do a prosecuting attorney harm.

Prosecuting attorneys throughout the United States are sometimes targeted for violence by criminals. You have each probably inspected the memorial on the statehouse lawn of Kansas law enforcement officers killed in the line of duty. There is a similar memorial in the center lawn of the Ernest F. Hollings National Advocacy Center on the campus of the University of

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South Carolina in Columbia. This memorial, however, honors prosecutors who were killed across the country during the performance of their duties.

Last August a deputy district attorney in Denver was murdered after being confronted in the yard of his own home by an armed man. It can happen in our neighborhood.

In August of 1993 a man from Jefferson County had been convicted of felony drug crimes. His name was Gary McKnight. On the day he was to be sentenced he came to Topeka armed with homemade bombs and handguns. McKnight went in the federal courthouse where he shot and killed a retired Kansas Highway Patrol trooper who was serving as a security officer in the courthouse. McKnight then searched throughout the building while discharging bombs and firing into court offices and critically injuring more victims. It can happen in our own backyard.

We make the case that district or county attorneys and their deputies and assistants who practice in 'hot' courts where felony charges are litigated endure a continuing risk of personal harm by virtue of their public employment. One intending such harm would find prosecuting attorneys easily identifiable in a courtroom, or coming or going from their government offices or parking lots. The same risk follows a prosecutor who joins major case detectives at the scenes of violent crimes. In the case of a person who has fixated on a particular prosecutor the risk to prosecutor carries over to any place at any time. The same can be said of federal prosecuting attorneys.

As a general rule, Kansas prohibits the possession of a firearm under certain circumstances, and the carrying of a firearm concealed from public view in yet other circumstances. See K.S.A. 21-4201. That general prohibition is exempted when it comes to:

- A person doing so on his own land
- A person doing so in his own home

A person doing so at his fixed place of business

And...

Law enforcement officers (without condition)

Persons summoned by such officers to assist, while actually assisting

Wardens...and keepers of prisons,...jails...for the detention of persons accused or convicted of crime, while acting within the scope of their authority

Members of the armed services or reserve forces of the US or Kansas national guard, while in the performance of their official duty

Makers, shippers, and sales personnel of weapons to law enforcement officers, jailers and military personnel

Watchmen, while in the performance of their employment

Licensed hunters or fishermen while engaged in hunting or fishing

Licensed private detectives, while in the performance of their employment

Railroad detectives, while in the performance of their employment

The state fire marshal, his deputies, or certain members of fire departments, while in the performance of their employment

Special deputy sheriff's, who have obtained the training for part-time law enforcement officers

Persons licensed under the Kansas Personal and Family Protection Act

It seems that at least some of the exemptions apply to the status of persons with greater need to carry a concealed firearm than felony prosecutors. Conversely, the same exemptions apply to those with less need to carry a concealed firearm.

Firearms are tools used both on offense and defense. A full-time police officer would use a firearm on both offense and defense. Prosecuting attorneys would typically not be involved with work-related offensive use of firearms, but instead would have the greatest need in connection with work-related personal defense or defense of others.

Felony prosecutors are entrusted with wide discretion that can and does result in the denial of a convicted person's life, liberty and/or property – without a firearm. Surely the same public servants can be entrusted with the authority to protect themselves – with a firearm.

Felony prosecutors in Kansas should be permitted the possession of firearms and the authority to carry firearms concealed from public view wherever they might be in

harms way, which is in any place and at any time. The authorization for doing so should be a statement of policy, including training policy. It should not include minute requirements that would then be inflexible in implementation.

We certainly concur that felony prosecutors should be adequately trained in the use of firearms. What amounts to adequate training? The answer is apparently a subject of some varied opinion.

First, with respect to the text of SB 19, New Section 4 requires prosecuting attorneys to obtain and maintain a concealed carry license under the Personal and Family Protection Act. Next, in addition to concealed carry training, SB 19 requires prosecutors to obtain firearms training as determined by the director of police training at KLETC. And finally, SB 19 saddles the individual prosecuting attorney with obtaining a concealed carry permit at his own expense.

The issue of expense may be misplaced in an authorizing statute. In the case of prosecuting attorneys, they would be protecting themselves from dangers made possible by their public employment. Law enforcement officers are not required by K.S.A. 21-4201 to pay for their own firearms training, nor are the other classes of public servants exempted from the prohibition against concealed carry. Other than the purely private instance of a concealed carry permit under the Personal and Family Protection Act, the non-public servants exempted in K.S.A. 21-4201 are not obligated by statute to pay for their own firearms training. The issue of payment for training is capable of resolution by other means than an authorizing statute. Nothing in SB 19 places a training burden on any trainer. The issue can be worked out between prosecutor and trainer.

The dual training requirement also places a burden on prosecutors that does not exist with any of the other classes of public servants or private individuals exempted from K.S.A. 21-4201. Additionally, the dual training requirement in SB 19 creates a Catch-22. A prosecutor who first obtains a concealed carry license is subject to the provisions of the PFPA – which would not permit the carry of a firearm in certain places. If the PFPA licensee violates the rules his license may be suspended or revoked. Meanwhile, a prosecutor who would carry a concealed firearm to his office in a courthouse by virtue of the amendment in section 3 to K.S.A. 21-4218 would necessarily violate the rules associated with the PFPA license.

A PFPA license is not a suitable tool for insuring that prosecutors are adequately trained.

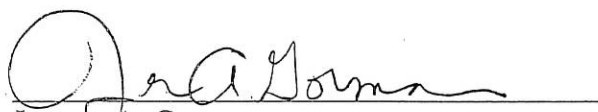
If felony prosecuting attorneys are worthy of having authority to carry concealed firearms at any place and any time, or wherever the legislature will approve, then **we recommend that the appropriate method would be to grant the authority without mention of payment for training, and with a training requirement not more burdensome than full-fledged law enforcement officers.**

District and county attorneys should be free to establish employment policies that would further regulate the possession and concealed carry of a firearm by prosecuting attorneys.

From our perspective the training requirements for PFPA licensure are insufficient for the purposes of prosecuting attorneys. Conversely, we do not advocate that prosecuting attorneys be required to train for the same uses of a firearm as do police. Police training is designed to prepare an officer for both offensive and defensive use of his firearm. Prosecutor training should be weighted to prepare a prosecutor for reasonably expected usage. **A prosecutor-specific training course is warranted.**

In summation, we favor the concept of authorizing prosecuting attorneys to carry concealed firearms at any place and any time. We favor a policy statement within the law that such prosecutors have minimum mandatory firearms training at a level somewhere between that of PFPA training and full-time police training. We favor drafting the law to not limit a district or county attorney from establishing employment policies that further regulate the use of firearms by prosecuting attorneys.

Respectfully,

A handwritten signature in black ink, appearing to read "Jerome A. Gorman", written over a horizontal line.

Jerome A. Gorman
District Attorney
Twenty-Ninth Judicial District
Wyandotte County
Kansas City, Kansas

Requested Change

Retired law enforcement personnel holding a valid concealed-carry permit shall be exempt from restrictions placed upon non-retired law enforcement concealed-carry permit holders.

Very Simple -- one sentence

Common Sense Approach

21 R 218, signed by President Bush in 2006, authorized all active and retired law enforcement officers to carry concealed nationwide. Previously, even active duty law enforcement had to disarm when leaving their home state.

Post 9-11 this put more guns on the street in the hands of trained, professional law enforcement and without costing taxpayers anything.

In these tight budgetary times this proposed change could enhance public safety in Kansas, again, without costing taxpayers anything. This change could reduce local needs for hiring additional law enforcement, always an expensive prospect.

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Attachment 2

Further, Kansas already pays retired law enforcement. Why not get something in return?

Again, retired law enforcement are pre-trained, experienced in the law, know "shoot/don't shoot" rules, and can easily enhance public safety, all for free.

I do not believe the governor would veto such a common-sense approach.

Thank You,

Oren Long, Jr.

Shawnee Co. Sheriff's Lt, Retired

10545 V-9 Rd. 66440

(785) 986-6229

HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

Hon. Melvin Neufeld, Chairman
Hon. Mike Kiegerl, Vice Chairman
Hon. Judith Loganbill, R.M. Member

February 5, 2009
1:30 p.m.
Room 143-N

Chief Judge Richard M. Smith
Sixth Judicial District
P.O. Box 350
Mound City, Kansas 66056-0350
judgeindc@earthlink.net

EXECUTIVE SUMMARY OF KDJA/KDMJA TESTIMONY ON SB 19

- Both Judges' Associations, the KDJA and KDMJA, oppose statutory authorization allowing prosecutors to carry guns into the courtroom.
- SB 19 only amends the criminal statutes, K.S.A. 21-4201, 21-4217 & 21-4218. This will result in a conflict in statutes.
- The Personal and Family Protection Act (K.S.A. 75-7c01 et. seq.), commonly known as concealed carry, still prohibits concealed firearms in courthouses and leaves it up to judges as to who may carry guns into courtrooms.
- Both Judges' Associations request that, if you act favorably on SB 19, it be amended to make it clear the current concealed carry provisions control and judges still determine who may have guns in the courtroom.

TESTIMONY ON BEHALF OF KANSAS DISTRICT JUDGE'S ASSOCIATION CONCERNING SENATE BILL 19

I wish to thank this honorable committee for extending this opportunity to appear and present testimony concerning SB 19. My name is Richard M. Smith, I am the Chief Judge of the Sixth Judicial District (Miami, Linn and Bourbon Counties) and am the Legislative Chairman and Treasurer of the Kansas District Judge's Association. I am appearing on behalf of the Kansas District Judge's Association to request careful consideration of SB 19. If this legislation

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Attachment 3

has the intended purpose of permitting the unrestricted presence of firearms (whether carried by a prosecuting attorney or others) into the courtrooms of the State of Kansas, the KDJA wishes to express their adamant opposition to this bill. Frankly, it is difficult to discern the exact intent of this legislation. As presently worded it would only modify the criminal statutes which pertain to certain weapons, their concealed nature and their discharge. It is the understanding of this association that the legislation is supported by certain prosecutors with the specific intent that it allow prosecutors to carry presumably concealed weapons into Kansas courtrooms. The problems inherent in allowing the unrestricted presence of firearms in Kansas courtrooms will be discussed later in this testimony. First, it is necessary to understand the current statutes and the effects of the changes requested by this bill. It is also necessary to review other statutes and legislative policies which appear to remain unchanged thereby calling into question the exact consequences of this legislation.

CURRENT LAW

While there are other effects of this legislation as it relates to various unlawful weapons, for the purposes of today's discussion, I will limit my references to what our association believes to be the true impetus of this bill. The statutes the bill seeks to amend include various weapons such as sawed off shotguns, straight-edge razors, switchblade knives, throwing stars and the like. I do not believe that these weapons are the concern. The real thrust of this bill relates to handguns. I will, therefore, attempt to focus on the statutes and requested changes as they relate specifically to this kind of weapon. The bill would amend three statutes all contained in the criminal code. K.S.A. 21-4201, 21-4217, and 21-4218.

K.S.A. 21-4201 is the crime of criminal use of a weapon. It includes carrying any pistol, revolver, or other firearm concealed on ones person except when in their home or place of business. Violation of this offense is a class A misdemeanor. Various law enforcement officers, correctional officers, firemen, private detectives, and others are exempted and therefore may carry a concealed weapon. The proposed legislation on pages 2 and 3, lines 38 to 3 suggests adding prosecuting attorneys to this class of exempted persons. This provision would exempt from criminal liability prosecutors so that they could carry a concealed weapon without violating K.S.A. 21-4201.

K.S.A. 21-4217 is the crime of criminal discharge of a firearm. It prohibits the discharge of any firearm upon land or nonnavigable body of water of another or from any public or private road without the permission of the landowner or the adjoining landowner. The bill on pages 4 -5 lines 34 to 2 would add prosecuting attorneys to that class of persons exempted from criminal liability under this statute. It would require that the prosecutor be actually engaged in the duties of their employment. Violation of this section is a class C misdemeanor.

K.S.A. 21-4218 is the crime of unauthorized possession of a firearm on state property and county courthouses. Subsection (a) of this statute is rather long and somewhat difficult to read. Highly summarized, it prohibits possession of a firearm in this building, the governor's residence, other state owned and leased buildings and all county courthouses unless (in the case of a county courthouse) such possession has been authorized by a resolution of the county commissioners. It contains an exemption for commissioned law enforcement officers and persons lawfully engaged in assisting such officers. SB 19 would add prosecuting attorneys to that exempted class allowing them to "possess a firearm within any courthouse."

IMPACT OF SB 19

In its current form SB 19 would exempt prosecuting attorneys from these criminal statutes so that they would not violate these criminal statutes when carrying a concealed weapon, or discharging it in the course of their official duties and when in a state building or a county courthouse.

If SB 19 is passed in its current form the criminal code would be modified such that carrying or discharging a firearm in a county courthouse by a prosecuting attorney would not be a crime under these three statutes. But, due to the impact of other statutes, while in a courthouse or courtroom, the firearm would then have to be carried in an open and notorious fashion and could not be concealed from others, including a jury.

Not addressed by this legislation, but of great importance and concern, is K.S.A. 75-7c10(a)(4)(5). K.S.A. 75-7c01 et. seq. is the Personal and Family Protection Act commonly known as "concealed carry." These statutes were passed by the Kansas Legislature in 2006 and set forth the rules, regulations and, most importantly, the public policy of this state regarding the carrying of concealed weapons. I am sure that I need spend no time in reiterating the thoughtful process this Legislature went through in establishing these laws. They are the laws of this state and represent a clear and well defined statement of what this Legislature believes to be the rule of law as it concerns the carrying of a gun. In K.S.A. 75-7c10(a)(4)(5) this Legislature made it abundantly clear that one place no one could carry a **concealed** weapon is the County Courthouse; provided the premises are posted. More particularly, in subsection (a)(5) this Legislature stated that one was allowed to carry a concealed weapon into a courtroom and the law goes so far as to state that nothing in the concealed carry law precludes a judge from "determining who will carry a concealed weapon in the judge's courtroom." Interestingly, SB 19 makes no mention of K.S.A. 75-7c10, it is for this reason that the Kansas District Judge's Association is in a quandary regarding SB 19. Under the provisions of the conceal carry statutes it remains a class A misdemeanor to carry a concealed weapon in a courthouse or courtroom. Surely prosecutors are not asking to strap a six gun on in a holster and wear it in front of the public, opposing counsel and the jury. Nevertheless, if SB 19 is passed in its current form, open and notorious is the only way a gun could be lawfully carried in the courtroom.

The solution is simple. SB 19 needs to be amended to include the same language as exists in 75-7c10 making it abundantly clear that despite the amendment to the criminal code the presence of firearms in the courtroom is left to the sound discretion of the judge.

PRESERVE THE AUTHORITY OF JUDGES

Our association takes no position on whether a prosecutor should be allowed to carry a concealed weapon in any venue other than our courthouses and more particularly our courtrooms. If SB 19 is designed for the purpose of insuring the personal safety of prosecutors in all other locations we are most certainly in favor of their protection. Our issue is with the judge's inherent authority to control their courtrooms. Judges are responsible for insuring that the litigants, attorneys and spectators in their courtrooms are safe. It is the judge who is ultimately responsible for the general public who appear during the course of court proceedings. The Legislature has recognized this inherent responsibility and codified that responsibility in K.S.A. 75-7c10(a)(5). This policy was debated and clearly established as recently as 2006. There is no reason to now waver from that stated policy.

In the day to day operations of the district courts in this state there is a need to make sure that one person is specifically in charge and in control and responsible for everyone's safety. Whether or not individual district judges wish to assume that responsibility, they must. From a practical point of view only one person can be in charge of a situation like a courtroom. There should be only one entity making and enforcing rules. In the context of the supervision and management of a courtroom that person or entity must be either the judge or chief judge of the district.

Courtrooms present unique situations that can be very emotional and even volatile. The situation in a courtroom and the dangers that may or may not exist change from day to day and even from case to case. No one is in a better position to make a decision about something as important as the presence of firearms in the courtroom other than the judge. A general exception for one class of persons, namely the prosecutors, from the control and authority of the trial judge as to whether or not they and they alone can carry weapons into the courtroom is not some magic or automatic guarantee of the prosecutor's safety. In fact, the unilateral decision of a prosecutor to be able to possess a firearm in a district courtroom can actually be a life threatening hazard not only to the other persons in the courtroom but even to that prosecutor themselves.

Issues of security can be addressed by the court on a case by case basis. Even those courts that do not have ongoing and continuous firearms security and the presence of duly authorized security officers can provide for appropriate security in cases where the facts dictate the same. It makes more sense for prosecutors to discuss these security issues with the judge, defense counsel, and court security officers in an attempt to insure that everyone is safe rather

than simply suggesting that one lawyer should be permitted to make the individual decision that they should be armed with a handgun.

CONCLUSION

In summary, our association asks that this committee view SB 19 very cautiously. If it is your desire to pass this legislation we ask that it be amended* to reflect that none of the changes in the criminal statutes be construed to change the well stated public policy in the Personal and Family Protection Act. As to courthouses and more particularly courtrooms judges should maintain ultimate authority to determine who may carry a firearm.

Respectfully submitted:
Richard M. Smith
Chief Judge of the 6th Jud. District
913.795.2622 – Linn Co Chambers
judge1ndc@earthlink.net

* The exact language taken from KSA 75-7c10(a)(5) that could be added is “nothing in this section would preclude a judge from who will carry a [firearm] in the judge’s courtroom.

Testimony in Opposition to SB 19

House Federal and State Affairs Committee
Thursday, February 5, 2009

Chief Judge Stephen R. Tatum, 10th Judicial District (Johnson County)

As a former prosecutor for fifteen years and a Judge for the past fifteen years, I can think of no good reason for prosecutors to carry concealed weapons in the Johnson County Courthouse.

Our security system has one entrance into the courthouse and one exit from the courthouse. All persons who come into the courthouse are scanned for weapons. Johnson County uses the universal screening method recommended by the National Center for State Courts (NCSC) Security Assessment Team. This involves a single public entrance equipped with a magnetometer (walk-through metal detector), an x-ray machine, a hand-held screening wand, a duress alarm, and CCTV cameras. Police officers who come to testify check their weapons at the door. The sheriff has a security detail that patrols the halls. It is a safe environment for all persons who come into the Courthouse.

The thought of prosecutors having a concealed weapon in our courthouse is not comforting, regardless of training. Our courtrooms are places for court proceedings without intimidation by either side. A prosecutor with a concealed weapon and open suit coat would soon be known to carry a weapon, by jurors, litigants, attorneys. A fair trial?

Johnson County has a good security system, based on removing guns, knives or other weapons from individuals at the front door. It works. We have a safe environment free of gun accidents, or shootings. The Sheriff's department provides excellent security and is always available to the courts. We want to keep it this way.

If this bill is inevitably going to pass, I ask that courthouses with good security and safety procedures be allowed to opt out.

Thank you.

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Attachment 4

HOUSE COMMITTEE ON JUDICIARY

Hon. Melvin Neufeld, Chair
Hon. Mike Kiegerl, Vice Chair
Hon. Judith Loganbill, Ranking Minority Member

February 5, 2009
1:30 pm.
Room 143-N
Chief Judge James R. Fleetwood
Eighteenth Judicial District
525 N. Main
Wichita, KS. 67203
jfleetwo@dc18.org

TESTIMONY IN OPPOSITION OF SENATE BILL 19

My name is James R. Fleetwood, Chief Judge of the 18th Judicial District. I would like to thank this honorable committee for allowing me the opportunity to speak in opposition to Senate Bill 19. For your information I speak as a gun owner and gun enthusiast. I regularly shoot and have become proficient in the use of my Colt 45, Baretta 22 and Browning 9 mm. Despite my enjoyment of the ownership and use of handguns I have professional reasons to resist the idea of handguns being carried into the courthouse or courtrooms.

Prior to being assigned to provide security in the courthouse or any of its courtrooms, a Sedgwick County Sheriff's deputy receives the following training directly related to the use of handguns in high stress situations related to security and police work:

1. 2 hours Introduction to Firearms
2. 4 hours Fundamentals of Marksmanship
3. 12 hours Basic Auto-Pistol Training
4. 50 hours Handgun Practical Exercise
5. 56 hours in Tactical Self Defense Concepts and Weapon Control
6. 7 hours of Judgment Development in the Simulator

This is a total of 131 hours deemed necessary by the sheriff to qualify a deputy to be effective in a sudden and dangerous situation involving handguns. The 8 hours of class time necessary to obtain a concealed carry permit simply does not compare nor prepare a person to respond in a situation where

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the potential of using lethal force can become an immediate possibility. In addition deputies are required to complete annual refresher courses in the use of force and policies related thereto.

We are not talking about just criminal trials where a minimum of 20 people are present but also Child In Need of Care, (CINC) cases, divorce cases, and Protection From Abuse Hearings where confusion can heighten tension. In many of these situations upwards of 100 individuals can be present for dockets filling courtrooms and spilling out into hallways and foyers.

Simply saying that a judge can order that no weapons be carried into his or her individual courtroom is not sufficient. Such an order will not control what is happening in hallways outside the courtroom. At any given time we have 6 security guards assuring that no weapons of any kind are brought into the courthouse. To have handguns available in any hallway or conference room where a prosecuting attorney or county attorney is present defeats their best efforts. Police are trained to be ever vigilant in weapon control and retention. Attorneys are present for an entirely different purpose. Their work as state advocates and prosecutors becomes a distraction to the necessity of controlling and retaining a lethal weapon. I would also state that trial judges do not want to be placed in a situation where they have to consider countermanding an action of the legislature on a daily basis.

Furthermore, we are not talking about situations that never happen in reality. In my own courtroom a previously compliant criminal defendant suddenly leaped into the jury box during the reading of the verdict and attacked several jurors. The 5 deputies present to provide security were able to control the individual but one of the deputies drew his pistol when the defendant appeared to be reaching for it. I do not like to contemplate the potential for disaster if an untrained but good intentioned prosecutor also drew a weapon in the ensuing melee`.

I do not address the ability or right of a prosecutor or county attorney to carry a concealed weapon in any other situation or circumstance. I am only concerned with the legitimate safety concern of creating a breach in the security of the courthouse now well established and maintained by the sheriff and courthouse security. Despite the best intentions involved I believe Senate Bill 19 creates

very real and unnecessary perils for those with legitimate business within the courthouse. I am not aware of anybody that believes that an armed prosecutor in the courthouse could improve the safety of themselves or other citizens. In my conversations with the judges of my district I can say that the vast majority of them strongly oppose the idea of permitting guns in the courthouse as contemplated under this bill.

Sincerely,

James R. Fleetwood
Chief Judge
18th Judicial District

**TESTIMONY ON BEHALF OF KANSAS DISTRICT
MAGISTRATE JUDGE'S ASSOCIATION
CONCERNING SB 19**

Judge Blaine A. Carter
District Magistrate Judge
Second Judicial District
P.O. Box 278
Alma, Kansas 66401-0278
bacjudge@embarqmail.com

I also wish to express my thanks for this honorable committee's courtesy in allowing me to appear to express my concerns regarding SB 19. I am Blaine A. Carter, District Magistrate Judge from Alma, Kansas. I am the legislative chair for the Kansas District Magistrate Judge's Association. I join with Judge Smith and Chief Judges Fleetwood and Tatum in opposition to this legislation if its purpose is to allow the unrestricted presence of firearms in Kansas courts if carried by a prosecutor.

I have taken an informal poll of the Magistrate Judge's Association. Everyone in our association who has responded to my inquiry has taken a strong position in opposition to allowing prosecutors to carry firearms while in court. Based upon my communications I am confident that our association is unanimous in this opposition. Our concerns are the same as those voiced by the other judges appearing this afternoon to testify.

This committee might be surprised to learn that in many judicial districts, by order of the chief judge or in some cases by order of specific trial judge, no one is allowed to carry a firearm into the courtroom. This includes law enforcement. In many jurisdictions all persons, including police officers, sheriffs and deputy sheriffs are required to "check their guns" at a security point when entering the courthouse or are required to leave their firearms at the sheriff's office or other law enforcement department and are not permitted to carry them into court when testifying. The reason for this rule is very simple. If a gun is present in the courtroom it can be taken from the person carrying it and present an immediate risk to the safety of the public, attorneys, parties and court personnel. This was what happened in Atlanta, Georgia where a defendant in a rape case managed to take a handgun from a court security officer. He shot the officer then killed the judge, a court reporter and another law enforcement officer. Many jurisdictions have security officers armed with only tasers or stun guns so as to provide security without the necessity of the presence of a firearm.

Our association, like the Kansas District Judge's Association, is in favor of allowing prosecutors to provide for their personal safety amending the statutes to allow prosecutors to carry concealed firearms in their cars, in the public and so on is not our concern. Our association requests that this committee provide for the continuation of the current rule that judges should remain in control of what firearms, if any, may be allowed in a courtroom and who may be in possession of the same while they are in court.

Respectfully submitted:
Judge Blaine A. Carter
District Magistrate Judge
Second Judicial District
bacjudge@embarqmail.com

House Fed & State Affairs
Date: 2-5-09

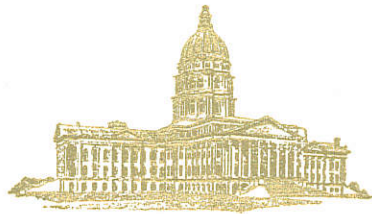
Attachment 6

Capitol Office

State Capitol, Room 390-E
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(785) 296-2497

15th District Office

P.O. Box 747
Independence, Kansas 67301-0747
(620) 331-1800



Senator Derek Schmidt
Majority Leader

Committee Assignments

Chair: Confirmation Oversight
Vice Chair: Assessment & Taxation
Organization Calendar & Rules
Member: Judiciary
Agriculture
Legislative Post Audit

Message Only (800) 432-3924
Fax: (785) 296-6718
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Testimony in Support of Senate Bill 19
Presented to the House Federal and State Affairs Committee
by Senator Derek Schmidt

February 5, 2009

Mr. Chairman, members of the committee, thank you for this hearing today regarding Senate Bill 19.

This legislation would extend to federal and state prosecutors in Kansas the authority to obtain the appropriate training to be treated much like law enforcement officers in their ability to carry weapons. The legislation was requested of me some time back by a federal prosecutor in Kansas, who relayed real-life stories of concern for his personal safety.

I began discussing this concept with interested parties before the concealed carry law passed in Kansas in 2006. After enactment of that statute, I asked the interested parties to review it. Although it provided more opportunity for prosecutors to carry weapons for personal safety than previously, the statute still was viewed as inadequate by some prosecutors, in large part because of the various limitations it contains on where a concealed weapon may be carried.

This bill would authorize federal and state prosecutors in Kansas who hold a concealed carry permit to obtain additional firearms training established through the Kansas Law Enforcement Training Center. Upon completion of that training, a prosecutor would be treated more like a law enforcement officer than an ordinary concealed carry permit holder in terms of his or her ability to carry a firearm.

The rationale of this legislation is simple: Prosecutors deal with the same group of often-unsavory characters that law enforcement officers deal with. They have personal safety issues that are more similar to those of law enforcement officers than those of most other citizens. Therefore, they should have available to them an avenue for personal protection comparable to law enforcement officers.

I have attempted to craft a bill that is permissive rather than mandatory, that requires high levels of added training to obtain permission to carry a weapon, and that reflects a consensus among the interested parties. I do not know whether I have succeeded on these points, but at least this represents a solid starting point for the policy discussion.

Thank you again, Mr. Chairman.

Attached: Testimony from the National Association of Assistant United States Attorneys

House Fed & State Affairs

Date: 2-5-09

Attachment 7



National Association of Assistant United States Attorneys

12427 Hedges Run Dr. • Ste 104 • Lake Ridge, VA 22192-1715

Tel: (800) 455-5661 • Fax: (800) 528-3492

Web: www.naausa.org

January 14, 2009

The Honorable Derek Schmidt
Majority Leader
Kansas State Senate
392-E
300 SW 10th Avenue
Topeka, KS 66612-1504

Dear Senator Schmidt:

I write on behalf of the National Association Assistant United States Attorneys to thank you for your efforts to improve the protection and safety of Assistant United States Attorneys in their efforts to secure justice for all Americans. More specifically, I write to extend the endorsement of the National Association of Assistant United States Attorneys for your proposed legislation to amend Kansas law to more broadly permit the carrying of concealed firearms by the United States Attorney and Assistant United States Attorneys for the federal district of Kansas, as well as Kansas state district attorneys and Kansas county attorneys.

It is well-recognized that firearms represent an effective personal security tool when judiciously placed in the hands of law enforcement officers and others who help to assure public safety. Your legislation responds to the increasing vulnerabilities, threats and assaults faced by federal, state and county litigators. It is narrowly and reasonably crafted, yet desirably promotes and expands the assurance of public safety. We urge the Kansas state legislature to adopt it.

Our association represents the interests of the 5,300 Assistant United States Attorneys (AUSAs) employed by the Department of Justice, including the nearly fifty AUSAs in the state of Kansas, located in United States Attorney Offices in Wichita, Kansas City and Topeka. These brave men and women constitute the front-line career-level employees of the Department of Justice responsible for the prosecution of persons charged with federal crimes, as well as the defense of the United States in civil matters.

Assistant United States Attorneys faithfully serve the people of the United States in significant and necessary ways, including the prosecution of the most serious, sophisticated and violent offenders in our society, ranging from drug kingpins to international terrorists to armed career criminals. The daily dangers faced by an Assistant United States Attorney are extensive and endless. The dangers faced by an Assistant United States Attorney can arise at any time and at any place during the investigation,

President:
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ND of West Virginia

7-2

arrest, indictment, trial and incarceration of a criminal suspect or defendant, and can continue beyond release from incarceration. It is not uncommon for a criminal defendant or an associate of that defendant to purposely seek to intimidate an Assistant United States Attorney to derail their prosecutorial effort or to seek reprisal for the conviction brought about by the same attorney.

As part of their litigation-related work, AUSAs are often called on to visit crime scenes, interview witnesses and otherwise aid in the investigation of criminal acts, often in high-crime areas. In addition, it is not unusual for AUSAs to work late into the night in their offices, then walk blocks to unsecured lots where they have parked their cars. As a result, AUSAs are high-profile targets, and they and their families have been the frequent victims of violent threats and even assaults against their personal safety.

Assistant United States Attorneys are the lead litigators in the often highly-publicized public trials of notorious criminal offenders. We are aware of Assistant United States Attorneys in Kansas who have been vulnerable to or specifically targeted for attack by highly dangerous and violent career offenders and organized criminal and terrorist groups, including the Bloods, Crips, Mexican Mafia and Inglewood Family Group. Additionally, the United States Attorney's Office for the district of Kansas has been particularly active in the prosecution of Freemen members, who are headquartered in Montana but maintain a large, active membership in Kansas. Their confrontation with law enforcement officers and their espousal of the use of weapons and violence against law enforcement officials both state and federal, has received national press attention. One of the Freemen defendants being prosecuted by the United States Attorney's Office in Topeka had threatened physical retaliation against anyone involved in prosecuting him for federal offenses.

As a result of the vulnerabilities described above, the United States Attorney and Assistant United States Attorneys in the state of Kansas are subject to the threat of harm, especially because of the infirmity of Kansas law to extend to them the privilege to carry a concealed firearm in many public locations, including county courthouses, even if they are properly licensed and trained in the use of a firearm. Your legislation would help to close this gap. Specifically, your legislation would amend the Kansas Personal and Family Protection Act, K.S.A. 75-7c01 et seq., to permit covered federal, state and county litigators to carry concealed firearms in certain public locations, including county courthouses, so long as they have been properly trained and licensed to own and operate such weapons. The authority to carry a firearm into a county courthouse will be particularly helpful, given the frequency of occasions in which Assistant United States Attorneys must visit a county courthouse to review evidence and consult with law enforcement personnel, largely in "adopted cases," i.e., those in which investigations originating under state law expand into federal investigations, requiring the involvement of Assistant United States Attorneys.

Finally, in view of the supremacy of federal law, as currently recognized by Kansas law section 75-7c10(15), it may be desirable to preserve such recognition by the

appropriate amendment of your legislation to assure that continued sanctions remain against the carrying of firearms, where prohibited by federal law, rule or regulation.

Thank you for your consideration of these comments, and your most valuable efforts to improve the safety and protection of federal, state and county prosecutors. Please contact me whenever and wherever our association may be helpful to you and the Kansas legislature.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard R. Delonis".

Richard Delonis
National President
National Association of Assistant United States Attorneys



Kansas County & District Attorneys Association

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TO: Chairman Melvin Nuefeld
House Committee on Federal and State Affairs

FROM: Thomas R. Stanton
Deputy Reno County District Attorney

DATE: February 5, 2009

RE: Senate Bill 19

Chairman Neufeld and members of the committee:

Thank you for the opportunity to submit written testimony regarding Senate Bill 19. I have been a prosecutor for nearly eighteen years. I prosecute high-level drug crimes, as well as other serious felony offenses. I am proud to serve the citizens of Kansas as an advocate on their behalf.

Prosecutors serve a unique role in the justice system. We act to insure those who violate the laws of Kansas receive consequences for their actions. As a result, prosecutors are sometimes viewed as being responsible for the severity of those consequences. This can lead to prosecutors being targets of violent acts perpetrated by defendants, their families and their friends.

I have been the recipient of death threats because of my work, and I have also had threats made against my family. Some of these threats were simply the rants of the person making the threat with little or no real probability the threat would be carried out. Many others have been threats I believed could very well be carried out. I have often felt vulnerable to these threats because of my inability to carry a firearm for protection. I know many prosecutors who have the same concerns. I often meet those I have prosecuted out in the community of Hutchinson. Many of these chance meetings occur at local restaurants. I have run into former and current defendants in grocery stores, retail outlets and on the streets of Hutchinson. I recently had a chance meeting with a drug offender I have convicted three times in the Hutchinson Salt

House Fed & State Affairs

Date: 2-5-07

Attachment 8

Museum. Many of the people I have prosecuted continue to use methamphetamine, making them very dangerous and very unpredictable.

It is for these reasons that I am pleased to see the introduction of SB 19. It is time to provide prosecutors with a way to arm themselves for their protection and the protection of their families. I appreciate the efforts of this body to provide us with the opportunity to protect ourselves.

I do wish to inform you of some concerns I have regarding the current form of the bill, however. I note that section 1, paragraph (b)(7) and section 3 paragraph (c) do place prosecutors in a protected position regarding the possession of concealed weapons generally and within the courthouse. However, the section requires that prosecutors comply with section 4 of the legislation. Section 4 requires prosecutors to be licensed at their own expense under the carry concealed statute, and to be trained by the police law enforcement training center. As a former police officer, I believe no person should carry a firearm without being first adequately trained. However, I do not see the necessity of requiring both a carry concealed permit and KLETC firearms training. Additionally, I do not believe this legislation should require these conditions be at the prosecutor's personal expense. The source of the funding to meet any training requirements should be left to the individual county or district attorney, in consultation with their specific funding authority.

My other concern with this legislation is found in section 2, paragraph (b)(8). This section excludes prosecutors from the provisions of the criminal discharge of a firearm statute, but only when the prosecutor "is actually engaged in the in the duties of" his or her employment. This language defeats the purpose of the act. Prosecutors should be allowed to defend themselves in any threatening situation, not limited to only those occasions when the prosecutor is in the office or courtroom. Some of the likely scenarios in which a prosecutor might need to defend himself are away from the office, especially in transit to and from the office. A person who threatens to harm me may very well choose an opportunity to do so away from the courthouse.

Thank you for your consideration of my testimony on this issue. I look forward to the opportunity to protect myself and my family.

Respectfully submitted,

Thomas R. Stanton