Approved: May 22, 2009
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:35 a.m. on February 13, 2009, in Room 545-N of the Capitol.

All members were present except:
Senator Les Donovan- excused
Senator Julia Lynn- excused

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Mike Kautsch, Professor of Law
Doug Anstaett, Executive Director, Kansas Press Association
Kent Cornish, Kansas Association of Broadcasters

Others attending:
See attached list.

The Chairman opened the hearing on **SB 211 - Providing journalists with privilege concerning the disclosure of certain information.**

Mike Kautsch testified in support indicating the value of testimonial privilege for journalists by providing some recent examples where the public good was served due to this type of protection. This bill would clarify current Kansas law and it would be a significant advancement in maintaining accountability, transparency, and honesty in government. The bill would be consistent with actions that several states across the country have taken. (Attachment 1)

Doug Anstaett appeared in favor by relating the recent experience of a local reporter regarding subpoenas in two separate cases. In both situations he could have been jailed and his newspaper fined for refusing to cooperate. Few newspaper owners have the financial means to absorb the financial impact on their business. This bill will protect a journalist from revealing his or her sources or unpublished information without due process. (Attachment 2)

Kent Cornish appeared as a proponent stating **SB 211** is as much about protecting the citizens of Kansas as it is about the protection of reporters. Information regarding corruption and wrongdoing should be reported without fear of retribution. The media should protect citizens willing to come forward with vital information. (Attachment 3)

Written testimony in opposition to SB 211 was submitted by:
Kevin O'Connor, Deputy District Attorney, 18th Judicial District of Kansas (Attachment 4)

There being no further conferees, the hearing on **SB 211** was closed.

The Chairman called for final action on **SB 157 - Driver improvement clinics, fees, disposition thereof; correctional services special revenue fund**.

Following discussion, the committee determined to continue final action at a later date pending the outcome of an anticipated DUI bill.

The Chairman called for final action on **SB 158 - Allowing offenders in violation of a traffic citation to be issued a restricted driver's license.**

Jason Thompson, staff revisor, reviewed the bill. A balloon amendment from the Office of Judicial

Minutes of the Senate Judiciary Committee at 9:35 a.m. on February 13, 2009, in Room 545-N of the Capitol.

Administration was distributed which addressed concerns presented during the February 10 hearing. (Attachment 5) Senator Vratil noted an amendment recommended by Judge Karen Arnold-Burger and others in submitted written testimony. (Attachment 6)

Following discussion, Senator Vratil moved, Senator Schodorf seconded, to amend **SB 158** with the language submitted by the judges. Motion carried.

Senator Schodorf moved, Senator Vratil seconded, to amend **SB 158** as reflected in the balloon amendment from the Office of Judicial Administration. Motion carried.

Senator Haley moved, Senator Schodorf seconded, to recommend **SB 158** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 159 - Enforcement of tobacco settlement**. Jason Thompson, staff revisor, reviewed the bill.

Senator Schodorf moved, Senator Kelly seconded, to recommend **SB 159** favorably for passage. Motion carried.

The Chairman called for final action on **SB 148 - Kansas silver alert plan.** The Chairman reviewed the bill and noted written testimony submitted by Ed Klumpp, Kansas Association of Chief's of Police and Kansas Peace Officers, on concerns following the hearing on February 12. (Attachment 7)

Senator Haley moved, Senator Schodorf seconded, to amend **SB 148** on line 18 replacing the word "shall" with the word "may" and on line 19 replacing the word "shall" with the word "may". Motion carried.

Senator Haley moved, Senator Schodorf seconded, to recommend **SB 148**, as amended, favorably for passage. Motion carried.

The next meeting is scheduled for February 16, 2009.

The meeting was adjourned at 10:29 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-13-09

NAME	REPRESENTING
DAVE SCHROEDER	KBT
Richard Gannon	KPA
Doug Anstaett	KBA
Michael Byington	KABUL
Martha Gabehart	KCDC
Carol Comer	KPHE
Leigh Keck	Heinlaw firm
Whitney Damron	KS Bar Assn.
Mike Reed	Gates Braden
Kent Cornish	KAB
Mike Kautsch	

Senate Judiciary Committee Hearing February 13 2009

SB 211, "concerning journalists; providing a privilege with regard to certain disclosures of information"

Mike Kautsch*

The bill that you are considering may seem to be merely about serving the particular interests of journalists. The purpose of the bill, however, is to protect the *public* interest. The testimonial privilege that the bill proposes for journalists would allow them to promise confidentiality to a source in exchange for information that the public needs to know. Thus, the bill is designed to facilitate the free flow of information about matters of public concern. If enacted into law, the bill would help journalists inform and empower the electorate, and advance a goal set by our nation's founders: that government be by and for the people.

The value of a testimonial privilege for journalists is shown by such examples as these:

• Two years ago, The Washington Post brought to light poor conditions at the Walter Reed Army Medical Center in Washington, D.C. One report began with this scene at the medical center:

Behind the door of Army Spec. Jeremy Duncan's room, part of the wall is torn and hangs in the air, weighted down with black mold. When the wounded combat engineer stands in his shower and looks up, he can see the bathtub on the floor above through a rotted hole. The entire building, constructed between the world wars, often smells like greasy carry-out. Signs of neglect are everywhere: mouse droppings, belly-up cockroaches, stained carpets, cheap mattresses.[1]

The Post's reporting about the plight of soldiers led to Congressional hearings, reforms at the medical center and a commitment by the federal government to improve treatment of wounded veterans.[2]

The Post's revelations were based on tips from soldiers, and the report was possible because of confidential information.[3]

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* *Professor of law and director of the Media, Law and Policy program at the University of Kansas School of Law. Previously dean of the William Allen White School of Journalism and Mass Communications at the University of Kansas.* *This statement of opinion supersedes one given to the Senate Judiciary Committee staff on February 12 and is the basis for testimony given on February 13. The opinion is strictly personal and does not represent any official view or position of the University of Kansas, including the School of Law.*

[1] Dana Priest and Anne Hull, *The Washington Post, Soldiers Face Neglect, Frustration At Army's Top Medical Facility*, February 18, 2007; Page A01, http://www.washingtonpost.com/wpdyn/content/article/2007/02/17/AR2007021701172.html

[2] Steve Vogel, *Walter Reed Chief Picked For Army Surgeon General*, The Washington Post, October 3, 2007; Page A04, http://www.washingtonpost.com/wp-dyn/content/article/2007/10/02/AR2007100202177.html

Also, Media Law Resource Center Institute, *Stories That Would Have Gone Unreported Without Confidential Sources*, MLRC Institute with support from the McCormick Foundation, 2009.

[3] MLRC Institute, supra, note 2.

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• Major league baseball players and other prominent athletes are frequently in the news because of evidence that they used performance-enhancing drugs. The athletes' drug-use was revealed in news reports based on information from confidential sources.[4] In response to the revelations, private and public entities across the United States have called for action to discourage use of performance-enhancing drugs and protect young athletes from the health risks associated with such drugs. The Committee for Government Reform of the U.S. House of Representatives is among the entities that have pressed for a solution to the problem.[5]

• In Providence, Rhode Island, a television journalist relied on a confidential source to report about strip clubs in Providence and campaign contributions to former Mayor Vincent "Buddy" Cianci, Jr.[6] The mayor was convicted on a federal racketeering charge. His conviction was characterized as "a blow for the irrepressible politician who was accused of turning City Hall into a den of thieves even as he revitalized Rhode Island's biggest city."[7]

In Kansas, with the privilege as proposed in SB 211, journalists would be in a far better position than they are now to inform the public about matters of public concern. The bill seeks to clarify and strengthen an area of law in Kansas that has been plagued by longstanding uncertainty. Also, if the bill is enacted into law, it would be a significant advancement of the Legislature's interest in maintaining accountability, transparency and honesty in government.

In my opinion, the bill establishes a fair and clear procedure for determining when a journalist has a privilege not to testify in response to a subpoena. The bill provides the protection that journalists need when they rely on a confidential source to serve the public interest, such as when they expose waste of taxpayers' money, abuse of government power or lack of integrity among public officials. Journalists who have no protection against subpoenas that call for disclosure of their confidential sources may not even dare to begin an investigation of suspected wrongdoing in government.

The bill would provide guidance to trial judges that is not now available in Kansas case law. The key Kansas precedent regarding reporter's privilege is *State v. Sandstrom.* [8]. In this case, the state Supreme Court said that a "newsperson has a limited privilege of confidentiality of information and identity of news sources."[9] Yet, the Court also said that the privilege is available to the journalist only if the "information sought is not relevant to the defense or could not lead the defendant to information relevant" to the

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[4] *Id.*
[5] Committee on Government Reform, U.S. House of Representatives, *Media Advisory*, June 5, 2005, http://www.usantidoping.org/files/active/resources/press_releases/the%20committee%20on%20government%20reform%20to%20examine%20steroid%20use%20by%20young%20women.pdf
[6] MLRC Institute, supra, note 2.
[7] The Associated Press, *Providence Mayor Convicted in Corruption Case*, USA Today, June 24, 2002, http://www.usatoday.com/news/nation/2002/06/24/providence-mayor.htm
[8] 224 Kan. 573 (1978).
[9] *Id.* at 574.

defense.[10] In 2002 and 2003, I served as a member of a Press Shield Advisory Committee that was formed by the Kansas Judicial Council. After reviewing *Sandstrom*, the committee concluded that the Court's decision "does not clearly set out the requirements for overcoming the privilege."[11]

The uncertain and limited nature of reporter's privilege in Kansas made headlines in 2000, after the Wichita Eagle published an article about a parolee who had been charged with first-degree murder. The article, by Tim Potter, was based on a telephone interview he conducted with the murder suspect while the suspect was in jail. The day following publication, a county prosecutor subpoenaed Potter's notes. The Eagle fought the demand for the notes, but a judge found the newspaper in contempt and imposed a fine of $500 a day. The Eagle then surrendered the notes, although only after posting them on its Web site. Rick Thames, the Eagle's editor at the time, wrote that the newspaper "reluctantly decided to comply with the judge's order because our chances of a successful appeal under existing Kansas law appear to be very slim in this case."[12] Unlike other jurisdictions, Thames noted, "Kansas lacks specific laws that prevent government agencies from seizing files of the working press."[13] He said that, by posting the reporter's notes on the newspaper's Web site, the Eagle was giving them to prosecutors as published information. "That may not seem like much of a distinction to many, but we believe it is very important," Thames said.[14]

In one report about Potter's subpoenaed notes, the *Eagle* called on the Legislature to "see the need for a shield law to protect journalists from subpoenas of unpublished work" and "'the right of the press to work independently of authorities.'"[15]

SB 211 is an effective response to the call that was expressed by the *Eagle*. The bill proposes to codify reporter's privilege in a way that successfully has been done elsewhere. For example, SB 211 resembles the commendable approach taken by the U.S. Court of Appeals for the Tenth Circuit in *Silkwood v. Kerr-McGee Corp.*[16] and *Grandbouche v. Clancy.*[17] The Kansas Judicial Council's Press Advisory Committee, which I mentioned previously, noted that the Tenth Circuit Court "recognized a stronger reporter's privilege than Kansas state courts."[18] The Committee also observed that "some state trial court judges have relied" in Kansas on the Tenth Circuit Court's precedents when analyzing reporter's privilege claims.[19]

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[10] *Id.* at 577.
[11] Press Shield Advisory Committee, *Report of the Press Shield Advisory Committee*, Kansas Judicial Council, 2003.
http://www.kansasjudicialcouncil.org/Documents/Studies%20and%20Reports/Previous%20Judicial%20Council%20Studies/PDF/Press_Shield_Adv_Comm_2003.pdf
[12] Rick Thames, *Keep Press, Prosecutors Separate*, The Wichita Eagle, May 6, 2002, Page 7A.
[13] *Id.*
[14] *Id.*
[15] Hurst Laviana, *Eagle Turns Over Reporter's Notes*, The Wichita Eagle, May 6, 2000, Page 1A.
[16] 563 F.2d 433 (10th Cir.1977).
[17] 825 F.2d 1463 (10th Cir.1987).
[18] See note 11, supra.
[19] *Id.*

Additional points to take into account include these:[20]

- A clear statute, as is proposed in SB 211, would streamline the process of evaluating a journalist's privilege claim by making clear when he or she should be protected from a subpoena. SB 211 would result in a weighing of the interests of journalists who aim to expose government wrongdoing with the help of confidential whistleblowers and the interests of law enforcement authorities who seek to uncover evidence of criminal acts and produce criminal convictions.
- Journalists are chilled if they freely may be compelled to disclose their unpublished notes, files, videotapes, photographs and the like. Subpoenas for such information, if granted without restraint, would render journalists ineffective as an independent provider of information about matters of public concern. Journalists' sources who could provide helpful and important facts would fall silent for fear of being discovered and suffering retaliation.
- Although law enforcement authorities may view a journalist's privilege as problematic, they also may see it as beneficial. For example, Utah Attorney General Mark Shurtleff has supported a qualified journalist's privilege. In early 2007, Shurtleff said he thought that "sources are more comfortable with reporters rather than police. The bottom line is, we in law enforcement recognize a need for confidential sources. If there is no privilege (protection) to go to a reporter, they may not report at all.'"[21]

SB 211 would be consistent with actions that most other states have taken to codify a journalist's privilege.

The bill would eliminate uncertainty that has surrounded journalist's privilege in Kansas since the late 1970s.

It would give clear direction to trial judges in resolving disputes over journalist's privilege.

It would provide protection to journalists in a way that would enable them to contribute to public understanding of government and increase public confidence that government in Kansas is committed to being open, clean and accountable to the people.

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[20] These points were included in an analysis of SB 211's predecessor, SB 313. That analysis was prepared by Adam Davis, a former journalist who is now a KU Law alumnus. He submitted the analysis to the Media Law Clinic at the University of Kansas School of Law. Other students who wrote analyses of journalist's privilege include Ann Premer, Leita Walker and Carol Toland—all now alumni of the School of Law.

[21] AP Alert, *Utah Supreme Court Considers Reporter's Privilege Rule*, The Associated Press, Feb. 25, 2007.

Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 13, 2009

To: Sen. Tim Owens, chairman, and members of the Senate Judiciary Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: SB 211

Mr. Chairman and members of the Committee:

I am Doug Anstaett, executive director of the Kansas Press Association. Thank you for the opportunity to discuss the merits of SB 211.

When our Founding Fathers wrote the great documents that would form the bedrock values of our Republic in the late 1700s, one theme seemed to permeate much of their thinking: Government's power should be limited.

A system of checks and balances was designed to temper the ability of our three branches of government — the executive, legislative and judicial branches — to exercise absolute power over one another.

Conversely, the Bill of Rights gave citizens the right to question what government did without fear of reprisal. We could address our grievances, speak freely and count on an unfettered press to expose corruption and abuses of power.

The power of subpoena gives enormous power to our prosecutors. That power can be used in the right way, of course, and it is most of time.

But it can also be used to silence, to intimidate and to coerce. Subpoenas have been used across America — and right here in Topeka, Kansas — to try to force journalists to reveal their sources and produce their unpublished notes.

This past year, Tim Carpenter of the Topeka Capital-Journal was subpoenaed twice after his stories were published. He was subpoenaed in the Tiller case because he was the reporter who broke the story that subsequently led to the resignation of former Attorney General Paul Morrison. He also was subpoenaed in a campaign finance case.

He told me that had he been forced to turn over the information or risk spending time in jail, he would have likely chosen to spend time in jail.

But he certainly would have had to weigh some other factors. Could his newspaper afford to pay his fines, should any be imposed? Or, what if, as was the situation in the New York Times case, he had been barred from accepting any help to pay his fine? He certainly could not have afforded to pay those fines out of his own pocket. And fewer and fewer newspaper owners have the option of opening up their checkbooks without regard for the financial impact on their businesses.

We are proposing that a speed bump be installed between the subpoena power and the reporter. This speed bump is designed just like the ones in parking lots — to slow down those who are in a hurry to get somewhere.

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The speed bump is called a shield law. Such a law would set into motion a three-part test that would have to be met before a reporter could be required to divulge certain information.

To do their job, reporters must have access to sources of information. Sometimes, the information journalists seek is so sensitive that those who have it fear for their jobs if they reveal it. They know the information must be made public for the truth to triumph, but they also know they may pay a hefty price if they reveal it. Such sources lose their jobs every day in America, even when they have done a great service to society.

Thirty-six states have "shield laws." Not a single one has chosen to back away from that commitment to provide some protection for news sources and for the unpublished notes, recordings and videotapes that journalists accumulate while doing their jobs. At the national level, a bipartisan group of senators continues to work on legislation to provide a qualified privilege to journalists covering federal issues as well. We think that legislation has a significantly higher chance of passage this year.

I use Tim Carpenter as an example not because he's the only reporter who has ever been subpoenaed but because most of you see him at some time during the legislative session. He is a reporter who will continue to do his job with or without a shield law. He would also tell you he will likely miss out on some big stories if he cannot promise anonymity to his sources.

So, who is to say how much government corruption will go undetected if sources believe they will be identified?

For example, could our nation have averted the current financial crisis in America if more sources would have stepped forward who knew about the shenanigans that were taking place, knowing their good deeds would lead to positive change rather than the loss of a job or a career?

We are not seeking an absolute privilege, even though a number of states afford their journalists that protection. We are seeking a "qualified privilege" that would protect a journalist from being hauled into court to reveal a source or turn over unpublished information without due process.

This bill would require a three-part test that the information sought:

(1) Is material and relevant to the controversy for which the disclosure is sought;
(2) Cannot be obtained by alternative means; and
(3) Is of a compelling and overriding interest for the party seeking the disclosure.

In other words, the journalist and the source of his or her information could be reasonably assured that the journalist couldn't be compelled to give up that information on a whim or merely because of a fishing expedition on the part of a prosecutor.

If a court found that, indeed, the information met those three tests, a judge could still review the materials for relevancy and admissibility before ordering their surrender to the party seeking the information.

There will be some prosecutors who say they won't be able to deal with this, that it will set back their cases or make them more difficult to prosecute. While you should consider their arguments, remember that this is also designed as a deterrent against overzealous prosecutors who believe they should have to stop at nothing to uncover the truth. In other words, it meets the Founding Fathers' admonition that government should have limits on its power.

Thank you for this opportunity to come before you today. I urge you to support passage of SB 211 and I'll stand for questions at the appropriate time.

KAB
KANSAS ASSOCIATION OF BROADCASTERS
2709 SW 29th Street Topeka, KS 66614
785-235-1307 www.kab.net

Testimony on SB 211
Friday, February 13, 2009
Senate Judiciary Committee

Good Morning Mr. Chairman and members of the Committee. I am Kent Cornish, President/Executive Director of the Kansas Association of Broadcasters, representing nearly 300 radio and television stations across the state.

In supporting SB 211, we think it is as much about protection of our citizens as it is about protecting reporters. In a free society, information regarding corruption and wrongdoing should be able to come to light without fear of retribution. While there is no such thing as a 100% guarantee, anonymity is essential in getting to the facts.

Currently a reporter (or station) who is subpoenaed has the burden of proving why a source should not be revealed. That means each time a prosecutor, for instance, wants to go on a "fishing expedition" they can generally get the court to grant the subpoena. This bill would reverse that burden of proof and the prosecutor would need to lay out a far more convincing case that in the opinion of the judge, "…its probative value is likely to outweigh any harm done to the free dissemination of information to the public…"

There are currently 36 states and the District of Columbia who have shield laws.

While there have not been recent cases of a jailed reporter in Kansas, I can tell you that stations and their ownership have some reluctance in investigating tips for fear of getting caught up in this unfair process. And when citizens don't see and hear this type of reporting, they too are reluctant to come forward. That doesn't help with openness and transparency. In a democracy you have to recognize the role of the media in protecting citizens who want to bring forth the truth.

Thank you for your time, and I will be pleased to answer questions.

Office of the District Attorney
Eighteenth Judicial District of Kansas
at the Sedgwick County Courthouse
535 N. Main
Wichita, Kansas 67203

Nola Foulston
District Attorney

Kevin O'Connor
Deputy District Attorney

February 13, 2009

Testimony in Opposition to SB 211
Submitted by Kevin O'Connor, Deputy District Attorney
On Behalf of Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District
And
On Behalf of the Kansas County and District Attorneys Association

Honorable Chairman Owens and members of the Committee,

I appreciate the opportunity to provide written testimony on this matter. I am sorry that I could not attend the hearing. SB 211 may have the best of intentions, but it is a solution looking for a problem.

The Supreme Court of the United States has rejected the idea of a reporter's privilege. See Branzburg v. Hayes, 408 U.S. 665 (1972). The Branzburg court refused to recognize a reporter as a member of a special class. Despite the Supreme Court's ruling in Branzburg, the Kansas Supreme Court has recognized limited protections for a reporter. See State v. Sandstrom (In re Pennington), 224 Kan. 573, 577 (1978). The bill is unnecessary based upon the rulings cited above.

Proponents of the bill may cite to a few Sedgwick County murder cases as a reason for the bill. Please be advised that subpoenas were issued to reporters in those cases because the reporters made a conscious decision to interview a charged defendant. The information was not available from any other source. The subpoenas were not a "fishing expedition" by any stretch of the imagination. The reporters knew or should have known that the interview of a defendant in a pending case would result in a subpoena. The legitimacy of the subpoenas was exhaustively

Session of 2009

SENATE BILL No. 158

By Committee on Judiciary

2-2

AN ACT concerning driver's licenses; relating to restrictions for certain persons; amending K.S.A. 2008 Supp. 8-2110 and repealing the existing section.

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

Section 1. K.S.A. 2008 Supp. 8-2110 is hereby amended to read as follows: 8-2110. (a) Failure to comply with a traffic citation means failure either to (1) appear before any district or municipal court in response to a traffic citation and pay in full any fine and court costs imposed or (2) otherwise comply with a traffic citation as provided in K.S.A. 8-2118, and amendments thereto. Failure to comply with a traffic citation is a misdemeanor, regardless of the disposition of the charge for which such citation was originally issued.

(b) *(1)* In addition to penalties of law applicable under subsection (a), when a person fails to comply with a traffic citation, except for illegal parking, standing or stopping, the district or municipal court in which the person should have complied with the citation shall mail notice to the person that if the person does not appear in district or municipal court or pay all fines, court costs and any penalties within 30 days from the date of mailing notice, the division of vehicles will be notified to suspend the person's driving privileges. The district or municipal court may charge an additional fee of $5 for mailing such notice. Upon the person's failure to comply within such 30 days of mailing notice, the district or municipal court shall electronically notify the division of vehicles. Upon receipt of a report of a failure to comply with a traffic citation under this subsection, pursuant to K.S.A. 8-255, and amendments thereto, the division of vehicles shall notify the violator and suspend the license of the violator until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the informing court. When the court determines the person has complied with the terms of the traffic citation, the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension or suspension action.

(2) In lieu of suspension under paragraph (1), the driver may submit

to the division of vehicles

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a written request, with a $25 application fee, for restricted driving privileges. Upon review and approval of the driver's eligibility, the driving privileges will be restricted pursuant to K.S.A. 8-292, and amendments thereto, for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. The provisions of this paragraph shall expire on January 1, 2012.

(c) Except as provided in subsection (d), when the district or municipal court notifies the division of vehicles of a failure to comply with a traffic citation pursuant to subsection (b), the court shall assess a reinstatement fee of $59 for each charge on which the person failed to make satisfaction regardless of the disposition of the charge for which such citation was originally issued. Such reinstatement fee shall be in addition to any fine, district or municipal court costs and other penalties. The court shall remit all reinstatement fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit 42.37% of such moneys to the division of vehicles operating fund, 31.78% to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, 10.59% to the juvenile detention facilities fund created by K.S.A. 79-4803, and amendments thereto, and 15.26% to the judicial branch nonjudicial salary adjustment fund created by K.S.A. 2008 Supp. 20-1a15, and amendments thereto.

(d) The district court or municipal court shall waive the reinstatement fee provided for in subsection (c), if the failure to comply with a traffic citation was the result of such person enlisting in or being drafted into the armed services of the United States, being called into service as a member of a reserve component of the military service of the United States, or volunteering for such active duty, or being called into service as a member of the state of Kansas national guard, or volunteering for such active duty, and being absent from Kansas because of such military service. In any case of a failure to comply with a traffic citation which occurred on or after August 1, 1990, and prior to the effective date of this act, in which a person was assessed and paid a reinstatement fee and the person failed to comply with a traffic citation because the person was absent from Kansas because of any such military service, the reinstate-

by the division of vehicles

, and regardless of any application for restricted driving privileges.

restricted license fee

5-2

ment fee shall be reimbursed to such person upon application therefor. The state treasurer and the director of accounts and reports shall prescribe procedures for all such reimbursement payments and shall create appropriate accounts, make appropriate accounting entries and issue such appropriate vouchers and warrants as may be required to make such reimbursement payments.

(e) The reinstatement fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such reinstatement. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

Sec. 2. K.S.A. 2008 Supp. 8-2110 is hereby repealed.

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

SB 158
Written Testimony Before the Senate Judiciary Committee
Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court
Maurice Ryan, Presiding Judge, Unified Government Wyandotte County
Randy McGrath, Presiding Judge, Lawrence Municipal Court
Steve Ebberts, Presiding Judge, Topeka Municipal Court
Brenda Stoss, Presiding Judge, Salina Municipal Court
Jennifer Jones, Presiding Judge, Wichita Municipal Court

February 10, 2009

We are submitting this testimony in opposition to SB 158 as it is currently drafted. We currently preside over municipal courts in the state of Kansas.

Thank you for the opportunity to address you on this topic. SB 158 appears to require the local municipal or district court to issue a restricted license to anyone whose license has been suspended, revoked, or cancelled for failing to comply with a traffic citation if the person pays a $25 fee and "is eligible." Eligibility is not defined. If the person fails to comply in one year, his or her license will again be suspended. For one year the person is allowed to be non-compliant with court orders, including any sentence imposed, and still drive.

Operating a vehicle when one's privilege to do so is suspended is all too common in our cities and counties. Drivers are often suspended by several different courts for tickets they have received all over the state. It often involves paying a significant amount of money in fines and reinstatement fees to regain the privilege to drive. Suspension of a driver's license for failure to comply with a citation is the single biggest hammer courts have in gaining compliance with court orders. Compliance does not just mean paying fines, but failure to appear in court to answer the charge as well. To dilute this process will hinder a court's enforcement efforts. By not appearing to answer to a traffic ticket, an alleged offender is able to avoid having a conviction on his record that would increase his insurance or even cause additional periods of suspension. Under this bill, for a mere $25, a driver can avoid the consequences of his behavior for a year and continue to drive.

Although we are sympathetic to the concern that a person should be able to get back and forth to work to make money to take care of his or her tickets so full privileges can be reinstated, **the motor vehicle division is the most appropriate entity to grant such privileges.** It is the central repository of driver history. A driver may be, and often is, suspended by multiple jurisdictions for not taking care of tickets, even though the tickets themselves may be minor in nature. What if an Overland Park judge provides the driver with a restricted license, but the person still has other suspensions from other cities or counties? The motor vehicle division is in the best position to have the "whole picture" and act accordingly. We have no objection to the motor vehicle division entering restriction orders, as it deems appropriate, to drivers who are otherwise suspended until they comply with their citations. We would continue to notify the division upon compliance in the same manner we do now.

It is our understanding that the impetus behind this bill may have been the department of corrections risk reduction strategy, a strategy we wholeheartedly support. In an effort to assist parolees and probationers in being successful and retaining employment, they must be able to drive. Their incarceration may have caused non-compliance with traffic tickets and therefore, license suspension. Maintaining employment once released, a key to success, is hindered by the suspension of their driving privileges for tickets received pre-incarceration that they do not yet have enough money to clear. If the division of vehicles were the "restricting" agency, it could adopt "eligibility" requirements that target the intended population of offenders, without regard to which courts in which part of the state are involved. We have no objection to such an approach.

Finally, if this bill remains in its current form, $25 is woefully inadequate to cover the costs of such actions by municipal courts. Increasing the fee to the point necessary to cover costs would make it more efficient to use the money to pay the ticket rather than an additional "administrative fee." To impose this responsibility on local courts without providing adequate recoupment of costs is an unfunded mandate.

Again, we have no objection to restricted privileges being entered if handled **solely and exclusively** by the motor vehicle division, and would support the bill if it were amended as follows:

(2) In lieu of suspension under paragraph (1), the driver may submit a written request, with a $25 application fee to the division of vehicles, for restricted driving privileges. Upon review and approval of the driver's eligibility, the driving privileges will be restricted ~~pursuant to K.S.A. 8-292, and amendments thereto,~~ by the division of vehicles for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. When restricted driving privileges are entered pursuant to this section, driving shall be restricted to (1) going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; and (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is ordered to go by a court. The provisions of this paragraph shall expire on January 1, 2012.

We respectfully ask that the Committee take these issues into consideration when acting on SB 158.

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February 12, 2009

Sen. Tim Owens, Chair
Senate Judiciary Committee

Subject: SB 148 Silver Alert Plan

Chairman Owens and committee members:

Please understand we are not opposed to the concept of some sort of silver alert plan. However, statutory provisions mandating any such plan must be clear to be effective and not create a negative backlash to law enforcement created by provisions that are subject to a broad range of interpretation. If the legislature determines there is a gap in current responses to missing persons and decides to proceed with a silver alert plan statute, we would ask you to consider the following points in SB148 that pose potential problems in law enforcement implementation.

1. As written this plan applies to any "missing elderly person" as stated in line 18.
   a. How will an officer determine the threshold for "elderly?"
   b. It is not illegal or dangerous for an adult to decide they want to go somewhere by themselves without telling anyone. Kansas law enforcement receives a significant number of reports every year where it is later determined a mentally and physically capable person does just that. Unless there are indications the missing person may be the victim of criminal activity or has mental/physical conditions rendering the person incapable of making decisions and caring for themselves, an intense and publicly announced search is unnecessary. Such unnecessary searches diminish the response to those announcements when they are necessary.
2. The bill does not take into consideration variables that exist in reported incidents. For example:
   a. Identified mental or medical conditions of the missing person, or the lack thereof.
   b. Past history of the missing person including where they were found in the past, frequency of leaving, and their tendency to return on their own within a reasonable time and without harm.
   c. Whether the person has left in a vehicle or on foot.
   d. Weather: A person missing in dangerous weather conditions needs a different level of response than a person missing in relatively harmless weather conditions.
   e. Other existing conditions or information indicating varying levels of danger to the person.
   f. An expressed desire by the adult missing person's family that media or publicity not be involved, especially at the early stages of the case.
   g. Available resources.
3. A point I am not clear on is a question of liability. We ask you to analyze whether or not the language in the bill creates a "duty" that results in any increased liability for law enforcement. Specifically, we are concerned about the wording on lines 19-21 requiring a search "in order to locate such person in time to avoid serious harm or death." For example, perhaps a person is not found "in time to avoid serious harm or death" even after a search is conducted without success or if it is reasonable with the given information to not engage the public and the media.

In light of the comparisons made to Amber Alert, it is perhaps noteworthy that there are no statutes mandating it. (At least none I could find.) It is my understanding the Kansas Amber Alert program was started with a cooperative effort of the Attorney General, law enforcement, and other interested parties. Perhaps a similar non-statutory method to consider the need for a silver alert plan and, if warranted, the best method of implementation could replicate its success.

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Senate Judiciary
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Attachment 7