Approved: May 5, 2010
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:34 a.m. on March 16, 2010, in Room 548-S of the Capitol.

All members were present.

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

Conferees appearing before the Committee:
Kari Ann Rinker, National Organization for Women of Kansas
Dr. Elizabeth Saadi, Interim Director & Acting State Registrar, KDHE
Christopher Joseph, Kansas Professional Bail Bond Association, Inc.
Representative Virgil Peck
Ed Klumpp, for Samuel Breshears, Chief, Kansas City, Kansas

Others attending:
See attached list.

A letter from the Kansas Bureau of Investigation was distributed fulfilling a request by the Committee regarding the fiscal note on **HB 2468 - Requiring offenders guilty of attempt, conspiracy or solicitation to commit any crime requiring offender registration for life to register as an offender**. (Attachment 1)

The Chairman reopened the hearing on **HB 2667 - Recodification of certain domestic relations matters**.

Kari Ann Rinker appeared in opposition. Ms. Rinker stated her concerns were with the covenant marriage amendment added by the House. These included:

- mandated marital counseling could lead to counseling with his/her batterer,
- couples must pay for their counseling, not every couple can afford such counseling,
- mandating parties to stay in unhealthy marriages will not make the marriage successful and can cause emotional duress to the couple involved as well as their children, and
- people may be pressured to agree to a covenant marriage especially minors.

A very small percentage of married couples in the three states that currently have covenant marriages take advantage of it, which indicates that adding covenant marriage option will have no affect upon strengthening marriages in Kansas. (Attachment 2)

Dr. Elizabeth Saadi provided neutral testimony to the committee with information related to the provisions for covenant marriages. While marriages and divorces occurring within Kansas are filed with the State, Kansas has no information on those events occurring in other states. Covenant marriages from Kansas could be divorced in another state without the fulfillment of the required provisions. Dr. Saadi indicated that **HB 2667** may be in conflict with state statutes regarding the recognition of marriages and divorces filed in other states. (Attachment 3)

Written testimony in support of **HB 2667** was submitted by:
Katherine Kirk, Kansas Association for Justice (Attachment 4)

Written testimony in opposition to **HB 2667** was submitted by:
Naomi Kaufman, Attorney (Attachment 5)
Scott M. Mann, Attorney (Attachment 6)
J. Bradley Short, Attorney (Attachment 7)
Kevin M. P. O'Grady, Attorney (Attachment 8)

There being no further conferees, the hearing on **HB 2667** was closed.

Minutes of the Senate Judiciary Committee at 9:34 a.m. on March 16, 2010, in Room 548-S of the Capitol.

The Chairman opened the hearing on **Sub for HB 2528 by the Committee on Judiciary - Amending the court procedure for the forfeiture of an appearance bond**. Jason Thompson, staff revisor, reviewed the bill.

Christopher Joseph appeared in support, stating the provisions of the bill will solve some current problems with bail bonds. Courts will not be able to impose continued liability on a surety without the consent or knowledge of the surety, require the presentation of an affidavit regarding the defendant's custody status. Mr. Joseph proposed an amendment which will codify current practice of the majority of district courts in Kansas when a defendant fails to appear. (Attachment 9)

There being no further conferees, the hearing on **Sub for HB 2528** was closed.

The hearing on **HB 2454 - Enhanced criminal penalty for felonies committed while wearing or using ballistic resistant material** was opened. Jason Thompson, staff revisor, reviewed the bill.

Representative Virgil Peck appeared in support, stating the bill is in response to a recent case in Coffeyville, Kansas as well as incidents in other parts of the State. The use of body armor puts both the public and law enforcement at risk and in recent years the use of body armor by felons has increased significantly. When a person straps on body armor prior to committing a felony they are anticipating a fight with law enforcement and increasing their advantage over police officers with total disregard for human life. (Attachment 10)

Written testimony in support of **HB 2454** was submitted by:

Commander Mike Brown, Coffeyville Police Department (Attachment 11)
Kwin Bromley, Detective Sgt., Coffeyville Police Department (Attachment 12)
Kelly Stewart, Detective Lt., Montgomery County Sheriff's Office (Attachment 13)
Thomas Stanton, Kansas County & District Attorneys Association (Attachment 14)
Samuel Breshears, Chief of Police, Kansas City, Kansas (Attachment 15)

There being no further conferees, the hearing on **Sub for HB 2454** was closed.

The Chairman called for final action on **Sub for HB 2528 by the Committee on Judiciary - Amending the court procedure for the forfeiture of an appearance bond**.

Senator Bruce moved, Senator Lynn seconded, to recommend **Sub for HB 2528** favorably for passage.

Senator Vratil made a substitute motion, Senator Schmidt seconded, to amend **Sub for HB 2528** on page 2, line 5, by striking *"30"* and inserting *"60"* and on page 2, line 7, following *"provided herein."* adding the sentence *"No judgement may be entered against the obligor in an appearance bond more that one year after a defendant's failure to appear."* Motion carried.

Senator Bruce moved, Senator Vratil seconded, to recommend **Sub for HB 2528,** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2454 - Enhanced criminal penalty for felonies committed while wearing or using ballistic resistant material**.

Senator Pilcher-Cook moved, Senator Umbarger seconded, to recommend **HB 2454** favorably for passage.

Senator Schmidt made a substitute motion, Senator Vratil seconded, to amend **HB 2454** on page 7, line 42, following the word *"offender"* and insert the word *"possessed"*. Motion carried.

Senator Schmidt moved, Senator Umbarger seconded, to recommend **HB 2454**, as amended, favorably for passage. Motion carried.

Minutes of the Senate Judiciary Committee at 9:34 a.m. on March 16, 2010, in Room 548-S of the Capitol.

The Chairman called for final action on **Sub for HB 2517- Domestic violence offenses; special sentencing provision**.

Senator Vratil moved, Senator Kelly seconded, to amend **Sub for HB 2517** by adopting the amendment recommended by Representative Jan Pauls during testimony. (Attachment 16) Motion carried.

Senator Bruce moved, Senator Pilcher-Cook seconded, to amend **Sub for HB 2517** on page 3, line 11, by striking the word *"sibling"*. Motion carried.

Senator Vratil moved, Senator Schodorf seconded to recommend **Sub for HB 2517**, as amended, favorably for passage. The motion was withdrawn.

Three balloon amendments based on testimony heard were distributed and reviewed by Jason Thompson, staff revisor. (Attachments 17, 18, & 19)

Senator Bruce moved, Senator Pilcher-Cook seconded, to amend **Sub for HB 2517** by adopting the balloon amendment as reflected in the distributed balloon labeled KSCDV2.pdf (Attachment 19) Motion carried.

Senator Schodorf moved, Senator Kelly seconded, to recommend **Sub for HB 2517**, as amended, favorably for passage. Motion carried.

The Chairman announced the Committee will take final action on **HB 2667** at a later date.

The next meeting is scheduled for March 17, 2010.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 16, 2010

NAME	REPRESENTING
Rep. Virgil Peck Jr.	Self
Helen Pedigo	Sentencing Commission
Ed Klumpp	KACP/KPOA/KSA
Donna Calabrese	KDHE
Lou Zaadi	KDHE
TRAVIS HARROD	KSAG
Sandy Barnett	KCSDV
Mark Gleeson	Judicial Branch
[illegible]	
Kevin Boone	KPBBA
Chris Joseph	KPBBA
Christie Brungardt	Janis Campaign
Curt Brungardt	Janis Campaign
Julienne Maska	Gov office for FRB
Richard Samaniego	Kennedy & assoc.
Liz Stueve	Janis Campaign
Elise Higgins	Janis Campaign / KU Student
Shannon Fisher	Janis Campaign / KU Law Student

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 16, 2010

NAME	REPRESENTING
Dorthy Stucky Halley	AG Office
Jamie Corkhill	SRS/CSE
Natalie Gibson	KS. Judicial Council
Thomas Witt	KS Equality Coalition
Carla Wozniak	KDOC
Jenni Roe	KCSL
Sean Miller	Capitol Strategies

Kansas Bureau of Investigation

Robert E. Blecha
Director

Steve Six
Attorney General

March 15, 2010

Senator Thomas C. (Tim) Owens
Chair of the Senate Judiciary Committee
Room 559-S, State Capitol
Topeka, Kansas 66612

RE: Response to questions concerning Fiscal Note for HB 2468

Dear Senator Owens,

In response to your questions concerning the Fiscal Note for HB 2468, I have reviewed the bill and our Fiscal Impact Statement, which noted that the KBI would need an additional person to perform the added work that this bill would create. We originally assumed the language would be retroactive as is much of the Offender Registration Act. Our in-house counsel has reviewed the bill and believes that, without clear language to the contrary, the bill would not apply to those convicted prior to the effective date of the legislation. Thus, there will be an increase in workload, but rather than see it immediately, we will see it in ten years when those offenders who presently are required to register for the ten year duration are extended to lifetime registration.

That said, this might be an opportune time to address the functions of the KBI's Registered Offender Unit. There is actually much more involved than merely adding names to a list.

When an offender is required to register, the initial paperwork is completed by the court and/or corrections and the sheriff's office. That paperwork is forwarded to us to enter in to the database that maintains all offender registration information and that feeds the public website. More than eighty pieces of information are recorded for each offender (the Adam Walsh Act will increase this to more than 140 pieces of information). We review the information to ensure that no errors are made and to determine the duration of the registration requirement. Not all records are public per Kansas law and each one must also be reviewed for this determination.

Any changes to the pertinent information of an offender are forwarded to the Registered Offender Unit and are added or amended to the existing information. This is a constant action because offenders frequently move, change employment, get different cars, and so on. We respond to all requests of local and out-of-state agencies who are also trying to manage and stay on top of the offenders' whereabouts and information. We maintain all of the pertinent documents such as journal entries, photographs, and fingerprints; and we ensure that the information properly syncs with other databases at the state and federal level.

Senate Judiciary
3-16-10
Attachment 1

1620 S.W. Tyler / Topeka, Kansas 66612-1837 / (785) 296-8200 FAX (785) 296-0915

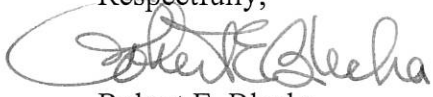
While not required to do so by statute, we generate and distribute a monthly report for the sheriff's offices containing information on offenders currently residing in each county, offenders that are required to report each month, and offenders who have been determined to be non-compliant with the requirement to register. Periods of non-compliance extend the duration of registration and must be routinely calculated and factored into the offenders' records.

We track and verify the location of offenders in Kansas prisons and juvenile correctional facilities, federal prisons, and county jails to ensure that the whereabouts of offenders who are released into the community from incarceration are not overlooked. We respond to constant inquiries from citizens, offenders, and concerned agencies. Representatives of the Offender Registration Unit are often called upon to testify in cases of non-compliance.

These are just the high points. It may appear that management of an individual offender is not that time consuming, but management of all 7,872 offenders presently in the system and the additional number that are added each year (921 in 2009) have a cumulative effect of increasing the burden on our short staff. We presently have one worker for every 926 offenders. This allows us to dedicate about 2 hours to the management of each offender in a given year. Requirements imposed by the federal Adam Walsh Act will add additional workloads.

Thank you for your interest. I encourage you to let me know if you have any other questions.

Respectfully,



Robert E. Blecha
Director

KANSAS NOW

PO Box 860
Wichita, KS 67201-1860

T 620 245 4904

coordinator@ksnow.org

www.ksnow.org

March 14, 2010

TO: Senate Judiciary Committee
Chairman Owens
FR: Kari Ann Rinker, State Coordinator & Lobbyist
Kansas NOW
RE: HB 2667 Opponent: Covenant Marriage Amendment

Kansas NOW stands in opposition not to HB 2667 as a whole, but to the Covenant Marriage Amendment added to the bill. Kansas NOW is opposed to amendment, as one of Kansas NOW's core issues is ending domestic violence. Kansas NOW believes that the narrow and specific conditions that must be met for a divorce in a covenant marriage contract places women and children at risk.

- The courts will mandate marital counseling. Essentially, this could lead to the court requiring that a person attend counseling sessions with his/her batterer. For obvious reasons, this is a safety concern.

- Couples will have to pay for their counseling. If a person is being beaten (not all domestic violence victims speak out about what is happening to them), they would not only be mandated to attend counseling with their batterer, but also pay for that counseling. Also, it is important to note that not every couple can afford counseling.

- Mandating that people stay in an unhealthy marriage will not make the marriage successful. It can cause emotional duress to the couple involved, as well as their children.

- People may feel pressure to agree to a covenant marriage. That pressure may come from the other partner, the clergy, families, etc. Children as young as 16 or 17 can enter into a Covenant Marriage with parental consent. We know that teenagers are impressionable; there is a real possibility that they will enter into a covenant marriage that they will find great difficulty in escaping.

Senate Judiciary
3-16-10
Attachment 2

I am sure that the intent of this amendment is to strengthen marriages and reduce divorce, but there is no proof that covenant marriages actually achieve this. In fact, a very small percentage of married couples in the three states that currently have covenant marriage take advantage of it. This indicates that adding a Covenant Marriage option in our state will have no affect upon strengthening marriages in Kansas.

There have been a host of bills introduced in various states across the US that mandate pre and/or post marital counseling, mandatory waiting periods for people with children, some with age requirements for the children, even suggested tax credits for going through premarital counseling. Almost all of these bills have been defeated, some have been repealed. The success of a marriage is largely a matter of the heart and each couples unique circumstances. The commitment, strength and love required for success cannot be legislated.

KANSAS
DEPARTMENT OF HEALTH
AND ENVIRONMENT

Mark Parkinson, Governor
Roderick L. Bremby, Secretary

www.kdheks.gov

Informational Testimony on HB 2667

To
Senate Judiciary Committee

Presented by
Elizabeth Saadi, Ph.D., Interim Director and Acting State Registrar
Bureau of Public Health Informatics
Kansas Department of Health and Environment

March 15, 2010

Chairman Owens and members of the committee, I am Elizabeth Saadi, Acting State Registrar for vital records. I'm pleased to appear before you today to provide some information related to the provisions for covenant marriages in HB 2667.

As you are aware, the civil registration process includes the registration, storage and issuance of vital events that affect civil status during a person's lifetime. These of course include births, deaths, marriages and divorces. In the United States, each state is responsible for establishing and maintaining civil registration processes and these events are registered only in the state where the event occurred. I would like to share some information with you today on the marriage and divorce processes as they are related to the covenant marriage provisions.

How marriages and divorces are filed in Kansas: Marriage licenses are obtained at a county district court and once completed, are filed with the court clerk at that district court. The court then forwards the completed licenses to the Office of Vital Statistics where they are filed and issued to eligible requestors of the marriage certificate. Divorce certificates are completed by the plaintiff's attorney or pro se, filed with the county district court which then files them with the Office of Vital Statistics and are then available for issuance to eligible applicants.

It is important to note that if a Kansas resident chooses to be married or divorced in another state, the State of Kansas would not know that event occurred. In addition, names can be changed and other actions filed in any state. There is no linked information process between states for marriages and divorces.

Senate Judiciary
3-16-10
Attachment 3

Recognition of other states' records: HB 2667 may be in conflict with state statutes regarding the recognition of marriages and divorces filed in other states. K.S.A. 23-115 specifies that, "All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state." K.S.A. 60-1611 states, "A judgment or decree of divorce rendered in any other state or territory of the United States, in conformity with the laws thereof, shall be given full faith and credit in this state…" In addition, per the U.S. Constitution (Article IV, Section 1), "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

Suggestion to streamline implementation: The State of Kansas has invested significantly in full electronic filing of vital event records and KDHE, through our partners, is promoting electronic filing to improve timeliness, assure accuracy, and increase efficiency. Because paper processing is costly, should HB 2667 become law, and we recommend that filing covenant marriage documents be done through an electronic process.

Thank you for the opportunity to appear before the committee today. I will now stand for questions.

3-2

KANSAS ASSOCIATION FOR JUSTICE

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FAX: 785-232-7730
www.ksaj.org

Your rights. Our mission.

TO: Senator Thomas "Tim" Owens, Chairman
Members of the Senate Judiciary Committee

FROM: Katherine L. Kirk, Attorney at Law, Lawrence
On Behalf of the Kansas Association for Justice

DATE: March 15, 2010

RE: HB 2667 (PROPONENT--WRITTEN ONLY)

The Family Law Section of Kansas Association for Justice supports the provisions of HB 2667. We respectfully request that if the committee takes action, that it remove the amendments added during House floor debate relating to covenant marriage, and pass HB 2667 without further amendment.

HB 2667, which was studied and recommended by the Kansas Judicial Council., will significantly help the organization of various statutes for practicing attorneys, judges, and lay persons seeking to access information. However, the Kansas Association for Justice Family Law Section does not support the provisions of HB 2667 relating to covenant marriage, which were the subject of House floor amendments.

Unlike the rest of HB 2667, the covenant marriage amendments were not part of the Kansas Judicial Council's careful review process, and have not been scrutinized by the Council. Based on the experience of our practices, Family Law Section members believe that the covenant marriage provisions will open a virtual Pandora's Box in situations where married couples cannot work through their differences. The provisions re-open the issue of fault-based divorce which will increase litigation, conflict, and detrimental effects on children, none of which are positive results.

A great deal of work, study and commitment has occurred in Kansas to assure that when couples divorce that as many collaborative methods as possible are available. Over the last 20 years, through enormous efforts to establish mediation programs across the state, the approach to divorce, especially in those families with children, has dramatically shifted. The covenant marriage provisions would return fault and blame back into the mix in a significant manner. The covenant marriage provisions would increase the burden on courts at a time when courts have limited resources to handle drawn-out trials in domestic cases.

The Kansas Association for Justice respectfully requests that if the committee takes action, that it remove the amendments added during House floor debate relating to covenant marriage, and pass the HB 2667 without further amendment.

Thank you for your valuable time and attention,

Katherine L. Kirk

Senate Judiciary
3-16-10
Attachment 4

TO: **The Honorable Tim Owens**
And Members of the Senate Judiciary Committee

FROM: **Naomi Kaufmann**

RE: **HB 2667 – Domestic Relations Act and new section 52 concerning covenant marriages.**

DATE: **March 15, 2010**

Good morning Chairman Owens and Members of the Senate Judiciary Committee. My name is Naomi Kaufman and I have provided the following written testimony to oppose the new section 52 concerning covenant marriages now contained within HB 2667.

The addition of a section on Covenant Marriage to H.B. 2667 is flawed in several respects, with potentially adverse consequences to the recodification of the domestic relations statutes. First, it promotes a two-tier system of marriage/family law statues with different standards, different requirements and different enforcement mechanisms. If you consider the federal doctrine of "equal protection" under the law, the concept of two different types of citizen/litigants, those who have signed a declaration of intent to contract a covenant marriage and those who have not, raises the question of whether citizens are granted equal protection under the law with two very different standards for what constitutes a "valid" and "legal" marriage and what steps it takes to dissolve a marriage legally entered into.

Presumably, the new provision is an attempt to reduce skyrocketing divorce rates. But, one has to question whether a serious "social" issue can be remedied by imposing a whole new legislative classification of marriage and divorce. Historically, Kansas adopted a so-called "no-fault" divorce statute in order to minimize past abuses where litigants were focused on proof of "fault" in order to obtain a divorce, rather than dealing with the important consequences, such as care of children, adequate support provisions and a fair and equitable division of property and debt.

We are at a point in time where budgetary constraints are at a peak and judicial resources are spread thin in many counties. This provision requires the adoption of new forms specific to covenant marriage, whose reliability, much less enforceability, are highly suspect. By its very terms, this provision requires the execution of a declaration of intent to contract a covenant marriage along with the application for a marriage license. The declaration of intent contains a statement "we have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage." What person, regardless of age, has not believed that by the time they apply for a marriage license, they have chosen carefully and exchanged pertinent information with their prospective spouse. In reality, the adoption in Kansas of the Uniform Premarital Agreement Act, contains more safeguards than a "naked" declaration of intent to enter a covenant marriage. At least the provisions of UPPA recognize that unless there is fair and full financial disclosure between parties contemplating marriage, the relinquishment of legally enforceable property rights can well have an adverse impact on the marriage from its inception. Furthermore, recognizing that an impending marriage can exert undue pressure on a party to execute a premarital agreement, the statutory scheme sets out a detailed process to insure the free and voluntary entry of each party into a contract which alters their traditional legal rights.

The same can be said in reverse about new Section 52. Namely, there are no safeguards to insure against the coercion by a party over another to enter into a "covenant" marriage, due to an impending marriage.

Section 52 requires an affidavit signed by a clergyman or a licensed marriage and family therapist that the parties have received premarital counseling. Provisions necessitating premarital counseling from a religious provider suggest a possible breach of separation of church and state when mandated by statute. You cannot ignore the vulnerability of a young person, in particular, of being subjected to a particular religion's concepts being imposed upon them as a condition of obtaining a marriage license. Considering the diversity of cultural, ethic, racial and religious backgrounds of today's citizens, there are always numerous issues to be addressed before entering into marriage without the necessity of imposing the requirement of a signed affidavit from a religious provider who may or may not have training in premarital counseling.

By requiring licensed marriage and family therapists to sign an affidavit does not guarantee that they will agree to do so. If they are worried about issues of liability and confidentiality, they may be unwilling to sign their names to a public record that goes in a file.

If the intent of the provision is to legislatively mandate premarital counseling that is currently voluntary, any family law professional can tell you that given the vagaries of human nature, premarital counseling can never be an absolute guarantee of a lifelong marriage.

Obviously, the drafters of Section 52 have had to acknowledge this by insisting on an entirely separate and different scheme for obtaining a divorce from a covenant marriage. It's an obvious attempt to restore proof of fault as a ground for the divorce. Whether it is adultery, or conviction of a heinous felony crime, such as murder or rape, obtaining a divorce should not be restricted to these instances because of the inherent conflict with the terms of the divorce statutes governing "traditional" marriage.

If the testimony of the Judicial Council Family Law Advisory Committee on H.B. 2667 is to be given any credibility in its stated intention to reduce confusion, make the statues more "user friendly" for the public and professionals alike, then the addition of Section 52 flies in the face of the intention to reorganize and present a logical progression of the domestic relations family law statutes.

Because the provisions of Section 52 are directly contradictory to the provisions of current K.S.A. 60-1601 et. seq., they only add to public confusion. One has to ask, how can one state have two entirely different standards for obtaining a divorce? Furthermore, Section 52 simply adds layers of complexity to the process of promoting the welfare of Kansas citizens. While the goal may be noble, the proposed covenant marriage statutes leave much room for abuse and coercion leaving parties potentially locked in an abusive marriage that is detrimental to the welfare of children simply because neither party has committed adultery nor been convicted of a heinous crime, such as murder or rape.

Other practical problems posed by the covenant marriage provisions are:

1) Unnecessary imposition of duties on the office of the attorney general to develop an informational pamphlet to be given to counselors for distribution to the public on

the terms and conditions of a covenant marriage as part of the premarital counseling process. Again, given budgetary constraints, it should not be the duty of the attorney general's office to prepare pamphlets, but rather to enforce the criminal and consumer protection laws of the State of Kansas. There is no question that marriage has legal consequences sanctioned by the state, but a marriage is also clearly the subject of both social and religious factors that differ from individual to individual and group to group. State laws impose upon judges in district courts authority and obligation to enforce divorce laws. To entangle the chief law enforcement officer of the State of Kansas in activities which take place in contemplation of marriage is to impermissibly entangle the State in issues that are largely religious, but at the least, invade the privacy of individuals in making major life choice decisions.

2) The provisions regarding grounds for termination of a covenant marriage are vague and ambiguous. Section 59(b)(3) and (b)(4) require that the other spouse has abandoned the matrimonial domicile for a period of one year and constantly refuses to return , the other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses; Section (b)(3) is basically stating that physical abandonment for one year is grounds for terminating a covenant marriage. The "abandoning" spouse may provide proof that the "intent" to abandon was not present and physical absence in and of itself is not conclusive, particularly in light of the statutorily mandated recital given at the time of obtaining a license attesting to the parties' intent that it be a lifelong commitment.

3) Judges are asked to enforce two separate sets of divorce rules, creating internal contradictions, complexities and confusion. Just as divorce petitions are sometimes marked "title to real estate involved", will a covenant marriage divorce petition have to be marked "termination of covenant marriage"?

4) It is respectfully submitted that the promotion of marriage as a lifelong commitment is an educational process that can be addressed through high schools, community service centers guided by social workers and through religious institutions tailored to fit the needs and interests of the individuals.

To impose state mandated requirements for obtaining, enforcing and terminating covenant marriage is to impermissibly erect two separate and not necessarily equal standards for marriage and then divorce. The scheme suggested by the addition of Section 52 and following is both impractical and imposes unnecessary burdens on law enforcement resources by placing them in the position of education providers that would otherwise be provided by social and religious institutions. What is more problematic is the vagueness of the provisions on grounds for divorce of a covenant marriage where the high threshold set by the proposed statute may actually work against the best interest of the parties and especially their children.

SCOTT M. MANN
7225 Renner Road, Suite 200
Shawnee, KS 66217

March 10, 2010

Senator Tim Owens, Chair
Capital Building, Room 559-S
300 SW 10th Street
Topeka, KS 66612

TESTIMONY BEFORE
THE SENATE JUDICIARY COMMITTEE MEETING SCHEDULED
FOR MARCH 15, 2010

RE: *Opposition to House Floor Amendment (Creating Covenant Marriage) to the Domestic Relations Recodification Bill; House Bill 2667*

Members of the Judiciary Committee:

I write to the Committee to respectfully request your consideration of the following written testimony on House Bill 2667, scheduled to be considered on March 15, 2010. While I support the original recodification and reorganization of the now scattered statutes that address Family Law issues that is embodied by House Bill 2667, I write in opposition to the House Floor Amendment that inserted the provisions that would for the first time in Kansas history create "covenant marriage."

By way of introduction, I am a Kansas attorney with a practice in the area of Family Law in the Kansas City Metropolitan area. I am a Past-President of the Section of Family Law of the Kansas Bar Association and am a Fellow of the American Academy of Matrimonial Attorneys. I am licensed to practice in both Kansas and Missouri and have practiced law regularly in both states for 20 years. I have limited my practice to assisting individuals and families in divorce, paternity, child custody, child support, and adoption cases. I handle many divorce cases each year. On a daily basis in divorce cases I see the full range of the human condition and I try to help my clients through what often is a very traumatic process and experience as quickly, quietly and cheaply as is possible under the circumstances. The following are my own views of the proposed concept of covenant marriage.

While the sponsor of the Amendment creating covenant marriage may have had only good intentions, Kansas simply does not need covenant marriage. In the three (3) States that have previously adopted the concept, less than one-half of 1% of the marriages in those states are covenant marriages. Covenant marriages created in one state may be terminated for any reason in another state that does not recognize the concept. No State can bind another State by its statutes. Most states, over 23, that have considered the concept have rejected it as unnecessary.

The concept of covenant marriage creates two classes of marriage. The concept as proposed implicates the State in a religious institution – a covenant that only God can terminate. The State should not impose any one religious view on the entire population. Most couples engage in some pre-marriage counseling, so the covenant marriage requirements duplicate what is already occurring.

By limiting the abused spouse from terminating the relationship, covenant marriage as proposed allows for the continued victimization of the battered spouse by the abusive spouse. In these difficult economic times, I am witnessing that domestic violence is on the rise in the cases I handle. Covenant marriage will not lessen or end spousal abuse, and it actually may increase the severity of the abuse if the abuser knows that it will difficult for the victim to leave the abusive relationship for a long period of time.

Most people enter into a marriage intending to stay married. In my experience, no one enters into marriage intending to divorce. The covenant marriage concept simply duplicates the assumptions of those marrying. Requiring "fault" to be proved before a divorce could be granted (whether in a regular or a covenant marriage) is a misguided attempt by the State to force two adults to remain together who do not wish to remain together.

For those who find out that they cannot stay married to or should not have married their spouse, covenant marriage does not mean that divorce will occur less often, only that when it does occur, it will be more difficult, acrimonious and expensive for the parties. If the intent of the Amendment was to create more attorney's fees and more litigation in the courts, and using more of the already limited court resources, then it surely will succeed. Divorces under the covenant marriage concept proposed will undoubtedly occur.

In a divorce case, "time is money" in many instances, and the delays required by the covenant marriage concept will mean more expense to the parties, regardless of the underlying disputes of the parties. In my experience, the longer a divorce case lingers in the court system, the more likely it becomes for the parties to engage in very costly and destructive (to them and their children) behavior.

The Judicial Council has proposed a simple and logical renumbering and reorganization of the several scattered domestic relations statutes currently in effect. This attempt at efficiency is admirable and will help the citizens of the State. However, for the foregoing reasons, this Committee should reject the misguided Amendment establishing covenant marriage. I thank the Committee for your consideration of my testimony on this subject.

Sincerely,

Scott M. Mann

To: Hon. Tim Owens, Chairman, Judiciary Committee, Kansas Senate

From: J. Bradley Short, Overland Park, Kansas

Re: Kansas House Bill 2667 as amended

Mr. Chairman, and members of the Senate Judiciary Committee,

I appreciate the opportunity to present my personal observations and comments with reference to Kansas House Bill 2667 as amended, currently under consideration by the Committee.

For the past 44 years, it has been my privilege to follow in a family legal tradition dating back to the mid-1800's in Abingdon, Virginia – where my great grandfather practiced law for over 50 years.

My own legal career has included a small county-seat law office (Short & Short, Fort Scott, Kansas) and a multi-attorney metropolitan law firm (Short, Borth & Thilges, Overland Park, Kansas). For over thirty years, I have limited my practice to family law, representing several thousand Kansans, both men and women, in a broad variety of difficult marital situations.

Like some of the others appearing before you, I am a fellow of the American Academy of Matrimonial Lawyers. I have served on the Family Law Bench-Bar committee of the Johnson County, Kansas, Bar Association for more than twenty years. In addition, I am a parent and have been happily married for 32 years in a lifelong relationship. I have also been divorced. I mention these matters solely in order that you may understand my remarks in appropriate context.

In order that there may be no initial confusion, let me state that I generally favor the reorganization of the family law statutes as presented by

House Bill 2667, but without the substantive changes introduced by the "covenant marriage" provisions.

First, we should recognize that what I will refer to as "traditional marriage" in Kansas (solely to distinguish it from "covenant marriage") is already based on a covenant, which, in addition to being a religious compact for many, if not most, couples, has a long legal history – it is an established legal concept with enforceable legal obligations.

Therefore, the questions posed by the "covenant marriage" amendment to House Bill 2667 are "why do we need yet another covenant" and "what is adding covenant marriage to Kansas law likely to do for Kansas families?"

Like many legislative proposals, the covenant marriage amendment borrows from an already existing worthy concept – counseling – but unnecessarily adds "baggage" which should be rejected – resurrecting the concept of fault in divorce.

There appears to be little disagreement that pre-marital counseling can be of value in assisting those who may be unwisely moved by "irresistible impulse" to marry without sufficient deliberation. Somewhere between 80 and 90 percent of Americans say they support pre-marital counseling.

In addition, I think that most attorneys who practice family law, either as mediators or in litigation, would acknowledge that pre-divorce counseling for couples is a really good idea. Many marriages which appear to be "on the rocks" can be helped with professional counseling and an opportunity for reflection. It is the standard practice of our office, for example, to encourage clients to exhaust every option for preserving the marriage before seeking a divorce.

Legislation, such as new Section 6 of House Bill 2667, which authorizes such counseling is a concept which I would endorse, although I would not limit the pre-marital counseling requirement to only those who seek a covenant marriage as appears to be the limitation in new Section 52. Too many young people, in particular, marry without sufficient reflection.

Deliberation and reflection before marrying (or divorcing) is a concept already present in our law. We currently have a three day waiting period which must be fulfilled to obtain a marriage license. We then have a sixty day residency period followed by another sixty day waiting period after filing to obtain a divorce decree. Thirty more days is added once a decree is signed and filed, during which marriage to anyone other than the former spouse is prohibited, so there is, in effect a minimum of a one-hundred fifty day delay in obtaining a divorce in Kansas.

Each of these existing provisions presents an opportunity for the mature and serious contemplation of both the privileges and the mutual obligations of marriage. Such provisions are commendable, and I have seen them result in reconciliation on more than one occasion in my practice.

Provisions, however, which seek to demonize one of the spouses on the basis of past conduct are a throwback to a more destructive and less compassionate period in our history.

I seriously question the premise offered for such draconian proposals – that they strengthen marriage by making divorce so distasteful, expensive and prolonged that fewer unhappy spouses will seek it.

Unlike some of the covenant marriage proponents, my legal career covers the period of transition from "fault" to "no fault" proceedings in Kansas. Of the two, I believe that "no fault" proceedings are much more likely to be amicable

and far less likely to injure the children of divorce. I conclude that "fault" proceedings are unlikely to strengthen Kansas marriages, and much more likely to destroy the potential for post-divorce cooperation in the ongoing task of rearing children.

"Fault based" divorce principles have been tried and then abandoned in this country over the last 200 years largely because they didn't work very well. They didn't preserve marriage, and they often resulted in fraud on the courts and demonstrable damage to the spouses and their children.

In New York, for example, where the only ground for divorce for many years was proof of adultery, couples who found that their marriage had been a mistake but could not obtain a divorce because neither had been adulterous were forced to collude with each other to falsify testimony -- one would confess to adultery in order that the court could grant a divorce both saw as the appropriate solution to their failed marriage. Parties were thus encouraged to commit perjury (in violation of the Ninth Commandment) because they were unwilling to commit adultery (in violation of the Seventh).

However, the primary reason that I (and I think most family law attorneys with whom I have discussed the matter) oppose the amendment to add the "option" of covenant marriage to our Kansas family law code is the impact that the fault based divorce has on children of divorce.

Laying aside for a moment the question whether it is harmful to force a child to remain in an emotionally abusive household (by discouraging or delaying the end of abusive marriages absent physical abuse), or even a household where his parents simply don't love each other and demonstrate their lack of respect for each other every day, one must still confront the unnecessary consumption of marital assets, the emotional erosion, and the

poisoning of the child's mind when the issues of the "other parent's" faults are encouraged to be explored and discussed in court as a precondition to moving on to better, less damaging relationships.

Such poisoning inevitably occurs not only in the courtroom, but also in the home preceding the courtroom appearance – airing one's marital problems with friends and neighbors in the comfort of one's own home is simply human nature – and unfortunately a distraught parent often turns to their child as an "ally" in the struggle with the other parent.

It may seem odd for a divorce attorney to be opposed to legislation which would make divorce more time consuming, more complex, more litigated and more expensive – all factors that would seem to benefit the divorce attorney. Nevertheless, as odd as it may seem, I, like the other members of our firm and many in our profession, am firmly committed to the concept of marriage – solid, stable marriages which provide the environment necessary for rearing healthy children. Mud-slinging is not consistent with those goals.

Is the proposal to authorize covenant marriage in Kansas likely to strengthen marriage? Has it lowered the divorce rate where it has been tried?

The conference topic adopted by The Coalition for Marriage, Family and Couples Education, at their 1998 CMFCE ANNUAL CONFERENCE, the year following the adoption in Louisiana of the first covenant marriage legislation in America, in 1997, was "Can Legislation Lower the Divorce Rate?"

One of the keynote speakers was Katherine Spaht of the LSU Law Center in Louisiana. In the mid 1990's Professor Spaht got the idea that there should be something called "covenant marriage" and that Louisiana ought to be the first place to have it. She began working with some of her friends in the legislature, and on June 23, 1997, Louisiana became the first jurisdiction in

the Western world to move away from no-fault divorce, thanks in no small part to the lobbying of Katherine Spaht. Since then, Professor Spaht appears to have become the principal advocate of the concept.

In her comments from the 1998 CMFCE conference, Professor Spaht sought to justify the restoration of fault grounds to Louisiana law because "they reflect collectively, society's condemnation of certain conduct in the marital relationship that is sufficiently offensive to society that society is willing to permit one spouse to terminate this relationship that has so much importance to the rest of [us] – that we all intended to be lifelong when it was contracted." Clearly, hers was a moralistic position, not a pragmatic one designed to improve marriages, but rather one intended to punish conduct.

She observed that one of the redeeming aspects of the Louisiana legislation was tactical – it tied the hands of the "guilty" spouse for a two year period by denying access to the courthouse: "[There is] greater protection to the spouse who keeps his or her promises, more leverage if preserving the marriage becomes impossible."

She explained, "Essentially what I mean by that is that during this two-year period in which the spouse who has left or has found someone else cannot get a divorce, the innocent spouse, the one who kept his or her promises and wishes to preserve the marriage, exclusively has the right to seek a divorce."

She suggested that if the attempts to force the "guilty spouse" into counseling to preserve the marriage should fail, "at the very least [the innocent party] will have bargaining power to negotiate on behalf of himself or herself, or more importantly the children, for greater financial and economic protection. The example I use in Louisiana is the fact that we do not permit post majority

child support. At the time at which children become the most expensive, age 18, college education, the spouse who is the noncustodial parent has no responsibility to support them at all. For the innocent spouse who is concerned about the children, this gives leverage so that you can say, "I alone have the right to get this divorce within the two-year period and I will do it under the following circumstances" so that you will be free to do whatever it is you want to do. That is, you set up a trust fund for the children's college education. It give[s] power back, where if power is not there for the spouse who deserves and seeks to preserve the marriage."

Despite Professor Spaht's enthusiasm for her idea to empower innocent spouses and financially punish the guilty, my research indicates that, since Louisiana became the first state to adopt covenant marriage in 1997, covenant marriage has only been adopted by two additional states (Arkansas, and Arizona), and even today, fewer than 1% of marriages in Louisiana are covenant marriages. Further, covenant marriage appears to have had no clearly ascertainable impact on the rate of divorce in any of the adopting states.

In Arizona, where covenant marriage is still available, only one-fourth of one percent of couples getting married selected the covenant marriage option according to a 2004 study by Scott D. Drewianka of the University of Wisconsin-Milwaukee.

Arkansas, the third state where covenant marriage is available, has one of the nation's highest divorce rates at 6.5 per 1,000 population (the national average for divorce in the U.S. is 4.2 per 1,000 population). According to William Bailey, Ph.D., of the University of Arkansas, there has been a decline in the number of new marriages choosing covenant marriage licenses. In 2002, the Arkansas Dept. of Health, Vital Statistics, reported 37,942 marriage

licenses issued in Arkansas. Only sixty-seven (67) couples signed up for the covenant marriage option. Twenty-four (24) who were already married converted to covenant marriages.

During the 13 years that covenant marriage has existed in the United States, 20 other states have considered it in one form or another, but none has adopted it. There is nothing to suggest that Kansas should be the next.

The idea of encouraging spouses to "sling mud" and "air the dirty laundry" in the process of divorcing may appeal to those in our society who would also support the idea of public stoning and use of the "scarlet A" to identify those of lesser moral fiber, but it has little to recommend it as a basis for cooperative parenting of the innocent casualties of failed marriages -- the children.

I strongly urge the Committee, and other members of the Kansas legislature to reject the amendment.

Thank you.

Respectfully submitted,

J. Bradley Short
Senior Member
Short, Borth & Thilges,
Attorneys at Law, LLC

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March 13, 2010

Thomas Owens
Kansas Senate Judiciary Chair
Kansas State Capitol
300 S.W. 10th Avenue
Topeka, KS 66612

Re: H. B. 2667

Dear Chairman Owens and Members of the Judiciary Commitee:

Please accept this letter as testimony regarding H.B. 2667. While I am unable to appear personally to deliver this testimony I appreciate the opportunity to address the Judiciary Committee in writing.

I am writing as Chair of the Johnson County Bar Association Family Law Bench-Bar Committee (hereinafter the "Bench-Bar Committee"). As a group we have had the opportunity to review H.B. 2667 and respectfully offer the following comments (the Judges that attend our meetings did not participate in this discussion). In general the Bench-Bar Committee supports the bill. The recodification of the various domestic relations statutes is a welcome development and one we have long supported. Pulling together the various domestic relations statutes will be beneficial not only to legal practitioners but to the public at large who may have had difficulty locating important laws that were located throughout the Code. We congratulate the Judicial Council, the Family Law Advisory Committee, your committee and all those who have worked so hard on this project.

While supporting the recodification efforts the Bench-Bar Committee has serious concerns with sections 52 through 59 concerning covenant marriage. While only three states have adopted covenant marriage as of this time (Louisiana in 1997, Arizona in 1998 and Arkansas in 2001) and statistically a very small number of married couples in those states opt for covenant marriage, estimates range from between 1.5% to 3%, the Bench-Bar Committee is concerned that the adoption of covenant marriage will create

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untenable and potentially dire consequences for some Kansas families.

As a practical matter the covenant marriage bill seeks to solve a problem that may not exist. As stated above very few people in the states that have adopted covenant marriage actually choose it. A careful review of the literature and pronouncements of those in the "covenant marriage movement" make it abundantly clear that covenant marriage statutes are an attempt to inject a religious definition of marriage into the statutory scheme. We submit that this is inappropriate in a pluralistic society. For those persons who are likely to choose covenant marriage, their religious convictions will lead them to obtain the counseling and make the personal commitments that are included in the proposed statute.

In Johnson County we have tried mightily to adopt a problem solving model to divorce instead of an adversarial and confrontational litigation style. This, we believe, has had a tremendous benefit to the parties and in particular the true victims of many divorces, the children. A return to the fault basis for divorce, which this proposed statute would impose upon those opting for covenant divorce, would be a step backwards, a step that would make the pain and heartache of divorce much worse for these families.

The requirement to prove fault will do nothing but increase the acrimony, bitterness and blame in divorce. Forcing a party to plead and prove fault to obtain a divorce will increase conflict, decrease the likelihood of an amicable settlement, encourage litigation, and increase the likelihood of high conflict cases involving children. For purposes of the division of property and support in a divorce fault is essentially a non-factor. Requiring it for the granting of a decree of divorce is not likely to encourage parties that should stay together to actually stay together, it will only make any divorce that much more difficult, and expensive, for all concerned.

Children suffer greatly from high conflict divorces. The greater the conflict between the parents, the greater the negative impact upon the children of that relationship. The best predictor for a child's healthy recovery from his or her parent's divorce is the level of acrimony between the parents. The greater the acrimony, the worse the child does.

While the proposed bill has an option for avoiding pleading fault, this too is problematic. The bill generally provides that the divorce may be granted if a spouse has abandoned the marital domicile for a year or if the parties have been living separate and apart for two years (but if combined with a decree of separate maintenance this cold effectively be three years length). A decree of separate maintenance may likewise be granted upon an abandonment for one year or living separate and apart for two years. The Bench-Bar Committee has grave concerns about the welfare of the parties and the children during these extended periods of separation. If an action cannot be commenced child support and maintenance may not be ordered. One wonders how the children and the financially dependant spouse will

survive economically without resort to state assistance. Orders cannot be entered prohibiting a spouse from dissipating or hiding assets. The equitable division of property upon divorce may be made difficult or impossible. A spouse who wished to do so could effectively impoverish the other, including the children. One spouse could use the statutory period to hide assets, increase debt, manipulate income and take other steps that could greatly harm the other spouse and the children. Proving these bad acts would be difficult and expensive. The injured spouse would be in a greatly compromised position and might be unable to afford the significant attorneys fees, expert witness costs and other expenses that would necessarily be incurred to prove the misdeeds of the other spouse. Even if proven the ability of the court to rectify the injustice might be limited especially if the malicious spouse was particularly clever in hiding assets.

Marriage is an institution that the Bench-Bar Committee believes should be encouraged and supported. Conscientious and respected family law practitioners encourage marital counseling and are pleased when parties are able to resolve their differences by reconciling or, if unsuccessful, by amicably settling their disputes in a calm, rational and low conflict approach that creates an environment conducive to successful co-parenting after divorce. Experience tells us that high conflict divorces rarely create that environment. We do not believe that the adoption of covenant marriage in Kansas will reduce divorce or improve the divorce process. We urge the committee to reject the provisions for covenant marriage while adopting the recodification of the domestic relations statutes.

Thank you once again for the opportunity to address the Committee.

Yours very truly,

Keven M. P. O'Grady

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Kansas Professional Bail Bond Association, Inc.

TO: Senate Judiciary Committee

FROM: Christopher M. Joseph, General Counsel

DATE: March 15, 2010

RE: Support for HB 2528

Good morning Chairman and members of the Committee, my name is Chris Joseph and I am the General Counsel for the Kansas Professional Bail Bond Association. The KPBBA is an association of professional sureties in the State of Kansas. We are here to testify today in support of HB2528.

The provisions of HB2528 solve practical problems with bail bonds

The KPBBA proposed the language in HB 2528. The following is offered as explanation for the provisions:

HB2528 provision: **An appearance bond is revoked by the execution of a warrant for a defendant's arrest for a violation of a bond condition.**

A number of district courts have issued warrants for defendants after a surety posted bond, caused the defendant's arrest on the warrant, released the defendant after holding a hearing on the defendant's violation of bond conditions, failed to notify the surety of the arrest or hearing, and then claimed to have "reinstated" the original bond and that the surety remained liable on the bond after the arrest and hearing.

Once a defendant is taken into custody at the court's direction, the defendant is no longer free on bond. The court's action of arresting a defendant should be recognized as a revocation of the existing bond. A surety should not thereafter remain liable on the bond unless it consents to do so by executing a new appearance bond. Sureties will frequently agree to execute a new appearance bond without charge when it is fair to do so. The decision to remain liable on the bond, however, should remain with the surety. Courts should not impose continued liability on a surety without the consent, or even knowledge, of the surety.

HB2528 provision: **by providing to the court a written statement, signed by the surety under penalty of perjury, setting forth details of such incarceration,**

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The problem addressed by this provision is the abuse of the rules of evidence by some district court judges. Sureties occasionally come across a judge who enters judgment against the surety despite the surety having apprehended the defendant and returned him to custody. The language in the existing statute gives the judge a basis for doing so. The reasoning is that because a bondsman did not conform to the rules of evidence and only orally told the judge that the defendant was in custody in the jail, the bondsman failed to "prove" that the defendant was in the jail.

Bondsmen are not lawyers and should not be asked to conform to the technicalities of rules of evidence to prove that a defendant has been arrested and returned to custody. It should be sufficient to prove a defendant's custody status by presenting an affidavit with the details of the defendant's location. The claims in an affidavit are easily verifiable by a phone call.

Proposed amendment to HB2528

The following provision should be added to HB2528 as amendments. The provision was in the bill as introduced.

Proposed amendment (insert at page 2, line 5): ~~**No default judgment shall be entered against the obligor in an appearance bond until more than 10 days after notice is served as provided herein.**~~ **Judgment against the obligor in an appearance bond may not be entered until at least 60 days after the clerk mails copies to the obligor and no later than one year after a defendant's failure to appear. Judgment against the obligor in an appearance bond may not be entered if a defendant is returned to custody, or is otherwise in custody somewhere within the United States, on or before 60 days after the clerk mails copies to the obligors.**

This provision codifies the practice of the vast majority of district courts in Kansas.

When a defendant fails to appear, the court declares the bond forfeited, and the prosecutor files a motion for judgment on bond. There is significant variation between the time prosecutors chose to file their motion, but it is a fair generalization to say that the motion is rarely filed within 10 days of the defendant failing to appear for court and is sometimes not filed until more than 60 days after the defendant failed to appear. The timing of when prosecutors file their motion is not impacted by the proposed amendment.

After the motion is filed, it is set for a hearing. It is unusual for the initial hearing to be held within 60 days of the defendant failing to appear for court.

At the hearing, it is fairly common for a bondsman to ask for additional time to apprehend the defendant if the defendant is still at large. Courts generally will agree to continue the hearing for at least 30 day if the surety tells the court that they are actively looking for the defendant and have some hope of finding him. Courts sometimes grant more than one

continuance. Some courts will allow a surety as much as 180 days from the time the defendant failed to appear in court before granting judgment against the surety.

This amendment recognizes that it is appropriate to have a uniform minimum amount of time for a surety to apprehend a defendant who fails to appear in court. It recognizes that justice does not require a judgment if a surety apprehends a defendant within 60 days of missing court. It creates a 60-day window where the surety knows that if it apprehends the defendant, it will not have to pay a judgment. This will maximize the incentive for a surety to apprehend a defendant, thereby minimizing the cost to the state of service of fugitive warrants and delay in court proceedings.

The amendment also recognizes that one year is more than adequate time for a prosecutor to file a motion for judgment on bond and the court to hold a hearing and enter a ruling. There is no protracted litigation involved. The only requirement is a short "form" motion and a relatively short hearing on the motion. The only limitation currently in place is the five-year statute of limitation on contracts. It is not unheard of for a motion or other notice to be given to a surety more than four years after a defendant failed to appear in court. When so much time has passed, the surety has virtually no hope of apprehending the defendant.

Response to note regarding fiscal impact

Comment: "According to the fiscal note, the State Board of Indigents Defense Services (BIDS) received $343,205 in bond forfeiture fees in FY 2009, an average of $28,600 per month. Currently, BIDS receives monthly payments for the State Treasurer's Office. If HB 2528 were enacted, there would be a two-month delay in the receipt of fees, an amount that the Board must have to operate."

The claim of a two-month delay in receiving revenue assumes that judgments are being entered immediately after the existing 10-day statutory "safe harbor." That is absolutely not true. Prosecutors almost never file motions within 10 days of a failure to appear. Even if a prosecutor quickly files the motion, it is unusual for a hearing to be held within 60 days. If the hearing is set within 60 days, judges will generally grant a request for additional time because they realize that providing less than 60 days to apprehend a defendant is unreasonable. In fact, judges will often grant continuances for up to 180 days.

The proposed 60-day "safe harbor" codifies the local practice of most courts, provides uniformity across jurisdictions, and recognizes that it often takes 60 days to locate and apprehend a defendant who fails to appear.

Comment: "Also, when defendants appear during the new 60-day time frame, the associated funding would be lost entirely."

Statute already requires that forfeitures be set aside and judgments be remitted if justice does not require payment in full. In those rare cases where judgment is entered before 60 days have passed, the result is almost always a motion to set aside the judgment, a hearing, and an order setting aside the judgment.

Sureties must be given a reasonable period of time to do their job. A 60-day window is reasonable.

Comment: "With the delay and diminished fees, the Board would have to look to the State General Fund to replace operating costs currently paid with forfeiture bonds."

The claim that this bill would significantly impact the amount of judgments entered and collected is without basis. The bill is budget-neutral. If there is any cost associated with not recognizing the principle that a surety who apprehends and returns a defendant to custody within 60 days should have to pay the judgment, it is a reduction in cost to the state. As long as the private surety is locating and apprehending a defendant, the state will not have to pay for police to do the work. If a judgment is entered before 60 days has lapsed, a surety would be well advised to seek to set aside the judgment and appeal any denial of the motion.

Comment: "That burden 3-2528 would fall on the public defenders whose staff could not handle the extra work load. The majority of defendants are out on bond. To determine whether those who fail to appear are incarcerated in another jurisdiction would require one support person for each of the six smaller public defender offices and at least two support people in the three largest offices. The starting salary for the 12.00 FTE support positions would be $324,000 from the State General Fund. Any fiscal effect associated with HB 2528 is not reflected in The FY 2011 Governor's Budget Report."

Public defenders do not track defendants who miss court. They do not appear in court to litigate motions for judgments against sureties. This bill would not cause them to suddenly start doing so. If they elect to hire staff to track defendants, it would be a cost of their own making.

Thank you for the opportunity to address HB2528. We respectfully request that you pass the bill with the proposed amendment.

Respectfully submitted,

Christopher M. Joseph

9-4

STATE OF KANSAS

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HOUSE OF REPRESENTATIVES
MAJORITY CAUCUS CHAIRMAN

COMMITTEE ASSIGNMENTS:
VICE-CHAIRMAN: INSURANCE
MEMBER: TAXATION
TRANSPORTATION
FINANCIAL INSTITUTIONS
LEGISLATIVE POST AUDIT

Testimony in support of HB 2454

March 15, 2010

Chairman Owens and Committee members, thank you for this hearing on HB2454.

The idea for such legislation was first brought to me by Detective Sergeant Kwin Bromley, of the Coffeyville Police Department.

Sergeant Bromley is a man any of us would appreciate having with us in any threatening situation. In February 2009, he again showed why the residents of Coffeyville and the State of Kansas are fortunate to have him as a Law Enforcement Officer.

Sergeant Bromley wanted to appear before you today, but due to some surgery his wife had he is unable. He did provide written testimony telling his story and I think you will agree with me that passing HB2454 is the right thing to do; not only for Sergeant Bromley, but for all law enforcement officers in Kansas.

I not only worked with Sergeant Bromley, but also Commander Mike Brown of the Coffeyville Police Department in developing language for HB2454. Commander Brown was very instrumental in 2006 in helping pass legislation to increase the penalty for Battery LEO to a felony.

Passage of HB2454 would add 30 months to the sentence of a person convicted of a felony who was wearing body armor during the commission of that felony, fleeing, etc. Common sense tells us that anyone who straps on body armor, such as a bulletproof vest and then commits a felony, such as bank robbery, was looking for a fight with law enforcement officers and hoping to increase the odds of saving their sorry butt.

Attached to my testimony is a copy of the story that appeared in the Coffeyville Journal about the incident that got us thinking about this piece of legislation.

I'll be happy to stand for questions.

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The Coffeyville Journal

50 CENTS

September 8, 2009 | Serving the area since 1875 | Vol. 120, No. 17

Ross pleads guilty of Coffeyville February bank robbery

The man accused of robbing he Bank of America, which sed to be located at 1401 W. Eighth Street (the location has ince closed for reasons unre-ted to the robbery) has pled uilty to killing Willie Neal, ., an innocent bystander.

Ross Williams, 39 of Claremore, Oklahoma was harged in federal court with ank robbery, murder, and try-g to kill police officers dur-g a bank robbery in offeyville, Kansas,

Ross is scheduled for sen-ncing at a later date but could receive up to life in prison.

The original indictment was issued on February 17, 2009, and stated that Williams robbed the Bank of America located at 1401 W. Eighth. Williams entered the bank, demanded money at knife point and took $7,549 from the bank before fleeing the scene on a bicycle.

A witness followed Williams and saw him put the bike into the back of an SUV and drive away and while he attempting to escape arrest from ensuing officers, he fired shots from a ROMARM assault rifle, which is when Neal was struck in the upper thigh.

A high speed chase with police started in the 1200 block of West 10th Street and the chased ended when Williams' SUV struck a tree. He then fled on foot to a wooded area. After looking for Williams for over three hours, officers finally located him when he attempted to cross a field and arrested him. He was wearing a bullet proof vest and carrying a pistol when they located him.

No officers were injured in the incident and the autopsy on Neal concluded the type of bullet shot from Williams' assault rifle was consistent with the bullet found in Neal.

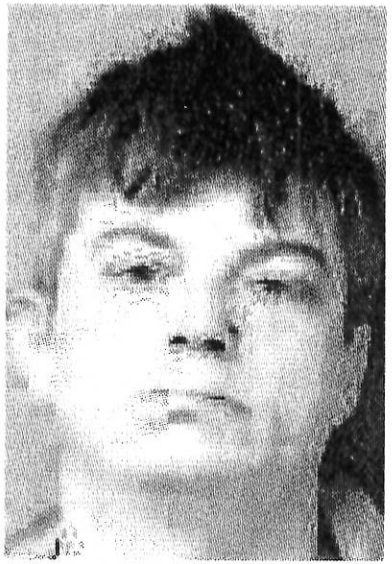
Williams original indictment and charges included:

- Maximum penalty of one count of bank robbery--20 years, and a fine of up to $250,000
- One count of killing a person while attempting to escape arrest--death, or life in federal prison
- One count of carrying a firearm in furtherance of a bank robber--life in federal prison
- One count of unlawful possession of a firearm after a felony conviction--10 years and a fine of up to $250,000

Williams was no stranger to trouble. According to Tulsa District Court records, he was sentenced in December 2007 to seven years in jail for first degree burglary. That sentence was later suspended and he was put on supervised probation. He had also been charged with knowingly concealing stolen property.

Agencies who conducted or assisted in the investigation included: Coffeyville Police Department, Federal Bureau of Investigation, Caney Police Department, Independence Police Department, Montgomery County Sheriff's Office, Labette County Sheriff's Office, Kansas Highway Patrol, Coffeyville Fire Department and Coffeyville EMS Department

Prosecuting attorneys are Assistant U.S. Attorney Matt Treaster and Assista U.S. Attorney Lanny Welch.



Montgomery County Corrections Pho
Ross A. Williams

Coffeyville Police Department

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620-252-6160
Joe Humble • Chief of Police

03/11/2010

To: Senate Judiciary Committee
From: Commander Mike Brown – Coffeyville Police Department
Re: Support of HB2454

My name is Mike Brown and I am a Commander with the Coffeyville Police Department and I have been involved in Kansas law enforcement for over 18 years. On behalf of the Coffeyville Police Department and the Kansas Association of Chiefs of Police I would like to submit the following testimony in support of HB2454 for your consideration.

During the course of my career, body armor has evolved from extremely expensive and cumbersome to affordable, lightweight and comfortable life-saving equipment. As a result of this evolution, the availability of new and surplus body armor to the general public has increased. Many law-abiding citizens own body armor for their own protection and we, in no uncertain terms, wish to limit the ability of the citizens of Kansas to purchase and utilize body armor for legitimate purposes. Our support of HB2454 is due to the alarming trend we have seen developing among the criminal element in which criminals are utilizing body armor or other forms of ballistic protection during the commission of crimes. The use of body armor by a person who is committing or attempting to commit a crime serves one and only one purpose. That purpose is to thwart the efforts of law enforcement or citizens in the application of deadly force to protect themselves or others from great bodily harm or death.

The criminal use of body armor not only puts law enforcement at risk but also puts the general public at risk as well. The much-publicized Bank of America Robbery in North Hollywood, Los Angeles on February 28, 1997 is a perfect example. The gun battle between LAPD officers and the two suspects, who were wearing body armor and heavily armed, lasted approximately 24 minutes. The suspects brazenly fired indiscriminately at officers. This reckless disregard for human life was undoubtedly bolstered by the suspects' knowledge that their body armor would protect them from a majority of the rounds fired at them by law enforcement. During these 24 minutes, 10 officers and seven civilians were injured due to the fact that traditional law enforcement handguns and shotguns could not penetrate the body armor worn by the suspects and end the threat. The criminal use of body armor in this case substantially increased the risk to

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everyone involved and even those who were simply in the vicinity, by hampering the efforts of law enforcement to quickly end the threat.

The North Hollywood Robbery is not just a west coast anomaly, it just received incredible media coverage. Detective Sergeant Bromley of the Coffeyville Police Department will offer testimony also supporting HB2454 based on another Bank of America robbery that also occurred in February. This bank robbery involved another heavily armed suspect wearing body armor who actively engaged law enforcement officers with gunfire. This Bank of America robbery and gun battle occurred in Coffeyville, Kansas in 2009.

The Coffeyville Police Department, the Kansas Association of Chiefs of Police and the Kansas Peace Officers Association feel that HB2454 appropriately addresses the criminal use of body armor and applies an appropriate enhancement to the established sentencing guidelines to punish those that utilize this life-saving technology for criminal purposes.

Thank you for your time and the opportunity to offer testimony in support of HB2454.

Sincerely,

Mike Brown – Commander
Coffeyville Police Department

Coffeyville Police Department

7th/Walnut • P.O. Box 1629 • Coffeyville, KS 67337
620-252-6160
Joe Humble • Chief of Police

March 12, 2010

To: Chairman Owens, Senate Judiciary Committee
From: Kwin Bromley, Detective Sgt. Coffeyville Police Department
Appearing on behalf of the Coffeyville Police Department
Re: HB 2454

Chairman Owens and Members of the Senate Judiciary Committee, thank you for the opportunity to appear before you today to provide testimony in support of HB 2454.

On October 5th, 1892, The Dalton gang made a bold, and futile attempt to rob two banks simultaneously in Coffeyville. Alert citizens saw the gang of robbers and sounded the alert to local townspeople. A furious and bloody shootout took place among the Dalton gang, city marshal, and townspeople. When the smoke cleared, the city marshal laid dead, along with three citizens who were killed defending the City of Coffeyville. Four of the five members of the Dalton gang were killed; the fifth was wounded and was later sentenced to life in prison.

A little over one hundred and sixteen years later, on February 17th, 2009, at approximately 4:55pm, a citizen of Coffeyville called the Coffeyville Police Department to report an armed robbery in progress at the Bank of America, 8th & Buckeye branch office. The alert citizen remained on the telephone and provided police dispatch with critical updated information pertaining to the bank robber's clothing description, vehicle description, and direction of travel.

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Responding police officers quickly honed in on the bank robber's location and attempted to stop him. A high speed chased then ensued. The bank robber led pursuing law enforcement officers in a winding chase through business and residential neighborhoods. The bank robber passed by a large low income apartment complex and drove through a barricade, which caused him to lose control of his vehicle, go off the road, and crash into a tree.

The bank robber immediately exited his vehicle and began engaging pursuing officers with rapid gunfire from a handgun. Lieutenant Colbert, who was in the lead patrol car radioed "shots fired" and placed his patrol car into reverse to put some distance between the suspect and his vehicle. The bank robber retrieved an AK-47 assault rifle from his vehicle and continued to fire at officers.

Sergeant Daily had stopped directly behind Lieutenant Colbert and was out of his patrol car; crossing between Lt. Colbert's vehicle and the front of his patrol car when he was inadvertently backed over by Lt. Colbert. I had stopped behind and to the right of Sergeant Daily's vehicle, and observed Lt. Colbert backing over Sgt. Daily. I quickly got out of my unmarked detective's unit, and drew my Glock 9mm handgun. Hearing the glass shattering, and metallic sounds of the patrol cars getting hit by multiple rounds from the bank robber, I returned fire at the suspect as I ran towards where I had seen Sgt. Daily go down. Once there, I found Sgt. Daily crawling out from under Lt. Colbert's patrol car, and drawing his weapon. The bank robber continued to engage us in heavy rifle fire while Sgt. Daily and I returned fired, eventually driving him back behind the cover of his vehicle, where he then fled into a heavily wooded area.

Sgt. Daily and I, both members of the Coffeyville Police Department's Special Operations Team, quickly assembled a six man contact team comprised of police and sheriff deputies, and utilizing Sgt. Daily's Police Service Dog, Arco, tracked the suspect to a remote area northeast of Coffeyville. Hours later, the bank robber having unknowingly been spotted by the contact team approached our position, where he was apprehended without further incident. During his arrest, officers quickly noticed that the bank robber had been wearing body armor, similar to the body armor currently worn by law enforcement personnel nationwide.

A subsequent investigation revealed that the suspect had prepared himself for a possible encounter with law enforcement. In addition to the AK-47 assault rifle, the suspect had taped together two 30 round magazines for his AK rifle, he had weapon mounted flashlights, several different handguns, including numerous loaded high capacity magazines, several knives, pepper spray, a stun gun, handcuffs, tape, several changes of clothing, flashlights, a GPS system for his vehicle, magnetic business vehicle decals, and several different automobile license plates.

Obviously, our times have certainly changed from the era of bank robbers of the old west, to the evolving modern bank robbers who utilize modern technology, superior firepower, and ballistic vests for protection to aggressively fight law enforcement to avoid arrest.

Kansas law currently has no language addressing criminals who don or use ballistic restraint material in the commission of, or attempt to commit, or flight from any felony. The growing expansion and use of the world wide web, gun & trade shows, mail order, military surplus stores, and even burglaries and thefts of police and military residences allows criminals easy access to an unlimited market of current issue and surplus police and military body armor, trauma plates, rifle grade ceramic trauma plates, helmets, and other ballistic garments.

Other states have taken steps to address criminals using ballistic restraint material while in the commission of, attempted commission of, or flight from a felony. I am asking that you consider taking a similar necessary step forward to add this language into Kansas law.

Respectfully,

Detective Sgt. Kwin Bromley
Coffeyville Police Department
7th & Walnut
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(620) 252-6194
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Montgomery County Sheriff's Office
300 E. Main
Independence, KS 67301
(620) 330-1000

Kelly Stewart
Detective Lt.
Montgomery County Sheriff's Office

March 15, 2010

Chairman Owens
Senate Judiciary Committee

Chairman Owens and Members of the Committee:

I wish to thank you for the opportunity to speak with you regarding the proposed legislation relating to enhanced sentencing for criminals who utilize bullet-resistant products and materials during the commission of their crimes.

I have been involved with Law Enforcement for almost twenty one years, beginning as a volunteer Reserve Officer while I completed college. During these past twenty years, I have seen many changes to the Law Enforcement profession as well as the criminal activity that we police.

In the beginning of my career, body armor was just becoming readily available to Law Enforcement and it was a heavy, expensive and bulky tool that was basically impossible to obtain unless you were a Law Enforcement Officer. Nonetheless, it was a tool that gave us an advantage over the criminals that we opposed and it was a welcome addition to our gear. Those of us in Law Enforcement felt that body armor was one of those items that tipped the balance of power in our favor.

In recent years, however, this balance of power has tipped away from us and has become more level. Body armor has become cheaper, lighter, thinner and much easier to obtain. With the advent of the internet, on-line stores and sights such as ebay have made body armor easily available and cheap to obtain. Many of these sights, including ebay, do not have any restrictions on who may purchase these ballistic-resistant items.

The result of this easy, cheap access is that over the past several years, Law Enforcement has started to see body armor being possessed and used by the criminals we face. Since 2006, I have been involved with two narcotics-related search warrants where we discovered body armor in the possession of those who were manufacturing and or selling illegal narcotics.

Discovering bullet-resistant vests in the possession of these drug dealers sounded warning bells for those of us involved. It was our belief, based on what we knew of these cases, that these criminals possessed body armor with the intent to even their odds against the Police.

The warning bells turned to outright alarms when I became involved in the Bank of America robbery and shootout in Coffeyville on February 17, 2009. I was in Coffeyville as the robbery began to unfold and I became involved in the pursuit of the suspect as he fled through town. When the suspect wrecked his vehicle near the north edge of town, he began firing shots at those of us who were pursuing him. After a brief gun battle, during which an innocent bystander was killed, the suspect fled into the woods and we gave chase. I was part of a six-man team that entered the woods after this violent robber and murderer. When we encountered him several hours later, we soon learned that he was wearing police-style body armor.

It is difficult to describe how disheartening it was to realize that this criminal was utilizing a tool that made it more dangerous and difficult for us to stop his actions. It forced us to realize that the playing field had been leveled and that the stakes had been raised.

While I am not under any illusions that passing legislation will stop criminals from using body armor if they are determined to do so, I do believe that this proposed legislation for enhanced sentencing will provide us a valuable tool to help keep them incarcerated when they do. I respectfully urge this committee to consider this legislation and its potential for helping us keep violent felons behind bars longer. Violent felons who utilize ballistic resistant items do so with only one goal in mind and that is to make their odds of success greater; lessoning their risk while increasing the risk to others. This proposed legislation can help provide an extra measure of attention that these felons deserve.

I wish to thank the Committee for their consideration of this proposed legislation and for allowing my comments to be heard.

Respectfully,

Kelly Stewart

Kansas County & District Attorneys Association
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Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

TO: Senator Tim Owens, Chair
Senate Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney
Past President, KCDAA

RE: Written Testimony in Support of House Bill 2454

DATE: March 15, 2010

Chairman Owens and Committee Members:

Thank you for the opportunity to submit written testify in support of House Bill 2454. Subsection (r) adds language that would add thirty months imprisonment to the sentence of any defendant convicted of a felony when a jury has found beyond a reasonable doubt that the defendant wore or used ballistic resistant material in the commission of the felony. The Kansas County and District Attorney's Association supports this legislation.

I am the Deputy Reno County District Attorney, and I have been a prosecutor for nearly nineteen years. I was also trained as a police officer, and was employed as such for six years prior to going to law school. The use of ballistic materials in the commission of an offense puts both citizens and police officers at a strategic disadvantage. Citizens protecting themselves, their families or their homes will generally defend themselves by attempting to incapacitate their attacker. Valuable time and effort are wasted when the attempt at self-defense is thwarted by the attacker's undisclosed use of body armor. The use of said materials give the attacker the advantage of surviving otherwise incapacitating responses, and gives the attacker the ability to inflict greater damage on his or her victims.

Law enforcement officers are also placed at greater risk when confronting suspects using ballistic materials. Officers are trained to fire at center mass, action which would be ineffective if the suspect us wearing body armor. Many dedicated criminals, however, train themselves to fire both at center of mass and at the head, knowing that there is a high probability the officer is

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wearing ballistic protection. Officers do not train to fire at the head of a suspect for several reasons. First, it is the duty of an officer to stop a suspect, and training to fire at a suspect's head would insure death to the suspect in every case. Second, the head is a much smaller target than the body; the possibility of a miss and the subsequent danger to any innocent citizen standing nearby becomes greater. Finally, there is no general expectation on the part of law enforcement that a suspect would be using protective ballistic materials unless there has been specific intelligence received regarding the use of said materials by a specific individual. It would be unreasonable for officers to treat every situation as if the suspect was using ballistic materials.

The increased penalty for use of ballistic materials is appropriate for the situation. The use of these materials by persons intentionally committing felonies in Kansas evidences a depraved, violent mind. The criminal using ballistic materials obviously expects to be involved in a situation where he or she would need such protection. The use of the materials is generally intended, therefore, to give the suspect the ability to inflict damage to law enforcement or citizens, while allowing the suspect to survive the encounter. This type of individual is a clear danger to the citizens of the Sate of Kansas.

It should be noted that the increased penalty would always be attached to another sentence; therefore the number of beds would not be impacted except for the fact a bed would not be freed up as early as it would in the absence of the increased penalty. The KCDAA requests that this legislation be favorably considered by this body. I would be happy to answer any questions upon request.

POLICE DEPARTMENT

OFFICE OF THE CHIEF OF POLICE

Samuel F. Breshears
Chief of Police

March 15, 2010

Senate Judiciary Committee

REF: HB2454 Felonies committed while wearing or using ballistic resistant material

Dear Chairman Owens and Committee Members,

My name is Samuel Breshears, and I am the Chief of Police for the Kansas City, Kansas Police Department. I am submitting the following written testimony on behalf of the Kansas Chiefs of Police Association, in support of House Bill 2454.

Early in the evening on March 26, 2003, Kansas City Police Officers Ryan Fincher and Phillip Trusskey responded to a domestic disturbance call, what later turned out to be an ambush situation. They were on the residence's front porch attempting to talk with the occupants when an unknown subject started firing on them from within the house with an Assault Rifle.

The sudden gunshots left both officers seriously wounded. Officer Fincher had sustained several potentially life-threatening wounds, but still, as he lay on the ground in front of the porch, he used his radio to calmly call for assistance. Even while he made the call, Officer Fincher returned fire as the suspect maneuvered several times in an apparent attempt to exit the front door. Officer Fincher managed to keep the assailant contained inside the house.

Officer Trusskey was also seriously wounded, but he too, reported the situation on his radio. As he called, the suspect's 11 year old daughter escaped from the house while the suspect fired at her, striking her in the leg. Officer Trusskey left an area of concealment and covered her with his body to physically protect her. The officer exhausted his own ammunition supply, yet continued to shield the girl as the assailant continued to fire shots at them.

Kansas City Police Sergeant Michael Hughes was the first to respond to the fallen officers' calls. He arrived with the firefight still in progress, found a good vantage point with his shotgun, and soon forced the subject to drop his weapon and plead for surrender. A subsequent search found a second handgun in the man's waistband.

Sergeant Hughes and Officer Sandra Carrera turned to the badly wounded Officer Fincher. Officer Carrera worked hard to keep him conscious and optimistic, personally guaranteeing him that he would survive his very serious wounds.

Officers LeeAnn Shelton, Scott Ladish, and Romulo O'Reilly then arrived. They assisted in securing the residence and the suspect, who was now found to have been wearing two protective vests during the confrontation.

More than 100 rounds were fired during the nearly four-minute firefight.

The suspect was prosecuted for two counts of attempted murder along with other charges.

Officer Trusskey recovered from two gunshot wounds, while Officer Fincher recovered from four. Both have returned to full duty.

A more recent event occurred in Kansas City, Kansas involving both the Kansas City, Kansas Police Department and the Federal Bureau of Investigation when information that a bank in KCK was the intended target of some career criminals.

On October 22, 2009, agents from the FBI and members of the KCKPD were conducting surveillance at a local bank in the area of 77th and Parallel Parkway. They had information that the bank was the intended target of a crew of "holdup men."

At approximately 1045 am, two suspects were observed pulling into the lot of the bank and parked in front of the bank doors. As they exited the vehicle they had on masks, wearing bullet proof vests, carrying police scanners and two-way radios, and Glock pistols. Officers on the scene, inside the bank, had secured the doors to prevent any employees from being placed in harm's way.

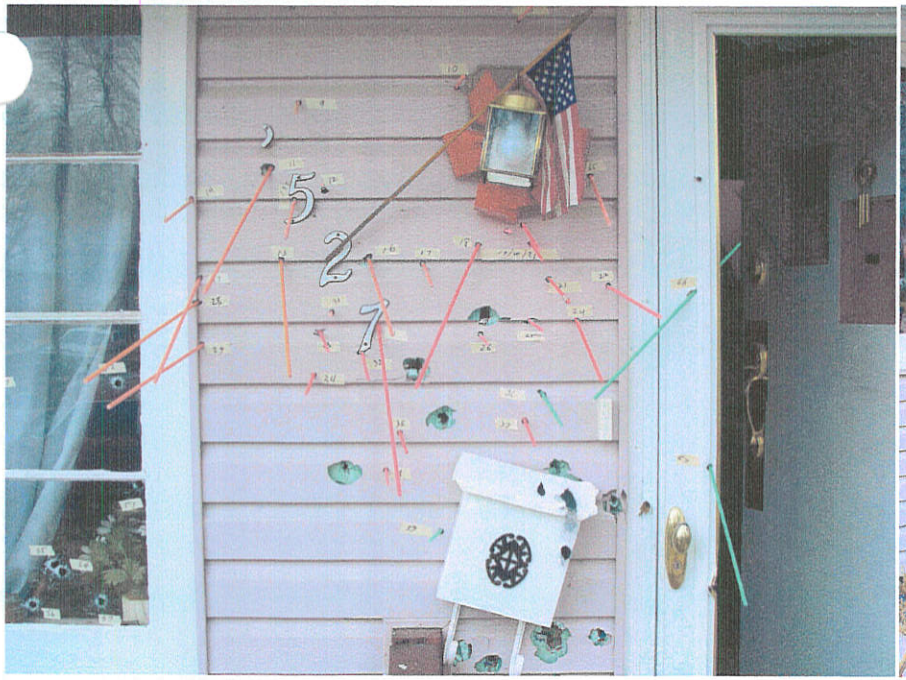
Upon finding the doors locked, the suspects returned to their vehicle and attempted to flee when they were rammed by a vehicle driven by officers. The driver was pinned in the vehicle, but the passenger fled a short distance before being apprehended by officers. Both were taken into custody without any shots being fired or dangerous pursuits occurring.

This is only two examples that clearly describe the mindset many felons perpetrating crimes in our community have. They are sending a message that they are prepared for armed encounters and continue to plan for ways to have an advantage over law enforcement when such encounters occur.

These are just two of the more "high profile" events the Kansas City, Kansas Police Department has been exposed to. However, it should be noted that officers of the KCKPD have made contact with several individuals in recent years while executing high risk search warrants and that these are not rare incidents.

I thank you for your time and consideration in this matter and strongly request that you support the measures submitted in House Bill 2454.

Samuel F Breshears
Chief of Police
Kansas City Kansas Police Department
Kansas City, Kansas
66101
913-573-6010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fender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:

(A) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(B) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, siblings, parents or stepparents and children or stepchildren, and who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

persons

(8) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence, a violation of stalking, as defined in K.S.A. 21-3438, and amendments thereto, or a violation determined pursuant to K.S.A. 60-31a09, and amendments thereto, of any order issued pursuant to the protection from stalking act, K.S.A. 60-31a01 et seq., and amendments thereto.

~~(7)~~ *(9)* "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(8)~~ *(10)* "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

~~(9)~~ *(11)* "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(10)~~ *(12)* "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(11)~~ *(13)* "Law enforcement officer" means:

(a) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(b) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments

Session of 2010

Substitute for HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

2-16

SubHB2517-Balloon-FRB1.pdf
RS - JThompson - 03/16/10

AN ACT concerning crimes, punishment and criminal procedure; relating to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-2908 and K.S.A. 2009 Supp. 21-3110, 21-3412a, 21-4603d, 22-2909 and 75-712 and repealing the existing sections.

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

New Section 1. (a) On and after July 1, 2011, in all criminal cases, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense. If the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and the defendant shall be subject to the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

(b) The term "domestic violence offense" shall have the meaning provided in K.S.A. 21-3110, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas code for criminal procedure.

New Sec. 2. In all criminal cases, when a complaint is filed charging a defendant with commission of any crime whereby the underlying factual basis includes an act of domestic violence, as defined in K.S.A. 21-3110, and amendments thereto, the court may place a "DV" designation in the unique identifying case number assigned to such case. Nothing in this section shall be construed to limit the courts of this state from adopting a system of case designation deemed by the courts to be beneficial to the efficient administration of justice.

New Sec. 3. The attorney general shall promulgate rules and regulations necessary to carry out the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto, on or before July 1, 2011.

Sec. 4. On and after July 1, 2011, K.S.A. 20-369 is hereby amended to read as follows: 20-369. (a) If a judicial district creates a local fund ~~under this act~~, the court may impose a fee as provided in this section against any defendant for crimes involving a family or household member as provided in K.S.A. 21-3412a, and amendments thereto, *and against any defendant found to have committed a domestic violence offense pur-*

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suant to section 1, and amendments thereto. The chief judge of each judicial district where such fee is imposed shall set the amount of such fee by rules adopted in such judicial district in an amount not to exceed $100 per case.

(b) Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the chief judge under this act. All moneys collected by this section shall be paid into the domestic violence special programs fund in the county where the fee is collected, as established by the judicial district ~~and as authorized by this act~~.

(c) Expenditures made in each judicial district shall be determined by the chief judge and shall be paid to domestic violence programs administered by the court and to local programs within the judicial district that enhance a coordinated community justice response to the issue of domestic violence.

Sec. 5. On and after July 1, 2011, K.S.A. 2009 Supp. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(1) "Act" includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(3) "Conduct" means an act or a series of acts, and the accompanying mental state.

(4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

(6) To "deprive permanently" means to:

(a) Take from the owner the possession, use or benefit of property, without an intent to restore the same; or

(b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(7) *"Domestic violence" means ~~an act or threatened act of violence~~ against a person with whom the offender is involved or has been involved in a dating relationship, or ~~an act or threatened act of violence against a family or household member by a family or household~~ member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the of-*

any crime or attempted crime or any municipal ordinance violation or attempted municipal ordinance violation

against a family

or attempted crime

or attempted municipal ordinance violation

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fender is involved or has been involved in a dating relationship or when directed against a family ~~*or household member by a family or household*~~ *member. For the purposes of this definition:*

(A) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(B) "Family ~~*or household*~~ *member" means persons 18 years of age or older who are spouses, former spouses,* ~~*siblings, parents or stepparents and children or stepchildren, and who are presently residing together or have resided together in the past, and*~~ *persons who have a child in common regardless of whether they have been married or have lived together at any time. Family* ~~*or household*~~ *member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.*

(8) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic ~~*violence, a violation of stalking, as defined in K.S.A. 21-3438, and amendments thereto, or a violation determined pursuant to K.S.A. 60-31a09, and amendments thereto, of any order issued pursuant to the protection from stalking act, K.S.A. 60-31a01 et seq., and amendments thereto*~~.

~~(7)~~ *(9)* "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(8)~~ *(10)* "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

~~(9)~~ *(11)* "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(10)~~ *(12)* "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(11)~~ *(13)* "Law enforcement officer" means:

(a) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(b) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments

Strike

Strike

or

Strike

Strike

4-11

~~(22)~~ *(24)* "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

~~(23)~~ *(25)* "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

~~(24)~~ *(26)* "Stolen property" means property over which control has been obtained by theft.

~~(25)~~ *(27)* "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

~~(26)~~ *28)* "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Sec. 6. On and after July 1, 2011, K.S.A. 2009 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month

Insert
Sec. 6. Amend K.S.A. 2009 Supp. 21-3412a (Attached).

Renumber remaining sections

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(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in K.S.A. 21-3110, and amendments thereto, the diversion agreement shall include a requirement that the defendant undergo a domestic violence offender assessment and follow all recommendations unless otherwise ~~*ordered by the court*~~*. The defendant shall be required to pay for such assessment and, unless otherwise* ~~*ordered by the court*~~*, for completion of all recommendations.*

agreed to with the prosecutor in the diversion agreement

~~(d)~~ *(e)* If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567 and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be

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Sec. 10. On and after July 1, 2011, K.S.A. 2009 Supp. 75-712 is hereby amended to read as follows: 75-712. (a) It is the duty of the members of the bureau to make full and complete investigations at the direction of the attorney general. Each member of the bureau shall possess all powers and privileges which are now or may be hereafter given to the sheriffs of Kansas.

(b) *(1)* The bureau shall acquire, collect, classify and preserve criminal identification and other crime records, and may exchange such criminal identification records with the duly authorized officials of governmental agencies, of states, cities and penal institutions.

(2) The bureau shall make available to the governor's domestic violence fatality review board crime record information related to domestic violence, including, but not limited to, type of offense, type of victim and victim relationship to offender, as found on the Kansas standard offense report. Such crime record information shall be made available only in a manner that does not identify individual offenders or victims.

(c) For purposes of carrying out the powers and duties of the bureau, the director may request and accept grants or donations from any person, firm, association or corporation or from the federal government or any federal agency and may enter into contracts or other transactions with any federal agency in connection therewith.

(d) The bureau shall conduct background investigations of: (1) Appointees to positions which are subject to confirmation by the senate of the state of Kansas; and (2) at the direction of the governor, all judicial appointments. The bureau shall require the appointee to be fingerprinted. The fingerprints shall be submitted to the bureau and to the federal bureau of investigation for the identification of the appointee and to obtain criminal history record information, including arrest and nonconviction data. Background reports may include criminal intelligence information and information relating to criminal and background investigations. Except as provided by this subsection, information received pursuant to this subsection shall be confidential and shall not be disclosed except to the appointing authority or as provided by K.S.A. 2009 Supp. 75-4315d, and amendments thereto. If the appointing authority is the governor, information received pursuant to this subsection also may be disclosed to the governor's staff as necessary to determine the appointee's qualifications.

(e) Reports of all investigations made by the members of the bureau shall be made to the attorney general of Kansas.

Sec. 11. On and after July 1, 2011, K.S.A. 20-369, 22-2307 and 22-2908 and K.S.A. 2009 Supp. 21-3110, 21-4603d, 22-2909 and 75-712 are hereby repealed.

21-3412a,

21-3412a. Domestic battery. (a) Domestic battery is:

(1) Intentionally or recklessly causing bodily harm by a family ~~[or household]~~ member against a family ~~[or household]~~ member; or

(2) intentionally causing physical contact with a family ~~[or household]~~ member by a family ~~[or household]~~ member when done in a rude, insulting or angry manner.

(b) (1) Upon a first conviction of a violation of domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than $200, nor more than $500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a second time, such person shall be guilty of a class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $500 nor more than $1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.

(3) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a third or subsequent time, such person shall be guilty of a person felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,000 nor more than $7,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court shall require as a condition of parole that such person enter into and complete a treatment program for domestic violence. If the person does not enter into and complete a treatment program for domestic violence, the person shall

serve not less than 180 days nor more than one year's imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(c) As used in this section:

(1) ~~[Family or household member]~~ **"Family member"** means persons 18 years of age or older who are spouses, former spouses~~[, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and]~~ **or** persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family ~~[or household]~~ member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(2) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(B) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(C) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any ~~[three-year]~~ **five-year** period.

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Session of 2010

Substitute for HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

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AN ACT concerning crimes, punishment and criminal procedure; relating to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-2908 and K.S.A. 2009 Supp. 21-3110, 21-4603d, 22-2909 and 75-712 and repealing the existing sections.

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

New Section 1. (a) On and after July 1, 2011, in all criminal cases, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense. If the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and the defendant shall be subject to the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

(b) The term "domestic violence offense" shall have the meaning provided in K.S.A. 21-3110, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas code for criminal procedure.

New Sec. 2. In all criminal cases, when a complaint is filed charging a defendant with commission of any crime whereby the underlying factual basis includes an act of domestic violence, as defined in K.S.A. 21-3110, and amendments thereto, the court may place a "DV" designation in the unique identifying case number assigned to such case. Nothing in this section shall be construed to limit the courts of this state from adopting a system of case designation deemed by the courts to be beneficial to the efficient administration of justice.

New Sec. 3. The attorney general shall promulgate rules and regulations necessary to carry out the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto, on or before July 1, 2011.

Sec. 4. On and after July 1, 2011, K.S.A. 20-369 is hereby amended to read as follows: 20-369. (a) If a judicial district creates a local fund ~~under this act~~, the court may impose a fee as provided in this section against any defendant for crimes involving a family or household member as provided in K.S.A. 21-3412a, and amendments thereto, *and against any defendant found to have committed a domestic violence offense pur-*

(1) Except as provided further,

(2) If the court finds on the record that the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved in a dating relationship or has been involved in a dating relationship or against a family member, then the court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

Substitute for HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

2-16

AN ACT concerning crimes, punishment and criminal procedure; relating to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-2908 and K.S.A. 2009 Supp. 21-3110, 21-4603d, 22-2909 and 75-712 and repealing the existing sections.

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(b) The term "domestic violence offense" shall have the meaning provided in K.S.A. 21-3110, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas code for criminal procedure.

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Sec. 4. On and after July 1, 2011, K.S.A. 20-369 is hereby amended to read as follows: 20-369. (a) If a judicial district creates a local fund ~~under this act~~, the court may impose a fee as provided in this section against any defendant for crimes involving a family or household member as provided in K.S.A. 21-3412a, and amendments thereto, *and against any defendant found to have committed a domestic violence offense pur-*

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Attachment 19

such agency.

(b) Such written policies shall include, but not be limited to, the following:

(1) A statement directing that ~~the officers shall make an arrest when they have probable cause to believe that a crime is being committed or has been committed~~ *when a law enforcement officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in K.S.A. 21-3110, and amendments thereto, has been committed, the officer shall, without undue delay, arrest the person for which the officer has probable cause to believe committed the crime or offense;*

(2) a statement that nothing shall be construed to require a law enforcement officer to:

(A) Arrest either party involved in an alleged act of domestic violence when the law enforcement officer determines there is no probable cause to believe that a crime or offense has been committed; or

(B) arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence;

(3) a statement directing that if a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine if there is probable cause that each accused person committed a crime or offense and their actions were not an act of defense of a person or property as provided in K.S.A. 21-3211, 21-3212 ~~or~~ 21-3213, and amendments thereto;

~~(2)~~ *(4)* a statement defining domestic violence *in accordance with K.S.A. 21-3110, and amendments thereto*;

~~(3)~~ *(5)* a statement describing the dispatchers' responsibilities;

~~(4)~~ *(6)* a statement describing the responding officers' responsibilities and procedures to follow when responding to a domestic violence call and the suspect is at the scene;

~~(5)~~ *(7)* a statement regarding procedures when the suspect has left the scene of the crime;

~~(6)~~ *(8)* procedures for both misdemeanor and felony cases;

~~(7)~~ *(9)* procedures for law enforcement officers to follow when handling domestic violence calls involving court orders, including protection from abuse orders, restraining orders and a protective order issued by a court of any state or Indian tribe;

~~(8)~~ *(10)* a statement that the law enforcement agency shall provide the following information to victims, in writing:

(A) Availability of emergency and medical telephone numbers, if needed;

(B) the law enforcement agency's report number;

if such person's actions were not an act of defense of a person or property as provided in K.S.A. 21-3211, 21-3212, 21-3213, 21-3218 or 21-3219, and amendments thereto

21-3218 or 21-3219,

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