



Testimony in opposition of SB 318

Jennifer Magana, City Attorney

City of Wichita

Members of the House Committee on Corrections and Juvenile Justice:

I respectfully request that you oppose and remove the amendment language added to SB 318 by Senator Olson.

When originally introduced, this bill was designed to reduce the burden on Municipal Courts by removing the fingerprinting requirement for persons convicted of violating municipal ordinances related to vehicle registration, driving without a valid driver's license, or failing to have motor vehicle liability insurance coverage.

An amendment was offered to the original bill by Senator Olson requiring that city attorneys review every audio and video recording relevant to a case. This proposed requirement will cause a significant, unreasonable, and undue burden on city attorneys and municipal courts, instead of reducing those burdens as originally intended by this legislation. No stakeholders were consulted prior to this amendment being offered or adopted. No testimony provided for SB 318 addressed this amendment language.

The City of Wichita's Law Department attorneys prosecute between 35,000 – 40,000 cases every year in our Municipal Court. These cases involve violations of municipal ordinances for traffic, DUI, criminal, domestic violence, and various code violations. The majority of these cases involve defendants who represent themselves. I would like to offer some perspective on the unintended consequences of Senator Olson's amendment for your consideration.

Department of Law

Jennifer Magaña, Director of Law

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- This language allows no discretion or exception for prosecutors to elect not review audio or video evidence in any Municipal Court case. This would require potentially thousands of hours of attorney time when such review may not be necessary. The majority of our cases are resolved by mutually negotiated plea bargains, voluntary diversions or even dismissals when appropriate.
- The City of Wichita designs our docket structure to create efficiencies for both the court and defendants. This docket structure allows Defendants who plan to contest their charge to set their case for a bench trial setting, where the prosecutors will review all relevant evidence in the matter. Defendants who are interested in an alternative form of resolution can take care of that during an appearance docket where review of discovery is often unnecessary.
- No testimony has been submitted by the defense bar suggesting that removing prosecutorial discretion regarding review of all audio and video evidence related to each case in municipal court is necessary to preserve a defendant's legal or constitutional rights.
- Defense attorneys are not raising this issue as part of their defenses of current Municipal Court cases in our Municipal Court.
- The amendment language is not drafted to provide a reasonably clear understanding of the issue in which this amendment attempts to bring resolution. The proper avenue to address any concern about a City Attorney reviewing relevant audio and video evidence in a matter would be in the court itself.
- Current statutory language protects the due process rights of an accused persons: *"The accused person shall be permitted to inspect all matters relevant to the case. Depositions shall not be taken or used except by written agreement of both parties filed with the court or by order of the court upon such conditions as the court may prescribe."*
- This new requirement offered by this amendment would be duplicative and unnecessary. The duty to adequately review information for a case, whether provided by the accused, the accused's attorney or made and retained by law enforcement is already required by the following ethical rules of the Kansas Rules of Professional Conduct requiring an attorney's due diligence in the review of cases:
 - Rule 1.1 - Competence
 - Rule 3.4 - Fairness to Opposing Party and Counsel
 - Rule 3.8 - Special Responsibilities of a Prosecutor.
 - Rule 4.3 - Transactions with Persons other than Clients: Dealing with Unrepresented Persons

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- In addition, our full-time Municipal Court judges have ethical duties to ensure that defendants' rights are protected. If this is an issue, again, there is that level of protection that already exists.

Thank you for your consideration.

A handwritten signature in black ink that reads "Jennifer Magaña". The signature is written in a cursive, flowing style.

Jennifer Magaña

City Attorney and Director of Law Office

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