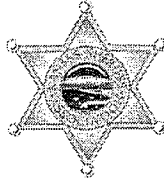


**Kansas Association of  
Chiefs of Police**  
PO Box 780603  
Wichita, KS 67278  
(316)733-7301



**Kansas Sheriffs Association**  
PO Box 1853  
Salina, KS 67402  
(785)827-2222



**Kansas Peace Officers  
Association**  
PO Box 2592  
Wichita, KS 67201  
(316)722-8433

February 15, 2012

House Federal and State Affairs Committee  
Rep. Steve Brunk, Chair

Ref: HB2576 and HB2578, Immigration

The Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association offers the following information in regards to the law enforcement related provisions of HB2576 and HB2578. We wish to make it clear this letter should not be interpreted as indicating the Associations' support nor opposition to the overall bill. We merely wish to express a need for more clarity in regards to legislative intent on some areas of the bill. We also wish to express the need to fully understand how certain provisions may affect law enforcement operations.

It is the desire of law enforcement to carry out the legislative intent of all bills becoming law. To do so requires we clearly understand that intent and for the statutory language to be clear enough to enhance the opportunity for the courts and law enforcement to reach the same conclusion in regards to legislative intent. It is also our desire to work with the legislature to assure that laws enacted are consistent with actual law enforcement capabilities and resources.

It is critical to law enforcement to provide public safety services to all people in our community. We must have all victims of crime willing to contact law enforcement to report their victimization. Without such reporting, they continue to be the prey of criminals and increase risk not only to those not reporting the crime but to everyone else around them including innocent third parties. It is also critical for members of the community to provide law enforcement with leads and information when they witness criminal activity or have knowledge after the fact which can lead to identifying the suspect or recovering property. This is probably the largest concern of law enforcement in regards to how we engage in immigration issues. Law enforcement's responsibility within our communities is to be responsive to all crimes and offer the safest environment we can to all persons in our community. We are assuming this is the situation intended to be guided by "except if the determination may hinder or obstruct an investigation" on page 1, lines 27 and 28 of HB2578. If that isn't correct, some type of clarification is probably in order.

House Fed & State Affairs

Date: 2-16-12

Attachment 18

Our understanding of the current resources for local law enforcement to utilize for immigration verification is as follows:

- The only quick response method available to law enforcement to determine citizenship or immigration status is the use of NCIC. When we run the name provided by the person through NCIC it will tell us if there is an immigration warrant outstanding on the person. It may provide additional immigration status information such as if the person was previously deported. NCIC will not provide us with confirmation a non-resident is in the country legally, nor will it reveal a non-resident is in the country illegally if they have had no prior deportation or current warrant.
- There is a system where once a person is booked into a jail a form can be faxed to ICE if the person claims they are foreign born. ICE then conducts a check and if the person is known to be in the country illegally ICE may place a hold on the person. Our experience is for replies to these inquiries to take from less than an hour to up to two business days.
- Another newer system is Secure Communities and it also only deals with persons who are already arrested on a criminal charge. This system is available to jails with an Automated Fingerprint Identification System (AFIS). Under this program, the fingerprints of all persons booked into the jail and fingerprinted can be submitted automatically to ICE and if ICE finds the person to be in the country unlawfully they may place a hold on the person. This system will only work with individuals with prior contact with ICE where fingerprints were taken.
- There is also a 24 hour ICE law enforcement support center available. But the support center has limited capacity and cannot handle inquiries very quickly. The time it takes to use the support center is not normally possible for a street detention due to the time it takes to get a response and the lack of fingerprint identification. The ICE support center can tell us if the person has been issued proper authority to be in the country and, if so, if that status is still current or if the person was previously processed in some manner by the federal immigration authorities. These inquiries are based on name and other identifiers such as birth date and as a result are highly dependent upon the accuracy of the information provided to the officer.
- It is important to understand if a person has never had any contact with ICE, there is no entry in a database to tell us if the person is in the country unlawfully. There also is no database that will tell us if a person is a US citizen.

The first area where we feel the legislative intent is not clear is on page 2, lines 36-37 of HB2576 as well as on page 1 line 34 through page 2 line 1 and on page 3, lines 12-15 of HB2578. We are not clear on exactly what law enforcement action the legislature intends to prohibit with, "At no point shall any law enforcement officer attempt to independently verify the immigration status of any alien." It appears that once reasonable belief is established we are forbidden to make any additional inquiries of either the suspected illegal alien or anyone else who may have information about their status, including family members. The context of this phrase seems pretty clear we only do the federal checks and absolutely nothing else is permitted.

The second area of concern is found on page 2, lines 38-40 of HB2576 and on page 2 lines 1-3 in HB2578 where it states, "A law enforcement officer may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the United States constitution and the Kansas constitution." This section causes us pause as it relates to racial profiling statutes which may be more restrictive than the constitution. How is it possible to not consider national origin when determining a reasonable belief the person is a non-resident in the country illegally? Even race can be problematic if law enforcement cannot consider it with other factors known to the officer.

Another issue is the timeliness of ICE response to inquiries. The language is in the bill to cover the on-street inquiries ("a reasonable attempt shall be made, when practicable"). We recognize the difference between a stop and a person charged with a crime. In the case of a stop or detention (HB2578 page 1 line 22) it will almost never be practical to use the existing methods beyond an NCIC check to obtain a determination from ICE if the person may be in the country illegally. Constitutional limits on the production of identification and on the length of stops/detentions without probable cause for arrest get rather difficult.

The provisions in HB2576 page 4 lines 19-25 will certainly have an unfunded mandate on local jails. These provisions will increase the time certain persons arrested will remain in confinement in the county jails. Some of which are already struggling with capacity issues.

While we are appreciative of the inclusion of a liability indemnification of the officers, the provisions of HB2578 page 3 lines 3-9 leaves the local agency on the hook for liability claims. That hardly seems appropriate for the local agency to be held responsible for carrying out the directions of the state. The bill does not allow an option for local agencies to enforce the new law nor does it provide much discretion for how we enforce it. Doesn't it seem the state who is mandating the action by the agency and the officers should be the one to indemnify both the officer and the agency for any expenses in the enforcement of these statutes?

We should point out the provisions on page 2 lines 4-15 are the kind of clarity that is very helpful to law enforcement. This provision makes it clear what identification you expect us to rely on to show a person is not in the country illegally.

We appreciate the opportunity to raise these issues and we encourage the committee to attempt to clarify these points so the legislative intent is clear with minimal court interpretation. Doing so will greatly assist law enforcement in completing our jobs in a manner you expect of us.

Ed Klumpp  
Kansas Association of Chiefs of Police, Legislative Committee Chair  
Kansas Sheriffs Association, Legislative Liaison  
Kansas Peace Officers Association, Legislative Liaison  
E-mail: eklumpp@cox.net

18-3