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SENATE CHAMBER

DAVID B. HALEY

SENATOR
FOURTH DISTRICT
WYANDOTTE COUNTY

January 18, 2011

TESTIMONY IN SUPPORT OF SB 6

MR CHAIRMAN ; FELLOW MEMBERS OF THE SENATE JUDICIARY COMMITTEE :

Thank you for scheduling this matter as the first hearing of the Session. Senate Bill 6 restores constitutional protections regarding search and seizure that had, until a few years ago, remained undisturbed in our statutes for forty (40) years. The Kansas Supreme Court reversed a decision that the technical fix in SB 6 purports to do; change "a" crime back to the time honored "the" crime.

Our Senate Committee once again is called upon to ignore the pleas of those who might prefer "fishing expeditions" when attempting to find evidence of ANY crime under the pretext of looking for evidence of a SPECIFICALLY enumerated crime for which a warrant has been issued and to show our leadership in insuring state and federal constitutional guarantees. As noted in State v. Helling during the summer of 2009, our Kansas Supreme Court noted that the specificity of a search within the scope of a lawful arrest should (beyond the reasonable scope of protecting the officer or preventing the person from escaping) be only to find evidence of THE crime for which the person is being arrested. A lower Court's decision was reversed by the Supreme Court in the Henning case based on this one vague statute. (Opinion Attached)A similar case reached the Court of Appeals with a similar decision in 2010.

Last year, the Legislature considered STRIKING an ENTIRE statute in an attempt to rewrite then SB 435 !

I believe legislative leadership can provide clear legislative intent in statute to be interpreted by the courts, prosecution and defense. Striking KSA 25-2201 I humbly suggest would only subject the statute to the patchwork interpretation of case law arguing for or against the validity of a search and seizure.

My greater concern is some potential civil suit against our State for so unconstitutional a statute. By bringing this issue up here, at least the Courts will have some framework of legislative intent by the Minutes and Explanations found in our votes here and/or on the Floor.

Mr. Chairman; members of the Committee ... please restore KSA 25-2201 to its' previously undisturbed form by replacing the "a" crime with "the" crime.

Thank you again for your consideration. I'm happy to stand for any questions you might have.

– David Haley, Ranking Minority, Senate Judiciary

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JOINT COMMITTEE Senate Judiciary
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Attachment 5