

Kansas Peace Officers' Association



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Testimony of Kyle Smith
In Opposition to SB 6
January 18, 2011

Chairman Owens and Members of the Committee,

On behalf of the Kansas Peace Officers Association, I appear today in opposition to the SB 6. The intent of the bill is appropriate, but we feel the approach is mistaken.

The general rule is that any search conducted without the benefit of a search warrant is presumed to be unreasonable, unconstitutional and invalid. The U.S. Supreme Court has recognized specific, limited exceptions to this rule such as exigent circumstances, abandoned property, exposed characteristics, plain view, fleeting vehicles, open fields and inventory.

This bill is just the latest chapter in a long story regarding efforts to codify the U.S. Supreme Court's decisions regarding the 'search incident to arrest' exception to the warrant requirement. For those with long memories, for the majority of the last 14 years there has been a bill in one format or another attempting to get it right. Then in 2009 the United States Supreme Court again changed the rule and the statute is again out of sync with the law.

SB 6 is an attempt to codify that ruling but, frankly, again, the bill totally fails to properly reflect that ruling.

- First it would apply to all searches incident to arrests but the Supreme Court's ruling only applied to a narrow sliver of such cases: searches of cars after a person has been arrested and secured.
- The court case also allows officers to search the car even after the arrest if they have reasonable suspicion of another crime. This bill would handicap the police and not allow them to search for such evidence, even if they have information that it is in the car.

The ironic point to all these futile efforts is that the legislature has not attempted to codify any of the other judicially recognized exceptions, and the problems with this effort aptly demonstrate why. The ebb and flow of court controlled decisions is best

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suites for training rather than statutory rules. Law enforcement is well aware of the need to keep current on these topics as not only can evidence be suppressed, but civil liability attaches for violating constitutional rights under 42 U.S.C. 1983.

As such, we would strongly recommend a better and more simple solution. Treat this exception to the search warrant requirement like all the other exceptions: repeal K.S.A. 22-2501. Law enforcement will get along just fine, bound by the same rules that apply regardless what a statute says, and you can spend more time on more meaningful bills.

If you feel it necessary to try once again to restate the transient opinion of the Courts, we would be happy to work with the revisor to better capture what the opinions hold, but we do believe that this would be a constant and ultimately unsuccessful approach.

I would be happy to answer any questions.