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**Testimony to the Senate Judiciary Committee
Regarding HB2106
March 6, 2012**

Chairman Owens and Committee Members,

The Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association is not opposed to the intent of this bill. However, we are concerned if the bill retains adequate protection for law enforcement and others who may respond to emergencies or otherwise enter the property of another under legal authority but "without permission and without invitation, expressed or implied." In short, we are concerned the new definition of trespasser on page 1 lines 6-8 of the bill may be too broad by including persons who lawfully enter onto the property as a trespasser.

An example of our concern is with a property owner who maintains a hazard on the property without willfully and wantonly injuring a "trespasser." An example of this can be an open well or other hazard the owner otherwise has a duty to prevent. In this respect the statute appears to possibly be in conflict with KSA 58-3206 subsection (a).

Examples of when others could lawfully enter property with legal authority include serving of a search warrant or other court orders, responding to an emergency such as plane crash or fire, or entering under exigent circumstances where the responder believes a life is in danger.

The worst case scenario for law enforcement would be if the new provisions give blanket immunity from liability if the property owner creates a hazard to guard against law enforcement action against illegal activity. For example, place hazards around a meth lab, marijuana field, or other illegal activity. Or perhaps even the existence of the hazards of a meth lab itself. This type of intentional conduct may be addressed with the wanton and willful clause in new section 1 subsection (b) found on page 1 lines 11-12 of the bill, but we aren't certain. We could see a court ruling there was no intent to cause injury and therefore the action is exempt from liability.

This is clearly outside of the criminal law we normally analyze and opine on and it is possible our concerns are already addressed either in the bill, another statute, or civil law we aren't aware of. But we want to be certain the bill does not create any unintended consequence by removing any protection for officers acting within their authority while lawfully engaged in their law enforcement duties.

Please consider whether the addition of ", or otherwise enter the property with legal authority" should be added to the end of page 1 line 8. Also please consider if replacing "injuring" with "causing injury" on page 1 line 11 is appropriate. If you consider the need for these suggested changes we will be satisfied with the judgment of the committee and the revisor regarding the necessity of implementing them.

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