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House Federal and State Affairs Committee

HB 2055 (including comments about 2098, 2111 and 2190)
Assistant Attorney General Charles W. Klebe
February 25, 2013

Mr. Chairman and members of the Committee, thank you for allowing me to provide written testimony regarding HBs 2055, 2098, 2111 and 2190 ("Bills"). I am the Assistant Attorney General responsible for the Concealed Carry Licensing Unit (Unit) and its administration of the Kansas Personal and Family Protection Act (KPFPA). If you wish, I am happy to stand for any questions. Our position here is that the contents of these Bills are policy determinations which rest within the discretion of the Legislature and, therefore, we stand neutral and merely offer technical considerations for them.

HB 2055:

Section 1:

Subsection (a): The first portion of (a) refers to "buildings" in the plural form but the second half of that paragraph refers to the singular "building." The Unit would suggest amending the first portion to read ". . . shall not be prohibited in *any* state or municipal building . . .."

The Unit would also suggest adding language referring to properly posted AG-approved signage so that this paragraph keeps with other paragraphs of the Bill where signage is included in the requirements (see, e.g., subsection (c)). To keep with other CCH provisions, the Unit suggests that such language read "and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto."

Subsection (b): While the scope of this new section is overwhelmingly related to licensed CCH holders, this language may suggest that concealed carry by anyone is lawful in Kansas IF the person carrying concealed is entering a state or municipal building which does not have "adequate security" in place. If the policy of allowing licensed CCH into unsecured state and municipal buildings is adopted by the Legislature, the Unit believes that it would be best to keep this subsection's language in-line with general Kansas law by limiting its reach to licensed CCH under the KPFPA.

This subsection references "adequate security" being required but the remainder of the bill references "adequate security *measures*" - the word *measures* should probably be inserted here as well.

Also, subsection (a) notes that adequate security measures should insure that "no weapons" are carried within the relevant buildings; this section references adequate security to restrict *concealed handguns* in the relevant buildings. As the adequate security measures of (a) do not limit themselves to the detection of concealed handguns, this section should be extended to detection of "*any weapons*. . .."

The last word of this subsection would flow with the remainder of the Bill if it were "public *buildings*" as opposed to "public areas."

Subsection (c): If the Legislature intends for this section to only apply to licensees from Kansas, then the language is fine. But if the Legislature wants to extend the allowance to honored licensees who commute from another state to their jobs in a "state or municipal building," the Legislature will want to consider amending this language to employees who are "*authorized* to carry" to cover those nonresident employees. This may be few and far between but Kansas City is a jurisdiction that comes to mind as being relevant for that issue.

Again, the Unit would suggest signage language consistent with that described above for subsection (a).

Subsection (d): Instead of referencing "such building," the Unit would suggest that the paragraph clarify the criminal penalty restriction to carrying into a "*state or municipal* building";

Another policy decision for the Legislature would be to have this paragraph refer to those "*authorized* to carry" so that visitors to Kansas who have honored CCH licenses and need to visit (or want to tour), a state or municipal building, are included;

Again the Unit would recommend signage language similar to that suggested for subsection (a) above.

Subsection (e): "adequate security *measures*" is suggested in line 1;

This paragraph says a state or municipal building that posts "a sign" prohibiting CCH has completed half of the requirements for no liability if an incident occurs. The Unit, consistent with current law and other portions of this Bill, would recommend dropping the singular reference and have that portion read "*conspicuously* posts *signage at all public exterior entrances to the building in accordance with K.S.A. 2012 Supp. 75-7c10.*" KSA 75-7c10 requires AG-approved signage be posted at ***all*** exterior entrances to a prohibited building and this bill seeks to require signage only at all ***public*** entrances to state or municipal buildings.

Subsection (f): Again, "adequate security *measures*" is suggested in the first line.

Subsections (g) through (i): The language of these four-year opt-out allowances does not suggest that renewal is an option – but it does not specifically prohibit a renewal either. This language should be addressed for clarity of that issue.

Subsection (i): According to K.S.A. 74-3201b, that provision defines "postsecondary" and not "post secondary" schools;

Subsection (j): Previously, use of the terms "facility" or "premises" have caused confusion because the text of the KPFPA (and this Bill too) now limit carry restrictions to "buildings" of public and private businesses. The use of those terms here may need some clarification or further definition if the intent is to go beyond "buildings."

Section 2:

Technical issue 1: The use of the language "on the grounds in" is odd within this statute because the numbered paragraphs of subsection (a) go on to describe locations such as the "grounds" of the Governor's residence but they also refer specifically to locations *within* certain buildings. Grounds, the Unit does not believe, is a term typically associated as being within a building.

KSA 21-4218, the predecessor to 21-6309, did refer to these limitations being for "the grounds *of or* in" those locations. Under SB 306, that statute was completely reworded in 2010 where the words "of or" were withdrawn – mistakenly or intentionally is unknown from that bill's legislative history. That revision then carried through the recodification. I realize this statute is being revisited in several bills this session. Notably, HB 2111, § 2, seeks to strike all lead-in language of subsection (a) which follows the word "firearm." From a technical perspective, HB 2111 certainly clarifies the intent of 21-6309 as to where firearms are to be prohibited. If the Legislature's policy is to still restrict firearms for the non-CCH-licensed public in or on any of those locations, then HB 2111 would be a good model for this Bill as well.

Technical issue 2a: The interplay of the exceptions in proposed 21-6309 is a bit confusing given the language of new section 1. As the Unit understands the Bill, (a)(4)(relating to state owned/leased buildings) and (a)(5)(relating to county courthouses) are expressly "subject to [new] section 1." That language appears clear in its intent. The bill then adds a new subsection (e) which says, "it is not a violation of this section for a person to possess a handgun as authorized under the personal and family protection act." It is this new subsection (e) that seems out of place.

There already exists a provision within 21-6309, that is subsection (c)(5), which exempts CCH from the general provisions of 21-6309. This is on lines 33-37 of the Bill. The exception in current (c)(5) <u>does</u> contain limitations to itself (i.e., the Governor's residence; the grounds of the Governor's residence; and buildings on the grounds of the Governor's residence are all off limits). Except for similar limitations within (c)(5) itself, the language of proposed (e) appears to be duplicitous with (c)(5). Perhaps a policy decision for the Legislature is posed by proposed (e) as to whether CCH licensees should still be restricted around the Governor's residence etc.?

Technical issue 2b: Another potential issue with this section is that neither proposed (e) nor current (c)(5) are declared "subject to [new] section 1." Where this could be an issue is as follows: Under the Unit's understanding of new subsection 1, a CCH licensee would not be subject to criminal penalties ***if*** they carry into a state or municipal building to which that licensee can enter through secured access (this is so even if that building is adequately-secured and properly posted). However, under new section 1, other licensee's would seemingly be subject to criminal penalties for carrying into adequately-secured and properly posted state or municipal buildings for which that licensee is unable to enter through secured access. So, on the one hand, the full immunity from the prohibitions of 21-6309 (found in current (c)(5) or proposed (e)) seem to clash with criminal penalty language of new section 1 (there could be a crime under new subsection 1 but there would not be a crime committed according to 21-6309). On the other hand, because neither (c)(5) nor proposed (e) subject themselves to new section 1, the full immunity within those paragraphs would seem to negate any CCH restrictions of new section 1 (for those with or without secured access to any state or municipal building) – or at least negate any limitations in section 1 for any state building and any county courthouse building (i.e., buildings that share coverage under both provisions). Other municipal buildings not covered under 21-6309(a) would still be subject to new section 1.

Technical issue 2c: Finally, the language in 21-6309 addresses what the Unit calls "prosecutor carry." This language is found in current subsections (d)(2) through (f) (or (d)(2) and (f) through (g) of this proposed Bill). Current law says that prosecutors from the county, state or federal levels, if approved by their agency head, can take extra CCH training through the KLETC center in Yoder, Kansas, and be allowed to use their CCH licenses to enter county courthouses and court-related facilities (hereinafter "courthouse" will be referenced to cover both locations). This allowance remains even if the courthouse has properly posted AG-approved signage. However, in order for the prosecutor carry allowance not to apply to a particular courthouse: (1) the county commission of that courthouse's county must elect to opt-out of the prosecutor carry allowance; (2) signage must be put up on the courthouse which states that the county has opted out of prosecutor carry; (3) the courthouse must have "adequate security measures" in place, (4) the county must limit all firearms into the courthouse (except court security or that county's sheriff's personnel) and (5) the courthouse must have secure firearm storage.

If new section 1 is enacted, the current law for prosecutor carry could be in conflict with section 1. KSA 21-6309 establishes a criminal violation for carrying into certain locations. Prosecutor carry into county courthouses can still be limited under 21-6309 by compliance with the 5 steps above; a prosecutor is therefore still subject to the penalty provisions of 21-6309. Under new section 1, however, a prosecutor would seemingly not be subject to a criminal penalty for carrying into an adequately secured and properly posted (with the general "no concealed carry" signage) courthouse IF that prosecutor can enter through a privately secured entrance. The issue is that neither 21-6309 or new section 1 limit themselves to (or place their provisions above) the other. If a courthouse complies with 21-6309 – do its provisions control or do the provisions of new section 1? Naturally, this issue would not apply to other courthouses where the prosecutor does not have private access entry.

These two provisions need to be reconciled so that prosecutors and county courthouses are able to address prosecutor carry issues without confusion.

Sections 3:

Again, the use of the term "facility" within *proposed* 75-7c10(b)(1) and (b)(2) may cause interpretation issues down the road because, per subsection 75-7c10(a), signage posting is limited to "buildings" of public and private businesses or entities.

HB 2098

A similar version of this Bill was introduced last year (HB 2422). The Attorney General offered some technical considerations in the Fiscal Note for that bill. Those considerations appear to have all been addressed within HB 2098 – with one exception being the proof of corrections officer firearm certification.

Currently, this Bill only requires that the corrections officer have been issued such a certificate – there is no requirement that the corrections officer send proof of that certificate to the Attorney General. If

this policy is one the legislature feels should become law, the Attorney General simply asks that the law be amended so that the 'corrections officer' applicant is required to affix a copy of their department of corrections or federal bureau of prisons training certificate to their application for concealed carry licensure.

HB 2111

Section 1:

Again, the policy of whether the State of Kansas wants to completely preempt cities and counties from being able to regulate firearms is a decision which rests with the Legislature. The Attorney General has recently offered two formal Opinions regarding KSA 12-16,124. See AG Opinions 2011-006 and 2011-024. As interpreted by our Office, currently this statute allows cities and counties limited regulation of the "manner" (way, mode or method) of openly carrying a loaded firearm on the person of anyone; or a loaded firearm from being openly carried within the immediate control of a non-CCH licensee. But the current law would not allow a city or county to completely prohibit the open carry of a loaded firearm; and the current law does not allow a city or county to regulate the open carry of an *unloaded* firearm by anyone. The current law also allows cities and counties to require firearms being transported in motor vehicles to be unloaded and in a container that completely encloses the firearm (or cities and counties can choose to be less restrictive than that – for instance, they could allow a firearm to be transported in a loaded and open manner).

The only technical consideration that the Attorney General wishes to highlight here is that HB 2111 seeks to strike the following relevant language: "... and subsection (a) of K.S.A. 2012 Supp. 75-7c11, and amendments thereto[.]" K.S.A. 75-7c11 is itself no longer in existence - it was stricken in 2010 when its provisions were shifted within current subsection (b) of K.S.A. 75-7c10. So striking the reference to 75-7c11 in favor of a reference to current law would certainly make sense; but completely striking the reference with no further substitution may lead to a statutory conflict as explained below.

HB 2111 says cities and counties cannot take any "administrative action" concerning, among other actions, the "carrying" of firearms "on one's person[.]" Meanwhile, 75-7c10(b) (as it is unaffected by this Bill) would still give cities and counties the authority to post signage (an "administrative action") on their buildings which would restrict the licensed concealed carry [on one's person] of a handgun within that building. Further, under 75-7c10(b), employers (which would include cities and counties) would still be allowed to restrict the licensed concealed carry of handguns by employees at the place of business <u>or</u> while the employee is otherwise engaged in the duties of their employment – no matter where they are. The restriction of an employee's licensed CCH while engaged in employment activities would appear to be an "administrative action" that would seemingly be disallowed by HB 2111 but also allowed expressly by 75-7c10(b).

The contents of KSA 12-16,124 and KSA 75-7c10(b) should be reviewed for compatibility between the two if HB 2111 should go forward through the legislative process. The intent of my comment here is not to suggest that a striking of 75-7c10(b) should be considered. In fact, such an action may lead to a lot of other confusion in the context of the employment relationship and licensees (confusion that has been clarified over the years of amendments to the KPFPA). I only mean to suggest that a wholesale striking of a city or county's ability to regulate firearms under KSA 12-16,124 needs to be carefully reconciled with the current allowances for CCH limitations by cities and counties found under 75-7c10(b).

Section 2:

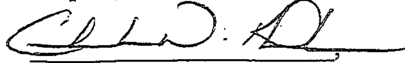
The proposed intent of this Bill's Section 2 appears clear; except for the grounds of the Governor's residence, all firearms limitations would apply to the buildings of those enumerated locations.

HB 2190

Same comment here as with Section 2 of HB 2111.

Again, I appreciate the Committee's time and attention to my testimony. Hopefully my comments provide some clarity to technical issues that we foresee. If not, I will gladly stand for questions to clarify my comments.

Respectfully submitted,



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