



OFFICE OF THE DISTRICT ATTORNEY
THIRD JUDICIAL DISTRICT OF KANSAS
Michael F. Kagay, District Attorney

March 19, 2018

Senate Judiciary Committee
Senator Richard E. Wilborn, Chairperson
Kansas State Capitol
Statehouse, Room 346-S
Topeka, KS 66612

RE: SB 439 - Clarifying methods of recording grand jury proceedings

Chair Wilborn and other distinguished members of this committee:

The Shawnee County District Attorney's Office offers the following testimony in support of Senate Bill 439. SB 439 offers amendments to three provisions of our statutes governing grand jury proceedings. SB 439 provides options for the method in which grand jury proceedings can be recorded, it allows the presiding grand juror to further protect his/her anonymity, and it clarifies how indictments can be later amended.

In its current format, K.S.A. 22-3006 requires that grand jury proceedings be recorded by stenographic record created by a certified shorthand reporter. It further provides that the payment of the shorthand reporter be provided from the general fund of the county. However, K.S.A. 20-361 prohibits a county from supplementing the compensation of any court reporter. Due to this prohibition, the grand jury must employ a private shorthand reporter instead of relying on a reporter already employed by the court. Currently, the pay for a grand jury reporter is fixed at \$200 per day. Most reporters in the private sector can make far more elsewhere so they are unwilling to commit, long-term, to the grand jury process. For these reasons it is becoming increasingly difficult to provide a certified shorthand reporter to each of our grand juries. One of the primary objectives of Senate Bill 439 aims to solve this problem. This bill amends K.S.A. 22-3006(b) to give the grand jury authority to employ a certified shorthand reporter or, if the court has a digital recording system available, the grand jury may elect to use that system. The District Court for the Third Judicial District, Shawnee County, currently utilizes the digital recording system for several other types of hearings, including hearings on traffic and misdemeanor cases. Not only would this be a cost savings for the county, this would ensure long-term preservation of the record, by the Court, should a transcript of a grand jury proceeding ever be needed.

Senate Bill 439 also aims to improve our grand jury system in two other ways. Currently, an indictment must be personally signed by the presiding grand juror. SB 439 proposes an amendment to K.S.A. 22-3011(a) to allow the presiding grand juror to sign as "Presiding Grand Juror." This will allow the presiding grand juror more anonymity by keeping his/her name from appearing on indictments, which eventually become part of the public record and are available to the accused. This amendment would make our grand jury system more consistent with the federal grand jury system.



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Finally, Senate Bill 439 aims to clear up any ambiguity in how an indictment can be amended. Currently, K.S.A. 22-3015 allows for an indictment to be amended by “the people” for the purpose of correcting technical defects or for the purpose of effecting a change of plea. The phrase “the people” is not defined elsewhere in the statute. However, the purpose of allowing amendments to the indictment is to prevent the need of submitting the case to the grand jury a second time. The clear intent is for the prosecutor to have the ability to amend the indictment under these very limited circumstances and by amending K.S.A. 22-3015 from “the people” to “prosecuting attorney” the bill would simply clarify the language in the statute to allow for this.

In summary, I fully support SB 439. The changes in the recording method will allow an already efficient system to operate even more efficiently. These changes will also open up the grand jury system for other jurisdictions that have even more difficulty in employing certified shorthand reporters. Finally, I believe the remaining changes are necessary because they clarify the intent of their respective subsections of the statutes, to protect the anonymity of the jurors and to allow prosecutors to make amendments under very limited circumstances.

Respectfully,

Michael F. Kagay
District Attorney