

TESTIMONY BEFORE THE KANSAS STATE SENATE JUDICIARY COMMITTEE  
IN SUPPORT OF SB-87

Presented on Friday, February 22, 2019

Mr. Chairman, Members of the Committee thank you very much for the opportunity to have a hearing and to testify before the committee in support of Senate Bill 87. When I originally made the request for SB 181 in 2017, I intended to rectify what I perceived to be an inequity regarding the suspension of Drivers' Licenses for failure to appear or failure to pay court assessed fines or costs for those indigent and unable to satisfy the obligation imposed by the court as a result of their convictions for various infractions. Currently, K.S.A. 8-2110 governs the operation of law requiring suspension of the license. I appreciate the committee's time and the Reviser's efforts in accomplishing that request. SB 87 is presented today as amended by the Kansas Senate Transportation Committee in 2017. SB181 passed the Kansas Senate 40-0. In October of 2017 a KDOR analysis determined Kansas has suspended 212,335 driver's licenses. In 2017 KDOR suspended 46,531 for failure to comply, 17,035 for insurance lapse, 4,473 for driving while suspended, 3,745 for accident without insurance.

To bring the original intent of the bill to realization, I am the first to recognize the Bill's shortcomings. Coordination of traffic cases in multiple jurisdictions is problematic. To bring them all under one umbrella would eliminate the individual judicial districts' difficulties with duplication of effort. With the new State wide software being implemented in the judicial system it will become easier to compile the cases from different jurisdictions. Kansas courts have accepted as a vendor for processing payments with Cite-Pay USA. The basics of the infrastructure will be in place soon. It is understandable that modification of the software will require some appropriation.

As an alternative, the Department of Revenue could be a good choice to administer the amnesty program. The department of Revenue could enter into the payment agreement, require SR22 proof of insurance as part of the agreement and ask the Courts to withdraw warrants. Whether the Legislature has the constitutional authority to grant directive power to the executive branch over the Judicial branch is a question above my pay grade.

This Bill provides flexibility to the Courts. They could set a time limit 90 days to enter into the agreement, for example, from 09/01/19 to 1/1/20. The Courts upon request of the driver or prosecuting attorney could withdraw the warrant and call the case back from collection attorneys. Citations still pending and not plead to will need to be resolved by the driver prior to payment. A newly discovered court case should be added to the agreement. The agreement is for up to 12 months or if the Committee desires 24 months.

I have seen many individuals that owe in excess of \$10,000.00 in fines and costs. Restoration of restricted driving privileges is contingent upon faithfully fulfilling the agreement and that agreement may be rescinded upon default and warrants for arrest

reissued. This is intended to be a periodic or a onetime opportunity for drivers to get straightened out, much like other amnesties for income tax. That will be up to the Courts.

This is not a new concept and Kansas is not plowing new ground. Jurisdictions inside Kansas and outside the State have successfully implemented traffic amnesty programs. All without Chicken Little's warnings of impending doom.

June 21<sup>st</sup>, 2017 in Sedgwick County we had an Amnesty Day. Several stakeholders such as the District Attorney's Office, the Sedgwick County Sherriff, Court staff and private attorneys participated making it a real success. With only one day notice over 500 people appeared. 350 actually had cases in our jurisdiction and were helped in resolving their cases. Sedgwick County currently has over 8,000 outstanding traffic warrants.

Wichita Municipal Court has held several amnesties over the last 30 years. All by any measure have been a real success, clearing cases and generating revenue.

June 24, 2015 California enacted a state wide program that ran from October 1, 2015 to March 31, 2017. State Court analysis over 4 quarters showed a net revenue gain of \$60,000,000.00. In Kansas, fines and some of courts cost paid are SGF revenue.

May 16-20, 2011 Vermont held a state wide amnesty. At the courthouse in Burlington over 1,000 line up before dawn.

March 31, 2017 Houston, Texas for a short period of time a discount on the amount owed was even offered.

December 31, 2017 Memphis, Tennessee completed its "Drive While You Pay" program offering discounts and information services.

January 17<sup>th</sup>, 2011 Texas Department of Public Safety began a State wide program. It ran for 4 months

May 2009 The State of Washington implemented a piecemeal amnesty program.

April 1, 2016 Atlanta, Ga. It ran for 6 weeks

October 2016 St. Louis, Missouri ran a program for 2 weeks that included misdemeanor criminal cases along with the traffic.

I have found references to several other states with proposed or pending legislation.

We have done this twice in recent memory for those with outstanding taxes.

I recognize the concerns of those who are fearful of lost revenue. Past legislation sought to finance pay raises by increasing the Driver's License Reinstatement fee. Some appear to believe they will get more blood out of turnips with a bigger hammer. Experience tells us that many who will participate in an Amnesty Program would have never made these payments. Their payment will actually be in large part new revenue. The carrot of operating a vehicle without the fear of red and blue lights behind them is a powerful incentive.

Turning a \$160.00 citation into \$750.00 is no way to finance the Courts' operations. It places untoward incentives into the justice process, balancing the budget on the backs of single parent families and those least able to afford the cost of government operations. Recent studies found that not only are these assessments unduly harsh penalties imposed on middle and low income individuals, but that 40% of these drivers lose their employment. On February 20, 2019 the United States Supreme Court issued *Timbs v. Indiana* No. 17-1091. The first page of the opinion, written by Justice Ginsburg

states' "Magna Carta required that economic sanctions 'be proportioned to the wrong' and 'not be so large as to deprive [an offender] of his livelihood.'" No justice dissented in the opinion. The opinion goes on to say that the 8<sup>th</sup> Amendment is applicable to the States by the Due Process Clause of the 14<sup>th</sup> Amendment, overturning the Indiana Supreme Court.

When the motive for enactment is to enhance revenue, it is criticized in the opinion. "Even absent a political motive, fines may be employed "in a measure out of accord with the penal goals of retribution and deterrence," for "fines are a source of revenue," while other forms of punishment "cost a State money." *Harmelin v. Michigan*, 501 U. S. 957, 979, n. 9 (1991) (opinion of Scalia, J.) ("it makes sense to scrutinize governmental action more closely when the State stands to benefit"). This concern is scarcely hypothetical."

I hope that the Committee recognizes the urgency of this proposed bill's enactment. It is not a perfect bill but a starting point to restore fairness and equity to the laws of the State of Kansas. Tens of thousands of our fellow Kansans and their families want to have normal lives. Recommending this legislation favorably to the floor will help do just that.

Respectfully submitted,

PHILLIP B. JOURNEY  
Div. 1 18<sup>th</sup> Judicial District