



*The Kansas District Judges' Association*



## **HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE**

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### TESTIMONY IN OPPOSITION TO HOUSE BILL 2251

Thank you for the opportunity to present testimony in opposition to HB 2251. I am Merlin G. Wheeler, Chief Judge of the Fifth Judicial District (Lyon and Chase Counties) and a member of the Executive Committee of the Kansas District Judges Association (KDJA). I also serve as one of three Legislative Co-Chairs of the association along with Chief Judge Thomas Kelly Ryan of the 10<sup>th</sup> Judicial District and Chief Judge Glenn R. Braun of the 23<sup>rd</sup> Judicial District. The Hon. Daniel D. Creitz, Chief Judge of the 31<sup>st</sup> Judicial District currently serves as President of KDJA.

This opposition should **not** be construed in any respect as stating a position about firearm ownership or Second Amendment freedoms. As judges, we daily deal with the results of criminal firearm use and do not intend to diminish concerns expressed of the risks from the possession or use of firearms by individuals who pose a risk to themselves or others. Rather, our opposition stems primarily from the fiscal impact and anticipated workload associated with complying with the bill.

As we did with similar legislation in 2018 affecting the operations of our district courts, we express our primary concern which is simply the fiscal burden and potential inability to meet expectations due to fiscal limitations experienced by the Kansas Judicial Branch. Our Supreme Court and Office of Judicial

Administration have taken great pains to illustrate the financial distress of this branch of government which has been only exacerbated by the COVID-19 pandemic. Shortfalls in fee revenue associated with the decline of case filings have impacted staffing even more than normal. We lack the ability to recruit, hire, and retain qualified personnel at all levels under current fiscal restraints. Within recent months, it has been reported that overall, the Judicial Branch suffers a staffing vacancy rate of approximately 11%. In many districts, the vacancy rate is substantially greater. Without adequate staffing, our ability to fulfill the extra duties imposed is jeopardized. Studies have demonstrated the need for additional personnel at all levels even if the Judicial Branch had no vacancies; we therefore question our ability to handle this additional casework even if we had full staffing.

HB 2251 provisions significantly impact court operations including issuing additional mandated orders, tracking proof of relinquishment by an offender, providing notice to law enforcement of failure to file proof of relinquishment, issuance of search warrants and additional hearings. Some of these functions would likely require use of a manual calendaring process by court clerks as there is not a current process or system to track proof of relinquishment. It is possible that programming changes to our current case management system could assist, but this would result in additional expenditures for the programming changes.

We ask also that you understand that many of the cases in which relinquishment would be sought or ordered are filed by *pro se* litigants. These cases necessarily involve additional time and effort by both judges and staff as these litigants generally seek information, forms, and guidance in processing their claims.

Simply put, when describing the fiscal note of the bill, the word “substantial” would likely be an understatement. When describing the toll on our human resources, there are no terms which would accurately describe the effect of this bill.

We also write to express concern about the provisions of New Section 1 (h) which permits, at any point during the term of a relinquishment order, a “plaintiff” to file an application for a search warrant to determine if a defendant has a firearm or concealed carry license in violation of a relinquishment order. Keeping in mind

that this term encompasses non-law enforcement individuals, including *pro se* parties, the grant of such authority is, to our knowledge, unprecedented and subject to significant abuse of the court system and law enforcement agencies. Without more than a suspicion of possession of a firearm or concealed carry permit, an individual may seek a warrant on a regular basis. If declined due to lack of probable cause, the individual will likely seek to blame the courts and law enforcement for failure to issue warrants when we are constitutionally prohibited from doing so. It also places a court in the untenable position of becoming both an investigator/advocate and judge in these matters, thereby impairing the role of the court as an impartial trier of fact.

While we reiterate that we are not stating any position on firearms ownership nor do we discount any lawful effort to control violence, our position remains that fiscal, procedural and constitutional questions should preclude adoption of this legislation.

Respectfully submitted on behalf of KDJA,

Merlin G. Wheeler, Chief Judge, 5<sup>th</sup> Judicial District.

Thomas Kelly Ryan, Chief Judge, 10<sup>th</sup> Judicial District.

Glenn R. Braun, Chief Judge, 23<sup>rd</sup> Judicial District.