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Testimony in Support of House Bill 2608

**Presented to the Senate Committee on the Judiciary
By Deputy Attorney General Steven Karrer**

March 14, 2022

Chair Warren and Members of the Committee:

Thank you for the opportunity to present this written testimony on behalf of Kansas Attorney General Derek Schmidt in support House Bill 2608.

The Supreme Court recently ruled in *State v. Arnett*, 496 P.3d 928 (October 15, 2021), K.S.A. 60-4301, 60-4302, 60-4303 and 21-6604(b)(2) are unconstitutional. Together these statutes created the ability for Kansas courts to collect restitution as civil judgments through garnishment or other execution. The Supreme Court's ruling was based upon the fact the statutes transformed a criminal restitution finding into a civil judgment without affording the defendant a right to a jury in the civil case.

The *Arnett* decision expressly contemplated that a court could still enforce its order of criminal restitution through lawful means if a defendant was noncompliant, and it also specifically stated these means could still include the potential for court-ordered garnishment. However, the Supreme Court's decision has not left any clear statutory authority to do so.

Prior to *Arnett*, most restitution paid to victims occurred through a collection process initiated by the court trustee. This occurred by the court trustee collecting the payments through garnishment or other collection practices. This process can often extend years after the completion of the defendant's sentence.

Because of the rulings in *Arnett*, the court trustees are currently unable to collect restitution from defendants on behalf of victims. This means many – if not most – victims are no longer receiving restitution payments. House Bill 2608 corrects this by allowing restitution to be collected as a criminal judgment rather than converting it to a civil judgment. It also allows for the court trustee to use the same collection tools as were used prior to *Arnett*.

For these reasons, on behalf of Kansas Attorney General Derek Schmidt and the thousands of victims of crime owed restitution, I encourage you to report HB 2608 out of committee favorably.

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