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*ADMITTED IN KANSAS AND MISSOURI



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Senator Kellie Warren and
Members of the Committee
Kansas State Capitol
SW 8th & SW Van Buren St.
Topeka, KS 66612

RE: Testimony of Mr. Todd Butler, Butler & Associates, PA
in support of HB 2608

Good Morning Senator Kellie Warren and Members of the Committee:

My name is Todd Butler. I am the principal owner of Butler & Associates, P.A., a law firm with an emphasis in collections work. Butler & Associates, PA is a Contracting Agent pursuant to K.S.A. 20-169. We collect debts owed to courts and restitution for 13 Judicial Districts, which includes 29 counties. Some of our clients include the State's largest counties, including Sedgwick, Shawnee, Johnson, and Wyandotte Counties.

State of Kansas v. Taylor Arnett

On October 15, 2021, the Kansas Supreme Court issued an opinion in *State v. Taylor Arnett*, 496 P.3d 928, 2021 Kan. LEXIS 108. In the *Arnett* case, Taylor Arnett challenged the constitutionality of the Kansas criminal restitution statutes and whether they violate section 5 of the Kansas Constitution Bill of Rights. The Court previously found in *Hilburn v. Enerpipe Ltd.*, that "section 5 preserves the jury trial right as it historically existed at common law when our state's constitution came into existence." 309 Kan. 1127, 1133, 442 P.3d 509 (2019). While there was no modern concept of criminal restitution in 1859, juries historically decided civil damages. The *Arnett* court found that because the current criminal restitution statutes make restitution orders "virtually identical" to civil judgments, that many of the criminal restitution statutes were unconstitutional.

In *Arnett*, the Kansas Supreme Court held unconstitutional K.S.A. 60-4301 (Enforcement of judgment of restitution; filing and status), K.S.A. 60-4302 (Enforcement of judgment of restitution; notice of filing), K.S.A. 60-4303 (Enforcement of judgment of restitution; filing; docket fee), K.S.A. 2020 Supp. 21-6604(b)(2) (Authorized dispositions), and the last sentence of K.S.A. 2020 Supp. 22-3424(d)(1) (Judgment and sentence; restitution; duties of court).

The *Arnett* decision did not destroy the district court's authority or obligation to order the defendant to pay restitution, but it did take away the present ability to collect the orders of restitution for thousands of crime victims. The *Arnett* decision has left thousands of Kansas crime victims with no means to recover for their injuries or damages.

Because the *Arnett* court struck down K.S.A. 21-6604(b)(2), which included language that "the court shall assign an agent procured by the judicial administrator pursuant to K.S.A. 20-169, and amendments thereto, to collect the restitution on behalf of the victim", the Office of Judicial Administration has withdrawn the collection of all restitution from all contracting agents. This withdrawal has even prohibited our office from accepting restitution payments voluntarily made by criminal defendants.

Prior to the *Arnett* decision, a crime victim could take the restitution order and file it as a civil case under K.S.A. 60-4301 and enforce the order for restitution. Because K.S.A. 60-4301 through 60-4303 were found to be unconstitutional, the crime victims can no longer collect the courts' restitution orders on their own.

The Kansas statute of limitations for a civil recovery for most criminal acts is 2 years. Once that two-year period has expired, crime victims are barred from pursuing a civil judgment to collect for their injuries and damages. Many crime victims were discouraged from pursuing their civil remedies because of reliance on the courts' orders for restitution.

This amendment is intended to bring the recovery of restitution orders back to the contracting agents retained by the Office of Judicial Administration pursuant to K.S.A. 20-169 and allows those contracting agents to collect restitution orders in criminal cases as they have been able to in the past. While this amendment does not restore crime victims' ability to register restitution orders to civilly collect on their own, it does allow crime victims to use a contracting agent to collect their restitution. Crime victims deserve the chance to receive restitution as recompense for injuries suffered at the hands of criminal defendants. The Legislature should ensure they have this chance.

Stormont-Vail Healthcare, Inc. v. Sievers

The Kansas Supreme Court held that the language in K.S.A. 60-2310 means wages are “earnings” even after they have been paid, as long as the employee can identify the funds as wages. If judgment-debtors faced with bank garnishments can show their funds can be traced to wages, without any limitation on time or scope, the funds are exempt from garnishment, despite K.S.A. 60-2313 not providing any exemption for cash in a bank account.

There is now no incentive to pay bills or judgments, as a defendant who can show that funds held by garnishment are traceable to employment can indefinitely protect those funds from seizure. Judgment-debtors may now request a hearing to have the court review past bank statements and any finds that are traceable to wages at any point in time cannot be garnished. Small businesses in Kansas, which may already be in tenuous positions due to customers’ failure to pay for goods or services received, will face even more challenges in their attempts to get paid for those goods or services.

K.S.A. 60-2310 states that “[e]arnings’ means compensation **paid or payable** for personal services.” The rest of the statute discusses the process by which an employer withholds funds under a court-ordered wage garnishment. The *Sievers* court found that the word “paid” in K.S.A. 60-2310 means that those wages are protected from seizure after the funds have left the employer’s control.

We have proposed that the word “paid” be removed so that employee earnings deposited into banks are not exempt from garnishment indefinitely. This amendment merely returns the law to the way it was prior to November 2021.

State v. Copridge

After a series of payments, on March 27, 2018, Alan Copridge satisfied his \$278.50 order for court costs, fines, and fees, from his sentence for first-degree murder, aggravated kidnapping, aggravated robbery, and criminal possession of a firearm in a 1994 case. These payments were voluntary payments made through the years and then payments made by agreement through his participation in a work-release program under K.S.A. 75-5211.

Four months after payment in full, Mr. Copridge filed a motion to have his court order declared dormant and his funds returned to him. K.S.A. 60-2304 states that a court must release a judgment that is dead once a party makes a request for release. Mr. Copridge filed this request 4 months after the order was satisfied.

The Court of Appeals held that because the judgment was void when Mr. Copridge made the voluntary payments, he was entitled to the return of all of those payments, going back 14 years to 2006.

This decision allows criminal defendants making voluntary payments to request that money back decades later. It places court clerks in the position of having to calculate dormancy periods on each voluntary payment the court receives to determine whether that payment can be applied or must be returned to the criminal defendant who was ordered to pay the costs. In addition, this ruling creates a liability on the State of Kansas with respect to any payments voluntarily received by criminal defendants over the past decades, as those defendants may force the return of funds paid twenty, thirty, or even forty or more years ago.

We have proposed language in K.S.A. 60-2403 that prevents defendants who have made voluntary payments or have not disputed collection efforts in the past decades from being able to now request the return of those funds.

Summary

HB 2608 allows for the continued collection of restitution, benefiting the tens of thousands of crime victims who have yet to be made whole. It also allows business owners and individuals to utilize the best collection methods to recover judgments through bank garnishments. Finally, it protects the State of Kansas and its taxpayers from having to refund voluntary payments defendants made decades ago.

We hope you will consider this bill favorably. Thank you.

Respectfully yours,

BUTLER & ASSOCIATES, P.A.



Todd B. Butler

TBB/slm