Approv	/edDate
MINUTES OF THE <u>House</u> COMMITTEE ON <u>Labor and</u>	Industry .
The meeting was called to order byRepresentative Arthur_ Chair	Douville at person
9:00 a.m. Aprix on <u>March 5</u>	1985 in room 526_S of the Capitol.
All members were present except:	
All members were present.	
Committee staff present:	
All present.	

Conferees appearing before the committee:

Mr. Richard LaMunyon, Chief of Police, City of Wichita Chief Anthony J. DiPlacito, President, KS Assoc. Chiefs of Police

Mr. Hannes Zacharias, Management Analyst, City of Lawrence, representing the Lawrence City Commission

Mr. David L. Yeagle, Lieutenant of the Kansas City, KS Police Department and the Commander of the Internal Affairs Unit.

Mr. Loren L. Taylor, Police Legal Officer, KS City, KS Police Dept.

Representative Douville asked that the opponents to H.B. 2238 please give their testimony. The first speaker was Mr. Richard LaMunyon. See attachment #1. The next speaker was Mr. Anthony J. DiPlacito. See attachment #2. Mr. David Yeagle was the third speaker. See attachment #4. The next speaker was Mr. Loren Taylor. See attachment #5. The last speaker to give testimony was Mr. Hannes Zacharias. See attachment #3.

Written testimony was received from the League of Kansas Municipalities. <u>See</u> attachment #6.

The meeting was adjourned at 10:00 a.m.

LABOR & Industry

3-5-85

Wayro Marihy

Jerry Marlatt

Jos Woodon

WALT DARLING

RaiPh McGee

Richard LaMburyon

JAMES BROWNING

TONY DiPlacito

David L. Yeagle

Loren L. Yaylon

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Richard E. LaMunyon Chief of Police Wichita, Kansas March 5, 1985

LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS

3-5-85 Att. #1

HOUSE BILL 2238

MR. CHAIRMAN - MEMBERS OF THE COMMITTEE.

I AM RICHARD LAMUNYON, CHIEF OF POLICE FOR THE CITY OF WICHITA.

I AM HERE TO TESTIFY IN OPPOSITION TO HOUSE BILL 2238, WHICH HAS BEEN REFERRED TO AS "THE LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS".

I AM SPEAKING TO YOU TODAY AS CHIEF OF THE LARGEST POLICE AGENCY IN THE STATE AND AS A MEMBER OF THE KANSAS ASSOCIATION OF CHIEFS OF POLICE AND ITS IMMEDIATE PAST PRESIDENT.

IF THE INTENT OF THIS BILL BEFORE YOU IS TO PROTECT LAW ENFORCEMENT OFFICERS WHO ARE DOING THEIR JOB IN GOOD FAITH, THEN I SUBMIT TO YOU THAT IT IS TOTALLY UNNECESSARY. ALL CITIZENS OF OUR COUNTRY ARE GUARANTEED RIGHTS AS ESTABLISHED AND PROVIDED BY THE U. S. CONSTITUTION AND THE BILL OF RIGHTS. AS A 22 YEAR VETERAN OF LAW ENFORCEMENT, WHICH INCLUDES ALMOST 9 YEARS AS CHIEF ADMINISTRATOR, I CAN ASSURE YOU THAT LAW ENFORCEMENT OFFICERS ARE ENTITLED TO AND DO ENJOY THESE SAME CONSTITUTIONAL RIGHTS AND PRIVILEGES.

IN MY JUDGEMENT, IF ALLOWED TO BECOME LAW, HOUSE BILL 223°, WOULD PROVIDE LAW ENFORCEMENT OFFICERS RIGHTS, PRIVILEGES, AND PROTECTIONS BEYOND THOSE ESTABLISHED IN OUR CONSTITUTION. IT WOULD ESTABLISH, BY STATE LAW, ALL POLICE DEPARTMENTS' ADMINISTRATIVE POLICIES, PROCEDURES AND REGULATIONS AND WOULD DICTATE THE MANNER

Atch. 1 3/5/85 IN WHICH ADMINISTRATIVE POLICE INTERNAL INVESTIGATIONS WOULD BE CONDUCTED. IT WOULD MANDATE HOW AND WHERE INTERROGATIONS OR INTERVIEWS WOULD BE PERFORMED. IT WOULD SEVERELY LIMIT POLICE MANAGEMENT ACTION IN SEARCH SITUATIONS WHERE AN OFFICER IS SUSPECTED OF WRONG DOING AND WOULD SET THE GROUNDWORK TO ELIMINATE THE UTILIZATION OF A POLYGRAPH EXAMINATION IN ADMINISTRATIVE POLICE INTERNAL INVESTIGATIONS.

I THINK YOU WOULD AGREE THAT POLICE OFFICERS, BY THE NATURE OF
THEIR WORK, HOLD A VERY UNIQUE POSITION IN OUR SOCIETY. THEY ARE
HIGHLY VISIBLE AND ARE REQUIRED TO DEAL WITH SITUATIONS QUITE FOREIGN
TO THE AVERAGE PERSON. THESE SITUATIONS MANY TIMES BRING FORWARD
COMPLAINTS THAT MUST BE DEALT WITH. INTERNAL POLICE INVESTIGATIONS
HAVE A DUAL PURPOSE: ONE IS TO PROTECT THE OFFICER FROM FALSE
COMPLAINTS; THE OTHER IS TO PROTECT CITIZENS FROM OFFICERS WHO OVERSTEP
THEIR AURHORITY.

I'M SURE THAT OVER 99 PERCENT OF LAW ENFORCEMENT OFFICERS TRY
TO PERFORM THEIR DUTIES IN A PROFESSIONAL MANNER; HOWEVER, THERE ARE
OCCASIONS WHEN SOME VIOLATE CRIMINAL STATUTES AND/OR ABUSE THE RIGHTS
OF CITIZENS. IT IS IN THESE RARE INSTANCES THAT POLICE ADMINISTRATORS
MUST HAVE EVERY LEGAL AVENUE AVAILABLE TO EFFECTIVELY DEAL WITH THE
PROBLEM.

SINCE I BECAME CHIEF OF POLICE IN 1976, I HAVE BEEN CONFRONTED WITH A FEW SITUATIONS WHERE OFFICERS VIOLATED THEIR OATH OF OFFICE. IN SOME CASES CRIMINAL CHARGES WERE FILED AGAINST OFFICERS AND THEY WERE CONVICTED IN COURT. THERE HAVE ALSO BEEN OTHER OFFICERS WHO WERE KNOWN TO BE GUILTY OF WRONG DOING BUT WHO COULD NOT BE CHARGED

DUE TO SOME PROSECUTION TECHNICALITY. FORTUNATELY, I WAS ABLE TO

DEAL WITH THESE INDIVIDUALS ADMINISTRATIVELY AND THEY ARE NO LONGER WITH

IN LAW ENFORCEMENT. THIS BILL LAYS THE GROUNDWORK TO DO AWAY WITH

THIS ADMINISTRATIVE TOOL. ADDITIONALLY, IT WOULD ESTABLISH, THROUGH

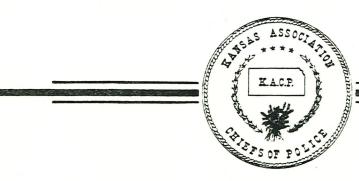
STATE LAW, POLICE POLICIES AND PROCEDURES THAT SHOULD REMAIN AT THE

LAW ENFORCEMENT AGENCY LEVEL.

I WOULD REMIND YOU THAT LAW ENFORCEMENT OFFICERS ACCUSED OF CRIMINAL VIOLATIONS HAVE THE SAME RIGHTS AS ANY OTHER CITIZEN; THEY MUST RECEIVE THE MIRANDA WARNING AND BE AFFORDED THE RIGHT TO AN ATTORNEY. NEITHER POLICE ADMINISTRATORS, NOR ANYONE ELSE, CAN TAKE AWAY THESE RIGHTS. HOUSE BILL 2238, HOWEVER, EXTENDS THESE RIGHTS INTO ADMINISTRATIVE INTERNAL INVESTIGATIONS WHICH ARE NOT AVAILABLE TO ANYONE ELSE IN OUR COUNTRY. IN MY JUDGEMENT, THIS PROTECTION WOULD SERVE ONLY TO HELP THE OFFICER WHO HAS EXCEEDED HIS OR HER OATH OF OFFICE.

FINALLY, HOUSE BILL 2238 SEEMS TO INFER THAT LAW ENFORCEMENT OFFICERS ARE ENTITLED TO SPECIAL JOB-RELATED PRIVILEGES. SUCH IS SIMPLY NOT THE CASE; A BILL OF RIGHTS SHOULD NOT BE ENXTENDED TO POLICE OFFICERS ANY MORE SO THAN TO ACCOUNTANTS, PLUMBERS, LEGISLATORS OR LAWYERS. PLEASE DO NOT BY ADOPTING THIS BILL OR ANYTHING SIMILAR, GIVE THE IMPRESSION THAT WE NEED SPECIAL CONSIDERATIONS. WE DON'T.

THANK YOU FOR YOUR TIME AND ATTENTION. IF THERE ARE ANY QUESTIONS
I WOULD BE HAPPY TO RESPOND.



March 4, 1985

3-5-85 9##2

Testimony given to the Labor and Industry Committee on March 5th, 1985 by Chief Anthony J. DiPlacito, President of the Kansas Association Chiefs of Police, regarding House Bill 2238, known as the "Law Enforcement Officers Procedural Bill of Rights."

Mr, Chairman, Members of the committee. I, as President of the Kansas Association Chiefs of Police, would like to say that we are opposed to House Bill 2238. We believe this bill would hinder or totally render the process of internal affairs investigations useless. It would give the law enforcement officers additional protection above and beyond those that are now given us by the Constitution and Bill of Rights. This we feel would place us above those citizens whom we are sworn to serve and protect.

We find that most of these so called rights are already given us by the Constitution and Bill of Rights. What this bill really is, is an attempt to legislate administrative procedures and possibly protect those few officers who may have exceeded their authority and/or abused their positions for whatever reasons. In these few incidents where criminal codes have not been violated but Department and/or public policy have been violated, the Law Enforcement Administrator needs all of those tools legally avaialable to him, so he may adequately investigate the complaint and handle it accordingly.

Most internal affairs investigations are done for the protection of the officer. They(the officers) are sometimes the target of unfounded complaints which without the use of the polygraph and internal affairs investigation, could lead to the unnecessary filing of charges. Although the officer may be exonerated of all charges in court, he has gone through a very tramatic and public experience. The internal affairs investigation although not the high spot in anyone's career is usually much shorter and does insure privacy for all parties involved.

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Testimony Cont'

-2-

March 4, 1985

This, also, allows us to maintain the confidentiality of all witnesses and informants along with the records of the proceedings. This helps to protect the officer from being branded as abusive or unfeeling unjustly by those who would only look at the accusations being made and not the findings of the investigation.

As I have stated before, we, the Chiefs, feel that any attempt to legislate administrative procedure will not help, but will hinder those officers who have been unjustly accused. It will surely make it much harder if not impossible for us to weed out those officers who should not be on the streets.

I will now answer any questions you may have.

Chief Anthony J. DiPlacito



BUFORD M. WATSON, JR., CITY MANAGER

CITY OFFICES BOX 708 66044 6 EAST 6th 913-841-7722

3-5-85 A++.#3

CITY COMMISSION MAYOR

ERNEST E. ANGINO

COMMISSIONERS

MIKE AMYX

HOWARD HILL

DAVID P.J. LONGHURST

NANCY SHONTZ

Statement by Hannes Zacharias Management Analyst, Lawrence, Kansas

Presented to the House Committee on Labor and Industry, March 1, 1985.

RE: Opposition to HB 2238 - Law Enforcement Bill of Rights.

Mr. Chairman, Members of the Committee, I am Hannes Zacharias, Management Analyst with the City of Lawrence, representing the Lawrence City Commission in the opposition to HB 2238.

We oppose HB 2238 because: (1). Public Employee-Employer Relations should be a matter of local control, (2). This bill blurs the distinction between administrative and criminal investigations of law enforcement personnel and, (3). This bill separates law enforcement personnel from other municipal employees in administrative matters.

During the last decade, Lawrence has enjoyed a reputation of having an honest and professional police force. This has been due, in part, to that department's established internal investigations policies which removes dishonest officers

Atch. 3 3/5/85 from the force. If HB 2238 were to pass, it would so severely amend the existing policies that we could no longer guarantee a police force free from these problem personnel. The bill could make it impossible for a supervisor to require an officer to communicate with him or her regarding any police policy without the presence of an attorney. Further, supervisors would not be able to use polygraph examinations in internal or <u>criminal</u> investigations as an important tool to establish the guilt or innocence of a police officer.

Beyond limiting the ability of supervisors to appropriately deal with internal investigations, this bill would create separate administrative rules between city employees, not only between departments, but also within departments. Code Enforcement and fire inspection personnel would be treated in radically different fashion than their office partners. This would create large administrative and personnel problems during times of internal investigations of misconduct.

There are many other problems with HB 2238 which, in the interest of time, we will not detail. We would hope that you carefully review this bill and that you reject it in its entirety.

City of Kansas City, Kansas

3-5-85 A#,#4

DEPARTMENT OF POLICE

March 1, 1985

My name is David L. Yeagle. I am a Lieutenant of the Kansas City, Kansas Police Department and the Commander of the Internal Affairs Unit. At the outset I thank this committee for giving me the opportunity to give my views regarding HB2238. This bill is of particular concern to me, first because I have been a law enforcement officer for sixteen (16) years and second because much of my career has involved investigations of misconduct, alleged and actual, by law enforcement officers.

As a law enforcement officer, I am concerned that the image of my profession can be smeared by individuals who enter the profession and then disgrace it by personal or professional misconduct. I have experienced the embarassment of being associated with persons whose conduct was unworthy of the title of law enforcement officer and I am grateful that other officers had the ability to investigate those individuals and rid our profession of them.

We in law enforcement as well as all persons with an interest in effective law enforcement must remain willing to take all available measures to weed out corruption, but I submit that some of those same corrupt individuals might still be in their positions of public trust if they had been shielded by HB2238.

Again, as one who has spent many years investigating police misconduct, I am more personally aware of the necessity to conduct internal investigations. The primary unit objective in my Department's Internal Affairs manual states, "Protection is synonymous with police work. The protection provided by the Internal Affairs Unit extends, although first to the public itself, also over the entire Police Department and by this token to each individual member of the organization.

The publics right to an honest, hard working, conscientious, orderly and effective Police Department is maintained by this unit. Of no other government agency does the public require such spotless integrity, as it does from the Police Department.

The Department must maintain these standards to protect itself from destruction within. The history of American Law Enforcement has demonstrated many times that when the public confidence in a Police Department is destroyed, it has been destroyed from within. The Internal Affairs Unit's first duty is to maintain the reputation of the Department and its members."

. . . .

My Department has spent many years developing and utilizing procedures that encourage the first class investigations to which the public and accused officers are entitled while doing everything we can to protect all concerned from unnecessary embarassment, humiliation or inconvenience. All of our procedures have been developed from within the Department. I can not emphasize enough that it did not require the state or federal

governments to step in and dictate what procedures we can utilize. Our procedures have worked very well and I know that they will continue to work.

You must understand that I strongly sympathize with the feelings and rights of law enforcement officers having been subjected to false accusation and investigation myself. But I know that just as I was cleared, so are the many falsely accused officers that are investigated by my unit. However, I would more rather see efforts to legislate punishment for false accusers than see this type of bill which can only serve to hamstring investigations of misconduct.

I could take much time, were it available, to discuss each section of the proposed legislation and I assure you that I object to much of it. But I would particularly like to address section 7 which, essentially opens up the investigative files. Citizens and police officers are too often reluctant to come forward with information concerning misconduct. It is often with an assurance of confidentiality that they divulge information. Section 7 would eliminate that confidentiality. Is it more important to allow an officer to learn who "snitched" than to weed out the corrupt individuals? Due process hearings have been developed to insure that accused officers receive fair hearings. This is achieved without a blanket opening of investigations as proposed in Section 7.

I repeat that I find objections to practically every section of the bill and I am prepared to indicate those specific objections if requested,

but more importantly I reemphasize that my strongest objection is to the attempt to legislate how each department will conduct its internal business.

Thank you again for the opportunity to speak about this bill.

3-5-85 AH, #5

Point Paper On House Bill No. 2238

Submitted By: Loren L. Taylor, Police Legal Officer Kansas City, Kansas Police Department

We should first note that this is not an unusual area of controversy. For a number of years the courts in the United States have diligently balanced the rights of all parties involved in these very sensitive areas. An officer's rights are protected under current laws and case decisions of the United States Supreme Court. There has been a careful balancing act that must be developed between the individual rights of the officer and the collective rights of society. The United States Supreme Court has had the opportunity on numerous occasions to balance these interests. We should also very clearly mark the distinction between internal discipline and the rights afforded to all our citizens in criminal investigations. This Bill does not make celar distinction between the two. The courts have noted that a patrolman owes a high degree of loyality and responsibility to the performance of his/her public trust. He is directly, immediately and entirely responsible to the city and state which is his employer. He owes his entire loyality to it. He has no other client or principal. He is a trustee of the public interest, bearing the burden of great and total responsibility to his public employer...the policeman is either responsible to the state or to no one. No other public employee is given the authority and power that is given to a law enforcement agent. He is in a unique position in the law. He owes a very special relationship to the public.

It would appear from Supreme Court cases that as long as a department does not require an officer, to waive his constitutional rights as to a criminal prosecution he may then be terminated if he refuses to cooperate fully and completely in internal affairs investigations. Not to cooperate in such an investigation may lead to his proper discipline for insubordination. I call attention to Uniform Sanitary Men v. Commissioner of Sanitation, 392 US 280; Garrity v. New Jersey, 385 US 493; spevack v. Kline, 385 US 511 and Garner v. Broderick, 392 US 372. In the case of Rux v. New Orleans Police Department, 397 US 1008, the Court noted that no one has an inalienable right to be employed as a police officer. The peoples right to a highly qualified and morally unassailable police department outweighs any right that the office had in keeping his job. His refusal to cooperate thereby impeded and hendered the inquiry into a violation of the law, which he was sworn to uphold and defend. Such a refusal was an act of misconduct

Atch. 5 3/5/85 on his part and he could no longer be said to possess the high standards required for policemen.

It should be remembered that an officer is not a private citizen. A police officer subordinates his rights of privacy as a private citizen "to the superior right of the public to an efficient and credible police department." Officers of the law are sworn to uphold and enforce the law, and this fact alone should require the fullest cooperation in all official investigations. There is no area of police endeavor of more importance than the area of internal affairs. The public can demand no less. The courts have stated that if a failure to cooperate in this way suggests guilt or unwillingness to help in the solving of crimes or internal problems it would undermine public confidence in the integrity of law enforcement. It is necessary for the efficient and effective accomplishment of the law enforcement mission that a proper environment be created not only within the department but without in the overall community. It must have the respect and regard of the public. When it has reason to believe that some of its members may be engaged in disruputable practis, it has a valid interest in cleaning itself of such practices through internal investigations and procedures. It has the right to require the full cooperation of all members of the department. Unluckily, it would be a naive approach to the law today to hold that all men within the police department are clear of misconduct and malpractices.

We must note the importance of confidentiality of information in internal affairs investigations. We should remember that to open the records to any party would open the door for the release of this information to all of the community. This would indeed have a chilling effect. Both citizens and fellow officers must be freely granted confidentiality in certain areas. Numerous cases have developed around the country that help in this balancing test. Compelled statements in non criminal internal affairs investiations are necessary. It is necessary that officers be warned that they may not refuse to answer questions specifically directed to their duties or fitness for office. A failure to respond to such questions can legally result in discipline. On the otherhand such statements and their fruits may not be used against the officer in a criminal trial. I call attention to Uniform Sanitation Men Association v. Commission, 392 US 280; Garner v. Broderick, 392 US 273; Garrity v. New Jersey, 385 US 493; Garbinger v. Conlisk, 320 Fed. Supp. 1213, etc. We should note that police officers are not entitled to the presence of counsel when they are compelled to give information in a non

criminal matter. The cases have noted that the character of such statements is much different than normal interrogations or depositions. Note Garbinger v. Conlisk, Supa; Jones v. Civil Service Commission, 489 P.2d 320. We should also note that internal affairs files must contain statements taken from citizens who report police misconduct, but who do not want to be directly involved themselves in internal prosecutions leading to a officer's discipline. Such complaints remain permanetly confidential and may form the basis for surveillance of officers placed under the cloud of suspicion. It is extremely important that the government be able to maintain the integrity of its investigation.

We should note that this Bill could complicate a already complexed field. It should be remembered that this state has a great number of law enforcement agencies with varying logistical capabilities. Even though a portion of this Bill may very well work in one city it may not meet the needs of another department. It should be remembered that departmental structures vary from department to department. What is practical for one department may not be practicable for another. The internal developing problems of one department may become extremely serious warranting rapid corrective action and investigation. This Bill may well create problems when immediate actions are required.

We should note certain weaknesses within this Bill. It does not make distinction between criminal investigation and administrative investigations for correction of less than criminal conduct. It should also be remembered that one of the growing areas of civil liability for a law enforcement agency is vicarious liability. Two subdivisions of vicarious liability are negligent retention and negligent supervision of officers. A department must develop a internal procedure to guard against these growing areas of potential danger to the financial stability of a governmental unit. This Bill does not address the problem that many departments in the state do not have specialized internal affairs units or investigators. The internal responses, in many departments, must be handled by various supervisory levels. It should be remembered that immediate response is necessary when a serious internal problem develops. The public can demand no less. This Bill can help create certain administrative problems within a department. It is impossible in many instances to determine what is an internal investgation and what is merely appropriate internal command and corrective procedure. We are creating an extremely complexed arena for the necessary task of police administration. This is unwarranted in the already complexed area of law enforcement. If road blocks are placed between corrective action and police supervisory personnel the public will suffer. The overall climate of law enforcement will suffer. We will have added to the continuing problem of effective and modern law enforcement in the state of Kansas.

Those persons concerned with the protection of the policemans rights as to due process would well look to the developed areas of protections afforded to these officers in our court system. These have developed within the last ten years. The courts are open to protect the rights of officers and at the same time to balance the legitimate needs of the administration of justice.



3-5-85 AH.#6

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

February 27, 1985

Representative Arthur Douville, Chairman House Committee on Labor and Industry State Capitol--Room 115-S
Topeka KS 66612

Re: HB 2238--Law Enforcement Officers' Bill of Rights

Dear Chairman Douville:

It appears unlikely that a representative of the League will be able to attend the Friday hearing on HB 2238. As a result, these brief written comments are submitted, with additional copies for Committee members.

The League is opposed to HB 2238. Some provisions of the bill apparently attempt to specify by statute some well-established constitutional and due process rights guaranteed to all public employees. (For example, Sections 3 and 12.) We question the advisability of this kind of special legislation singling out one group of public employees, inferentially suggesting that others do not have these same legal rights.

Other provisions of the bill appear to us to represent questionable public policy. For example, Section 2 concerns "internal investigations" of law enforcement agencies. If such investigations are, as we interpret them to be, essentially criminal investigations, then police officers should have the same "bill of rights" available to them as are available to any U.S. citizen--no more and no less.

While we oppose, as a matter of philosophy of government, the idea of making law enforcement officers a special class of citizens endowed with special procedural safeguards, we would note that the public trust and confidence required of police officers for effective law enforcement may well require of them a \underline{more} stringent standard of conduct than is required of other municipal employees.

Our fundamental objection to the bill is that those procedures attempted to be guaranteed by HB 2238, which are not otherwise guaranteed by law, are matters of local affairs and government and should be dealt with locally, by municipal personnel rules and policy manuals, not by state law. Perhaps it is reasonable, for example, that an officer shall have "five working days" to file a written response to an adverse comment in an officer's

Rep. Arthur Douville, Chairman House Committee on Labor and Industry February 27, 1985 Page Two

personnel file (lines 95-96). The basic policy issue, however, is whether in this state, with Constitutional Home Rule, the Kansas legislature is the appropriate agency to decide whether five, or three, or ten,...days is the desirable length of time. If it is, I assume we can look forward in future years to state-established salaries for municipal employees and other controls over local affairs and government.

Sincerely

E.A. Mosher

Executive Director

EAM:grs

Encls.