

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on January 31, 2011 in Room 144-S of the Capitol.

All members were present

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Lauren Douglass, Legislative Research
Robert Allison-Gallimore, Legislative Research
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

State Representative Greg Smith
Debra Billingsly, Kansas Board of Pharmacy

Others attending:

See attached.

Chairperson Colloton called the meeting to order and announced to the Committee that the play at the Women's Correctional facility in Topeka had been canceled due to the weather and would be rescheduled. She then opened the floor for introduction of bills and stated she had a bill to introduce. She explained the Kansas Sentencing Commission would like a bill to put drug quantities to the drug sentencing grid.

Representative Brookens made a motion to introduce the bill as a committee bill. Representative Wolf seconded. Motion carried.

Chairperson Colloton had another bill request. She explained it was a bill the DAs had asked for and it would be a burglary bill; when entering a home and committing certain crimes it would be a part of the incident.

Representative Moxley made a motion to accept the request as a committee bill. Representative McCray-Miller seconded. Motion carried.

Chairperson Colloton called on Dr. David Mouille, who also had a bill request. Dr. Mouille stated he was a licensed Psychologist residing in Shawnee, Kansas and he served on the Kansas Board of Forensic Examiners. He presented a list of the board members for the Committee. (Attachment 1) He requested a bill regarding competency to stand trial evaluations.

Representative McCray-Miller made a motion to introduce the bill as a Committee bill. Representative Kelly seconded. Motion carried.

Chairperson Colloton recognized State Representative Frownfelter for a bill introduction. He stated he would like to request a conceptual bill regarding wire transfers out of the state which would have a tax imposed between two and three percent and the money would go for the KBI Lab. The person paying the tax could be allowed to get it back on their income tax.

Representative Wolf made a motion to accept the conceptual bill request. Representative Roth seconded. Motion carried.

Chairperson Colloton recognized Dave Hutchings, KBI, for a bill introduction. Mr. Hutchings stated he was requesting two bills. The first bill request was for a bill regarding expungement of city ordinance violations. He presented a written draft copy of the bill. (Attachment 2)

Representative Brookens made a motion to accept the bill introduction as a committee bill. Representative Pauls seconded. Motion carried.

Mr. Hutchings continued with his second request for a bill introduction. He stated it was in regard to the manufacturing of controlled substances and making it an inherently dangerous felony. Mr. Hutchings presented written copy of his bill. (Attachment 3)

Representative Wolf made a motion to accept the bill as a committee bill. Representative Pauls seconded. Motion carried.

Chairperson Colloton recognized Representative McCray-Miller who had three bill requests. The first bill

request was regarding indigent defense challenges the public defenders have by clarifying statutes already intact.

Representative Brookens made a motion to accept the bill as a conceptual bill. Representative Kelly seconded. Motion carried.

Representative McCray-Miller continued with her second bill introduction allowing counties to charge a special sales tax with the proceeds going into children, youth, and juvenile programs.

Representative McCray-Miller made a motion to accept as a conceptual bill. Representative Brookens seconded. Motion carried.

It was noted that this bill would probably go to the tax committee.

Representative McCray-Miller made her last request for a bill regarding putting a mechanism in the state of Kansas that would be required for reentry of juveniles, cost analysis on performance programs.

Representative McCray-Miller moved to accept as a conceptual bill. Representative Meier seconded. Motion carried.

Chairperson Colloton called for any others wishing to request a bill. Being none, she opened the hearing on **HB 2032.**

HB 2032-County and district attorney monthly reporting of caseloads

Chairperson called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill. Mr. Ostrow stated the bill would require district attorneys and county attorneys to produce a list each month of hearings.

Chairperson Colloton called Representative Greg Smith to give his testimony as a proponent of the bill. Representative Smith presented written copy of his testimony. (Attachment 4) He stated the bill would provide information to the citizens of each Kansas county in regard to the name of criminal cases filed, dismissed, prosecuted, entered into a plea bargain agreement, or entered into a diversion agreement by the district attorney. He feels this information is needed by the voters of each county to evaluate, at least in part, the effectiveness of their elected district or county attorney. He also stated that he felt this information would help business owners, citizens, prospective business owners, and entrepreneurs evaluate public safety issues for a county. In closing, he urged the Committee to recommend this bill be favorably passed out of committee.

A question and answer session followed.

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of Grier Weeks, National Association to Protect Children (Attachment 5) and the "written only" opponent testimony of Charles Branson, Kansas County and District Attorney Association. (Attachment 6)

Chairperson Colloton called for any others wishing to testify or speak on the bill, being none, she closed the hearing on **HB 2032.**

Chairperson Colloton called on Debra Billingsly, Board of Pharmacy, to give an up date on pseudoephedrine. Ms. Billingsly stated prior to 2005 you could get pseudoephedrine over the counter. In 2005 a bill was passed and you had to buy it from the pharmacist and sign for it. The liquids were left on the shelf because meth could not be made out of a liquid. There was the restriction of only being able to buy three boxes of pseudoephedrine tablets at a time in a seven day period. You had to show a photo identification and sign a book when purchased. The pharmacist had to keep it under lock and key. In 2007 the Federal act was passed and liquids and gels had to also be kept under lock and key and be signed for with a photo identification. In 2008 there was a task force formed to address the problem of the log books not working. They looked at several options one of which was electronic logging. There was a Pilot Program they tried in SE Kansas and could not get it off the ground and finally gave up. Presently they are working on something to get the software for electronic logging for free or a minimal charge.

Questions and answers followed.

Upon the conclusion of Ms. Billingsly's update, Chairperson Colloton opened the floor for consideration of **HB 2022.**

HB 2022-Allowing venue to be transferred back to the jurisdiction where the crime occurred when a defendant is to be conditionally released.

A discussion followed regarding the bill. Several of the Committee members have concerns with the bill.
Representative Pauls made a motion to table the bill. Representative Brookens seconded.

A discussion followed.

Chairperson Colloton called for a vote on the motion on the floor. Motion carried and the bill is tabled.

Chairperson Colloton adjourned the meeting at 2:45 p.m. with the next meeting scheduled for February 1, 2011 at 1:30 p.m. in room 144 S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 1-31-11

[illegible]

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Be it enacted by the Legislature of Kansas:

Section 1. K.S.A. 12-4516a is hereby amended to read as follows: **12-4516a: Expungement of city ordinance violations; disclosure limited upon filing of petition.**

(a) Any person who has been arrested on a violation of a city ordinance of this state may petition the court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. The petition shall state:

- (1) The petitioner's full name;
- (2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) the petitioner's sex, race and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest, and
- (6) the identity of the arresting law enforcement agency.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section, except that no fee shall be charged to a person who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, and amendments thereto. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

- (1) The arrest occurred because of mistaken identity;
- (2) a court has found that there was no probable cause for the arrest;
- (3) the petitioner was found not guilty in court proceedings; or
- (4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes:

- (1) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto;

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or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142 and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) the court shall make all expunged records and related information created prior to and after the effective date of this act available to the Kansas bureau of investigation for the purpose of either:

(1) completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701, et seq.; or

(2) providing information or documentation to the federal bureau of investigation, in connection with the National Instant Criminal Background Check System, to determine a person's qualification to possess a firearm.

~~(f)~~ (g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

~~(g)~~ (h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

Section 2. K.S.A. 21-4619 is hereby amended to read as follows: **21-4619.**

Expungement of certain convictions, arrest records and diversion agreements.

(a) (1) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or

a suspended sentence.

(2) Except as provided in subsections (b) and (c), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503, and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603, and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608, and amendments thereto; (11) aggravated endangering a child as defined in K.S.A. 21-3608a, and amendments thereto; (12) abuse of a child as defined in K.S.A. 21-3609, and

amendments thereto; (13) capital murder as defined in K.S.A. 21-3439, and amendments thereto; (14) murder in the first degree as defined in K.S.A. 21-3401, and amendments thereto; (15) murder in the second degree as defined in K.S.A. 21-3402, and amendments thereto; (16) voluntary manslaughter as defined in K.S.A. 21-3403, and amendments thereto; (17) involuntary manslaughter as defined in K.S.A. 21-3404, and amendments thereto; (18) involuntary manslaughter while driving under the influence of alcohol or drugs as defined in K.S.A. 21-3442, and amendments thereto; (19) sexual battery as defined in K.S.A. 21-3517, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed; (20) aggravated sexual battery as defined in K.S.A. 21-3518, and amendments thereto; (21) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation; (22) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or (23) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

(2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;

(5) the date of the defendant's arrest, conviction or diversion; and

(6) the identity of the convicting court, arresting law enforcement authority or diverting authority. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after the effective date of this act through June 30, 2011, the supreme court may impose a charge, not to exceed \$15 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the

order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2009 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act:

(i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2009 Supp. 75-7c01 et seq., and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(h) Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(i) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that

the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act:

(A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and

(B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications:

(A) To be an employee of the state gaming agency; or

(B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; or

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act.

(17) *the Kansas bureau of investigation for the purpose of either:*

(A) *completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701, et seq.; or*

(B) *providing information or documentation to the federal bureau of investigation, in connection with the National Instant Criminal Background Check System, to determine a person's qualification to possess a firearm.*

The provisions of subsection (i)(17) shall apply to records created prior to and after the effective date of this act.

Section 3. K.S.A. 22-2410 is hereby amended to read as follows: **22-2410:
Expungement of arrest records; docket fee; disclosure limited upon filing of
petition.**

(a) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, 2011, the supreme court may impose an additional charge, not to exceed \$15 per docket fee, to fund the costs of non-judicial personnel. The petition shall state:

- (1) The petitioner's full name;
- (2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) the petitioner's sex, race and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest; and
- (6) the identity of the arresting law enforcement agency.

No surcharge or fee shall be imposed to any person filing a petition pursuant to this section, who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, and amendments thereto. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

- (1) The arrest occurred because of mistaken identity;
- (2) a court has found that there was no probable cause for the arrest;
- (3) the petitioner was found not guilty in court proceedings; or
- (4) the expungement would be in the best interests of justice and (A) charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of

corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes:

(1) In any application for employment as a detective with a private detective agency, as defined in K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142 and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) in any other circumstances which the court deems appropriate.

(f) *The court shall make all expunged records and related information created prior to and after the effective date of this act available to the Kansas bureau of investigation for the purpose of either:*

(A) *completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701, et seq.; or*

(B) *providing information or documentation to the federal bureau of investigation, in connection with the National Instant Criminal Background Check System, to determine a person's qualification to possess a firearm.*

~~(f)~~ (g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

~~(g)~~ (h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

~~(h)~~ (i) The docket fee collected at the time the petition for expungement is filed shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

Section 4. K.S.A. 22-4701 is hereby amended to read as follows: 22-4701:

Definitions. As used in this act, unless the context clearly requires otherwise:

(a) "Central repository" means the criminal justice information system central repository created by this act and the juvenile offender information system created pursuant to K.S.A. 2007 Supp. 38-2326, and amendments thereto.

(b) "Criminal history record information" means *any and all* data initiated or collected by a criminal justice agency on a person pertaining to a reportable event, *and any and all documentation supporting and related to reportable events, as provided in K.S.A. 22-4705*. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions;

(3) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide; or

(4) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and countywide law enforcement agencies, correctional facilities, jails and detention centers;

(2) the offices of the attorney general, county or district attorneys and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts;

(4) the Kansas sentencing commission;

(5) the Kansas parole board; and

(6) the juvenile justice authority.

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) "Director" means the director of the Kansas bureau of investigation.

(f) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(g) "Reportable event" means an event specified or provided for in K.S.A. 22-4705, and amendments thereto.

Section 5. K.S.A. 22-4704 is hereby amended to read as follows: **22-4704: Rules and regulations.**

(a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and amendments thereto, the director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act.

(b) The director shall develop procedures to permit and encourage the transfer of criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

(c) The rules and regulations adopted by the director shall include those:

(1) Governing the collection, reporting, and dissemination of criminal history record information by criminal justice agencies;

(2) necessary to insure the security of all criminal history record information reported, collected and disseminated by and through the criminal justice information system;

(3) necessary for the coordination of all criminal justice data and information processing activities as they relate to criminal history record information;

(4) governing the dissemination of criminal history record information;

(5) governing the procedures for inspection and challenging of criminal history record information;

(6) governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with this act;

(7) governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(8) governing the exercise of the rights of inspection and challenge provided in this act.

(d) The rules and regulations adopted by the director shall not include any provision that allows the charging of a fee for information requests for the purpose of participating in a block parent program, including but not limited to, the McGruff house program.

(e) Rules and regulations adopted by the director may not be inconsistent with the provisions of this act.

Section 6. K.S.A. 22-4705 is hereby amended to read as follows: **22-4705: Reportable events; establishment of criminal justice information system central repository; reports; method of reporting.**

(a) The following events are reportable events under this act:

(1) Issuance of an arrest warrant;

(2) an arrest;

(3) release of a person after arrest without the filing of a charge;

(4) dismissal or quashing of an indictment or criminal information;

(5) an acquittal, conviction or other disposition at or following trial, including a finding of probation before judgment;

(6) imposition of a sentence;

(7) commitment to a correctional facility, whether state or locally operated;
(8) release from detention or confinement;
(9) an escape from confinement;
(10) a pardon, reprieve, commutation of sentence or other change in a sentence, including a change ordered by a court;
(11) judgment of an appellate court that modifies or reverses the lower court decision;

(12) order of a court in a collateral proceeding that affects a person's conviction, sentence or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and

(13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.

(b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director.

(c) Except as otherwise provided by this subsection, every criminal justice agency *as defined in this act* shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act. A criminal justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(d) Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by the agencies.

(e) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of that criminal history record information is governed by the provisions of this act.

(f) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.

(g) *No fees or charges may be assessed to the central repository for reporting or otherwise providing criminal history record information pursuant to this act. This shall apply to records created prior to and after the effective date of this act.*

Section 7. K.S.A. 38-2312 is hereby amended to read as follows: **38-2312**
Expungement of records.

(a) Except as provided in subsection (b), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, and amendments thereto, murder in the first degree, K.S.A. 21-3402, and amendments thereto, murder in the second degree, K.S.A. 21-3403, and amendments thereto, voluntary manslaughter, K.S.A. 21-3404, and amendments thereto, involuntary manslaughter, K.S.A. 21-3439, and amendments thereto, capital murder, K.S.A. 21-3442, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3502, and amendments thereto, rape, K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3504, and amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, and amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, and amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516, and amendments thereto, sexual exploitation, K.S.A. 21-3603, and amendments thereto, aggravated incest, K.S.A. 21-3608, and amendments thereto, endangering a child, K.S.A. 21-3609, and amendments thereto, abuse of a child, or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state:

- (1) The juvenile's full name;
- (2) the full name of the juvenile as reflected in the court record, if different than (1);
- (3) the juvenile's sex and date of birth;
- (4) the offense for which the juvenile was adjudicated;
- (5) the date of the trial; and
- (6) the identity of the trial court.

Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after the effective date of this act through June 30, 2011, the supreme court may impose a charge, not to exceed \$15 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(d) (1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) The court may require that all court costs, fees and restitution shall be paid.

(e) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile.

Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(f) ~~A~~ *Copies certified copy* of any order made pursuant to subsection (a) or (c) shall be sent ~~a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify each public officer and juvenile or criminal justice agency in the county which may haveing possession of any~~ records or files ordered to be expunged. If the ~~officer or~~ agency fails to comply with the order within a reasonable time after its receipt, ~~the officer~~ the agency may be adjudged in contempt of court and punished accordingly.

(g) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(h) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(i) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(j) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) ~~the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;~~

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; ~~or~~

(8) the Kansas sentencing commission; or

(9) *the Kansas bureau of investigation for the purpose of either:*

(A) completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701, et seq.; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the National Instant Criminal Background Check System, to determine a person's qualification to possess a firearm.

The provisions of subsection (j)(9) shall apply to records created prior to and after the effective date of this act.

Section 8. New Section: Relief from disabilities; Restoration of certain rights.

(a) An individual that has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution may petition for relief of disabilities for the purpose of firearm prohibitions imposed under state and federal laws.

(b) The applicant shall submit a petition to a state court, board, commission, or other lawful authority.

(c) The state court, board, commission or other lawful authority:

(1) Must consider the applicants petition for relief; and

(2) may only consider applications for relief due to mental health adjudications or commitments that occurred in the state of Kansas.

(d) The state court, board, commission or other lawful authority shall grant the relief in accordance with the principles of due process. To determine relief the authority must receive and consider the following:

(1) The circumstances regarding the firearm disability imposed by federal law;

(2) the applicant's record mental health records;

(3) the applicant's criminal history records; and

(4) the applicant's reputation, developed through character witness statements, testimony or other character evidence, to determine that the person.

(e) To grant the relief, the authority must issue findings that:

(1) The applicant will not be likely to act in a manner dangerous to public safety; and

(2) granting of such relief would not be contrary to public interest.

(f) If denied of relief, the applicant may petition a court of appropriate jurisdiction for a de novo judicial review of denial, including the state court, board, commission or other lawful authority that rendered the decision.

(1) The reviewing court may, but is not required to, give deference to the decision of the lawful authority to deny the application for relief.

(2) In cases of denial by a lawful authority other than a State court, the reviewing court must have discretion to receive additional evidence necessary to conduct an adequate review.

(g) Documentation of granted relief must be submitted to the Kansas bureau of investigation. The Kansas bureau of investigation shall immediately cause the order to be entered into the appropriate state and federal databases.

(h) "Adjudicated as mental defective" is defined as provided in K.S.A. 59-2946.

(i) "authority" is defined as the state court, board, commission or other lawful authority.

(j) Due process is defined as:

(1) The applicant must have the opportunity to submit his or her own evidence to the lawful authority considering the relief application;

(2) An independent decision maker, other than the individual who gathered the evidence for the lawful authority acting on the application, shall review the evidence; and

(3) A record of the matter must be created and maintained for review.

Be it enacted by the Legislature of Kansas:

K.S.A. 21-3436 is hereby amended to read as follows:

Chapter 21. Crimes and Punishments

Part II. Prohibited Conduct

Article 34. Crimes Against Persons

21-3436. Inherently dangerous felony; definition

(a) Any of the following felonies shall be deemed an inherently dangerous felony whether or not such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto, as not to be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:

- (1) Kidnapping, as defined in K.S.A. 21-3420, and amendments thereto;
- (2) aggravated kidnapping, as defined in K.S.A. 21-3421, and amendments thereto;
- (3) robbery, as defined in K.S.A. 21-3426, and amendments thereto;
- (4) aggravated robbery, as defined in K.S.A. 21-3427, and amendments thereto;
- (5) rape, as defined in K.S.A. 21-3502, and amendments thereto;
- (6) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amendments thereto;
- (7) abuse of a child, as defined in K.S.A. 21-3609, and amendments thereto;
- (8) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and amendments thereto;
- (9) burglary, as defined in K.S.A. 21-3715, and amendments thereto;
- (10) aggravated burglary, as defined in K.S.A. 21-3716, and amendments thereto;
- (11) arson, as defined in K.S.A. 21-3718, and amendments thereto;
- (12) aggravated arson, as defined in K.S.A. 21-3719, and amendments thereto;
- (13) treason, as defined in K.S.A. 21-3801, and amendments thereto;
- (14) any felony offense as provided in K.S.A. 21-36a03, 21-36a05, or 21-36a06, and amendments thereto;
- (15) any felony offense as provided in K.S.A. 21-4219, and amendments thereto;
- (16) endangering the food supply as defined in K.S.A. 21-4221, and amendments thereto;

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(17) aggravated endangering the food supply as defined in K.S.A. 21-4222, and amendments thereto;

(18) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto; or

(19) aggravated endangering a child, as defined in subsection (a)(1) of K.S.A. 21-3608a, and amendments thereto.

(20) *Unlawful manufacturing of controlled substances as defined in K.S.A. 21-36a03.*

(b) Any of the following felonies shall be deemed an inherently dangerous felony only when such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto, as to not be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:

(1) Murder in the first degree, as defined in subsection (a) of K.S.A. 21-3401, and amendments thereto;

(2) murder in the second degree, as defined in subsection (a) of K.S.A. 21-3402, and amendments thereto;

(3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-3403, and amendments thereto;

(4) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto;

(5) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-3411, and amendments thereto;

(6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto; or

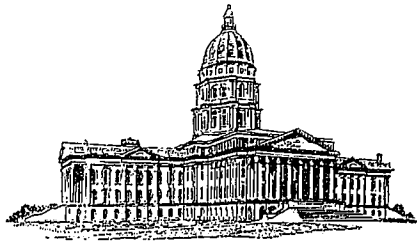
(7) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-3415, and amendments thereto.

(c) This section shall be part of and supplemental to the Kansas criminal code.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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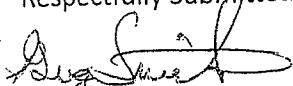
The purpose of HB 2032 is to provide information to the citizens of each Kansas County in regards to the number of criminal cases filed, dismissed, prosecuted, entered into a plea bargain agreement or entered into a diversion agreement by the district or county attorney. This information is needed by the voters of each county to evaluate, at least in part, the effectiveness of their elected district or county attorney. Currently there no central repository that collects this information so that voters can evaluate it. It also allows evaluation of public safety issues in a county by interested parties.

District and county attorneys are elected officials. Transparency is needed between those elected and the folks that elect them. The activities of district or county attorney offices should be readily available to the public. Other elected officials in the state have a public record of authored legislation, resolutions and votes that the public can access and use to evaluate these officials. State legislators can be evaluated utilizing the KLISS website, for example. The collection of criminal case data stored in a central location, such as the webpage of the Kansas Attorney General, makes evaluation of district and county attorney offices possible.

The fiscal note for this bill shows no costs incurred to the state. It does mention that some smaller counties may incur expenses publishing the monthly activities of their district or county attorney offices. However, the intent of this bill is to provide information to citizens, not to increase cost. In fact, no portion of the bill requires independent publication of the data. It only requires the data to be published on the Attorney General's website. Any other publication source of the data would be a voluntary action by a county.

This information will help business owners, citizens, prospective business owners and entrepreneurs evaluate public safety issues for a county. The access to information by the public can only improve the political process in Kansas by allowing voters to educate themselves and make an informed decision at the voting booth. I encourage the committee to recommend this bill be favorably passed out of committee

Respectfully Submitted,


Greg Smith

House Corrections and Juvenile Justice
Committee
2011 Session
Date 1-31-11
Attachment # 4

**Testimony of Grier Weeks
Executive Director
National Association to Protect Children (PROTECT)**

**Before the Standing Committee on Corrections and Juvenile Justice
Kansas House of Representatives**

Concerning House Bill 2032

January 31, 2011

Chairman Colloton, Vice Chairman Kinzer and distinguished members of the Committee, thank you for the opportunity to submit written testimony in support of House Bill 2032.

I would like to briefly provide you with background on PROTECT and our experience on the issue of transparency and accountability in the justice system. PROTECT was founded in 2002 as a bipartisan, pro-child, anti-crime membership association. We have members in all 50 states. We have worked to successfully pass legislation in seven states and in Congress. I believe that our experience working with lawmakers, prosecutors, crime victims and many others in such a wide variety of state systems has given us a unique perspective the issue before you today.

More specifically, PROTECT has worked since 2005 on the issue of how you go about increasing transparency and accountability in the child protection and justice systems. We've worked with some of the toughest minds in America on this problem, including many prosecutors and former prosecutors. Last year, we succeeded in getting innovative "sunlight" laws passed in Virginia and Tennessee. We've also consulted on this issue with the Arkansas legislature and worked with legislators from California to New York.

As elected representatives of the people of Kansas, each one of you is subject to a great deal of transparency in the work you do. And each one of you is subject to even more accountability. Sometimes what passes for "accountability" is fair, sometimes it's not. But you ran for office, you took an oath to serve, and you most likely haven't had a day since when you weren't being scrutinized, analyzed or criticized.

Your colleagues in the Kansas Senate are in the same boat. Kansas' Congressional delegation is no different, nor are your two U.S. Senators. In fact, you'd be hard-pressed to find an elected official from the smallest town or county government who doesn't bear the bright light of accountability for the decisions he or she makes.

But here is an amazing thing. There is one elected representative in Kansas, just as in every other part of the United States, who is different from all the public servants I have mentioned. There is one office—and I think you will agree it is a very powerful office—that is pretty well exempt when it comes to the whole transparency and accountability obligation. You see these colleagues all the time at community events, campaign bar-b-ques

and even calling on you here at the legislature. Many of them ran for higher office and are now your fellow House members. Maybe you were once among their numbers yourself.

They are the District Attorneys.

The vast majority of voters have no real understanding of what a District Attorney does. They have no real information about performance in office that could be used to evaluate their own DA.

In fact, District Attorneys have it even better than that. Not only are they immune to the scrutiny other elected officials must face, they even get to write their own report cards. Prosecutors typically run for re-election on their "conviction rates," an always impressive statistic that simply shows you how often they won the statistically small number of cases that they chose, unilaterally, to take to trial... because they were fairly certain they could win. This explains why District Attorneys are universally among the most "safe" of all elected officials when re-election rolls around.

A DA running on her conviction rate would be like a state representative going years without any real review and then reporting back to the voters that he introduced 12 bills and got 11 passed. Imagine doing that, with no reporter ever digging into what important bills you failed to support, what you opposed, how effective you were along the way and how much the bills you got passed were watered down.

I want to emphasize here that I am not only staunchly pro-prosecution, but that I also believe District Attorneys are among the most important elected officials we have in America. They might do their work out of public sight. They might not be the biggest wheels in state or national politics. But if you are a ten-year old kid who's been abused or the mother of a rape victim, the District Attorney can be the most important politician in the world.

For these reasons, Representative Smith's legislation is extremely important. And because of Mr. Smith's own terrible loss, I hope you will join me in expressing thanks and respect to him for choosing this subject for legislative action.

I am sad to say that I know many parents who have lost children to abduction and murder. I have always believed that none of us could blame them if they spent the remainder of their lives focusing solely on crimes like the one that happened to them. Some do, even though abductions and murders are extremely rare compared to intra-familial child abuse or other sexual assaults.

But Representative Smith did not bring you a "stranger-danger" bill or a simple enhancement to criminal penalties. He didn't bring you something that might make him feel better but not necessarily save another child.

I am sure that Representative Smith's experience as a law enforcement professional taught him what most people don't really understand: the Kansas legislature can pass all the laws

it wants, but none of them will matter if they are not used. The things that matter the most in the child protection and justice systems are, unfortunately, the things that go on behind the scenes. This is why the bright sunlight of accountability is so necessary.

If you step back and look at the entire child protection and justice system, you could look at it as a giant funnel. At the top, there are a large number of reports of child abuse and assaults that come in to child protection agencies and police departments.

Many are immediately screened out as invalid and never even investigated. Of those that are investigated, a large percentage will not be founded or charged and will be dropped. Of those that are charged, many will be deemed unsuitable for prosecution. Of those that are prosecuted, most will be plea-bargained. While plea bargaining is often necessary and not in and of itself a bad thing, there is too often a good reason they are called "bargains."

This relentless process of attrition means that the vast majority of child abuse, rape and other crimes against persons—even if they are reported—will not result in criminal convictions. Many go in the top of the funnel, but few come out the other end.

If you'll indulge me in this metaphor just one minute longer, what's important is that the "funnels" for each county in your state have different shapes, reflecting the wide variety of practices, competencies and performance of different agencies and actors at each stage of the process. At the prosecution stage, this disparity can take a variety of forms.

In one county, the prosecutor might be brave, energetic and deeply concerned about bringing every case he can to justice. These DA's are willing to take risks, including the risk of losing cases. They will encourage law enforcement to file charges and refer cases. They'll try cases they might lose, and defense lawyers will get the message that these DAs will not give away the store just to avoid a risky or time-consuming trial.

In the next county over, you might see a very different climate. There, the DA is risk-averse and unenergetic. He's made it abundantly clear to law enforcement not to bring him cases that aren't slam-dunks, and if he's a big enough problem, they'll probably just quit trying. (If you can't vividly picture this, ask a cop to paint the picture for you.) Those cases this DA does get, he'll be looking to dispose of quickly. And the plea bargains will be real bargains.

It is extremely important to give citizens access to the information they need to see these differences. Families and communities depend on it. Children's safety depends on it. Lives depend on it.

And it's only fair, good government.



Kansas County & District Attorneys Association

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January 31, 2011

**Testimony Regarding HB 2032
Submitted by Charles E. Branson, District Attorney, 7th Judicial District
On Behalf of the Kansas County and District Attorneys Association**

Madame Chairperson and Members of the Corrections and Juvenile Justice Committee:

My name is Charles E. Branson. I am the District Attorney for the 7th Judicial District comprising entirely of Douglas County, Kansas. I am here to testify on behalf of the Kansas County and District Attorney Association (KCDA) and my office in opposition to H.B. 2032.

H.B. 2032 seeks to amend K.S.A. 19-702 and 22a-104 dealing with the duties of county and district attorneys. Specifically the bill requires that each county and district attorney file a monthly report with the State's Attorney General regarding the number and type of cases filed in adult and juvenile criminal proceedings along with dispositions.

The KCDA's opposition is two fold. First, the burden of such accounting on the offices of county and district attorneys across the state would be overly burdensome to current staff. Most offices in the State are working under reduced budgets as a result of the past and current economic turmoil in the State. Staffs are simply spread thin and do not have the capacity for additional clerical work.

Most office use some form of case software for generation of forms and pleadings. For example the Douglas County District Attorneys Office uses Full Case by Justice Systems, Inc. This system was touted as the new state wide standard and select district courts and county and district attorney offices started implementing this system in 2004. Although a useful system with many features, it lacks easily customizable reports. To customize reports we often have to write query's that will mine the system's database for the information that is sought; sometimes an easy task, sometimes a complex undertaking.

Currently, a report that could satisfy the proposed bill is not part of the system. Offices would have two choices to try and satisfy the reporting requirements of this bill. One, hand tabulation of cases as cases are charged and resolved. Two, writing computer queries to retrieve the statistical information for their respective software system. The first option is time consuming and will require some one prepare an appropriate report at the end of the month. The second option will require, in most cases, hiring new staff that is trained and capable of composing the

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queries necessary to complete the monthly reports and make adjustments for software updates and changes in the system that occur over time.

Continuing with the Douglas County District Attorney's Office as my sample specimen; option one is not realistic. Our office is currently at or near maximum workload capacity for our clerical staff. Option two would require the hiring of additional staff that would result in a budgetary increase of at least \$60,000 for wages and fringe benefits and necessary equipment and accommodations. If the county commission would not agree to fund an additional staff person then office production would have to be decreased to accommodate the new reporting requirements.

The second concern that raises opposition to H.B. 2032 is the potential for duplication of efforts. Statistics are currently maintained by the Office of Judicial Administration (OJA). OJA completes the Annual Report on the Courts of Kansas as required by Supreme Court Rule No. 1.03(c).

The Annual Report on the Courts of Kansas (Annual Report) provides a summary of felony and misdemeanor caseload for the entire State and reports the criminal case filing and disposition by judicial district. The criminal case filing report includes number of felonies, misdemeanors and appeals filed in each judicial district. In addition, the report includes the number cases pending and percentage of cases over 12 months old. *See attached page 1 of Criminal Case Filings by Judicial District, Analysis of Criminal Caseload Activity Year Ending June 30, 2010, By County, By District from the Annual Report of the Courts of Kansas.*

The Annual Report also provides the disposition of the various cases during the reporting period. Dispositions are reported by Guilty Pleas, Dismissals, Deferred Adjudication/Diversions, Trial to Court, Trial by Jury, and other. Trial verdicts are also reported by Trial Convictions, Guilty Pleas after start of Trial, Trial Acquittals, and Mistrials. *See attached page 1 of Criminal Case Disposition by Judicial District, Analysis of Criminal Caseload Activity Year Ending June 30, 2010, By County, By District, from the Annual Report of the Courts of Kansas.*

The Annual Report also includes juvenile offender filing and disposition by county and district. *See attached page 1 of Formal Juvenile Offender Caseload Activity, Analysis of Formal Juvenile Offender Caseload Activity Year Ending June 30, 2010, By County, By District, from the Annual Report of the Courts of Kansas.*

Although the above referenced reports are not 100% accurate from district to district, they contain much of the information sought by H.B. 2032.

For the above stated reasons, KCDA respectfully requests that no action be taken on H.B. 2032.

Respectfully,

Charles E. Branson

ANALYSIS OF CRIMINAL CASELOAD ACTIVITY
YEAR ENDING JUNE 30, 2010, BY COUNTY, BY DISTRICT

	FILINGS				PENDING			
	Felonies	Misde- meanors	Appeals	Total	FELONIES		MISDEMEANORS*	
					Total Pending	% over 12 mos.	Total Pending	% over 12 mos.
<u>District 1</u>								
Atchison	194	258	0	452	26	0.0%	8	0.0%
Leavenworth	380	333	1	714	122	4.1%	88	2.3%
Total	574	591	1	1,166	148	3.4%	96	2.1%
<hr/>								
<u>District 2</u>								
Jackson	158	300	0	458	28	0.0%	78	7.7%
Jefferson	66	123	0	189	35	8.6%	37	13.5%
Pottawatomie	135	346	0	481	56	3.6%	41	2.4%
Wabaunsee	74	1	0	75	15	0.0%	0	0.0%
Total	433	770	0	1,203	134	3.7%	156	7.7%
<hr/>								
<u>District 3</u>								
Shawnee	1,432	1,101	26	2,559	296	1.4%	284	1.1%
<hr/>								
<u>District 4</u>								
Anderson	56	55	0	111	29	31.0%	42	69.1%
Coffey	46	48	0	94	20	0.0%	9	0.0%
Franklin	181	193	0	374	81	3.7%	69	1.5%
Osage	77	191	0	268	31	16.1%	50	14.0%
Total	360	487	0	847	161	10.6%	170	21.8%

*Includes appeals pending.

ANALYSIS OF CRIMINAL CASELOAD ACTIVITY
YEAR ENDING JUNE 30, 2010, BY COUNTY, BY DISTRICT

	<u>DISPOSITIONS</u>						<u>TRIAL VERDICTS</u>				
	Guilty Pleas	Dis- missals	Adjud./ Diversion	Trials to Court	Trials by Jury	Other	Total	Trial Convicts.	Glty Plea after Start	Trial Acqts.	Mis- trials
<u>District 5</u>											
Felonies											
Chase	7	4	3	0	0	0	14	0	0	0	0
Lyon	218	52	26	2	11	8	317	7	0	5	1
Total Felonies	225	56	29	2	11	8	331	7	0	5	1
Misdemeanors											
Chase	13	2	12	0	0	0	27	0	0	0	0
Lyon	134	38	71	6	1	12	262	5	0	2	0
Total Misdemeanors	147	40	83	6	1	12	289	5	0	2	0
<u>District 6</u>											
Felonies											
Bourbon	100	23	7	0	4	2	136	3	0	1	0
Linn	86	11	5	0	0	1	103	0	0	0	0
Miami	65	8	2	0	1	0	76	1	0	0	0
Total Felonies	251	42	14	0	5	3	315	4	0	1	0
Misdemeanors											
Bourbon	82	76	87	2	0	7	254	2	0	0	0
Linn	81	25	64	0	0	0	170	0	0	0	0
Miami	56	48	55	0	0	3	162	0	0	0	0
Total Misdemeanors	219	149	206	2	0	10	586	2	0	0	0
<u>District 7</u>											
Douglas											
Felonies	297	86	53	0	9	19	464	8	0	1	0
Misdemeanors	640	221	318	6	11	32	1,228	14	0	3	0
<u>District 8</u>											
Felonies											
Dickinson	117	10	2	1	4	0	134	4	0	1	0
Geary	446	119	26	1	6	3	601	3	0	4	0
Marion	22	11	0	0	3	0	36	3	0	0	0
Morris	33	4	8	0	1	0	46	1	0	0	0
Total Felonies	618	144	36	2	14	3	817	11	0	5	0
Misdemeanors											
Dickinson	102	14	28	2	1	0	147	1	0	2	0
Geary	104	45	23	2	1	1	176	2	1	0	0
Marion	31	20	10	0	0	3	64	0	0	0	0
Morris	18	3	7	0	0	0	28	0	0	0	0
Total Misdemeanors	255	82	68	4	2	4	415	3	1	2	0

ANALYSIS OF FORMAL JUVENILE OFFENDER CASELOAD ACTIVITY
YEAR ENDING JUNE 30, 2010, BY COUNTY, BY DISTRICT

	FILINGS	DISPOSITIONS						Total
	Juvenile Offender	Dismsd/ Non Adjud.	Adjud. by Plea/ Stip.	Deferred Adjud./ Diversion	Adjud. by Trial	Trans. to Adult Court	Other	
<u>District 1</u>								
Atchison	127	24	88	0	10	0	4	126
Leavenworth	286	101	92	77	8	0	23	301
Total	413	125	180	77	18	0	27	427
<u>District 2</u>								
Jackson	74	23	46	20	0	0	6	95
Jefferson	41	6	25	6	0	0	0	37
Pottawatomie	121	15	20	63	0	0	1	99
Wabaunsee	35	5	9	15	0	0	0	29
Total	271	49	100	104	0	0	7	260
<u>District 3</u>								
Shawnee	545	217	389	0	15	4	17	642
<u>District 4</u>								
Anderson	32	8	11	10	0	0	0	29
Coffey	22	0	6	12	1	0	1	20
Franklin	82	9	42	13	0	0	2	66
Osage	73	11	21	15	0	0	0	47
Total	209	28	80	50	1	0	3	162
<u>District 5</u>								
Chase	5	3	3	2	0	0	0	8
Lyon	133	39	76	31	0	0	1	147
Total	138	42	79	33	0	0	1	155
<u>District 6</u>								
Bourbon	35	21	13	13	0	0	3	50
Linn	30	3	4	14	0	0	2	23
Miami	76	5	35	26	0	0	4	70
Total	141	29	52	53	0	0	9	143
<u>District 7</u>								
Douglas	298	73	165	55	6	0	15	314
<u>District 8</u>								
Dickinson	145	18	37	81	7	0	5	148
Geary	306	65	123	89	17	1	8	303
Marion	46	27	22	14	0	0	6	69
Morris	40	3	15	15	0	0	1	34
Total	537	113	197	199	24	1	20	554
<u>District 9</u>								
Harvey	94	35	140	0	2	0	5	182
McPherson	103	15	37	48	2	0	1	103
Total	197	50	177	48	4	0	6	285
<u>District 10</u>								
Johnson	2,562	422	809	993	25	8	158	2,415