Approved: 5-11-11
Date

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 February 3, 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:
Steve Obermeier, Senior Deputy District Attorney, Johnson County

Others attending:
See attached.

Chairperson Colloton called the meeting to order and opened the floor for bill introductions and stated she had a bill request for a bill regarding the "bath salts" issue.
Representative Brookens moved the request as a committee bill. Representative Pauls seconded. Motion carried.

Chairperson Colloton made a second request for a bill abolishing the death penalty.
Representative Roth moved the request. Representative McCray-Miller seconded. Motion carried. With one "no" vote from Representative Greg Smith.

Chairperson Colloton opened the hearing on **HB 2118-Amending the requirements of offender appearance bonds and supervision costs.** She called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill to the Committee. The following testified:

- Steve Obermeier, Senior Deputy District Attorney, Johnson County, appeared as a proponent of the bill. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 1)

- Judge Tatum, Johnson County, presented "written only" testimony as an opponent of the bill. A copy of his testimony can be found in its entirety in the offices of Legislative Administrative Services. (Attachments 2,3,4)

A short question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2118** and opened the hearing on **HB 2008-Creating a special sentencing rule for identity theft and identity fraud.** The following testified on the bill:

- Stephen M. Howe, District Attorney, Johnson County testified as an opponent. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 5)

- Ernest Kutzley, AARP, "written only" proponent. His testimony can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 6)

A question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2008.**

Chairperson Colloton then reopened the floor for bill introductions. She recognized Rick Kagen, National Association for Mental Illness ("NAMI"), who made a request for a bill addressing mental health diversions.

Representative McCray-Miller moved the request as a committee bill. Representative Meier seconded. After a short discussion, motion carried.

Chairperson Colloton opened the hearing on **HB 2009**.-**Defining the crime of home improvement fraud and providing penalties.** The following testified on the bill:

- Steve Howe, District Attorney, Johnson County testified as an opponent. He presented written testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 7)

- There was "written only"proponent testimony from Ernest Kutzley, AARP, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 8)

A short question and answer session followed.

With no others to testify or speak to the bill, she closed the hearing on **HB 2009** and opened the floor for the consideration of **HB 2023-Amending the drug schedule by adding additional unlawful substances. Representative Brookens moved to pass HB 2023 out favorably with the technical changes needed by the Revisors. Representative Goodman seconded. Motion carried.**

Chairperson Colloton adjourned the meeting with the next meeting February 4, 2011 at 12:00 pm in room 144-S.

CORRECTIONS & JUVENILE JUSTICE
GUEST LIST

DATE: 2-3-11

NAME	REPRESENTING
Kevin Baron	KPBBA
Patrick Vegelsberg	KCDAA
Travis Lowe	Little & Gov't Relations
Martha Sue Smith	KMHA
DAVID HUTCHINGS	KBI
SEAN MILLER	CAPITOL STRATEGIES
Donna Schneweis	AT
Ed Klumpp	KACP/KSA/KPOA
Sarah Fertig	KSC
Mark Gleason	Judicial Branch
Melissa Ward	Hein Law Firm

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY
Steven J. Obermeier, Senior Deputy District Attorney

February 3, 2011

Honorable Pat Colloton, Chair
House Corrections and Juvenile Justice Committee
Kansas Statehouse, Topeka, Kansas

Re: House Bill 2118

Members of the Committee:

The Kansas Court of Appeals recently ruled that, notwithstanding a sentencing judge's broad discretion in ordering conditions of probation, "the exercise of that discretion cannot thwart the clear intent of the Legislature expressed in a specific statute." *State v. Gardner*, 44 Kan.App.2d __, __ P.3d __, 2011 WL 117658 (2011). The "thwarted" statute at issue, K.S.A. 2009 Supp. 22-2802, permits a judge to order a person released on bond to "to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed $15 per week of such supervision." But the Court of Appeals ruled that "the district court does not have discretion to ignore the [$15 per week] limit on costs imposed by the Legislature" and may not order the entire payment of costs associated with pre-trial bond supervision as a condition of probation. This, even though K.S.A. 21-4610(c)(7) authorizes a judge to order a probationer to "pay a fine or costs, applicable to the offense."

Under the Court of Appeals' interpretation, the government would have to absorb the bond supervision costs exceeding $15 per week. This will result in more criminal defendants remaining in jail during the pendency of their cases. The holding of *State v. Gardner* is not what the legislature intended to occur. However, the current attitude of the appellate courts, as the Kansas Supreme Court recently stated in *State v. Horn*, 291 Kan. 1, 12, 238 P.3d 238 (2010), is:

> We recognize that the result we reach today is unlikely to be what the legislature would have intended to occur. However, " '[n]o matter what the legislature may have really intended to do, if it did not in fact do it, under any reasonable interpretation of the language used, the defect is one which the legislature alone can correct."

House Bill 2118 will accomplish this legislative intent by requiring probationers, as a condition of probation, to reimburse the county or State for **all** of the costs associated with their bond supervision. Thank you for considering its passage.

Respectfully,

Steven J. Obermeier

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-3-11
Attachment # 1

JOHNSON COUNTY COURTHOUSE, P.O. BOX 728, OLATHE, KANSAS 66051-0728
PHONE NUMBER: (913) 715-3057 FAX NUMBER: (913) 715-3050

(2)

STATE OF KANSAS
TENTH JUDICIAL DISTRICT

STEPHEN R. TATUM
DISTRICT JUDGE, DIVISION 5
COURTHOUSE
OLATHE, KANSAS 66061

KRISTIE HUDSON
ADMINISTRATIVE ASSISTANT DIVISION 5
COURTHOUSE
OLATHE, KANSAS 66061

February 3, 2011

Honorable Pat Colloton, Chair
House Corrections and Juvenile Justice Committee
Kansas Statehouse

Re: HB 2118

Members of the Committee:

In 2001, the Kansas Legislature passed legislation (KSA 22-2802 sub. 12) specifically allowing the Court to order a defendant to pay $5 per week for the cost of bond supervision. Since that time, the Kansas Legislature has approved subsequent increases with the current rate of up to $15 per week approved in 2009.

The 10th Judicial District has an extensive history in the use of bond supervision as a tool in the pretrial release of defendants. Bond supervision was originally used most frequently on domestic violence cases. However, in November of 2004, the criminal judges approved more extensive use of bond supervision for other criminal cases. The 2010 caseload numbers indicate a monthly average of 524 defendants on pretrial release. These cases are supervised by a staff of 5.5 county employees housed in our Court Services Department and are funded through the collection of the bond supervision fees. In addition, the Johnson County Department of Corrections funds two county employees to provide initial bond screening when defendants are booked into the Johnson County Adult Detention Center. I believe that pretrial supervision is a vital tool for judges when determining bond in criminal cases. Also, given that our jail is facing serious over-crowding issues, bond supervision allows for the court to consider release of low risk defendants knowing that they will be supervised during the pendency of the case.

HB 2118 was introduced as result of the recent Kansas Court of Appeals ruling Kansas v. Gardner, in which the court ruled that the total of all bond supervision costs could not exceed $15.00 per week. Clearly, this was not the intention of the legislation as it was proposed in 2001 through the efforts of Johnson County justice officials. Most defendants on pretrial release are required to complete many conditions to be allowed released on bond. These conditions may include drug testing at a rate of $18 per screen, house arrest at a rate of $14 to $16 per day, SCRAM (24 alcohol detection at the rate of $11 per day, and/or completion of evaluations and related treatment recommendations. Knowing all these costs could be incurred, it is unrealistic to implement a

pretrial program limited to a total of $15 dollars per week in costs. It was the original intention of the legislation for the bond supervision fees to be applied to the direct cost of the supervision personnel.

The 10th Judicial District is finding success in this program. Specifically, the additional supervision while on bond places requirements on the offender that are not typically enforced by traditional bonds. For example, a defendant who is placed on bond supervision for a DUI charge may have a condition prohibiting consumption of alcohol and 24/7 alcohol detection testing. Requirements for employment and reporting would also be in place. In domestic violence cases a defendant may have a no contact condition with the victim requiring supervision. Conditions are tailored to the specific issues presented by the defendant, as determined by the bond screening process. The defendant then is required to report to the assigned court staff to insure compliance with those conditions. The defendant may also be referred to counseling programs and be on the road to completing many probation requirements before probation is ordered.

Your support of this legislation is needed to modify the existing statute to clarify that the costs assessed for bond supervision do not encompass all costs associated with bond supervision. The proposed legislation will allow all judicial districts in Kansas who provide pretrial services to continue in their efforts that include many program components to assist the courts in providing a higher level of community protection while defendents are released on bond.

Thank you for your consideration.

Stephen R. Tatum
District Court Judge
10th Judicial District

No. 103,312

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

GLEN GARDNER,
Appellant.

SYLLABUS BY THE COURT

1.

According to K.S.A. 2009 Supp. 22-2802(15), the district court can only order a person to pay a maximum of $15 each week for pretrial release supervision costs.

2.

When general and specific statutes conflict, the specific statute controls unless it appears the legislature intended otherwise.

3.

In criminal cases, the district court does not have discretion to ignore the limits on costs specifically imposed by the legislature and order a greater amount to be paid by the defendant as a condition of probation.

Appeal from Johnson District Court; SARA WELCH, judge. Opinion filed January 14, 2011. Vacated and remanded with directions.

Courtney T. Henderson, of Billam & Henderson, LLC, of Olathe, for appellant.

Ramsey A. Olinger, legal intern, *Steven J. Obermeier*, assistant district attorney, *Stephen M. Howe*, district attorney, and *Steve Six*, attorney general, for appellee.

Before HILL, P.J., LEBEN and STANDRIDGE, JJ.

HILL, J.: Under Kansas law, a judge has extensive discretion to order a defendant to complete certain tasks as a proviso of probation. But the exercise of that discretion cannot thwart the clear intent of the Legislature expressed in a specific statute. In other words, a judge cannot use his or her discretion, granted in a general statute, to ignore the clear commands stated in a specific statute. Here, as a condition of probation, the sentencing court ordered Glen Gardner to pay all $121 of the costs of an alcohol monitor he was required to wear as a condition of release from jail before trial. According to K.S.A. 2009 Supp. 22-2802(15), the district court can only order a person to pay a maximum of $15 each week for pretrial release supervision costs—or $60 total in Gardner's case. We hold the district court does not have discretion to ignore the limit on costs imposed by the Legislature and, therefore, vacate the order assessing costs against Gardner. We remand the matter with directions to impose the cost amount as limited by the Legislature.

After accepting his guilty plea, the court placed Gardner on probation.

There is no dispute about the history of this case. The State originally charged Gardner with one count of criminal threat and one count of domestic battery. One of the pretrial release conditions imposed on Gardner required him to wear an alcohol monitor. Gardner pled guilty to one count of domestic battery in violation of K.S.A. 2009 Supp. 21-3412a and the State dismissed the criminal threat charge.

The court sentenced Gardner to serve 112 days in the county jail, suspended his incarceration, and placed him on 12 months' probation. In granting probation, the district court ordered that Gardner—among other things—pay $121 for the cost of the alcohol monitor.

Indeed, at sentencing, Gardner's counsel asked the court to waive the costs and fees associated with the case. Defense counsel noted that Gardner was unemployed and unable to work and is the primary caretaker of his epileptic son—whose state benefits had been cut. In response, the court pointed out that Gardner had not paid the alcohol monitor cost of $120. Defense counsel responded that (1) Gardner had paid some of the amount due, and (2) the defense believed the court had authority to waive the cost because there was a weekly limit for such costs set by K.S.A. 2009 Supp. 22-2802(15).

The court rejected this argument: "I'm imposing the amount. If he wants to appeal that, that's fine. That was a privilege to remain on [the alcohol monitor] and not in custody which he chose to accept. I'm imposing the full amount today as a condition of probation, which I believe today is $120." In the order of probation, the district court stated that Gardner must pay $121 for the cost of the alcohol monitor.

The court had no discretion to order Gardner to pay the full amount of the monitor expense.

In this appeal, Gardner claims the district court erred in ordering him to pay $121 for the cost of the alcohol monitor. In Gardner's view, the district court can only order a person to pay a maximum of $15 per week for supervision costs according to K.S.A. 2009 Supp. 22-2802(15). Noting he was released and monitored for 4 weeks, Gardner claims the maximum he can be ordered to pay is $60. The State counters that Gardner was not ordered to pay the cost of the monitoring as a condition of release, but as a condition of probation. Thus, the State argues that K.S.A. 21-4610, a statute that gives the district court broad discretionary power to impose probation conditions, controls and K.S.A. 2009 Supp. 22-2802(15) does not apply.

Clearly, this appeal involves the interpretation and application of two statutes. Thus, we will exercise unlimited review over these questions of law. See *State v. Cott*, 288 Kan. 643, 645, 206 P.3d 514 (2009).

Our law, K.S.A. 2009 Supp. 22-2802, governs the release of persons charged with committing a crime and the district court's authority to impose conditions of release. The statute states that the district court may impose any condition deemed reasonably necessary to assure a person's appearance at the preliminary examination or trial. K.S.A. 2009 Supp. 22-2802(1)(c). The statute further provides that the court "may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond *in an amount not to exceed $15 per week of such supervision.*" (Emphasis added.) K.S.A. 2009 Supp. 22-2802(15).

What about (2) amended to include alcohol

In turn, K.S.A. 21-4610 governs the district court's authority to impose probation conditions. The statute states that the court may impose any conditions of probation that it deems proper, including the requirement that the defendant pay a fine or costs applicable to the offense. K.S.A. 21-4610(c)(7).

The district court ordered Gardner to wear the monitoring device as a condition of release on bond, not as a condition of probation. When the court later ordered Gardner to pay for the cost of the device, it essentially required him to pay for a cost "associated with the supervision of the conditions of release"—which is governed by K.S.A. 2009 Supp. 22-2802(15). In enacting 22-2802(15), our legislature placed a specific cap on the amount that a person can be required to pay for supervision costs incurred while on release.

A fundamental rule of statutory construction controls this issue. Our rule states that when general and specific statutes conflict, the specific statute controls unless it appears the legislature intended otherwise. *State v. Casey*, 42 Kan. App. 2d 309, 319, 211

P.3d 847 (2009). Obviously, K.S.A. 2009 Supp. 22-2802(15) deals specifically with what a court can order a person to pay toward these costs. The general statute, K.S.A. 21-4610(c)(7), deals with the general subject of the payment of fines and costs. The specific statute prevails here.

To rule otherwise would mean that a court could ignore the clear intent of the legislature. The public policy for pretrial release is stated in K.S.A. 22-2801: "to assure that all persons, regardless of financial status, shall not needlessly be detained pending their appearance to answer charges." We hold the legislature meant what it said. There is a limit of $15 a week on all such pretrial release costs. The district court's broad discretion could not overcome this limit.

We vacate the cost order in this case and remand the matter to the district court to impose an order that reflects the limits placed by the legislature.

From: Obermeier, Steve, DAT <Steve.Obermeier@jocogov.org>
To: 'patpatkat@aol.com' <patpatkat@aol.com>; 'pat.colloton@house.ks.gov' <pat.colloton@house.ks.gov>
Cc: Tatum, Stephen, DCA <Stephen.Tatum@jocogov.org>
Subject: Judge Tatum's Proposed Legislative Fix for State v. Gardner
Date: Fri, Jan 21, 2011 2:00 pm

Dear Representative Colloton,

District Judge Stephen R. Tatum contacted me yesterday with the following proposed language in response to last Friday's Court of Appeals ruling in State v. Gardner, Appeal No. 103312 (Kan. App. Jan. 14, 2011) http://www.kscourts.org/Cases-and-Opinions/opinions/CtApp/2011/20110114/103312.pdf . His intent is to address the unanswered question in Gardner, namely, does the $15 apply only to bond supervision or to other expenses that can be associated with conditions of bond.

Judge Tatum's proposed changes to 22-2802 are in italics.

K.S.A. 22-2802 (15)

The magistrate may order the person to pay for ~~any~~ costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed $15 per week of such supervision. *The costs ordered under this subsection are to be used to pay for bond supervision staff to monitor defendants who are placed on bond supervision. Additional costs, such as drug and alcohol testing, drug and alcohol evaluations or treatment, or mental health evaluations or treatment, are separate and apart from the fee authorized for supervision and are not part of the bond supervision fee. The defendant shall be responsible for the cost of those additional conditions of bond imposed by the magistrate.*

I still think the amendment to K.S.A. 22-2802(15) should reference K.S.A. 21-4610, giving the sentencing court the authority to order the entire costs associated with bond supervision &/or testing, evaluation or treatment, subject to some wordsmithing by Shawn in the Office of the Revisor of Statutes.

Thank you,

Steve Obermeier
Senior Deputy District Attorney
Johnson County D.A.'s Office
Box 728
Olathe, KS 66051
(913) 715-3057

=

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-3-11
Attachment # 4

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

February 3, 2011

House Corrections and Juvenile Justice
Attention: Pat Colloton, Chairman
State Capitol, Room 167W
Topeka, Kansas 66612

Re: House Bill 2008

Dear Chairman Colloton,

Thank you for the opportunity to submit our written response in support of HB 2008.

Over the last several years, the Federal Trade Commission has reported that Identity Theft is the fastest growing crime in America. Many of you have probably heard from victims of these crimes and the impact it has had on their lives. It can include obtaining an individual's personal information, which, when compromised, can affect credit scores, the ability to obtain mortgages, car loans, etc. The earned wages by the perpetrator can result in a long and difficult process to convince the IRS that someone else generated this income. It can also cause disruption of unemployment or disability benefits as the government is notified of false earning wages under the victim's name. When the criminal commits crimes under the victim's name, it can result in criminal arrest WARRANTS. This has resulted in the unsuspecting victim being arrested. Collection efforts by the numerous retailers who are trying to collect on the credit accounts opened under victim's name or bad checks passed in victim's name has a collateral effect, which includes impact on job applications when potential employers run credit scores and do criminal history checks.

The effects of these crimes can linger for years as the information is passed from perpetrator to perpetrator. The methods used to gain this information are becoming more and more elaborate. Organized groups are the source of many of these acts. The economic impact on individuals and businesses reaches billions of dollars in the U.S. economy.

Under the current statute, career criminals can repeatedly commit these crimes and still obtain probation. They will never exceed a criminal history "E" under the current sentencing guidelines. Furthermore, there are no special rules for repeat offenders such as those that exist in the burglary, theft and forgery statutes. The identity theft statute and the impact of those crimes deserves to be distinguished from those who commit identity fraud.

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-3-11
Attachment # 5-1

JOHNSON COUNTY COURTHOUSE, P.O. BOX 728, OLATHE, KANSAS 66051
PHONE NUMBER: (913) 715-3000
FAX NUMBER: (913) 715-3050

This change in the identity theft statute would provide prosecutors and victims the opportunity to imprison these repeat offenders who continually victimize Kansans. These career criminals should not be afforded numerous chances at probation. This will give prosecutors the tools needed to protect the public from the fastest growing areas for organized crime.

We would ask this committee to support this bill as drafted. I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,

Stephen M. Howe
Johnson County District Attorney

S-2

AARP Kansas
555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

T 1-866-448-3619
F 785-232-8259
TTY 1-877-434-7598
www.aarp.org/ks

January 30, 2011

The Honorable Pat Colloton, Chair
House Corrections and Juvenile Justice Committee

Reference: HB 2008- ID Theft

Good afternoon Chairperson Colloton and members of the House Corrections and Juvenile Justice Committee. My name is Ernest Kutzley and I am the Advocacy Director for AARP Kansas. AARP represents the views of our more than 341,000 members in the state of Kansas. Please accept our written testimony in support of HB 2008.

Businesses and government alike can make use of today's technology to collect volumes of personal information about an individual's financial transactions, retail buying patterns, and use of telecommunications and medical services. The increasingly common incidents of fraudulent activities such as "phishing" (using spyware to gather personal information from a consumer's computer) and identity theft have heightened public apprehension about information privacy. In 2005 the Federal Trade Commission (FTC) estimated that 8.3million Americans were the victims of identity theft, resulting in the loss of billions of dollars for businesses and consumers.

According to a 2004 survey by Forrester Research, privacy and security concerns were so acute that 61 percent of consumers surveyed were reluctant to give credit card information online. Such concerns were a large reason for the lower participation rates among older Americans in some online commercial activities. An AARP survey found that 43 percent of respondents age 50 to 64 do "not at all" trust companies providing information or services on the Internet; only 19 percent either "mostly" or "completely" trust such companies.

Getting access to sensitive personal information as the result of a security breach is another area of growing concern. A 2006 AARP analysis of 244 known security breaches between January 2005 and May 2006 estimates that the names of 89.8 million people were potentially exposed to identity theft. And 40 percent of those breaches—involving the information of 50 million individuals—involved hackers or insiders specifically targeting the personal information contained in the breached data bases. Thirty-three states have passed laws requiring covered entities that maintain electronic personal information to advise consumers publicly of any computer security breaches that involve their personal information.

H. Corrections & Juvenile Justice Committee
2011 Session
2/3/11
Attachment 6-1

(Over)

AARP Kansas feels that:

- Legislation should strengthen protections against identity theft, for example, by enabling all consumers to place a security freeze on their credit files.
- States should strengthen protections against identity theft in areas not clearly preempted by federal law.
- Greater resources and training should be provided for state and local law enforcement to improve their response to victims and increase inter-jurisdictional cooperation in investigating identity crimes and apprehending perpetrators.
- States should allow victims to make reports of identity theft at convenient locations.
- States should enhance penalties for identity theft to encourage enforcement and prosecution.

Therefore, we respectfully request your support for HB 2008. We appreciate the opportunity to provide this testimony.

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

February 3, 2011

House Corrections and Juvenile Justice
Attention: Pat Colloton, Chairman
State Capitol, Room 167W
Topeka, Kansas 66612

Re: House Bill 2009
Dear Chairman Colloton,

Thank you for the opportunity to submit our written response in support of HB 2009.

Over the last 15 years, our office has seen a consistent pattern of fraud being perpetrated by unscrupulous home repair contractors. The vast majority of these victims are elderly citizens. These actions have a serious impact on the victims' largest investment, their home. The contractor will often do shoddy work, leave the home in disrepair and cause the homeowner to pay another contractor to fix the damage done by this offender. The ability to prosecute these perpetrators by using the criminal statutes, such as theft, is limited since the criminal intent requirement cannot be met when money was taken on a "future promise." For example, if you give me $5,000 to remodel my house and I tell you, "with your $5,000, I am going to purchase materials and supplies beginning next Monday." This is a future promise which prevents criminal prosecution.

The only other option to help victims is by attempting a civil action under the Consumer Protection Act. However, these actions result in limited outcomes. Once a default judgment is obtained against contractors, there is no way to enforce it and obtain restitution for the victims. Many times, the fraudulent contractors will change the name of the company and continue the criminal enterprise, or file bankruptcy and become judgment proof.

This bill gives prosecutors the leverage to force the contractors to repay the victims with the threat of jail time looming over their heads. History has shown that criminal prosecution provides the leverage needed to obtain the restitution and help reduce the likelihood of reoffending.

This type of criminal statute has been implemented in at least eight states. Those states are: New York, New Jersey, Maryland, Florida, Connecticut, Virginia, Ohio and Delaware. In each of these states, it has been an effective tool to insure justice for victims. This bill provides a meaningful way for victims of these crimes to be made whole, while holding these repeat offenders accountable for their actions.

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-3-11
Attachment # 7-1

JOHNSON COUNTY COURTHOUSE, P.O. BOX 728, OLATHE, KANSAS 66051
PHONE NUMBER: (913) 715-3000
FAX NUMBER: (913) 715-3050

We would ask this committee to support this bill as drafted. I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,

Stephen M. Howe
Johnson County District Attorney

7-2

JOHNSON COUNTY COURTHOUSE, P.O. BOX 728, OLATHE, KANSAS 66051
PHONE NUMBER: (913) 715-3000
FAX NUMBER: (913) 715-3050

AARP Kansas
555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

T 1-866-448-3619
F 785-232-8259
TTY 1-877-434-7598
www.aarp.org/ks

January 30, 2011

The Honorable Pat Colloton, Chair
House Corrections and Juvenile Justice Committee

Reference: HB 2009- Home Improvement Fraud

Good afternoon Chairperson Colloton and members of the House Corrections and Juvenile Justice Committee. My name is Ernest Kutzley and I am the Advocacy Director for AARP Kansas. AARP represents the views of our more than 341,000 members in the state of Kansas. Please accept our written testimony in support of HB 2009.

According to the Census Bureau, in 2004 Americans spent more than $215 billion on improvements to owner- and renter-occupied housing. Home repair is necessary for preserving both the safety and value of property. While most contracted home repairs are completed professionally and satisfactorily, tens of thousands of homeowners annually receive inadequate, unprofessional, or fraudulent home repair work.

Prevention of home improvement fraud is a critical concern for older homeowners, who are more likely than younger people to own a home, have no mortgage, and live in an older home that needs repair. Additionally, as homeowners age they are less likely to undertake home repairs themselves and more likely to require the services of a contractor. The latest American Housing Survey (2005) reports that 74 percent of homeowners age 75 and older who reported having home repairs done did not do the work themselves.

The financial and psychological effects of home improvement fraud can be severe. Older people may lose all or a significant part of their life savings and be left with shoddy or incomplete repairs and no legal resources or remedies. Licensing requirements in most states are inadequate. There are often no minimum standards with regard to a home contractor's skills, knowledge, or financial resources and no required personal background checks.

The lack of requirements for a written contract and for specificity in contract provisions frequently makes it impossible to determine what the homeowner and contractor agreed. In addition state enforcement agencies often lack sufficient authority and resources to tackle the sweeping nature of contractor fraud.

States should require that home improvement contractors are licensed, insured, and/or bonded. States should also require written home improvement contracts and specify required and prohibited contract provisions.

House Corrs JJ Committee
2-3-11
Attachment 8-1

Criminal penalties and civil remedies should be established to:

- provide consumers with a private right of action,
- establish a home improvement consumer recovery fund, and
- create protections for home improvement borrowers claiming contractor malfeasance or nonfeasance. This would safeguard consumers from deceptive practices when securing a mortgage or home equity loan to finance the transaction.

Therefore, we respectfully request your support for HB 2009. We appreciate the opportunity to provide this testimony.