

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 12:30 p.m. on February 11, 2011 in Room 144-S of the Capitol.

All members were present except:

Representative Goodman; Representative Roth; and Representative Wolf

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:

Detective Brown, Lawrence Police Department
Tim Madden, Chief Counsel, Kansas Department of Corrections
Stuart Little, Kansas Community Corrections Association

Others attending:

See attached.

Chairperson Colloton called the meeting to order and opened the hearing on **HB 2059-Requiring second-hand stores to verify identity of sellers and record such information.** The following testified as a proponent of the bill.

- Detective Brown, Lawrence Police Department. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 1)

A short question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2059** and opened the hearing on **HB 2061-Enumerating transferred intent as an element of state criminal law when the person acts with the requisite culpability but such person's actions affect a different object or person than intended.** The following testified as a proponent of the bill.

- Detective Brown, Lawrence Police Department. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 2)

A short question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2061** and opened the hearing on **HB 2062-Giving law enforcement officers permission to search people on probation, parole or postrelease supervision upon reasonable suspicion.** The following testified as a proponent of the bill.

- Detective Brown, Lawrence Police Department. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 3)
- Tim Madden, General Counsel, Kansas Department of Corrections. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 4)
- Stuart Little, Kansas Community Corrections Association presented "written only" copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 5)

Chairperson Colloton called the Committee's attention to the "written only" opponent testimony of Marc Bennett, Kansas County and District Attorneys' Association, which 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 2062** and opened the floor for consideration of **HB 2151-Concerning crimes; criminal procedure and punishment; relating to breach of privacy and blackmail.** Sean Ostrow, Office of the Revisor of Statutes, explained the bill to the Committee. **Representative Kinzer moved to report the bill out favorably. Representative Smith seconded. Motion carried.**

Chairperson Colloton recognized Representative McCray-Miller who requested the bill she requested regarding permissive sales tax be withdrawn.

Chairperson Colloton announced that Representative Frownfelter requested the bill he requested regarding additional tax fee charge on wire transfers be withdrawn from our Committee.

The meeting was adjourned at 3:00 pm with the next meeting scheduled for February 14, 2011 at 1:30 pm in room 144-S.

DATE: 2-11-11

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[illegible]

Testimony: HCR 2059-Operation of Secondhand Stores

Madam Chairman, Members of the Committee: HCR 2059 represents an opportunity to enable law enforcement help victims who have had their property stolen from them.

I wanted to explain to you a little about my background. I am married, the father of two and I have been a Lawrence Police Officer since 1991 and a Detective since 1994. Although the following testimony represents my (and many of my colleagues) experiences, they do not necessarily represent the governing body of the City of Lawrence. This testimony simply represents the experience of many who work in the area and deal with the every day and very real life issues this bill seeks to address.

Note: This bill is not intended to apply to organizations such as Good Will, Salvation Army, or Disabled American Veterans who do not purchase items for resale, but instead accept donations.

According to the Bureau of Justice Statistics about 11.7 million property thefts occurred in the United States in 2009. About 95.7 per 1,000 households experienced property thefts during this period. The National Institute of Corrections reported that in 2008 property crimes accounted for around 89.1% of the crime rate in Kansas; which is about 5% higher than the national average.

One of the issues facing law enforcement; which this bill aims to address, is the tracking of stolen property. Many of the current pawn laws address the purchasing of used and or second hand property for businesses defined as Pawn Stores. However, Craigslist, Ebay, and other retail outlets for used property have helped create a host of new businesses such as those that purchase and sell used games, game consoles, music, music devices such as popular iPods and other MP3 players etc. Some of these businesses do a great job of tracking the items they purchase, what they paid for the item, the serial number (if it has one) of the item they purchased and who they purchased the item from; with proper identification. On the other hand some of these businesses do not keep records of any kind and are reluctant to share any information they do collect about their transactions with law enforcement.

The main problem we are facing is the lack of documentation when it comes to solving auto and residential burglaries, which in some cases can involve a large number of crimes in a single night. The trend, in the burglaries over the last couple of years, is that the burglars take iPods, mp3 players, phones, GPS units, CDs, video games, backpacks containing text books and other items to second hand shops and sell the items far below what they are worth. In some instances businesses will buy these items for between \$3 and \$20, and then mark up the price to make a profit. Some of these businesses have paid \$50 for ten video games, which cost \$20 to \$50 per game. Most of the victims in these cases have

complained they cannot make an insurance claim because the total loss is under their deductible. Only the businesses and the burglars profit unless they are instructed to collect information on all transactions.

Currently several sets of burglars we have dealt with know which stores in town have the weakest recording systems or recording systems they can manipulate so they do not have to present identification for their transactions. One specific place in town will not take any information for a cash transaction but will take detailed information when it is a store credit transaction. Some businesses already have a tracking policy and keep track of all transactions. They do so for tax purposes and to get the word out to burglars and thieves not to come to their stores because they are willing to work with the police and give them all their information. Those same businesses have willingly given up property and information received from the seller once they have learned the items were stolen. We have received complaints from these same cooperative owners about other businesses who do not track all their transactions. It has been reported; those businesses not taking information were receiving stolen property and are increasing their inventory with items which are most likely stolen. This sets up an unfair advantage for businesses with less than credible business practices.

Conclusion:

Requiring businesses to track this information will help law enforcement identify stolen property, who sold it, and when they sold it. Ultimately, identifying those who sell stolen property will help law enforcement solve more of these crimes, which will hopefully reduce the ability of those involved in this criminal activity from perpetrating new ones.

Thank you for your attention and I look forward to your questions.

M.T. Brown
Detective
Lawrence Kansas Police Department

Testimony: HCR 2061-Criminal Procedure and punishment; relating to criminal culpability.

Madam Chairman, Members of the Committee: HCR 2061 represents an opportunity to enable the criminal justice system help those who are victims of violent crimes.

I wanted to explain to you a little about my background. I am married, the father of two and I have been a Lawrence Police Officer since 1991 and a Detective since 1994. Although the following testimony represents my (and many of my colleagues) experiences, they do not necessarily represent the governing body of the City of Lawrence. This testimony simply represents the experience of many who work in criminal justice and deal with the every day and very real life issues this bill seeks to address.

A real life incident that occurred July of 2010 exemplifies a situation that presents itself regularly. The suspect in this case entered an apartment and drew a handgun after arguing with several people. The suspect fired approximately 10 times into an apartment, striking eight people. The DA was only allowed to charge one count of attempted second degree murder, and seven aggravated batteries, with the "reckless" part of that statute applying instead the "intentional".

Additionally, another scenario which presents itself regularly that offers challenges in regards to charging is when a person shoots a firearm at individuals while they are standing in a crowd (outside). In as many as three recent cases, and individual shot into a crowd that was standing outdoors and several individuals were injured, however, only through luck were they not seriously injured. Because the suspect was not shooting at them particularly, again the "reckless" part of the aggravated battery instead of the "intentional" was all that could be applied, resulting in a lesser charge and sentence.

Conclusion:

We believe rewarding individuals who show this level of disregard for human life with lesser charges and sentences is an insult to those they victimize. This bill seeks to address this issue. Another possible approach might be to increase the sentence for those who discharge a firearm in the commission of a felony. For example, if a firearm is discharged in the commission of a felony the mandatory sentence for that crime should be increased by 5 years. If someone is injured by the discharge of the firearm in the commission of a felony, the mandatory sentence should be increased by 10 years. If someone is killed by the discharge of a firearm in the commission of a felony then the mandatory sentence is should be increased by 15 years. I seek your assistance with this issue, if this bill does not adequately address it, then I welcome your assistance in improving it so that it does.

Thank you for your attention and I look forward to your questions.

M.T. Brown
Detective
Lawrence Kansas Police Department

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Testimony: HCR 2062- Lawful Searches

Madam Chairman, Members of the Committee: HCR 2062 represents an opportunity to help law enforcement address an ever increasing threat to our communities.

I wanted to explain to you a little about my background. I am married, the father of two and I have been a Lawrence Police Officer since 1991 and a Detective since 1994. Although the following testimony represents my (and many of my colleagues) experiences, they do not necessarily represent the governing body of the City of Lawrence. This testimony simply represents the experience of many who work in the area and deal with the every day and very real life issues this bill seeks to address.

In 2008, the National Institute of Corrections reported Kansas had 770 adults on probation per 100,000 and 235 per 100,000 on parole. According to the Kansas Department of Correction Monthly Offender Population report (December 2010), 5985 adults were under post incarceration management. Douglas County Court Services currently has 858 individuals on active supervision, which means they are following their conditions of release, and another 600 individuals on absconder status; which means there are active warrants for their arrest. Additionally, Douglas County Court Services has another 93 individuals on pre-sentence status, which means they have been convicted but not sentenced. Douglas County Court Services is currently responsible for managing a total of 1551 cases.

Douglas County Community Corrections, which is a separate entity in Douglas County, is responsible for supervision the more serious offenders. A check with their staff earlier this week revealed they are actively supervising 140 individuals. Additionally, Douglas Community Corrections is has an inactive case load of 114 individuals. These individuals are either absconders, in treatment programs, or otherwise not supervised.

In an article in the Lawrence Journal World, printed in January 2007, research revealed Douglas County probation officers had a case load of about 150 each. Judge Malone reported that, because of the case loads, judges in Douglas County often assign unsupervised probation to misdemeanor offenders and that, "Overall, people are slipping through the cracks."

The experience by those in law enforcement is that a majority of those who continually commit crimes are on probation and/or parole. Probation and parole officers currently are given the authority to conduct searches based on reasonable suspicion that a person on parole or probation has violated their terms of probation or parole. The issue is that those on parole and probation have agreed to specific conditions upon their release and are given these conditions in lieu of remaining in custody where searches are a matter or routine. The issue is those on parole and probation do not honor those agreements,

putting the community at risk. This bill helps address the problem by allowing law enforcement the authority to conduct searches. This will authority will have an impact. This bill will allow law enforcement, with reasonable suspicion, the authority to search those who have promised to abide by the law in order to be released from incarceration. It is likely that if they would not have agreed, they would not have been released. This could create a powerful deterrent and a powerful tool for law enforcement.

Regardless of which statistics one researches, it is likely that at least three fourths of all convicted offenders are in the community rather than incarcerated. The ability for law enforcement to conduct these searches will offer a real threat to those on active supervision who decide to carry a firearm, drugs, or engage in illegal activity. With the lack of supervision they currently have, this threat is currently not there.

In preparing this testimony, I have spoken with officers responsible for supervising those on parole and probation and they support this bills authority and welcome the help.

Examples:

I am currently assisting in the investigation of a Rape case and an Aggravated Robbery case and anticipate arresting a person on post incarceration supervision for the rape ant at least two persons on post release supervision for the Aggravated Robbery case. Additionally, a quick check with other investigations that are on going or recently concluded (within last three months), the following crimes included arrest for person or persons on post incarceration supervision for the Lawrence, Kansas Police Department's Investigations Division alone:

Attempted Murder

Aggravated Robbery

Rape

Drug Violations

Burglary

Aggravated Intimidation of a Witness

Conclusion:

This bill aims to address those who have offended and are not incarcerated but still choose to engage in criminal activity. This bill will give law enforcement more authority when those who are on post supervision release are involved in criminal activity. The bill only seeks to enforce the commitments made by those who

agree to probation and/or parole. If there are recommendation as to how to improve this bill or to address this issue, I welcome them.

Thank you for your attention and I look forward to your questions.

M.T. Brown
Detective
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Ray Roberts, Secretary of Corrections

Department of Corrections

Sam Brownback, Governor

Testimony on HB 2062
to
The House Corrections and Juvenile Justice Committee

By Ray Roberts
Secretary
Kansas Department of Corrections
February 11, 2011

The Department of Corrections supports codification of the authority of law enforcement officers including parole, court services and community corrections officers relative to the search of offenders on parole, postrelease or probation. The contours of the 4th amendment of the United States Constitution, as applied to the search of persons under supervision by criminal justice agencies, is as pointed out by the United States Court of Appeals for the Tenth Circuit, defined by the privacy expectations created by state law. See U.S. v. Freeman, 479 F.3d 743 (10th Cir. 2007). Therefore, a statutory provision setting out the search authority of law enforcement officers and the corresponding expectation of privacy held by the releasee should be enacted.

The department, however, submits that HB 2062 provides a greater expectation of privacy and thus a corresponding limitation on the search of a parolee or postreleasee than is constitutionally required. HB 2062 permits searches of persons under parole or postrelease supervision if the officer has a reasonable suspicion. The department submits that for at least those offenders released from prison, they may be subject to a search that is not based upon any suspicion but merely due to a condition of their release supervision. Samson v. California, 547 U.S. 843, 126 S.Ct. 2193, 165 L.Ed.2d 250 (2006). Thus, a suspicionless search of a parolee or postrelease is constitutional.

The department, however, believes that successful reentry of offenders entails that offenders be treated firmly but fairly and that searches not be a vehicle for harassment of the offender. Therefore, HB 2062 should be amended to prohibit harassing searches.

The department believes that the level of privacy afforded to probationers is less clear. U.S. v. Knights, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (Upheld a search of a probationer subject to a probation condition specifying authorization for suspicionless searches but in that case the court found that a reasonable suspicion for the search did exist and therefore did not need to address whether the condition alone would have sufficed in justifying the search). In State v. Bennett, 288 Kan. 86, 200 P.3d 455 (Ks. Sup. Court 2009), the Court recognized that the United States Supreme Court has not addressed the issue of whether a condition authorizing suspicionless searches of probationers is constitutional pointing out that the cases decided by the U.S. Supreme Court involved situations where a "reasonable suspicion" was present. See Knights, supra, and Griffin v. Wisconsin, 483 U.S. 868, 97 L.Ed. 2d 709, 107 S.Ct. 3164 (1987). The Kansas Supreme Court did point out that the U.S. Supreme Court in Samson, supra, noted that parolees have fewer expectations of privacy than probationers, because parole is more akin to

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imprisonment then probation is to imprisonment and thus held that a search of a parolee must be based upon a reasonable suspicion.

In regard to the search of probationers, the committee may wish to draw a distinction between "searches" that are a routine part of the supervising officer's monitoring of compliance with probation conditions such as home visits wherein only areas in plan view are examined and routine drug urinalysis testing in contrast to more intrusive searches conducted in the course of an criminal investigation. This distinction is based upon the two functions of probation supervision, the rehabilitation of the offender and the protection of the public.

A proposed amendment to effect the recommendations of the department is attached.

HOUSE BILL No. 2062

By Representative Sloan

1-24

1 AN ACT concerning criminal procedure, relating to searches; amending
2 K.S.A. 22-2501 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 22-2501 is hereby amended to read as follows: 22-
6 2501. (a) When a lawful arrest is effected a law enforcement officer may
7 reasonably search the person arrested and the area within such person's
8 immediate presence for the purpose of:

9 (a)(1) Protecting the officer from attack;

10 (b)(2) preventing the person from escaping; or

11 (e)(3) discovering the fruits, instrumentalities, or evidence of a
12 crime.

13 (b) *Any law enforcement officer or parole officer may search the*
14 *residence, person, and any property under the control of any person*
15 *known to be on probation, parole or postrelease supervision if such*
16 *officer has a reasonable suspicion that such person has violated the*
17 *terms of such person's probation, parole or postrelease supervision.*

18 Sec. 2. K.S.A. 22-2501 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.

including

, court services or community
corrections officers

or court ordered supervision

or court ordered supervision.

(c) Any law enforcement officer, including parole, court services or community corrections officers may search the residence, person, and any property under the control of any person known to be on parole or postrelease supervision, at any time of the day or night with or without a search warrant and with or without cause.

(d) A parole, court services or community corrections officer may (1) conduct a home visit of any person on probation or court ordered supervision and enter the residence and any structure on the property to observe any property in plain view without cause or (2) demand urine, breath or other bodily fluid sample of any person on probation or court ordered supervision for the purpose of the detection of drugs or alcohol without cause.

(e) Nothing within this statute shall authorize a search that is harassing.

STUART J. LITTLE, Ph.D.
Little Government Relations, LLC

February 2, 2011

**House Corrections and Juvenile Justice Committee
Testimony in Support of House Bill 2062**

Chairwoman Colloton and Members of the Committee,

I am here today on behalf of the Kansas Community Corrections Association (KCCA) to offer some comments regarding House Bill 2062.

Overview

I want briefly to provide some background information on what community corrections and KCCA are so that you might be more aware of this critical component in the community correction systems in Kansas.

Community corrections agencies are thirty-one statutorily mandated programs in each part of the state, governed by county commissions and community advisory boards for both adult and juvenile offenders. They provide cost-effective community-based supervision instead of prison for adult and juvenile offenders with lower severity level offenses (although the offenders are increasingly more severe and high-risk). The courts and sentencing guidelines determine whether an adult offender is assigned to regular probation (through the courts) or intensive supervise probation with graduated sanctions in a community corrections program. Juveniles are also sent to community corrections by district courts through the juvenile offender placement matrix and after they leave the juvenile correctional facilities.

Kansas Community Corrections Association is the voluntary association comprised of twenty-eight community corrections agencies and seven affiliated groups. I am here today representing these thirty-five member agencies.

House Bill 2062

We support the concept of HB 2062 allowing law enforcement and parole officers to conduct searches with a reasonable suspicion of individuals on probation, parole or postrelease supervision. We believe that is a valuable and necessary objective.

However, the KCCA would suggest an amendment to the bill to ensure that all public safety agencies responsible for the supervision of offenders on probation, parole, and postrelease supervision be provided the same authority. We recommend an amendment to HB 2062 that in Section 1 (b) that would add "*Any law enforcement officer or parole, community corrections,*

or court services *officer may search the residence...*” This amendment would be inclusive of all public safety officers who supervise offenders in the community.

I would be happy to stand for questions at the appropriate time.



Office of the District Attorney
Eighteenth Judicial District of Kansas
at the Sedgwick County Courthouse
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Wichita, Kansas 67203

Nola Foulston
District Attorney

Marc Bennett
Deputy District Attorney

February 11, 2011

**Testimony Regarding HB 2062
Submitted by Marc Bennett, Deputy District Attorney
On Behalf of the Kansas County and District Attorneys Association**

Honorable Chairwoman Colloton and Members of the House Committee on Corrections and Juvenile Justice:

On behalf of the Kansas County and District Attorneys Association, thank you for the opportunity to submit written testimony to this committee regarding House Bill 2062.

The KCDAA desires to bring to this committee's attention certain concerns regarding the addition of the following language at §(b) of K.S.A. 22-2501, "Search without Search Warrant":

"(b) Any law enforcement officer or parole officer may search the residence, person, and any property under the control of any person known to be on probation, parole or postrelease supervision if such officer has a reasonable suspicion that such person has violated the terms of such person's probation, parole or postrelease supervision."

The proposed amendment appears to be a response to State v. Bennett, 288 Kan. 86 (January 30, 2009), wherein the Kansas Supreme Court found that a condition of probation that states the defendant is required "to submit to random searches deemed necessary that community corrections or Law Enforcement may conduct without probable cause or need for further court order," violates the Fourth Amendment to the United States Constitution and § 15 of the Kansas Constitution Bill of Rights. The Bennett Court noted the opinion of the United State Supreme Court in Sampson v. California, 547 U.S. 843 (2006), which recognized that parolee's have fewer expectations of privacy than

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probationers because parole is "more akin" to imprisonment than probation. The Bennett Court found that even when the subject of a search is a probationer—who the court agreed has "more limited expectations of privacy than do free citizens"—officers still "***must have a rational, articulable suspicion of a probation violation or other criminal activity before subjecting the probationer's person or property to a search.***" (emphasis added).

The proposed language appears to mirror the language then of the Bennett decision highlighted directly above. Therefore, while there is nothing wrong or unconstitutional about the proposed language in HB 2062, the KCDA's position is that there is rarely a need to amend statutes to mirror what is already well-settled law.

The concern is that such a proposal arguably implies that, absent the amendment to the statute, the law was somehow unclear or subject to misinterpretation. In this case, the law is clear: as has always been the case, a search of any person—whether they are on probation or not—must be predicated upon reasonable, articulable suspicion of criminal activity, or in the case of a probationer, on suspicion of a probation violation whether or not said behavior is a violation of the law.

Additionally, the KCDA is concerned that the proposed language actually hinders the ability of parole and law enforcement officers to search parolees and those subject to post-release supervision by requiring a "reasonable suspicion" standard to searches of that class of citizens where none is currently required by Sampson v. California.

In closing, the KCDA believes HB 2062, while well-intended, adds nothing to existing law in Kansas.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Marc Bennett
Deputy District Attorney
Eighteenth Judicial District