Approved: 5-11-11
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Vice-Chairman Lance Kinzer at 1:30 p.m. on February 15, 2011 in Room 144-S of the Capitol.

All members were present except: Representative Kay Wolf and Representative Pat Colloton

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 Sean Gatewood
Chris Tymeson, Chief Legal Counsel, KS Dept of Wildlife & Parks
Ed Klumpp, KS Assoc.of Chiefs of Police, KS Sheriffs Assoc., and KS Peace Officers Assoc.
State Repressentative Nile Dillmore
William A. Draper, Jr., Private Citizen

Vice-Chair Kinzer called the meeting to order and opened the hearing on **HB 2152-Amending the provisions of the crime of operating a vessel under the influence,** and called on Sean Ostrow, Office of the Revisor of Statutes go explain the bill. The following testified as proponents of the bill. They presented written copy of their testimony, which can be found in its entirety in the offices of Legislative Administrative Services.

- State Representative Sean Gatewood (no written testimony)
- Chris Tymeson, Chief Legal Counsel, Kansas Department of Wildlife & Parks (Attachment 1)

A short question and answer session. With no others to testify or speak to the bill, Vice-Chair Kinzer closed the hearing on **HB 2152** and opened the hearing on **HB 2227-Allowing for the issuance of arrest warrants based on DNA profiles.** Sean Ostrow, Office of the Revisor of Statutes, explained the bill. Ed Klumpp, KS Association of Chiefs of Police, KS Sheriffs Assoc., and KS Peace Officers Association testified as a proponent. He presented written 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, Vice-Chair Kinzer closed the hearing on **HB 2227** and opened the hearing on **HB 2162-Concerning expungement of arrest records; docket fee.** Sean Ostrow, Office of the Revisor of Statutes, explained the bill. The following testified as proponents of the bill and presented written copy, which can be found in its entirety in the offices of Legislative Administrative Services:

- State Representative Nile Dillmore (Attachment 3)
- William A. Draper, Jr., Private Citizen (Attachment 4)

A short question and answer session followed. With no others to testify, Vice-Chair Kinzer closed the hearing on HB 2162 and opened the hearing on **HB 2197-Amending the circumstances under which public defenders may accept new clients.** The following testified as proponents of the bill and presented written copy of their testimony which can be found in its entirety in the offices of Legislative Administrative Services:

- State Representative Melody McCray-Miller (no written testimony)
- Kevin Myles, President, Wichita Branch NAACP, written only (Attachment 5)

A short question and answer session followed.

Vice-Chair Kinzer adjourned the meeting at 2:15 pm with the next meeting scheduled for February 16, 2011 at 1:30 pm in room 144-S.

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Sam Brownback, Governor

**Testimony on HB 2152 relating to BUI**
**To**
**The House Committee on Corrections and Juvenile Justice**

**By Christopher J. Tymeson**
**Chief Legal Counsel**
**Kansas Department of Wildlife and Parks**

**February 15, 2011**

HB 2152 seeks to make boating under the influence a crime rather than a Department of Wildlife and Parks violation. **The Department supports the provisions contained in the bill.**

HB 2152 would take current provisions of Wildlife and Parks law and transfer those provisions to Chapter 21 of the Kansas Statutes Annotated. In addition, the penalties for BUI would be enhanced under the bill. Currently, a BUI violation is considered a Class C misdemeanor and the provisions of the bill would make BUI a Class B misdemeanor first offense and a Class A misdemeanor for subsequent offenses.

Kansas had 36 incidents in 2010 where people were cited for Boating Under the Influence.

**The Department appreciates the support of the Committee in passage of the bill.**

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-15-11
Attachment # 1

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# Testimony to the House Corrections and Juvenile Justice Committee
# In Support of HB 2227
# Arrest Warrants Using DNA Identification

Rep. Colloton and committee members,

The Kansas Association of Chiefs of Police, the Kansas Sheriffs Association and the Kansas Peace Officers Association support the amendments to K.S.A. 22-2304 as proposed in HB 2227. Today's use of DNA, coupled with the capability of computerized national DNA offender database comparisons, provides opportunities to bring previously unidentified offenders to justice. Sometimes the DNA database just doesn't contain the suspect's DNA profile yet. When those perpetrators are eventually arrested for the first time, the introduction of their DNA profile in the database will yield all of the other cases where DNA evidence was collected and a match can be made. These victims deserve to have their cases presented for prosecution and resolution. The ability to file DNA based warrants for otherwise unidentifiable perpetrators is critical in these cases.

These warrants will always be the option of last resort. Law enforcement will always use all available resources to identify the criminal by name. A warrant with a name is much more likely to be served and the perpetrator brought to justice more quickly. But that option is simply not always available to us in the timeframe necessary to issue a warrant to keep the case moving forward.

DNA evidence provides methods to positively and uniquely identify the perpetrator even without knowing the name or other common identifiers. In 2008, the Kansas Supreme Court ruled DNA identifiers meet the constitutional and statutory tests for identification purposes in arrest affidavits and warrants. In State v. Belt the court states that "an arrest warrant's or a supporting affidavit's inclusion of a unique DNA profile can qualify as a description by which a defendant can be identified with reasonable certainty; mere listing of DNA loci in the warrant or in a supporting affidavit cannot." While specifying the DNA loci was insufficient, the court did not specify what had to be present in the DNA descriptor to be "a unique DNA profile." The court does state that a complete description was available but not used in the Belt case which offers insight into what the court requires. The court's terminology is not foreign to DNA scientists and practitioners who believe the proposed language captures the level of identification required by the court in the Belt case.

The proposed amendment will not only help law enforcement and prosecutors to assure the proper information is included in the affidavit and arrest warrant, but it will also help the courts in determining if an acceptable standard is met. More importantly, this bill will do no harm. While it establishes a standard that appears to meet the level of identification the court required in Belt, we may not know for sure until another case reaches appellate courts. However, it will not have caused any harm and may support a positive appellate court outcome since it sets a standard above that used in the Belt case.

This is an important issue for law enforcement and for public safety. The public and the victims deserve to see the accused tried in court on the factual merits of the evidence. They do not deserve to have a potentially dangerous felon turned loose on society due to a technical shortfall. We cannot

afford to replicate this outcome. The Belt case represents exactly what the legislature intended to prevent when passing the current language of K.S.A. 21-2304. This bill will reinforce that legislative intent while providing further guidance and clarity to law enforcement, prosecutors and the courts.

We encourage you to recommend this bill favorably for passage to the full House.

Ed Klumpp
Kansas Association of Chiefs of Police, Legislative Committee Chair
Kansas Sheriffs Association. Legislative Liaison
Kansas Peace Officers Association, Legislative Liaison
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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: GENERAL GOVERNMENT BUDGET
JOINT COMMITTEE ON INFORMATION TECHNOLOGY
UTILITIES
TAX

# House Corrections and Juvenile Justice Committee
## Testimony on HB 2162
February 15, 2011

Chairwoman Colloton and members of the House Corrections and Juvenile Justice Committee let me begin by thanking you for your attention to HB 2162. From the onset I will be the first to acknowledge that this is probably not the centerpiece of legislation for the 2011 session. However, that does not diminish its importance.

HB 2162 goes to what I consider to be the heart of our justice system. That is; that those who are brought before our courts and are found to be innocent or that the charges have been dismissed should not be burdened, nor should there be any barriers to that defendants efforts to restore their good name and reputation.

When I introduced this bill my intent was to amend the statute that forbids a surcharge or fee imposed to any person who was charged as a result of being a victim of identity theft. You can read the proposed change in the bill.

However, the individual who brought this issue to my attention has determined that we could do more to improve our system. Mr. William Draper will testify and he is bringing some amendments he believes will more compressively address the issue.

I am here to encourage you to take up this bill at your earliest opportunity, amend it to bring the statutes in line with Mr. Draper's request, and recommend the bill favorably for passage.

In so doing you will have addressed an issue of fairness and equity that I believe is missing in our current statutes.

Thanks for your kind attention.

**Testimony**
**of**
**William A. Draper, Jr.**

**Re:**

## House Bill No. 2162 - Expungement & Docket Fees

**Before**

## The Kansas House Committee on Corrections and Juvenile Justice

**Chaired by**

**Rep. Pat Colloton, Vice Chair: Rep. Lance Kinzer**

**Ranking Minority Member: Rep. Melody McCray-Miller**

**15 February 2011**

In February of 2001, I was arrested on charges that I had intentionally battered a Wichita police officer in the line of duty. I was jailed, later released on bond and tried in Wichita's Municipal Court. There the prosecution was successful in getting the judge to believe that while responding to a legitimate 911 domestic disturbance complaint, the officer had encountered me in a public place, requested a "Terry", search and frisk for his safety, which I had refused, and in the course of his attempt to accomplish that search, I had rudely battered the officer by pushing the officer (without injury to property or person). The judge rejected my rebuttal, refused to take judicial notice of indisputable facts from the 911 tapes and public record and misapplied the law in order to find me guilty and sentence me to jail, court costs and a psychiatric evaluation, etc. I was released on bond and appealed pro se, and a year later was successful in winning my case, de nova, before a jury in the 18th Judicial District Court.

I was able to do that because the prosecution had misrepresented the material facts, and misused the law i.e.:

There was no probable cause, by the objective standard, to stop or search me.

The 911 complaint made against me didn't really describe any conduct that indicated that a crime had been committed, was being committed or was about to be committed. Listening to the tape, one can hear the caller ask the 911 dispatcher how to file an "harassment complaint". Rather than telling the caller that she is not qualified, or allowed, to give legal advice, the 911 operator lead the caller along and escalated the call up to a notification of a domestic disturbance, even after the caller told her he didn't want to\ make trouble for anyone.

The caller was the relative of a police officer but not related to me. We were not acquainted and he was not living on the same or an adjoining property. I had no domestic relationship with the caller and thus the exception stated in K.S.A 22-2307(b)(1) allowing warrantless arrests in domestic violence disturbances was inapplicable.

The property where the search took place was posted and private. According to the public record, I was one of its owners and it is my residence. You can't search and arrest someone, at his home, without a warrant.

The search was not a, "Terry", pat-down search for weapons that could threaten the office's safety. Prior to the search, the officer had been shown the harmless contents of my pockets. By his own admission he was looking for contraband and a contraband search, on private property, requires a warrant. My refusal of an illegal warrantless search could not be construed as a probable cause for believing that I was hiding contraband in my private parts and that force had been needed to expose it.

Despite well rehearsed presentations, the prosecution witnesses contradicted themselves. The jury was probably able to see that that the arresting officer had contrived the battery when none of the facts or circumstance would have justified intervention on behalf of a fellow officer's relative(s) who were operating a party house, i.e., an illegal drinking establishment in violation of city zoning ordinances, liquor laws, event permit ordinances and with reckless disregard for the safety and tranquility of their neighbors.

The jury acquitted me of the charges and I was free to go.... But go where? Though they had lost their court case the officers had succeeded in inflicting revenge on me for curtailing activities at the neighborhood party house and getting an officer's relative into trouble. I now had a conviction record from the municipal court on file at the KBI and FBI. My chance of returning to my former professions as a commercial pilot, aviation mechanic or registered securities representative were nil. While fighting the case for a year I had accumulated thousands of dollars in debt and other problems. After several years of trying to stay gainfully employed I began to realize that my, "criminal record", was a serious problem that wasn't going to be overcome by just showing people that I had won my case.

I applied for a position as a substitute school teacher with a local district and, at the last minute, was removed from consideration. When I called that district's director of human resources, I was told that the district had

other candidates to choose from who did not have criminal records and who had not been in jail. She read the sentence from the municipal court. I pointed out that jail time had been suspended pending my appeal and that I had won the appeal and been acquitted. She was not impressed and was not going to take the risk of being criticized for having put someone with my record in front of their students. When I applied for work with the U.S. Census Bureau, the results were similar. I had to reveal my municipal conviction for battery. Despite a high test score, extra points for veteran's preference and experience in door-to-door interviewing, my application was sidelined for, "adjudication", and I was never given an employment offer. I had, in fact, been twice put in jeopardy for the same offense, i.e., one that I had not committed. I later found out, from the K.B.I., that Census Bureau had just set aside the applications for all candidates who had criminal history files, regardless of the disposition of their cases.

After that discovery, I resolved to get my battery record expunged. I went back to the District Court and it wouldn't look at my petition because the conviction had occurred in the Wichita Municipal Court. I found out that the state has several overlapping and slightly conflicting laws on expungements. I went to Wichita's Municipal Court and found that as a first class city, subject to home rule exception, Wichita has its own charter ordinance, court rules and fee structure for expungements. After weeks of work I had gone around in a circle and made no progress. I also found out that innocent defendants are not entitled to dock expungement petitions unless they pay the same large fee as guilty offenders. I protested that that was unfair and added insult to injury. I appealed to the council woman representing my municipal district, but she wouldn't grant me an appointment to discuss the matter. I sent her a brief on the subject and all she did was to refer the matter to legal council for study and submit some undisclosed inquiries to the city manager. After approximately eight of months of waiting to discuss the matter with some decision-maker at city hall, I gave up and appealed to my State Representative, Nile Dillmore, to find justice for innocent defendants. He had House Bill No. 2162 drafted which would waive the docket fee for innocent defendants petitioning to have their **arrest** records expunged. It is a great step in the right direction, but I can see that it doesn't go far enough to meet, "3R" standards for Kansas Criminal recodification. The deficiencies I see are as follows:

a. **It lacks a clear statement of purpose with respect to innocent/dismissed defendants and fails to distinguish between their case and that of guilty, convicted offenders.** The purpose of expungement for innocent, offended defendants, victimized by the judicial system, should be **their rehabilitation and restoration**. The purpose of expungement for guilty, convicted offenders should be to remove barriers that would prevent them from **making restitution to their victims and society at large**

b. **It lacks any statement of legislative intent that its provisions be applied uniformly throughout the state and in all of its cities** and shall supersede all other statutes, municipal charter ordinances and Rules Adopted by the Supreme Court of Kansas which are not consistent with it. *If, after recodification, it ends up in that collection of statutes known as Chapter 22, The Kansas Code of Criminal Procedure its uniformity may be implied. If not, its, "uniformity", could be contested.* *(It has been my experience that a district court will/can\ not expunge the records of a municipal or appellate court and that cities of the first class can exempt themselves, through charter ordinances, from legislation that is not specifically declared to be uniform in its application, "throughout the state and in all of its cities".) Unless the bill makes a clear declaration of "uniformity" many innocent/dismissed defendants/petitioners could be denied justice and victimized by conflicts of laws and court rules

c. **Its applicability is so limited as to not guaranty liberty, justice or rehabilitation for all who deserve it**. For example, Section 1.(a) of the proposed bill says, "Any person who has been **arrested** in the state may petition the **district court** * for the expungement of such **arrest** record." Not all defendants, who have been charged with an offense, and dragged through the state's criminal justice system, have ever been **arrested**, or had their detentions recorded as arrests. The proposed bill appears to create a loophole, i.e., an excuse that courts could use to deny some defendants rehabilitation, through expungement and an incentive for law enforcement to not record detentions as **arrests**, in order to achieve a similar result ***(Examples available upon request)*** Defendants, who need not be arrested, could precipitate their arrests in order to avoid the, "**arrest loophole**", when later applying for the expungement of their records. Defendants who were not arrested, and because of that, are denied expungement under the proposed statute, could tie our courts up in protracted proceedings as they sued to earn parody with arrested defendants and divine legislative intent in their favor. *(See comment re: district court, above.)

d. **It is ambiguous**. In its Section 1. (b), It retains the phrase, from previous legislation, which says, "On or 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". Does that mean from the effective date of the original act, which this bill amends or the date that this new bill is implemented??? Does it mean that the supreme court can impose, until June 30, 2011, a charge on innocent/dismissed defendants petitioning to have their lives rehabilitated??? or is that possibility negated by the unidentified paragraph interposed between Section 1. (b)(6) and Section 1. (c) Which says, "No charges 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.....or who has had criminal charges dismissed ..." ? **Patchwork laws filled with exceptions to exceptions lead to confusion and ultimately, injustice.** The best way to avoid ambiguity about expungements for defendants would be to separate them into two completely different sections. i.e., a first section for **innocent** defendants who have had the criminal charges against them dismissed, and the second section for **convicted** offenders.

e. Its Section 1.(b)(3) **invades the privacy of innocent petitioners** by requiring them to identify themselves by, "**race**", a nebulous term without definition in the statute, or scientific basis. That requirement could expose them to prejudice, and the judicial system to claims of racism. It might be more accurate and less controversial to allow petitioners to select, from a menu of features, that they could use to portray themselves, with sufficient particularity, so that a person of average intelligence and visual acuity can distinguish them from others in the general population. *(The petition/race issue would be mute, if expumgements for innocent/dismissed defendants became automatic.)*

f. **It fails to address expungement issues in light of social service reporting mandates, post-911 national security measures, and electronic information reporting and retrieval technologies**, etc., which can instantly inflict devastating and irrevocable harm on innocent defendants nor does it detail procedures that could be used to exploit such technologies to insure the uniformity and thoroughness of Kansas expungements and reduce the expense and congestion that burden our ever-expanding judicial system.

g. **It is remedies are too limited to fully realize its purpose.** Section 1.(g) of the proposed bill **binds only the, "custodian of the records of the arrest", and does nothing to curtail such dissemination by parties other than the KBI, FBI, secretary of Corrections and other criminal justice agencies which may have a record of the arrest.** It has been my experience that information about innocent defendants, available through the public record can be as, or more, damaging than, the information kept in closed case records. The bill has no provision to control such dissemination or to make whole, i.e., "rehabilitate", those unjustly injured by such dissemination. **The bill needs to draw the line, in the sands of Kansas between the rights of innocent defendants to privacy, reputation, employability, etc., and the rights of a free press and electronic media. There is no provision to return or destroy** records created about, or evidence taken from innocent defendants. If the federal Departments of Justice, Defense and State cannot keep their most sensitive data bases from being, "hacked" and their most sensitive state secrets from being published on the internet; if the Veterans' Administration could not prevent the loss of a data base containing its patients' medical records and senior members of the federal executive branch hazard the lives of CIA operatives by leaking their identities to the press, and FBI and other law enforcement agencies can't prevent billions of dollars of intellectual property from being stolen from the America's economy each year, ... then what makes the State of Kansas assume that evidence that it has stolen from, and data that it has collected on, innocent defendants, and other persons named in their cases will stay forever and completely expunged and never be used to harm such persons? Recent Wiki leaks have proven such assumptions to be absurd. The only way the courts can begin to make an innocent defendant whole is to order that all evidence seized from, and all information compiled about, such persons be retrieved and destroyed or returned to them, as they may direct *(and to enjoin the press from publishing it during their lifetimes.)*

h. **Under the proposed bill, innocent, dismissed defendants are only relieved of court costs. Their procedural burdens remain the same.** Like convicted offenders, the innocent defendants would have to deal with petitions [Sections 1.(b)], hearings [Section 1.(c) ] and further invasion of their privacy inflicted by testimony from persons with relevant information about them and court inquiry into their

backgrounds [Section 1.(b)(6) et., seq. If such defendants did learn of the proposed right to free expungements and chose to exercise it, they would have to return to the, "scene of the crime", i.e., the various courts in which they had been tried and appear before the judicial bureaucracy by which they had been victimized. Most would have to do more legal research, deal with a statute of limitation, serve notices of appearance, prepare correctly formatted petitions, docket such petitions, serve a notices of hearing on opposing counsel, respond to stalling motions for continuance from prosecutors attempting to extinguish their rights, deal with persons wishing to offer information about them and take time from work and family and endure all of the costs, risks and embarrassments involved in a pro se appearances, or.... suffer the costs of having legal counsel perform such tasks or ..... have their privacy again invaded by inquiry as to whether they are indigent enough to qualify for the aid of a public defender. Even if the defendants' case files were separated from the records of other cases as required by Section 1.(b), they would be at risk of being disclosed to new people, in the prosecutor's offices, the arresting agencies and, "other persons, authorized by court order, in the pursuit of their duties". ***I would imagine that, for most acquitted defendants, it would be as unpleasant to return to a courtroom where their reputations, liberty and possibly life had been in jeopardy as it would be for a coed to return to the basement of a fraternity house where she had been stripped, berated and gang raped.*** The problems of having to petition the court, i.e., mount another defense, in adversarial proceedings, ,when one's body, mind and finances are exhausted could be so overwhelming, for some innocent defendants, that they could end up foregoing the expungements they deserve. The procedures mentioned in the proposed bill serve the employment interests of attorneys, but not innocent, dismissed defendants and would do nothing to reduce the clutter and expense that burden our ever-expanding judicial system.

A "**3R's**" (recodification, rehabilitation and restoration) bill that would provide relief for all innocent, dismissed defendants should:

a. Begin with a clear statement of legislative intent to:

(1) Distinguish between the cases of innocent, dismissed defendants and guilty, convicted offenders
and provide, in separate statutes, expungement opportunities appropriate to each.

(2) Try, through the expungement of criminal records and supporting evidence, to make all innocent/discharged defendants, and other innocent named persons as whole as they were before their privacy was invaded.

(3) Provide a statute that is to be uniformly applied throughout the state and in all of its cities and which, **with respect to only dismissed defendants**, shall supersede all other statutes, municipal charter ordinances and Rules Adopted by the Supreme Court of Kansas, which are not consistent with
it such as K.S.A 21-4619, K.S.A22-2410, K.S.A 38-1610 (Juvenal Offenders) and K.S.A. 12-4516
(Municipal Court Expungements)

b. Contain a statement of, "proportionality", indicating that the legislature considers that the burdens imposed by the implementation of this legislation to be outweighed by its benefits to the state's economy and society and that the liabilities that ensue from retaining prejudicial information on innocent citizens outweigh the benefits of retaining identifiable records about their prosecutions, incarcerations , bioidentifiers, medical histories, etc, etc.

c. Be free of all ambiguity.

d. Be applicable to **all** innocent, discharged defendants, whether arrested or not.

e. Be **free of any racial identification requirement** that could invade privacy of innocent, dismissed defendants, stigmatize them or expose the judicial system to accusations of racial bias. *(*Automatic expungements for such defendants, requiring no application, petition or appearance would solve that*

*problem.)*

f. **Eliminate self-defeating requirements** for discharged defendants to incur expense, appear in court, exercise legal expertise and expose themselves to embarrassment and trauma, in adversarial proceedings, as a prerequisite to rehabilitation and restoration. **(See note in italics, Para. 4.(e.), above).*

g. **Prohibit prosecutors, defense counsels, pro se defendants or courts from using expungement, or** allowing expungement to be used, as a, "bargaining chip", to influence charges, pleas, evidence to be presented, verdicts or sentences.

h. Keep the process simple by mandating that courts **automatically, without charge,** upon dismissal of a case, order an expungement of the records and evidence related to that case, unless the defense moves to waive that expungement.

i. **Mandate that courts**:

(1) **Inform innocent, dismissed defendants**, in writing and in conjunction with the announcement of their verdicts, of their rights to free expungement of the records and evidence related to the dismissed charges.

(2) Determine whether the defendant wishes expunged information and evidence to be destroyed or returned and whether the defendant wishes to move the court to waive or limit the Expungement.

(3) Instruct the defendants how they may respond to inquiries related to dismissed charges and what recourse they have, if they can prove that they have been discriminated against, or injured by, a unauthorized release of expunged information or evidence ensuing from the dismissed charges.

(4) Make clear to all, that a violation of an expungement order is a contempt of court.

j. Define expungement, with respect to innocent, dismissed defendants as the, "the use of all available means to locate, remove, return or destroy, as the innocent defendant and other innocent parties named in the case may elect, all information and evidence pertaining to them that was gathered, retained or disseminated in support of, or to facilitate, the dismissed charges. Unlike the expungements available to **guilty, convicted offenders**, the expungements for **innocent, dismissed defendants** and other innocent parties named in the case, should be so complete that nothing from their records of arrest, investigation, indictment, incarceration, bioidentification, medical or mental health, psychological profile, social network or trial remains outside of their possession to stain their reputations, cause further invasions of their privacy or put them at a disadvantage in future prosecutions.

k. **Prohibit all public and private, for profit or nonprofit data bases and repositories from holding or disseminating information or evidence ensuing from dismissed charges,** which could be used to identify living, innocent, dismissed defendants, or other innocent persons named in the case and put at risk their privacy, reputations, credibility, safety, employability, insurability, entitlements or credit.

l. **Specify civil and criminal penalties** designed to prevent law enforcement, correction system and judicial system personnel and others involved in a defendant's case from revealing, during the defendant's lifetime and without his/her written permission, information and evidence related to the case that has been, or is likely to become, subject to expungement.

m. **Absolve defendants from having to disclose** anything about dismissed charges to employers, law enforcement agencies, courts, election commissions, issuers of licenses or permits, providers of social

services, education, health care, housing, financial services, credit, insurance or connectivity and establish penalties for the protection of dismissed defendants, from such inquiry.

n. Be **retroactive** to provide, upon simple, written request, from innocent, dismissed defendants, free expungements, as defined in paragraph h., above, of all records and evidence related to charges against them, which have been dismissed prior to the effective date of this bill.

o. Instruct courts that the statute is to be **liberally interpreted** in favor of defendants whose charges have been dismissed.

I thank you all for trying to improve the state's criminal and procedural statutes and for giving me the opportunity to testify concerning expungement legislation.

Most sincerely,

William A. Draper, Jr.

# The Kansas State Conference of NAACP Branches

829 N. Market St. Wichita KS 67207 – (316) 541-1305

"102 Years Speaking Truth to Power"

## Testimony regarding HB2197 – Public Defenders

02/14/11



Chairman Colloton, Vice Chairman Kinzer, and members of the Committee on Corrections and Juvenile Justice,

My name is Kevin Myles and I am the President of the Kansas State Conference of the NAACP, representing more than 2,000 registered voters throughout the State of Kansas.

We are offering our qualified support to House Bill 2197. Our support is qualified because while we firmly support the intent of this bill to protect and safeguard the rights of criminal defendants, we do not believe the language is quite comprehensive enough to achieve this goal.

The language is section 1, parts A and B both speak to the rights of the Public Defender to withdraw from a case when they feel their caseload would preclude them from providing an adequate defense.

We wholeheartedly support any effort to ensure that all criminal defendants are afforded competent and adequate representation. We are therefore supportive of the language in Section 1 parts A and B in so far as it allows Defense Attorney's who are unable to provide such a defense to remove themselves so that other less burdened attorney's may do so.

But while the bill clearly delineates the rights of public defenders, we believe it does not adequately speak to or protect the constitutionally guaranteed rights of defendants. We want to see the system address the issue of unmanageable caseloads. But we do NOT want to create a situation wherein defendants could find themselves unable to obtain representation because the caseloads in a given public defender's office were too high.

The right to counsel is guaranteed to all citizens through the 6th amendment of the United States Constitution. But that right is diminished when Public Defenders are faced with large and unmanageable caseloads which prevent them from spending the necessary time it takes to provide an adequate defense. Allowing individual Defense Attorneys to remove themselves from a case solves only half of the problem. The larger and more pressing question is; How do we ensure that all defendants are allowed to exercise their right to counsel and to enjoy adequate representation when caseloads become excessive?

What we would ask of the Committee of Corrections and Juvenile Justice is that you amend this bill to strengthen the Public Defender and Indigent defense system by the provision of additional safeguards and resources.

We ask that you would amend this bill to provide guidelines for manageable caseloads, much as the American Bar Association did when it issued its guidelines that Attorneys should not handle more than 150 felony cases per year. We also ask that you stipulate that when caseloads are significantly higher than the guidelines you would set, that the State would allocate additional resources so as to ensure that all citizens were afforded the full measure of their rights under the constitution.

*Respectfully,*

*Kevin Myles*
*President; Kansas State Conference of NAACP Branches*
*President; Wichita Branch NAACP*

House Corrections and Juvenile Justice
Committee
2011 Session
Date 2-15-11
Attachment # 5