Approved:	August 25, 2011
* *	(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:34 A.M. on January 18, 2011, in Room 548-S of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department Jason Thompson, Office of Revisor of Statutes Tamera Lawrence, Office of Revisor of Statutes Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

James Colgan

Kyle Smith, KS Peace Officers Assn.

Ed Klumpp, KS Assn. of Chiefs of Police, KS Sheriffs Assn., KS Peace Officers Assn.

Others attending:

See attached list.

Bill Introductions:

Helen Pedigo, Special Counsel to the Chief Justice of the Kansas Supreme Court requested introduction of legislation, as follows:

- A bill concerning the Judicial Branch Surcharge
- A bill concerning e-filing
- A bill concerning the Debt Setoff Law
- A bill concerning the assessment of court costs in asset forfeiture cases
- A bill concerning the Senior Judge Program
- A bill concerning appeals of defendants sentenced under Jessica's Law

Ms. Pedigo gave a brief description of the proposed legislation and the reasons for the requests (Attachment 1). The bills were approved for introduction without objection.

The Chairman opened the Confirmation Hearings on the appointments of two persons to the State Board of Indigent Defense Services (BIDS):

Appearing before the committee was James Colgan, who introduced his wife, Ann, and gave a brief statement concerning his personal and professional background (<u>Attachment 2</u>). He noted that he had handled defense work for BIDS in his private practice of law.

In response to a question by Senator Vratil concerning a conflict of interest, Mr. Colgan stated he believed that there would not be a conflict since BIDS was not making a direct payment to him.

Mr. Colgan stated that BIDS reimburses attorneys handling BIDS cases, other than capital offense cases, at a rate of \$62 per hour. In capital offense cases, the rate of reimbursement is \$150 per hour. He noted that BIDS fixes the rate of reimbursement and the amounts paid do not cover the "overhead" expenses of the attorneys.

The Chairman called the committee's attention to the biographical and background information relating to the second appointee to BIDS, John Robert Weber (<u>Attachment 3</u>). The Chairman noted that Mr. Weber was being reappointed to BIDS and was not appearing before the committee.

Senator Vratil moved, Senator Umbarger seconded, that the committee recommend the confirmation of both appointments to the full senate. Motion carried.

The Chairman closed the Confirmation hearings.

The Chairman opened the hearings on SB 6 -- Criminal procedure; search incident to arrest.

Jason Thompson, Staff Revisor, reviewed the bill. Mr. Thompson also distributed a handout which contained a copy of 2010 SB 435, as amended by Senate Committee, and a copy of 2010 SB 435, as

CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on January 18, 2011, in Room 548-S of the Capitol.

amended by House Committee (<u>Attachment 4</u>). Mr. Thompson noted that <u>SB 6</u> is identical to the original version of 2010 SB 435.

Senator Vratil stated that the language inserted into 2010 SB 435 is the law, whether or not that language is actually in the statute; it is the same as repealing K.S.A. 22-2501 (as the Senate had done in its version).

Senator Haley, as the sponsor of <u>SB 6</u>, spoke in favor of the bill. Senator Haley stated that the word "the" preceded the word "evidence" for 40 years. He noted in his testimony that the bill would codify the holding in the Kansas Supreme Court decision, *State v. Helling* (<u>Attachment 5</u>). He urged the committee to approve the bill to ensure due process.

Senator King asked, "Is K.S.A. 22-2501, as written, is unconstitutional?" Senator Haley responded, "Yes."

Kyle Smith testified in opposition to <u>SB 6</u> (<u>Attachment 6</u>). Mr. Smith gave a brief overview of the law relating to searches and seizures. He concurs with Senator Haley's statement that the language of K.S.A. 22-2501 is unconstitutional, but changing the word "a" to "the" would make the statute narrower in application than required by the Supreme Court opinion. He suggested that the committee repeal K.S.A. 22-2501.

In response to a question by Senator Kelly concerning when a search may be conducted without a warrant, Mr. Smith explained that a law enforcement officer may conduct a warrantless search if there is a reasonable suspicion of the commission of another crime (as in the case of a stumbling driver and DUI offenses). He also explained the "plain view" doctrine that allows for a warrantless search.

Ed Klumpp testified in opposition to <u>SB 6</u> (<u>Attachment 7</u>). Mr. Klumpp stated that 44 other states have not attempted to codify the "search incident to arrest" case law and expressed his support of the repeal of K.S.A. 22-2501. He added that a statute is needed only if the Legislature wants to impose a stricter requirement than is allowed by the Constitution.

Written testimony in support of <u>SB 6</u> was submitted by Jennifer Roth, Kansas Association of Criminal Defense Lawyers (<u>Attachment 8</u>). Written testimony in opposition to <u>SB6</u> was submitted by Patrick Vogelsberg, Kansas County and District Attorney Association (<u>Attachment 9</u>).

The Chairman noted that the fiscal note indicated that there would be no fiscal impact.

Senator Bruce asked, "If K.S.A. 22-2501 is amended as provided in <u>SB 6</u>, could the statute still be unconstitutional?"

Kyle Smith responded, "Possibly."

The Chairman closed the hearings on **SB** 6.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for Monday, January 19, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 122011 18,2011

NAME REPRESENTING					
Peter Senei	BIDS				
Ann K Colgan	quest Bits				
JAMES COLCORN	6000				
Fabrick Vage Kherry	KCDAA				
JOE MOLKER	LBA.				
Kyle Smith	KPOA				
ED KLUMP	KACP/KRA/KPOA				
SEN MILIER	CAPITOL STRATEGES				
David Clark	Intern				
Lydia Buster	Federico Consultivos				
Keun Brose	Cop lob Grp				
13/h					



SUPREME COURT OF KANSAS

HELEN PEDIGO

SPECIAL COUNSEL

TO CHIEF JUSTICE

Kansas Judicial Center 301 SW 10th Ave. Topeka, Kansas 66612-1507

PHONE: (785) 368-6327 Fax: (785) 291-3274

SENATE JUDICIARY COMMITTEE

Honorable Senator Tim Owens, Chair

Request for Introduction

January 18, 2010

Mr. Chairman, and committee members, thank you for the opportunity to request that legislation be introduced through this committee. I would like to request the following six bills:

- 1. Judicial Branch Surcharge The current Judicial Branch surcharge will expire on June 30, 2011. The Judicial Branch FY 2012 budget request is based upon continuing the surcharge, and legislation is required to extend it into FY 2012.
- 2. E-Filing Issues Two amendments regarding e-filing are requested. The first amendment would be to K. S. A. 60-2601a to clarify that the Supreme Court, rather than the chief judge of a judicial district, would issue an order stating when records and information would be maintained in a computer information storage and retrieval system, rather than in dockets and journals. The second amendment should be to K. S. A. 60-2601(d) and would delete language that refers to the clerk keeping papers filed in each case carefully enveloped in a wrapper or folder and that requires to clerk to initial time and date stamps. Under the amendment, clerks would record the date and time of receipt of all filings. Both amendments should be included in one bill.
- 3. Debt Setoff Provision The Kansas Association of District Court Clerks and Administrators (KADCCA) requests amendment to K. S. A. 75-6210, to provide that the debt setoff collection assistance fee shall be paid as an additional costs for all debts owed to the court when the debt setoff procedure is utilized. This would make the debt setoff collection assistance fee that same as the debt collection fee authorized by K. S. A. 75-719. K. S. A. 75-719 provides that "the cost of collection shall be paid from the amount col3ected, but shall not be deducted from the debts owed to courts or restitution." This amendment would allow clerks to collect the full amount of the debt owed to the court in debt setoff cases. Under current law, the debt setoff collection assistance fee is paid from the amount collected, and the amount remitted to the court is approximately 15 percent less than the debt owed.
- 4. Assessment of Court Costs in Asset Forfeiture Cases KADCCA's second request for a bill introduction would amend K. S. A. 2009 Supp. 60-4107 and K. S. A. 60-4109 to provide that court costs, which in most cases would include only the docket fee, may be assessed by the court in asset forfeiture cases.
 - K. S. A. 2009 Supp. 60-4107 (b)(3) provides that "[f]ilings or recordings made pursuant to this act are not subject to a filing fee or other charge." K. S. A. 60-4109(b) provides that [t]he



aintiff's attorney, without a filing fee, may file a lien for the forfeiture of property upon the initiation of any civil or criminal proceeding relation to conduct giving rise to forfeiture under this act or upon seizure for forfeiture." Moreover, K. S. A. 60-2005 exempts the state of Kansas and all cities and counties from payment of the docket fee bur further provides that, "if the costs are assessed against the state of Kansa or any city or county in this state in any such action, such costs shall include the amount of the docket fee prescribed by K. S. A. 60-2001 together with any additional court costs accrued in the action."

The Asset Seizure and Forfeiture Act provides in K. S. A. 2009 Supp. 60-4117 that the proceeds of any sale shall be distributed in a prescribed order of priority, and includes "sale and court costs" as an item that may be paid in the second order or priority. While this provisions appears to allow the assessment of the docket fee when forfeited assets are actually sold, there appears to be no express authority for the court to assess the docket fee when the object of the forfeiture proceeding is cash and on o sale occurs. The proposed amendments to K. S. A. 2009 Supp. 60-4107(b)(3) and 60-4109(b) would provide that "court costs may be assessed and, if so, shall include the amount of the docket fee prescribed by K. S. A. 60-2001 and amendments thereof, together with any additional court costs accrued in the action.

5. Senior Judge Program Amendment - An amendment is requested to K. S. A. 20-2622, which established the Senior Judge Program. The first amend would strike from current law the requirement that retirants who which to serve as senior judges enter into written agreements within thirty days prior to any anniversary date of retirement. This requirement applies only to judges who did not enter into a senior judge contract prior to retirement. The amendment would mean that judges who have been retired for five years or less would be eligible to enter into senior judge contracts at any point during the year and that they would not have to wait until thirty days prior to a retirement anniversary date to enter into a contract.

In addition to the amendment noted above, the second proposed amendment would also strike from current law language that limits to within five years after retirement the participation of judge who did not enter into a senior judge contract prior to retirement. This would allow the Court to enter into a senior judge contract with any retired judge, rather than limit consideration to only those judges who have been retired for five years or less.

6. Direct Appeals of Jessica's Law cases - Amendment to K.S.A. 22-3601 is requested to ensure that direct appeals on behalf of criminal defendants who are sentenced pursuant to Jessica's Law or departures from it go first to the Court of Appeals rather than the Supreme Court. More than thirty Jessica's Law cases have been heard so far by the Supreme Court, and many of the novel legal issues that inevitably arise out of new legislation with such far-reaching effect are already settled. Continuing to require that these particular off-grid offenses or departures come to the Supreme Court rather than the Court of Appeals in the first instance is no longer necessary. In addition, the influx of Jessica's Law cases tends to delay other important cases already designated for initial Supreme Court review, for example, other off-grid criminal offenses, including capital cases; federal certified questions; original actions such as mandamus and quo warranto; and eminent domain matters. Decisions in significant civil cases transferred to the Supreme Court also may be delayed, as may decisions in matters accepted for discretionary review after an opinion has been issued by the Court of Appeals. Frequently, these transfer and petition for review cases concern issues in particular need of the final decision the Supreme Court must provide. In short, the requested amendment to K.S.A. 22-3601 will correct the tendency of Jessica's Law cases, which are regrettably numerous, to clog the Supreme Court's docket, even when the legal issues they raise are no longer subject to much dispute.

Senate Confirmation Information Summary

Prepared and Submitted by the Office of Governor Mark Parkinson

Appointee: James Colgan

Position: Member, State Board of Indigent

Defense Services

Term Length: 3 years

Expiration Date: January 15, 2012

Statutory Authority: KSA 22-4519 et seq.

Party Affiliation: Independent

⇒ Statutory geographic representation

Congressional District:

Requirements (insert any that apply)

County:

Size requirement (if any):

Other, specify:

⇒ Statutory party affiliation requirement:

5:4

⇒ Statutory industry or occupation requirements:

Two members from each Congressional District – one attorney and one public member who cannot be an attorney. One attorney member from each county > 100,000; however, no more than five such members. No judicial/law enforcement officers. Limit of two consecutive three year

terms.

Salary: NA

Predecessor: Denise Tomasic

Board Composition Prior to Confirmation of New Appointee:

(SEE ATTACHED LIST)

Senate Judiciary
1-18-11
Attachment

Kansas

Senate

CONFIRMATION OVERSIGHT COMMITTEE

Acknowledgment of Release of Tax and Criminal Records Information Form

I, AMES PATRICK CROSSE acknowledge that as part of the

Senate Confirmation Oversight Committee process I will:

- be subject to a criminal records background investigation by the Kansas Bureau of Investigation; and
- have my tax records released by the Kansas Department of Revenue.

Such information will not be released to the general public, but will be made available for review at the appropriate time by:

- Myself;
- My appointing authority;
- Chairperson of the Senate Confirmation Oversight Committee; and
- The Vice Chair of the Senate Confirmations Oversight Committee.

By signing the "Authorization and Certification" section (on page 8) of the Senate Confirmation Oversight Committee questionnaire, the Kansas Department of Revenue will be authorized to release my tax information and the Kansas Bureau of Investigation will be authorized to conduct a criminal background investigation on me and provide that information to the appropriate individuals.

Signature

Form 08/08

_ Date 4/16/10

Kansas Senate

CONFIRMATION OVERSIGHT COMMITTEE

APPOINTMENT QUESTIONNAIRE

Full Name:	viously used)
Home Address: 8149 DEER RUI	(City, State, Zip)
Driver's License Number: Social Security Nu	
Position to which Appointed: BOARD OF TA	DIGENT DEPENS
Appointing Authority: 600 SVAOR / 5	ENATE

* Information on this page will not be made public but is used by the KBI and Department of Revenue.

(for Committee use only)		
KBI Check: N/A	In-Process	Complete
DOR Check: N/A	In-Process	Complete

This Questionnaire is to be fully completed by each appointee appearing before the Senate Confirmation Oversight Committee (Committee) and returned to the Committee Chairman's Office. A meeting of the Committee to consider an appointee will not be scheduled until a completed questionnaire and other forms are received by the Chairman. Please answer each question completely to the best of your knowledge. Should a question not be applicable, please so state. Hand-written responses are strongly discouraged. If filling out this form electronically, "\(\sigma\)" should be replaced with "X" by the appropriate response on the form. Please contact your appointing authority if you have questions when completing the form.

form.
Full Name: TAMES TATICU COLGAY (please include title and middle name along with any names previously used)
Position to which Appointed: BUALLO 8F TWOGHT DEFENSET
Appointing Authority: OUNHON SALATE
Home Address: S/49 DESER RUN STREET (City, State, Zip)
Business Name: ONC GALL / ALL FIDM / C
Business Address: //OO PANA UET PANNUAY SUNE 250 (Street Address) Position Title: PANNUAR
Position Title: ANTWER (City, State, Zip) /CC 166109
Home Phone (913) 441.7308 Business Phone (913) 721-9999 Cell Phone: (913) 909-1545
Fax Number: (913) 121-9964 E-Mail Address: Jamercalgen 6 colgenton.
Kansas resident? Wes / ONo Date of Birth: 2/2>/42 Place of Birth: Resp Our Four
Registered Voter? Party Affiliation: Party Affiliation:
Congressional District: Kansas Senate District: Kansas Representative District:
Do you have the legal right to live and work in the United States? Yes / No
Please answer the following questions numbered 1 – 43. Each question <u>MUST BE ANSWERED ON</u> <u>THIS ORIGINAL FORM.</u> If the answers the question are provided on your resume, please state
"See Resume" or if you supply additional attachment(s) with answers, please state "See Attachment(s)" on this form.
1. What is your educational background?

Describe your employment experience. Include any expertise related to the position to which you

PESUM5

Form 08/08 - Page 2

2.

were appointed.

3.	List any professional licenses that you have obtained and include the number for each license.	W
4.	Why do you feel you are a good candidate for the position to which you have been appointed?	
5.	What do you see as the purpose or mission of the role to which you have been appointed?	ARN
6.	Military Service: List rank, date and type of discharge from active service. None	7 (· Eu)
7.	Government Experience: List any experience or association with local, state or federal government (exclusive of elective public office but including advisory, consulting, honorary, appointed or other part-time service or positions) and include dates of service. None	
8.	Elective Public Office: List all elective public offices sought and/or held with dates of service. None	
9.	Campaigns: Have you ever played a role or held a position in a political campaign? If so, please identify the candidate(s), the dates of the campaign and describe your involvement. No □Yes	
10.	Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships and any other special recognition for outstanding service or achievements. None	
11.	Organization Affiliations: List all civic, cultural, educational, charitable, or work-related organizations that you have been associated with in the past ten years. Include any position held in the organization and the dates of service. None	
12.	Organization Restrictions: To your knowledge, is any organization listed above restricted on the basis of race, color, religion, sex, national origin, disability, marital status or veteran status? If so, please describe. No □Yes	
13.	Issues: Have you ever been publicly identified, in person or by organizational membership, with a particularly controversial national or local issue? If so, please describe. ⚠No ☐Yes	
14.	Submission of Views: Have you ever submitted oral or written views to any governmental authority, whether executive or legislative, or to the news media on any particularly controversial issue other than in an official governmental capacity? If so, please describe. No □Yes	
15.	Associations: Have you ever had any association with any person, group or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for the position to which you seek to be appointed? If so, please describe. No Yes	
	Form 08/08 - Page 3	

- Opposition: Do you know of any person or group who might take overt or covert steps to attack, even unfairly, your appointment? If so, please identify and explain the basis for the potential attack.

 No DYes
- 17. **Miscellaneous**: List any factors, other than the information provided above, which particularly qualifies you or is relevant to the position to which you are seeking appointment? Include any special skills.
- Relationship to Governmental Employees: Are you or your spouse or other close family members related to any state governmental official or employee? If so, please provide details.

 MNo Tyes
- 19. Compensation: During the past five years, have you or your spouse or other close family members received any compensation or been involved in any financial transaction with the State of Kansas? If so, please explain.

 Notice Arrows Reput Seaming The Language Seaming Seaming

20. **Business Relationships**: Describe any business relationship, dealing or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client or acting as an agent, which you believe may constitute an appearance of impropriety or result in a potential conflict of interest in the position to which you want to be appointed. If none, please so state.

None

- 21. Transactions with Officials: During the past five years, have you or your spouse or other close family members received any compensation or been involved in any financial transaction with any state government official? If so, please explain.
- 22. Spouse or Other Family Members: If the nature of employment for your spouse or other close family member is related in any way to the position to which you have been appointed, please indicate the employer, the position and the length of time it has been held. If not, please so state.

 No
 Yes
- 23. Lobbying Activities: Describe any lobbying activity during the past ten years in which you and/or your spouse have engaged for the purpose of influencing the passage, defeat or modification of any legislative or administrative action. Lobbying activity includes any activity performed as an individual or agent of another individual, or of any organization that involves direct communication with an official in the executive branch of state government or any official of the legislative branch. If none, please so state.
- 24. **Regulated Activities**: Describe any interest that you, your spouse or other close family member may have (whether as an officer, owner, director, trustee, or partner) in any corporation, firm, partnership or other business enterprise and any non-profit organization or other institution that is regulated by or receives direct financial benefits from any department or agency of the State of Kansas. If none, please so state.

25.	Other: Please describe any other matter in which you are involved that is or may be incompatible or in conflict with the discharge of the duties of the position to which you have been appointed or which may impair or tend to impair your independence of judgment or action in the performance of the duties of that position. If none, please so state. None
26.	Conflict of Interest: How would you resolve any potential conflicts of interest that, while maybe unforeseen at this point in time, could arise?
27.	Citations: Have you ever been cited for a breach of ethics for unprofessional conduct, or been named in a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please provide details. No Tyes
28.	Convictions: Have you ever been convicted of or entered a plea of guilty or nolo contendere or forfeited collateral for any criminal violation other than a traffic infraction? (Please include any offenses of driving under the influence, operating while impaired, reckless driving, or the equivalent offenses in other states.) If so, please explain. No Tyes
29.	U.S. Military Convictions: Have you ever been convicted by any military court? If so, please provide details. ▶ No □Yes
30.	Imprisonment: Have you ever been imprisoned, been on probation or been on parole? If so, please provide details. ☑No ☐Yes
31.	Agency Proceedings/Civil Litigation: Are you presently, or have you ever been, a party in interest in any administrative agency proceeding or civil litigation that is related in any way to the position to which you are seeking appointment? If so, please provide details. No \(\supersetting Yes\)
32.	Agency Proceedings and Civil Litigation of Affiliates and Family: a.) Is your spouse or other close family member currently, or ever been, a party in interest in any administrative agency proceeding or civil litigation that is related in any way to the position to which you are seeking appointment? If so, please provide details. No \(\Delta\)Yes
	b.) Has any business in which you, your spouse, close family member or business associate are or were an officer, director or partner been a party to any administrative agency proceeding or civil litigation relevant to the position to which you are seeking appointment? If so, please provide details. (With respect to this question, you need only consider proceedings and litigation that occurred while you, your spouse, close family member, or business associate were an officer of that business.) No Yes

33.	Other Litigation: a.) Other than the litigation described in question 32, have you or any business in which you are or were an officer, director, or partner been a plaintiff or a defendant in a civil lawsuit? If so, please describe. No Tyes b. Are you aware of any pending or anticipated litigation against you or any business in which you
	are an officer, director, or partner? If so, please describe. No DYes
34.	Drivers License: Has your driver's license ever been suspended or revoked? If so, please describe. No □Yes
35.	Parking Tickets: Do you have outstanding parking tickets from any jurisdiction that have remained unpaid for more than 60 days? If so, please explain. No Pyes
36.	Security Clearance Denial: Have you ever been denied a military or other governmental clearance? If so, please explain. No UYes
37.	Firings: a.) During the past ten years, have you been fired from a job for any reason? If so, please explain. No Yes
	b.) During the past ten years, have you quit a job after being told that you would be fired? If so, please explain. ✓ No ☐Yes
	c.) During the past ten years, did you leave a job by mutual agreement because of specific problems? If so, please explain. No Yes
38.	Alimony and Child Support: Are you now, or have you ever been, delinquent in the payment of alimony or child support? If so, please explain ☑No ☐Yes
39.	Consumption of Alcohol: Have you ever or are you currently abusing alcohol? If so, please explain. No □Yes
40.	Controlled Substances: Have you ever or are you currently engaged in the illegal use of a controlled substance or abusing the use of a prescribed controlled substance? If so, please explain. No Tyes
41.	Physical Examination: If you receive a conditional offer of appointment or employment, would you be willing to take a physical examination, which may include a drug test? No Pyes

- 42. Governmental Delinquencies: Are you delinquent in the payment of any obligation owed to the federal or state government or any political or taxing subdivision or any instrumentality thereof? (Include delinquencies in the payment of: Income, property, or other taxes; exactions, fees or special assessments; loans, including any defaults, on or under loans which are or were made by, guaranteed, insured or subsidized by any unit of government or instrumentality thereof; overpayment of benefits; required payments into or under governmental programs; payments under a diversion arrangement or other repayment schedule.) If applicable, please state whether such delinquency is under formal appeal.
- 43. Other: Please provide any additional information, favorable or unfavorable, which you feel should be considered in connection with your appointment. If none, please so state.

 None

Please include resume and completed Statement of Substantial Interest not more than twelve months old.

REFERENCES

Name: TEAN M. MITCHELK nov	vs you how?: WORKS FA OUR OFFICES
Address: 816 11. 10068 57	RONNER Sport. 6602
Home Phone: 9/3 - 721-9999	Business Phone:
	vs you how?: FRIENS/ AMONR BEFORE HE
Address: 7/0 1/, 7th Apola	WY ANDOTELS COUNTHOUSE LANSACCTY, 15
Home Phone:	Business Phone: (9/3) 573 - 2834
Name: HON GRABUS WAYNE LANGER POV	vs you how?: CHIEF JUDGE WYADONE
Address: 7/0 R/ 170 STPLOS	vs you how?: CHILET JUDGE WYANDONE (WYANDONE COUNTROUSE) / GANSASCRYKI (City, State, Zip)
Home Phone:	
Name:Knov	vs you how?:
Address:	
Home Phone:	(City, State, Zip) Business Phone:

AUTHORIZATION AND CERTIFICATION:

The facts set forth in my application are true and complete. False statements, answers, or omissions on this application shall be sufficient cause for nonconsideration or for dismissal after appointment or employment. I also recognize that my selection is based on receipt of satisfactory information from former employers and references, and upon my ability to perform the essential elements, with or without reasonable accommodations, for the position for which I am applying. I herein authorize investigation, without liability, of the information supplied by me in this application for employment or appointment including academic, occupational, health, law enforcement, and government records. I also authorize listed employers and references, without liability, to make full response to any inquiries in connection with this application for appointment or employment. I understand and agree that the terms, conditions, compensation, benefits, hours, schedule, and duration of my appointment or employment may be determined, changed, or modified from time to time at the will of the appointing authority or designee without limitation or condition. I FURTHER CERTIFY THAT I HAVE READ THE FOREGOING PARAGRAPH AND KNOWINGLY MAKE THIS AUTHORIZATION BY SETTING FORTH MY SIGNATURE.

I understand that if I am required to be registered, licensed, or certified by federal or state law or regulation for the position I seek, I will notify the appointing authority immediately if any investigation, limitation, or cancellation of my registration, licensure, or certification occurs. If any investigation, probation, limitation, or cancellation occurs, I understand that my failure to notify my appointing authority as described above will result in the termination of my appointment or employment.

Signature

Form 08/08 - Page 8

James P. Colgan

8149 Deer Run Street Lenexa Kansas 66220 (913) 441-7308 home • (913) 721-9999 work (913) 721-9964 facsimile Political Affiliation – Registered Independent jamescolgan@colganlaw.com

Education

- Juris Doctor, Washburn University School of Law, Topeka, KS, 1983
- Master of Education, Guidance and Counseling Psychology, Loyola University, Chicago, IL, 1974
- Bachelor of Arts, Business and Psychology, Redeemer College, Waterford, WI, 1965

Experience & Accomplishments:

Colgan Law Firm L.L.C Kansas City, Kansas 66220 (Affiliated with Edward Gillette as separate law practice from September of 1997 to 2000): now partner with wife Ann Colgan: 2000 to present. Current address Country Club Bank Bldg. Suite 202 11006 Parallel Parkway, Kansas City, Kansas 66109

- General Practice of law with concentrations the areas of Domestic, Criminal, Personal Injury and Probate
- Member of the Board of Indigent Defense Services in Wyandotte County since 1997. Member of the Board of Indigent Defense Services in Leavenworth County since 2008. Defended clients in more than 44 Jury Trials in Johnson, Wyandotte and Leavenworth Counties. Offenses include: First Degree Murder, Agg Indecent Liberties, Rape, Agg Burglary, Criminal Threat, Theft, Felony DUI.

Boatmen's Bank and Trust Kansas City, MO. (Purchased by NationsBank in June of 1997) Vice President and Manager of the Corporate Trust Department, 1991 to September 1997

Managed Corporate Trust Department with 24 employees. Responsible for millions
of dollars in corporate and municipal bonds, new business development, default
workouts and coordination with St. Louis headquarters on budget projections and
analysis.

Commerce Bank and Trust, Topeka, KS

Vice President for Commercial Financial Services, May 1986 to 1991

- Selected for this newly expanded division to provide:
 Administrative Management: Provide technical expertise on bond issues, stock transfers and custody issues regarding pension and profit sharing plans. Direct the work of four staff technicians.
- Prepare documents for Master Pension Plan Services, with careful attention to technical requirements and protection of the bank's long-term interests.
- Manage the major self-directed IRA programs, and the mutual fund asset allocation program.

James P. Colgan

Page 2

Experience & Accomplishments Continued

Bank IV, Topeka, KS

Trust Officer, 1984-1986

 Responsible for personal trust administration and tax compliance of \$30 million in gross account values; annual new business development; and probate administration

United Missouri Bank, Kansas City, MO

Trust Officer, 1984

 Responsible for 150 trust accounts; customer relations and investment counseling; real estate and tax coordination.

First Bite Sandwich Shoppe, Topeka, KS

Co-owner, 1981 to 1984

Owned and operated gourmet delicatessen while attending law school.

 Responsible for all aspects of small business development and management, including product development, quality control, advertising, accounting, tax preparation and personnel management.

Governor's Office for Planning and Programming, Des Moines, IA Assistant State Director for Developmental Disabilities, 1975-1979

Administered a \$500,000 federal program for people with developmental disabilities.
 Coordinated efforts of volunteer organizations.

 Designed contract application packets for community grants and evaluated performance of grant programs.

· Testified before legislative subcommittees on program plans and funding.

Kansas and Nebraska Schools of Banking

Visiting Professor, 1987

• Specialize in providing training on corporate trust and custodial accounts to banking professionals at industry-sponsored conferences.

Professional & Civic Affiliations

Kansas Bar Association: Member 2010
 Wyandotte County Bar Association 2010
 Leavenworth Kansas Bar Association 2010

Topeka Hospice: Board member 1987

Topeka Capitol City Youth Basketball League: Boys coach

James P. Colgan Page 3

Experience & Accomplishments Continued

- Topeka Youth Basketball League: Girls coach Washburn Rural Optimist Club: Board member 1987 Paso Fino Owner's & Breeder's Association: President in 1988



STATE OF KANSAS



Sec. of St. bar code

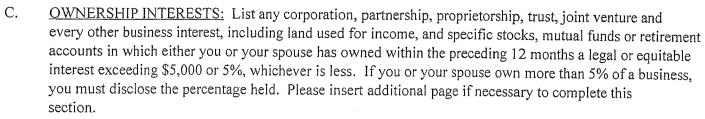
KANSAS GOVERNMENTAL ETHICS COMMISSION

STATEMENT OF SUBSTANTIAL INTERESTS FORM

INSTRUCTIONS. This statement (pages 1 through 4) must be completed by individuals who are required to do so by law. Any individual who intentionally fails to file as required by law, or intentionally files a false statement, is subject to prosecution for a class B misdemeanor.

Please read the "Guide" and Definition" section provided with this form for additional assistance in

	Commission office at 109 West			
•	IDENTIFICATION:	PLEASE TYPE O	R PRINT	
	COLL-AN	SAI	125	P
	Last Name	First N	lame .	MI
	ANN K	. COLGU	4.1	
	Spouse's Name			
	8149 DE	SV RUN	STRUST	
	Number & Street Name, Aparti	ment Number, Rural Rou	te, or P.O. Box Number	
	LEMEN XIA	- 1/5		·
	City, State, Zip Code	7	_	
	(9/3) 441	-7308	913-721-	-9999
	Home Phone Number (include	area code)	Business Phone Numbe	r (include area code)
	1. State Elected Offici State Treasurer, Sec Education, or District Appointed Member 3. Appointed State Pour 4. Employee of a State 5. General Counsel for 6. Candidate for State	cretary of State, State Senict Attorney); or of a State Board, Counciposition is Subject to Senate Agency or University; or State Office;	or, Attorney General, Comminator, State Representative, Molification, State Representative, Molification, Commission or Authority; e Confirmation;	ssioner of Insurance, ember of State Board of
ist N	lame of Agency, Board, Universi	ity or Elected Position (Y	ou may use abbreviations but	not acronyms)
9	POARD OF IM	161-38 PE	FENSE :	BOARD MISLUB
		ion if applicable (May use ocial security number will	l aid in identifying you from o	ition
01	799			Rev. 3/2006



If you have nothing to report in Section "C", check here ____.

				
BUSINESS NAME AND ADDRESS	TYPE OF BUSINESS	DESCRIPTION OF INTERESTS HELD	PERCENT OF OWNERSHIP INTERESTS	HELD BY WHOM
1. COLGAN GAWARUN PRX 10000 PARALLIN PRX	2 LAW	PARAMER	1809	SOLIF WIFE
2 SUST 202	10109			
3.				
4.				
5.				·
6.				
7.				·
8.		3 0		-
9.	-			
10.		·		

D. GIFTS OR HONORARIA: List any person or business from whom you or your spouse either individually or collectively, have received gifts or honoraria having an aggregate value of \$500 or more in the preceding 12 months.

If you have nothing to report in Section "D", check here _____.

NAME OF PERSON OR BUSINESS FROM WHOM GIFT RECEIVED	ADDRESS	RECEIVED BY:
1. NONE		
2.		
3.		

SSI	of:	

- E. RECEIPT OF COMPENSATION: List all places of employment in the last calendar year, and any other businesses from which you or your spouse received \$2,000 or more in compensation (salary, thing of value, or economic benefit conferred on in return for services rendered, or to be rendered), which was reportable as taxable income on your federal income tax returns.
 - 1. YOUR PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. IF SAME AS SECTION "B", CHECK HERE ____. If you have nothing to report in Section "E"1, check here ____.

	NAME OF BUSINESS		ADDRESS	TYPE OF BUSINESS
1. COL	GAY GAW FIRM	LLC	11000 PARALLE PKWY	LAW
2.			KANGECITY, 115	

2. SPOUSE'S PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR.

If you have nothing to report in Section "E"2, check here.

	NAME OF BUSINESS		ADDRESS	TYPE OF BUSINESS
1. B	OLGAN LAW FIR	MLLC	11006 PANALLES, Bass	LAW
2.			KANSA CTY IN	v v v v v v v v v v v v v v v v v v v

F. OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS: List any organization or business in which you or your spouse hold a position of officer, director, associate, partner or proprietor at the time of filing, irrespective of the amount of compensation received for holding such position. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "F", check here .

	BUSINESS NAME AND ADDRESS		POSITION HELD	* HELD BY WHOM
1.	VONE			
				,
2.				and the second second
3.	A STATE OF THE STA			
4.				
				•
5.				
6.				
			,	
7.		:		
				the state of the s
8.				
		·		

G. RECEIPT OF FEES AND COMMISSIONS: List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions you or your spouse received an aggregate of \$2,000 or more in the preceding calendar year. The phrase "client or customer" relates only to businesses or combination of businesses. In the case of a partnership, it is the partner's proportionate share of the business, and hence of the fee, which is significant, without regard to expenses of the partnership. An individual who receives a salary as opposed to portions of fees or commissions is generally not required to report under this provision. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "G", check here _____.

NAME OF CLIENT / CUSTOMER		RESS R	RECEIVED BY
1 ALL PORTIONS OFF	last .		
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			<u> </u>
12.			

H. DECLARATION:

I, AMEI P. COCOM, declare that this statement of substantial interests (including any accompanying pages and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my substantial interests and other matters required by law. I understand that the intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.

gnature of Person Making Statemen

NUMBER OF ADDITIONAL PAGES _____.

Return your completed statement to the Secretary of State, Elections Division, Memorial Hall, First Floor, 120 SW 10th, Topeka, Kansas 66612-1594.

Print Form

Reset Form

Senate Confirmation Information Summary

Prepared and Submitted by the Office of Governor Mark Parkinson

Appointee: John Robert Weber

Position: Member, State Board of

Indigent Services

Term Length: 3 years

Expiration Date: January 15, 2013

Statutory Authority: KSA 22-4519 et seq.

Party Affiliation: Republican

⇒ Statutory geographic representation

Congressional District: 4th Congressional

District Public Member

Requirements (insert any that apply)

County:

Size requirement (if any):

Other, specify:

⇒ Statutory party affiliation requirement:

5:4

⇒ Statutory industry or occupation requirements:

Two members from each Congressional District – one attorney and one public member who cannot be an attorney. One attorney member from each county > 100,000; however, no more than five such members. No judicial/law enforcement officers. Limit of two consecutive three

year terms.

Salary: NA

Predecessor: Himself - Reappointed

Board Composition Prior to Confirmation of New Appointee:

(SEE ATTACHED LIST)

Senate Judiciary

/-/8-//
Attachment 3



CONFIRMATION OVERSIGHT COMMITTEE

Acknowledgment of Release of Tax and Criminal Records Information Form

John Rober Weber

I, ^{JO}	hn Rober Weber	acknowledge that as part of the
	(print name)	
Senat	e Confirmation Oversight Committee proc	ess I will:
•	be subject to a criminal records background Investigation; and	and investigation by the Kansas Bureau of
	have my tax records released by the Kan	sas Department of Revenue.
	information will not be released to the gen appropriate time by:	eral public, but will be made available for review
•	Myself;	
•	My appointing authority;	
	Chairperson of the Senate Confirmation	Oversight Committee; and
•	The Vice Chair of the Senate Confirmat	ons Oversight Committee.
Overs releas a crin	sight Committee questionnaire, the Kansas se my tax information and the Kansas Bureninal background investigation on me and iduals.	"section (on page 8) of the Senate Confirmation Department of Revenue will be authorized to au of Investigation will be authorized to conduct provide that information to the appropriate Date 10/19/10
		Form 08/08

Form 08/08



CONFIRMATION OVERSIGHT COMMITTEE

APPOINTMENT QUESTIONNAIRE

Full Name: John Robert Weber	middle name along with any names previously used)
(prease merade title and r	initiatio name along with any names proviously asour
Home Address: 14221 W. Burton Ct.	Wichita, Kansas 67235
(Street Address)	(City, State, Zip)
Driver's License Number:	Social Security Number:
Dily of 8 Dicombo I (amoo).	
Position to which Appointed: Board of Indigent I	Defence Services
1 Ostfloif to Willoff Appointed.	
A : distinct A Governor	
Appointing Authority: Governor	

* Information on this page will not be made public but is used by the KBI and Department of Revenue.

(for Committee use only)			
	KBI Check: N/A	In-Process	Complete
İ	DOR Check: N/A	In-Process	Complete

This Questionnaire is to be fully completed by each appointee appearing before the Senate Confirmation Oversight Committee (Committee) and returned to the Committee Chairman's Office. A meeting of the Committee to consider an appointee will not be scheduled until a completed questionnaire and other forms are received by the Chairman. Please answer each question completely to the best of your knowledge. Should a question not be applicable, please so state. Hand-written responses are strongly discouraged. If filling out this form electronically, "\sum " should be replaced with "X" by the appropriate response on the form. Please contact your appointing authority if you have questions when completing the form.

Full Name:John Robert Webs	er"	
	(please include title and middle name along with a	ny names previously used)
Position to which Appointed: _	Board of Indigent Defence Services	
Appointing Authority:Gove	nor	
Home Address: 14221 W. Burto	n Court	Wichita, Kansas 67235
Tionic riddress.	(Street Address)	(City, State, Zip)
Business Name: Weber and Ass	sociates, Inc.	
Business Address: 1427 E. Wate		Wichita, Kansas 67211
	(Street Address)	(City, State, Zip)
Position Title: President	the state of the s	
Home Phone: 316-721-0753	Business Phone: 316-267-8762	Cell Phone: 316-648-2118
Fax Number: 316-267-6028	E-Mail Address	jweber@weber-corp.com
A STATE OF A SECURITION OF A S	No Date of Birth: 11/18/1951	and the second s
Registered Voter? Yes	Party Affiliat	ion: Republican
Congressional District:	Kansas Senate District: 0026	Kansas Representative District: 0094
Do you have the legal right to	live and work in the United States'	? ⊠Yes / □No

Please answer the following questions numbered 1-43. Each question <u>MUST BE ANSWERED ON THIS ORIGINAL FORM</u>. If the answers the question are provided on your resume, please state "See Resume" or if you supply additional attachment(s) with answers, please state "See Attachment(s)" on this form.

- 1. What is your educational background? Batchelor of Science, Friends University
- 2. Describe your employment experience. Include any expertise related to the position to which you were appointed. Owner of Weber and Associates, Inc., sales company here in Wichita. Company incorporated in November 1983. Company sells computer room air conditioning and power systems.

List any professional licenses that you have obtained and include the number for each license. 3. None Why do you feel you are a good candidate for the position to which you have been appointed? I have an interest in the work of the board, have been on the board. 4. What do you see as the purpose or mission of the role to which you have been appointed? To help provide the right to a fair trial to all provided for in the constitution 5. Military Service: List rank, date and type of discharge from active service. 6. None Government Experience: List any experience or association with local, state or federal 7. government (exclusive of elective public office but including advisory, consulting, honorary, appointed or other part-time service or positions) and include dates of service. Board of Indigent Defence, 2009 to date None Elective Public Office: List all elective public offices sought and/or held with dates of service. 8. ⊠None Campaigns: Have you ever played a role or held a position in a political campaign? If so, please 9. identify the candidate(s), the dates of the campaign and describe your involvement. ⊠No □Yes Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society 10. memberships and any other special recognition for outstanding service or achievements. None Organization Affiliations: List all civic, cultural, educational, charitable, or work-related 11. organizations that you have been associated with in the past ten years. Include any position held in the organization and the dates of service. Board of trustees, Friends University, 1992 to date, sat out one year 2000 American society of Heating, Refrigeration & Air Conditioning Engineers. 1978 to date, President 1983-1894 Trustee, First Presbyterian Church, Wichita. Currently Organization Restrictions: To your knowledge, is any organization listed above restricted on the 12. basis of race, color, religion, sex, national origin, disability, marital status or veteran status? If so, please describe. ☑No ☐Yes Issues: Have you ever been publicly identified, in person or by organizational membership, with a 13. particularly controversial national or local issue? If so, please describe. ☑No ☐Yes Submission of Views: Have you ever submitted oral or written views to any governmental 14. authority, whether executive or legislative, or to the news media on any particularly controversial issue other than in an official governmental capacity? If so, please describe.

Associations: Have you ever had any association with any person, group or business venture that

could be used, even unfairly, to impugn or attack your character and qualifications for the position

to which you seek to be appointed? If so, please describe.

⊠No □Yes

⊠No □Yes

15.

- Opposition: Do you know of any person or group who might take overt or covert steps to attack, even unfairly, your appointment? If so, please identify and explain the basis for the potential attack.
 ☑No ☐Yes
- 17. **Miscellaneous:** List any factors, other than the information provided above, which particularly qualifies you or is relevant to the position to which you are seeking appointment? Include any special skills.

 None
- Relationship to Governmental Employees: Are you or your spouse or other close family members related to any state governmental official or employee? If so, please provide details.

 No DYes
- Compensation: During the past five years, have you or your spouse or other close family members received any compensation or been involved in any financial transaction with the State of Kansas? If so, please explain.

 No Yes

 Sold equipment to Wichita State University. Sold equipment to the Kansas Air National Guard
- Business Relationships: Describe any business relationship, dealing or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client or acting as an agent, which you believe may constitute an appearance of impropriety or result in a potential conflict of interest in the position to which you want to be appointed. If none, please so state.
- Transactions with Officials: During the past five years, have you or your spouse or other close family members received any compensation or been involved in any financial transaction with any state government official? If so, please explain.

 No Tyes
- 22. Spouse or Other Family Members: If the nature of employment for your spouse or other close family member is related in any way to the position to which you have been appointed, please indicate the employer, the position and the length of time it has been held. If not, please so state.

 No Tyes
- 23. Lobbying Activities: Describe any lobbying activity during the past ten years in which you and/or your spouse have engaged for the purpose of influencing the passage, defeat or modification of any legislative or administrative action. Lobbying activity includes any activity performed as an individual or agent of another individual, or of any organization that involves direct communication with an official in the executive branch of state government or any official of the legislative branch. If none, please so state.
- Regulated Activities: Describe any interest that you, your spouse or other close family member may have (whether as an officer, owner, director, trustee, or partner) in any corporation, firm, partnership or other business enterprise and any non-profit organization or other institution that is regulated by or receives direct financial benefits from any department or agency of the State of Kansas. If none, please so state.

25.	Other: Please describe any other matter in which you are involved that is or may be incompatible or in conflict with the discharge of the duties of the position to which you have been appointed or which may impair or tend to impair your independence of judgment or action in the performance of the duties of that position. If none, please so state. None
26.	Conflict of Interest: How would you resolve any potential conflicts of interest that, while maybe unforeseen at this point in time, could arise? I would excuse myself from the board.
27.	Citations: Have you ever been cited for a breach of ethics for unprofessional conduct, or been named in a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please provide details. ☑No ☐Yes
28.	Convictions: Have you ever been convicted of or entered a plea of guilty or nolo contendere or forfeited collateral for any criminal violation other than a traffic infraction? (Please include any offenses of driving under the influence, operating while impaired, reckless driving, or the equivalent offenses in other states.) If so, please explain. ☑No ☐Yes
29.	U.S. Military Convictions: Have you ever been convicted by any military court? If so, please provide details. ☑No ☐Yes
30.	Imprisonment: Have you ever been imprisoned, been on probation or been on parole? If so, please provide details. ☑No ☐Yes
31.	Agency Proceedings/Civil Litigation: Are you presently, or have you ever been, a party in interest in any administrative agency proceeding or civil litigation that is related in any way to the position to which you are seeking appointment? If so, please provide details. No Tyes
32.	Agency Proceedings and Civil Litigation of Affiliates and Family: a.) Is your spouse or other close family member currently, or ever been, a party in interest in any administrative agency proceeding or civil litigation that is related in any way to the position to which you are seeking appointment? If so, please provide details.
	b.) Has any business in which you, your spouse, close family member or business associate are or were an officer, director or partner been a party to any administrative agency proceeding or civil litigation relevant to the position to which you are seeking appointment? If so, please provide details. (With respect to this question, you need only consider proceedings and litigation that occurred while you, your spouse, close family member, or business associate were an officer of that business.) No Pyes

33.	Other Litigation: a.) Other than the litigation described in question 32, have you or any business in which you are or were an officer, director, or partner been a plaintiff or a defendant in a civil lawsuit? If so, please describe. ☑No ☐Yes b.) Are you aware of any pending or anticipated litigation against you or any business in which you are an officer, director, or partner? If so, please describe. ☑No ☐Yes
34.	Drivers License: Has your driver's license ever been suspended or revoked? If so, please describe. ⊠No □Yes
35.	Parking Tickets: Do you have outstanding parking tickets from any jurisdiction that have remained unpaid for more than 60 days? If so, please explain. No Tyes
36.	Security Clearance Denial: Have you ever been denied a military or other governmental clearance? If so, please explain. No Tyes
37.	Firings: a.) During the past ten years, have you been fired from a job for any reason? If so, please explain. No Tyes
	b.) During the past ten years, have you quit a job after being told that you would be fired? If so, please explain. ☑No ☐Yes
	c.) During the past ten years, did you leave a job by mutual agreement because of specific problems? If so, please explain. ☑No ☐Yes
38.	Alimony and Child Support: Are you now, or have you ever been, delinquent in the payment of alimony or child support? If so, please explain ☑No ☐Yes
39.	Consumption of Alcohol: Have you ever or are you currently abusing alcohol? If so, please explain. No □Yes
40.	Controlled Substances: Have you ever or are you currently engaged in the illegal use of a controlled substance or abusing the use of a prescribed controlled substance? If so, please explain ☑No ☐Yes
41.	Physical Examination: If you receive a conditional offer of appointment or employment, would you be willing to take a physical examination, which may include a drug test? No Yes

- Governmental Delinquencies: Are you delinquent in the payment of any obligation owed to the federal or state government or any political or taxing subdivision or any instrumentality thereof? (Include delinquencies in the payment of: Income, property, or other taxes; exactions, fees or special assessments; loans, including any defaults, on or under loans which are or were made by, guaranteed, insured or subsidized by any unit of government or instrumentality thereof; overpayment of benefits; required payments into or under governmental programs; payments under a diversion arrangement or other repayment schedule.) If applicable, please state whether such delinquency is under formal appeal.
- Other: Please provide any additional information, favorable or unfavorable, which you feel should be considered in connection with your appointment. If none, please so state.

 ☑None

Please include resume and completed Statement of Substantial Interest not more than twelve months old.

REFERENCES

))
p)
p) .
ip)

AUTHORIZATION AND CERTIFICATION:

The facts set forth in my application are true and complete. False statements, answers, or omissions on this application shall be sufficient cause for nonconsideration or for dismissal after appointment or employment. I also recognize that my selection is based on receipt of satisfactory information from former employers and references, and upon my ability to perform the essential elements, with or without reasonable accommodations, for the position for which I am applying. I herein authorize investigation, without liability, of the information supplied by me in this application for employment or appointment including academic, occupational, health, law enforcement, and government records. I also authorize listed employers and references, without liability, to make full response to any inquiries in connection with this application for appointment or employment. I understand and agree that the terms, conditions, compensation, benefits, hours, schedule, and duration of my appointment or employment may be determined, changed, or modified from time to time at the will of the appointing authority or designee without limitation or condition. I FURTHER CERTIFY THAT I HAVE READ THE FOREGOING PARAGRAPH AND KNOWINGLY MAKE THIS AUTHORIZATION BY SETTING FORTH MY SIGNATURE.

I understand that if I am required to be registered, licensed, or certified by federal or state law or regulation for the position I seek, I will notify the appointing authority immediately if any investigation, limitation, or cancellation of my registration, licensure, or certification occurs. If any investigation, probation, limitation, or cancellation occurs, I understand that my failure to notify my appointing authority as described above will result in the termination of my appointment or employment.

Signature	John Rulehu	Date	10/19/10	· · · · · · · · · · · · · · · · · · ·
- 25·······	//	-		

John R. Weber

14221 W. Burton Ct. Wichita, Ks. 67235 316-721-0753 jweber@weber-corp.com

Education

Friends University, BS, 1985

Work Experience

1984 to date, Weber and Associates, Inc., Wichita, Ks

President

- Sales company, selling computer room air conditioning and power systems.
- Started company in 1984

1980 to 1983, M.E. Chieppo Company, Wichita, Ks.

Sales engineer

- Responsible for designing and selling commercial/industrial air conditioning systems
- Purchased the company in October of 1983 and started up Weber and Associates, Inc.

1979 to 1980, Bryant O'Conner Company, Wichita

Sales

• Selling residential air conditioning and heating equipment to contractors in the state of Kansas

1975 to 1979, Comfort Inc., Liberal, Ks.

Project manager

- Managed small commercial heating, air conditioning and electrical projects.
- Maintained company inventory
- Purchased material for projects and was responsible for billings
- Purchased the company in October, 1983. Started Weber and Associates, Inc. in January 1984

References

• Shown on Confirmation Oversight Committee Appointment Questionnaire

STATE OF KANSAS



KANSAS GOVERNMENTAL ETHICS COMMISSION

ELECTRONIC STATEMENT OF SUBSTANTIAL INTERESTS FORM

<u>INSTRUCTIONS</u>: This statement must be completed by individuals who are required to do so by law. Any individual who intentionally fails to file as required by law, or intentionally files a false statement, is subject to prosecution for a class B misdemeanor.

Please read the "Guide" and "Definition" section provided with this form for additional assistance in completing sections "C" through "G". If you have questions or wish assistance, please contact the Commission office at 109 West 9th, Topeka, KS or call 785-296-4219.

А. ј	DEN	1171	CATION:		*			
	WE:	BE	R JOHN		R			
	Last h	Nam	e First Name		MI			
	JUD)IT					· · · · · · · · · · · · · · · · · · ·	
	Spou	se's	Name					
	142	21	WEST BURTON COURT					
	Numb	oer 8	Street Name, Apartment Number, Rural Route, or P.O. Box Number					
	WIC	CH	TA, KS 67235					
	City,	State	e, Zip Code		•	*		
	(316	 7 	21-0753		(316) 267	-8762		
	Home	e Ph	one Number	*	Business Pho	one Numbe	r ·	
B.	THIS	(check one or more of the following) State Elected Official (Governor, Lt. Governor, Attorney Gene Secretary of State, State Senator, State Representative, Men	eral, Com	missioner of l tate Board of	insurance Educatior	State Treasur or District	er,
			Attorney);					
	4	2.	Appointed Member of a State Board, Council, Commission of	r Authorit	у;			
		3.	Appointed State Position is Subject to Senate Confirmation;			•		
	Γ	4.	Employee of a State Agency or University;					
	Γ	5.	General Counsel for a State Agency;					
		6.	Candidate for State Office.					
		7.	Other (Contractor / Member of Compact)					

BOARD OF INDIGENTS' DEFENCE SERVICES

List the Name of Agency, Board, University or Elected Position (You may use abbreviations but not acronyms)

COMMITTEE MEMBER

3-12

Division if applicable (May use acronyms)	Position	•				
* The last four digits of your social security number computer list. This information is optional. *	will aid in identifying y	you from others v	vith the same na	ame on th		
C. <u>OWNERSHIP INTERESTS</u> : List any corporation, partnership, proprietorship, trust, joint venture and every other business interest, including land used for income, and specific stocks, mutual funds or retirement accounts in which either you or your spouse has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5%, whichever is less. If you or your spouse own more than 5% of a business, you must disclose the percentage held. Please insert additional page if secessary to complete this section. If you have nothing to report in Section "C", check here						
BUSINESS NAME AND ADDRESS	TYPE OF BUSINESS	DESCRIPTION OF INTERESTS HELD	PERCENT OF OWNERSHIP INTERESTS	HELD BY WHOM		
WEBER AND ASSOCIATES, INC.	SALES OFFICE	DDECIDENT	4000/			
1. 1427 E. WATERMAN, WICHITA, KS. 67211	SALES OFFICE	PRESIDENT	100%	self		
D. GIFTS OR HONORARIA: List any person or busine	ess from whom you or yo	our spouse either i	ndividually or coll	lectively		

have received gifts or honoraria having an aggregate value of \$500 or more in the preceding 12 months.

If you have nothing to report in Section "D", check here

NAME OF PERSON OR BUSINESS FROM WHOM GIFT RECEIVED	ADDRESS	RECEIVED BY
1.		

- E. RECEIPT OF COMPENSATION: (Part 1) List all places of employment in the last calendar year, and any other businesses from which you or your spouse received \$2,000 or more in compensation (salary, thing of value, or economic benefit conferred on in return for services rendered, or to be rendered), which was reportable as taxable income on your federal income tax returns.
- 1. YOUR PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. IF SAME AS SECTION "B", CHECK HERE

If you have nothing to report in Section "E"1, check here

NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.		

2. SPOUSE'S PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR.

If you have nothing to report in Section "E"2, check here

NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.		

F. OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS: List any organization or business in which you or your spouse hold a position of officer, director, associate, partner or proprietor at the time of filling, irrespective of the amount of compensation received for holding such position. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "F", check here

BUSINESS NAME AND ADDRESS	POSITION HELD	HELD BY WHOM
1.		

G. <u>RECEIPT OF FEES AND COMMISSIONS</u>: List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions you or your spouse received an aggregate of \$2,000 or more in the preceding calendar year. The phrase "client or customer" relates only to businesses or combination of businesses. In the case of a partnership, it is the partner's proportionate share of the business, and hence of the fee, which is significant, without regard to expenses of the partnership. An individual who receives a salary as opposed to portions of fees or commissions is generally not required to report under this provision. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "G", check here

NAME OF CLIENT / CUSTOMER	ADDRESS	RECEIVED BY
1.		

H. <u>DECLARATION:</u> I declare that this statement of substantial interests (including any accompanying pages and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my substantial interests and other matters required by law. I understand that the intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.

Date Electronically Filed: 10/19/2010

Name of Person Making Statement: John R. Weber

Session of 2010

SENATE BILL No. 435

By Committee on Judiciary

1-25

AN ACT concerning criminal procedure repealing K.S.A. 22-2501; re-10 11 lating to search incident to arrest, amending K.S.A. 22-2501 and re-12 pealing the existing section. 13 Be it enacted by the Legislature of the State of Kansas: 14 Section 1. K.S.A. 22-2501 is hereby amended to read as follows: 22-15 16 2501. When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's 17 18 immediate presence for the purpose of 19 — (a) Protecting the officer from attack, (b) Preventing the person from escaping, or 20 21 - (c) Discovering the fruits, instrumentalities, or evidence of a the 22 crime. 23 Sec. 2. Section 1. K.S.A. 22-2501 is hereby repealed. Sec. 3. 2. This act shall take effect and be in force from and after its 24 25 publication in the statute book.

Senate Judiciary

Attachment Z

As Amended by House Committee

As Amended by Senate Committee

Session of 2010

SENATE BILL No. 435

By Committee on Judiciary

1-25

	The state of the s
12	AN ACT concerning criminal procedure repealing K.S.A. 22-2501
13	concerning criminal procedure; relating to search incident to ar-
14	rest; amending K.S.A. 22-2501 and repealing the existing section;
15	amending K.S.A. 22-2501 and repealing the existing section.
16	
17	Be it enacted by the Legislature of the State of Kansas:
18	Section 1. K.S.A. 22-2501 is hereby amended to read as follows: 22-
19	2501. When a lawful arrest is effected a law enforcement officer may
20	reasonably search the person arrested and the area within such person's
21	immediate presence for the purpose of
22	— (a) Protecting the officer from attack;
23	- (b) Preventing the person from escaping, or
24	(e) Discovering the fruits, instrumentalities, or evidence of a the
25	crime.
26	Section 1. K.S.A. 22-2501 is hereby amended to read as fol-
27	lows: 22-2501. When a lawful arrest is effected a law enforcement
28	officer may reasonably search the person arrested and the area within
29	such person's immediate presence for the purpose of
30	— (a) Protecting the officer from attack;
31	—(b)—Preventing the person from escaping; or
32	— (e) Discovering the fruits, instrumentalities, or evidence of a crime.
33	to the full extent allowed by and consistent with the constitution of the
34	United States.
35	Sec. 2. Section 1. Sec. 2. K.S.A. 22-2501 is hereby repealed.
36	Sec. 3. 2. 3. This act shall take effect and be in force from and after
37	its publication in the statute book.

STATE CAPITOL BUILDING **ROOM 140-N** TOPEKA, KANSAS 66612 (785) 296-7376 (785) 296-0103/FAX

STATE OF KANSAS



CIVIC CENTER STATIC POST OFFICE BOX 171110 KANSAS CITY, KANSAS 66117 (913) 321-3210 (913) 321-3110/FAX

SENATE CHAMBER

DAVID B. HALEY

SENATOR FOURTH DISTRICT WYANDOTTE COUNTY

January 18, 2011

TESTIMONY IN SUPPORT OF SB 6

MR CHAIRMAN; FELLOW MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

Thank you for scheduling this matter as the first hearing of the Session. Senate Bill 6 restores constitutional protections regarding search and seizure that had, until a few years ago, remained undisturbed in our statutes for forty (40) years. The Kansas Supreme Court reversed a decision that the technical fix in SB 6 purports to do; change "a" crime back to the time honored "the" crime.

Our Senate Committee once again is called upon to ignore the pleas of those who might prefer "fishing expeditions" when attempting to find evidence of ANY crime under the pretext of looking for evidence of a SPECIFICALLY enumerated crime for which a warrant has been issued and to show our leadership in insuring state and federal constitutional guarantees. As noted in State v. Helling during the summer of 2009, our Kansas Supreme Court noted that the specificity of a search within the scope of a lawful arrest should (beyond the reasonable scope of protecting the officer or preventing the person from escaping) be only to find evidence of THE crime for which the person is being arrested. A lower Court's decision was reversed by the Supreme Court in the *Henning* case based on this one vague statute. (Opinion Attached)A similar case reached the Court of Appeals with a similar decision in 2010.

Last year, the Legislature considered STRIKING an ENTIRE statute in an attempt to rewrite then SB 435!

I believe legislative leadership can provide clear legislative intent in statute to be interpreted by the courts, prosecution and defense. Striking KSA 25-2201 I humbly suggest would only subject the statute to the patchwork interpretation of case law arguing for or against the validity of a search and seizure.

My greater concern is some potential civil suit against our State for so unconstitutional a statute. By bringing this issue up here, at least the Courts will have some framework of legislative intent by the Minutes and Explanations found in our votes here and/or on the Floor.

Mr. Chairman; members of the Committee ... please restore KSA 25-2201 to its' previously undisturbed form by replacing the "a" crime with "the" crime.

Thank you again for your consideration. I'm happy to stand for any questions you might have.

- David Haley, Ranking Minority, Senate Judiciary

COMMITTEE ASSIGNMENTS ASSESSMENT & TAXATION JUDICIARY REAPPORTIONMENT PUBLIC HEALTH & WELFARE

JOINT COMMITTE Senate Judiciary STATE TRIBA CORRECTIONS & .

EARLY CHILDHOC Attachment

Kansas Peace Officers' Association



INCORPORATED

TELEPHONE 316-722-8433 FAX 316-722-1988 www.kpoa.org kpoa@kpoa.org
P.O. Box 2592 WICHITA, KANSAS 67201

Testimony of Kyle Smith In Opposition to SB 6
January 18, 2011

Chairman Owens and Members of the Committee,

On behalf of the Kansas Peace Officers Association, I appear today in opposition to the SB 6. The intent of the bill is appropriate, but we feel the approach is mistaken.

The general rule is that any search conducted without the benefit of a search warrant is presumed to be unreasonable, unconstitutional and invalid. The U.S. Supreme Court has recognized specific, limited exceptions to this rule such as exigent circumstances, abandoned property, exposed characteristics, plain view, fleeting vehicles, open fields and inventory.

This bill is just the latest chapter in a long story regarding efforts to codify the U.S. Supreme Court's decisions regarding the 'search incident to arrest' exception to the warrant requirement. For those with long memories, for the majority of the last 14 years there has been a bill in one format or another attempting to get it right. Then in 2009 the United States Supreme Court again changed the rule and the statute is again out of sync with the law.

SB 6 is an attempt to codify that ruling but, frankly, again, the bill totally fails to properly reflect that ruling.

- First it would apply to all searches incident to arrests but the Supreme Court's ruling only applied to a narrow sliver of such cases: searches of cars after a person has been arrested and secured.
- The court case also allows officers to search the car even after the arrest if they have reasonable suspicion of another crime. This bill would handicap the police and not allow them to search for such evidence, even if they have information that it is in the car.

The ironic point to all these futile efforts is that the legislature has not attempted to codify any of the other judicially recognized exceptions, and the problems with this effort aptly demonstrate why. The ebb and flow of court controlled decisions is best

Senate Judiciary
/-/8-//
Attachment /a

suited for training rather than statutory rules. Law enforcement is well aware of the need to keep current on these topics as not only can evidence be suppressed, but civil liability attaches for violating constitutional rights under 42 U.S.C. 1983.

As such, we would strongly recommend a better and more simple solution. Treat this exception to the search warrant requirement like all the other exceptions: repeal K.S.A. 22-2501. Law enforcement will get along just fine, bound by the same rules that apply regardless what a statute says, and you can spend more time on more meaningful bills.

If you feel it necessary to try once again to restate the transient opinion of the Courts, we would be happy to work with the revisor to better capture what the opinions hold, but we do believe that this would be a constant and ultimately unsuccessful approach.

I would be happy to answer any questions.



Kansas Association of Chiefs of Police

PO Box 780603 Wichita, KS 67278 (316)733-7301



Kansas Sheriffs Association PO Box 1853

PO Box 1853 Salina, KS 67402 (785)827-2222

Testimony to Senate Judiciary Committee In Opposition to SB6

January 18, 2011

Chairperson Senator Owens and Committee Members,

I stand before you today representing the Kansas Association of Chiefs of Police and the Kansas Sheriffs Association in opposition of SB6 as proposed. You will recall this same proposal came to you last year as SB435. During the testimony last year you heard from the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association, Kansas County and District Attorneys Association, and the Kansas Attorney General's Office all recommending this bill be amended to simply repeal KSA 22-2501. The reasons and the logic to do so were clear and this committee made such an amendment and the amended bill passed the Senate. The House Committee amended the bill by proposing the statute to read, "When a lawful arrest is effected a law enforcement officer may reasonably search to the full extent allowed by and consistent with the constitution of the United States." This amendment was approved by the House Committee and went to the full House for a vote. During the House Committee of the Whole debate, the bill was amended further to include provisions for an additional unrelated topic that had never had a hearing in either the House or Senate committees. The amended bill passed the House and went back to the Senate where the House floor amendment caused the bill to be ruled substantially altered and the bill was sent back to a Senate Committee. The bill as amended by the House was not approved by the Senate and received no further action. In the end, the House and Senate seemed to be in agreement that the law should not be amended as proposed in SB6 today. They appeared to agree search incident to arrest case law should not be codified. They just differed in how to get there.

We believe Kansas should repeal, not amend, KSA 22-2501 and join the other 44 states that do not attempt to codify search incident to arrest case law. It is worth noting that Kansas nor any other state we are aware of attempts to codify any other search warrant exceptions approved by case law.

Since a statute cannot permit the search to be any less restricted than the constitution as determined by case law, the statute can only serve to be more restrictive than the courts have ruled. Law enforcement does not need to be further restricted than allowed by the courts. Further, codifying search and seizure case law creates confusion, not clarification, when new case law develops.

We strongly urge you to amend SB6 in the same manner you amended SB435 last year by amending it to simply repeal the statute.

Ed Klumpp

Kansas Association of Chiefs of Police, Legislative Committee Chair Kansas Sheriffs Association. Legislative Liaison

E-mail: eklumpp@cox.net Cell: (785) 640-1102

Senate Judiciary

Attachment

Senate Judiciary Committee Senate Bill 6 Testimony of the Kansas Association of Criminal Defense Lawyers Proponent January 18, 2011

The Kansas Association of Criminal Defense Lawyers is a 300-member organization dedicated to justice and due process for people accused of crimes. KACDL is strongly in favor of SB 6.

Last year, when this bill existed as SB 435, it was characterized as a "technical correction . . . with no fiscal effect" (to quote the 2010 Fiscal Note). At that time, a number of opponents asked for K.S.A. 22-2501 to be repealed in its entirety. While I do not know if this is the case this year, I nevertheless dedicate this testimony to responding to this suggestion. KACDL opposes the repeal of K.S.A. 22-2501.

K.S.A. 22-2501 has been around for 40 years. For the first 36 years, it read:

When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of

- (a) Protecting the officer from attack;
- (b) Preventing the person from escaping; or
- (c) Discovering the fruits, instrumentalities, or evidence of the crime.

In 2004 and 2005, there was a movement by law enforcement and prosecutors to change "the crime" to "a crime" to expand the scope of searches incident to arrest. In part, they were reacting to a holding ten years earlier in *State v. Anderson*, 259 Kan. 16 (1996) and using as support a ruling 23 years prior in *New York v. Belton*, 453 U.S. 454 (1981). (The legislative history of this movement to amend and/or repeal K.S.A. 22-2501 is set forth in *State v. Henning*, 289 Kan. 136 (2009).) While efforts to amend or repeal initially failed, the Legislature did repeal K.S.A. 22-2501 in 2006 (Senate Bill 366) only to revive and amend the statute that same year to read "a crime" (House Substitute for Senate Bill 431). I could not find legislative history behind the 2006 actions, and *Henning* also notes that the legislative record is silent on this issue.

In 2009, the United States Supreme Court decided *Arizona v. Gant*, 129 S.Ct. 1710 (2009) and the Kansas Supreme Court subsequently decided *Henning*. Under these decisions, the "a crime" language is unconstitutional.

Last year, opponents argued for the Legislature to abdicate its responsibility as lawmaker and leave that role to the courts:

"The ebb and flow of court controlled decisions is best suited for training rather than statutory rules." (KS Peace Officers and Chiefs of Police – written testimony to Senate Judiciary, 3/3/10)

"... [K.S.A. 22-2501] cannot anticipate the changing shape of Fourth Amendment search and seizure law" (KS Attorney General's Office – written testimony to Senate Judiciary, 3/3/10)

Senate Judiciary

| -/8-/|
Attachment | 8

"We propose that it would be best to rely on the rulings of the courts as they are handed down . . ." (KCDAA – written testimony to Senate Judiciary, 3/3/10)

The Legislature crafted K.S.A. 22-2501 four decades ago. It made one change to it in 40 years and it spent three years deliberating that move. As *Henning* said of that change, "[a]lthough the language appears to move toward *Belton*, the legislature's rejection of outright repeal in favor of amendment may indicate that it wished to retain some restrictions in excess of those demanded by the United States Supreme Court case law." The Legislature thinks and acts for itself and does not need to rely exclusively on the courts.

Our next point is framed by this excerpt:

[K.S.A. 22-2501] also gives criminals an additional avenue to protract litigation, leaving courts and law enforcement to struggle with the application of K.S.A. 22-2501 when they could be spending those resources on other cases and fighting crime.

(Kansas Attorney General's Office – written testimony to Senate Judiciary, 3/3/10)

What is going to happen when a 40-year-old statute is eliminated? Less "protracted" litigation? Less "struggle" to apply case law? The point of a statute is clear guidance – for law enforcement, prosecutors, defendants and so on. Instead, we will have 105 counties (more entities if you count cities/towns, etc.) interpreting federal and state court rulings and making policies and procedures based on those interpretations, etc. Will that result in fewer "avenues" for "criminals" to assert their constitutional rights?

State v. Daniel, 242 P.3d 1186 (KSC 11/19/10), gives us insight into what might happen if K.S.A. 22-2501 is eliminated. In that case, the district court found a warrantless search lawful because of the "a crime" language in K.S.A. 22-2501. However, during the pendency of Ms. Daniel's appeal, that language was found unconstitutional in *Henning*. Therefore, the State asked the Kansas Supreme Court to "salvage Daniel's conviction by applying a good-faith exception to the exclusionary rule." *Daniel*, 242 P.3d at 1188. In the end, the Court did affirm Ms. Daniel's conviction: "The officer's objectively reasonable reliance on K.S.A. 22-2501(c) is demonstrated by (a) the substantial case law precedent across the country upholding similar searches; (b) an appellate court decision directly on point that was valid at the time of Daniel's search; and (c) the statute's legislative history." *Daniel*, 242 P.3d at 1195.

If this issue had arisen and K.S.A. 22-2501 had not existed, then the outcome could have been different -- Ms. Daniel could have had her conviction reversed. In the absence of a statute with case law and legislative history behind it, the State could have ended up losing *Daniel*.

Thank you for your consideration,

nsiger C. Pitt

Jennifer C. Roth

on behalf of the Kansas Association of Criminal Defense Lawyers

rothjennifer@yahoo.com

785.550.5365.

Senate Judiciary Committee January 18, 2011

Testimony on Senate Bill 6

Submitted by Patrick Vogelsberg
On behalf of the
Kansas County and District Attorney Association

It is the pleasure of the Kansas County and District Attorney Association (KCDAA) to be able to testify in regards to Senate Bill 6. The purpose of this bill is to codify the holdings in *Arizona v. Gant*, 129 S. Ct. 1710, 556 U.S. ___(April 21, 2009), and *State v. Henning*, 289 Kan. 136, 209 P.3d 711 (2009). The statutory result of SB 6 would simply change K.S.A. 22-2501(c) from, "discovering the fruits, instrumentalities, or evidence of <u>a</u> crime," to "discovering the fruits, instrumentalities or evidence of <u>the</u> crime. This is a return to the pre-2006 language of K.S.A. 22-2501(c), which contained "the" from its enactment in 1970 until legislation amended the statute in 2006. Though the above change may comply with *Gant* and *Henning*, it is the position of the KCDAA that a better approach would be to repeal K.S.A. 22-2501 and let law enforcement operate under a case law rubric of search incident to arrest rather than a rigid statutory framework that runs the risk of being declared unconstitutional.

The change of one word may seem as a simple enough solution to the recent court holdings. However, the perspective that history can give us regarding K.S.A. 22-2501(c) lends itself to the notion that repeal is the better course of action.

Approximately four decades ago the United States Supreme Court, in *Chimel v. California*, 395 U.S. 752 (1969), provided boundaries to the search incident to arrest exception to the Fourth Amendment warrant requirement.

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control" -- construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Id. at 762-63. This limitation, as the U.S. Supreme Court explained forty years later in *Gant*, "continues to define the boundaries of the exception, ensures that the scope of a search incident

Senate Judiciary

1-18-1

Attachment 9

to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy." 129 S.Ct. at 1716.

With *Chimel* as its guide, the Kansas legislature first took to codifying its holding one-year after its publication in 1970. From 1970 until 2006, K.S.A. 22-2501 stated,

When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of

- (a) Protecting the officer from attacks;
- (b) Preventing the person from escaping; or
- (c) Discovering the fruits, instrumentalities, or evidence of *the* crime. (Emphasis added.)

Since its enactment in 1970, two cases provided the underpinning for attempted legislation in 2004 and 2005 and then successful legislation in 2006 that changed "the" to "a" in K.S.A. 22-2501(c). The first was the U.S. Supreme Court case *New York v. Belton*, 453 U.S. 454 (1981) and the second was our own Kansas Supreme Court case, *State v. Anderson*, 259 Kan. 16, 910 P.2d 180 (1996).

In Belton, the Supreme Court held that,

[w]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. 453 U.S. at 460. The *Belton* court explained, "[t]he jacket [wherein cocaine was found] was located inside the passenger compartment of the car in which the respondent had been a passenger just before he was arrested. The jacket was thus within the area which we have concluded was "within the arrestee's immediate control" within the meaning of the *Chimel* case. The search of the jacket, therefore, was a search incident to a lawful custodial arrest, and it did not violate the Fourth and Fourteenth Amendments.

Id. at 462-63.

In 1996 the Kansas Supreme Court examined a vehicle search incident to arrest and directly considered the implications of the use of "the" in the then language of K.S.A. 22-2501(c) in *Anderson*. The *Anderson* court held that K.S.A. 22-2501(c) permitted a police officer to search a car or truck incident to an occupant's or a recent occupant's arrest, for the purpose of uncovering evidence to support *only* the crime of arrest. 259 Kan. at 24. Since the driver in *Anderson* was arrested for driving on a suspended license and a warrant for her arrest was in connection with a charge of operating a vehicle with no child restraint, the search of the vehicle could only be done for the purpose of unveiling evidence in connection with these crimes of arrest. With these two crimes in mind, there was no evidence that would be in the vehicle that would have a connection with the crimes of arrest. The result in *Anderson* was that a search of the vehicle's glove compartment, which revealed a crack pipe was impermissible under the K.S.A. 22-2501(c) and

all subsequent evidence found was suppressed. At the time it was thought that K.S.A. 22-2501(c) placed more restrictive boundaries than what were allowable under *Belton*.

In 2004 and 2005 there were attempts to change "the" to "a" in K.S.A. 25-2501(c). Neither of the years resulted in the statute being amended. However, the 2006 legislative session resulted in successful legislation. Therefore, K.S.A. 25-2501(c) currently reads:

When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of

- (a) Protecting the officer from attack;
- (b) Preventing the person from escaping; or
- (c) Discovering the fruits, instrumentalities, or evidence of a crime. (Emphasis added).

In analyzing the legislative history of K.S.A. 25-2501(c), the court in *Henning* stated:

[W]e believe we can safely say that the legislature at least intended to undercut our holding in *Anderson*. We thus rule here that K.S.A. 22-2501(c)'s current wording would permit a search of a space, including a vehicle, incident to an occupant's or a recent occupant's arrest, even if the search was not focused on uncovering evidence only of the crime of arrest.

289 Kan. at 718. One could assume that if the present language was in place in 1996 when the Kansas Supreme Court was applying K.S.A. 25-2501 to the facts in *Anderson* the search incident to arrest that revealed the drug evidence would have been permitted. Regardless, the *Henning* court ruled that K.S.A. 25-2501(c) was facially unconstitutional under the Fourth Amendment and Section 15 of the Kansas Constitution Bill of Rights by applying the recent U.S. Supreme Court ruling of *Arizona v. Gant*.

In Gant, the Supreme Court held that

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

129 S.Ct. at 1724. In striking down the current language of K.S.A. 25-2501(c), the Kansas Supreme Court stated that the U.S. Supreme Court's

return to the first principles of *Chimel* [was] also significant because it set up without compelling reinforcement of [the Kansas Supreme] [C]ourt's *Anderson* interpretation of the pre-2006 version of K.S.A. 22-2501(c). *Gant 's* equation of purpose and scope deviated somewhat from the *Anderson* discussion, but it

arrived at the same ultimate destination: To have a valid search incident to arrest, when there is no purpose to protect law enforcement present, the search must seek evidence to support the crime of arrest, not some other crime, be it actual, suspected, or imagined. In the vehicle context, " in many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains ... evidence [relevant to the crime of arrest.]" (Citations omitted).

Therefore, K.S.A. 25-2501(c) as it stands now is unconstitutional under the holdings of *Gant*, which was applied in Kansas by *Henning*. The suggestion is that by going back to the pre-2006 language with "the" instead of "a" would make the statute compliant with *Gant* and *Henning*. However, the main point of this testimony is that there is no need to have a statute that codifies case law regarding search incident to arrest. As the KCDAA's former president, Thomas Stanton provided in past testimony regarding this same subject matter:

There are many other aspects of constitutional search and seizure law that do not rely on statutory codification that work well. Examples are inventory searches, searches based on emergency circumstances, and probable cause searches. None of these areas of the law are codified, yet law enforcement officers are well trained on the parameters of such searches. When changes occur in these areas of the law, officers are immediately trained on those searches, and the law, as handed down by the appellate courts, is followed. We believe this is the best approach to guiding the actions of law enforcement officers in the field. The KCDAA recommends the repeal of K.S.A. 22-2501 for these reasons.

Testimony given to Senate Judiciary Committee on March 3, 2010. The KCDAA has not changed its position regarding K.S.A. 22-2501. Repeal is the most appropriate action to be taken.

What this testimony has endeavored to convey by the chronological account of K.S.A. 25-2501(c) and search incident to arrest case law over the past 40 years is that at no point was a statutory framework for search incident to arrest necessary. Law enforcement remains capable of following court holdings as well as anyone, and as Mr. Stanton explained, law enforcement is capable of quickly conforming practices to the latest court rulings. If anything, having a statue has required duplication of analysis in search incident to arrest cases: one based on case law and one based on statute. Repeal is the best action.

Nonetheless, should this body determine not to repeal K.S.A. 25-2501; the KCDAA believes SB 6 as written should be passed to accurately reflect the decisions in *Gant* and *Henning*.