



STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

February 17, 2025

Judiciary Committee
Attention: Senator Kellie Warren
State Capitol, Room 419-E
Topeka, Kansas 66612

Re: Senate Bill 204

Dear Senator Warren,

Thank you for the opportunity to submit our written response in support of SB 204.

Over the last several years, the Office of Judicial Administration (OJA) and the Kansas Supreme Court have worked on establishing a state-wide court management system called Odyssey. That was accomplished in November of 2024. Prosecutors across the State had previously notified OJA and the Supreme Court of some public safety concerns we had with how this new management system was operated. There are two areas of concern addressed in this bill. The release of warrant information and personal identification information to the general public.

Warrant Information

In summer of 2023 several prosecutors met with the Supreme Court and OJA to outline our concerns regarding public access to case information prior to an arrest warrant being served on defendants. We believed that the legislature's intent was clear: nothing directly or indirectly notifying the public of the existence of an arrest warrant should be available. We argued that K.S.A. 21-5906 precludes the release of any information associated with issuance of an arrest warrant. That section of the statute reads as follows:

- (a) Criminal disclosure of a warrant is recklessly making public in any way, prior to the execution of such warrant the:
 - (1) Fact that a search warrant or warrant for arrest has been applied for or issued;

Prior to using the Odyssey court system the case filing information was not available to the public. The Supreme Court and OJA took a position that only data directly related to issuance of the warrant should be excluded from public view. (see Supreme Court Rule 22 comments section) We still believe that the legislature's intent was withhold any information that disclosed the presence of the warrant, not just the word "warrant".

Obviously, we have no opportunity to appeal their decision, which is why we come before you with this bill. Currently under the Odyssey court management system, when we file a case and an arrest warrant is issued, the following information is seen by the public; name of the offender, list of criminal charges, date of offense, city and county where it occurred, the name of the victim, prosecutor who filed the case and the judge who signed the documents. Any criminal defendant can easily create an account to figure out if there is an active case pending against them and can reasonably conclude they have a warrant for their arrest if they haven't yet appeared in court. This occurs for all cases including homicide, sexual assault and domestic violence cases.

There are several obvious public safety concerns with this situation. It puts victims of violence including domestic violence at risks by allowing the offender to have the ability to intimidate, hurt, or kill victims prior to their arrest. This publication of charges also puts law enforcement at risk by giving the offender notice of the case and the warrant prior to their arrest. It also places the public at risk from individuals who will flee from police because of the warrant, which results in many traffic fatalities throughout the State.

The Supreme Court outlined only limited relief available in Supreme Court Rule 23. It allows prosecutors to file a motion and order to seal the information from public view. However, there are several problems with how this rule is constructed. The Court has forbidden the unilateral use of seal orders. Therefore, we must provide case specific facts on each case we want sealed. This requires the prosecutors to file many motions and orders and have a hearing, prior to filing charges, to protect law enforcement and victims. It places an additional burden on the already overworked prosecutors and court clerks offices across the state.

This case specific facts requirement by OJA and the Court presumes that we can anticipate which warrant situations places victims and the public at risk, presuming we have the ability to predict future behavior like the Sci-fi movie "Minority Report". That is far from reality. We have had a number of fatality accidents where individuals fled from police for minor crimes like traffic warrants. This also holds true for many misdemeanor domestic battery cases. Limiting what type of cases can be sealed unnecessarily puts law enforcement, victims and the general public at risk. Therefore, we propose the following amendment to K.S.A. 60-2617.

(a)(1) Upon filing of a criminal case or a case pursuant to the revised Kansas juvenile justice code in which an arrest warrant is being sought, the case shall be sealed by the court until such warrant has been executed or the request for such warrant is denied. Nothing in this paragraph shall prohibit disclosure of case or warrant information to law enforcement for the purposes of executing such warrant.

We are asking the legislature to pass these amendments to reaffirm your intent to exclude all direct and indirect reference to case and warrant information until execution of the warrant. This commonsense approach will once again help protect our law enforcement officers, victims and the general public. Once the warrant is executed and the person arrested, then all case information would once again become public.

Personal Identification Information

As the State-wide court management system (Odyssey) has been implemented, it has highlighted the need for additional changes to protect victims and individuals "personally identifiable information". The Supreme Court has acknowledged a need to protect this information under Supreme Court Rule 24. So has this legislative body by limiting this same information under various statutory provisions including the Open Records Act.

Attorneys across the State have for years taken steps to protect personally identifiable information from public view during court proceedings. This has been done by using initials or abbreviations of this information in filed court documents. However, prosecutors must utilize this information when subpoenaing individuals and documents to present their case and make their arguments in court. This would include names of children who are victims of abuse and neglect, names and addresses of adult victims of sexual assault and domestic violence, requests for bank records that has victims account numbers and social security numbers on it, medical records that includes victim's social security number and or date of birth. Those subpoenas need to specify the name, address and personal information in order for the proper individuals and documents to be served and obtained for court. We have already had domestic violence cases where subpoena information listing the name and addresses of the victim has resulted in harassment of the victim by the defendant.

The crux of the problem under Odyssey is that it allows all subpoenas filed with the court to be accessible to the general public. Prior to Odyssey those records were not available to the public. The only relief available to the attorneys is to file motions and orders to seal this information and then schedule a hearing to argue why this information should be protected. We are then required to articulate case specific information as to why sealing the information is necessary. Once again, this suggests that we can predict future human behavior. This would unnecessarily require attorneys to file seal orders on something that is presumptively considered by the Supreme Court and the Kansas Legislature as privileged information. We are asking that you pass this bill to require the Court to proactively seal subpoena information from public view. The attorneys and court and process servers would still have access to this subpoena information. We are therefore asking that you amend Kansas Statutes in the following way.

60-2617. Sealing or redacting court records; closing a court proceeding; motion; notice; hearing; exceptions.

(a)(2) All subpoenas issued in a criminal case or a case pursuant to the revised Kansas juvenile justice code shall be sealed by the court and a subpoena shall only be unsealed if the court makes a finding that unsealing such subpoena is in the interest of justice

The only stated reason for making these subpoenas public was the court's desire for transparency. The transparency of our court system will not be impacted by this bill, since all court hearings are presumptively open to the public, with a few limited exceptions. The vast majority of court documents are also available for public view. Those individuals and records obtained by subpoena would still be presented in open court available to the public, while protecting the individual's privacy rights and safety.

This amendment would also help reduce the necessity to file large number of motions and orders to seal and avoid clogging up the Court system with hearings requesting said orders. It would also have the collateral benefit of eliminating unnecessary documents from being filed by our numerous court clerks across the State. This commonsense approach would create a more efficient means of affecting justice.

Both of these commonsense amendments will protect victims, law enforcement, and the general public and allow individuals personal identification information to be protected. We ask that you pass this bill into law for the safety of all Kansans.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. Howe", written in a cursive style.

Stephen M. Howe
Johnson County District Attorney