

House Federal and State Affairs Committee  
February 14, 2017  
House Bill 2145

Testimony of the  
Kansas Association of Criminal Defense Lawyers  
prepared by Geoffrey Clark

Opponent  
(written only)

Dear Chairman Barker and Members of the Committee:

I am an attorney in private practice in Fort Scott. I am providing this testimony as a member of the Kansas Association of Criminal Defense Lawyers, an organization made up of 350+ attorneys and other legal professionals across the state. HB 2145 adds four additional categories to K.S.A. 21-6301, criminal use of weapons. All new violations would be severity level 8 felonies. The language in HB 2145 is drawn from 18 USC 922(g)(8), which makes it a federal offense for a person to possess a firearm in the four categories set out in HB 2145. The wording and scope vary a little, but **essentially HB 2145 would create state crimes that mirror current federal offenses with regard to firearm possession.** We believe this is unnecessary and costly.

**HB 2145 adds fugitives from justice from other states.** To put this proposal in context, we look to existing federal law. If a person is under indictment (i.e. charged) with a felony, he/she is prohibited by federal law, 18 USC 922(n), from shipping or transporting a firearm or ammunition in interstate commerce. That is, they cannot personally move or ship a firearm or ammunition across state lines. The same section also prohibits a person under indictment for a felony from receiving a firearm or ammunition. So, in this scenario, a fugitive from another state who is charged with a felony in another state could neither lawfully come to Kansas with a firearm, or lawfully take possession of a firearm while here. 18 USC 922(g)(4) already prohibits a fugitive from justice from possessing a firearm or ammunition. "Fugitive from justice" is defined at 18 USC 921(a)(15): "[A]ny person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding." The 922(g)(4) prohibition is not limited to felony cases.

In HB 2145, "fugitives from justice" are defined as people who are wanted in other states (the definition refers to K.S.A. 22-2713, which is part of the Uniform Criminal Extradition Act) for felonies. Depending on the fugitive's status in the other state, this law would either be duplicative of federal law or possibly lead to an unwarranted loss of the right to possess firearms.

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If the person has been convicted of a felony in the other state and is facing a sentence or probation revocation, then it is already a crime in Kansas for that person to possess a firearm. If the person has not been convicted in the other state in the case at issue, but is already a felon for another reason, then it is already a Kansas crime for that person to possess a firearm. See K.S.A. 21-6304 and 21-6305.

If the accused has a warrant for a pending felony charge (i.e. no conviction in that case at this point), then it appears it is already against 18 USC 922(n) for that person to come to Kansas with a firearm or take possession of a firearm while here. It is unnecessary to make a new state crime.

Furthermore, it seems excessive to make it a severity level 8 felony to possess a firearm when the accused has no conviction for a felony at that point and may never be convicted of a felony. While at first blush we can see why the police and society would not want someone who has an active warrant for them to have a firearm, HB 2145 would needlessly turn people into felons who will not be convicted for a felony in the other state. In addition, it would seem that as soon as you know you have a warrant for a felony, even if you are in the process of turning yourself in, you are guilty of a felony if you are in possession of a firearm. HB 2145 does not say that it has to be on you or in your general vicinity. The statutory definition of "possession" that would be applied in the absence of a more specific one in K.S.A. 21-6301 would be the one in K.S.A. 21-5111(v): "'Possession' means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control." This means that a person who is on his way to turn himself in on a felony warrant who has a gun at home could become a felon for possessing that firearm even if he is never convicted of the underlying felony in the other state. Another example would be if law enforcement comes to a person's home to execute the arrest warrant. If that person knew he had a warrant and there was a gun in the home, garage, or car - even if the arrest was peaceful and no gun involved - then he could be charged and convicted of a felony for possessing that firearm, even if he is never convicted of a felony in the other state who issued the warrant.

**HB 2145 adds people illegally or unlawfully in the country.** First, this is potentially duplicative of 18 USC 922(g)(5), which already makes it a federal crime for a person illegally or unlawfully in this country to possess a firearm. Second, HB 2145 does not define the terms "illegally or unlawfully" and doesn't seem to require that the person have knowledge that he/she is here "illegally or unlawfully." Immigration law is complex and ever-changing. Sometimes people think they are here illegally and they

aren't, or think they are here legally and they aren't. Even if there is no requirement that the person have knowledge of their status, it would be the prosecutor's burden to prove it. The prosecutor would have to prove an element of the crime where the law governing said element is not only complex and ever-changing, but dictated by federal law. This would require the State to incur costs for both prosecutors and defense counsel to work with experts in immigration law. Since the federal government is already dealing with these prosecutions, we fail to see the point of burdening the State with it. Third, if these terms are given an expansive reading, this would also encompass people who have inadvertently overstayed their visas or potentially a student who is working part-time in violation of his visa.

**HB 2145 adds people subject to certain court orders.** 18 USC 922(g)(8) already makes it a federal crime for a person subject to a protective order to possess a firearm. 18 USC 921(a)(32) defines "intimate partner" as "the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person." While the wording in HB 2145 appears to track 921(a)(32) for the most part, it still concerns me because in addition to criminal law, I practice domestic law. It is standard language in my temporary orders (issued at the start of cases) - as well as the temporary orders of many attorneys who handle divorces - to prohibit people from harassing, molesting, or abusing the other party. While the language was crafted to only include specific situations, I am concerned the language might be construed to keep people from having any firearms during a divorce when there has been no proof that they did anything or possess a danger to anyone.

Thank you for your consideration,

Geoffrey Clark  
on behalf of Kansas Association of Criminal Defense Lawyers  
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1 "WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED  
2 EQUAL, THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN  
3 UNALIENABLE RIGHTS." - U.S. Declaration of Independence  
4

5 From:  
6 3UP OF KANSAS

WRITTEN TESTIMONY  
HOUSE BILL NO. 2145,

7 To:  
8 HOUSE COMMITTEE ON FEDERAL AND STATE  
9 AFFAIRS

10 Dear Senate Committee Members,

11 3UP of Kansas represents a State wide network of United Kansas Patriots who are dedicated to support and  
12 defend the Constitution of the United States and the State of Kansas, who loves their country/state and supports its  
13 rightful legal authority and interests. We are the embodiment of mans' desire for freedom, believing in the  
14 fundamental unalienable rights of all human beings.  
15

16 To label the possession of any firearm by a person while such person is subject to a court order that restrains  
17 such person from harassing, stalking or threatening, as an offense of "Criminal use of weapons", takes away the  
18 flexibility of the Court to institute steps that would discourage potential behavior yet may not require the stripping of  
19 2<sup>nd</sup> Amendment Rights to self-protection.  
20

21 Keep in mind that typically, the subjects of these orders may not, at this point, have done any illegal actions that  
22 constitutes harassment, stalking or domestic violence. We have laws against all of those things and if they have done  
23 those things then they should be facing prosecution and not an order requiring them to not do actions that are already  
24 illegal. Instead, an order of protection is meant to be a tool for the Court to institute a period of cooling off or if need  
25 be to make it very clear and official that the subject is to leave the requesting party alone and have no contact. It is a  
26 tool to discourage any illegal actions before they happen and set lines in the sand for behavior that if continued now  
27 constitutes a crime, such as continuing to try and make contact in violation of the Courts order.  
28


1 HB2145, creates a requirement that even for temporary orders, the person under court order would be required to  
2 dispose of personal property as well as be stripped of their 2<sup>nd</sup> Amendment Rights in order to remain in compliance.  
3 Creating such an onerous burden with no options to lessen the burden may serve to give pause to Courts who may  
4 otherwise have felt that a short period of cooling off with a simple court order would have been beneficial. The net  
5 result may very well be fewer numbers of protection orders actually granted. This is no longer a simple court order  
6 that delineates acceptable behavior but has now become a punitive action that strips rights and forces the disposal of  
7 personal property and possibly without even having actually broken any laws.

8  
9 There is very clear language concerning “Parents and Legal Guardians” of the “Victim” with very little language  
10 defining what constitutes a “credible threat to their physical safety” or what could “potentially” cause bodily injury.  
11 Can such unclear language now be used to prosecute or harass law abiding Parents who simply engaged in corporal  
12 punishment of their children in the past? Will unclear language and the binding of the Courts ability to institute  
13 reasonable restrictions have an opposite effect upon the desired goal of deterrence?

14  
15 The Courts currently have the authority, when it is called for, to restrict the possession of firearms by setting  
16 terms of their order, is there truly a benefit from taking common sense decisions away from the Courts and passing  
17 such inflexible across the board terms? Does this create incentives for former Spouses to file for Court Orders in a  
18 “He said, She said” setting, in an attempt to harass or position themselves better during child custody hearings?

19  
20 Not seeing any clear benefit and seeing many detriments to current processes, we respectfully urge the  
21 Committee to vote against HB2145.

22 Respectfully Submitted and Dated this 8<sup>th</sup> of February, 2017,

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