

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:30 a.m. on February 4, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Kathleen Collins, Wyandotte County Clerk of the District Court
Ann Swegle, Deputy District Attorney, 18th Judicial District & KDCDA
Gail Bright, Office of the Kansas Security Commissioner
Lana Walsh, Office of Judicial Administration
Tom Stanton, Deputy Reno County District Attorney

Others attending:

See attached list.

The Chairman opened the hearing on **SB 400 - Requiring plaintiff or plaintiff's attorney to notify defendants of payment of appraisers' award within 15 days.** The Chairman reviewed the bill.

Kathleen Collins appeared in support, stating current practices required by K.S.A. 26-510(a) is a duplication of services that the plaintiff's attorneys are doing. The Clerks believe responsibility should lie with the attorneys and request they be relieved of an unnecessary practice. (Attachment 1)

There being no further conferees, the hearing on **SB 400** was closed.

The Chairman opened the hearing on **SB 386 - Preventing transmission of unredacted personal identifiers during discovery; repealing a statute concerning recorded statements of child victims.** Jason Thompson, staff revisor, reviewed the bill.

Ann Swegle testified in support stating there have been unfortunate collateral consequences related to the provision of discovery materials in criminal cases which have led to this proposed legislation. The release of sensitive identifiers or information to a criminal defendant could jeopardize a victim or witness' personal or financial security. **SB 386** would reduce the likelihood of future incidents while allowing for the protection of crime victims and witnesses against further victimization. (Attachment 2)

Gail Bright spoke in favor stating, the Office of the Kansas Securities Commissioner has an open discovery policy. Defense counsels are encouraged to review and copy files during the pendency of active cases. There can be numerous references to savings accounts, checking account, brokerage accounts, etc. in a financial crimes case. It is the position of the Commissioner that complainants who have already been victimized should not risk additional harm by further publication of their active financial accounts and support enactment of **SB 386**. (Attachment 3)

Lana Walsh appeared in opposition indicating the Office of Judicial Administration supports the merit of **SB 386** but have concerns regarding Section 1(b) on page 2. Ms. Walsh stated the burden would be on the court to discern that the unredacted personal identifiers have been supplied to defense counsel and recommended a balloon amendment barring the defendant's counsel from transmitting such information except as authorized by the court. (Attachment 4)

There being no further conferees, the hearing on **SB 386** was closed.

The hearing on **SB 411 - Criminal possession of a firearm** was opened. Jason Thompson, staff revisor, reviewed the bill.

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CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on February 4, 2010, in Room 548-S of the Capitol.

Tom Stanton testified in support stating **SB 411** will add certain drug felonies to the list of offences under K.S.A. 21-4204. This legislation will include drug crimes, some of which are considered the most dangerous of all crimes, that were inadvertently excluded from the original statute which serves as a basis for a ten-year proscription on the possession of a firearm restriction for convicted felons. (Attachment 5)

The Chairman called for final action on **SB 368 - Amending penalties for driving under the influence of alcohol or drugs.**

Senator Vratil moved, Senator Umbarger seconded, to recommend **SB 368** favorably for passage. Motion carried.

The next meeting is scheduled for February 5, 2010.

The meeting was adjourned at 10:28 a.m.

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*Kathleen Collins, President-Elect
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Senate Bill 400
Notice of Payment of Appraisers' Award
Condemnation Procedures

TESTIMONY

By: Kathleen Collins, Clerk of the District Court
Wyandotte County District Court
29th Judicial District

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Kansas Association of District Court Clerks and Administrators regarding Senate Bill 400.

In condemnation cases filed under K.S.A. Chapter 26, Article 5, after the petition is filed, the court will appoint appraisers to value the property in question. The appraisers will file their report in the office of the clerk of the district court with their findings, and then the plaintiff pays the amount set out in the report to the clerk of the district court.

K.S.A. 26-510(a) currently requires the clerk of the district court to notify defendants within 15 days that the plaintiff has paid the amount of the appraisers' award pursuant to K.S.A. 26-507.

Clerks are currently complying with the statute, but we are finding that the plaintiff's attorneys are doing the notice as well, and believe that the responsibility should lie with the attorneys. We feel that duplication of notices is unnecessary and redundant. We appreciate your consideration of this bill.

Thank you for your time.

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*Phil Fielder, Past President
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Senate Judiciary
2-4-10
Attachment 1



Office of the District Attorney
Eighteenth Judicial District of Kansas
at the Sedgwick County Courthouse
535 N. Main
Wichita, Kansas 67203

Nola Foulston
District Attorney

Ann Swegle
*Deputy District
Attorney & Chief
Legal Counsel*

February 4, 2010

Testimony Regarding SB 386
Submitted by Ann Swegle, Deputy District Attorney
On Behalf of the Kansas County and District Attorneys Association
And Nola Foulston, District Attorney, Eighteenth Judicial District

Honorable Chairman Owens and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 386. On behalf of the Kansas County and District Attorneys Association and Nola Foulston, District Attorney, Eighteenth Judicial District, I would like to bring to your attention some unfortunate collateral consequences related to the provision of discovery materials in criminal cases that have led to this proposed legislation.

A prosecutor's obligation to provide discovery materials to a criminal defendant is an important one, and one that has both constitutional and statutory foundations. Discovery materials – generally items which reflect exculpatory and inculpatory evidence relevant to the case - include police reports and witness statements. These items typically include personal identifiers of victims and witnesses, e.g. date of birth, home address, social security number, telephone numbers, and driver's license number. In some cases, these reports contain financial account identification numbers, vehicle identification numbers, medical information and other sensitive data. The release of these sensitive identifiers or information to a criminal defendant could jeopardize a victim or witness' personal or financial security; in fact, it has already happened.

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Attachment 2

In the summer of 2008, an incident in Wichita exposed the risk attendant to the prosecutor's discovery obligation, when an inmate in the Sedgwick County Adult Detention Facility awaiting trial on a murder charge began to contact potential witnesses in writing after receiving copies of police reports containing the personal information of the witnesses from his attorney. The obvious intimidation felt by these witnesses also led to fears of identity theft and financial vulnerability. The defendant indicated to some witnesses that their information was being passed throughout the jail to inmates who had the ability to use it to the detriment of the witnesses. A somewhat similar situation subsequently occurred in Sumner County, and was brought to public attention by the mother of the defendant, who received the sensitive information from his attorney while in jail.

SB 386 would reduce the likelihood of future incidents of this nature. It allows for the protection of crime victims and witnesses against further victimization. It simply recognizes that unless there is a specific need for such sensitive information, it need not and should not be divulged. It does not adversely impact the defense's ability to have all necessary information to understand or challenge the State's case. Its primary purpose is to restrict access to personal, sensitive information by the defendant personally, unless the court deemed it appropriate for the defendant to have access. While many defense attorneys do not share police reports with their clients, some do. Unless previously redacted by the prosecution, defense counsel would now be required to excise sensitive information about victims and witnesses before disclosure of the reports to the defendant, unless they received court approval to do otherwise.

Similar protections for those involved in litigation were enacted by the Kansas Supreme Court through the implementation of Supreme Court Rule 123 in 2005. This rule requires attorneys to refrain from including, or at minimum partially redacting, information relative to a person's date of birth, social security number or financial account information from all pleadings filed in district courts.

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

Respectfully submitted,

Ann Swegle
President, KCDA
Deputy District Attorney
Eighteenth Judicial District



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

MARK PARKINSON, GOVERNOR
CHRIS BIGGS, COMMISSIONER

TESTIMONY IN SUPPORT OF SB 386

By
Gail E. Bright
Associate General Counsel

Senate Committee on Judiciary
February 4, 2010

Chairman Owens and Members of the Committee,

On behalf of Securities Commissioner Chris Biggs, I appear before you today to testify in support of SB 386 as it relates to K.S.A. 22-3212. Unfortunately, Commissioner Biggs and General Counsel Rick Fleming were unable to attend today's hearing.

SB 386, if passed, would make changes to criminal procedure relating to discovery. The modifications to K.S.A. 22-3212, found at page 1, lines 41-43 and page 2, lines 1-9, would allow prosecuting attorneys to redact personal identifiers of victims, e.g., account numbers of active financial accounts, from discovery provided to defense counsel.

First, let me advise the Committee that the Office of the Kansas Securities Commissioner has an open discovery policy. In fact, we encourage defense counsel to review and copy our files during the pendency of active cases. However, as one might suspect with a financial crimes case, there can be numerous references to savings accounts, checking accounts, brokerage accounts, etc., as well as copies of actual deposit and withdrawal items.

As an example, in a recent trial, the court had to admonish the press not to publish photographs of an investment check being identified by a witness. In today's technologically advanced world, the check was being projected onto a screen for the jury and photographers started taking photographs.

It would be our position that complainants who have already been victimized should not risk additional harm by further publication of their active financial account numbers.

Thank you for the opportunity to appear before you today in support of SB 386 [related to K.S.A. 22-3212]. I would stand for any questions from the Committee.



State of Kansas

Office of Judicial Administration

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Senate Judiciary Committee

Thursday, February 4, 2010

Testimony Regarding SB 386 and Suggesting an Amendment

Lana Walsh

The Office of Judicial Administration supports the merit of this bill, which we believe is intended to protect and keep out of the hands of criminal defendants sensitive personal identifiers of victims or material witnesses.

Our concern regarding this bill is procedural. Section 1(b) on page 2 of the bill provides that, "[i]f the prosecuting attorney does provide the defendant's counsel with unredacted vehicle identification numbers or personal identifiers, the court shall enter a protective order prohibiting the transmission of the unredacted numbers or identifiers to the defendant, directly or indirectly, except as authorized by further order of the court."

The court will have no way of knowing that the prosecuting attorney has provided the defendant's counsel with unredacted personal identifiers. The bill does not require the prosecuting attorney to notify the court that unredacted personal identifiers have been supplied to defense counsel. Nevertheless, the burden is on the court to somehow discern that the unredacted personal identifiers have been transmitted to defense counsel, and to enter a protective order. For that reason, we offer the attached balloon amendment, which would provide that, "[i]f the prosecuting attorney does provide the defendant's counsel with unredacted vehicle identification numbers or personal identifiers, *the defendant's counsel shall not transmit the unredacted numbers or identifiers to the defendant, directly or indirectly, except as authorized by further order of the court.*"

Thank you very much for your consideration of this amendment.

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Attachment 4

SENATE BILL No. 386

By Committee on Judiciary

1-19

9 AN ACT concerning criminal procedure; relating to discovery and in-
10 spection; amending K.S.A. 22-3212 and repealing the existing section;
11 also repealing K.S.A. 22-3433.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 22-3212 is hereby amended to read as follows: 22-
15 3212. (a) Upon request, the prosecuting attorney shall permit the de-
16 fendant to inspect and copy or photograph the following, if relevant: (1)
17 Written or recorded statements or confessions made by the defendant,
18 or copies thereof, which are or have been in the possession, custody or
19 control of the prosecution, the existence of which is known, or by the
20 exercise of due diligence may become known, to the prosecuting attorney;
21 (2) results or reports of physical or mental examinations, and of scientific
22 tests or experiments made in connection with the particular case, or cop-
23 ies thereof, the existence of which is known, or by the exercise of due
24 diligence may become known, to the prosecuting attorney; (3) recorded
25 testimony of the defendant before a grand jury or at an inquisition; and
26 (4) memoranda of any oral confession made by the defendant and a list
27 of the witnesses to such confession, the existence of which is known, or
28 by the exercise of due diligence may become known to the prosecuting
29 attorney.

30 (b) Upon request, the prosecuting attorney shall permit the defend-
31 ant to inspect and copy or photograph books, papers, documents, tangible
32 objects, buildings or places, or copies, or portions thereof, which are or
33 have been within the possession, custody or control of the prosecution,
34 and which are material to the case and will not place an unreasonable
35 burden upon the prosecution. Except as provided in subsections (a)(2)
36 and (a)(4), this section does not authorize the discovery or inspection of
37 reports, memoranda or other internal government documents made by
38 officers in connection with the investigation or prosecution of the case,
39 or of statements made by state witnesses or prospective state witnesses,
40 other than the defendant, except as may be provided by law. *Except as*
41 *provided in subsection (e), this section does not require the prosecuting*
42 *attorney to provide unredacted vehicle identification numbers or personal*
43 *identifiers of persons mentioned in such books, papers or documents. As*

defendant's
counsel shall not
transmit

1 used in this subsection, personal identifiers include, but are not limited
2 to, birthdates, social security numbers, taxpayer identification numbers,
3 drivers license numbers, account numbers of active financial accounts,
4 home addresses and personal telephone numbers of any victims or ma-
5 terial witnesses. If the prosecuting attorney does provide the defendant's
6 counsel with unredacted vehicle identification numbers or personal iden-
7 tifiers, the court shall enter a protective order prohibiting the transmission
8 of the unredacted numbers or identifiers to the defendant, directly or
9 indirectly, except as authorized by further order of the court.

10 (c) If the defendant seeks discovery and inspection under subsection
11 (a)(2) or subsection (b), the defendant shall permit the attorney for the
12 prosecution to inspect and copy or photograph scientific or medical re-
13 ports, books, papers, documents, tangible objects, or copies or portions
14 thereof, which the defendant intends to produce at any hearing, and
15 which are material to the case and will not place an unreasonable burden
16 on the defense. Except as to scientific or medical reports, this subsection
17 does not authorize the discovery or inspection of reports, memoranda or
18 other internal defense documents made by the defendant, or the defend-
19 ant's attorneys or agents in connection with the investigation or defense
20 of the case, or of statements made by the defendant, or by prosecution
21 or defense witnesses, or by prospective prosecution or defense witnesses,
22 to the defendant, the defendant's agents or attorneys.

23 (d) The prosecuting attorney and the defendant shall cooperate in
24 discovery and reach agreement on the time, place and manner of making
25 the discovery and inspection permitted, so as to avoid the necessity for
26 court intervention.

27 (e) Upon a sufficient showing the court may at any time order that
28 the discovery or inspection be denied, restricted, *enlarged* or deferred or
29 make such other order as is appropriate. Upon motion, the court may
30 permit either party to make such showing, in whole or in part, in the form
31 of a written statement to be inspected privately by the court. If the court
32 enters an order granting relief following such a private showing, the entire
33 text of the statement shall be sealed and preserved in the records of the
34 court to be made available to the appellate court in the event of an appeal.

35 (f) Discovery under this section must be completed no later than 20
36 days after arraignment or at such reasonable later time as the court may
37 permit.

38 (g) If, subsequent to compliance with an order issued pursuant to this
39 section, and prior to or during trial, a party discovers additional material
40 previously requested or ordered which is subject to discovery or inspec-
41 tion under this section, the party shall promptly notify the other party or
42 the party's attorney or the court of the existence of the additional material.
43 If at any time during the course of the proceedings it is brought to the

1 attention of the court that a party has failed to comply with this section
2 or with an order issued pursuant to this section, the court may order such
3 party to permit the discovery or inspection of materials not previously
4 disclosed, grant a continuance, or prohibit the party from introducing in
5 evidence the material not disclosed, or it may enter such other order as
6 it deems just under the circumstances.

7 (h) For crimes committed on or after July 1, 1993, the prosecuting
8 attorney shall provide all prior convictions of the defendant known to the
9 prosecuting attorney that would affect the determination of the defend-
10 ant's criminal history for purposes of sentencing under a presumptive
11 sentencing guidelines system as provided in K.S.A. 21-4701 et seq. and
12 amendments thereto.

13 (i) The prosecuting attorney and defendant shall be permitted to in-
14 spect and copy any juvenile files and records of the defendant for the
15 purpose of discovering and verifying the criminal history of the defendant.

16 Sec. 2. K.S.A. 22-3212 and 22-3433 are hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after its
18 publication in the Kansas register.



Kansas County & District Attorneys Association

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Senate Judiciary Committee
February 4, 2010

Submitted by Thomas R. Stanton
Deputy Reno County District Attorney
Past-President, Kansas County and District Attorneys Association

Testimony in Support of Senate Bill 411

Chairman Owens and Members of the Committee,

Thank you for the opportunity to testify regarding Senate Bill 411. This legislation will add certain drug felonies to the list of offenses under K.S.A. 21-4204 which serve as a basis for a ten-year proscription on the possession of a firearm for persons convicted of those crimes. It will also add references to convictions under statutes which were recently repealed in order to place the crimes under the provisions of Chapter 21 of the Kansas Statutes.

K.S.A. 21-4204 (a)(4) criminalizes the possession of a firearm by a person who has been convicted within the previous ten years of certain violent crimes, as well as felony crimes under the uniform controlled substances act. The drug crimes currently covered by the statute include felony crimes involving the possession, cultivation and sale of controlled substances. Crimes under K.S.A. 21-36a03, 21-36a07 and 21-36a09 (formerly K.S.A. 65-4159, 65-4141 and 65-7006) would be added to the list of crimes covered by the provisions of the statute under the provisions of this legislation. These crimes include the unlawful manufacture of controlled substances, unlawfully arranging a drug transaction using a communication device and possession of chemicals (anhydrous ammonia, lithium metal, pseudoephedrine, etc.) with the intent to manufacture methamphetamine. This body has determined that crimes involving the manufacture of controlled substances are serious crimes, and they carry some of the most stringent sentences of all drug crimes. However, these offenses were not included in those crimes which carry a ten-year firearm proscription under K.S.A. 21-4204.

This legislation basically cleans up the language of the statute to include drug crimes that were inadvertently excluded from the original statute. It adds crimes which are considered some of the most dangerous of all crimes in the ten-year firearm restriction for convicted felons. The Kansas County and District Attorneys Association request your favorable recommendation and support of this bill.

Senate Judiciary

2-4-10

Attachment 5