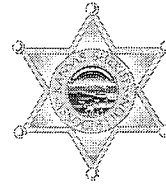




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**Testimony to Senate Judiciary Committee
In Opposition to SB6
January 18, 2011**

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
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Senate Judiciary
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Attachment 7