

**House Corrections and Juvenile Justice Committee  
January 23, 2017  
House Bill 2049**

**Testimony of the  
Kansas Association of Criminal Defense Lawyers  
Neutral**

**(written only)**

Dear Chairman Jennings and Members of the Committee:

HB 2049 would create a new special rule for crimes against law enforcement officers. We provide this testimony out of concern for HB 2049's lack of a definition of law enforcement officer. Not only does HB 2049 not define that term, it does not refer to any statute that does. We found five definitions in existing statutes:

**K.S.A. 21-5111 (definitions as used in Chapter 21, crimes and punishments):**

(p) "Law enforcement officer" means:

- (1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;
- (2) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-5412 and subsection (d) of K.S.A. 21-5413, and amendments thereto, any employee of the Kansas department of corrections; or
- (3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

**K.S.A. 21-5412 (Assault or aggravated assault on a law enforcement officer):**

(c) Assault of a law enforcement officer is assault, as defined in subsection (a), committed against:

- (1) A uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty; or
- (2) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

**K.S.A. 21-5413 (Battery or aggravated battery on a law enforcement officer):**

(c) Battery against a law enforcement officer is:

- (1) Battery, as defined in subsection (a)(2), committed against a:
  - (A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
  - (B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee

or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;

(C) judge, while such judge is engaged in the performance of such judge's duty;

(D) attorney, while such attorney is engaged in the performance of such attorney's duty; or

(E) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;

....

(3) battery, as defined in subsection (a) committed against a:

(A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) state correctional officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(D) city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

**K.S.A. 22-2202 (definitions as used in Chapter 22, criminal procedure):**

(m) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, community corrections officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority.

**K.S.A. 74-5602 (as used in the Kansas law enforcement training act):**

(g) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to: The sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife, parks and tourism; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage control; law enforcement agents designated by the secretary of revenue

pursuant to K.S.A. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; special investigators of the juvenile justice authority; special investigators designated by the secretary of labor; and law enforcement officers appointed by the adjutant general pursuant to K.S.A. 48-204, and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524, and amendments thereto; school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222, and amendments thereto; the manager and employees of the horsethief reservoir benefit district pursuant to K.S.A. 82a-2212, and amendments thereto; and the director of the Kansas commission on peace officers' standards and training and any other employee of such commission designated by the director pursuant to K.S.A. 74-5603, and amendments thereto, as a law enforcement officer. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the commissioner of juvenile justice who is employed solely to perform correctional, administrative or operational duties related to juvenile correctional facilities; any employee of the secretary of corrections, any employee of the secretary for children and families; any deputy conservation officer of the Kansas department of wildlife, parks and tourism; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

Having a definition, or at least a reference to one, would 1) allow legislators to consider the scope of the policy question at issue; 2) prevent future confusion in the criminal justice system about who is covered; and 3) allow exclusion of those not intended to be covered (for example, I would be covered under the definition in K.S.A. 21-5413(c)(1)(D)).

Thank you for your consideration,

  
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