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Testimony to the House Federal & State Affairs Committee in Opposition of HB2251
March 26, 2021

Chair Barker and Committee Members,

The Johnson County Sheriff's Office opposes HB2251. We have concerns about the bill.

Page 1, New Section 1, Lines 17-19: This portion of the bill directs the defendant to "relinquish all firearms in the defendant's custody, control or possession to the sheriff of the county in which the court issuing such relinquishment order is located, or to a licensed federal firearms dealer." We are confused over the inclusion of a licensed federal firearms dealer. Is this an attempt to incorporate the SCOTUS case, *Henderson v. United States*, 575 U.S. ____ (2015)? Is the intent for the FFL dealer to sell the weapons?

Our research for Johnson County, Kansas indicates there are hundreds of licensed federal firearms dealers in Johnson County. Many of these licensees operate out of their residences. We contacted several of the dealers to ask about their knowledge of the bill and their reaction to the bill that they be included as a "relinquishment center." None of the licensees that we contacted were in favor of being involved as a storage site. Several of them also expressed a concern on a lack of any immunity for the FFL dealer should a weapon be damaged or stolen while in their possession. For that matter, the bill also does not provide this for the sheriff's offices who are storing these weapons.

As mentioned earlier, the only case law we can find on the subject is *Henderson v. United States*, 575 U.S. ____ (2015). Briefly, Henderson was required, as a bail condition, to turn over all firearms that he owned. He pled guilty to his charged crime, a felony, which now made it illegal for him to possess firearms (18 U.S.C. 9229g). The FBI had seized Henderson's weapons and Henderson requested that his weapons be turned over to a friend of his. The FBI refused. Both the district and appeals courts agreed with the FBI stating they believed that this would give Henderson constructive

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possession of the firearms. The U.S. Supreme Court, by a unanimous opinion, vacated the 11th circuit court's order. ¹

*A court-ordered transfer of a felon's lawfully owned firearms from government custody to a third party is not barred if the court is satisfied that the recipient will not give the felon control over the firearms, so that he could either use them or direct their use. The **government's view conflated possession with an owner's right to alienate his property. The Court stated that a felon may select a firearms dealer or third party to sell his guns; a court, with proper assurances from the recipient, may also grant a felon's request to transfer his guns to a person who expects to maintain custody of them.***²

Given that this was a **unanimous opinion of SCOTUS we have doubts HB2251 is constitutional as it appears to also conflate possession and an owner's right to dispose of his or her property.**

We are also concerned with the page 1, Lines 21-23 language: This portion of the bill directs the defendant to "relinquish any concealed carry license issued to the defendant to the sheriff of the county in which the court issuing such relinquishment order is located." The bill is silent as to the final disposition the CCW license. Counties do not issue CCW licenses, the state of Kansas does. Are sheriff's offices supposed to mail the license to the Attorney General's Office or is some other disposition anticipated? Perhaps the license could be surrendered to the court?

Sheriff's offices also do not deal with municipal court orders. If a person is convicted of a municipal court jurisdiction domestic violence offense that falls under the jurisdiction of a municipal court and municipal police officers. The Johnson County Sheriff's Office would not intervene in a municipal court proceeding or order. Municipal courts/police agencies should be responsible for enforcing municipal court orders.

The Johnson County Sheriff's Office is fully committed to reducing domestic violence through education, enforcement of valid court orders, and enforcing domestic violence laws. However,

¹ https://www.supremecourt.gov/opinions/14pdf/13-1487_l6gn.pdf

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we do not support this bill as written and would ask the committee to not recommend the bill for passage.

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