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Testimony to the House Judiciary Committee
In Support of SB367
March 8, 2022

Chairman Patton and Committee members:

We have brought SB367 to you in hopes of resolving several issues we are having with the current KSA 22-2512. These changes are all procedural issues and preserve the most critical existing provisions in the law. I will go through each change in the order they appear in the bill. This bill is essentially identical to 2020 HB2446. It includes the amendments made by the Senate Judiciary Committee to SB133 in 2019.

In subsection (a) current law requires us to take two actions, provide the person we seize property from with a receipt of the seized items, and to provide the court with the listing of the seized items. The issue is it requires both actions not only for when we seize property with a search warrant, but also when we seize property without a search warrant. We agree that when we seize property with or without a search warrant we need to provide a receipt to the person from whom we seize the items. The new language continues to require that in both cases. But courts do not want the list of seized items unless it is with a search warrant. When there is no search warrant they have no case to file the information in. We could not find any jurisdiction that is filing such a report with the court. The new language continues to require filing the list of seized property with the court when the seizure is from a search warrant. But it eliminates the requirement to provide the listing to the court when there is no search warrant.

Also in subsection (a), a new provision is added which allows the filing of the property listing for items seized with a search warrant may be submitted electronically in a format acceptable to the court. This is to accommodate the new court system being implemented which is more reliant on electronic filings. This addresses a concern that was shared with us by several district court judges.

The change in subsection (b) was recommended by the Kansas Highway Patrol as we worked with them on the other provisions of the bill. These amendments will allow us to deal with dangerous illegal drugs in the same manner we can deal with hazardous materials we seize. That is to retain ample samples of the items for further testing but allows larger quantities of the dangerous drug

to be destroyed. This reduces the risk of unnecessary handling and storage of these dangerous drugs while retaining adequate evidence of the items for court purposes.

The changes in subsection (c) are technical amendments made by the revisor.

The changes in subsection (d) clarify the procedures for returning weapons to the rightful person when a case is over. The current law only directs us to return the firearm to the owner if it is stolen, and if not to return it to the person from whom we seized it. We have experienced court actions being filed against us by persons we seized a firearm from that is prohibited by state or federal law from possession of the firearm. The current statute is silent on that issue. While we haven't had trouble defeating those efforts, they are time consuming and costly. Our proposal in the bill does the following:

1. If the firearm is stolen it is returned to the owner. NOTE: The owner may be the insurance company if they have already paid the claim on it.
2. If we have knowledge the firearm is owned by someone other than the person from whom we seized it, but it is not stolen, we will return it to the owner.
3. If we seized the firearm from a juvenile, we will return it to the parent or legal guardian.
4. If none of the above apply, we return it to the person from whom we seized it.
5. If any of the above are prohibited by law from possessing the firearm, we are required to retain the firearm for a minimum of 60 days after giving notice of our determination. This is to allow the person we believe is prohibited to file a court action to challenge our determination.
6. Finally, if the person is prohibited we have added a provision to protect their ownership rights, even though they have lost their possessory rights to the firearm. This would be accomplished by allowing the person to direct the firearm be delivered to a licensed firearm dealer whom the person can work with for disposition of the weapon in whatever way the prohibited owner sees fit (sell it, transfer it to a relative, store it until the person is no longer prohibited, etc.). This provision is designed to assure compliance with Henderson v US, a US Supreme Court decision ruling that while a person may lose possessory rights to a firearm, they do not lose their ownership rights of the firearm. The case law establishes law enforcement responsibilities to assure those ownership rights in cases where a person is prohibited from possession of the firearm.

We believe SB367 clarifies practices that are not working well for us. It also makes sure the statute reflects best practices in the recording and reporting of seized property; safe handling, storage and disposal of dangerous drugs; and the appropriate release of weapons that also assure the ownership rights of firearms owners.

We ask you to pass SB367 favorably.

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