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Testimony in Opposition of SB192 to the Senate Committee on Federal and State Affairs March 2, 2022

The Johnson County Sheriff's Office is a strong supporter of the victims of domestic violence. We have partnered with advocacy and support groups to assist domestic violence victims. We established the position of Crime Victim Advocate to serve as an immediate contact for the victims of crimes to assist with placing resources into the hands of these victims before they have contact with the court system.

The sheriff's office sees many issues with this bill and fear that it will not do what is anticipated but could instead cause victims to have inflated expectations as to their safety. Nothing in this bill can provide a guarantee that the defendant, whether charged with a crime or having been served with a protection order, will not obtain a firearm, or commit a violent act without a firearm.

LEGAL CONCERNS

Established case law appears to make the bill unconstitutional on its face.

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

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.

Given that this was a **unanimous opinion** of SCOTUS we have doubts SB192 is constitutional as it appears to also conflate possession and an owner's right to dispose of his or her property.

Kansas law prohibits a person under a protection order or conviction under the conditions listed in SB192 from lawfully possessing a firearm. The law was changed several years ago with the support of law enforcement. There are mechanisms in place that allow law enforcement to investigate circumstances such as these and act if a violation is found – with a search warrant.

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The bill would require relinquishment to the sheriff. What happens when the order is from a municipal court? A person convicted under a city ordinance falls under the jurisdiction of that municipality, not the county sheriff. Municipal courts/police agencies are responsible for enforcing municipal court orders.

Surrender of a concealed carry license should be to the court, not the sheriff's office. These are issued by the state. Sheriff's offices are not the issuing agency. Courts are state agencies and can properly take custody and provide a proper disposition. Surrendering the license to the sheriff's office may be in violation of the Personal and Family Protection Act.

OPERATIONAL CONCERN

Our property room is often near capacity with evidence. The requirement to have the sheriff's office being mandated to store all relinquished weapons – that aren't evidence – but just as a housekeeping measure would exceed the capacity of our property room.

Firearms cannot just be placed in a room and ignored. They must be regularly inspected. This examination and maintenance are needed to prevent the weapon from deteriorating. The cost of storing these weapons would be expensive. There is no other situation where we are mandated to store property that is not involved in a crime for long periods of time. This places the sheriff's office at risk of litigation, particularly if the weapon is damaged in some way. Taxpayer dollars would have to be used to defend lawsuits.

The term "good faith effort" is vague. What does that mean? We are limited by the Constitution and law on what type of "search" can be conducted depending on the circumstances we encounter. If, due to legal constraints, we do not find a firearm that is hidden or if the defendant doesn't tell us the truth, are we liable? We find this uncertainty to increase our liability in today's world of constant litigation.

CONCLUSION

This is at least the third time in about as many years that this exact same bill, albeit with different numbers, has appeared in one or both chambers. All the concerns that we have outlined in our testimony today were outlined in previous hearings, and yet, not one change has been made to the legislation. It is the same. We believe our concerns are valid yet appear to have not been considered.

We do not deny that there are terrible, tragic outcomes in these types of cases. We cannot find many that have occurred in our jurisdiction. The most recent one involved a male, convicted of domestic violence, and placed on house arrest. He removed his ankle monitor, went to his wife's location, and strangled her to death. No firearm was involved in the murder.

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We appreciate the passion of those who are advocating for the bill, and we support the intent of protecting victims of domestic violence from further abuse or harm. We do not see this bill as a tool that will do that.

We would ask the committee not recommend the bill for passage.

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