



OFFICE OF THE DISTRICT ATTORNEY
THIRD JUDICIAL DISTRICT OF KANSAS
Michael F. Kagay, District Attorney

February 15, 2022

TO: Chairman Patton and Members of the House Judiciary Committee
FROM: Mike Kagay, District Attorney for Shawnee County
RE: Proponent Testimony for HB 2608

Good Afternoon Chairman Patton and Members of Committee:

I serve as the Shawnee County District Attorney, and as a member of the KCDA board. I am offering my strongest possible support for HB 2608, and hope that you give it favorable treatment.

Victims of crime are negatively impacted in a variety of ways. They may be harmed physically, emotionally, and financially to name a few. The law has always recognized the right of victims to be financially restored to their previous condition. The Court frequently orders convicted offenders to reimburse their victims for financial losses caused by the offense in question. This process of restitution has provided compensation to countless victims for financial burdens they have incurred due to the offenders' actions. Whether the victim has suffered lost wages or property, requires counseling, or serious physical harm or even death, this process allows the victim, or their family, to recover that cost. This tool is an essential part of our justice system.

Many criminal defendants require an extended period of time in order to meet their obligations in paying court costs, fines and restitution. It is common in these cases that all these costs are referred to a collection agency, and collected as a civil judgment. This process has been quite effective for some time.

In October of last year, the Supreme Court issued its decision in *State v. Arnett*. The Court made a specific finding that criminal restitution could not be collected as a civil judgment without a jury trial. This applied to restitution only, not to the court costs and other fines. As a practical matter, less than five percent of criminal cases are resolved by way of jury trial. There is no Court in our State that is equipped to facilitate jury trials for criminal restitution. We have an extended backlog already in determining the guilt or innocence of the accused.

The net result of this decision is that victims of crime are left without a reliable means of collecting the restitution that has been ordered by the Court. As a prosecutor, this screams injustice to me. I hope that this Committee will agree with that sentiment.

The clear solution to this problem is HB 2608. This bill allows the Court specific authority to collect restitution through the garnishment statute, as opposed to a civil judgment. This avoids any conflict with the decision in *Arnett*, and provides the Court an avenue to actually enforce its order. Finally, this bill provides victims the only reasonable means to recover their financial losses.