



**Kansas Association of
Chiefs of Police**

PO Box 2163
Hutchinson, KS 67504
(620)899-4122



**Kansas Sheriffs
Association**

PO Box 1122
Pittsburg, KS 66762
(620)230-0864



**Kansas Peace Officers
Association**

PO Box 2592
Wichita, KS 67201
(316)722-8433

**Testimony to the House Judiciary Committee
Opposing HB2376
February 23, 2021**

Chairman Patton and Committee Members:

Our associations oppose HB2376 in its current form.

To be clear, we take violations of protection orders very seriously, as we do all domestic violence cases. We make probable cause arrests in most felony protection order cases. We want to be clear we are not opposed to making arrests when appropriate for protection orders. Such arrests are by taking the person into physical custody and booking them into the county jail for the violation.

Our concerns with the requirements proposed in this bill begin with the provisions in section 1, subsection (b)(6) on page 2, lines 8-10. This provision is more general and not specific to a violation of a protection order. It requires our domestic violence policies to include “. . . procedures to keep the suspect away from the scene for a period of time.” Short of a court order, we are not aware of any constitutional procedure we can employ to “keep the suspect away from the scene for a period of time.” This is especially true if that person has interest in the property where the “scene” is located or if the “scene” is public property. If the person does not have such a property interest, the person in charge of the property can order the person to not return to the property, but law enforcement cannot make that decision, give such an order, or direct the property owner or other authorized person on behalf of the property owner to give such an order. Even then, we have no power to keep the suspect from the property, we can only arrest the person if they refuse to leave or if they return. See the criminal trespass statute KSA 21-5808 subsection (a)(1)(A). This provision appears to skirt the court making a determination of the facts requiring such a directive and leaving it to law enforcement discretion, at least in the short term. We do not believe this is a wise approach. We would have similar constitutional concerns if the proposal had included ordering a person to stay away from another person without a court order.

In addition to the constitutional concerns, the “scene” may not even be a place connected to the victim in an ongoing fashion. The scene may be a business or a public place where the suspect has equal or perhaps even more right to be at in the future than the victim. It could be a place where the suspect resides, and the victim does not. In any circumstance, the proposal only would cover keeping the suspect away from the “scene” and not the victim if that were appropriate.

Our second concern is with the proposal mandating an arrest in cases of protection order violations found in Section 1, subsection (b)(1) on page 1, lines 18 and 19. Those violations may be misdemeanors or felonies as provided in KSA 21-5924. In misdemeanor cases, law

enforcement is limited on when we can arrest a person on probable cause. In addition to requiring probable cause the misdemeanor occurred and probable cause that a particular person committed the misdemeanor, we can only arrest if one of three conditions are met: (A) The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested; (B) the person may cause injury to self or others or damage to property unless immediately arrested; or (C) the person has intentionally inflicted bodily harm to another person.

As we stated earlier, in most cases where we have probable cause to make an arrest for a felony violation of a protection order, we do so. However, there are exceptions. For example, if the suspect is seriously injured we may opt to not charge for the protection order violation but refer the case to the prosecuting attorney for the filing of charges. This is an important exception to maintain considering a court case rendered by the Kansas Court of Appeals last year.¹ In that case the court held the agencies were responsible for the medical costs of a drunk driver who crashed their vehicle while committing felony traffic violations who was not arrested due to their incapacitating injuries. The Court of Appeals interpreted KSA 8-2104(d) to be a mandatory arrest requirement for felony traffic violations and cited that interpretation as the reason for ruling the local governments were responsible for the medical costs. We also note the language in KSA 8-2104(d) is not nearly as clear of a mandatory arrest directive than we find in the above referenced subsection of the bill in both existing law and with the proposed amendment.

We are already concerned about the impact of this ruling under the existing provision of a mandated arrest in domestic violence cases. The frequency of injury to a person later arrested for domestic violence is much higher than that of drunk drivers committing felonies. Under the cited Appeals Court case law, cities and counties will likely be held responsible for the medical costs of those injuries. Those costs will be significant ranging from minor treatment at an emergency room (required for pretty much any injury before incarcerating an injured person in a county jail) to very serious injuries such as gun shot wounds or stabbings. It would probably be extended to treating severe drug overdoses, severe intoxication, or even a medical problem developing during the domestic violence incident such as a heart attack or stroke.

For those reasons, while supporting constitutional efforts to reduce domestic violence, we must oppose HB2376 in its current form. If the committee decides to move this bill forward over our opposition, we request the committee consider modifying the mandatory arrest language on page 1, lines 15-24, to minimize the new unintended consequence of the exposure to significant medical costs not within our control.

Ed Klumpp
Legislative Liaison
eklumpp@cox.net
(785) 640-1102

¹ UNIVERSITY OF KANSAS HOSPITAL AUTHORITY vs. BOARD OF COUNTY COMMISSIONERS OF FRANKLIN COUNTY, KANSAS and CITY OF OTTAWA, KANSAS
<https://www.kscourts.org/KSCourts/media/KsCourts/Opinions/120472.pdf?ext=.pdf>