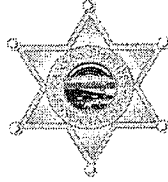




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**Testimony to the House Corrections and Juvenile Justice Committee
In Support of HB2601
February 14, 2012**

Chairperson Colloton and Committee Members,

The Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association supports HB2601. This bill follows the provisions allowed in a 2004 US Supreme Court Decision, *Hiibel vs Nevada*, to assist law enforcement in those cases where a person is stopped under reasonable suspicion as allowed in KSA 22-2402 and the person refuses to identify himself to officers. Before discussing the details of this bill there are some important considerations we want to be sure everyone understands:

1. This bill will in no way expand the currently existing authority of law enforcement to stop a person who they have reason to believe is committing, has committed or is about to commit a crime.
2. KSA 22-2402 neither currently nor as amended by this bill requires any person to be in possession of identification documents. It merely requires the person to verbally identify himself. Of course the exceptions to that are included in other statutes such as the requirement for the operator of a motor vehicle to display their driver's license on demand. The provisions of this bill will not expand the already existing requirements in how the demanded identification is provided.
3. If a person is charged under the law as amended by the bill it will require officers to articulate to a court their reason for believing the person was committing, had committed, or was about to commit a crime. The court must then find that reasonable belief was justified before a person can be convicted under the new provisions.

What are we fixing? Current case law in Kansas holds a person properly stopped under the provisions of KSA 22-2402 can be found guilty of interference of a law enforcement officer's official duties if they lie to the officer about the required information. However, the courts have held a person may not be found guilty for refusing to provide the information an officer may demand as provided in KSA 22-2402 because the legislature has not provided that it is illegal to refuse to provide the information.

While this circumstance does not often happen, when it does it leaves an officer in a dilemma. If the officer does not gain probable cause of a crime they must release them not knowing who they are. If the officer releases them then later discovers a crime the person probably committed we do not know who they are. The US Supreme court recognized this need in *Hiibel v Nevada* and stated it succinctly when they stated, "Knowledge of identity may inform an officer that a

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suspect is wanted for another offense, or has a record of violence or mental disorder. On the other hand, knowing identity may help clear a suspect and allow the police to concentrate their efforts elsewhere. Identity may prove particularly important in cases such as this, where the police are investigating what appears to be a domestic assault. Officers called to investigate domestic disputes need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim."

The proposed amendment relies on the 2004 US Supreme Court case of *Hiibel v Nevada*. In part that decision stated, "The officer's conduct did not violate Hiibel's Fourth Amendment rights. Ordinarily, an investigating officer is free to ask a person for identification without implicating the Amendment. *INS v. Delgado*, 466 U. S. 210, 216. Beginning with *Terry v. Ohio*, 392 U. S. 1, the Court has recognized that an officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further. Although it is well established that an officer may ask a suspect to identify himself during a *Terry* stop, see, e.g., *United States v. Hensley*, 469 U. S. 221, 229, it has been an open question whether the suspect can be arrested and prosecuted for refusal to answer, see *Brown, supra*, at 53, n. 3. The Court is now of the view that *Terry* principles permit a State to require a suspect to disclose his name in the course of a *Terry* stop. *Terry, supra*, at 34. The Nevada statute is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures because it properly balances the intrusion on the individual's interests against the promotion of legitimate government interests. See *Delaware v. Prouse*, 440 U. S. 648, 654. An identity request has an immediate relation to the *Terry* stop's purpose, rationale, and practical demands, and the threat of criminal sanction helps ensure that the request does not become a legal nullity. On the other hand, the statute does not alter the nature of the stop itself, changing neither its duration nor its location. Hiibel argues unpersuasively that the statute circumvents the probable-cause requirement by allowing an officer to arrest a person for being suspicious, thereby creating an impermissible risk of arbitrary police conduct. These familiar concerns underlay *Kolender*, *Brown*, and *Papachristou*. They are met by the requirement that a *Terry* stop be justified at its inception and be "reasonably related in scope to the circumstances which justified" the initial stop. *Terry*, 392 U. S., at 20. Under those principles, an officer may not arrest a suspect for failure to identify himself if the identification request is not reasonably related to the circumstances justifying the stop. Cf. *Hayes v. Florida*, 470 U. S. 811, 817. The request in this case was a commonsense inquiry, not an effort to obtain an arrest for failure to identify after a *Terry* stop yielded insufficient evidence. The stop, the request, and the State's requirement of a response did not contravene the Fourth Amendment." The key here is "permit a state to require." In Nevada the law requires the person to provide the information. In Kansas the law only allows the officer (with reasonable grounds) to demand the information but there is no requirement for the stopped person to provide it.

We are also asking for the addition of the person's date of birth to the requirements in KSA 22-2204. The date of birth is the basic search data used in law enforcement computer queries such as NCIC and Kansas Hot Files. This additional piece of information helps law enforcement to verify the authenticity of the information being provided and also to identify if the person has an outstanding active warrant.

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Stopping of suspect. (1) Without making an arrest, a law enforcement officer may stop any person in a public place whom such officer reasonably suspects is committing, has committed or is about to commit a crime and may demand of the name, address of such suspect and an explanation of such suspect's actions.

(2) When a law enforcement officer has stopped a person for questioning pursuant to this section and reasonably suspects that such officer's personal safety requires it, such officer may frisk such person for firearms or other dangerous weapons. If the law enforcement officer finds a firearm or weapon, or other thing, the possession of which may be a crime or evidence of crime, such officer may take and keep it until the completion of the questioning, at which time such officer shall either return it, if lawfully possessed, or arrest such person.

NEVADA STATUTE

NRS 171.123 Temporary detention by peace officer of person suspected of criminal behavior or of violating conditions of parole or probation: Limitations.

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.
2. Any peace officer may detain any person the officer encounters under circumstances which reasonably indicate that the person has violated or is violating the conditions of the person's parole or probation.
3. The officer may detain the person pursuant to this section only to ascertain the person's identity and the suspicious circumstances surrounding the person's presence abroad. **Any person so detained shall identify himself or herself**, but may not be compelled to answer any other inquiry of any peace officer.
4. A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes. The detention must not extend beyond the place or the immediate vicinity of the place where the detention was first effected, unless the person is arrested.

(Added to NRS by 1969, 535; A 1973, 597; 1975, 1200; 1987, 1172; 1995, 2068)

Indiana

IC 34-28-5-3.5 Refusal to identify self

Sec. 3.5. A person who knowingly or intentionally refuses to provide either the person's:

- (1) name, address, and date of birth; or
- (2) driver's license, if in the person's possession;

to a law enforcement officer who has stopped the person for an infraction or ordinance violation commits a Class C misdemeanor.

As added by P.L. 1-1998, SEC.24.

OHIO

2921.29 Failure to disclose personal information.

- (A) No person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects either of the following:
- (1) The person is committing, has committed, or is about to commit a criminal offense.
 - (2) The person witnessed any of the following:
 - (a) An offense of violence that would constitute a felony under the laws of this state;
 - (b) A felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or to property;
 - (c) Any attempt or conspiracy to commit, or complicity in committing, any offense identified in division (A)(2)(a) or (b) of this section;
 - (d) Any conduct reasonably indicating that any offense identified in division (A)(2)(a) or (b) of this section or any attempt, conspiracy, or complicity described in division (A)(2)(c) of this section has been, is being, or is about to be committed.
- (B) Whoever violates this section is guilty of failure to disclose one's personal information, a misdemeanor of the fourth degree.
- (C) Nothing in this section requires a person to answer any questions beyond that person's name, address, or date of birth. Nothing in this section authorizes a law enforcement officer to arrest a person for not providing any information beyond that person's name, address, or date of birth or for refusing to describe the offense observed.
- (D) It is not a violation of this section to refuse to answer a question that would reveal a person's age or date of birth if age is an element of the crime that the person is suspected of committing.

Effective Date: 04-14-2006