



*The Kansas District Judges' Association*



**SENATE COMMITTEE ON JUDICIARY**

**Hon. Sen. Rick Wilborn, Chair**  
**Hon. Sen. Eric Rucker, Vice Chair**  
**Hon. Vic Miller, R. M. Member**  
**February 22, 2019 at 10:30 a.m.**  
**Room 346-S**

Chief Judge Merlin G. Wheeler

Fifth Judicial District

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WRITTEN TESTIMONY IN OPPOSITION TO SENATE BILL 87

Thank you for the opportunity to present testimony in opposition to SB 87. I am Merlin G. Wheeler, Chief Judge of the Fifth Judicial District (Lyon and Chase Counties) and a member of the Executive Committee of the Kansas District Judges Association (KDJA). I also serve as one of three Legislative Co-Chairs of the association along with Chief Judge Thomas Kelly Ryan of the 10<sup>th</sup> Judicial District and Chief Judge Glenn R. Braun of the 23<sup>rd</sup> Judicial District.

The license reinstatement fees imposed by K.S.A. 8-2110 have long been claimed to be a barrier to employment for individuals unable to afford the cost. It is argued that the inability to pay the fee results in an individual being unable to obtain or maintain employment when a driver's license is required either as a condition of employment or to provide transportation to or from the workplace. To date, the courts of Kansas have not had the ability to waive all or any part of the fee although such requests are frequently made. KDJA does not oppose creation of an opportunity to secure relief from this fee through the courts, but opposes the mechanism suggested in SB 87.

SB 87 proposes new legislation, as opposed to an amendment to K.S.A. 8-2110, which establishes the opportunity to enter into an amnesty agreement with a county or district attorney for waiver of the fee, for payment plans to be administered by the prosecutor's office, or for performance of community service work in lieu of payment. After approval of the agreement by the prosecutor, the court then becomes involved in the granting of relief.

There are multiple problems with the structure of this proposed legislation. First, it appears to bind the court to granting relief from the fee upon the approval of the prosecution. This ignores the fact that the county or district attorneys do not have the authority to enter into agreements which bind the court to any action regarding sentencing or the consequences of the sentencing. The authority of prosecutors extends only to making recommendations to the court. This legislation therefore violates the inherent authority and discretion of a court in the manner in which it makes and enforces its judgments.

Secondly, as opposed to the simple mechanism (as proposed in 2019 HB 2211) that allows a defendant to file a hardship request directly with the court, this proposed legislation presents the distinct possibility of confusion on the part of an individual as to how to seek relief from the fee. Simply put, by first requiring an agreement to be reached and then presented to the Court, an additional barrier has been created to the possibility of relief. The goal here should be to create an easily understood mechanism for seeking relief rather than one which requires additional time, effort, and possibly expense of attorney fees.

Next, as chief judges, we point out that this legislation presents confusing and complex management issues in its administration which are not necessary to achieve resolution of a relatively simple issue. For example, the legislation is silent as to who maintains the amnesty agreement or how its existence is communicated between offices. Similarly, there appears to be no mechanism available for appeal should a prosecutor decide not to enter into an amnesty agreement for arbitrary reasons.

Finally, we point out that SB 87 offers no standard for either the prosecution or the Court to make a determination as to when relief should be granted. This will undoubtedly result in at least a lack of uniformity

across districts in the manner of granting relief and conflict between the Courts and prosecutors as to whether relief should be granted. Although we recognize that no precise mathematical formula exists to gauge financial hardship, we should not create a situation where differing views would impact the ability of an individual to seek relief.

For these reasons, KDJA respectfully opposes passage of 2019 SB 87.

Thank you,

Hon. Merlin G. Wheeler  
Chief Judge 5<sup>th</sup> Judicial District

Hon. Thomas Kelly Ryan  
Chief Judge 10<sup>th</sup> Judicial District

Hon. Glenn R. Braun  
Chief Judge 23<sup>rd</sup> Judicial District