

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson John Barker at 12:00pm on Monday, May 04, 2015, 112-N of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Legislative Research Department
Robert Allison-Gallimore, Legislative Research Department
Katherine Goyette, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Connie Bahner, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:

No conferees present

Others in attendance:

[See Attached List](#)

Chairperson Barker expressed the committee's thanks to John Federico for providing the meal at today's meeting. He also thanked the committee members for coming today.

Chairperson Barker apologized for having a meeting at the rail on April 30, 2015. When substantive issues are involved as in this situation, they should not have been taken up in a meeting at the rail. In addition, the Veterans Committee was having a meeting at the rail adjacent to our meeting, and it caused a lot of confusion. As a result, he got permission from Speaker Merrick to hold a committee meeting, and that's why we are here today.

Final action on: SB11 — Regulated scrap metal; crime of theft and related sentencing provisions; regulation of scrap metal dealers, including unlawful acts and penalties.

Chairperson Barker asked for the pleasure of the committee with regard to **SB11**.

*Vice-Chairperson Charles Macheers moved to amend **SB11** by adopting the amendments recommended by the House Committee on Judiciary as reported in the Journal of the House on March 23, 2015, and that **SB11**, as printed with amendments by the House Committee, be passed as amended. Representative Leslie Osterman seconded the motion.*

Representative Jim Ward stated it was not appropriate to both move to amend the bill and to pass it out since there may be additional amendments. He asked that the motion be separated.

After some discussion, it was decided that the motion would be divided, and the committee would take up the amendment first.

Representative James Todd stated that he has an amendment to **SB11** ([Attachment 1](#)).

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Representative James Todd moved to amend **SB11** by placing a \$5,000 minimum on the crime of aggravated criminal damage to property, seconded by Representative Charles Macheers.

Katherine Goyette, Office of Revisor of Statutes, explained the amendment. It states that with regard to the crime of aggravated criminal damage to property, the amount of damages must exceed \$5,000.

Representatives Stephen Alford, Leslie Osterman, and John Carmichael had questions concerning whether the damages would include the loss to crops, loss of business profits or production, or other losses in addition to the damage done to the equipment as a result of the copper theft. Both Representative James Todd and the revisor, Katherine Goyette, responded that those damages would be included.

Representative John Carmichael said he would vote for the amendment, but he did not feel that it was well drawn. The bill ought to state that it applies to all consequential damages instead of itemizing what the damages would include.

Representative James Todd said that his amendment only speaks to the dollar amount. His understanding of the way the bill was previously written was that any amount of damage under certain circumstances would result in a presumptive sentence of imprisonment. His intent with this amendment was to have showable damages of a certain amount to justify a prison sentence.

Representative John Rubin asked whether the February 10th prison bed space impact statement which shows that an additional 8 to 25 beds will be needed in fiscal year 2016 and 20 to 57 additional beds in 2025 is the most current report. Scott Schultz, Executive Director of the Sentencing Commission, stated that that report is the most current report.

Representative James Todd closed on the amendment to **SB11**. A vote was taken, and the amendment to **SB11** passed.

Representative Pam Curtis stated that she has an amendment ([Attachment 2](#)). This is the same amendment she offered the last time with the exception that it changes the effective date for local ordinances already in place prior to January 1, 2015, to remain in full force and effect.

Representative Pam Curtis moved to amend **SB11** by allowing municipalities that had scrap metal theft ordinances in effect prior to January 1, 2015, to keep those ordinances in full force and effect, seconded by Representative Annie Kuether.

Representative James Todd echoed his concerns from the last time this bill was taken up by the committee that one of the main goals of enacting a state law is comprehensiveness, information sharing, and applying the same rules. If a local ordinance is different from the state law, it has the potential of creating safe harbors for someone to avoid the state law by applying the local ordinance.

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He opposes the amendment.

Vice-Chairperson Charles Macheers opposes the amendment. He believes that local ordinances can be established as long as they are more restrictive than the state statute. A less restrictive ordinance would contradict the state law and the state statute would trump the ordinance. He doesn't think the amendment is necessary.

Representative Blaine Finch stated that the way this bill is written, it bars any local ordinance. He is in favor of the amendment and thinks they should be supportive of local governments who have enacted these types of ordinances.

Representative Leslie Osterman is opposed to the amendment. One of the problems with this amendment is that it causes confusion when there are different ordinances in each municipality. It also makes it harder on law enforcement

A vote was taken and Chairperson Barker stated that the nays had it. Representative Curtis called for division. A vote was taken by a raise of hands. The amendment to **SB11** failed with six in favor and fourteen opposed.

Vice-Chairperson Charles Macheers moved to favorably pass **SB11**, as amended, seconded by Representative Leslie Osterman.

Representative Jim Ward asked why the committee is taking up **SB11** a second time since it was passed out of committee and still sits under the line. Chairperson Barker stated that **SB11** went to Taxation when it was under the line to preserve it. It was sent back to this committee from Taxation. Although the Speaker has the authority to pass the bill out himself, he preferred to send it back to the Judiciary Committee. Representative Ward then asked if the Speaker would allow them to bring this to the floor under general orders for a full debate and amendments. Chairperson Barker stated that if the bill gets to the floor, they would have the opportunity to debate it and offer amendments.

Representative Jim Ward opposes **SB11** because this increases the bed space in prisons. Our prisons are at maximum capacity. Although scrap metal theft is a serious problem, he prefers to keep murderers and rapists in prison, and he is concerned some of those people will be released if this bill is passed.

Vice-Chairperson Charles Macheers closed on his motion. A vote was taken, and **SB11**, as amended, passed favorably.

Final action on: SB34 — Penalties for voting crimes; prosecution of election crimes.

Chairperson Barker directed the committee's attention to **SB34**, and asked what its pleasure was.

Vice-Chairperson Charles Macheers moved to favorably pass **SB34**, seconded by Representative John Whitmer.

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Representative John Carmichael stated he has an amendment ([Attachment 3](#)).

Representative John Carmichael moved to amend **SB34** by requiring that all the election crimes set out in this bill be intentional crimes, seconded by Representative Jim Ward.

Representative James Todd wanted to know if this bill would have any impact on voting crimes that are prosecuted by county attorneys, or does it only relate to those cases the Secretary of State handles.

Katherine Goyette, Office of Revisor of Statutes, stated that the bill would apply to anyone who prosecutes voting crimes.

Representative John Whitmer asked for an explanation of the difference between knowingly and intentionally,. Jason Thompson, Office of Revisor of Statutes, read the definitions from the Criminal Code.

Representative Craig McPherson asked Representative Carmichael to give a hypothetical where the one severity level would apply and the other would not. Representative Carmichael responded that both the Secretary of State and Johnson County District Attorney Howe testified about the elderly couple who no longer lived in Kansas. They voted by a mail ballot in a Johnson County election believing that they were entitled to do so since they still owned property in Kansas. Mr. Howe, in his discretion, did not prosecute this couple because they did not intentionally violate the election laws even though they knowingly voted and knew they weren't residents of Kansas. By this amendment, Representative Carmichael wants to make sure people who did not intentionally violate the voting laws are not prosecuted.

Representative Craig McPherson stated he doesn't think the distinction would be legally significant because lack of knowledge of law or lack of intent to violate the law is never the question. The question would be if they had the intent to double vote, which that couple did have. He therefore doesn't think this distinction is legally that important.

Representative John Rubin stated that when there are extenuating circumstances, the prosecutor always has the discretion of whether or not to prosecute someone. He is opposed to the amendment.

Representative Jim Ward stated that when someone is caught speeding, it doesn't matter whether they intended to or not; they still receive a ticket. However, to commit murder there has to be intent to extinguish that person's life. It's a different crime if it was an accident or done in the heat of passion. The policy question is whether election fraud should be intentional or should people who inadvertently break the law be prosecuted. This amendment makes it necessary for there to be an intent to violate the law. Representative Ward said that this bill is not giving power to professionally trained prosecutors who are held accountable by the public for their prosecutorial decisions; it's being given to Kris Kobach, which is entirely different.

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Vice-Chairperson Charles Macheers opposes the amendment. The word "knowingly" in this bill indicates that when you vote twice, you know that you already voted once. He doesn't feel that a differentiation or change in the language is needed.

Representative John Carmichael closed on the amendment to **SB34**. A vote was taken and the amendment failed to pass.

Representative John Carmichael moved to strike Section 2, lines 23-36 on page 1 from **SB34**, relating to the prosecution of election crimes, seconded by Representative Jim Ward.

Representative Mark Kahrs stated that this amendment eviscerates the full intent of **SB34** by taking away the Attorney General's authority to prosecute voter fraud, as well as the Secretary of State's Office. Voting for this amendment is voting to effectively kill the bill. He is opposed to this amendment.

Representative John Whitmer and Vice-Chairperson Charles Macheers stated that they were opposed to the amendment.

Representative John Carmichael closed on the amendment to **SB34**. An oral vote was taken, and Chairperson Barker declared that the nays had it. Representative Ward called division. Another vote was taken by a raise of hands. There were eight votes in favor of the amendment and fourteen in opposition. The amendment to **SB34** failed to pass.

Representative John Rubin asked that his vote against the amendment be recorded.

Representative John Carmichael stated that he has another amendment to **SB34** ([Attachment 4](#)), relating to Class A and level 9 penalty levels.

Representative John Carmichael moved to amend **SB34** by consolidating all of the felony election crimes as level 9 crimes and by reducing the severity level 7 non-person felonies listed on page 1, line 17, and page 3, line 18, to Class A misdemeanors, seconded by Representative Jim Ward.

Representative Mark Kahrs is opposed to the amendment.

Representative John Rubin stated this significantly lessens the severity levels of the crimes specified in the statute. These are serious crimes that strike at the heart of democracy and of the principle of one person having one legitimate vote. He is opposed to the amendment.

Representative Jim Ward asked if we ever got a bed impact statement. Ms. Goyette responded that the report of the Sentencing Commission indicates that **SB34** would have no impact on prison admission and bed space, but it might have a slight impact on the probation population and the journal entry workload of the Sentencing Commission.

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Representative James Todd stated that he is opposed to the amendment.

Representative Dennis Highberger stated that there has been no demonstration that there has been a problem with any of these crimes, He feels this bill is in search of a problem. He supports the amendment.

Representative Steven Becker stated that this bill gives the same penalties for attempting to commit the crime as actually committing the crime. He doesn't think felony status should be assigned to an attempt to commit election fraud.

Vice-Chairperson Macheers opposes this amendment. Voting is a fundamental right that should be taken seriously. The severity levels should stand without amendment.

Representative John Carmichael closed on the amendment to **SB34**. A vote was taken, and Chairperson Barker stated that the nays had it. Representative Carmichael called division. Another vote was taken by a raise of hands. There were six ayes and fifteen nays. The amendment to **SB34** failed.

Representative John Rubin asked to have his nay vote recorded.

Chairperson Barker said that the committee is back on **SB34**, without amendment.

Representative Jim Ward opposes this bill. The Secretary of State is excessively partisan. This bill will give him the authority to intimidate and deter voting by prosecuting a person with Alzheimer's who goes to the wrong polling place. This Secretary of State, for the first time in history, has a political action committee where he tries to pick winners and losers in the elections that he is supposed to be supervising. Today, over 20,000 Kansans are being suppressed from their right to vote. More often than not, those people are opponents of the Secretary of State. It is bad policy to politicize the counting of votes and the people who can participate in elections. Voting is the fundamental talisman of elections. Everyone must feel comfortable that the election process is fair and clean. He is opposed to **SB34**.

Representative John Rubin stated that this is not a bill to grant Kris Kobach authority to prosecute election crimes. This is a bill to authorize, among others, the Secretary of State -- whoever he or she may be and of whatever political party, both now and in the future -- to prosecute election crimes. Originally he had reservations about **SB34** because he didn't know if he wanted to grant this authority to all future secretaries of state -- Republicans, Democrats, moderates, liberals, or conservatives. He has now answered that question yes because the expertise on how the election process works uniquely resides with the Office of the Secretary of State. That's why he now fully supports **SB34**, including the prosecutorial authority. He likens it to the prosecutorial authority of the Securities Commissioner who has expertise in the area of securities crimes. It's the same principle here. He supports **SB34**.

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Representative Blaine Finch stated that he intends to vote against this bill. When the committee was discussing one of the amendments, it was stated that we do not want to infringe on the prosecutorial discretion of those who prosecute crimes. This bill substitutes our judgment over a prosecutor's discretion. Second, the reason that county and district attorneys and sheriffs are elected at the county level is that we believe the government closest to the people is the government that governs best. There is a strong tug of accountability on local prosecutors and sheriffs because they face the ballot within those local communities. We are substituting that for a statewide office subject to completely different pressures and vote totals, which has no accountability at the local level for crimes that may occur. We should be loathe to do that. We already have someone who handles criminal prosecutions on a statewide level. The Secretary of State is elected to function as the chief clerk of the state. We should be very reluctant to expand those duties without letting the voters first pass on whether or not they want any holder of the Secretary of State's Office to have that authority. This has nothing to do with the personalities of our elected officials; it has to do with democratic principles. He opposes **SB34**.

Representative John Carmichael reminded the committee that not all Secretaries of State are members of the bar. He can only think of two in his lifetime who were lawyers. When someone is elected as a prosecutor, they are a member of the bar and they subscribe to an oath of office and they are under the power of the disciplinary administrator for attorneys.. When you place the ultimate prosecutorial power in a non-lawyer -- someone who is not professionally trained or subject to the Code of Ethics to lawyers and the Code of Ethics that apply to prosecutors -- you open the door for zealotry, and that is not a good idea, particularly in election laws. He opposes **SB34**.

Vice-Chairperson Charles Macheers stated that the Secretary of State is a subject matter expert for this very unique area of the law. There are a lot of times when people at the local level, for parochial reasons, may be disinclined to prosecute someone because of a local connection. Expanding this authority to the Secretary of State makes it safer. Voting is a fundamental right. Anything that makes the voting process more accurate is an improvement and is good. It is his understanding that Georgia and Texas are also considering laws along these lines.

*Vice-Chairperson Charles Macheers closed on his motion to report **SB34** favorably for passage. An oral vote was taken, and Chairperson Barker declared that the ayes had it. Division was called, and a vote was taken by a raising of hands. There were fourteen ayes and eight nays. **SB34** was favorably passed.*

The following representatives asked that their nay votes be recorded: Representatives John Carmichael, Jim Ward, Dennis Highberger, and Pam Curtis.

The following representatives asked to have their aye votes recorded: Representatives John Rubin, John Whitmer, Leslie Osterman, and Becky Hutchins.

Chairperson Barker advised the committee that there would be a meeting at the rail to pass on the minutes from this meeting and the previous meeting at the rail.

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There being no further business, the meeting was adjourned at 1:18 p.m. No dates have been set for any further meetings.