

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~pm~~ on February 1, 1983 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Hess, Mulich, Steineger and Werts.

Committee staff present: Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Judge James Wells, Topeka Municipal Judge
Fred Allen, Kansas Association of Counties
Chris McKenzie, League of Kansas Municipalities

The chairman announced this is the second day for the overview of how the DUI law is working.

Judge James Wells remarked there is one area he found problems with, and it has to do with collection of fines and the evaluation. He said in this economy, it is almost unworkable now if it is considered to be a mandatory situation. The more affluent have no problem with the diversion program; the problem is with the ones who can't afford to pay it. He suggested permitting the judge to determine if they can go beyond 90 days, and also the statute be changed to permit the court to collect as the individual has the ability to pay; the \$85 state fund be collected within 90 days, and the court handle its own collections in the \$200 area. Judge Wells said the DUI law puts a very heavy load upon his court, and he will have to go to the city commission to ask for a second judge. He reported there were 450 DWIs in 1982; in the month of January, called 200 alone, and 25% to 30% were negotiated out. He stated under the new law everything will be tried, and it will be a heavy burden. He said he can live with the situation of having to hear and try them; he thinks the law is having a deterrent effect; feels it is good legislation. A committee member inquired if he had trouble getting cooperation with public service and sentencing. Judge Wells replied, he was at a loss concerning what to do with public service. The committee member inquired if any civic groups have come forward. Judge Wells answered one person did who is with the downtown chamber of commerce; talked about getting a crew down there to clean up the alleys. He said the biggest problem is that we are so urban and busy with everyday affairs to go out and find someone, they have to come to me. The committee member inquired whom he has elected to use for the diversion programs. Judge Wells said they use the A.S.A.P. program; it is automatic the persons go through that educational process. The committee member inquired about the payment of the diversion fee. Judge Wells replied he has had no problem with that; it is the education I want, not the money. The committee member inquired if the judge thought he had the statutory authority to waive the fee; Judge Wells answered you either pay it or the diversion gets set aside. The committee member inquired if there is a constitutional question involved because of financial ability to pay. They discussed the double standard of a person who can afford it and the one who cannot.

The chairman referred the committee to the handout before them from the Topeka Police Department that is in response to a question yesterday regarding setting goals (Attachment #1).

The chairman inquired of Judge Wells if he were aware of goal setting by the police department and number of arrests. Judge Wells replied it is not sensible to set goals and standards that focus on the number of arrests; he would like to take the position the community is going to respond to what the legislature has done. He stated he has a very good relationship with the police department.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on February 1, 1983

Another committee member asked the judge's opinion of the highway patrol's suggestion to adopt the per se standard rather than prima facie. Judge Wells replied it depends upon the effectiveness of the prosecutor; he is comfortable with the way we have it at this time and feels it is an effective mechanism.

Another committee member inquired if he knew of any situation where officers' quotas are set. Judge Wells replied he didn't know of any.

Another committee member inquired if it would be helpful to change to a rebuttable presumption concerning blood or breath tests in these cases. Judge Wells said it wouldn't change his philosophy.

Fred Allen explained he had other people scheduled today but due to the weather they were unable to be present. He passed out two responses he had received pertaining to the DUI law (See Attachments #2, #3). He will have additional information as it comes to him. He reported Trego County indicated their problems are Interstate 70 and the Cedar Bluff Reservoir where there is lots of traffic. Mr. Allen stated their concern is with the cost it is amounting to and what they might do to offset this. Wabaunsee County reported 9,000 traffic cases in 1982; they have 12 jury cases waiting action, and this will cost money. Douglas County reported they have been requested by their district judge to add another person on their payroll. It is not just the extra cases they have; they have an additional 17 people in their jail over the weekend. Mr. Allen said historically it has been a problem to get people to come in to do the work; then you have to pay someone to supervise these people. He stated the cost of maintaining prisoners in jail has gone up; so far it averages out between \$30 and \$40 per day. He said it appears that their expenses are going to increase substantially; they have some assistance from the state but that has not developed into what they had expected. Their source of revenue is their tax on property. Mr. Allen suggested an additional revenue source be provided for this people service.

Chris McKenzie explained he also had people scheduled to come today, and they said they would be happy to come at a later date. They have not had time for any formal survey on the DUI law but had talked to city attorneys in Wichita and Lawrence. He stated the mechanics involved in getting information out about the law and holding meetings was substantial. He reported there have been some cost concerns of the cities that go in the direction of housing prisoners if they have increased rate of conviction. They see a low rate of recidivism in Lawrence and Wichita if offenders have gone through the diversion program. Mr. McKenzie reported the community service option in Wichita is used very sparingly; they use it with the United Fund. The city of Lawrence is also using that option. He referred to the provision concerning the introduction in evidence of the refusal to take the test, and suggested not to change that. He also suggested counting out-of-state convictions. He suggested that the judge should be able to allow a person to drive to school as well as to work. He reported there was interest shown in allowing the \$85 fee to be kept at the local level. Mr. McKenzie said there was some dispute whether the city of Iola would prosecute DUI cases; they are going to reassume responsibility of DUI; they are concerned about housing in the jail. The chairman inquired if they had any information about Overland Park. Mr. McKenzie reported their diversion program seems to be working quite well.

The chairman thanked the conferees who came in. The committee will probably be having some bills dealing with some aspects of the DUI law.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Gene Johnson	Topoka	Siinflawer ASAP
Jim Wells	214 E 8th Top.	Judge - City of Topeka
S. K. [unclear]	Topoka	AP
Jim York	Topoka	KCDAA
Chris Graw	Topoka	Assoc. Students of Ks.
Jean A. [unclear]	Topoka	NADWE
Chris Frank	Wichita	KAKE-TV 10
J. Culh	Topoka	KITWU - CR II
Jeanella Knight	Topoka	Governor's Office
[unclear]	Topoka	SNS/ADAS
David Ross	Missouri, Ks.	FARMER TAX GROUP
Marjorie Jan Bures	Topoka	OJA
Chris McKenzie	Topoka	League of Ks. Men
Hallean Siddens	Topoka	KTVA

Department of Police

#1

2-1-83



Topeka, Kansas
66603
Robert L. Weinkauff
Chief of Police

1-31-83

Senator Pomeroy

I Hope The Enclosed Information Will
Clarify The Statement Made By Capt.
Ted Baehr. This Morning. While It
May Have Sounded Like A Quota In
Reality It Is A Goal.

Respect Fully
Lt. Lee Lewis

Atch. 1

1

TRAFFIC GOALS 1983

1. Reduce total accidents by 4%.
2. Reduce fatality accidents by 30%.
3. Reduce hit and run accidents by 10%.
4. Increase hit and run clearance rate to 50%.
5. Establishment of a Defensive Driving Course for in-service training for all Police Officers.

Objectives to accomplish the above goals:

1. Increase hazardous traffic violation enforcement by 2%.
2. Development of a special new squad of three officers assigned to work the hours of 2000 to 0400 for special D.W.I. enforcement. This squad will be in addition to our A.S.A.P. unit.
3. Increase D.W.I. enforcement by 50%. This will be accomplished through the joint effort of the special squad and the A.S.A.P. officers. This objective is critical toward reaching our goal of reduced fatalities.
4. Operation of Drivers License lanes as a regular routine procedure during 1983. This objective is important in meeting our hit and run accident goals.
5. Continue with our present traffic safety programs in enforcement, education and public awareness. We will attempt to change the pervasive attitude toward disregard of traffic law through our educating, public awareness and defensive driving projects.

Mayor Lee Stanley

2

To: Riley County Commissioners

We have had six months to evaluate the amount of revenue generated to the counties in the filing fees of cases filed with the district court. From July 1, 1982 thru December 31, 1982 the average monthly collections were \$726.00. There have only been two jury trials resulting from the new DWI law, therefore we really do not have sufficient experience to know what impact this may have on our budget. We do know that this law is going to increase our expenses for the operation of the court. There are many unknown factors which will determine the actual amount. Some of these factors are the number of juries called in each case, we will have to experiment for a while to know how many to call, if legal council is appointed the cost will be increased, the number of witness's which we may have to take from our budget, the length of the trial and the distance the jurors and witness's have to travel. There are other costs to the county that do not reflect upon our budget, some of which are witness fees that may be paid from the county attorney's budget and police officers will be spending more time in court.

The first of the two trials which have been completed reveal the following costs; Trial one; thirteen jurors for one day at \$10.00 per day - \$130.00, six jurors for two days at \$10.00 per day - \$120.00, one hundred and thirty eight miles travel and jurors at twenty-two cents per mile - \$30.36, Total: \$280.36. In this case an attorney was appointed, the bill for attorney fees has not been submitted. Attorney's are paid at the rate of \$20.00 an hour for out of court work and \$30.00 an hour for in court. Trial two: Sixteen jurors for one day at \$10.00 per day - \$160.00, one hundred and thirteen miles travel and jurors at twenty-two cents per mile - \$24.86, there were no attorney's fees in this case. We are keeping records of both of these areas as we will have to have the information when we prepare our budget.

I hope this information is helpful to you, if I can be of further assistance, please let me know.

Very Truly Yours

Al Singleton
Court Administrator

Atch. 2

2-1-83
#3

District Court of Kansas
Third Judicial District

Shawnee County Courthouse
Topeka, Kansas 66603

Richard A. Schultz, J.D.
District Court Administrator

Pam Schuckebrook
Administrative Assistant
Virginia L. Burket
Finance-Budget
Mary Dean Byard
Jury Coordinator
Vaughn E. Minton
Systems Analyst

January 31, 1983

Fred Allen
Executive Director
Kansas Association
of Counties

Dear Fred,

The following information is in response to your questions to me this date.

- Q: Has there been an increase in the District Court operating costs because of the new DWI law?
- A: We do not have data which breaks down court operation costs by type of case. Our operational budget from the County has been reduced each of the last three years. I can estimate that of the \$98,228 we spent on indigent defense services during 1982, there is an alarming higher percentage being paid to counsel for indigents charged with DWI offenses. Our total County operational budget funds paid for indigent defense has risen steadily over the last three years.
- Q: Was there a net increase in fines and fees collected from DWI offenders?
- A: Our monthly fee report does not breakdown fines and fees collected by case types. I have attached our fee report work sheet for the twelve months of 1982 for your analysis. Please bear in mind that the court costs went up in 1982 as did our case filings.
- Q: What is the average overall daily cost per prisoner?
- A: The Shawnee County Department of Corrections attempts to arrive at these costs and then contracts with the

Atch. 3

Fred Allen
January 31, 1983
Page 2

City and Federal rates a year in advance. Their rates are as follows:

	<u>1983</u>	<u>1984</u>
City	\$30/day	\$42
Federal	\$37.43	Unknown

In this short period of time we are unable to determine precise answers to your questions. The full impact of the new DWI law has not been felt by us at this time. I do know the Topeka Municipal Court has a docket of some 300 DWI cases which are coming up shortly and a percentage of these will be appealed to our court which will most likely result in a jury case.

We had 50 appeals from the city in 1982, and we will certainly have twice that many in 1983. Other contacts for opinions in the area of DWI cases could be obtained from Gene Johnson, Coordinator for the ASAP Project and Ken Smith, Assistant District Attorney for our District who is in charge of the traffic and DWI cases.

Yours truly,



Richard A. Schultz
Court Administrator

RAS:pls

Enclosure (2)

UNIFIED DISTRICT COURT
FINANCIAL ANALYSIS
1976 - 1982

	<u>Budget</u>	<u>Expended</u>	<u>As of</u>	<u>Returned</u>	<u>%</u>
1976	\$1,090,517 ¹	\$1,052,477	2-3-77	38,040	3.4
1977	1,378,360	1,251,456	4-14-78	116,779	8.6
1978	1,592,060	1,454,218	5-15-79	137,842	8.7
1979	1,481,444 ²	1,455,690	5-27-80	25,754	1.7
1980	1,571,442 ²	1,485,783 ³	3-31-81	85,659	5.5
1981	1,262,190	1,170,269	3-31-82	91,871	7.3
1982	1,186,322	1,075,900 (Estimate)			

1983 Request 1,250,731
1983 Approved 1,068,959

¹ Summary of departments before court unification

² Includes Acct #594, Reimbursement to State of Kansas, KSA 20-362

³ Includes Acct #591 which will be approximately \$33,499 reimbursed in 1981

1982 Traffic Breakdown

	Fines	Costs	P.A.T.	Victims	L.E.T.C.	Alcohol	Total
1	Jan.	2773700	1204350	61500			4039550
2							
3	Feb.	2424854	985650	50950			3461454
4							
5	Mar.	2818850	1195350	61200			4075400
6							
7	Apr.	3218600	1354300	68900			4641800
8							
9	May	3131275	1326250	67900			4525425
10							
11	June	3341300	1431200	74000			4846500
12							
13	July	3211800	1720450	72900	145800	437400	5588350
14							
15	Aug.	3596354	1975000	73900	147800	443400	6253454
16							
17	Sept.	3384720	1821950	67400	134800	404400	5821770
18							
19	Oct.	3439760	1803850	66400	132800	398400	5883710
20							
21	Nov.	3743100	1931400	70100	140100	420300	6330500
22							
23	Dec.	3026000	1600450	57500	115100	345300	5203850
24							
25							
26	Totals	38110313	18350200	792650	816400	2449200	60671763
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