

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at  
Chairperson

3:30 ~~AM~~ p.m. on February 22, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes' Office  
Nedra Spingler, Secretary

Conferees appearing before the committee:

Judge Jay Emler, Lindsborg Municipal Court and Chairman of the Legislative Action  
Committee for the Kansas Municipal Judges Association  
Judge Pat Caffey, Manhattan Municipal Court  
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association  
Jim Kaup, League of Municipalities

Minutes of the meeting of February 20, 1984, were approved.

Hearings were held on HB 2986, 2987, 2988, and 2989, all requested by the Kansas Municipal  
Judges Association.

HB 2986 - An act relating to municipal court and pretrial release.

Judge Jay Emler, Lindsborg Municipal Court and Chairman of the Legislative Action Committee  
for the Kansas Municipal Judges Association, spoke in favor of the bill which would change  
the pretrial release period for DUI arrests from twelve hours after arrest to 24 hours. He  
gave examples of the inadequacy of the 12-hour limit when judges may not be available for  
the first appearance. He noted his committee did not believe 48 hours was reasonable, and  
24 hours was ample. DWI reckless driving and attempting to elude police is a more serious  
offense and are exempted from the 24 hours which will comply with legislative intent for  
more strict enforcement of DUI laws. Section 2 allows police to release a person without  
bond, but if the officer thinks release would be risky and wants the judge to make that  
decision, that person can be held. It was clarified that, presently, there is no differential  
between first, second and third time DWI offenders being released on their own recognizance  
if a judge is not available within twelve hours. House Bill 2986 addresses this.

HB 2987 - An act relating to marriage officiates.

Judge Emler said there were two inconsistent laws regarding the authority of municipal judges  
to perform marriages with one saying any judge of a court of record may do so, but municipal  
judges do not have court reports. The other law says every judge may perform marriages. HB  
2987 would clarify that any judge of a court of the state may perform this service. Judge  
Emler had no objection to including former judges of the district court in the bill.

HB 2988 - An act relating to evaluation and supervision regarding alcohol and drug-related  
crimes.

Judge Pat Caffey, Manhattan Municipal Court, said the bill would permit judges to have post-  
sentence evaluations to consider conditions of probation or parole for persons convicted of  
alcohol and drug-related crimes. He noted it takes the Manhattan Alcohol Safety Action  
Project about three weeks to make an evaluation which means, after a conviction, another  
sentencing date must be set. Third offenders serving 90 days could be evaluated while serving  
the term. In regard to residents of non-contract states, Judge Caffey believed it would be  
better if they could be released on parole after serving 48 hours, evaluated in their home  
state, then come back for sentencing. Judge Caffey asked for an amendment to line 105 to  
insert, after "prior to", "or after". He agreed to a suggestion that a period be inserted  
after "court" and striking the rest of the sentence. Concern was expressed that this discre-  
tion would be abused and become routine to have evaluations done after sentencing. Judge  
Caffey said this was not the intent, and sentencing before evaluation would be used only in  
a few special cases.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 22, 1984.

In response to a question regarding diversion reports not being received by the Driver Control Bureau, Judge Caffey said his court sends them in to the Bureau.

Gene Johnson listed the concerns of the Kansas Community Alcohol Safety Action Project Coordinators Association as outlined in Attachment No. 1. He believed, if HB 2988 addresses only a limited number of offenders, incarcerated people should be evaluated and the evaluation given to the court before these people are released.

HB 2989 - An act relating to DUI.

Judge Caffey explained provisions of the bill that change penalties regarding first, second, and third time offenders. An inconsistency was noted in subsection (e), page 3, regarding the third time offender and the present DWI statute. It was noted charter ordinances of cities would have to be changed rather than the statute in municipal courts which are not automatically subject to current state law.

Jim Kaup said the League of Kansas Municipalities supports all four bills.

The Committee took action on several bills previously heard.

HB 2931 - An act relating to aid of execution.

Representative Knopp moved to report the bill favorably and that it be placed on the Consent Calendar, seconded by Representative Patrick. Motion carried.

HB 2920 - An act relating to false alarms on 911.

Representative Knopp moved to amend the bill on line 34 by striking "transmitting in any manner a request" and inserting "making a telephone call", and, in line 37, to strike "transmission" and insert "call", seconded by Representative Miller. Representative Buehler moved to report the bill, as amended, favorable for passage, seconded by Representative Patrick. Motion carried.

HB 2836 - An act relating to the amount of fine in DUI diversions.

Representative Schweiker moved to amend the bill to allow a credit on diversion for the fines paid and against the fine on conviction if diversion is revoked, seconded by Representative Miller.

Representative Schweiker said the author of the bill, Representative Moomaw, had no objection to the amendment. Motion carried.

Representative Duncan noted the Driver Control Bureau may not have the needed information which should be if a person is currently on diversion. He questioned if diversions were not being turned in until the end of diversion because they might be reported as a conviction. He moved to amend K.S.A. 12-4416 (c) to denote that a person is "participating in" a diversion program, the intent of the statute, and this same amendment be made to the criminal code. The motion was seconded by Representative Wunsch, and it carried. Representative Campbell moved to report HB 2836, as amended, favorably, seconded by Representative Douville. Motion carried.

HB 2796 - An act relating to care of children.

Representative Vancrum moved to report the bill favorably, seconded by Representative Patrick. There was discussion regarding where a child will be placed when SRS facilities are not available, application of provisions only to runaways, and Johnson County being the only county that restricts, through its interpretation of current law, provisions of the bill.

Representative Miller made a substitute motion to amend the bill in line 38 to strike "an imminent" and insert "a", and, on line 33, to strike "or" and restore "and", seconded by Representative Buehler. Substitute motion carried. Representative Patrick moved to report HB 2796, as amended, favorable for passage, seconded by Representative Buehler. Motion carried.

The meeting was adjourned at 5:00 p.m.

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**House Judiciary Committee  
Testimony on H.B. 2988**

Attachment # 1

**Gene Johnson**

**February 22, 1984**

Mr. Chairman and members of the Committee, I am Gene Johnson representing the 27 Kansas Community Alcohol Safety Action Project Coordinators Association. We provide the alcohol and drug evaluations on DWI offenders in all of the Judicial Districts in Kansas.

We have some concern about the proposed legislation before this Committee today. We note that throughout H.B. 2988 the word presentence has been eliminated. Also on page 6 line 223 through 227 the language gives the court, at its discretion, the authority to sentence the offender first and then order an alcohol and drug evaluation.

We find that inconsistent with language under the present law as shown on page 3 lines 103 through 123.

We also feel that the court should have the best possible and most complete information on the offender before the sentencing process. It would appear under this proposed legislation that this could not be accomplished with the post alcohol and drug evaluations.

Another worrisome factor is that by statute the court costs and assessment fees are due and payable within 90 days of the sentencing date. Any post alcohol and drug evaluations could become a stumbling block in meeting the payment deadline.

If H.B. 2988 is designed strictly for evaluations for a limited number of offenders who for one reason or other are incarcerated and that evaluation is performed and made available to the court before that person is released by parole or probation our concerns would be greatly diminished.

Thank you.

*Gene Johnson*

*Atch. 1*