

Approved _____

4/25/86
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

2:30 ~~xxxxx~~ p.m. on April 23, 1986 in room 254-E of the Capitol.

All members were present except:

Senator Vidricksen was excused.

Committee staff present:

J. Russell Mills, Jr., Legislative Research
Mary Torrence, Assistant Revisor of Statutes
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Pat Baker, Kansas Association of School Boards (KASB)
Ron Smith, Kansas Bar Association (KBA)
Kathleen Sebelius, Kansas Trial Lawyers Association (KTLA)
Representative Charles Laird and Representative Edwin A. Bideau
Dwight Parscale, Attorney, Topeka
Nick Tomasic, District Attorney of Wyandotte County, Kansas City, Kansas
Sheriff John Quinn of Wyandotte County, Kansas City, Kansas
Representative Marvin Smith
Fred Allen, Kansas Association of Counties
Judge Herb Rohleder, District No. 20, Division No. 2, Great Bend
Judge Donald L. Allegrucci, District No. 11, Division No. 1, Pittsburg
Glenn Cogswell, Kansas Association of Professional Sureties
Paul Schwartz, Department of Corrections
HB3114 - tort claims act, excepting claims resulting from community service work programs.

The Chairman passed out an amendment concerning HB3114. He explained it is an attempt to try to alleviate some of the potential for liability for people who serve. It is an amendment that has been arrived at by the Kansas Bar Association and the Kansas Trial Lawyers Association. It concerns immunity for employees and the already existing law. Ron Smith of the KBA and Kathleen Sebelius of the KTLA assisted in answering questions.

Pat Baker, of the KASB, also assisted in answering questions.

Senator Martin moved to accept the amendments proposed by the Kansas Trial Lawyers and the Kansas Bar Association defining new Section 3 on Page 4 of the bill. 2d by Senator Hoferer. Motion carried.

Senator Martin moved the bill be recommended favorably as amended. 2d by Senator Hoferer. Motion carried.

The Minutes of the meeting of 8:30 a.m. today, April 23, 1986, were distributed to the Committee. Senator Strick moved that the Minutes be approved. 2d by Senator Arasmith. Motion carried.

HB2961 - cash deposit appearance bond prohibited.

Representative Charles Laird appeared in support of the bill.

Dwight Parscale, a Topeka lawyer, appeared in support of the bill. He left a copy of a paper in support of the matter signed by Shawnee County lawyers. (Attachment #1) He had appeared in support at the meeting of April 9.

Representative Edwin A. Bideau, who also had appeared at the meeting of April 9, again spoke as a proponent of this legislation.

Mr. Nick Tomasic, District Attorney of Wyandotte County, Kansas City, Kansas, was the next proponent to appear for the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 2:30 ~~xxxx~~/p.m. on April 23, 1986

The next conferee was a proponent of HB2961, Sheriff John Quinn of Wyandotte County, Kansas City, Kansas.

Representative Marvin Smith, a co-sponsor of this bill, appeared next in favor of it.

Mr. Fred Allen of the Kansas Association of Counties spoke as a proponent of the bill.

Judge Rohleder, of District No. 20, Division No. 2 in Great Bend, appeared before the Committee as an opponent of this bill. Judge Rohleder had not appeared at the earlier meeting. He said the 20th Judicial District has had the court bonding sistem for eight or nine years. It is not something that was just started up over night. They got this idea from the American Bar Association. None of the lawyers in the 20th Judicial District have challenged it.

Judge Donald Allegrucci, of District No. 11, Division No. 1, in Pittsburg, was the next opponent to the proposed legislation. Judge Allegrucci had appeared at the meeting of April 9, and a copy of his statement is part of those Minutes.

Mr. Glen Cogswell, of the Kansas Association of Professional Sureties, also appeared as a conferee. Mr. Cogswell appeared as a proponent, as he had done at the meeting of April 9, 1986.

The Chairman thanked all the conferees for their appearances and said he will give all the Committee a chance to reflect on HB2961, with the matter to be acted upon tomorrow.

The Chairman then referred the Committee to two legislative proposals before it. The first was 5 RS 2917, concerning prison-made goods; relating to disposition of moneys therefrom; amending K.S.A. 75-5282 and repealing the existing section. (Attachment #2) Mr. Paul Schwartz, from the Department of Corrections, testified that this would give them some financial felexibility and would assist in their cash flow. Senator Morris moved that it be introduced. 2d by Senator Martin. Motion carried. (This will be a Senate Substitute for House Bill No. 2655) Senator Morris moved that the bill be recommended favorable for passage. 2d by Senator Martin. Motion carried.

The next proposal for consideration was 5 RS 2920, concerning crimes and punishments; relating to the crime of unlawful use of weapons; amending K.S.A. 1985 Supp. 21-4201, as amended by 1986 House Bill No. 3154, and repealing the existing section. (Attachment #3). No action was taken by the Committee on this.

The meeting was adjourned at 4:15 p.m.

0124 (n) any claim for injuries resulting from the use of any public
0125 property intended or permitted to be used as a park, playground
0126 or open area for recreational purposes, unless the governmental
0127 entity or an employee thereof is guilty of gross and wanton
0128 negligence proximately causing such injury;

0129 (o) the natural condition of any unimproved public property
0130 of the governmental entity;

0131 (p) any claim for injuries resulting from the maintenance of
0132 an abandoned cemetery, title to which has vested in a govern-
0133 mental entity pursuant to K.S.A. 17-1366 through 17-1368, and
0134 amendments thereto, unless the governmental entity or an em-
0135 ployee thereof is guilty of gross and wanton negligence prox-
0136 imately causing the injury; or

0137 (q) the existence, in any condition, of a minimum mainte-
0138 nance road, after being properly so declared and signed as
0139 provided in K.S.A. 1982 Supp. 68-5,102 and amendments
0140 thereto; or

0141 (r) any claim for damages resulting from performance of
0142 community service work.

0143 ~~The enumeration of exceptions to liability in this section shall~~
0144 ~~not be construed to be exclusive nor as legislative intent to waive~~
0145 ~~immunity from liability in the performance or failure to perform~~
0146 ~~any other act or function of a discretionary nature.~~

leave
in

0147 Sec. 4. K.S.A. 75-6102 and 75-6104 are hereby repealed.
0148 Sec. 5. This act shall take effect and be in force from and
0149 after its publication in the statute book.

New Section 3. The members of the governing body of a municipality as defined in K.S.A. 75-6102(b) thereof acting within the scope of their employment shall not be liable for damages resulting from any act of the municipality. This shall not, however, effect the liability of the municipality.

4/23/86
Attachment #1

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

| | |
|-----------------------------|-------------------------------|
| <i>Henry BOATEN</i> | <i>Robert J. [unclear]</i> |
| <i>Donald Hoffman</i> | <i>John [unclear]</i> |
| <i>John A. Mc [unclear]</i> | <i>John [unclear]</i> |
| <i>John Wilkinson</i> | <i>John A. Bausch</i> |
| <i>Douglas E. [unclear]</i> | <i>John [unclear]</i> |
| <i>John [unclear]</i> | <i>John [unclear]</i> |
| <i>Howard [unclear]</i> | <i>John [unclear]</i> |
| <i>John M. [unclear]</i> | <i>John [unclear]</i> |
| <i>Bill McCarroll</i> | <i>John [unclear]</i> |
| <i>Robert [unclear]</i> | <i>John [unclear]</i> |
| <i>Doug [unclear]</i> | <i>Elizabeth M. [unclear]</i> |
| <i>Charles Rooney</i> | <i>Billy [unclear]</i> |
| <i>William [unclear]</i> | <i>John [unclear]</i> |
| <i>Thomas [unclear]</i> | <i>Constance [unclear]</i> |
| <i>David [unclear]</i> | <i>Shirley J. [unclear]</i> |

EDWIN BIDEAU III
 REPRESENTATIVE, FIFTH DISTRICT
 NEOSHO COUNTY
 123 W MAIN
 CHANUTE, KANSAS 66720-1790



TOPEKA

COMMITTEE ASSIGNMENTS
 MEMBER JUDICIARY
 LABOR AND INDUSTRY
 PUBLIC HEALTH AND WELFARE

HOUSE OF
 REPRESENTATIVES

April 23, 1986

TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

RE: H.B. 2961

USE OF FUNDS IN CRAWFORD COUNTY

In discussing this with Judge Allegrucci after the committee hearings I told him that I did recall reading that some of the money from the 11th Judicial District court bond program was used to remodel offices. I have not heard anyone state that he personally used any of these funds for his personal office. Judge Agllegrucci did confirm to me that under the previous Administrative Judge approximately \$4,000.00 of funds from the program was used to assist in remodeling of the office of the Clerk of the District Court. It is therefore correct that funds from the program, derived from criminal defendants, were used for remodeling of offices for the court under the previous administrative judge.

This points out the fact that the use of the funds acquired is up to the individual administrative judge. This is an inherent danger in the program and a strong reason why the bill is needed. The court program creates a fee fund which is not subject to outside audit, control by rules and regulations or oversight. It is apparently simply under the control of the administrative judge. As in Crawford county, individual judges can differ on how the funds should be used. Unauthorized fee funds are unacceptable.

NEED FOR STATEWIDE UNIFORMITY

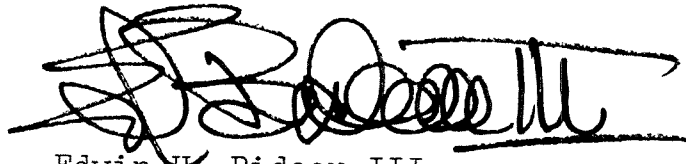
No county can operate a criminal justice program in a vacuum. A defendant charged in one county is often arrested in another, creating problems if bail bond procedures are not uniform. A high bond set in the charging county might be severely diluted if the defendant is arrested in a county with a 10% discount bond system in place. Criminal law enforcement, including bonds, should be uniform, not diverse.

PUBLIC TRUST

Under the 10% court bond system the public can be easily misled. Under the 10% system the bond set does not equal the bond which is posted. A victim or a witness can leave the courthous feeling that a sufficiently high bond was set only to find to their surprise that catch-22, the 10% system, let them out on the street. Bond amounts set become therefore meaningless.

Opposition to the bill comes from only three judges operating this type of program. One judge instituted the program in the face of legislative disapproval of enabling legislation. The Supreme Court has not adopted a similar state-wide program nor endorsed the local programs. There is very strong law enforcement support for the bill. I would urge you to support the bill if for no other reason to insure that the public and victims are not misled, can understand the bond system and to guarantee that bond posted equals bond set.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Edwin H. Bideau III". The signature is stylized and somewhat cursive, with a horizontal line underneath the name.

Edwin H. Bideau III
State Representative
5th District

Attachment #2

PROPOSED BILL NO. _____

By Committee on Federal and State Affairs

AN ACT concerning prison-made goods; relating to disposition of moneys therefrom; amending K.S.A. 75-5282 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 75-5282 is hereby amended to read as follows: 75-5282. (a) All moneys collected by the secretary from the sale or disposition of ~~articles--and--products~~ goods manufactured and services provided under the prison-made goods act shall be remitted to the state treasurer at least monthly. The state treasurer shall deposit each such remittance in the state treasury and the same shall be credited to the correctional industries fund, which fund is hereby created in the state treasury.

(b) All the moneys collected and deposited pursuant to subsection (a) shall be used solely for the purchase of manufacturing supplies, equipment and machinery, for the repair and maintenance and replacement of equipment and machinery, and for administrative expenses; ~~except that on July 1 of each year the director of accounts and reports shall transfer from the correctional industries fund to the correctional industries equipment replacement fund a sum equal to 5% of the total receipts deposited to the credit of the correctional industries fund pursuant to subsection (a) during the preceding fiscal year which receipts were derived from the sale of inmate-made articles and products and inmate provided services. Amounts credited to the farming operations account of the correctional industries fund pursuant to subsection (d) shall not be included in determining the amount to be transferred under this subsection from the correctional industries fund to the correctional~~

industries-equipment-replacement-fund.

~~(e) The secretary of corrections shall furnish the director of accounts and reports such information as shall be necessary for the determination of the amount to be transferred under subsection (b). Upon making any of the transfers provided for under subsection (b), the director of accounts and reports shall notify the secretary of corrections thereof, who shall make the proper entries in the records of financial transactions to show such transfers.~~

~~(d) (c) The balance of all proceeds from the lease of agricultural land at Kansas state penitentiary which are received after March 17, 1982, after payment of the expenses of the lease from such proceeds, shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and such amount shall be credited to the farming operations account of the correctional industries fund which is hereby created in such fund. All moneys credited to the farming operations account of the correctional industries fund shall be used for the development and maintenance of farming operations at Kansas state penitentiary for the employment of inmates under the custody of the secretary of corrections.~~

Sec. 2. K.S.A. 75-5282 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Attachment #3

PROPOSED BILL NO. _____

By Committee on Federal and State Affairs

AN ACT concerning crimes and punishments; relating to the crime of unlawful use of weapons; amending K.S.A. 1985 Supp. 21-4201, as amended by 1986 House Bill No. 3154, and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1985 Supp. 21-4201, as amended by 1986 House Bill No. 3154, is hereby amended to read as follows: 21-4201. (1) Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles ~~or throwing star~~, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(b) carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slung shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(c) carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(d) carrying any pistol, revolver or other firearm

concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(e) setting a spring gun;

(f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

(g) selling, manufacturing, purchasing, possessing or carrying any throwing star;

(h) selling, manufacturing, purchasing, possessing or carrying a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger;
or

~~(h)~~ (i) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight.

(2) Subsections (1)(a), (b), (c), (d) ~~and (g)~~ , (g) and (h) shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(c) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(d) manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) ~~of this subsection~~ to possess such weapons.

(3) Subsection (1)(d) shall not apply to or affect the following:

(a) Watchmen, while actually engaged in the performance of the duties of their employment;

(b) licensed hunters or fishermen, while engaged in hunting or fishing;

(c) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(d) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or

(e) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 1985 Supp. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 1985 Supp. 31-157 and amendments thereto.

(4) Subsections (1)(a), (f) and ~~(g)~~ (h) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(5) Subsection (1)~~(h)~~(i) shall not apply to a governmental laboratory or solid plastic bullets.

(6) Subsection (1)(g) shall not apply to any person who sells, manufactures, purchases, possesses or carries a throwing star only for the purpose of giving training or demonstrations in martial arts.

(7) It shall be a defense that the defendant is within an exemption.

~~(7)~~ (8) Violation of subsections (1)(a) through ~~(1)(f)~~ (1)(g) is a class B misdemeanor. Violation of subsection ~~(1)(g)~~ (1)(h) or (1)(i) is a class E felony.

~~(8)~~ (9) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

Sec. 2. K.S.A. 1985 Supp. 21-4201, as amended by 1986 House Bill No. 3154, is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.