

Approved February 1, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./p.m. on January 28, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Feleciano, Langworthy, Parrish, Steineger, Winter and Yost.

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Doug Mays, Kansas Securities Commission
Jerry Robertson, Social and Rehabilitation Services
Senator Gerald Karr
Lane K. Ryno, Emporia Police Department
Ken Rogg, Private Citizen
Clifford F. Hacker, Lyon County Sheriff
Rick L. Easter, Law Enforcement Training Commission
Brenda Braden, Office of Attorney General
Jim Kaup, League of Kansas Municipalities

Doug Mays, Kansas Securities Commission, presented two bills requests. One request concerned granting statutory authority to issue subpoenas, and the other request concerned powers to fine and censure administratively.

Jerry Robertson, Social and Rehabilitation Services, presented two bill requests. The first request concerned support enforcement, and the second request concerned youth services.

SENATE BILL 487 - Crime of unlawful use of weapons.

Senator Gerald Karr, the sponsor of the bill, appeared to explain the bill to the committee. He said the bill addresses the issue of carrying a concealed weapon in a land vehicle. A copy of his statement is attached (See Attachment I).

Lane K. Ryno, Emporia Police Department, testified the proposed change in this section of the statute would not hinder or infringe upon any actions of the sportsman or legitimate user of any firearm. These persons would have no reason to conceal their weapons. A copy of his statement is attached (See Attachment II).

Ken Rogg, Private Citizen, stated he is not opposed to the amendment but possibly to the wording. He said his son has a van with a rack on the back of the van. They would hesitate to leave the guns in plain view when they go in for lunch. He suggested adding the word to the bill "loaded". He said this should only apply to a loaded firearm.

Senator Karr introduced Clifford F. Hacker, Lyon County Sheriff. Mr. Hacker said it is not their intent to interfere with hunters, but they are concerned with loaded guns that are concealed, and a person could have access to the firearm. They are not

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./p.m. on January 28, 1988

Senate Bill 487 continued

concerned about the rifles and long guns behind a seat of a pickup. He said we are finding more and more people are carrying concealed weapons.

Senate Bill 424 - Amendments to Kansas Law Enforcement Training Act.

Rick L. Easter, Law Enforcement Training Commission, appeared in support of the bill. He testified the purpose of the bill is to provide the Law Enforcement Training Commission with the authority to perform its duties. These duties consist of regulating law enforcement officers concerning their basic training and continuing education requirements in the state of Kansas. A copy of his statement is attached (See Attachment III). A committee member inquired how much money will be spent on these hearings? Mr. Easter replied it will take about two hearings. There are two or three that have not filled their requirement for in-service training and these are the people we need to call in. I think the cost would be minimal for the results we will have.

Brenda Braden, Office of the Attorney General, explained there were people in the structure who would not go along with the requirements, and they said you can't make us. The commission had no ability to compel anybody to appear before the commission. They had absolutely no money and without money to conduct a hearing it is impossible for the commission to perform this function. There will have to be some money earmarked for this function. We are not talking about an enormous cost here. In response to a question, she replied there are 25 officers who have not complied, and two officers are two years behind in their in-service training.

Jim Kaup, League of Kansas Municipalities, testified while the league has taken no position on the bill, we do offer this committee proposed amendments to address problems we see in the bill as drafted. He stated their concern is in lines 113 and 114. They do seek clarification of the language in these lines. In lines 176 their concern is about the potential liability for unlawful termination. They are also concerned with line 182 and suggested that the district court have discretion in assessing the amount of the civil penalty. A copy of his handout is attached (See Attachment IV).

SENATE BILL 424 - Amendments to Kansas Law Enforcement Training Act

Further committee discussion was held with Brenda Braden. A committee member inquired if they could get the county and district attorneys involved in this or is it more appropriate to have the Attorney General do this? She replied sometimes the county or district attorney prefers to handle this. It is less expensive. Further committee discussion was held with her.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 28, 1988

BILL REQUESTS

Senator Langworthy moved to introduce the bills that were requested at the beginning of the meeting by Doug Mays and Jim Robertson. Senator Steineger seconded the motion, and the motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment V).

A copy of a letter from from Jim Lawing concerning Senate Bill 270 is attached (See Attachment VI).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-28-88

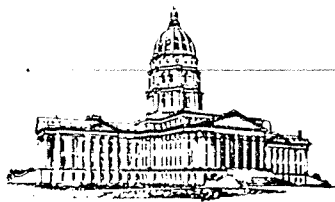
NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
PAUL S. KALMAR	120 N. Spruce KINGMAN	Police Dept. Wichita
RICK L. EASTEN	Box 119 Colwich, Kansas 67020	Police Dept
LARRY WELCH	Box 647 Hutchinson, Ks	KLETC
LANE K. RYNO	SRB MECHANIC EMPORIA, KS.	EMPORIA POLICE DEPT.
CHEFFORD F. HACKER	425 MECHANIC EMPORIA, Ks 66801	LYON COUNTY SHERIFF
NICK A. TOMASIC	710 N 7th K-C-K	WY CO D.A.
JOHN P. WOLF	UNIVERSITY OF KANSAS CONT. EDUC. BLDG LAWRENCE	KLETC
TERRY CANTRELL	Leavenworth Ks	Sheriff
Harold Whell	HANSING, Ks.	
Jim Glor	Topeka	KCOAA
Jim Robertson	Topeka	SRS
Helma Hunter Gordon	Topeka	SRS
DAVID REAVIS	Lawrence	KLET Committee
Bob Griffin	KHP - TOPEKA	
Ken Rogg	Paola	Self
PATRICIA HENSHALL	TOPEKA	OSA
Carl B. Davis	Lawrence	Senator B. Davis Office
Doug Mays	Topeka	Ks Securities Comm.
Brenda Braden	Topeka	AG
Shirley J. Henry	topoka	sen. Motch
Ronald "Jerry" Kaur	Emporia	Ks. Senate
MARIA HOWARD	CITY OF WICHITA	WICHITA
Jim Hostette	3921 Cheburford Top	
Jim Kemp	Topeka	League of Municipalities
Sally Steff	Topeka	AP

Attach. V

1-28-88

STATE OF KANSAS

GERALD "JERRY" KARR
SENATOR, SEVENTEENTH DISTRICT
CHASE, LYON, MARION, MORRIS,
OSAGE COUNTIES
R R 2, BOX 101
EMPORIA, KANSAS 66801



TOPEKA

COMMITTEE ASSIGNMENTS

MEMBER AGRICULTURE
ASSESSMENT AND TAXATION
FINANCIAL INSTITUTIONS AND
INSURANCE
ECONOMIC DEVELOPMENT
EDUCATION
JOINT COMMITTEE ON ADMINISTRATIVE
RULES AND REGULATIONS
LEGISLATIVE EDUCATIONAL PLANNING
COMMITTEE

SENATE CHAMBER

January 27, 1988

TO: Senate Judiciary Committee
FROM: Senator Gerald "Jerry" Karr
TOPIC: Senate Bill 487

Today I would like to introduce SB 487, which is an amendment to our current statute, K.S.A. 21-4201 (d). It addresses the issue of carrying a concealed weapon in a land vehicle. This concern was brought to my attention by law enforcement officers in Emporia, who have become increasingly more concerned about the interpretation of the current law relating to concealed weapons.

Senate Bill 487 attempts to clarify the current statutes and assist officers who may approach a vehicle and find a concealed weapon within the reach of the driver or any passenger in the vehicle.

I would like to note that we do address the transportation alcoholic beverages, especially open containers, in such a manner that we want them completely out of reach of the driver. We request that they be placed in a locked rear trunk or rear compartment of a car. What we would like to do here is to make certain that if there is a weapon in a vehicle, that it not escape the concealed weapon law by being hid by a newspaper off the person.

I have asked representatives of the Emporia Police Department to explain in more detail the kind of problems they have been confronted with in their daily work in law enforcement.

In closing, I would like to emphasize that this is certainly not an attempt on the part of myself or the law enforcement officers to restrict the legitimate users of fire arms, specifically by individuals that may transport fire arms for use in hunting and sporting activities.

If there are any questions, I would be glad to answer them or refer them to the representatives, who are present here today to discuss this issue.

Attch. I



THE CITY OF
EMPORIA

Civic Center / 522 Mechanic / P.O. Box 928 / Emporia, KS 66801 / 316-342-5105

Floyd McCracken, Mayor
Evora A. Wheeler, Vice-Mayor
W. L. Jenks, Commissioner
Leonore H. Rowe, Commissioner
Raymond A. Toso, Commissioner
Steve Commons, City Manager

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

It has come to my attention that a change in Kansas Statutes Annotated K.S.A. 21-4201(d) could be more encompassing than as currently written. The change I am recommending would not alter the meaning of the statute as I perceive it, but would strengthen the enforcement ability of the intent of the statute.

As the statute now reads, a person can legally carry a handgun concealed under the seat of his automobile, with easier access to it than he would have if the handgun were concealed under his coat in a shoulder holster. The latter, of course, is in violation of K.S.A. 21-4201(d) for obvious reasons.

The proposed change in this section of the statute would not, of course, hinder or infringe upon any actions of the "sportsman" or legitimate user of any firearm. These persons would have no reason to conceal their weapons.

Based upon my experience as a police officer for the City of Emporia, Kansas, I have seen several instances in the past where the intent of an individual was the same as if he were carrying a concealed weapon on "his person." However, he was conducting himself within the scope of K.S.A. 21-4201(d). Due to the recent rash of freeway shootings in the state of California, that state is presently conducting hearings on legislation to restrict the carrying of concealed firearms or any firearms in motor vehicles.

As I previously stated, I have personally observed several instances where the intent of an individual was to conceal a weapon, however, no violation of the statute was committed.

One example of this was an instance where an individual was stopped for driving under the influence. This individual was subsequently arrested for the offense and was very cooperative throughout the arresting procedure. During the procedure, however, an individual who had been a passenger in the vehicle during the stop had re-entered the vehicle and proceeded to the area of the driver's seat. After the officer had secured the driver, as he was now under arrest, he contacted the passenger, who was now behind the wheel of the vehicle, for the sole purpose of advising him not to drive due to his state of intoxication and to inform the passenger he would be assisted in finding transportation. When the officer made contact with the passenger, the officer observed him reaching with his right hand under the driver's seat and reaching with his left hand toward a jacket laying on the back seat. This area of the back seat had previously been occupied by the passenger prior to the stop.

The officer continued to observe the passenger reach under the jacket and take possession of a loaded, cocked, .45 caliber automatic revolver with the safety off. The officer subsequently pointed his weapon at the passenger and ordered

Attch. II

him to drop the weapon. After some conversation between the officer and the passenger, the .45 caliber automatic revolver was left on the back seat and the passenger exited the vehicle.

A short time later another weapon was found in the vehicle. This weapon was a cocked and loaded .44 magnum revolver and was located out of view under the driver's seat, approximately eight inches (8") from where the passenger's right hand had been located.

In this instance, the passenger was not in violation of any statute. He did not actually point a weapon at anyone and was not what one would consider a criminal. He was merely a "good ol' boy" who had too much to drink and liked to clown around with loaded guns. The potential for true tragedy did exist, however, and could have ended in the death or injury of the officer and/or the death, injury or prison term for the passenger. If the passenger had been a true criminal, only speculation could tell us the possible outcome of this incident.

It should also be noted that in recent years the trend of society is for people to buy more and more weapons. Since the discreditation and abandonment of most major "flower child" type peace movements, our society has become more violent in nature. This can be ascertained by reviewing statistics, observing more favorable attitudes toward military and survivalistic type behavior. The most recent example of our violent tendencies can be illustrated by the freeway shootings in California and the St. Louis areas.

I am not so naive to believe the revision in the statute will change the course of society. But I do believe it will aid law enforcement in its ability to fulfill its basic prime mission, to protect life and property. Not only would it aid in protecting the lives of law enforcement personnel, but the lives of everyday citizens. The revision would also give law enforcement another tool in combating the proven criminal element.

As stated previously, it is certainly not my intent to infringe upon the rights or restrict the legitimate users of firearms. It is also not my intent to enter into the debate of the "Right to Bear Arms" versus "Gun Control" legislation. I do not believe the proposed revision would carry any relevancy in this debate.

Any assistance you can give in accomplishing a possible change in this statute would be greatly appreciated not only by myself, but by all law enforcement personnel and supportive citizens.

Lane K. Ryno, Sgt.
Emporia Police Department

STATE OF KANSAS
LAW ENFORCEMENT TRAINING COMMISSION
TESTIMONY

re

Senate Bill 424

before

Senate Committee

Judiciary

by

Rick L. Easter
Sub-Committee Chairman
Law Enforcement Training Commission

28 January 1988

Mr. Chairman, Senators, I want to thank you for allowing me to appear before you today in support of Senate Bill 424; the purpose of which is to provide the Law Enforcement Training Commission with the authority to perform it's duties. These duties consist of regulating law enforcement officers concerning their basic training and continuing education requirements in the state of Kansas.

Several months ago, it was brought to the attention of our commission that we did not possess the proper wording in the state statute to enforce the law. With the assistance of the State Attorney Generals Office, we requested the amendments to this statute that you now have in front of you. These amendments will allow the Training Commission to suspend, revoke or deny the certification of a

Attch. III

law enforcement officer who fails to meet the requirements of this statute. In short, these amendments will serve to upgrade the profession of law enforcement.

The Law Enforcement Training Commission

Chairman - Al Naes

K.B.I. Director - Dave Johnson

Kansas Highway Patrol Superintendent
Don Pickert

Leavenworth County Sheriff
Terry Campbell

Ellis County Sheriff
Bruce Hertel

Stanton County Sheriff
James Garrison

Lawrence Police Detective
David Reaves

Wyandotte County District Attorney
Nick Tomasic

Chief of Police Kingman, Kansas
Paul Kalmar

Chief of Police North Newton
Ray Classen

Commander of Training Wichita Police Department
Rick Easter



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Chairman Frey and Members, Senate Judiciary Committee
FROM: Jim Kaup, League General Counsel
DATE: January 28, 1988
RE: Proposed Amendments to SB 424

While the League of Kansas Municipalities has taken no position on SB 424, we do offer this Committee proposed amendments to address problems we see in the bill as drafted.

Lines

Purpose

113:114

No amendment is offered by the League at this time. We do seek clarification of the language ". . .within one year after such education or training is required. . .".

Is the intent of this language to give an officer one full year from the date the education or training should have been completed before forfeiture of office occurs, or is the intent to have the forfeiture occur on the last day of the year for which the education or training was not completed as required by K.S.A. 74-5607a(b)?

If public officials are going to be threatened with removal from office and civil fines for violating the law enforcement training act, it is essential that the duties this Legislature places upon them be clear and unambiguous.

176

- (1) SB 424 would subject elected and appointed local government officials to severe civil penalties (loss of office and fines) if they "knowingly permit the . . . retaining . . ." of a law enforcement officer who has not met the education or training provisions of the Act. (It is already a violation of the Act to knowingly hire such a person.)

The League is greatly concerned about the potential liability for unlawful termination of employment that might result from a local official's mistaken belief that an officer has not completed the required education or training.

Attach. IV

Lines

Purpose

The solution we offer is to prevent mistaken terminations by placing the duty to remove law enforcement officers upon local officials only after they have been notified in writing by the Law Enforcement Training Commission that the subject officer has had his or her certification revoked.

- (2) A second objective of this amendment to line 176 is to allow a city to keep a "decertified" officer on the payroll in a non-law enforcement capacity. A literal reading of the present language of SB 424 would mandate firing an officer who is in violation of the Act, regardless of that person's suitability for other positions that do not require certification as a law enforcement officer.

Such a law would be unnecessarily harsh and violates the Home Rule principle of self-government.

182

We suggest that the district court have discretion in assessing the amount of the civil penalty. Our amended language would be the same as that found elsewhere in the Kansas statutes where civil penalties can be assessed against public officials, e.g., violations of the Kansas Open Meetings Act, K.S.A. 75-4320(a).

SENATE BILL No. 424

By Committee on Federal and State Affairs

4-6

5

0157 general shall prosecute or defend any action for review on behalf
0158 of the state, but the county or district attorney of the county
0159 where the police or law enforcement officer has been employed
0160 as such shall appear and prosecute or defend such action upon
0161 request of the attorney general.

0162 Sec. 4. K.S.A. 74-5617 is hereby amended to read as follows:
0163 74-5617. (a) Every candidate for permanent appointment to a
0164 position as a police officer or law enforcement officer shall meet
0165 the minimum training criteria specified in K.S.A. 74-5605 and
0166 amendments thereto and shall have attained 21 years of age.

0167 (b) For the purpose of determining the eligibility of an indi-
0168 vidual for certification under this act, the commission may re-
0169 quire the submission of training and education records, and
0170 experience history, medical history, medical examination reports
0171 and records, and interview appraisal forms.

0172 (c) Law enforcement agencies in Kansas shall be responsible
0173 for their agency's observance of the hiring requirements of this
0174 section.

0175 (d) No law enforcement agency head or other appointing
0176 authority shall knowingly permit the hiring ~~or retaining~~ of any
0177 person in violation of the requirements of this act. Any violation
0178 of the requirements of this act shall be deemed to constitute
0179 misconduct in office and shall subject the agency head or ap-
0180 pointing authority to:

0181 (1) Removal from office pursuant to K.S.A. 60-1205 and
0182 amendments thereto; or (2) a civil penalty ~~of~~ \$500 for each
0183 occurrence of noncompliance in an action brought in the district
0184 court by the attorney general or by the county or district
0185 attorney, which penalty shall be paid to the state treasurer for
0186 deposit in the state treasury and credit to the state general fund,
0187 if the action is brought by the attorney general, or paid to the
0188 county treasurer for deposit in the county treasury and credit to
0189 the county general fund, if the action is brought by the county or
0190 district attorney.

0191 (e) Whenever in the judgment fo the commission any person
0192 has engaged in any acts or practices which constitute a violation
0193 of this act, or any rules and regulations of the commission, the

, or knowingly permit the con-
tinued employment of any person
as a law enforcement officer af-
ter receiving written notice from
the commission that the person
has had his or her certification
revoked as provided for under
this act.

in a sum set by the court of not
to exceed

Wichita Bar Association

225 N. MARKET, SUITE 210

WICHITA, KANSAS 67202

SUZANNE K. BARNES
EXECUTIVE DIRECTOR

(316) 263-2251

Senator Bob Frey
Chairman, Senate Judiciary Committee
State Capitol Building
Topeka, KS 66612

Dear Senator Frey

S.B. 270 has received a careful review by a subcommittee and then by the entire Legislative Committee of the Wichita Bar Association at its meeting on November 16, and the enclosed page out of our minutes of that date represents the final product we would suggest be adopted. We agree that the present state of the law needs to be changed because of the potential difficulty in suing all partners of a firm. There is an interesting case holding that diversity jurisdiction in the Federal courts does not require all a firm's partners to have diverse citizenship from the opposing party, National Bank of Washington v. Mallery, 669 F.Supp. 22 (D.D.C. 1987), and there will be other questions of jurisdiction which S.B. 270 seeks to resolve that may require litigation. But our Committee's suggestions might eliminate a few problems.

The amendments we would suggest may take away the need to have the Supreme Court decide precisely what is intended by S.B. 270. They also set some guidelines for the partner served with notice of the suit to follow. Yet, the Committee recognized when we were through that there still could be some problems of a constitutional nature regarding notice. They will never arise if all partners act responsibly in carrying out their fiduciary duties toward their co-partners, but this scenario comes to mind:

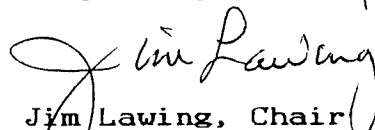
Partner X of a well-heeled and famous accounting firm is served in Kansas under the partnership name of Fox & Thornton. The existence of the partnership is assumed by the plaintiff and not contested by the partner who was served, and the partner who was served is never asked during discovery who his or her partners are who comprise the accounting partnership. Without ever notifying the partners, partner X allows judgment to be entered and then takes bankruptcy. Understandably, the remaining partners are going to be a bit disappointed and maybe even hot under their collective collar at 1) partner X, 2) the service law, 3) the court system, 4) the plaintiff.

Attch. VI

Senator Bob Frey
Page 2

Unfortunately, the law cannot deal with every possible fiduciary breach that might arise, and we decided not to try. We think that the notice requirements set out in Sections 2 and 3 are about the best that can be devised, but naturally we were biased. No particular hurt will be realized if our wording is changed, but we do hope our notice concept remains in S.B. 270 and that the bill is passed.

Very truly yours



Jim Lawing, Chair
Legislative Committee

January 12, 1988
Enc.

there were issues on the existence of a partnership or the composition of the partnership. After a question from Palenz, the Committee decided that it would be useful to spell out the way that partners or putative partners could receive notice of the existence of such an issue, and the following language was then approved by the Committee:

Section 1. A general partnership shall have the capacity to sue or be sued in the name of the partnership, without the necessity of naming any of the individual partners, unless the action includes an issue as to (a) the existence of the partnership, or (b) a determination of the partners who comprise the partnership.

Section 2. Service of summons on any partner shall constitute service on the partnership, except in those instances set forth in subsections 1(a) and (b).

Section 3. If any responsive pleading challenges the existence or composition of the alleged partnership, the party filing such response must serve a copy of the Petition and responsive pleading on all who have been named as partners in the original Petition and any other individuals or corporations the party filing the responsive pleading believes to be members of the partnership.

Section 4. This section shall be part of and supplemental to the Uniform Partnership Act.

Section 5. This Act shall take effect and be in force from and after its publication in the statute book.

The Chair then delivered Laing's report on the status of amendments to the exemption laws. The Revisor's Office has reported that its staff would draft five changes: