

Approved February 18, 1988  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Jeanne Hoferer at  
Chairperson

10:00 a.m./~~p.m.~~ on February 16, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, 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:

Representative Michael O'Neal  
Jim Clark, Kansas County and District Attorneys Association

House Bill 2040 - Traffic offenses committed by juveniles, application of juvenile codes.

Representative Michael O'Neal explained the bill to the committee. He stated it was brought to his attention by the court services office in his district, that one area of juvenile misconduct has been overlooked by the current state juvenile codes and that is traffic infractions committed by persons under 14 years of age. A copy of his handout is attached (See Attachment I). Committee discussion was held on the bill.

House Bill 2260 - Mandatory sentence for crimes with firearms, exceptions.

Representative O'Neal explained the bill would not prevent a judge from sending one convicted of involuntary manslaughter to prison under proper circumstances. It would, however, grant the judge discretion to take factors above into consideration in determining a just sentence. Copies of his handouts are attached (See Attachments II). Considerable committee discussion was held concerning mandatory sentencing.

Jim Clark, Kansas County and District Attorneys Association, appeared in opposition. He stated this will severely punish the people that use firearms wrongly. He said he feels this is a gross inconsistency. We don't think backing off of a mandatory penalty is one of them. Committee discussion was held concerning presumptive sentencing. Mr. Clark stated instead of abolishing mandatory sentencing but making a presumptive sentencing would be an acceptable compromise.

The meeting adjourned.

A copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-16-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<i>Ken [unclear]</i>	<i>KBA</i>	<i>Loeice</i>
<i>Jim Clark</i>	<i>KCVAA</i>	<i>Topeka</i>
<i>Ruth [unclear]</i>	<i>Topeka</i>	<i>AARP</i>
<i>[unclear]</i>	<i>Topeka</i>	<i>Supreme Court</i>
<i>Jan Gray</i> <i>he left before starting</i>	<i>Topeka</i>	<i>live at its best</i>
<i>Bob BARNUM</i>	<i>"</i>	<i>SRS</i>
<i>Barb Pernert</i>	<i>"</i>	<i>KPOA</i>
<i>Rep. Mike [unclear]</i>	<i>"</i>	<i>Legis.</i>
<i>Walter J. [unclear]</i>	<i>Topeka</i>	<i>Budget</i>
<i>Bob [unclear]</i>	<i>Tanna</i>	<i>RITA</i>
<i>John [unclear]</i>	<i>Topeka</i>	

MICHAEL R. (MIKE) O'NEAL  
REPRESENTATIVE, 104TH DISTRICT—HUTCHINSON  
RENO COUNTY  
P.O. BOX 1868  
HUTCHINSON, KANSAS 67504-1868



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
VICE-CHAIRMAN: JUDICIARY  
MEMBER: LABOR AND INDUSTRY  
PUBLIC HEALTH AND WELFARE

2-16

MEMORANDUM

TO: Senator Robert Frey  
FROM: Representative Michael R. O'Neal  
RE: HB 2040  
DATE: February 1, 1988

Bob, the above bill is a technical clean-up bill that was requested by one of my juvenile probation officers in Hutchinson regarding a current loophole in the juvenile code regarding traffic offenses committed by juveniles less than sixteen years of age. I believe the clean-up is needed and would be happy to come over and answer any questions your committee might have with regard to the proposed legislation.

MRO:mlr

Att. I

**COURT SERVICES DIVISION**

**27th Judicial District**

**206 WEST 1ST**

**HUTCHINSON, KANSAS 67501**

**ROBERT ROBINSON CHIEF CSO**

**ADULT**

316-665-2921

JOHN PAHL, CSO II

SAVAS GUEVARA, CSO I

PETER ESTRADA, CSO I

JANIS KUHN, CSO I

**JUVENILE**

316-665-2966

JANE BECKER, CSO II

RUTH LLOYD, CSO I

July 17, 1986

Representative Mike O'Neal  
304 Crescent  
Hutchinson, Kansas 67502

Dear Rep. O'Neal:

It has come to our attention that one area of juvenile misconduct has been overlooked by the current state juvenile codes: traffic infractions committed by persons under 14 years of age. The Kansas Juvenile Offender Code, specifically, K.S.A. 38-1602 (b), designates the juvenile offender code as being the mode of prosecution for felonies and misdemeanors committed by persons between the ages of 10 and 18 years, except for traffic offenses committed by persons 14 years of age and older. K.S.A. 8-2117 (a) states that a "...court of competent jurisdiction may hear prosecutions of traffic offenses involving any child 14 or more years of age...."

The lapse in these two statutes arises when a child under 14 commits a traffic infraction. Traffic infractions are not technically misdemeanors and, therefore, do not come under the provisions of K.S.A. 38-1602. At the same time, traffic offenders under the age of 14 are excluded from prosecution by adult traffic court pursuant to K.S.A. 8-2117. Therefore, there is no statutory mechanism for dealing with a 12-year-old who disobeys a traffic signal while riding his bicycle or other similar situations. If the state wishes the courts to provide some sort of appropriate consequence or response for this kind of behavior, then a remedy needs to be provided by the statutes.

Concern and confusion already have been voiced in this Judicial District by law enforcement persons, parents, and Court personnel regarding our inability to deal with traffic violators under the age of 14. I am certain that other judicial districts also have found this situation frustrating. We would like to suggest that legislation be introduced to address this issue.

Thank you for your attention to this matter.

Sincerely,

*Jane L. Becker*

Jane L. Becker  
Court Services Officer II  
Juvenile Services Supervisor

*Ruth A. Lloyd*

Ruth A. Lloyd  
Court Services Officer I

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PUBLIC HEALTH AND WELFARE

2-16

MEMORANDUM

TO: Senator Robert Frey  
FROM: Representative Michael R. O'Neal  
RE: HB 2260  
DATE: February 1, 1988

Bob, the above bill is my proposal to remove the crime of involuntary manslaughter from the class of crimes for which the judge must impose a mandatory prison sentence. All the bill does is restore the district judge's discretion in cases where an individual is convicted of "unintentionally" killing another. These are usually the self-defense and defense of property situations. As you may recall, District Attorney Clark Owens from Sedgwick County appeared before our summer committee to testify against the "make my day" law but during this testimony he endorsed the proposal that mandatory sentencing should not necessarily apply to some of those cases. This bill has passed the House twice and I would appreciate it very much if you could schedule this bill for hearing before your judiciary committee. Thank you.

MRO:mlr

2-16-88

STATE OF KANSAS

MICHAEL R. (MIKE) O'NEAL  
REPRESENTATIVE, 104TH DISTRICT--HUTCHINSON  
RENO COUNTY  
P O BOX 1868  
HUTCHINSON, KANSAS 67504-1868



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HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
VICE CHAIRMAN JUDICIARY  
MEMBER LABOR AND INDUSTRY  
PUBLIC HEALTH AND WELFARE

MEMORANDUM

TO: House Judiciary Committee

DATE: February 23, 1987

RE: HB 2260

Several years ago the Legislature took a tough stand on crimes involving firearms and passed a mandatory sentencing law aimed at (1) deferring criminals from using firearms to commit crimes and (2) reducing crimes committed by firearms and the death and injury caused thereby (State v. Pelzer, 230 Kan. 780).

The law was made applicable to convictions for rape, aggravated sodomy or any Chapter 34 crime (crimes against persons). Probation and suspension of sentence was prohibited on these convictions.

Then came the case of Sutton v. State, 6 Kan. App. 2d 831. There Sutton was convicted of attempted first degree murder. The judge's sentencing pursuant to the mandatory sentencing provisions of K.S.A. 21-4168 was reversed by the appellate court because attempted murder is a Chapter 33 crime, not a Chapter 34. (Anticipatory crimes are covered under Chapter 33.)

Thus, we have a law that sends to prison those who are convicted of such crimes as involuntary manslaughter, but which does not require that we send would-be 1st degree murderers to prison.

House Bill 2314 creates an exception to the mandatory sentencing law insofar as it applies to the crime of involuntary manslaughter (K.S.A. 21-3404). By definition it is an unintentional crime and as such is strikingly different from its counterparts in the mandatory sentencing law. Imposition of the penalty has brought about great hardship and has done little to advance the cause of just sentencing.

Consider the circumstances where involuntary manslaughter is committed. Often it is the person who in defending himself takes the life of another under circumstances where such force is later found to be unjustified. Often it is the tragic loss of life in hunting accidents or negligent discharges where the defendant and victim were close friends or relation. When negligence is excessive it becomes criminal. But in Kansas, it also is an automatic ticket to prison without regard for the tragic and unintentional circumstances.

Att. II

Take the recent case of Willie L. Robinson (State v. Robinson, docket #56,971). In attempting to unload his gun in his bedroom, he handed it to his common law wife. The gun discharged, killing her. The unintentional act was done in such a careless manner that it constituted involuntary manslaughter, a Class D felony. The Court of Appeals has recently held that there is nothing in the statute to suggest that involuntary manslaughter was to be excluded so Willie is off to prison to contemplate the tragic loss of his wife, while others who intentionally committed worse crimes are out on probation in many cases.

Consider also the case of Montie Brown (State v. Brown, docket #84-57182-A) convicted two years ago of involuntary manslaughter when a warning shot fired in the direction of two individuals stealing from his property, hit one and killed him. The statute gave the judge no authority to consider Montie's circumstances which were as follows:

- 1) criminals were stealing from his property
- 2) his act was found to have been unintentional
- 3) he had no previous criminal record
- 4) he hadn't fired his gun in over 10 years
- 5) he is a 56 year old triple-by-pass patient with severe heart problems
- 6) the crime demonstrated an isolated event with no evidence that he poses a threat to society
- 7) public-opinion was overwhelmingly in his favor
- 8) his pre-sentence report indicated he shouldn't be incarcerated notwithstanding the statute
- 9) in a negligence action filed by the family of the deceased, a settlement satisfactory to the family was quickly reached.

The bill would not prevent a judge from sending one convicted of involuntary manslaughter to prison under proper circumstances. It would, however, grant the judge discretion to take factors such as those set forth above into consideration in determining a just sentence.

With the prison population at its current numbers, would we rather see those like Montie go to prison - or the would-be 1st degree murderer, instead?

SESSION OF 1985

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2314**

**As Amended by House Committee  
of the Whole**

Brief of Bill\*

H.B. 2314 amends the mandatory sentencing statute so that probation or suspension of sentence may be available to a defendant convicted of the crime of involuntary manslaughter. Under current law this option is not available.

Further, this bill includes, under the mandatory sentencing provisions, convictions of attempting to commit the crimes listed and those in Article 34, Chapter 21 in which a firearm was used. Under present law, anticipatory crimes, Article 33, Chapter 21, are not covered by the mandatory sentencing laws.

Fines imposed under this section shall be in addition to any sentence prescribed.

The Committee of the Whole amended the bill by striking the provision regarding mandatory sentencing of anticipatory crimes.

Background

The sponsor expressed a need for the bill in order to close a loophole in the law regarding anticipatory crimes and to create an exception to mandatory sentencing in the case of involuntary manslaughter which is an unintentional crime.

\* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.