Approved: May 4, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at

10:05 a.m. on February 25, 1991 in room 514-S of the Capitol.

All members were present except: Senators Yost and Feleciano who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Chuck Simmons, Kansas Department of Corrections
Representative Alex Scott, Sixty-Fifth District
Chris Biggs, Geary County Attorney
Tracey McDaniel, Geary County Victim Assistance Coordinator
Carol Ott, Emporia
Nancy Lindberg, Assistant to the Attorney General
Steve Davies, Kansas Department of Corrections Secretary
James McHenry, Kansas Child Abuse Prevention Council
Rick Kittel, Assistant Appellate Defender

Chairman Winter called the meeting to order by asking for bill introduction requests.

Senator Lana Oleen requested introduction of a bill to allow mileage payments to private sector members of the family and children trust fund review panel who are attending meetings.

Senator Oleen made a motion to introduce the legislation as described. Senator Morris seconded the motion. The motion carried.

Chuck Simmons, Kansas Department of Corrections, addressed the committee with four requests for introduction of legislation. The requests were:
1) concerning community corrections, to clarify grant determinations (ATTACHMENT 1)
2) concerning community corrections, to change the grant year accounting basis from a calendar year to the state fiscal year (ATTACHMENT 2)
3) to provide for disposition of abandoned property (ATTACHMENT 3)
4) to authorize fees for substance abuse testing, creating a fund and disposition criteria (ATTACHMENT 4)

Senator Morris moved to introduce the bills as requested. Senator Gaines seconded the motion. The motion carried.

Senator Oleen presented an additional request for introduction of a drug-free housing act. The act would allow speedy eviction from public housing of those convicted of drug offenses.

Senator Oleen moved to introduce the bill as explained. Senator Rock seconded the motion. The motion carried.

The Chairman opened the hearing for SB 211.
SB 211 - notice to victim prior to parole required in Class A felony cases.

Senator Oleen presented SB 211 and outlined the background for introduction of the bill.

Representative Alex Scott, Sixty-Fifth District, testified in support of SB 211. (ATTACHMENT 5)

Chris Biggs, Geary County Attorney, testified in support of SB 211. (ATTACHMENT 6)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:05 a.m. on February 25, 1991.

Tracey McDaniel, Geary County Victim Assistance Coordinator, testified in support of SB 211. She described a specific situation that had occurred in Geary County that stressed her support of the bill. (ATTACHMENT 7)

Carol Ott, Emporia, testified in support of SB 211. (ATTACHMENT 8)

Written testimony was received from Donald and Norma Bush, Junction City, in support of SB 211. (ATTACHMENT 9)

Nancy Lindberg, Assistant to the Attorney General, testified in support of SB 211. (ATTACHMENT 10)

Steve Davies, Kansas Department of Corrections Secretary, testified in support of SB 211 but with concerns about funding for implementation. (ATTACHMENT 11)

This concluded the hearing for SB 211.

The Chairman opened the hearing for SB 233.
SB 233 - eliminating voluntary intoxication as defense.

Paul Nelson, Bourbon County Attorney, submitted written testimony in support of SB 233. (ATTACHMENT 12)

James McHenry, Kansas Child Abuse Prevention Council, testified in support of SB 233. (ATTACHMENT 13)

Rick Kittel, Assistant Appellate Defender, testified in opposition to SB 233. (ATTACHMENT 14)

This concluded the hearing for SB 233.

Written comments were received from Sheryl Bussell, Iola attorney, addressing SB 124 and SB 125. (ATTACHMENT 15)

SB 124 - suspension and restriction of driver's license on conviction of DUI or refusal to take blood alcohol test.
SB 125 - lower blood alcohol levels for DUI convictions.

Senator Bond moved to approve the minutes of January 30, January 31, February 1, February 4, February 5 and February 6. Senator Oleen seconded the motion. The motion carried.

The meeting was adjourned.

Date 25 February 1991

VISITOR SHEET
Senate Judiciary Committee

(Please sign) Name/Company	Name/Company
Helen Stephens	KPOA
PATRICIA HENSHALL	OJA
Charles Simmons	KDOC
Steven J Davis	KDOC
Jim McHenry	KCAPC
Marilyn Balsom	Douglas County Sheriff's Dept.
JUDY OSBURN	Do. Co. DIST. ATTY'S OFFICE
Rick Kittel	Appellate Defender Office
Will Belden	LWVK
JIM CLARK / KCDAA	
Chris Biggs	Geary Co Atty
Tracey McDaniel	Victim/Witness Coordinator Geary Co.
Carol Otto	sister of victim
Kayl Otto	
Rep. Alys Scott.	Represent district of a crime victim
Michelle Moore	KAC

BILL NO. ____

AN ACT concerning community corrections; relating to the primary purpose of the community corrections act; establishment of priorities and review of comprehensive plans; grant determinations; presumptive sentence to community corrections; amending K.S.A. 75-5291 and 75-5296 and K.S.A. 1990 Supp. 21-4606b and 75-52,111 and repealing the existing sections.

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

Section 1. K.S.A. 1990 Supp. 21-4606b is hereby amended to read as follows: 21-4606b. (1) If probation is not granted pursuant to K.S.A. 21-4606a, and amendments thereto, or if probation is granted pursuant to that statute and is later revoked, the presumptive sentence for a person convicted of a class D or E felony shall be assignment to a community correctional services program on terms the court determines.

(2) In determining whether to impose the presumptive sentence provided by this section, the court shall consider whether any of the following aggravating circumstances existed:

(a) Whether the crime is a felony violation of the uniform controlled substances act or an attempt to commit such an offense;

(b) whether the crime is a crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated or an attempt to commit such an offense; or

(c) any prior record of the person's having been convicted of a felony or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult.

Sec. 2. K.S.A. 75-5291 is hereby amended to read as follows:

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75-5291. (a) The secretary of corrections may make grants to counties for the development, implementation, operation and improvement of community correctional services including, but not limited to, restitution programs, victim services programs, preventive or diversionary correctional programs, community corrections centers and facilities for the detention or confinement, care or treatment of adults charged with or convicted of crime or of juveniles being detained or adjudged to be delinquent, miscreant or a juvenile offender except that no community corrections funds shall be expended by the secretary for the purpose of establishing or operating a conservation camp as provided by K.S.A. 75-52,127 and amendments thereto.

(b) The primary purpose of the community corrections act is to prevent the incarceration of certain adult felons and juvenile offenders in state correctional facilities and youth centers through services developed by the local communities.

Sec. 3. K.S.A. 75-5296 is hereby amended to read as follows: 75-5296. (a) Except as provided in K.S.A. 75-5293 and amendments thereto, no county shall be qualified to receive grants under this act unless and until the comprehensive plan for such county, or the group of counties with which such county is cooperating, is approved by the secretary of corrections.

(b) The secretary of corrections shall adopt rules and regulations establishing additional requirements for receipt of grants under this act, standards for the operation of the correctional services described in K.S.A. 75-5291 and amendments thereto and standards for performance evaluation of the correctional services described in K.S.A. 75-5291 and amendments thereto. In order to remain eligible for grants the county or group of cooperating counties shall substantially comply with the operating standards established by the secretary of corrections.

(c) The secretary of corrections shall review annually the comprehensive plans submitted by a county or group of cooperating counties and the facilities and programs operated under such plans. The secretary of corrections is authorized to examine

books, records, facilities and programs for purposes of recommending needed changes or improvements.

(d) In reviewing the comprehensive plan or any annual recommendations or revisions thereto, the secretary of corrections shall ~~limit--the--scope--of--the--review---of---the corrections~~ annually establish a statewide list of service priorities and shall review the advisory board's statement of priorities, needs, budget, policies and procedures, to ~~the determination~~ determine that such statement does not directly conflict with rules and regulations, policies and operating standards adopted pursuant to subsection (b) and the community corrections act under K.S.A. 75-5290 et seq., and amendments thereto.

(e) When the secretary of corrections determines that there are reasonable grounds to believe that a county or group of cooperating counties is not in substantial compliance with the minimum operating standards adopted pursuant to this section, at least 30 days' notice shall be given the county or to each county in the group of cooperating counties and a hearing shall be held in accordance with the provisions of the Kansas administrative procedure act to ascertain whether there is substantial compliance or satisfactory progress being made toward compliance. If the secretary of corrections determines at such hearing that there is not substantial compliance or satisfactory progress being made toward compliance, the secretary of corrections may suspend all or a portion of any grant under this act until the required standards of operation have been met.

(f) Determinations made by the secretary pursuant to this section are subject to review by the state community corrections board as provided in K.S.A. 75-52,114 and amendments thereto.

Sec. 4. K.S.A. 1990 Supp. 75-52,111 is hereby amended to read as follows: 75-52,111. (a) On or before each July 1, the secretary of corrections shall determine annually the amount of the grant for the ensuing fiscal year for each county or group of counties which has qualified to receive grants as provided in

this section.

(b) (1) For each county or group of counties entitled to receive grants prior to July 1, 1990, the secretary of corrections shall determine on or before each January 1 the amount of the grant for the ensuing fiscal year based on the fiscal year 1989 per capita costs of such county or group of counties and the budget request of each county or group of counties for additional grant moneys submitted to the secretary as provided by subsection (b)(2). The per capita costs of each county or group of counties shall be determined by dividing the amount of the fiscal year 1989 grant of such county or group of counties by the number of individuals served by the community correctional services program of such county or group of counties during fiscal year 1989. Subject to the other provisions of this subsection, the amount of the ensuing fiscal year grant for a county or group of counties shall be an amount equal to the total of: (A) The fiscal year 1989 per capita costs, as determined pursuant to this subsection, multiplied by the ~~number--of individuals-to-be-served~~ total of the average daily number of active clients to be served by the community correctional services program of such county or group of counties during the ensuing fiscal year, plus (B) the fiscal year 1989 per capita costs, as determined pursuant to this subsection, multiplied by the total number of clients to be served for infrequent contact services by the community correctional services program of such county or group of counties during the ensuing fiscal year. Except as provided in this subsection for reduction of a grant with respect to certain community correctional services, no grant for a county or group of counties which received a grant for fiscal year 1989 shall be less than the amount of the grant funds expended by the county or group of counties during fiscal year 1989, if such county or group of counties continues to serve, or is projected to serve, at least the same number of persons as served during fiscal year 1989 and continues to provide the same community correctional services as provided during fiscal year

1989, as provided by K.S.A. 75-5291 and amendments thereto. The secretary of corrections may reduce the grant of a county or a group of counties with respect to certain community correctional services determined by the secretary subject to limitations provided in this subsection. The determination to reduce the grant of a county or group of counties by the secretary shall be based on the following criteria, whether: Staffing levels exceed levels justified by active cases under supervision; one-time expenditures such as renovation or construction costs, major equipment purchases or capital acquisitions were a factor in the fiscal year 1989 base; administrative costs were excessive; funded contracts for services remain unused for an unreasonable period of time; any unreasonable indirect costs were factored into or allowed in the fiscal year 1989 base; client numbers were reduced; caseload projections were supported by historical experience; excessive travel costs outside the program area were a factor in the fiscal year 1989 base; contracted services' costs factored into the fiscal year 1989 base are significantly higher than other programs of the department of correction's experienced costs; and whether shrinkage factors, vacancy savings and turnover rates are relevant factors for consideration. Except as provided in K.S.A. 75-52,105 and amendments thereto, the secretary may reduce a grant to a county or group of counties only at the time the county or group of counties submits its annual budget request to the secretary for determination of such county or group of counties annual grant amount as provided in this section. Any reduction in the grant amount to a county or group of counties is subject to approval by the state community corrections board pursuant to K.S.A. 75-52,114 and amendments thereto, if appealed. Decisions on appeal by such board shall be final decisions and binding on the secretary and the county or group of counties subject to such appeal.

(2) As a part of such county's or group of counties' budget request submitted to the secretary, the county or group of counties may request a higher grant amount than determined as

provided in subsection (b)(1) for new or expanded programs as provided in K.S.A. 75-52,102 and amendments thereto and increased amounts as determined in subsection (b)(1) for inflationary costs. The secretary shall determine such additional grant amount for such new or expanded programs based on existing experience of other programs offering similar programs.

(c) On or before July 1, 1990, each county or group of counties applying to receive a grant for the first time shall submit a budget request to the secretary. The secretary shall determine the amount of the grant for such county or group of counties based on existing experience of similar programs. For each fiscal year thereafter, the amount of the grant for such county or group of counties shall be determined as provided in subsection (b), except that the grant received by such county or group of counties pursuant to this subsection shall not be less than the amount of the grant received by such county or group of counties during the first year of operation, if such county or group of counties continues to serve at least the same number of persons as served during the first year of operation and continues to provide the same community correctional services as provided during the first year of operation, as provided by K.S.A. 75-5291 and amendments thereto. The per capita costs of such county or group of counties for the purposes of determining grants for ensuing fiscal years under this section shall be determined as provided in subsection (b), except that per capita costs shall be based on the first year of operation.

(d) All determinations of base year per capita costs pursuant to this section, shall include all actual audited costs incurred for approved programs included without limitation as to fixed administrative costs.

Sec. 5. K.S.A. 75-5291 and 75-5296 and K.S.A. 1990 Supp. 21-4606b and 75-52,111 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

BILL NO. ____

AN ACT concerning the community corrections act; relating to grant years; alteration of county participation; amending K.S.A. 75-52,103 and 75-52,110 and repealing the existing sections.

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

Section 1. K.S.A. 75-52,103 is hereby amended to read as follows: 75-52,103. (a) Except as provided in K.S.A. 75-5293 and amendments thereto, each grant under this act shall be expended by the county receiving it for correctional services as described in K.S.A. 75-5291 and amendments thereto in addition to the amount required to be expended by such county under this section. Each ~~calendar~~ state fiscal year in which a county receives grant payments under K.S.A. 75-52,105 and amendments thereto, the county shall make expenditures for correctional services as described in K.S.A. 75-5291 and amendments thereto from any funds other than from grants under this act in an amount equal to or exceeding the amount of base year corrections expenditures as determined by the secretary of corrections under subsection (b).

(b) The secretary of corrections shall audit and determine the amount of the expenditures for correctional services as described in K.S.A. 75-5291 and amendments thereto of each county applying for a grant as provided in K.S.A. 75-52,111 and amendments thereto.

(c) In any case where a county receiving a grant does not make expenditures for correctional services from funds other than from grants under this act as required by this section, the grant to such county for the next ensuing ~~calendar~~ state fiscal year shall be reduced by an amount equal to the amount by which such county failed to make such required amount of expenditures.

(d) The secretary of corrections may provide, by rules and regulations, procedures for the following, as determined by the

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secretary to further the purposes of this act:

(1) The transfer, to one or more other counties, of any portion of a county's annual grant which is not included in such county's program budget for the current program year; and

(2) the transfer, to one or more other counties, of any portion of a county's annual grant which remains unused at the end of such county's program year and is not included in such county's program budget for the ensuing program year.

(e) Except as otherwise provided pursuant to subsection (d), if a county does not expend the full amount of the grant received for any one year under the provisions of this act, the county shall retain the unexpended amount of the grant for expenditure for correctional services as described in K.S.A. 75-5291 and amendments thereto during any ensuing ~~calendar~~ state fiscal year. The secretary of corrections shall reduce the grant for the ensuing ~~calendar~~ state fiscal year by an amount equal to the amount of the previous year's grant which was not expended and was retained by the county, unless the secretary finds that the amount so retained is needed for and will be expended during the ensuing ~~calendar~~ state fiscal year for expenditures under the applicable comprehensive plan.

Sec. 2. K.S.A. 75-52,110 is hereby amended to read as follows: 75-52,110. (a) ~~Before July 1, 1990,~~ Each county in this state, based on the recommendation from the administrative judge of the judicial district in which each such county is located as provided in subsection (b), shall ~~have~~:

(1) ~~Established~~ Establish a corrections advisory board in accordance with K.S.A. 75-5297 and amendments thereto and ~~adopted~~ adopt a comprehensive plan for the development, implementation, operation and improvement of the correctional services described in K.S.A. 75-5291 and amendments thereto which has been approved by the secretary of corrections and which, in addition to such matters as are prescribed by rules and regulations of the secretary of corrections, provides for centralized administration and control of the correctional services under such plan;

(2) ~~entered~~ enter into an agreement with a group of cooperating counties to establish a regional or multi-county community correctional services program; ~~established~~ establish a corrections advisory board in accordance with K.S.A. 75-5297 and amendments thereto; and ~~adopted~~ adopt a comprehensive plan for the development, implementation, operation and improvement of the correctional services described in K.S.A. 75-5291 and amendments thereto which has been approved by the secretary of corrections and which, in addition to such matters are are prescribed by rules and regulations of the secretary of corrections, provides for centralized administration and control of the correctional services under such plan~~.~~; such group of counties may comply with the provisions of this subsection (a)(2) through cooperative action pursuant to the provisions of K.S.A. 12-2901 through 12-2907 and amendments thereto, to the extent that those statutes do not conflict with the provisions of this act; or

(3) ~~contracted~~ contract for correctional services described in K.S.A. 75-5291 and amendments thereto from any county or group of cooperative counties, as provided in K.S.A. 75-52,107 and amendments thereto, which are receiving grants under this act.

~~(b) Before September 15, 1989, the administrative judge in each judicial district shall make a recommendation to the board of county commissioners in each county in such judicial district which has not established a program to provide for the correctional services described in K.S.A. 75-5291 and amendments thereto, as to which option provided in subsection (a) each such county in such judicial district should choose to comply with the provisions of this act.~~

Sec. 3. K.S.A. 75-52,103 and 75-52,110 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

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BILL NO. ____

AN ACT concerning state correctional institutions; relating to disposition of certain property of inmates in cases of abandonment.

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

Section 1. (a) Any personal property owned by an inmate and located at a correctional institution shall be considered abandoned property if the inmate escapes from custody.

(b) Any personal property owned by an inmate and located at a correctional institution shall be considered abandoned property if the property is not claimed by an inmate or an authorized representative of an inmate within 90 days after the inmate's release from incarceration.

(c) Any personal property which is determined to be abandoned pursuant to this section shall be reported to the state treasurer pursuant to K.S.A. 58-3912 and amendments thereto. The state treasurer shall then dispose of the property in accordance with K.S.A. 58-3918 and amendments thereto.

(d) As used in this section, "correctional institution" has the meaning ascribed thereto in subsection (d) of K.S.A. 75-5202 and amendments thereto and "personal property" shall include any property an inmate is authorized by the secretary of corrections to possess while incarcerated, including any funds held by the correctional institution for the inmate.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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BILL NO. ____

AN ACT concerning the department of corrections; authorizing certain fees for substance abuse testing; creating the substance abuse testing fee fund.

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

Section 1. (a) The secretary of corrections is hereby authorized to fix, charge and collect a fee from each person who is committed to the custody of the secretary of corrections who is an inmate or who is on parole or conditional release, and who has taken a test administered by the department of corrections to determine if the person has been using one or more controlled substances and who tests positive for the use of a controlled substance. The secretary of corrections shall fix the fee authorized by this section by rule and regulation in order to collect all or part of the costs of the test for use of controlled substances, including the costs of acquiring the test materials and the costs of administering the test.

(b) There is hereby created in the state treasury the substance abuse testing fee fund. All funds collected under this section 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 and to the credit of the substance abuse testing fund. All moneys credited to the substance abuse testing fee fund shall be used to obtain and administer tests to determine if inmates or inmates on parole or conditional release have been using controlled substances. All expenditures from the substance abuse testing fee fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of corrections or the

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secretary's designee.

(c) As used in this section, "inmate" has the meaning ascribed thereto by K.S.A. 75-5202 and amendments thereto and "controlled substance" has the meaning ascribed thereto by K.S.A. 65-4101 and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

TESTIMONY PRESENTED TO HOUSE JUDICIARY COMMITTEE

SB 211

February 25, 1991

My name is Alex Scott and I am a State Representative from the 65th District and among my constituents are Don and Norma Bush. I appear before your committee today because of the death of the daughter of this couple. The daughter was working as a Rangerette at Milford State Park, was kidnapped, raped and murdered over the line in Wabaunsee County.

I was not the coroner of Wabaunsee County, but because of confusion over the county line I was called and did see most of the events of that case.

In the summer of 1990 I noticed in the paper that the convicted murderer of the Bush girl was set for a parole hearing and it was to be within 48 hours of the time that I saw it in the paper. At that time I tried to contact the Bushes, but found that they were out of town and I had no way to reach them, so I decided to come to Topeka where the hearing was being held so I could testify. This was subsequently accomplished and fortunately I was joined by Don and Norma Bush at the hearing as they had left a family reunion in Illinois and driven back in time for the hearing. After the Parole Board heard the testimony of the Bush family and myself, the parole was not granted to the inmate.

In subsequent investigation of the circumstances surrounding the quick call for parole, there apparently was a breakdown in the system of notification to the County Attorney's Office and to the family and those concerned. It was only through a journalistic accident that the name was picked up from a list of people who were coming up for parole and the newspaper reporter made a story out of it which was printed in the local newspaper. This is too irregular a method of notifying people and only through happenstance was the inmate prevented from walking out of the State Penitentiary as a free man. I personally believe that this is a man who should have had a hard 40 sentence and I believe the potential to repeat the crime would exist with this man.

I support SB 211 with its provisions for a far more comrehensive method of notifying the authorities and victims of a crime about parole hearings.

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First of all we want to say that we appreciate the opportunity to testify in support of house bill #211. We suggested that amendments be made to the present statute 22-3717 to require written notice be sent to victims or family of victims in class A felonies.

The reason we support the change is because there have been a number of cases in our jurisdiction wherein family members were not notified that the defendant s were coming up for parole. The Frank Pencek case which involved the brutal murder of a young Junction City woman is a classic example.

Our office endeavors to notify victims about parole hearings in every case when we receive notifications from the Secretary of Corrections. However, in this case we were never notified that the defendant was coming up for parole and it was only because of a chance inquiry that it was discovered that he had an immediate parole hearing set. The family rushed back from out of State and was able to testify and oppose parole which was ultimately denied. It would be a travesty if the murderer was released without there having been any attempt to contact the family of the victim.

We do support the bill as presently written, but there remains a statutory problem in the scheme under 22-3717f. As proposed, the County Attorney s have the duty to give a written notice of public comment sessions. However, statutes require that we be notified by the Secretary of Corrections of the fact of parole within ten (10) days <u>after</u> their decision concerning parole. We do receive comment sessions from the Secretary of Corrections. However, names are routinely left off the list which was the case in the Pencek matter.

We appreciate the efforts of the legislature in helping grant a Victims/Assistance Coordinator program. We feel we have a very effective program in our office. <u>However, there is no way we can perform our duty to notify victims or families of victims about parole hearings if the Secretary of Corrections is not required in a meaningful way to notify us in a timely manner</u>. We are also concerned that there is no definition under the proposed statute that as to who the victims' "designated representative" is under sub-section (f). If that is intended to be the Victims/Assistance Coordinator or County Attorney the statute should so state. We would also suggest that the statute should consider that no class A felon should be considered for a parole unless it appears from the file that a notice by certified-restricted delivery has been sent to the victims or the families

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of the victims or that an Affidavit appears in the file explaining that the victim or family has not been located and what steps have been taken to do so. This may be a task that takes some time but it would not be overburdensome considering all the time and energy that is involved in the part of the prosecutor and victims during the course of prosecutig an A felony case.

The Victim Assistance Coordinator in our office only discovered that the defendant who had bound and gagged her in her own home and robbed her and her husband was released because she ran into him in the Courthouse. His original sentence was 10 to 100 years and he was released after doing about four years without any notification. In another case a man who was sentenced to prison for threatening to kill someone was considered for parole without any notification to the victim, who remained fearful and convinced that she would be targeted by him upon his release.

These situations cannot be allowed to occur. Simply requiring the Secretary of Corrections to do something like give notice and include that with a limitation of liability accomplishes nothing without a provision which requires a notification by certified mail so there is some record to show what efforts have been made.

Chris Biggs
Geary County Attorney

Tracy McDaniel
Victim Assistance
Coordinator

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PAROLE NOTIFICATION

Out of 24 Kansas victim/witness programs, 19 replied to a questionnaire concerning parole notification. The following is a summary of their replies:

1. Are you receiving adequate notice of upcoming parole hearings so you can notify crime victims?

Yes - 13
No - 6
Comments:

Depending upon the date of the case and the availability of a current address, some notifications may be delayed by a week.

It seems to have improved, but it would be nice to have an even longer period for notification.

I'm receiving adequate notice of public comment sessions, but not of everyone who will be eligible for parole.

In most cases, no. In cases that are over 3 or 4 years old, it is difficult, if not impossible to find a file easily. The court file does not contain victim information and in some instances where minor cases are involved, records might be destroyed over a period of time. Because the time frame from the instigation of the crime to the parole hearing date is often several years, the limited time does not allow us to find a forwarding address (whenever possible).

It is an ongoing problem. By the time we get notices it is too late to send notification to the victim/family.

Many times, we receive notice after the fact. If they are scheduled for work release or half-way house, I always have to call to see which one and the date on which they will be transferred.

We receive the announcement of the upcoming public comment session on the last two or three days of the month preceding the public comment session, which does not follow the statutory requirements. Again, address are not readily accessible. Oftentimes, lengthy searches of storage file rooms have to be made. At one time I was told that the parole board chose not to send us notices any sooner because they were afraid we would get confused and notify victims of the wrong hearing.

They are coming soon enough for some cases, but not soon enough for us to notify before the news media gets it.

2. When you receive the minutes from the parole board, do you understand them?

Yes - 9
No - 1
Not always - 9

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Comments:
Neither the victim/witness program nor the county attorney have received parole board minutes since March 1990. We are working with the parole board to correct the situation.
Not always, however the parole board seem quite willing to explain when we have a question.
Certain terms are not understandable.
Some of the codes are used often enough that we have learned them, however, the improved coding that the parole board has implemented still requires us to call the parole board to decipher their action. The most common problem we have with their action is that we are unable to identify "when" the action will take place. Some type of time frame would be helpful.
Usually, except when revoked, they don't designate county of conviction.

3. Has the parole board ever sent you a key to the minutes so you could better understand them?

Yes - 0
No - 19
Comments:
Most of the comments are self-explanatory.
A key would be helpful.

4. Have you read the minutes of the parole board and saw someone from your county had a hearing but you had not been notified previously that the person was eligible?

Yes - 12
No - 7
Comments:
Has happened at least 24 times.
Has happened approximately 5 times.
Many people appear on minutes that have not appeared on parole hearing notices. Happens frequently.
On occasion. Sometimes the results are simply months after the initial announcement was received. We can usually find them by tracing back through the announcements. Other times we have no clue as to why there was some action but not an announcement. We aren't sure that there was a public comment session that we were not notified about.
We have indeed found instances where inmates are not shown on the eligible list, but show up on minutes after parole hearing.

5. Has DOC been contacting you for the victim's address before releasing an inmate?

Yes - 14
No - 5
Comments:
About 10-11 calls per month.
On a limited basis.
Sometimes they call me to swap addresses.

I can't say that it is "before" the inmate's release. I would like to see a system implemented wherein the victim's address is kept in DOC's records and the victim would have to notify them concerning changes.

6. How far in advance of the release of an inmate has DOC contacted you for the address of the victim?

Comments:
Usually day before except for Osawatomie. They give us several days.
From one day to two months.
Usually less than one week.
Usually day before.
Two days and as short as hours.
Not sure.
Sometimes same day.
Usually several weeks. Occasionally within a day or two of release.
According to the DOC, it is within 72 hours of the inmate's release. We can't be sure they contact us on all of them. It is not uncommon for the release to be within hours of the DOC requesting an address.

7. Do you think DOC is notifying victims too late?

Yes - 8
No - 3
Not sure - 2
Occasionally - 3
Comments:
Without the current parole board minutes, we do not have the information available to adequately assess notification requirement IAW K.S.A. 22-3718.
I think that the DOC is releasing the inmate whether or not the victim is being notified. The victim notification is a requirement of the statute but it does not say that the inmate cannot, under any circumstances, be released prior to the victim receiving notification.

8. Other problems experienced concerning notification:

Comments:
Old cases are a real problem. We don't have the time to search old files which are outdated anyway.
Our county attorney's office is not being notified of all inmates that are going before the board until after the fact. This is not allowing the victims to be heard at comment sessions or even gives them the chance to write to the parole board. As a victim, I feel there needs to be a big change in the current system. Notification can be done by this office as long as we are notified.
Notices are not always correct. Some cases listed for our county are not even our cases. This takes a lot of time to look up these cases.
In minutes it would be helpful if case number was included along with prison number. At present, only prison number appears.

7-3/4

I feel the victims or victims' families should be notified of the parole board's determination after all comments and interviews.

More than one day or same day notice of release would be helpful for our office in notifying victims.

I think the parole board should notify or attempt to notify all victims.

On occasion we have identified individuals eligible for parole who are labeled from the 1st district, when in fact the individual is from another jurisdiction. The Kansas Parole Board has been of great assistance in clarifying the error. Hopefully, other jurisdictions are also contacting the parole board when errors are identified so we may also receive adequate notice of any additions or deletions.

There is too much duplication of efforts on the part of the local parole officers and our office, i.e. they ask us to locate an address or make direct contact with the victim of an inmate coming up for parole. Would it be possible for the DOC to issue the announcement of the PCS by an alphabetized list, not broken down by institution. Also, the minutes in the same format sent on a monthly basis. The institution could be indicated by some type of symbol in both of these instances. I feel like it confuses the victim when we attempt to report the results of the parole hearing. We don't have any other resource except to refer them to the DOC, which inconveniences everyone.

More time to notify victims (an additional two weeks).

9. Any other problems or comments:

Comments:

Current victim addresses are a nightmare. We don't have the time or staff to try and locate them. If our old address is no good, we drop it. Victims rarely notify us when they move.

Why does the newspaper know before our agency does? In a recent murder case, it was in the paper before we even received our notification.

Just trying to learn so I will be able to avoid having problems. Do see this office being more of a victim assistance program, as the county attorney's secretaries work with witnesses and I contact victims.

The parole office in our county has been very helpful in notification of victims.

I would like some guarantee that the DOC has a procedure identified to notify a victim and the district attorney where the inmate was convicted, if an inmate escapes. We had an incident where a convicted rapist escaped and we subsequently learned about it through a local media representative. We were able to take care of the situation, but because of the intensity of the event, an established procedure should be established to notify the victims. Many of the problems experienced with the notification process and the DOC in general could be resolved by establishing a centralized method to disseminate information about inmates to victims. An 800 number that could be used by anyone attempting to gain information about inmates would be ideal.

Chairman Winter and Members of the Committee:

I was called by a friend, that had read an artical in the paper. It read that Frank Pencek, the man that had killed my sister was to be coming up for parole. The public hearing was to be in 2 days.

I did appear at the parole hearing. They didnot have him listed, but would listed to what we had to say. The chairman of the parole board said we should have been notified by the County Attorney, because there is a law stating that he should notify us.

We checked with the Geary County Attorney and we were told he had not ever been notified, so he could not notify us. We were told by the Department of Corrections that their must have been an error in the computer. That is why no one was notified.

Bill# 211 in part might help. The victims or a member of their family be notified by having them sign a written notice of the parole hearing. With enough time to prepair for the board hearing.

Carol Otto

Carol Otto
R.R. 2 Box 127D
Emporia, KS 66801

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Testimony SB 211

Chairman Winters and Members of the Committee

We were never officially notified that Pencek was being considered for parole. Concerned family friend of ours in Junction City some way found out that he was one of the individuals to be considered by the Parole Board. My wife Norma and daughter Carol Otto attended the hearing in Topeka Aug 28, 1990. The Board did not have Pencek on their list. Two days later on Aug 30, 1990 my sister-in-law Nadine Carr appeared before the Parole Board in Wichita and his name still was not on their list. We were told by Department of Corrections Office, that a computer glitch caused the problem. We find this difficult to accept.

We have shared our experience with the Geary County Attorney and Sheriff. Both of these men expressed sympathy with us in the case because more often than not they are notified

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after the fact rather than before.
We were told by the Parole Board Chairman that we should have been notified by the Geary County Attorney. A bill passed by the 1990 legislature requires the County Attorney notify victims of a crime or the immediate family prior to the parole of an inmate. When we contacted the County Attorney he affirmed this fact but said it was not possible for him to notify victims when he is not notified. Therefor we feel there needs to be a bill passed to assure positive action so there would be no possibility for parole with out victims being notified prior to parole hearings when the victim has kept the correction authorities apprised of current address.

9-2/3

on addition the victims acknowledgment of a parole hearing date should be in writing and on file with the Department of Corrections, along with the current addresses of the victims or victims family.

Donald and Norma Bush
106 N Jackson
Junction City, Ks 66441
913-762-3342

9-3/3

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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Testimony of
Nancy Lindberg
Assistant to the Attorney General
Before the Senate Judiciary Committee
RE: Senate Bill 211
February 25, 1991

On behalf of Attorney General Bob Stehan and his Victims' Rights Task Force, I encourage your support of Senate Bill 211. Our office has received several complaints from victims about not being notified of public comment sessions for class A felons. These complaints usually refer to the horrendous tragedies that families experience.

K.S.A. 74-7335 provides notification of public comment sessions for crime victims. Senate Bill 211 would strengthen the need of notification before a class A felon has a parole hearing.

I would suggest two changes in the bill:

On page 2, lines 33 and 35, I believe "victim's designated representative" should be deleted. I would suggest you say "victims' family" be notified as is outlined in the notification statute K.S.A. 74-7335.

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Also, on page 5, lines 36, 37, and 43, "designated representative" should be changed to "victims' family". There is no need to adopt new language which may result in confusion as to who should be notified.

Our office has been working with the Department of Corrections in developing a program which new section 2 addresses. I would strongly suggest that new section 2 include a statement in (c) that all victims' names and addresses be kept separate from the inmate's file, and that this information is confidential and inmates cannot have access to it.

Senate Bill 211 would strengthen the rights of persons who are victims of our most heinous crimes. I ask you to support Senate Bill 211 with these amendments. Thank you.

10-2-2

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

To: Senate Judiciary Committee

From: Steven J. Davies, Ph.D.
Secretary of Corrections

Subject: Senate Bill No. 211

Date: February 25, 1991

The Department of Corrections supports the concept of SB 211 regarding notification of victims or the victim's designated representative, particularly in the case of the possible parole of an individual convicted of a class A felony.

Under current statutes the notification to the victim or next of kin of the victim is made by the county or district attorney. Under SB 211 that function would be given to the secretary of corrections when the inmate being considered for parole has been convicted of a class A felony. In class B, C, D, and E cases notification would still come from the county or district attorney.

For purposes of consistency of notification, the Department believes that it would be best if all notifications came from the same source. The Department of Corrections could be that source if it had adequate resources to take on this responsibility. With existing staff, this additional task would not be possible to complete in the proper manner.

The Department of Corrections and the Attorney General have discussed the possibility of the Department receiving a grant of up to $25,000 for use in establishing a victim notification procedure. If the grant is received, this task could be undertaken provided the grant covered clerical support, computer capabilities, postage, and other operating costs. The Department would then be in a position to notify victims whether the case involved a class E felony or a class A felony.

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One problem in the area of victim notification has been maintaining a current address for the victim or the next of kin. SB 211 places the responsibility for notification of a change of address on the victim or the victim's designated representative in cases where a class A felony is involved. This responsibility should be extended to the victim or victim's designated representative in all cases.

SB 211 provides that if the notice is not given at least one month prior to the parole hearing, the hearing will be postponed until at least 30 days after the notice is actually given. We believe the better approach would be to go ahead and have the hearing but provide that the Kansas Parole Board continue the case for a decision until after the notice has been given. This will avoid a situation of infringing upon an inmate's interest in having a parole hearing after completion of a certain portion of his or her sentence.

In summary, the Department of Corrections supports fully the concept of victim notification. If the Department of Corrections receives adequate funding to take on this responsibility, the Department is willing to undertake the task of victim notification prior to parole hearings for all classes of felony offenses.

SJD:CES/pa

OFFICE OF THE
BOURBON COUNTY ATTORNEY
COURTHOUSE
FORT SCOTT, KANSAS 66701

VOR C. (CHRIS) NELSON

TELEPHONE 316 223-2910

BOURBON COUNTY ATTORNEY

February 23, 1991

The Hon. Wint Winter
Kansas House of Representatives
Topeka, Kansas

Re: Legislation aimed at deleting the LaRoche Defense

Dear Representative Winter:

I am pleased with your and other legislators' attempts to remedy what I consider to be a serious flaw in our present criminal code, one which recently allowed a man who attempted intercourse with a child to go free because he claimed to be intoxicated. I respectfully suggest that intoxication should not be a defense for such conduct. Merely knowing that her attacker was drunk does not decrease the trauma for the victim of this attack, and her words, from her Victim Impact Statement following the defendant's conviction for providing intoxicating beverages to a minor, speak with greater eloquence that I can muster. Her statement is as follows:

> I feel like dirt. I'm uncomfortable around older guys. I'm closed up because I don't trust people. I'm afraid of himI have the same dream over and over about some guys following me home from school and coming in to hurt me. I feel scared to go back to sleep.

No child or woman who has been the victim of a sexual assault should ever be victimized twice, as this girl has been: once at the hands of her assailant, and then again by the legal system in excusing such conduct by reason of voluntary intoxication. Please note, first, that I do not believe the defendant in this case was so drunk as to be incapable of forming the necessary criminal intent; had he been that intoxicated, he should have been unable to achieve an erection. He most certainly did so, however, and after this girl awoke from her stupor to find Clarence LaRoche naked on top of her attempting penetration, he attempted to insert his erect penis in her mouth. He told her, though, that he would get away with it because she was drunk. That he was right compounds the tragedy of this case.

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It mystifies me that in this era of accountability for our actions, even the most heinous conduct can be excused if the actor is drunk enough. This clearly sends the wrong message, and the legislature is in the position to correct the flaw this statute presents. The conduct, not the frame of mind, should be punishable. Intoxication should not be a defense to any crime, particularly a sex crime.

Please repeal K.S.A. 21-3208(2).

Sincerely,

Paul C. Nelson
Bourbon County Attorney

PCN/mtf

12-2/2

Kansas
Child Abuse
Prevention Council

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Topeka, Kansas 66612
(913) 354-7738

428 S. Broadway, Suite 204
Wichita, Kansas 67202
(316) 262-8434

Testimony in Support of SB 233
Senate Judiciary Committee
February 24, 1991

The Kansas Child Abuse Prevention Council supports the intention of SB 233. We are particularly interested in seeing voluntary intoxication removed as a defense in crimes involving the physical and sexual abuse of children.

A case last year in Fort Scott drew our attention forcefully to this issue. I am attaching to our testimony copies of several editorials representative of the strong public reaction that reached our office.

Research reported by the National Committee for Prevention of Child Abuse indicates that "when drinking is used as a response to stress, alcohol may act as a physiological disinhibitor thereby making it easier for child abuse to occur. For example, research suggests that alcohol is frequently present in cases of sexual abuse because it allows a person to ignore the social taboos against child molestation." (See David Finkelhor, A Sourcebook on Child Sexual Abuse. California: Sage Publications, 1986)

While reasonable people may differ in their assessment of the damage done to children by corporal punishment, there is no room for debate regarding child sexual abuse. A recent article by a multidisciplinary team of experts concluded: "At the present time, it cannot be denied that child sexual abuse often has devastating long-term consequences. The terrible damage caused by sexual abuse has been described most eloquently by the adult survivors of child sexual abuse." (See "Expert Testimony in Child Sexual Abuse Litigation" by John Myers, et.al, reprinted from the Nebraska Law Review, Vol. 68, 1989, p.53.)

Naturally we would all prefer to devote more time and resources to prevention strategies. However, when serious crimes against children do occur, it is imperative that their abusers be held fully accountable before the law. That a perpetrator would be allowed to hide behind a defense of voluntary intoxication ought to offend our sense of justice and motivate us to seal off that means of evading responsibility.

Testimony submitted by James McHenry, Ph.D.

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Opinions

Bad precedent on child abuse

"Drunkenness is not an excuse, but you can be so drunk that you can't be held responsible for having the intent to do anything wrong," said John Solbach, a Lawrence Democrat and member of the House Judiciary Committee. "A crime requires intent."

Solbach was speaking in general terms, but with reference to the acquittal of a Fort Scott man accused of taking indecent liberties with a 13-year-old girl. The man's defense was simply that he had been so drunk he didn't remember molesting the girl, as she alleged. He was found guilty on a charge of furnishing alcoholic beverages to a minor, having given her beer at a private club and later vodka at his home. But he said he couldn't remember molesting her. So he is protected under a Kansas law pertaining to voluntary intoxication, and the judge therefore instructed the jurors that they must consider whether intoxication had impaired the defendant's mental faculties to the point at which he was incapable of forming the necessary intent to commit a crime. If so, regardless of whether the 13-year-old girl was telling the truth about what had happened to her, it wasn't a crime.

Some ethicists argue that intoxication, and especially *voluntary* intoxication, in no way relieves one of responsibility for one's actions while intoxicated. But responsibility is a broad term, and in practice, of course, moral responsibility is altogether different from legal responsibility. Diminished capacity resulting from voluntary intoxication is widely accepted as mitigating the severity of a crime.

But authorities in child-abuse prevention say that up to 90 percent of sexual-abuse cases are linked to alcohol or drug abuse; indeed, that alcohol and illicit drugs might almost be considered catalysts for such behavior. As James McHenry, executive director of the Kansas Child Abuse Prevention Council, points out, "It's common knowledge that people inclined toward sexual abuse will use substance abuse to lower their inhibitions.

That intoxication, then, should be found an acceptable defense in cases of child abuse is quite disturbing indeed.

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13-2/3

Editorials

Too drunk

Intoxication defense at best questionable; at worst tragic

When is molesting a child not a crime?

Apparently when you're drunk enough not to be deemed capable of criminal intent. And that's what a Fort Scott jury found to be a reasonable defense in its Nov. 14 verdict in the case of a man accused of molesting a 13-year-old girl.

Defying all logic, Kansas allows the intoxication defense as part of the law involving criminal intent.

That'll change if two Kansas legislators have their way. State Rep. Gilbert Gregory, D-Fort Scott, has said he will introduce a bill at the 1991 legislative session that would outlaw the intoxication defense. Sen. Wint Winter Jr., R-Lawrence, will ask that similar legislation be drafted in the Senate.

Let's hope this legislation passes without a whimper. It's tough enough to prosecute child molestation cases. Throwing in evidence that suggests a defendant's judgment was so impaired by alcohol that he or she could not form necessary intent is as outrageous as suggesting that alcohol abuse is a mitigating factor in murder and robbery.

To add irony to outrage, alcohol abuse adds to the severity of many driving violations. Our judiciary is unforgiving, indeed, toward those who would drink and drive.

Certainly, any case carries with it exceptions. But when a person really commits a crime, that person shouldn't be able to hide behind the bottle. If there is a time for leniency, a time to consider mitigating factors, it is when passing sentence.

Accountability is a gray issue. But when one out of three girls and one out of seven boys are sexually abused by age 18, the haunting question remains:

Should alcohol abuse be used as an excuse for child abuse? Or for any other serious crime?

11

13-3/3

Summary of Testimony Opposing Senate Bill 233
Submitted by Rick Kittel, Assistant Appellate Defender

I. Nature of Criminal Intent

A. Historical Aspects of Intent in Criminal Law

B. General Criminal Intent (21-3201)

C. Specific Criminal Intent (21-3208(2))

II. Voluntary Intoxication as a Defense to Specific Intent Crimes

A. Rationale for the Defense

B. Kansas Case Law History

C. Other Jurisdictions

III. Current Status of the Defense in Kansas

A. Evidence Sufficient to Warrant a Jury Instruction

B. Success of Defense

C. Elimination of Defense Eliminates Specific Intent Elements

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I

For centuries, in the field of criminal law, it has been deemed necessary to investigate a person's state of mind to determine if that person had the particular intent necessary for the commission of a crime. Historically, the determination of a criminal defendant's state of mind has been a factual question left to the jury.

In Kansas a number of other jurisdictions, criminal intent has been separated into two components: general criminal intent and specific criminal intent. General criminal intent is that intent which is set forth in K.S.A. 21-3201. It is an element of every offense defined in the criminal code. I would submit, that this legislature, by making intent an element of every crime in the code, has acknowledged the importance of the actor's state of mind at the time an offense was committed. A common sense view of criminal justice is that blame and punishment are inappropriate and unjust when the actor cannot comprehend his actions or their consequences.

Specific criminal intent is an intent which goes beyond general criminal intent. In a specific intent crime, the specific intent necessary to prove the offense is set forth as an element of that offense. Crimes are defined in these ways because a special state of mind is a crucial element in the description of the conduct sought to be prohibited.

Therefore, there are two classes of crimes: general intent and specific intent. Currently, K.S.A. 21-3208(2) establishes voluntary intoxication as a defense to specific intent crimes.

II

Voluntary intoxication is a defense to a specific intent crime, not because drunkenness excuses the crime, but because, if the mental status required by law to constitute the crime is one of specific intent, and drunkenness prevents the existence of the specific intent or state of mind, the crime charged has not been committed because the elements of the offense have not been proved.

In Kansas, voluntary intoxication to a specific intent crime has existed for decades, even before the defense was codified in the criminal code. In State v. Rumble, 81 Kan. 16 (1909), the Kansas Supreme Court acknowledged that drunkenness could be a defense to any specific intent crime. The Supreme Court has consistently recognized the validity of the voluntary intoxication defense. Some of the more recent cases are State v. Sterling, 235 Kan. 526 (1984), State v. Shehan, 242 Kan. 127 (1987), and State v. Gadelkarim, 247 Kan. 505 (1990). The voluntary intoxication defense was not established by the legislature, but is a part of the common law.
Statutory provision for the defense of voluntary intoxication are

common throughout the country. The current status of the law in Kansas is in the mainstream of thought on the issue.

III

The matter of voluntary intoxication is normally raised at trial through the defendant's request for a jury instruction on the matter. Such an instruction should only be given if there is evidence of intoxication which impaired the defendant's mental faculties to the extent that he was incapable of forming the necessary intent for the crime. See Gadelkarim, 247 Kan. at 509. Voluntary intoxication may only be raised as a defense to specific intent crimes. In my experience, the defense is only rarely available to a criminal defendant, and even more rarely successful.

Elimination of the defense has the effect of eliminating specific intent elements. For example, if a person is intoxicated to the extent that he could not form the specific intent necessary to the commission of the crime of theft, but is prohibited by this bill from raising the defense of voluntary intoxication, his state of mind at the time of the offense becomes irrelevant. This result is contrary to accepted Kansas law which requires that the defendant have a particular state of mind at the time of the theft. The result is also contrary to the principle of criminal law which says that a person is only responsible and can only be punished for acts committed with the required criminal state of mind.

It is my understanding that this bill is the result of a case from Bourbon County, State v. LaRoche. In that case, which was tried last year, the defendant was acquitted of the offense of indecent liberties with a teenaged girl. The defendant had raised the voluntary intoxication defense. The result of the case, however, was not necessarily due to that defense. Other factors affected the jury's decision. These factors were the charging decision of the prosecutor and the credibility of the victim.

Finally, there are questions about the constitutionality of this bill. Under the constitutions of the United States and Kansas, a criminal defendant is entitled to a fair trial. Part of a defendant's right to a fair trial is the right to present a full and complete defense. This bill infringes upon that right. The bill would deny the defendant the ability to produce evidence to disprove the specific intent element which is necessary for his conviction. Therefore, while the prosecution could produce evidence of the defendant's specific intent, the defendant would be prohibited from producing evidence to show that he did not have the requisite specific intent.

Sheryl A. Bussell
ATTORNEY
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February 19, 1991

Senator Wint Winter
State House
Topeka, Kansas 66612
Atten: Judy Craspser, secretary

Re: S.B. 124 and 125

Dear Senator Winter, members of the Judiciary Committee:

I would like to submit some comments concerning the proposed changes in the laws on driving under the influence of alcohol or drugs. I am an attorney who has represented people changed with "D.U.I." as well as someone injured by a drinking driver.

My observation would be that, every year since I entered the practice of law eight years ago, the legislature has changed the D.U.I. laws to make the punishment more harsh. In my numerous contacts with first offenders, not a single one in recent memory came in my office knowing anything about the penalty for D.U.I.! Making the penalty for D.U.I. harsher will only result in more first offenders losing jobs- thus causing suffering for the innocent spouses and children of those people.

Making harsher penalties for crimes has never been shown to deter conduct. In the case of D.U.I., I would respectfully suggest that the way to deter the undesirable conduct is to convince drivers that they have a very high chance of getting caught. (They all believed before thay come to see me, that they would never get caught).

This is an issue that is separate from 2nd or 3rd (or more) offenders. If legislation is going to be enacted to create harsher penalties, it should be for repeat offenders, whose conduct is more culpable. A person who receives a 3rd D.U.I. within a 5 year period either (a) is a serious scofflaw who should be charged with a feloney or (b). has a serious drinking problem and the only way to protect the community is to incarcerate for as long as possible.

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I would suggest that instead of spending time every year on "first offender" issues, that the legislators should find ways to:

(1) Make a "D.U.I. curriculum" part of every high school student's required studies.

(2) Create a separate test for D.U.I penalties which must be passed for issuance and renewal of driver's licenses.

(3) Create a procedure, easily understandable for local law enforcement, to use in setting up screening road blocks and require 1st and 2nd class city police departments to do five of them at random in each year. (any city department not in compliance would not be allowd to send officers for academy training)

(4) Consider a "dram shop" type law that does not place civil liability upon tavern owners, but requires that when evidence comes to the attention of law enforcement that a person has received a D.U.I. after drinking in an establishment, the establishment gets a letter setting forth the name of the offender, the date of the offense and the blood alcohol content test result, and stating that after the receipt of five letters in any- one year, their license could be subject to revocation.

Thanks for your consideration. I hope my comments arrive in time to be included in your consideration of these two bills.

Sincerely,

Sheryl A. Bussell

Sheryl A. Bussell

cc: Senator Douglas Walker
Representative Aldie Ensminger
K.B.A. legislative affairs

59:

15-2/2