

Approved 2-10-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Denise Everhart at
Chairperson

3:30 a.m./p.m. on February 5, 1992 in room 514-S of the Capitol.

All members were present except:

Representatives Carmody, Douville, Gomez, Snowbarger and Solbach who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Captain Terry Scott, Kansas Highway Patrol
Helen Stephens, Kansas Peace Officers Association
Ron Smith, Kansas Bar Association

Vice-Chairman Denise Everhart called the committee meeting to order.

Representative Parkinson moved to introduce a bill making sobriety check points constitutional in Kansas. Rep. Hamilton seconded the motion. Motion carried.

Hearings on HB 2767, concerning fleeing or attempting to elude a police officer, were opened.

Captain Terry Scott, Kansas Highway Patrol, testified for Colonel Bert Cantwell in favor of HB 2767. (Attachment #1) He presented examples of why this legislation is needed. He also answered committee members questions and concerns.

Helen Stepehns, Kansas Peace Officers Association, testified in favor of HB 2767. (Attachment #2) She submitted several amendments for committee consideration. She answered committee members questions.

Hearings on HB 2767 were closed.

Co-chairman Everhart asked for testimony on HB 2364, civil remedies for theft. Ron Smith, Kansas Bar Association, said he had no testimony on the bill at this time since there were no proponets for such bill.

Rep. Macy moved to approve committee meeting minutes of 2/3/92. Rep. Pauls seconded the motion. Motion carried.

The meeting was adjourned at 4:25 p.m.

SUMMARY OF TESTIMONY

Before the House Judiciary Committee

February 5, 1992

Presented by the Kansas Highway Patrol

(Captain Terry Scott for Colonel Bert Cantwell)

The Patrol supports passage of HB 2767 which amends K.S.A. 8-1568 to include a felony penalty for drivers who WILLFULLY and WANTONLY endanger another person while fleeing or attempting to elude a police officer.

Law enforcement agencies across Kansas and the nation have found it necessary to take a hard look at policies regarding when and/or if officers should pursue traffic offenders. This decision is not an easy one, for the agency nor for the officer involved. Law enforcement officers are called upon to exercise good judgment and appropriate restraint in these situations. Agencies are promulgating policies which provide definitive guidance to officers BEFORE the incident occurs to assist that officer in making his decision whether or not to pursue. Officers and agencies are being held accountable for what they do or for what they don't do, which is how it should be.

The Patrol has spent almost six month devising such a policy. During that time, court decisions, legal opinions, other state patrols, national and international police agencies and local law enforcement agencies were consulted. A task force of troopers and supervisors within the Patrol was assembled to review and recommend action. The result has been a policy which provides guidance for Patrol personnel in making the decision whether or not to pursue.

During our research in this matter, we discovered a need for this type of legislation. We spoke with officers who had encountered instances in which drivers had "gone beyond" simply fleeing or attempting to elude an officer. Troopers and other law enforcement officers reported that they, on occasion, were confronted with a pursuit situation in which the actions of the pursued driver were so flagrant and posed such an extreme risk to other users of the streets and highways, that these officers likened it to playing Russian Roulette with five bullets in a six-gun.

HJC
2-5-92
Attach #1
1 of 3

It became abundantly clear that there is more than one level of violation in pursuit situations. The present statute provides a tiered penalty for repeat offenses, but does nothing to address the instances in which the driver WILLFULLY and WANTONLY endangers innocent users of the streets and highways. The penalty is the same for the frightened teenager who panics and runs home, as for the driver who runs a red traffic light at 60 m.p.h. in a busy intersection and continues to drive 60 m.p.h. through a school zone at 3:30 in the afternoon.

It should be abundantly clear to drivers who would intentionally and knowingly place innocent persons at great risk of injury or death, that that behavior is unacceptable to the citizens of Kansas. We believe that the passage of House Bill 2767 would clearly establish this message and provide a penalty consistent with the offense.

HJC
2-5-92
Attach #1
2 of 3

21-3201. Criminal intent. (1) Except as provided by sections 21-3202, 21-3204, and 21-3405, a criminal intent is an essential element of every crime defined by this code. Criminal intent may be established by proof that the conduct of the accused person was willful or wanton. Proof of willful conduct shall be required to establish criminal intent, unless the statute defining the crime expressly provides that the prohibited act is criminal if done in a wanton manner.

(2) **Willful conduct is** conduct that is purposeful and intentional and not accidental. As used in this code, the terms "knowing," "intentional," "purposeful," and "on purpose" are included within the term "willful."

(3) **Wanton conduct is** conduct done under circumstances that show a realization of the imminence of danger to the person of another and a reckless disregard or complete indifference and unconcern for the probable consequences of such conduct. The terms "gross negligence," "culpable negligence," "wanton negligence" and "recklessness" are included within the term "wantonness" as used in this code.

21-3202. Criminal intent; exclusions. (1) Proof of criminal intent does not require proof of knowledge of the existence or constitutionality of the statute under which the accused is prosecuted, or the scope or meaning of the terms used in that statute.

(2) Proof of criminal intent does not require proof that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which he is charged.

21-3203. Ignorance or mistake. (1) A person's ignorance or mistake as to a matter of either fact or law, except as provided in section 21-3202, is a defense if it negatives the existence of the mental state which the statute prescribes with respect to an element of the crime.

(2) A person's reasonable belief that his conduct does not constitute a crime is a defense if:

(a) The crime is defined by an administrative regulation or order which is not known to him and has not been published in the Kansas administrative regulations or an annual supplement thereto, as provided by law; and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him; or

(b) He acts in reliance upon a statute which later is determined to be invalid; or

(c) He acts in reliance upon an order or opinion of the supreme court of Kansas or a United States appellate court later overruled or reversed;

(d) He acts in reliance upon an official interpretation of the statute, regulation or order defining the crime made by a public officer or agency legally authorized to interpret such statute.

(3) Although a person's ignorance or mistake of fact or law, or reasonable belief, as described in subsection (2) of this section, is a defense to the crime charged, he may be convicted of an included crime of which he would be guilty if the fact or law were as he believed it to be.

21-3204. Guilt without criminal intent, when. A person may be guilty of an offense without having criminal intent if the crime is a misdemeanor or traffic infraction and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

HJC
2-5-92
Attach #1
3 of 3

AVEY, President
Ks. Law Enforcement Training Center
Hutchinson, Kansas 67504

CLIFF HACKER, President-Elect
Lyon County Sheriff
Emporia, Kansas 66801

LARRY MAHAN, Vice-President
Kansas Highway Patrol
Wichita, Kansas 67212

ALVIN THIMMESC
Secretary-Treasurer
Kansas Peace Officers' Association
Wichita, Kansas 67201

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030

FAX 316-729-0655

P.O. BOX 2592 • WICHITA, KANSAS 67201



February 4, 1992
House Bill No. 2767

BOARD OF GOVERNORS

GOVERNORS

(At Large)

BILL RICE

Chief of Police

Arkansas City, Kansas 67005

CHARLES RUMMERY

Chief W.S.U. Police

Wichita, Kansas 67208

DENNIS TANGEMAN

Kansas Highway Patrol

Topeka, Kansas 66603

BOB SCHUMAKER

Santa Fe R.R. Police

Topeka, Kansas 66612

DISTRICT 1

FRANK P. DENNING

Johnson Co. Sheriff's Office

Olathe, Kansas 66202

DAVE SMALL

Paola Police Department

Paola, Kansas 66671

DARRELL PFLUGHOF

Kansas Lottery Security

Kansas City, Kansas 66103

DISTRICT 2

DANA KYLE

Riley County Police Department

Manhattan, Kansas 66502

RANDALL THOMAS

Lyon County Sheriff's Office

Emporia, Kansas 66801

DOUGLAS PECK

Kansas Highway Patrol

Emporia, Kansas 66801

DISTRICT 3

JIM HUFF

Chief of Police

Elstoworth, Kansas 67439

CARL McDONALD

Dickinson County Sheriff's Office

Abilene, Kansas 67410

ALLEN BACHELOR

Kansas Highway Patrol

Salina, Kansas 67401

DISTRICT 4

LAWRENCE YOUNGER

Chief of Police

Hays, Kansas 67601

JOHN FROSS

Ft. Hays State University Police

Hays, Kansas 67601

FRANK REESE

Ellis County Sheriff's Office

Hays, Kansas 67601

DISTRICT 5

KENT NEWPORT

Holcomb Police Department

Holcomb, Kansas 67851

CAMERON HENSON

Kansas Bureau of Investigation

Liberal, Kansas 67901

RAY MORGAN

Kearny County Sheriff's Office

Lakin, Kansas 67860

DISTRICT 6

DAVE SMITH

Hoisington Police Department

Hoisington, Kansas 67594

JIM DAILY

Barton County Sheriff's Office

Great Bend, Kansas 67530

DICK BURCH

Kansas Law Enforcement Training Ctr.

Hutchinson, Kansas 67504

DISTRICT 7

DELBERT FOWLER

Chief of Police

Derby, Kansas 67037

BOB ODELL

Cowley County Sheriff

Winfield, Kansas 67156

LARRY WELCH

Ks. Law Enforcement Training Center

Hutchinson, Kansas 67504

DISTRICT 8

ALLEN FLOWERS

Chief of Police

Coffeyville, Kansas 67337

LOWELL PARKER

Greenwood County Sheriff

Eureka, Kansas 67045

TINY WILNERD

Ks. Dept. Wildlife & Parks

Howard, Kansas 67349

SERGEANT-AT-ARMS

KENNETH McGLEASON

Kansas Highway Patrol

Wakeeney, Kansas 67672

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the 3,000 members of the Kansas Peace Officers Association.

KPOA supports the amendments as noted on lines 35, 36, and 37; but would like your consideration of an additional change affecting lines 20 through 22.

Current law states "The officer giving such signal shall be in uniform, prominently displaying such officer's badge of office, and the officer's vehicle shall be appropriately marked showing it to be an official police vehicle".

Law enforcement officers working undercover work or drug investigations do not wear uniforms and drive unmarked cars, which do have the some type of emergency lights and siren; but no light bar and the car is not marked with a law enforcement insignia. These officers are found in city and county law enforcement, the Kansas Bureau of Investigation, and the Kansas Highway Patrol.

There should be no difference in the penalty for attempting to elude an undercover officer as opposed to an officer described above. We ask the committee's consideration in deleting these lines to avoid the discrepancy which now exists.

If you have any questions, I would be happy to answer them.

Thank you for this opportunity.

HJC
2-5-92
Attachment #2

In Unity There Is Strength