

Approved 2-13-92  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~xxx~~/p.m. on February 12, 1992 in room 313-S of the Capitol.

All members were present except:

Representatives Carmody, Hamilton, Lawrence, Parkinson, Rock & Snowbarger who were excused.

Committee staff present:

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

Conferees appearing before the committee:

Representative Gwen Welshimer  
Christine Tamburini, Assistant District Attorney, 18th Judicial District  
Lt. Michael McKenna, City of Wichita Police Department  
Jim Clark, Kansas County & District Attorneys Association  
Ruby Gilbert, State Representative  
Captain Terry Scott, Kansas Highway Patrol

Vice-Chairman Denise Everhart called the committee meeting to order for the purpose of hearing HB 2658, theft of a motor vehicle.

Representative Gwen Welshimer, bill sponsor, testified in support of HB 2658. (Attachment #1) She requested to have the bill passed and take effect upon publication in the Register instead of in the statute book. She answered committee members questions and concerns.

Christine Tamburini, Assistant Dist. Atty., 18th Judicial Dist., testified in favor of HB 2658. (Attachment #2) She answered committee members questions.

Lt. Michael McKenna, City of Wichita Police Department, testified in favor of HB 2658. (Attachment #3) He said he thought current law needs more teeth. A committee member suggested that current statutes be looked at to see if concerns could be addressed, and suggested that temporary deprivation might be included in the burglary statute. McKenna answered committee members questions.

Jim Clark, County & Dist. Attorneys Assn., testified in favor of HB 2658. (Attachment #4) He stated he did not, however, support all the legislation in the bill.

Ruby Gilbert, State Representative, testified in support of HB 2658.

Captain Terry Scott, Kansas Highway Patrol, testified that "joy riding" was a problem in proving theft. He said auto theft in the U.S. is big business and this bill would help prosecute offenders.

Hearing on HB 2658 was closed. Chairman Solbach said several committee members will work on the bill before action will be taken.

Hearing on HB 2160, regulation of traffic, inattentive driving, was opened. Rep. Garner reiterated the testimony he gave in favor of HB 2160 on 2/18/91 before the Judiciary Committee. (Attachment #5) The bill allows officers investigating accidents a charge they might need to use. A letter from Ed Klumpp, Kansans for Highway Safety, supporting HB 2160 was given to committee members. (Attachment #6) Hearing on HB 2160 was closed.

Hearing on HB 2190, alcohol and drug-related offenses, penalties, was opened. Letter from Ed Klumpp, Kansans for Highway Safety, in support of the bill was passed out. (Attachment #7) There were no conferees on HB 2190. Rep. Pauls said that reference to 1990 supplements should be changed to 1991 supplements in HB 2190.

Meeting adjourned at 4:45 P.M.



GWEN WELSHIMER  
REPRESENTATIVE, EIGHTY-EIGHTH DISTRICT  
SEDGWICK COUNTY  
6103 CASTLE  
WICHITA, KANSAS 67218  
316-685-1930  
DURING SESSION  
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HOUSE OF  
REPRESENTATIVES

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MEMBER: TAXATION  
INSURANCE  
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ADMINISTRATIVE RULES & REGULATIONS

1 RS 1734

HOUSE BILL NO. *2658*

By Representative Welshimer

AN ACT concerning crimes and punishments; relating to theft of a motor vehicle.

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

Section 1. Theft of a motor vehicle is obtaining or exerting unauthorized control over a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, with intent to deprive the owner of the possession, use or benefit of the motor vehicle, and without the owner's consent.

Theft of a motor vehicle is a class E felony.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of a motor vehicle unlawfully placed or left upon real property.

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

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TESTIMONY IN SUPPORT OF HB 2658  
 BEFORE THE HOUSE JUDICIAL COMMITTEE  
 WEDNESDAY, FEBRUARY 12, 1992

There is extreme frustration in Wichita because no arrests are being made on theft of automobiles. The public is told that a thief must admit he intended to keep the vehicle and never return it. Simply remaining silent gets him off. It doesn't matter if he is caught in Colorado or Canada or however much time has elapsed since the vehicle was stolen.

The Legislature is being blamed for putting the public in this vulnerable position. A Wichita Eagle article, written by Bob Getz, explains it very well. Few missed reading it in Wichita. It is attached to this testimony for your information.

I mailed 3,000 questionnaires to voters in my district #88 in Wichita. I asked them if we should have stiffer penalties on crime, even if it means new jails, new prisons, and new tax increases. Out of 353 responses, 73% said yes. One respondent brought up the subject of car theft under additional comments and said this: "I want the crime of stealing a car to be a felony crime, not a misdemeanor 'joyride'." It's no joyride for the owner to be the victim of a car theft after paying the property tax, license fees, and insurance for it. And these punk criminals don't even go to jail for it. Put some teeth in the law by making it "unauthorized use of a motor vehicle" which is a felony and LOCK THEM UP! If it takes more prisons to hold them all, fine, I'll gladly pay higher taxes to lock them away from honest people who work for what they have."

This comment on auto theft and a breakdown of the results of all the questionnaires returned is attached to this testimony. Also, attached is the fiscal note on this bill prepared by the division of the budget which advises that there will be little change in cost to taxpayers if this bill is passed.

To emphasize the seriousness of the growing problem of car theft, on Sept. 10, 1991, our 1982 Oldsmobile was stolen. The first two people to contact me upon discovery of the theft were the patrol officer and our insurance agent. Interestingly, both had had their cars stolen in 1991 as well.

This incident prompted my introduction of this bill, and it was read in on January 13, 1992, the first day of session, by the clerk on the House floor. But I didn't hear her. I was receiving an emergency call from my neighbor that the 83 Oldsmobile we had purchased to replace our stolen car had also been stolen. This time the thieves left us something in trade, a tire and a hubcap from a cadillac.

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Testimony continued  
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500 cars per month were stolen during the summer months in Wichita. This number will increase.

Anything we can do to deter car theft in the future will help offset increasing auto insurance rates and the anger and frustration of hardworking citizens who need their cars to get to work or for trips to the doctor and other emergencies.

I hope and ask each of you to pass this bill favorably from your committee.

  
Gwen Welshimer

GWEN WELSHIMER  
 REPRESENTATIVE, EIGHTY EIGHTH DISTRICT  
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FEBRUARY 12, 1992

HOUSE OF  
 REPRESENTATIVES

*9-20-91 Eagle*  
**Could this be  
 one of Kansas'  
 craziest laws?**

**S**tealing cars is frowned on in Kansas. By some prudes, anyway. Take my word for it.

Auto theft is really, really discouraged all over Finneyland.

Funny thing, though, about auto theft in Kansas.

It would be understandable if you got the crazy impression that a number of our state legislators over the years haven't really disapproved of car theft all that much.



**BOB GETZ**

Nice of them, at least, to keep a law on the books against it.

This intriguing subject came to my attention the other day when I heard a news report that the police say one of their

worst frustrations is how auto theft charges won't hold up in court unless they can prove that the person who took a vehicle didn't intend to return it.

Zounds.

Alice's Wonderland wasn't this looney. The Queen of Heart's justice system ("Off with their heads!") wasn't this much of a joke.

I phoned the Nola Foulston Show to check on the report. The district attorney's office, I mean.

It's true, Greg Waller said. That's the way the theft law works.

If, say, some slick slack-jawed slug helps himself to your shiny and glorious new driving machine and is nabbed by the cops, the sleazeball can actually beat a stolen-car rap if he convinces a jury he was just going to take the car for a little spin and then return it.

Waller said auto theft is a "specific intent crime" in which it must be proved beyond a reasonable doubt that a defendant meant "to permanently deprive the owner of the benefit of the use of the property."

And, Waller said, "in auto theft, many times it is difficult to prove that's the case."

I imagine.

What lowlife who knows how the car-theft game is played is going to admit in court he stole a car *for keeps*?

"No, sir. I didn't steal the car. I just took it for a little ride. Yeah, I know I had it five days. Yeah, I know I put 1,100 miles on it. But I swear I was going to take it back. Things just kept coming up, you know. I got sick. I got lost once. It was very stressful."

Waller said, "What occurs many times is you'll find someone in possession of a stolen vehicle, and they'll say they were going to take it back."

Maybe this is Be Kind to Car Thieves Century in Kansas.

In 1970, auto theft was downgraded from a Class D to Class E felony. And now, last session, the Legislature tinkered with reducing Class E felonies to misdemeanors.

Waller says this is the Legislature's way of dealing with overcrowded prisons. But "what the Legislature has done is take the teeth out of the theft law."

Even turned it into a joke?

"I've seen many cases in the past," Waller said, "where detectives, police — we just had to sit back and laugh because officers catch a person (who took a car) *too soon*."

"They'd catch them 10 minutes afterward. And the defendants would say, 'I didn't steal it. I was just going to drive around a little and take it back.' It would've been better if they hadn't been caught for a week."

I have a wild idea.

Why don't our legislators do one of two things:

Either come up with a special, simple, sleek little law that says juries don't have to read minds anymore, and so, if you take somebody's car without permission, your intent doesn't matter, you're guilty of stealing a car — a felony — period.

Or, if the legislators are so opposed to putting car rustlers away, then why don't they simply decriminalize auto theft?

Come to think of it, I could use a new set of wheels myself.

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ARE KANSAS SCHOOLS DOING A GOOD JOB? OVERALL, MEDIOCRE. THE PROBLEM ISN'T THE SCHOOLS — ITS THE PARENTS AND KIDS — THEY JUST WANT AN EASY RIDE  
SHOULD THE AGE LIMIT FOR A DRIVER'S LICENSE INCREASE FROM 14 TO 16 YEARS OLD? YES

WITH THE PRESENT CRIME RATE, PRISON FACILITIES WILL BE FULL AGAIN IN THREE TO FIVE YEARS. THE KANSAS SENTENCING COMMISSION'S SOLUTION IS TO RELEASE NON-VIOLENT OFFENDERS. STATISTICS SHOW MANY NON-VIOLENT OFFENDERS LATER COMMIT VIOLENT CRIMES. SHOULD WE HAVE STIFFER PENALTIES ON CRIME, EVEN IF IT MEANS NEW JAILS, NEW PRISONS, AND NEW TAX INCREASES? YES

DOES KANSAS NEED A DEATH PENALTY? YES!

A COMPREHENSIVE PROGRAM HAS BEEN DEVELOPED BY A LEGISLATIVE COMMITTEE FOR KANSAS CHILDREN WHICH WILL BE INTRODUCED AS A BILL TO OFFSET INCREASING CRIME RATES, SCHOOL DROPOUTS, AND SRS BUDGETS. IS IT A GOOD IDEA TO INCREASE TAXES FOR THIS PURPOSE? I'D HAVE TO SEE THE PROPOSAL TO KNOW MORE,

SHOULD ABORTION BE TOTALLY AGAINST THE LAW IN KANSAS IF FEDERAL RULINGS ARE OVERTURNED? NO

IF ABORTION IS LIMITED, SHOULD WE REQUIRE RAPE OR INCEST TO BE PROVEN IN COURT? NO

SHOULD PHYSICIANS BE REQUIRED TO PROVE DESIGNATED CIRCUMSTANCES OF ABORTION OR ANSWER TO THE LAW? NO

ON A SCALE OF ONE TO TEN (TEN BEING A PERFECT JOB), HOW WELL DO YOU BELIEVE ELECTED OFFICIALS ARE DOING?

POOR <u>1</u> CITY OFFICIALS—WICHITA	<u>8</u> COUNTY OFFICIALS
POOR <u>1</u> SCHOOL DISTRICTS—WICHITA	<u>7</u> LEGISLATURE
<u>2</u> GOVERNOR	<u>4</u> CONGRESS
<u>8</u> PRESIDENT	

ADDITIONAL COMMENTS I WANT THE CRIME OF STEALING A CAR TO BE A FELONY CRIME, NOT A MISDEAMEANOR "JOYRIDE."  
IT'S NO JOYRIDE FOR THE OWNER TO BE THE VICTIM OF A CAR THEFT AFTER PAYING THE PROPERTY TAX, LICENSE FEES AND INSURANCE FOR IT AND THESE PUNK CRIMINALS DON'T EVEN GO TO JAIL FOR IT. PUT SOME TEETH IN THE LAW BY MAKING IT "UNAUTHORIZED USE OF A MOTOR VEHICLE" WHICH IS A FELONY AND LOCK THEM UP. IF IT TAKES MORE PRISONS TO HOLD THEM ALL FIVE, I'LL GLADLY PAY HIGHER TAXES TO LOCK THEM AWAY FROM HONEST PEOPLE WHO WORK FOR WHAT THEY HAVE.

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From: Robert Beattie  
 Re: Survey Results to date

Increase Kansas Driver's License Age to 16?

Yes	82%	290
No	13%	44
U	<u>5%</u>	<u>19</u>
Total	100%	353

(Note: The majority of comments want age 18.)

Should Real Estate Prices Be Made Public? (2 Feb 92)

Yes	78%	248
U	14%	46
No	<u>8%</u>	<u>27</u>
Total	100%	321

Will You Pay Increased Taxes for Stiffer Penalties on Crime?

Yes	73%	258
U	17%	61
No	<u>10%</u>	<u>34</u>
Total	100%	353

Should Abortion Be Totally Against the Law in Kansas?

No	70%	247
Yes	26%	94
U	<u>4%</u>	<u>12</u>
Total	100%	353

Does Kansas Need a Death Penalty?

Yes	67%	238
No	25%	87
U	<u>8%</u>	<u>28</u>
Total	100%	353

(FYI: Washburn Law School Student Newspaper Poll October 1991)  
 Death Penalty                      Abortion Rights                      Gun Control

Yes	50%	76%	56%
No	35%	18%	28%
U	17%	6%	16%

1/6th of all 1st & 2nd yr. law students responded (50+ of @ 300), a good statistical sample. Note that fewer law students support a death penalty and more support abortion rights and gun control than does the general population.

#JC  
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STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1578

(913) 296-2436  
FAX (913) 296-0231

JOAN FINNEY, GOVERNOR

GLORIA M. TIMMER, Director

February 6, 1992

The Honorable John Solbach, Chairperson  
Committee on Judiciary  
House of Representatives  
Third Floor, Statehouse

Dear Representative Solbach:

SUBJECT: Fiscal Note for HB 2658 by Representative  
Welshimer

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2658 is respectfully submitted to your committee.

HB 2658 establishes the new crime of theft of a motor vehicle as a class E felony, which is punishable by a prison term of from one to five years and a fine of not more than \$10,000. The offense is defined as obtaining or exerting unauthorized control over a motor vehicle with the intent to deprive the owner of the possession, use or benefit of the motor vehicle. There is no requirement that there be an intent to deprive the owner of his or her property permanently.

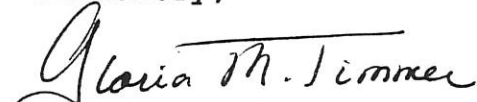
The bill would have fiscal impact upon state expenditures, but it is estimated the impact would not be great. Its enactment could result in some offenders, who would otherwise be convicted of a class A misdemeanor for theft of a car with a value of less than \$500 or unlawful deprivation of property, being convicted of a class E felony and incarcerated in a state facility. Persons who would currently be convicted of a class D felony for stealing a car worth at least \$50,000 would be convicted of a class E felony under this bill and serve less time in prison. Any additional costs or savings to the state correctional system resulting from this bill would probably be

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The Honorable John Solbach  
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limited to basic support costs for incarceration, which are estimated at \$1,700 per year per inmate, excluding program and health care costs.

Sincerely,

  
Gloria M. Timmer  
Director of the Budget

cc: Dennis Williams, Department of Corrections  
Jerry Sloan, Judicial Branch  
Ron Miles, Board of Indigents' Defense

4566

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**COMMENTS OF CHRISTINE M. TAMBURINI  
Assistant District Attorney**

**IN SUPPORT OF  
HOUSE BILL NO. 2658**

**I. Proof Problems of Intent**

Theft requires proof of intent to permanently deprive the owner of the possession, use or benefit of such owner's property. K.S.A. 21-3701.

As a practical matter, it is very difficult to prove auto theft, because suspects are street wise enough to tell the police that there was no intent to keep the car. The typical defense is that the intent was just to joy ride for a limited period of time and either abandon the car or return the car to its original location.

Absent independent evidence of intent to permanently deprive, such as switched car tags, stripping the car for parts or removing the car from the jurisdiction, it is very difficult to prove theft.

The result is that these cases are charged as unlawful deprivation of property under K.S.A. 21-3705, a Class A Misdemeanor. The message is that joy riding is not a serious crime, with no serious consequences. These misdemeanor cases are filed against adults in Municipal Court, where probation and restitution are not adequately monitored. Unlawful deprivation of property charged against a juvenile offender brings no different disposition than theft of a pack of gum. It has been my experience that restitution is usually waived in juvenile cases because of the court's discretion in assessing a juvenile offender's ability to pay.

Under House Bill No. 2658, these types of auto theft cases committed by adults could and would be brought in District Court where probation and restitution are court orders of record and monitored more closely. Repeat offenders could be placed in Community Correction programs which are well suited for persons who have committed property crimes and need supervision in finding employment to pay off court costs and restitution.

**II. Unfairness to Victims on the Issue of Value**

In today's society, transportation by car is a necessity. Whether a car is worth \$30,000 or \$300, if a citizen is without transportation from having been victimized by a car thief, the hardship is equal.

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Theft of property less than \$500 is a Class A Misdemeanor. Theft of property of a least \$500 or greater is a Felony. It is unfair to victims of auto theft that there are different penalties based upon value, when even if a car is worth less than \$500, it still may be the only means of transportation for a victim.

Value is a question of fact for the trier of fact, be it a jury or the court. So many factors are considered in determining value: age, mileage, improvements, wear and tear. Proof of value is not as exact a science as it might seem. Removing the value requirements from the theft statute (as it relates to automobiles) would remove the uncertainty in determining value and remove the unfairness in establishing different penalties for stealing different types of cars.

### III. Consistency in Establishing Penalties for Property Crimes Against Automobiles

It is bothersome and frustrating for prosecutors, law enforcement and victims that a criminal may break a car window, punch an ignition and take the car, only to be charged with unlawful deprivation of property, a misdemeanor. Whereas, if the criminal breaks the same window and instead of taking the car, takes a cassette tape, the charge is burglary, an E Felony.

House Bill 2658 would make the penalty for theft of a motor vehicle commensurate with the penalty for a burglary of an automobile. K.S.A. 21-3715(2).

/ch

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**House Judiciary Committee**  
**Room 519 - S**  
**Testimony Regarding House Bill No. 2658**  
**Wednesday February 12, 1992**

Chairman Solbach and members of the House Judiciary Committee: My name is Michael McKenna, Lieutenant for the City of Wichita Police Department. Thank you for the opportunity to appear before you today regarding **House Bill No. 2658**.

The wording in the opening sentence of the current statute which contains the phrase, "done with the intent to deprive the owner permanently," severely inhibits felony prosecution. Because there is no legal definition of the "intent to permanently deprive" on record, it becomes extremely difficult to pursue felony prosecution.

The adoption of this bill would put teeth back into penalty for the crime which deprives many citizens of the second largest economic investment of their lives. In some instances, their vehicle is the most costly item they own. In addition, with the current high rates of insurance premiums, many owners carry only liability coverage and end up paying the price of repairs to the vehicle as a result of its theft. Misdemeanor prosecution provides no realistic threat of incarceration even for repeat offenders.

Clearly, when the legislature inacted the present law, the intent was to make a distinction between permanent and temporary deprivation of property. However, the citizen commonly feels victimized twice. Once from the offender who stole his automobile and again from the judicial system which fails to enable the citizen to recover his resulting losses.

The citizen legitimately assumes an expectation of protection from and punishment for violations of an index crime. It is glaringly obvious that we are sorely

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lacking in providing that protection when in the past year we arrested and charged 22 identified gang members with 39 counts of assorted auto theft related crimes. Totally speaking, in 1991 we charged 164 offenders with 48 felony thefts, 12 assorted misdemeanors, and 210 deprivation of property charges. In addition, the theft of automobiles has increased by an average of 400 per year in Wichita for the past four consecutive years.

As you can see, an overwhelming majority of those apprehended are being prosecuted as misdemeanors through Municipal court. The fact is that having to prove that the person caught driving a stolen auto had the intent to **permanently** deprive the owner of the vehicle is virtually impossible without confession or significant alteration of the vehicle from its original condition.

Although restitution is legally possible through the District and Municipal Court, in Juvenile court their is no power to enforce orders of restitution for damages caused by juveniles. The parents of juvenile auto thieves can not be ordered to pay restitution because they are out of the Court's jurisdiction.

We have been assured by the District Attorney of full cooperation and prosecution of these cases should the necessary revision be made. The empowerment to make this correction in the law is up to you.

The City of Wichita Supports the language and intent of this bill and urges you to act favorably on it. Thank you for your attention.

Michael E. McKenna  
Lieutenant  
Auto Theft Section  
Wichita Police Department

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## Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

### Testimony in Support of

### HOUSE BILL NO. 2658

The Kansas County and District Attorneys Association appears in support of House Bill 2858, which establishes a uniform statute for theft of a motor vehicle. It eliminates the necessity of establishing value, as is presently required under K.S.A. 21-3701; and, more importantly, eliminates the applicability of 21-3705, unlawful deprivation of property, where a motor vehicle is involved. This latter issue is especially important because of the speed factor in the theft and stripping of a motor vehicle.

There are a number of cases involving motor vehicles in which the appellate courts have reversed convictions of theft of motor vehicles, primarily due to the holding in State v. Keeler, 238 Kan. 356, which determined that unlawful deprivation of property is a lesser, included offense of felony theft. In the Keeler case, the Supreme Court held that where the vehicle was not found until nine days later, there was no requirement for such an instruction. However, in State v. Zirkle, a 1986 unpublished decision, the Court of Appeals reversed a conviction of aiding and abetting a felony theft, holding that where defendant helped his co-defendants take a car for the purpose of committing a burglary, and where the co-defendants were caught in the act and used the car to escape, driving through a barbed wire fence and down a ravine before abandoning it, an instruction on the lesser offense of temporary deprivation of property was required. Most recently, the Court of Appeals reversed a conviction of felony theft where defendant was apprehended while driving without lights, some 2 1/2 hours after the owner had last seen the vehicle, and lied about the owner. The failure to instruct on the lesser offense was reversible error. State v. Wickliffe, \_\_\_ Kan. \_\_\_ (Jan. 11, 1992)

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CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,  
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on February 18, 1991

Representative Empson, co-sponsor of HB 2152, appeared in support of HB 2152 (See Attachment # 12).

A committee member questioned the removal of KSA 8-262, driving under a restrictive license. Representative Empson said she has no problem with removing that section in addition.

Revisor's staff noted HB 2175 takes KSA 8-262 out.

Cpl. Mark Fendley, Topeka Police Department, appeared to suggest changing the wording of HB 2152 to allow the investigating officer the option of taking the suspect into custody or not. (See Attachment # 13).

A committee member asked if Mr. Fendley believes that someone driving on a suspended or revoked license should go into custody. Mr. Fendley affirmed.

A committee member asked if the law is changed, could Mr. Fendley still do inventory searches; e.g. search a car after someone has been taken into custody.

A committee member asked if hit and run means leaving the scene of a non-injury accident or an injury accident. Mr. Fendley said if a person had unintentionally hit someone, he should not be taken into custody.

A committee member pointed out that if the bill is passed the opportunity still exists for the investigating officer to take someone into custody but at the officer's discretion.

Ed Klumpp, President, Kansans for Highway Safety, appeared in support of HB 2152 (See Attachment # 14). Mr. Klumpp said he would support the removal of KSA 8-262.

A committee member pointed out that intoxicated drivers may leave the scene of the accident. Mr. Klumpp said he doesn't believe the law will affect the driver's behavior and that there is still time to make a case.

Lt. Bill Jacobs, Kansas Highway Patrol, appeared to comment regarding HB 2152. Lt. Jacobs said that people stopped for driving with a suspended license should not be exempt from being taken into custody because a license is suspended for a serious reason; that KSA 8-262 should not be deleted. Also Lt. Jacobs said he agrees that there is an incentive to leave the scene of an accident under the proposed law.

There being no further conferees, the hearing on HB 2152 was closed.

The Chairman called for action on HB 2160.

Representative Garner made a motion that HB 2160 be passed. Representative Gomez seconded the motion.

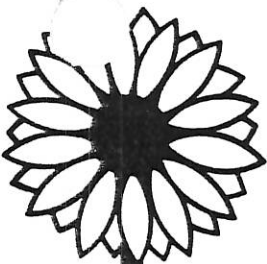
The committee discussed language contained in the Topeka Ordinance.

Representative Rock made a substitute motion to amend HB 2160 with the Topeka Ordinance language. Representative Snowbarger seconded the motion.  
Committee discussion continued.

The language of "inattentive driving" was discussed. A committee member said the charge of "inattentive driving" should follow a collision and not be based on an officer's observation; that HB 2160 does not have a definitional section; that negligent in attention and non-negligent inattention are not defined; that a provision without a triggering mechanism causes concern.

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## Kansans for Highway Safety

February 12, 1992

TO: House Judiciary Committee

REF: HB2160 regarding inattentive driving

We continue to support a state statute for inattentive driving. We provided statistics to this Committee at the hearing on this bill last year showing that a large percentage of accidents in the state indicate the contributing factor as "inattentive driving." It certainly makes sense to have a statute providing for penalties for a problem that leads to so many collisions. Many cities have adopted the Standard Traffic Ordinances for Kansas Cities as published by the League of Kansas Municipalities. Section 104 of those ordinances is titled "Inattentive Driving" and the wording is identical to the section 1 of this bill. As a result this is already law in many Kansas cities.

Last year the argument was posed that this law would increase plea bargaining. We don't feel that this is an accurate assessment. Will plea bargaining occur where a defendant will be allowed to plea to inattentive driving after originally being charged with another violation? Undoubtedly. However, if a prosecutor wants to plea bargain a case it will be done. It is just a question of what statute will be used. The only thing that could be done that would encourage the use of inattentive driving more than other statutes as a plea bargaining device would be to make it a non-moving violation. If this were done it would be used like the speeding in a 55 mph zone law is used now for plea bargaining. We have seen a few prosecutors abuse plea bargaining on original charges ranging from speeding to DUI reduced to charges of illegal parking to defective equipment. Plea bargaining is not induced by laws, it is induced by prosecutors sometimes for valid reasons but frequently as an easy out or political favor.

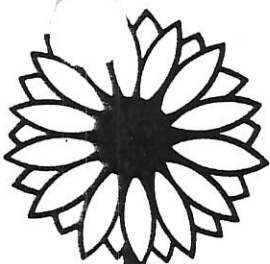
The only problem that we see with the wording in the bill is that it tends to shut the gate after the horse is out. We feel that it should not be limited to being applied only after the collision has occurred. The Topeka City Ordinance 43-271(a) is an example of an inattentive law that has been around for years and does not have this limitation. It states:

"Every driver shall remain alert and give full attention to the safe operation of his/her vehicle while it is in motion, and any driver who does not, shall be in violation of this subsection."

We encourage you to consider this alternate wording and to recommend the bill favorably with the language you determine appropriate.

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HJC  
2-12-92  
Attach #6



## Kansans for Highway Safety

February 12, 1992

TO: House Judiciary Committee

REF: House Bill 2190 relating to DUI penalties

We support allowing local jurisdictions to set minimum penalties for DUI offenses that exceed the minimum penalties provided in state statute. These provisions would allow the local governing bodies to be more responsive to the desires of the citizens of their communities in dealing with the DUI problem.

We see nothing in this bill as being controversial nor that should allow any subversion of the state statutes on DUI. We urge you to recommend this bill favorably.

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