

Approved: April 7, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 16, 1995 in Room 313-S-of the Capitol.

All members were present.

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Representative Jack Wempe
Representative Mike Farmer
Randy Stone, Wichita Police Officer
Blaise Plummer, Assistant Sedgwick County Attorney
Representative Jim Garner
Paul Shelby, Office of Judicial Administration

Others attending: See attached list

Chairman O'Neal announced that there was a change on **HB 2030** sub-committee. Representative Heinemann would replace Representative Graber.

HB 2297 - Fees paid in diversion agreements subject to county audit; traffic infraction fines can not be increased in plea bargain, were opened.

Representative Jack Wempe appeared before the committee as the sponsor of the bill. He explained that there is a practice in some areas where a moving violation offense is being plea bargained to a non-moving violation in return for increased fines. The proposed bill would allow no fine greater than the fine for the original offense. It would also mandate that any diversion fees would be credited to the county general fund. (Attachment 1)

Hearings on **HB 2297** were closed.

HB 2270 - Obstructing legal process or official duty, were opened.

Representative Mike Farmer appeared before the committee as the sponsor of the proposed bill. He commented that the bill would amend the definition of "official duty" to include the stopping of a suspect pursuant to K.S.A. 22-2402. (Attachment 2)

Randy Stone, Wichita Police Officer, appeared before the committee as a proponent to the bill. He told the committee that this would clarify the authority that police officers have to perform a Terry Stop. This bill would result in more successful prosecutions. (Attachment 3)

Blaise Plummer, Assistant Sedgwick County Attorney, appeared before the committee as a proponent to the bill. He stated that this would assist police officers in the line of duty.

Hearings on **HB 2270** were closed.

HB 2295 - Expungement of arrest records and diversion agreement records, were opened.

Representative Jim Garner appeared before the committee as the sponsor of the bill. He told the committee that this bill would allow records of arrest and diversion agreements to be subject to expungement in the same matter as records of convictions are treated. (Attachment 4)

Paul Shelby, Office of Judicial Administration, appeared before the committee with a suggested amendment on page 2, line 34 & page 7, line 6 of the bill to strike "federal bureau of investigation" and after "the Kansas bureau of investigation" add the language "who shall notify the FBI" because the FBI sends the record back without doing anything until they receive it from the KBI.

Hearings on **HB 2295** were closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on February 16, 1995.

HB 2270 - Obstructing legal process or official duty

Representative Ott made a motion to report **HB 2270** favorably for passage. Representative Rutledge seconded the motion.

Representative Heinemann made a substitute motion amend K.S.A. 22-2402 to read "Without making an arrest, a law enforcement officer may stop any person in a public place whom such officer reasonably suspects is committing, has committed or is about to commit a crime and may demand of the suspect such suspect's name, address of such suspect and an explanation of such suspect's action." Representative Nichols seconded the motion. The motion carried.

Representative Ott made a motion to report **HB 2270** favorably for passage as amended. Representative Rutledge seconded the motion. The motion carried.

HB 2295 - Expungement of arrest records and diversion agreement records

Representative Garner made a motion to report **HB 2295** favorably for passage. Representative Pauls seconded the motion.

Representative Nichols commented that expungement of a record three years after the fact doesn't quite seem long enough. Representative Garner explained that the three years applies only to severity levels 5-10 and that severity level 1-5 would have a five year period but there would be no expungement of sex crimes. These records are not erased any law enforcement agency or court could view the records at anytime.

Representative Garner made a substitute motion to refer the bill to the Judicial Council for further study, because the Criminal Law Committee wants to look at the issue of expungement. Representative Adkins seconded the motion. The motion carried.

HB 2013 - Victim of sex offense identification not a public record

Representative Pauls made a motion to report **HB 2013** favorably for passage. Representative Grant seconded the motion. The motion carried.

HB 2219 - Child support enforcement; penalties to payor for failure to pay over support withheld from obligor's paycheck.

Representative Heinemann made a motion to report **HB 2219** favorably for passage. Representative Mays seconded the motion.

Representative Heinemann made a substitute motion to change the wording on page 2, line 41 from "shall" to "may" and insert "for up to three times the amount of income owed". Representative Mays seconded the motion. The motion failed.

Representative Nichols made a motion to add the language "without just cause or excuse to pay" in line 39 after "if payor". Representative Yoh seconded the motion. The motion carried.

Representative Snowbarger made a motion to insert on page 2, line 43 "payor and in favor of the" after the language "the court shall enter a judgement against the". Representative Adkins seconded the motion. The motion carried.

Representative Pauls made a motion to add the following language in line 39 "as defined in K.S.A. 23-4,106, and amendments thereto". Representative Ott seconded the motion.

Representative Pugh made a substitute motion to strike the language in line 38 after "over" through "owed". Representative Nichols seconded the motion. The motion failed.

The Pauls motion passed.

Representative Yoh made a motion to report **HB 2219** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

The next meeting is scheduled for February 20, 1995.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: February 16, 1995

NAME	REPRESENTING
Diana Jones	District Court
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Jim Clark	KCOAA
Ken Callahan	Kammco
Bud Smoot	
Ken Baker	St. Hospital Assn

J. R. (JACK) WEMPE
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JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

**Testimony
by
Jack Wempe
Judiciary Committee - February 16, 1995**

Chairman O'Neal and Members of the Committee:

My interest in this legislation derives from inquiries I received regarding the practice of plea bargaining traffic charges to non-moving violations in return for an increased fine. I have been in no position to verify these reports and felt such issues were properly a consideration for this committee. If charges are being reduced for a double or triple fine, I would think you might want to learn more about this practice.

The second part of the bill, that of subjecting diversion funds to audit, would seem to be a standard business practice. Apparently there is no uniformity among counties in the management of these funds.

I certainly leave the matter to the judgement of the committee.

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Attachment 1

MIKE FARMER

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SCHOOL FINANCE SUBCOMMITTEE

February 16, 1995
House Judiciary Committee
Testimony on House Bill 2270

Mr. Chairman, members of the committee, it is a pleasure to be here this afternoon to testify on behalf of House Bill 2270.

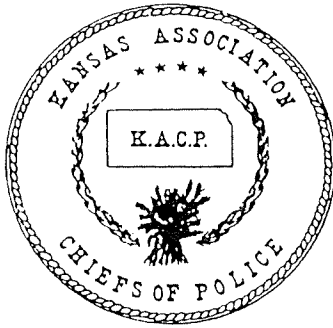
About this time last year I had the opportunity to spend a Friday evening riding with the SCAT team of the City of Wichita Police Department. To make a long story short, I was involved in a high speed car chase. Two of the four occupants in the car were apprehended. In the car was a large amount of money, a hand gun and some possible stolen property. While in pursuit of the vehicle, several items were thrown from the car, one of which was recovered containing a large amount of crack cocaine.

After this thrilling adventure, I had an opportunity to spend quite a lot of time visiting with the officers about many issues that concerned them. One of these concerns dealt with current law regarding the definition of "official duty" of a law enforcement officer. I followed up this conversation with another officer who put me in touch with Officer Randy Stone. Randy suggested the piece of legislation that you are reviewing today. Randy is here today to testify on this bill as he believes that this legislation would assist him and his fellow police officers in the performance of their duty.

I would request that staff distribute written testimony from the Kansas Association Chiefs of Police. They unanimously endorsed this bill in its current form. It is also my understanding that the District Attorney's organization in Kansas has also endorsed this bill. However I don't believe they have anyone present here today to testify.

Also with us today is former Representative Blaise Plummer who is now with the City Attorney's office in Wichita. I'm sure Blaise would be happy to respond to any questions concerning legal issues dealing with passage of this bill.

Thank you, Mr. Chairman, I would be happy to stand for questions.



February 7, 1995

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LYNN MENAGH
Region V
Norton

ROGER SCHROEDER
Region VI
Garden City

Representative Mike Farmer
State Capitol, 174-W
Topeka, KS 68612-1504

Dear Representative Farmer:

We are pleased to inform you that the Legislative Committee of the Kansas Association Chiefs of Police has carefully reviewed the attached proposed legislation and decided to officially support this Bill.

On behalf of the over two hundred Chiefs of Police from all across Kansas that we are proud to represent, please feel free to utilize our endorsement in any forum appropriate to the success of this legislation becoming law.

Please recognize that this support is extended only for the specific language of the Bill at the time of its review by our Committee. Should the Bill's language change in any way, our official endorsement would need to be renewed by further analysis.

Best wishes and sincere appreciation for your commitment to working with our association to benefit the public safety of all Kansas.

Chief Rick Stone - Chairperson
Wichita P.D.
FAX #316-268-4105

Chief Delbert Fowler
Derby P.D.

Chief Gerald Beavers
Topeka P.D.

Chief J. R. Heitschmidt
Hutchinson P.D.

Chief Mickey DeHook
Hesston P.D.

Chief Ron Jackson
Newton P.D.

cc: Committee Members
President Lee Doehring

HOUSE BILL NO. 2270

By Representatives Farmer, Aurand, Cornfield, Flower, Franklin,
Howell, Hutchins, Landwehr, Mays, O'Connor, Powell, Powers,
Rutledge, Swenson, Wagle and Wilk

AN ACT concerning crimes and punishment; relating to obstructing
legal process or official duty; amending K.S.A. 1994 Supp.
21-3808 and repealing the existing section.

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

Section 1. K.S.A. 1994 Supp. 21-3808 is hereby amended to
read as follows: 21-3808. (a) Obstructing legal process or
official duty is knowingly and intentionally obstructing,
resisting or opposing any person authorized by law to serve
process in the service or execution or in the attempt to serve or
execute any writ, warrant, process or order of a court, or in the
discharge of any official duty.

(b) (1) Obstructing legal process or official duty in the
case of a felony, or resulting from parole or any authorized
disposition for a felony, is a severity level 9, nonperson
felony.

(2) Obstructing legal process or official duty in a case of
~~misdemeanor--or--resulting--from--any--authorized--disposition--for--a~~
~~misdemeanor--or--a--civil--case~~ other than a felony case as
specified in subsection (b)(1) is a class A nonperson
misdemeanor.

(c) As used in this section, "official duty" shall include,
but not be limited to, the stopping of a suspect pursuant to
K S A 22-2402. and amendments thereto.

Sec. 2. K.S.A. 1994 Supp. 21-3808 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and
after its publication in the statute book.

THE CITY OF WICHITA



POLICE DEPARTMENT
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

February 15, 1995

Testing Re: House Bill #2270
House Judiciary Committee
Room 313 South
Thursday, February 16, 1995

Law Enforcement Officers are authorized and empowered by Terry vs. Ohio to perform a Terry Stop on an individual to investigate his actions once the officer has established "reasonable suspicion that criminal activity is afoot." Officers are also authorized to use a reasonable amount of force in order to perform that Terry Stop on the individual. Unfortunately, the officers frequently encounter a situation in which they use authorized force to perform a Terry Stop then, upon further investigation, find that no crime was occurring or about to occur. The officers must then release the individual unless they have developed charges on that person. The State Statute of Obstruct Legal Process or Official Duty, 21-3808, could be applicable in this situation, however, frequently there has been difficulty in recognizing that the performance of a Terry Stop falls within the "Official Duty" portion of the statute. The revision to the Statute submitted by Representative Farmer would specifically state that the performance of an authorized Terry Stop on an individual falls within the "Official Duty" portion of the Obstruct Statute.

An example of how this statute would be applied is the following:

Officers on patrol are observing a known crack house in their patrol area. They observe an individual go to the door, have a conversation with the person that answers the door, hand that person some money and receive something in return. The individual then leaves. The entire transaction takes less than 30 seconds. Throughout the time they have been observing this residence, they have seen similar traffic at this house. The officers suspect that due to the known history of the residence, the short

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Attachment 3

amount of time that elapsed during the transaction, and the furtive manner in which money was exchanged for an unknown item, a drug transaction has just

occurred. After establishing these elements of reasonable suspicion, they decide to perform a Terry Stop on the individual as he leaves. As they approach the subject, he runs from the officers who give chase. During the ensuing chase, the suspect is chased through traffic and yards, pepper maced, fought with, handcuffed, and taken back to the scene. Unfortunately, during the chase he was able to dispose of the drugs he purchased, and in doing so got rid of the evidence needed to charge him with drug possession. The officers may now be forced to let him go.

In the previous example, the use of force in the application of the Terry Stop and then the subsequent release of the suspect gives the appearance that the officers used excessive force in dealing with the situation. In addition to this, the officers, the suspect, and the general public were put at risk by the chase through traffic and backyards and the use of force on the suspect.

By the designation of a Terry Stop as being specifically covered within the "Official Duty" portion of the statute, the officers could arrest and book the suspect on a charge of Obstruct Official Duty. This would result in a more successful prosecution of the suspects in these type of cases, and would help to reduce police liability and charges of excessive force against officers and departments because of the appearance of improper actions while officers are performing their duties.

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AND JUSTICE COMMITTEE

TESTIMONY IN SUPPORT OF HB 2295

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony in support of HB 2295, concerning expungement. Expungement currently prohibits agencies from disclosing records of convictions of crimes.

HB 2295 simply allows records of arrest and diversion agreements to be subject to expungement in the same manner as records of convictions are treated. An individual seeking expungement of an arrest or diversion would have to petition the court for expungement and the court would still have to find that the petitioner's behavior warrants expungement and that expungement would be consistent with the public welfare.

If expungement is granted, the individual would be treated as if they had not been arrested or entered into a diversion agreement. However, the record would be available if the individual has committed a subsequent crime; if the individual applies for a law enforcement position, a license to practice law, a commercial driver's license, or a job with the lottery or racing commission.

I can not think of a rational reason for treating arrest records or records of diversions differently from records of conviction. HB 2295 will treat all records in the same manner.

Again, thank you for the opportunity to testify in support of HB 2295. I urge the committee to take favorable action on this bill. I would be pleased to stand for any question the committee may have.