

Approved: 4-7-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 9, 1995 in Room 514-S of the Capitol.

All members were present except: Senator Harris (excused)
Senator Brady (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:
Jim Clark, County and District Attorneys Association
Jennifer Lind-Spahn, Assistant District Attorney, Wichita
Mike Miller, Kansas Independent Auto Dealers Association
Pat Barnes, Legal Counsel Kansas Auto Dealers Association
Mike Stevens, Chairman of Crime Commission, Wichita
John Stubbs, Topeka Nissan Dealer

Others attending: See attached list

Bill Introduction:

The Chair introduced a bill requested by the Highway Patrol. The bill would give the Capitol Police, arrest powers in certain circumstances in Shawnee county. Motion by Feleciano, second by Vancrum to introduce this bill. Motion carried.

Senator Vancrum requested introduction of a bill concerning alcohol and drug safety action programs, relating to qualifications. Moved by Vancrum, second by Bond. Motion carried.

Confirmation Hearing:

The Chair opened the confirmation hearing on David Boal for appointment to the Indigents Defense Service Board. Mr Boal resides in Bonner Springs, and practices law in Kansas City. Mr. Boal briefly shared personal background information. Mr. Boal related his experience in defending criminal cases over the years. Through this experience, he believes that he has some understanding in the process, and what needs to be done.

Questions were posed by Committee members concerning reduction of the time for due process, the filing of appeals, and the determination of need for using indigents defense funds. Mr. Boal stated that the district court needs to look carefully to see if the defendant truly qualifies for indigent defense funds. Mr. Boal discussed public defenders office verses appointed defender. Mr. Boal continued by stating that the cost of appointed counsel could become so great that it might be necessary to go to public defenders, however, in Wyandotte county cost for appointed counselor system has decreased. Generally the attorneys picked are those whose experience matches the case.

Motion by Reynolds second by Parkinson to recommend favorably for confirmation Mr. David Boal. Motion carried.

SB 141--Concerning deprivation of property, relating to joyriding

Mike Stevens, Executive Committee of the Crime Commission, and also representing car dealers appeared in support of **SB 141**. Mr. Stevens, owner of several car dealerships, related the security measures and

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 9, 1995.

expense taken to protect cars on his property. Despite these efforts, last year Mr. Stevens lost about forty cars. Almost all cars were recovered, wrecked, in most cases there was a thief picked up who was released. Most cars were used in racing, chasing around city streets. Speaking on behalf of car dealers in Wichita, Mr. Stevens requested help in reducing this crime. Mr. Stevens stated that because stealing a car and joyriding is a misdemeanor, and the predators know there will not be a felony charge, this type of behavior is encouraged (Attachment 1)

Jim Clark, District and County Attorneys Association, explained that the bill raises the penalty for "joyriding" or temporary deprivation of property when a motor vehicle is involved. **SB 141** raises the penalty for "joyriding" or deprivation of property to a level seven non-person felony from a class A misdemeanor. Mr. Clark acknowledged that there is probably inconsistency in the penalty of this bill and the penalty under the law for permanent deprivation for a car under \$25,000 is a level nine and over \$25,000 is a level seven. The level of felony requested in this bill may need to be lowered from level seven to level nine. Mr. Clark stated that there needs to be serious consequences for stealing cars, many stolen cars are used in drive-by shootings. This is the type of crime where you catch someone in the act they are only guilty of a lesser offense. Mr. Clark stated that the effect of this bill is that disparity is eliminated between temporary deprivation of property and permanent deprivation of property. With this bill the "joyriding" statute would no longer exist. Mr. Clark expressed concerns with the language beginning at line 22: "In any prosecution pursuant to this subsection----." The concerns are that this will be construed as an attempt to shift the burden of proof, which is prohibited by the U.S. Supreme Court decision of Sandstrom v. Montana. Mr. Clark requested to strike that language beginning at line 22. (Attachment 2)

Questions from Committee members concerning disparity in sentencing were asked by Committee members. Discussion regarding the situation in certain larger counties where law enforcement and prosecutors are refusing to prosecute or arrest under the present joyriding statute followed.

Jennifer Lind-Spahn, Assistance District Attorney, Wichita, spoke on behalf of Nola Foulston, District Attorney, Eighteenth Judicial District, Wichita- in support of **SB 141**. Ms Lind-Spahn stated that the Wichita District Attorney's Office believes that this bill would have an effect in deterring car thieves. Ms Lind-Spahn also expressed concerns with the language in Section 1, (b) which eliminated the prima facie evidence requirement. Changing the time frame for license suspension from the 30 days as proposed to 90 days was also requested. A third request was to change (d) in Section 1 to reflect applicability to the misdemeanor portion of the statute only. (Attachment 3)

Questions from Committee members regarding presumptive probation if this crime became a felony instead of a misdemeanor were addressed by Ms Lind-Spahn. Ms Lind-Spahn stated that the effect on juvenile offenders, under the change in the law last year, was that once a juvenile is sixteen years and they have a felony conviction for the first car, adjudication, second car would be a felony, and then they would be prosecuted as an adult even though they would not be eligible for prison. Ms Lind-Spahn continued by stating enactment of this bill would provide more of a punishment than without the bill.

Lisa Moots, Kansas Sentencing Commission was asked to clarify what the impact of this bill would be, and whether or not this bill would have any impact on the prison population? Ms Moots addressed these questions by referring to the presumptive probation- -rule in the guidelines that if they commit a felony while on presumptive probation, then they are not on presumptive probation any more. Ms Moots stated that the court will have a way to send them to prison. Enacting this bill will trigger a special rule where the offender would go into the adult system and possibly off to prison. Ms Moots continued by stating that the special rule makes it possible to punish people much more severely, than to place them on repeat plans of probation. Answering the question regarding projected increase in prison population due to **SB 141**, Ms Moots stated that the ability to project what this would do to prison population is limited due to the mix of several factors.

Discussion followed regarding providing community resources, and the need of judges to have some ability to hold offenders or monitor them. Ms Moots suggested that conviction under this bill might reduce the number of crimes for other offenses.

Mike Miller, representing Kansas Independent Automobile Dealers Association, spoke in support of **SB 141**. Mr. Miller cited the alarming increase in the number of vehicles stolen in all areas of Topeka as well as in other communities, despite increased security measures. Mr. Miller explained that if these vehicles are recovered, most have been damaged. Mr. Miller stated that **SB 141** is a step in the right direction, with the suggestion that the bill be amended to raise the fine from \$100 to \$500, and add a provision for restitution in an amount equal to the damages. Mr. Miller concluded that this bill with the suggested amendments would have an impact on decreasing the number of vehicles taken. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 9, 1995.

John Stubbs, Nissan Car Dealer, Topeka, Kansas spoke in support of **SB 141**. Mr. Stubbs stated that he had many vehicles stolen. Mr. Stubbs related his frustration with the current law's ineffectiveness to prosecute and to provide victims with restitution. Mr. Stubbs urged the Committee to make the bill tougher. According to Mr. Stubbs, "the guy had no intention of returning the car--word is on the street--this problem is going to get worse and worse."

Mr. Barnes, Kansas Automobile Dealers Association testified in support of **SB 141**. Mr. Barnes, related that joyriding can occur in a number of circumstances. The cost to the car dealers translates into lower taxes collected by the state, the cost of prosecution, the cost of addition law enforcement officers. Losses due to damages occurring in stolen vehicles accounts for significant cost to card dealers, and ultimately, the state of Kansas. We ask that the penalty be not less than \$500, and we would also like to suggest the addition of 100 hours of community service as a penalty. Mr. Barnes concluded by requesting the Committee's favorable approval of this bill, stating that this bill is one of the ways the legislature can help reduce this spreading crime. (Attachment 5).

Meeting adjourned 11:00 a.m.

The next meeting is scheduled for February 13, 1995.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-9-95

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Dena Braun	KNSA
Amy L. Bruton	KNSA
Dawn A. Brinkler	"
Kristine Busch	KSNA
Erika Busiel	KSNA
Deb Burris	BCCC (KSNA)
MIKE STEVEN	STEVEN MOTORS.
PAT BARNES	K. AUTOMOBILE DEALERS ASSOC.
David Boal	SBIDS
Lisa Maats	KSC
Shannon Peterson	KBA
John W. Smith	KDOR DMV
JOHN SWAGS	KADA.
Pam Somerville	KS Auto Dealers
Jennifer Lund-Spahn	DA's office - Wichita
Karen Langston	DA's office - Wichita
Lynette Brown	BCCC (KSNA)

Stevens

Wichita Crime Commission, Inc.



316-267-1235
Fax: 316-263-0011

Bobby F. Stout
Executive Director

February 8, 1995

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TO WHOM IT MAY CONCERN:

This is to advise you that the Wichita Crime Commission, Inc. strongly supports the proposed Senate Bill #141 and House Bill #2223, the measure to define "joyriding" as a felony, not a misdemeanor.

We appreciate your concern and consideration of this matter.

Sincerely,

Benjamin L. Burgess, Jr.

Benjamin L. Burgess, Jr.
President

BLB:jf

*Senate Judiciary Com
2-9-95*

Attachment 1

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

Testimony in Support of

SENATE BILL NO. 141

The Kansas County and District Attorneys Association appears in support of SB 141, which raises the penalty for unlawful deprivation of property of a motor vehicle from a class A misdemeanor to a level 7 nonperson felony.

The bill recognizes the reality of the present-day, where the carefree fad of teenage "joyriding" has been replaced with the necessity of obtaining a vehicle for a drive-by shooting.

The bill also recognizes the reality of the fact that criminal deprivation of property is the only instance where getting caught in the act, can lead to a defense to a lesser charge.

We have some concern with the language beginning at line 22: "In any prosecution pursuant to this subsection....". The concerns are that this will be construed as an attempt to shift the burden of proof, which is prohibited by the U.S. Supreme Court decision of Sandstrom v. Montana.

Strike this language
2-9-95

Senate Judiciary Comm.
2-9-95
Attachment 2

Jennifer and John



OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

NOLA FOULSTON
District Attorney

SEDGWICK COUNTY COURTHOUSE
535 N. MAIN
WICHITA, KANSAS 67203

(316) 383-7281
FAX: (316) 383-7266

TESTIMONY IN SUPPORT OF
SENATE BILL No. 141
and
HOUSE BILL No. 2223
February 9, 1995

An act concerning crimes and punishment; relating to criminal deprivation of property; amending K.S. A. 1994 Supp. 21-3705 and repealing the existing section.

Mr. Chairman, Ladies and Gentlemen of the Committee:

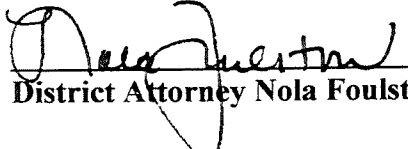
Thank you for the opportunity to testify before you in support of a bill amending the existing Criminal Deprivation statute to make it felonious conduct when such property involves a motor vehicle. The necessity of increasing the penalties is not only demonstrated by the increased incidences of such activity in the largest jurisdiction in this state, Sedgwick County, but in other locales, both rural and urban, in the State of Kansas. This bill is supported by state-wide law enforcement and prosecutors, as well as by citizens, your constituents, and by businesses, all who have suffered economic loss as a result of this oft-repeated criminal activity. Our review of the bill recommends the following changes:

Elimination of the prima facie requirement in paragraph (b). It is our opinion that as drafted, this language would do nothing to enhance prosecution and could present additional appellate issues;

Change the time frame for license suspension from the 30 days as proposed to 90 days;

Change (d) to reflect applicability to the misdemeanor portion of the statute only. The sentencing guidelines and sentencing structure provide that as a condition of probation, the court can impose a sentence of 30 days in the county jail.

The changes to this bill are reflected on the attached document.


District Attorney Nola Foulston

*Senate Judiciary Comm.
2-9-95
Attachment 3*

SENATE BILL NO. 141

By Committee on Judiciary

AN ACT concerning crimes and punishment; relating to criminal deprivation of property; amending K.S.A. 1994 Supp. 21-3705 and repealing the existing section.

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

Section 1. K.S.A. 1994 Supp. 21-3705 is hereby amended to read as follows: 21-3705:

(a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.

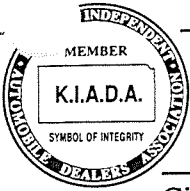
(b) Criminal deprivation of property when such property is a motor vehicle, as defined in K.S.A. 8-1437 and amendments thereto, is a severity level 7, nonperson felony. In any prosecution pursuant to this subsection, proof that such person was operating such motor vehicle shall be prima facie evidence that such person knew such motor vehicle was being operated without the owner's consent. In addition to any other penalty prescribed by law, a person shall be fined not less than \$100 and have such person's driving privileges suspended for 90 days.

(c) Criminal deprivation of property when such property is property other than a motor vehicle, as defined in K.S.A. 8-1437 and amendments thereto, is a class A nonperson misdemeanor.

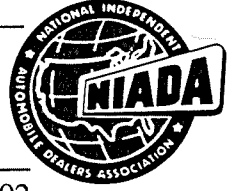
(d) Upon a second or subsequent conviction of this subsection (a), a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this section relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

Sec. 2. K.S.A. 1994 Supp. 321-3705 is hereby repealed.

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



KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION



Citizens Bank & Trust Building • 6th & Humboldt • Manhattan, Kansas 66502
Phone: 913-776-0044 FAX: 913-776-7085

February 9, 1995

TO: SENATE JUDICIARY COMMITTEE

SUBJECT: SB 141--Concerning crimes and punishment, re-
lating to criminal deprivation of property

FROM: KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Mike Miller representing the Kansas Independent Auto-
mobile Dealers Association, an organization of over 230
used vehicle dealers.

We are appearing in favor of SB 141 which would add penal-
ties for criminal deprivation of a motor vehicle. This bill
would establish a severity level 7, nonperson felony, fine
\$100 and suspend driving privileges for 30 days.

I am a vehicle dealer in Topeka, and I can tell you vehicles
are being stolen at an alarming rate. No one in the state is
excluded from having their vehicle stolen. A February 7, 1995
article in the Capital Journal indicates that used car dealer-
ships, new car dealerships, credit unions, individuals and
other businesses currently have vehicles that are on a "hot
list" for having a vehicle stolen since January 1. A total
of 41 cars were stolen between January 1 and January 19. Four-
teen vehicle thefts are still being investigated.

The article states that there was no pattern to the thefts,
and they were occurring in all parts of Topeka. Police de-
tectives say the thieves tend to be teenagers and young adults
looking for transportation, and then they abandon the vehicle
with body damage or minus stereo equipment. This is what is
commonly known as a joy ride.

During the years I have been selling used vehicles, I have had
cars taken on test drives and not returned. I have had ve-
hicles also taken after hours. Most of these vehicles were
abandoned or found in Topeka, one was recovered in Pennsylvania,
and one has yet to be recovered.

I have taken steps to help identify who test drives my vehicles
by validating a driver's license and an insurance card. This
helps eliminate the test driving of vehicles which could end
in nothing more than a joy ride. I have also put the security
device called "The Club" on the vehicles most prone to be taken
after business hours. But this is not enough.

Individually we struggle to be heard—Collectively we cannot be ignored.

*Senate Judiciary Comm
2-9-95
Attachment 4*

February 9, 1995
Senate Judiciary Committee--SB 141
Page 2

SB 141 is a step in the right direction, but we would request that this be amended by raising the fine from \$100 to \$500 and adding restitution in an amount equal to the damages sustained on the vehicle.

This would give vehicle dealers as well as individuals a needed tool in combating this growing problem. This would take the joy out of joy riding. We urge you to approve SB 141.

Thank you for your time and consideration.



Leading to return of
STOLEN JEEP RENEGADE CJ5

Topeka (913) 267-7540

Description: Brown in color. Primer on fender. No Top - No Doors - No Tag.
Fancy wheels, white letter tires. High Back Bucket Seats.
V8 Motor. 3 speed transmission

Case #25537-94 Topeka Police
VIN # J7F83AH070536

\$ REWARD \$

Innovative Auto Marketing • 4200 S. Topeka

(Recovered 1-31-95)

Police say car thefts on rise, release 'hot list' of vehicles

2-7-95

By TIM HRENCHIR
The Capital-Journal

Police are looking for 14 vehicles stolen this year in Topeka, ranging from a 1967 AMC car to a 1995 Chevy truck.

Those vehicles were identified Monday in a "hot list" released by police. Detective Steve Damron made the list public at a time when he's seeing many more auto thefts than normal. The most recent statistics from police show 41 cars were stolen between Jan. 1 and Jan. 19 in Topeka.

Police see no pattern to the thefts, which are occurring in all parts of the city. They don't think there are any "chop shops" in this area where stolen vehicles would be dismantled for parts.

Detectives say the thieves tend to be teenagers and young adults who use the vehicles for transportation before abandoning them — often with body damage or minus stereo equipment.

Monday's list named 14 missing vehicles:

■ A white 1983 Chevrolet four-door car stolen Friday from the 1600 block of N. Kansas Avenue. Its license plate number is JNT488.

■ Orange and white 1994 Honda CR250 motorcycle stolen Friday from 2808 S.W. Arrowhead.

■ Blue 1995 Chevrolet pickup stolen Thursday from 3731 S.W. Topeka Blvd.

■ Gray 1981 Chevrolet Monte Carlo two-door stolen Jan. 31 from 401 S.E. 34th. License plate is JQP107.

■ Blue 1982 Oldsmobile 98 four-door stolen Jan. 28 from 540 S.E. 29th.

■ White 1985 Chevrolet Monte Carlo stolen Jan. 23 from 1010 S.W. Polk. License plate is JQ0953.

■ White 1975 Dodge Caravan stolen Jan. 19 from 912 S.E. 6th.

■ Red 1989 Ford Aerostar van stolen Jan. 19 from 832 S.E. Lawrence.

■ White and red 1968 Chevrolet pickup truck stolen Jan. 18 from 1106 N.W. Topeka Blvd.

■ Blue 1992 Toyota Camry four-door stolen Jan. 18 from 1600 S.W. Fillmore. License plate is 63934.

■ Black 1987 Honda moped stolen Jan. 18 from 4208 S.W. 29th. License plate is GTV20.

■ Brown 1982 Oldsmobile Custom Cruiser station wagon, stolen Jan. 11 from 3100 S.E. 6th. License plate is HGZ193.

■ Blue 1967 AMC Ambassador two-door stolen Jan. 9 from 520 S.E. Leland.

■ White 1988 Honda Civic four-door, stolen Jan. 3 from 2037 S.W. Gage Blvd.

REWARD

for return of truck



STOLEN FROM

Innovative Auto Marketing
4200 S. Topeka

Topeka, Ks 913 267-7540

1982 CHEV. 3/4T 4X4

4spd. Lockouts Gooseneck set up

VIN# 1GCEK14H8CJ138910

Color: Blue / Gray

Date Stolen: 1-8-94

Case # Topeka Police: 589-94

4-4

2/9/95
Barnes

TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY

THURSDAY, FEBRUARY 9, 1995 by
the KANSAS AUTOMOBILE DEALERS ASSOCIATION

RE: SENATE BILL 141

Mr. Chairman or members of the Committee, I am Pat Barnes, legal counsel for the Kansas Automobile Dealers Association representing the franchised new car and truck dealers of Kansas. As always, we appreciate the opportunity to appear before you to express our views and support for Senate Bill 141 which deals with the issue of "joy-riding."

Joy-Riding can occur in a number of circumstances, but when applied to our members it typically involves deceptively obtaining a new or used vehicle from a dealer's lot through either falsely representing one's intent to test drive the vehicle or surreptitiously entering upon the lot after hours or at other times and taking a vehicle. The present law defines this crime to occur when the intent is to deprive the owner of only the temporary use of the vehicle, without consent. It can also include groups of individuals who for fun or whatever other reason obtain a vehicle and make use of it without the least regard or concern for the owners or others they may injure in the negligent operation of such a vehicle.

Regardless of the reason, it results in thousands of dollars in damage and lost value to Kansas businesses each year. For those of you who may not see how that translates into both losses for our government and economy, there are two points I would like to make. First, once the car is driven in the fashion we are complaining about, it is not the same article for sale it once was. This means we get a lower price, which translates to lower sales

Senate Judiciary
2-9-95
Attachment 5

tax and lower profits and, therefore, lower income taxes to the State. The cost also translates to a law enforcement expense since the resources available for crime enforcement, including prosecution, are finite. Even this leaves aside loss or damage from accidents occurring in these vehicles.

We think that the present deterrent and punishment to this type of activity is insufficient. This bill would cure that insufficiency by increasing the severity of this offense to a "Level 7, Non-Person Felony" and, additionally, a fine of not less than \$100 and suspension of one's driving privileges for 30 days.

This bill would also streamline the ability to prosecute the case due to the presumption it creates.

If we have any criticism of the bill, it would be that we would like to see the penalty not less than \$500, and we would also suggest the addition of 100 hours in community service as a penalty.

This measure is one of the better means available to you today as a legislature to improve upon the methods we have to combat crime in this state. Please give it your favorable approval.