

Approved: 4-26-96
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 23, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Martin (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: Carla Stovall, Attorney General
Barbara Tombs, Kansas Sentencing Commission

Others attending: See attached list

The Chair called the meeting to order at 10:05 a.m.

SB 177--Enhanced penalties for repeated acts of battery

Senator Ranson spoke in support of **SB 177**. The Senator stated that this bill provides for escalated penalties. Senator Ranson listed those who spoke in support of **SB 177** at the previous hearing of **SB 177** on February 16, 1995. The conferee explained the provisions of the bill and referred to the word "uncontrolled" on line 23 and suggested that "uncontrolled" be removed.

Attorney General Carla Stovall testified in support of **SB 177**. The conferee stated that this bill sends a message that Kansas treats domestic violence very seriously. The conferee stated that she endorses the National Council of Juvenile and Court Judges change in language defining conviction making sure to include diversion. The conferee asked for some language changes that defines convictions and includes diversions as well as convictions in other states. (Attachment 1)

The Chair noted that written testimony was provided by Mr. Mike Taylor, Government Relations Director City of Wichita, in support of **SB 177**. (Attachment 2)

During discussion with Committee members the Attorney General stated that it would be okay to delete New Section 1 of **SB 177**. The conferee and Committee members discussed the severity level on the third conviction and the impact on prison bedspace.

Barbara Tombs of the Sentencing Commission offered to provide the Committee members with information concerning the number of prisoners committed on battery charges. Problems with obtaining information on those convicted in municipal court of a misdemeanor and those given presumptive probation was discussed.

A Committee member discussed concerns regarding the cost and the impact this bill will have on prison population. A Committee member suggested reducing the severity level and giving judges more discretion in sentencing.

In response to the Committee member's statement, the Attorney General stated that currently the capability does not exist to figure the impact on prison population, because it can be assumed that not everyone convicted will be sent to prison.

A Committee member related that Judge Harold Flaigle from Sedgwick County wanted the Committee to be aware of a case in Sedgwick County where domestic violence escalated into murder in a public place. The Committee members discussed whether the impact on prison population should govern such cases.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 23, 1996.

Committee members discussed making battery in the first degree and second degree two separate crimes. A staff member stated that currently there are a number of statutes concerning battery and suggested leaving the actual elements as stated in the bill but changing the penalty part.

The Committee members discussed limiting the bill to domestic violence and discussed using the language, "protection from abuse." The Committee members discussed whether escalation of penalties should be tied to the same victim, and the Attorney General stated that repetitive acts of domestic violence may not always involve the same victim.

SB 609--Expand the definition of rape to include when the offender is in a position of authority over the victim.

The Chair referred to Subcommittee Chairman, Senator Parkinson to discuss a balloon to **SB 609**. Senator Parkinson stated that the balloon expands definition of rape to apparent authority. Senator Parkinson stated that the subcommittee developed language that ties this crime to very specific situation and gets away from apparent authority. (Attachment 3)

A motion was made by Senator Oleen, seconded by Senator Bond to amend **SB 609** per subcommittee report. The motion carried.

A motion was made by Senator Petty, seconded by Senator Reynolds to recommend **SB 609** favorably as amended. The motion carried.

SB 677--Persons with life threatening communicable disease, criminal conduct.

The Chair discussed the problem with **SB 677** in subparagraph 1 with the intent language. The proposed amendment would strike lines 18 and 19 in subparagraph 1 and insert, "without first disclosing the existence of the infection;" (Attachment 4)

A motion was made by Senator Parkinson, seconded by Senator Petty to amend. The motion carried.

A motion was made by Senator Reynolds, seconded by Senator Parkinson to recommend **SB 677** favorably as amended. The motion carried.

SB 241--Life imprisonment for persistent sex offender.

The Attorney General testified in support of **SB 241** and stated that an amendment should be made in New Section 1, line 15, changing the imprisonment for the persistent sex offender to 40 years instead of life. The conferee requested additional amendments: that would impose a \$100 fine on the offender; that would exclude the spouse exemption on sexual battery; and an amendment that would change expungement laws concerning juvenile offenders. (Attachment 5)

The conferee and Committee discussed issues of constitutionality and the impact this bill will have on prison population and society. The Attorney General provided information concerning the profile of those convicted as sex offenders.

The Chair adjourned the meeting at 11:10 a.m.

The next meeting is scheduled for February 26, 1996.

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STATEMENT OF
ATTORNEY GENERAL CARLA J. STOVALL
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 177
FEBRUARY 23, 1996

Dear Chairperson Emert and Members of the Committee:

I want to thank you for the opportunity to testify on behalf of SB 177. I appreciate the efforts of Senator Pat Ranson and Sedgwick County District Nola Foulston on the introduction and drafting of this bill. As you know I strongly support this bill as well as my committee on Violence Against Women and Children. This bill is extremely important for the protection of our Kansas families.

Domestic violence involves people of all ages, ethnic and socio-economic backgrounds, lifestyles and marital status. Domestic violence occurs approximately every 25 minutes in Kansas. Kansas law enforcement officers respond to more than 20,000 incidents of crime related to domestic violence each year. More than 65 percent of the incidents are determined to be batteries.

In 1994 Kansas domestic violence hotlines received more than 44,903 crisis calls. More than 6,444 children witnessed the abuse of a parent and 762 children were themselves physically injured during the course of their parent being victimized. More than 2,640 women, 3,299 children, and 10 men received shelter services from domestic violence programs in 1994. In 1992, 4,582, protection from abuse orders were filed in our district courts, in 1993, 5,437 and in 1994, 6,713 were filed. I believe that violence in the home is the most frequent type of violent crime that occurs in Kansas.

This bill will allow prosecutors and the courts to enhance penalties for the repeat offender. The National Council of Juvenile and Family Court Judges has recommended enhanced penalties in its Model Code on Family Violence. The Council's commentary for enhanced penalties states, "Enhanced penalties may deter some perpetrators and serve to persuade those subjected to elevated sanctions that refraining from violence is preferable to further incarceration."

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I think it is extremely important to include language that defines convictions. I am suggesting amendments to the bill which would define the first, second, third and subsequent convictions. A conviction includes a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of battery. A conviction includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution. Also, I am requesting that these conviction histories should be extended to a ten year period instead of five years.

I appreciate your support of these amendments and Senate Bill 177. Thank you.

SENATE BILL No. 177

By Senators Ranson, Bogina, Bond, Downey, Hardenburger, Harrington, Langworthy, Lawrence, Morris, Papay, Petty, Reynolds, Salisbury and Vancrum

2-1

11 AN ACT concerning crimes and punishment; relating to battery; penal-
12 ties, repeated acts; amending K.S.A. 1994 Supp. 21-3412 and repealing
13 the existing section.
14

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

16 New Section 1. The legislature of the state of Kansas finds that re-
17 peated acts of violence have escalated at an alarming rate. Violence in the
18 home and in the streets has risen dramatically thus placing all citizens at
19 risk for victimization. The legislature further finds that the likelihood of
20 engaging in repeated acts of violence is high if the offender is not legally
21 discouraged from continuation of such conduct. In an effort to protect
22 the citizens of the state of Kansas from violent crime, the legislature finds
23 that the punishment for each successive ~~uncontrolled~~ act of violence
24 should increase proportionately so that a clear message is sent to the
25 population of the state of Kansas that violence in any form shall not be
26 tolerated.

27 Sec. 2. K.S.A. 1994 Supp. 21-3412 is hereby amended to read as
28 follows: 21-3412. Battery is:

29 (a) Intentionally or recklessly causing bodily harm to another person;
30 or

31 (b) intentionally causing physical contact with another person when
32 done in a rude, insulting or angry manner.

33 ~~Battery is a class B person misdemeanor.~~

34 (c) (1) ~~Upon a first conviction of a violation of this section, a person~~
35 ~~shall be guilty of a class B person misdemeanor.~~

36 (2) ~~If, within five years immediately preceding commission of the~~
37 ~~crime, a person is convicted of a violation of this section a second time,~~
38 ~~having at least one time before within such period been convicted for such~~
39 ~~crime or comparable crime under the laws of any municipality, state,~~
40 ~~federal government or foreign government, such person shall be guilty of~~
41 ~~class A person misdemeanor.~~

42 (3) ~~If, within five years immediately preceding commission of the~~
43 ~~crime, a person is convicted of a violation of this section a third or sub-~~

(2) On a second conviction of a violation of this section, a person shall be guilty of a class A person misdemeanor.

(3) On a third or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 5, person felony.

(d) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) only convictions occurring in the immediate preceding ten years, including prior to the effective date of this act, shall be taken into account, but the court may

1-3

1 ~~sequent time, such person shall be guilty of a severity level 5, person~~
2 ~~felony.~~

3 Sec. 3. K.S.A. 1994 Supp. 21-3412 is hereby repealed.

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

consider other prior convictions in
determining the sentence to be imposed
within the limits provided for a first,
section, third or subsequent offender, which-
ever is applicable.

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**Testimony for the 1996 Kansas Legislature
Senate Judiciary Committee**

Regarding Senate Bill 177

2/23/96

Mike Taylor
Government Relations Director
City of Wichita

The City of Wichita handles as many as 500 Domestic Violence arrests a month. Police estimate 25-percent of those arrests involve repeat offenders. The City of Wichita's local ordinance requires a mandatory five day jail sentence for people convicted for the second time on a domestic violence battery charge. The penalty does not increase for additional violations.

Senate Bill 177 increases the penalty for repeated acts of battery. The City of Wichita supports making the third conviction of a domestic violence battery charge a felony offense. The increased penalty should apply if the offender is convicted of a third battery charge regardless who the victim is.

A widespread coalition of people and groups support stricter penalties for repeat offenders of domestic violence battery. The City of Wichita is proud to join the list of supporters for Senate Bill 177.

Thank you for your consideration.

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SENATE BILL No. 609

Proposed Amendment to Senate Bill No. 609

By Senators Jordan, Bond, Burke, Clark, Corbin, Emert, Feleciano, Hardenburger, Harrington, Harris, Kerr, Langworthy, Lawrence, Moran, Morris, Oleen, Papay, Parkinson, Praeger, Ramirez, Ranson, Reynolds, Salisbury, Sallee, Steffes, Tillotson and Vidricksen

2-5

12 AN ACT concerning crimes and punishment; relating to rape; amending
13 K.S.A. 21-3502 and repealing the existing section.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 21-3502 is hereby amended to read as follows: 21-
17 3502. (a) Rape is: (1) Sexual intercourse with a person who does not
18 consent to the sexual intercourse, under any of the following circum-
19 stances:

- 20 (A) When the victim is overcome by force or fear;
- 21 (B) when the victim is unconscious or physically powerless; or
- 22 (C) when the victim is incapable of giving consent because of mental
23 deficiency or disease, or when the victim is incapable of giving consent
24 because of the effect of any alcoholic liquor, narcotic, drug or other sub-
25 stance, which condition was known by the offender or was reasonably
26 apparent to the offender; or

- 27 (2) sexual intercourse with a child who is under 14 years of age; or
- 28 (3) sexual intercourse with a victim ~~and the offender is in a position~~
29 ~~of authority, either real or fictitious, over the victim and used such offen-~~
30 ~~der's apparent authority to convince the victim to submit.~~

31 (b) It shall be a defense to a prosecution of rape under subsection
32 (a)(2) that the child was married to the accused at the time of the offense.

33 ~~(c) As used in this section, "position of authority" means that position~~
34 ~~occupied by any person who, by reason of such person's position, is able~~
35 ~~to exercise significant influence over a person.~~

36 ~~(e)(d)~~ Rape is a severity level 2, person felony.

37 Sec. 2. K.S.A. 21-3502 is hereby repealed.

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

where the victim's consent was obtained through a representation that the sexual intercourse was a necessary part of a medical procedure when the offender knew that such sexual intercourse was not part of a good faith medical procedure

(c)

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#3

SENATE BILL No. 677

By Committee on Judiciary

2-13

9 AN ACT concerning crimes and punishment; relating to persons with life
10 threatening communicable disease; amending K.S.A. 21-3435 and re-
11 pealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-3435 is hereby amended to read as follows: 21-
15 3435. (a) It is unlawful for an individual who knows oneself to be infected
16 with a life threatening communicable disease knowingly:

17 (1) To engage in sexual intercourse or sodomy with another individual
18 ~~with the intent to expose that individual to that life threatening commu-~~
19 ~~nicable disease;~~

without first disclosing the existence of the infection;

20 (2) to sell or donate one's own blood, blood products, semen, tissue,
21 organs or other body fluids ~~with the intent to expose the recipient to a~~
22 ~~life threatening communicable disease;~~

23 (3) to share with another individual a hypodermic needle, syringe, or
24 both, for the introduction of drugs or any other substance into, or for the
25 withdrawal of blood or body fluids from, the other individual's body ~~with~~
26 ~~the intent to expose another person to a life threatening communicable~~
27 ~~disease.~~

28 (b) As used in this section, the term "sexual intercourse" shall not
29 include penetration by any object other than the male sex organ; the term
30 "sodomy" shall not include the penetration of the anal opening by any
31 object other than the male sex organ.

32 (c) Violation of this section is a ~~class A severity level 8, person mis-~~
33 ~~demeanor felony.~~

34 Sec. 2. K.S.A. 21-3435 is hereby repealed.

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

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ATTACH 4

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STATEMENT OF
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BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 241
FEBRUARY 23, 1996

Dear Chairperson Emert and Members of the Committee:

I want to thank you for the opportunity to testify on behalf of SB 241. This bill was introduced last session and deals with harsh penalties for the persistent sex offender.

After studying the sentencing issue of life imprisonment for the persistent sex offender this past year, I have determined that an amendment should be made in New Section 1, line 15, that the imprisonment for the persistent sex offender should be 40 years instead of life. Violent sex offenders are rarely if ever treatable for the crimes they commit. What this bill does is allow the courts to remove the persistent sex offender from communities so that no further sex crimes will be committed by this offender.

Sexually violent crimes are defined in K.S.A. 22-3717. They are rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, indecent solicitation with a child, aggravated indecent solicitation with a child, sexual exploitation of a child, and aggravated sexual battery.

I would also like to propose several amendments to this bill that deal with sex crimes. Convicted sex offenders should be fined an additional \$100 at the time of sentencing. This money would be used to help fund sexual assault centers who work with victims of sexually violent crimes. Currently there is no state money dedicated to funding sexual assault centers and this would be an avenue to make the convicted offender pay for programs that assist the victim.

Several years ago the Kansas legislature amended all sex crimes that allowed a spouse to be exempt from committing sex crimes against his or her spouse except of sex battery. Sex battery still has language in it that allows a spouse to be

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excluded from this charge. I would ask for an amendment to change this exemption.

My final amendment would include a change in the expungement statute for juveniles. At this time the law allows a juvenile to expunge the crime of rape when the victim is less than 14 years of age, however an adult cannot expunge this crime. I believe that persons who commit sex crimes should not be able to have their record expunged. Currently, records on sex offenses committed by adults where children are victims, cannot be expunged. Juveniles who commit certain sex offenses against children cannot have their records expunged. A juvenile who is 17 years of age and fondles a 15 year old could be charged with indecent liberties and that crime cannot be expunged from the juvenile's record. However, a 17 year old who rapes a four year old can have that crime expunged from their record.

I want to ensure that no offender of any sex crime is able to expunge his or her record of this heinous crime. I believe the expungement statutes for adults and juveniles should be the same in regard to sex offenses.

Thank you for your consideration for these changes. I appreciate your support for this bill and these amendments.