

Approved: 3/13/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by acting Chairperson Carlos Mayans at 3:30 p.m. on March 6, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Adkins (excused)
Representative Carmody (excused)
Representative Garner (excused)
Representative Kline (excused)
Representative Mays (excused)
Representative Powell (excused)
Representative Presta (excused)
Representative Wagle (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Representative Haley
Representative Ballou
Wendy McFarland, ACLU
Dale Finger, KBI
Helen Stephes, Kansas Sheriffs Association and the Kansas Peace Officers Association

Others attending: See attached list

Representative Carlos Mayans called the meeting to order as acting Chair at 3:50 p.m.

A motion to approve the minutes of 1/29, 2/3, 2/4, 2/5, 2/6 and 2/24 was made and seconded. The motion carries.

HB 2409: Drug grid; sentencing court not distinguish between crack cocaine and powder cocaine when sentencing defendant.

Representative Haley testified in support of HB 2409. Representative Haley stated that there is a disparity between the sentencing guidelines for convictions in distribution of crack and the distribution of powder cocaine. The conferee stated that there seems to be a departure upward from the grid for those convicted of distributing crack. The conferee stated that HB 2409 amends the Kansas Sentencing Guidelines Act by providing that sentencing courts cannot distinguish between crack cocaine and powder cocaine in determining the length of a sentence for a drug offense. Representative Haley stated that this bill will provide for more equitable sentencing of such offenders. The conferee stated that research shows that the disparity truly exists. Those sentenced for crack get longer sentences than those sentenced for powder cocaine. (Attachment 1)

The conferee stated in response to Committee members inquiries that in one Kansas case the judge stated that crack was more addictive and easier to obtain. The conferee stated that powder cocaine has a more elite clientele. The conferee continued by stating that crack cocaine seems to be an inner-city (urban) drug. The conferee stated that there are statistical demographic and social economic differences in the use/distribution of each form of cocaine. The conferee stated that he did not want to have sentencing distinctions based on social economic factors.

Wendy McFarland offered that the American Civil Liberties Union had testified on this issue before Congress and she could provide three studies. Ms McFarland stated that one study was conducted by Department of Justice, and the other two studies were independent studies. Ms McFarland stated that these studies will

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 6, 1997.

provide the statistics requested by several Committee members. Ms McFarland stated that she will bring the studies tomorrow.

The acting Chair seeing no other conferees closed the hearing on HB 2409.

HB 2364: Hard 15 sentences for persons selling or manufacturing certain controlled substances.

Representative John Ballou spoke in support of HB 2364. The conferee stated that this bill will increase the time of incarceration of convicted drug dealers from 3-5 years to 15 years. The conferee stated that this bill will go after the major drug dealers. The conferee stated that this bill was originally drafted with a hard 40. Representative Ballou related that this bill will still allow the KBI to turn some cases over to the federal government for prosecution. (Attachment 2)

The Committee members and conferee discussed issues concerning guidelines pertaining to what amount of drugs constitute a major drug dealer.

Dale Finger, KBI, testified in support of HB 2364. The conferee stated that this bill should provide a deterrent for large drug dealers. The conferee requested a language change on page 1, line 40, (5) referring to LSD to replace ".5 gram" with "100 dosage units." (Attachment 3)

The conferee displayed a brick of marijuana valued at appropriately \$7,000 to demonstrate the amount of that drug necessary for the provisions of this bill to apply.

The conferee answered several questions from Committee members.

Helen Stephens, Kansas Sheriffs Association and Kansas Peace Officers Association testified in support of HB 2364. The conferee expressed that law enforcement officers are frustrated with the current law, because it offers too little punishment for major dealers. (Attachment 4)

The acting Chair closed the hearing on HB 2364 and adjourned the meeting at 4:50 p.m. The next meeting is scheduled for March 10, 1997.

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THE CAPITOL

HOUSE OF
REPRESENTATIVES

DAVID B. HALEY
DISTRICT 34

HB 2409:

Greetings

Introduction to HB 2409

This Committee is empowered to review laws and policy in order that justice may prevail. Justice, in and of itself, presupposes balance. Today in Kansas, as in the rest of the U.S., the distributors of cocaine base (hence referred to as "powder") and cocaine hydrochloride (hence referred to as "crack") receive different sentences for the same volume. HB 2409 is an effort to mitigate this disparity.

Statistical Support/Analysis

- U.S.
- Kansas

Conclusion

Because our current statutes allow too broad discretion in sentencing here in Kansas, we must be equitable in the sentencing of dealers of powder and its' diluted derivative, crack.

Q & A?:

Notes:

Background material contributing to this bill/testimony gratefully acknowledged of: Kansas Legislative Research; Kansas Revisor's Office; National Organization for Women; Kansas Sentencing Commission; and the A.C.L.U.

COMMITTEE ASSIGNMENTS
GOVERNMENTAL ORGANIZATIONS & ELECTIONS
HEALTH & HUMAN SERVICES
JUDICIARY

House Judiciary
Attachment 1
3/6/97

#2
JOHN BALLOU

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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENT

VICE-CHAIR: AGRICULTURE
MEMBER: EDUCATION
FEDERAL AND STATE AFFAIRS
ADMINISTRATIVE RULES
AND REGULATIONS

Chairman Carmody and members of the House Judiciary Committee, I am here asking you to consider HB 2367.

HB 2367 will extend the time of incarceration of convicted drug dealers from 3-5 years to 15 years.

This bill will only affect the major drug dealers in Kansas (approximately 5-10%); and will not affect the person convicted of possession of small amounts of illegal drugs.

HB 2367 will still allow the KBI to turn some cases over to the federal government for prosecution which will still have the authority to charge the illegal drug dealers in federal court where they will be facing 20 year sentences.

With drug use on the increase in Kansas and the nation, I believe we need to send a message to the drug dealers in Kansas that we are not going to tolerate their illegal activities; nor are we going to sit by and watch them destroy the children and families of this state.

In closing, I believe it's important to remember that these drug dealers are destroying the very fabric of our society with their own personal greed for money.

John Ballou

*House Judiciary
Attachment 2
3/6/97*



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
DALE A. FINGER, ASSOCIATE DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY
IN SUPPORT OF HOUSE BILL 2367
MARCH 6, 1997

Mr. Chairman and Members of the Committee:

I am pleased to appear today in support of HB 2367, legislation which vigorously and appropriately rewards large-scale dealers in controlled substances with large-scale terms of imprisonment. On behalf of Director Welch and the men and women of the KBI, we support this legislation as removing from society and punishing large-scale drug dealers. Briefly, the provisions of HB 2367 set large threshold amounts of the most commonly trafficked controlled substances and awards persons convicted of trafficking in these amounts with a "life" sentence with no parole eligibility until 15 years of that sentence has been served. Such substantial deterrence is needed to counter the lucrative attraction of drug dealing.

Prior to being appointed Associate Director of the KBI, I had served as an undercover narcotics agent and supervisor of the narcotics division of the KBI. And I know from this experience the KBI investigates a number of the same drug defendants over the years, demonstrating that punishments at this time are not sufficient to deter illegal activity. HB 2367 will either provide that deterrence or will have that drug dealer locked up for 15 years.

*House Judiciary
Attachment 3
3/6/97*

Another benefit of this legislation would be the ability it would place in the hands of prosecutors to obtain the cooperation of defendants in turning dope dealer against dope dealer. To give you an example, a defendant was caught in Southeast Kansas with over 1,000 marijuana plants and possession of a handgun as a convicted felon. Under state law he was looking at approximately 2 1/2 years. Under federal sentences he was facing 25 years in prison. The KBI requested the U.S. Attorney's Office to adopt the prosecution and take the charges federally. When that happened, we were no longer facing a trial, but rather a most willing, cooperating individual who arranged numerous arrests of other significant drug dealers, including two individuals flying in from California with \$200,000 "drug" cash. I might add that the defendant still served 5 years in the federal penitentiary after all his cooperation.

The potential "hammer" of a life sentence with no parole for 15 years would be an able tool for prosecutors to completely destroy the largest drug trafficking organizations in this state. We appreciate your consideration of this legislation. I would be happy to stand for questions.

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KANSAS SHERIFFS ASSOCIATION
and
KANSAS PEACE OFFICERS ASSOCIATION

March 6, 1997
House Federal and State Affairs Committee
House Bill 2367

Mr. Chairman and Members of the Committee:

I am Helen Stephens, representing the Kansas Sheriffs Association (KSA) and Kansas Peace Officers Association (KPOA).

The members of both organizations applaud Rep. Ballou and the co-sponsors of HB 2367. The drug problem in Kansas and the county will not be resolved until all legislatures get serious about the drug manufacturers and drug dealers. With the introduction of this bill, Kansas is on its way.

The one area of frustration for law enforcement is the lack of sentencing for these manufacturers and dealers. Too often, law enforcement spends weeks or months trying to put one of these manufacturers or dealers "out of business"; and when they do, state law allows too little punishment for the harm they have created in our State to our adults and children; and they are back on the streets too soon. Then they are our problem again -- until they are caught and the cycle begins for a second, third, or fourth time.

Yes, this will add to the prison problem; but we believe the time is NOW. Would you rather have a new prison unit or these people out on the streets preparing their mixtures and then selling them to our citizens? We believe the people of Kansas would support this bill and its ramifications because it WILL get these people off the streets for 15 years. Hopefully, in the 15 years, the manufacturers and dealers will have gotten an education and/or counseling that will lead them in a lawful pursuit when they are released.

We urge you to pass HB 2367, ramifications and all; give our citizens and our children a safer place to live and maybe, just maybe, we can honestly say we have something in place that is truly fighting the drug problem.

Thank you for your time and I would stand for questions.

House Judiciary
Attachment 4
3/6/97