

Approved: 3/20/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice-Chairperson Terry Presta at 3:40 p.m. on March 18, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Carmody (excused)
Representative Kline (excused)
Representative Mayans (excused)
Representative Wagle (excused)
Representative Ruff (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: Representaive Ralph Tanner
Jo Ann Wiley, Kansas Silver-Haired Legislature, Inc.
Don Moler, Kansas League of Municipalities
Sherlyn Sampson, Clerk of the District Court, Douglas County
Paul Shelby, Office of Judicial Administration (OJA)
Tom Palace, Kansas Oil Marketers Association/Convenience
Store Association of Kansas
Debra Vermillion, Drug and Alcoholism Council of Johnson
County (DAC)

Others attending: See attached list

The Vice Chair Representative Presta called the meeting to order at 3:40 p.m.

HB 2197: Juveniles who commit a violation of an ordinance cigarette or violate a city ordinance which prohibits an act which is not a violation of state law are not juvenile offenders

The Vice Chair opened the hearing on HB 2197.

Representative Ralph Tanner testified in support of HB 2197 and requested that it be amended into SB 87. The conferee stated that HB 2197 was initially requested on behalf of the Franklin County Clerk. The conferee stated that HB 2197 is germane to SB 87. The conferee stated that HB 2197 clarifies that if a juvenile is charged with this infraction, they are not considered a juvenile offender.

The Committee members discussed with the conferee issues concerning the violation of city ordinances.

JoAnn Wiley, Kansas Silver-Haired Legislature, Inc. testified in support of HB 2197. The conferee related that communities in Kansas are engaged in planning to develop programs, services and placement options for each judicial district juvenile justice program. The conferee asked that the Committee members consider addressing HB 2191 which deals with crimes and punishment of battery against a person on school property. The conferee also requested consideration of another KSHL bill, HB 2195. The conferee stated that HB 2195 addresses parental responsibility and recovery amounts for the willful acts of children. (Attachment 1)

Mr. Don Moler, Kansas League of Municipalities, testified in support of HB 2197. The conferee stated that the League had requested this bill in an effort to help cities fight against juvenile crime and to allow for adjudication in municipal court of juveniles for certain specific offenses. (Attachment 2)

The Vice Chair closed the hearing on HB 2197.

Vice Chair Presta opened the hearing on SB 87.

SB 87: Cigarette or tobacco infractions: classification and trials

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 18, 1997.

Sherlyn Sampson, Clerk of the District Court, Douglas County testified in support of SB 87. The conferee stated that this bill was introduced by the Kansas Association of District Court Clerks & Administrators as a clean up bill. The conferee stated that this bill cleans-up 1996 HB 2544 which provided for cigarette or tobacco infractions. The conferee stated that SB 87 amends Sections 1, 2, and 4 of K.S.A. 23-3404 and makes infraction cases tried to the court not to a jury. The conferee referenced other changes made in the bill that would ensure trials for traffic and cigarette or tobacco infractions are tried to a court and not a jury. (Attachment 3)

In response to Representative Pauls inquiry concerning curfew ordinances and issues concerning Child in Need of Care, the conferee offered to provide additional information to the Committee secretary to be distributed to Committee members.

Paul Shelby, OJA, testified in support of SB 87. The conferee stated that this bill is a clean-up measure to 1996 HB 2544. The conferee stated that when K.S.A. 22-3404 was amended in 1996, and when jury trials were addressed in paragraphs (2) and (4), the word "offense" was changed to "infraction," resulting in an conflicting law. Mr. Shelby stated that the OJA has no position on the Senate floor amendment. (Attachment 4)

Tom Palace, Kansas Oil Marketers Association/Convenience Store Association of Kansas testified in support of SB 87. The conferee stated that the provision in the bill that allows, if the retailer has more than one location in the state, that records be maintained at the central location of the retailer is particularly critical to the Convenience store owners. (Attachment 5)

Debra Vermillion, Drug and Alcoholism Council of Johnson County (DAC), testified in support of SB 87. The conferee recommended on behalf of DAC strengthening the effectiveness of Kansas' tobacco infraction law by incorporating the changes proposed in HB 2260. The conferee stated that incorporating HB 2260 into SB 87 adds a provision for a graduated fine schedule based on the number of offenses. (Attachment 6)

After the Committee members and the conferee discussed issues concerning tobacco infractions, the Vice Chair closed the hearing on SB 87.

Vice Chair Presta adjourned the meeting at 4:10 p.m.

The next meeting is scheduled for March 19, 1997.



Kansas Silver-Haired Legislature, Inc.

March 18, 1997

Judiciary Committee

Testimony: Joann Wiley, Speaker
Kansas Silver Haired Legislature

Re: HB 2197: An Act concerning juveniles, relating to
city ordinance violation:

(a) "Juvenile" as defined by this bill, means a person
10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who does an act
while a juvenile which if done by an adult would constitute
the commission of a felony or misdemeanor as defined -- --
but does not include

- (1)
- (2)
- (3)

(4) A person 14 or more years of age who commits a violation of
an ordinance of any city which prohibits an act which is not a
violation of state law or

(5) A person who commits a violation of an ordinance cigarette
or tobacco infraction.

Communities within counties, within Kansas are engaged in planning
to develop programs, services and placement options as are necessary
and appropriate for each judicial district juvenile justice program.
KSHL respectfully requests the Judiciary Committee to address HB 2191
as a proponent of city ordinance violations, as they are related to
school property: AN ACT concerning crimes and punishment; relating
to battery against a person on school property; amending K.S.A. 1996
Supp.21-3443 and repealing the existing section. (Attachment)

SPEAKER

Joann Wiley
218 Summertree Lane
Lawrence, KS 66049

SPEAKER PRO TEM

Wayne Comer
P.O. Box 54
Moscow, KS 67952

FLOOR LEADER

David Stallard
1318 Carolyn
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House Judiciary
Attachment 1
3/18/97

HOUSE BILL No. 2191

By Representative Tanner
(By Request)

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10 AN ACT concerning crimes and punishment; relating to battery against
11 a person on school property; amending K.S.A. 1996 Supp. 21-3443 and
12 repealing the existing section.

13

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

15 Section 1. K.S.A. 1996 Supp. 21-3443 is hereby amended to read as
16 follows: 21-3443. (a) Battery against a ~~school employee person on school~~
17 ~~property~~ is a battery, as defined in K.S.A. 21-3412, and amendments
18 thereto, committed against a ~~school employee person~~ in or on any school
19 property or grounds upon which is located a building or structure used
20 by a unified school district or an accredited nonpublic school for student
21 instruction or attendance or extracurricular activities of pupils enrolled in
22 kindergarten or any of the grades one through 12 or at any regularly
23 scheduled school sponsored activity or event; ~~while such employee is en-~~
24 ~~gaged in the performance of such employee's duty.~~

25 (b) Battery against a ~~school employee person on school property~~ is a
26 class A, person misdemeanor.

27 (c) ~~As used in this section, "school employee" means any employee~~
28 ~~of a unified school district or an accredited nonpublic school for student~~
29 ~~instruction or attendance or extracurricular activities of pupils enrolled in~~
30 ~~kindergarten or any of the grades one through 12.~~

31 (d) This section shall be part of and supplemental to the Kansas crim-
32 inal code.

33 Sec. 2. K.S.A. 1996 Supp. 21-3443 is hereby repealed.

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



League of
Kansas
Municipalities

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LEGISLATIVE TESTIMONY

TO: House Judiciary Committee
FROM: Don Moler, General Counsel
RE: Support for HB 2197
DATE: March 18, 1997

First I would like to thank the Committee for allowing the League to appear today in support of HB 2197. Specifically, HB 2197 modifies K.S.A. Supp. 38-1602 to allow a person, 14 or more years of age who commits a violation of an ordinance of any city which prohibits an act which is not also a violation of state law, to be prosecuted in municipal court for the violation. Historically, cities in Kansas have taken the position that they are preempted from adjudicating juveniles in municipal court except in instances of traffic offenses pursuant to subsection (b)(1) of K.S.A. Supp. 38-1602. This bill allows cities to adjudicate juveniles in municipal court for violation of city ordinances which have no counterpart in state statute. Examples of city ordinances which have no counterpart in state statute include: curfew violations, riding bicycles or skateboards on downtown sidewalks, minors on CMB premises, graffiti violations, etc.

We believe this would be a positive step in allowing cities to gain control over juveniles for certain specific acts. This legislation is in no way intended to bring juveniles into municipal court for violations of anything which would correspond to a state statute violation. All of those crimes would continue to be handled as they are today in the district court, juvenile division. What we are asking for is the ability of cities to control juveniles in certain specific instances. The League estimates that in excess of 100 cities have some type of curfew ordinance on the books. What this change in the law would allow is for juveniles to be adjudicated in municipal court for violating curfew ordinances and other ordinances. Current ordinance language typically makes curfew violations unlawful but only allows for the prosecution in municipal court of the parent or guardian of the juvenile who was found to be in violation of the ordinance.

We would respectfully ask the Committee to consider favorably reporting HB 2197 in an effort to help cities fight against juvenile crime and to allow for adjudication in municipal court of juveniles for certain specific offenses.

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SENATE BILL NO. 87
House Judiciary Committee
March 18, 1997

Testimony of Sherlyn Sampson
Clerk of District Court, Douglas County
for the Kansas Association of District Court Clerks & Administrators

Mr. Chairman and members of the committee:

This bill is being introduced by the Kansas Association of District Court Clerks & Administrators as a clean up bill. This bill cleans-up 1996 House bill No. 2544 which provided for cigarette or tobacco infractions.

Prior to the passage of 1996 HB 2544, KSA 22-3404 provided for jury trials for felonies, misdemeanor and traffic offenses but specifically stated that trials of traffic infractions shall be to the court. With the passage of 1996 HB 2544, the word "offense" in Section 1, 2 and 4 of KSA 22-3404 was changed to "infraction" implying that infraction cases could be tried to a jury. However, section 5 still specified that trials on infraction cases shall be to the court.

SB 87 amends those sections and makes infraction cases tried to the court not to a jury. Section 3, 4 and 5 of this bill also amends KSA 22-3409, KSA 22-3412 (a) (1) (d) and KSA 22-3609a (5) by deleting the words infraction and cigarette or tobacco infraction and adding the word offense. This would ensure trials for traffic and cigarette or tobacco infractions are tried to a court and not a jury.

Thank you for allowing me the opportunity to speak to the committee on behalf of the District Court Clerks & Administrators in Kansas. I urge your support of this bill. If you have any questions, I would be happy to answer them.

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Attachment 3
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Senate Bill No. 87
House Judiciary Committee
March 18, 1997

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee:

We appreciate the opportunity to appear before the committee in support of Senate Bill No. 87 which relates to criminal procedure and specifically to cigarette or tobacco infractions.

This bill is a very important clean-up measure to 1996 House Bill No. 2544. It was introduced on behalf of the Kansas Association of District Court Clerks and Administrators.

Prior to the passage of 1996 H.B. 2544, K.S.A. 22-3404 provided for jury trials for felonies, misdemeanors and traffic offenses and specifically stated that trials of traffic infractions would be only to the court.

However, when K.S.A. 22-3404 was amended and when jury trials were addressed in paragraphs (2) and (4), the word "offense" was changed to "infraction," giving us conflicting law since paragraph (5) still specified that trials on infraction cases shall be only to the court.

This conflict extends to other statutes noted in 1997 Senate Bill No. 87.

Due to the nature of an "infraction" as created by the legislature, it appears the intent was not to provide jury trials for these non-criminal violations. 1997 Senate Bill No. 87 follows that intent.

We have no position on the Senate floor amendment. We urge your favorable consideration for Senate Bill No. 87.

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KANSAS OIL MARKETERS ASSOCIATION

Convenience Store Association of Kansas

Testimony on Senate Bill 87
Submitted by the Kansas Oil Marketers Association/
Convenience Store Association of Kansas
To The House Judiciary Committee

Chairperson Carmody, and members of the House Judiciary Committee: My name is Tom Palace. I am Executive Director of the Kansas Oil Marketers Association, a statewide trade association representing over 350 independent Kansas Petroleum companies which distribute petroleum products at the wholesale and/or retail level. KOMA is also the flagship organization for the Convenience Store Association of Kansas and, as such, represents the interests of the owners and operators of convenience stores across the state.

We appreciate the opportunity to appear before you today in support of S.B. 87.

SB 87 clarifies that last year's comprehensive tobacco measure did not intend for a jury trial to be required for tobacco infractions. We support the Office of Judicial Administration's clarification of this matter. A cigarette or tobacco infraction will result in a ticket being issued and a fine being assessed.

SB 87 also amends K.S.A. 1996 Supp. 79-3316 in which record retention is required for the sale of tobacco products for three years, and allows, if the retailer has more than one location in the state, that records be maintained at the central location of the retailer. This is critical to the Convenience store owners because many have multiple stores located in the state, and the billing process, in many cases, is done by computer at the main office. Additionally, by including this amendment, the state inspectors would benefit, as they would have the ability to check all records at each location of a retailer with multiple locations.

We appreciate the opportunity to appear before you today, and will stand for any questions you may have.



Drug and Alcoholism Council
of Johnson County

TESTIMONY BEFORE

Kansas House Judiciary Committee

March 18, 1997

Good afternoon. My name is Debra Vermillion. I am here representing the Drug and Alcoholism Council of Johnson County (DAC) as a member and President of the Council. The Drug and Alcoholism Council is a division of United Community Services of Johnson County (UCS). As an advisory body, the DAC supports and enhances the mission of UCS by overseeing functions related to alcohol and drug planning and allocations in Johnson County. The DAC supports the changes proposed in SB 87 because it improves the implementation of law passed in 1996. The DAC also has additional changes to recommend.

The Kansas Legislature, recognizing the detrimental effect of smoking on Kansas youth and that tobacco is a gateway drug, passed HB 2544 in 1996. Under the new law, any person under the age of 18 who possesses or attempts to possess cigarettes or tobacco products may be charged with a "cigarette or tobacco infraction," and be subject to a \$25 fine. The law allows police officers to write a juvenile a ticket, but requires that juveniles have the option to mail in the fine. It also sets the fine at \$25 (plus any required court costs) and prohibits a city from charging any more than \$25, regardless of the number of offenses.

The DAC supports SB 87 and further recommends strengthening the effectiveness of Kansas' tobacco infraction law by incorporating the changes proposed in HB 2260. First, HB 2260 adds a provision for a graduated fine schedule based on the number of offenses. This would provide a level of deterrence built into the fine. Second, it gives courts the option to require the offender and the offender's parents to appear in court. By allowing the fine to simply be mailed in, many parents never know their child was charged with the offense. Finally, HB 2260 recommends and the DAC concurs that an educational component be incorporated. The amount of the fine is not as important as the requirement that the offender, and his or her parents, receive education on the dangers of tobacco usage at such an early age.

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If this legislation is a means to reduce the usage of tobacco products by our young people, then they should be charged criminally for possessing tobacco products, and the punishment must, in some way, seek to accomplish the goal of reduced use. Mailing a small fine in repeatedly, without parental knowledge, does little to accomplish this goal. The Drug and Alcoholism Council believes these recommended changes will more directly achieve the desired results.

Thank you for your support of the Drug and Alcoholism Council and attention this afternoon.

DRUG AND ALCOHOLISM COUNCIL OFFICERS FOR 1997

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