

Approved: March 22, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:15 a.m. on March 17, 1999 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Marilyn Scafe, Kansas Parole Board
Jane Nohr, Assistant Attorney General
Brian Leininger, General Legal Counsel, Kansas Highway Patrol
Craig Spomer, Wabaunsee County Attorney, FATAL Task Force Member
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association
Ron Smith, Kansas Bar Association
Jim Clark, County and District Attorneys Association

Others attending: see attached list

The minutes of the March 16 meeting were approved on a motion by Senator Oleen and seconded by Senator Gilstrap; carried.

SB 347—concerning criminal procedure; relating to parole and the Kansas parole board

Conferee Scafe testified in support of **SB 347**, a bill that pertains to changes in the administrative and procedural policies of the Kansas Parole Board. She discussed the following provisions in the bill: decrease in the Board's membership from four to three members; majority vote rather than unanimous to grant original parole to certain offenders; establishment of educational and professional qualifications for Board members; designation of two-member panels of the Board; and the ability of the Board to refer certain cases to hearing officers. (attachment 1) Reference was made, by the Conferee, to written testimony submitted by Secretary Charles Simmons who supports the bill. (attachment 2) Following discussion Senator Bond moved to recommend the bill favorably for passage, Senator Goodwin seconded; carried.

SB 334—concerning crimes; relating to criminal intent

Conferee Nohr testified in support of **SB 334**, a bill which amends current law pertaining to criminal offenses that can be proven without establishing criminal intent, to include the following list: driving with a suspended or revoked license; habitual violations; driving while under the influence of drugs or alcohol (DUI); and individuals under 21 years of age DUI. She discussed an amendment request to add the word "felony" to be inserted before "violation" on line 18 and delete the reference to 8-1567a on the same line. She discussed other provisions in the bill and commented on **SB195**, a bill which the attorney general's task force recommends be combined with **SB 334**. (attachment 3) There was discussion regarding the content in **SB 131** being similar to this bill but following discussion it was determined the issue in **SB 131** was not the same.

Conferee Leininger testified in support of **SB 334**. He commented on the bill's provision to exempt felony DUI from the requirement of specific criminal intent and commented on **SB 195** regarding aggravated battery in DUI cases. (attachment 4)

Conferee Spomer testified in support of **SB 334**. He cited court case examples which point to a need for the elimination of the criminal intent requirement in current law regarding DUI felony cases. He argued for felony convictions which he stated are an effective tool in curbing repeat offenders. He also discussed **SB**

195, a bill which he stated makes committing or attempting to commit a violation of the statute regarding a DUI, an element of aggravated battery. (attachment 5)

Conferee Johnson testified in support of SB 334. He stated that there have been some questions regarding the third time offender of DUI and how the court viewed criminal intent, and this bill would clarify the language regarding this issue. (attachment 6)

Conferee Smith commented briefly on SB 195. He stated "this bill continues a line of bills I've seen in the last 5 years that looks and focuses punishment of a criminal based on results of the incident and not the perpetrator's state of mind." He stressed the importance of focusing on the intent of the perpetrator so that logical demarcations can be made between misdemeanors and felonies. (no written testimony)

Conferee Clark testified in support of SB 334. He discussed the bill which he stated, "allows for strict liability crimes if they are misdemeanor, tobacco or traffic violations, by adding to that list certain traffic-related offenses for which repeat violations are classified as felony offenses." He also discussed concerns regarding application of the bill on the DUI statutes. (attachment 7)

Written testimony was submitted by MADD in support of SB 334. (attachment 8)

The meeting adjourned at 11:00 a.m. The next scheduled meeting is Monday, March 22, 1999.

M. Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson

Bob J. Mead
Member

Larry D. Woodward
Member



KANSAS PAROLE BOARD
LONDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
TOPEKA, KANSAS 66612-1236
(913) 296-3469

Teresa L. Saiya
Administrator

MEMORANDUM

**TO: Senator Tim Emert, Chairman
Committee on Judiciary, Kansas Senate**

**FROM: Marilyn Scafe, Chair
Kansas Parole Board** MS

**RE: SB 347
Reorganization of the Kansas Parole Board**

DATE: March 17, 1999

In cooperation with the Governor, the Kansas Parole Board is proceeding with the plan to adjust the size of the Board according to the workload and the number of "old law" inmates under our jurisdiction. I have attached a report based on the Sentencing Commission numbers and record keeping by our staff which attempts to track the workload of the Board. These numbers were used to determine the FY97 reduction of the Board from five (5) to four (4) members. Increments of twenty percent (20%) decreases in the workload and "old law" inmates were targeted for appropriate timing for the reduction of members.

Inmate numbers were at an eighteen percent (18%) reduction when the Board was reduced to four members. By the end of FY99, projections show a thirty-two percent (32%) reduction of inmates. In FY95, there were 5599 hearings conducted by the five member Board. As shown by the numbers in the report, the hearings have not reduced as quickly as estimated, due to the large number of violation hearings conducted. However, the use of video conferencing resulted in better use of time by the Board, and four members has been adequate for handling the workload.

If SB 131 is passed, the waivers for final revocation hearings should reduce the number of violation hearings significantly. 740 hearings (50% of the FY99 projected "new law" violators) is a conservative estimate of the number of violators who would waive their final revocation hearing before the Board. This would result in a projected thirty-seven percent (37%) reduction in total hearings from FY95. Therefore, it is appropriate timing to introduce SB347 as a plan to reorganize the Board to three (3) full time members.

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The Board continues to strive for responsible release decisions and quality parole plans. Therefore, it is important to keep in mind that cutting the membership is not the only strategy for the Board. We have been involved with the Department of Corrections this year to develop a stronger role for the Board in release planning for the "new law" inmates. The numbers under the heading of "File Review" reflect those responsibilities that remain important duties of the Board.

REORGANIZATION OF THE BOARD:

Number of Positions:

Two of the remaining four positions expire January 15, 1999. Only one would be filled.

Qualifications:

Succeeding appointments would be required to meet the qualifications of a college degree. This is a step toward bringing experience to the position. We continue to encourage additional qualifications such as those proposed in the legislation introduced in the 1998 session.

Rational for qualifications:

- Considering the volume of work, the level of decision-making and the limited time available to the three members, the efficiency and quality of the Board will be limited if all members are not at least familiar with information necessary to deal with the mental health and substance abuse issues we must consider, as well as the growing number of sex offenders. A new member will be required to vote on all cases immediately. There was some flexibility of training time when there were more members to cover the workload.
- A position at this level in the criminal justice system usually requires qualifications.
- The Board has communicated expectations and standards for offender behavior. Understanding and experience in offender management is important in order to hold offenders accountable to realistic expectations.
- The Board must be part of a collaborative effort for assessment of offenders. Therefore, decisions need to be made by integrating information from many agencies and resources on a professional level in the fields of behavioral science and criminal justice.
- Experience and knowledge enable the Board to comprehend and use the available information in the best interests of the inmate and the community.

PRO TEM MEMBERS

Extended absence due to illness or other leave and conflict of interest issues which would require a member to refrain from voting have been mentioned as concerns for reducing the Board. In the event of one of these occurrences, there would not be sufficient members for a vote. The appointment of a pro tem member would allow the Board to continue to carry out its duties. Pro tem members would meet the same requirements as regular members. The Governor would determine the compensation for such services. This appointment would not be subject to confirmation and would be temporary.

VOTE:

2 out of 3 votes will determine the action of the Board consisting of three members.

HEARING OFFICERS:

Hearing Officers would be qualified employees of the Department of Corrections authorized by the Board to conduct the hearings. This would be subject to the approval of the Secretary of Corrections. Use of hearing officers would be for temporary emergencies or in situations where the use of a DOC employee is a better use of resources than requiring a Board member to travel to a facility for a hearing.

Statistical Information

The previously listed items are all duties of the Kansas Parole Board. Below, please find the number of Board actions for Fiscal Years 1996, 1997 and 1998 as well as the projections for Fiscal Years 1999 and 2000 for some of the Board's duties:

	FY96 Actual	FY97 Actual	FY98 Actual	FY99 Estimated	FY2000 Estimated
Parole Hearings	3,235	2,765	2,259	2,033	1,931
Parole Violator Hearings	1,701	1,884	2,079	2,244	2,244
Total Hearings	4,936	4,649	4,338	4,277	4,175
Public Comment Sessions	36	36	36	36	36
File Reviews*	2,587	4,676	4,790	4,885	5,129

*File reviews include setting conditions of parole, conditional release and post release supervision as well as decisions regarding clemency recommendations and early discharges.

Inmates Under "Old Law" as of June 30th, 1998 (End of FY 1998)*

6/30/95 (actual)	6/30/96 (actual)	6/30/97 (actual)	6/30/98 (actual)	6/30/99 (projected)	6/30/2000 (projected)	6/30/2001 (projected)
4802	4424	3929	3486	3247	2427	2000

*Numbers provided by the Sentencing Commission



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2

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 17, 1999

TO: Senate Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: SB 347

SB 347 is one of the Kansas parole board's legislative initiatives. The parole board has consulted with the department of corrections relative to the impact of SB 347 on the operations of the department. The department supports the provisions of SB 347 that impact the department of corrections.

Section 3 of SB 347 authorizes the parole board to utilize employees of the department of corrections to conduct hearings on behalf of the board. This authority is contingent on the approval of the secretary of corrections. Pursuant to discussions between myself and parole board chairperson, Marilyn Scafe, it is the understanding of both the department and the board that the frequency of hearings conducted by employees of the department on behalf of the board would be limited.

Employees of the department would be requested to conduct hearings on behalf of the board when it would not be a good use of the state's resources for a member of the board to preside at the hearing. An example of such a situation would be when the board is conducting hearings by video conference and one of the inmates for whom the hearings are being conducted is in the infirmary and is physically unable to be present at the location within the correctional facility where the video conference is being transmitted. Use of a department employee to conduct the hearing for that inmate would be a better use of the state's resources than requiring a parole board member to travel to the facility. Both the parole board and the department are cognizant that neither the department's operations nor its budget would permit an extensive use of department personnel as hearing officers for the board.

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State of Kansas

Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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TESTIMONY OF
ASSISTANT ATTORNEY GENERAL JANE E. NOHR
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 334
MARCH 17, 1999

Senator Emert and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf Attorney General Carla Stovall and the Far-Reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force to ask for your support on S.B. 334. Attorney General Stovall regrets that she is unable to be here today. This bill, which was originally introduced on January 28, 1999 in the Senate Federal and State Affairs Committee, amends K.S.A. 21-3204, the guilt without criminal intent statute, to include felony driving while intoxicated, felony drive while suspended and the habitual violator statute. We would respectfully ask the committee to amend the statute to add the word "felony" to be inserted before "violation" on line 18 and delete the reference to 8-1567a on the same line.

Currently, K.S.A. 21-3204 states that absolute liability exists if the crime is a misdemeanor, cigarette or tobacco infractions or a traffic infraction and clear legislative purpose is indicated. The statute does not include felony offenses which are considered absolute liability offenses. K.S.A. 8-1567, 8-262 and 8-287 require only that an individual engage in the prohibited conduct to be guilty of the crime. K.S.A. 8-1567 only requires a person to be driving while under the influence of alcohol or drugs and not that they intended to drive while intoxicated. K.S.A. 8-262 and 8-287 only requires a person to drive while the license is suspended or revoked. These provisions contain the same elements for a first, second, third or subsequent violation. No where in these provisions indicates any language requiring criminal intent simply because the third violation becomes a felony.

The Kansas Supreme Court has decided two separate cases relating to K.S.A. 8-287 and 8-262 stating that knowledge is required under these provisions since the legislative intent is not clear that criminal intent is not required under K.S.A. 21-3204. We believe that the legislature intentionally omitted the intent language at the time the felony provisions were enacted for driving under the influence, driving while suspended and driving while a habitual violator in Chapter 8. This bill attempts to rectify this confusion and state that the legislature intended to create absolute liability offenses for these specific felony traffic offenses.

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Further, it was our original intent that the content of S.B. 195 on Aggravated Battery, which is in your committee, be combined with this bill. S.B. 195 proposes amending K.S.A. 21-3414 to include unintentionally causing great bodily harm or bodily harm while driving or boating while under the influence of alcohol or drugs or fleeing or attempting to elude a law enforcement officer. This Task Force recommendation is the result of the Kansas Supreme Court's decision, *State v. Huser*, 265 Kan. 228 (1998), which stated that simply driving while intoxicated and causing an injury does not necessarily equate to reckless conduct as required under the aggravated battery statute. The Task Force members feels strongly that there should be appropriate felony penalties for individuals who seriously injure innocent parties while committing these crimes.

On behalf of Attorney General Stovall and the FATAL Task Force, I would urge your favorable consideration of these bills.

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KANSAS HIGHWAY PATROL

Service—Courtesy—Protection

Bill Graves
Governor



Col. Lonnie R. McCollum
Superintendent

My name is Brian Leininger and I am the General Legal Counsel for the Kansas Highway Patrol. I am pleased to have served as the chair of the criminal committee of Attorney General Stovall's FATAL task force. Following are my comments regarding Senate Bill 334, regarding criminal intent, and Senate Bill 195, regarding aggravated battery.

SENATE BILL 334

A problem was evolving in the area of felony driving offenses. Kansas has a statute, K.S.A. 21-3201, which requires every felony offense to have a criminal intent. The felony driving offenses included in this bill are known as absolute liability offenses, which means no specific criminal intent is required. This created a conflict. In an attempt to resolve this conflict we recommend passage of this bill, which exempts felony DUI from the requirement of specific criminal intent.

SENATE BILL 195

This bill concerns a hole in the law which requires addressing. As it currently stands, there is no law which clearly and unambiguously punishes the infliction of bodily harm on another while driving under the influence of intoxicants. A prosecutor can attempt to charge aggravated battery on the theory that driving drunk is "reckless" behavior, but there is no assurance that effort will be effective. A recent Kansas appellate decision states that driving while intoxicated does not necessarily equal recklessness, so some cases may slip between the cracks. This bill fixes that problem.

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TESTIMONY OF
WABAUNSEE COUNTY ATTORNEY CRAIG SPOMER
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 195 and 334
MARCH 17, 1999

Good Morning, Chairman Emert and Members of the Committee

My name is Craig Spomer and I am the County Attorney of Wabaunsee County, Kansas and a member of the Kansas Attorney General's Far Reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force.

As the county attorney for a county that has Interstate 70 running its entire length a large proportion of our cases are third and subsequent DUI, third and subsequent Driving while Suspended and Habitual Violator.

In 1998 two Kansa Supreme Court cases State v. Lewis 263 Kan. 843 and State v. Thomas Docket Number 78,381 stated that the prosecution has the burden to show that a defendant had knowledge of his suspended or revoked status in order to obtain a felony a for third time conviction of K.S.A. 8-262 and K.S.A. 8-287.

I am here today to ask you to consider amending K.S.A. 21-3204 and repealing the existing section as proposed by SB 334. The change in this statute will eliminate the criminal intent requirement in the above traffic felonies.

Under the Public Welfare Doctrine the legislature may for the protection of public safety make the doing of an act criminal without regard to the intent or knowledge of the person committing the offense. This can and should be accomplished by clearly indicating a legislative purpose to impose absolute liability for these traffic felonies, SB 334 does this.

It is the belief of the membership of the FATAL Task Force and myself that a third conviction of DUI and Driving While Suspended and a conviction for Habitual Violator should remain a felony. There are increased potential penalties and strong stigmas attached to a felony conviction. The threat of a felony conviction is an effective tool in curbing repeat offenders in these offenses.

Senate Bill 195 amends K.S.A. 21-3414 Aggravated Battery to make committing or attempting to commit a violation of K.S.A. 8-1567 driving under the influence an element of Aggravated Battery. The Kansas Supreme Court in State V. Huser Docket Number 80128 ruled that the prosecution had the burden to show reckless conduct in order to obtain a conviction under K.S.A. 3414. In other words driving under the influence was not reckless per se. Making DUI an element of Aggravated Battery as proposed in SB 195 would resolve this issue.

Both of these Bills will make positive changes that will impact county and district attorney's day to day prosecutions of these crimes.

Thank you for allowing me to testify and I will attempt to answer any questions you may have.

Respectfully,

Craig J. Spomer
Craig J. Spomer
Wabaunsee County Attorney

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Testimony
Senate Judiciary Committee
March 17, 1999

Good Morning, Chairperson Emert, and Members of the Committee,

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We provide the courts of the State of Kansas pre-sentence evaluation and referral suggestions for those persons who have been convicted of, or are receiving diversion from, the charge of DUI or other alcohol related offenses. We are also available to the courts for those individuals under the age of 21 who violate the alcohol and drug laws.

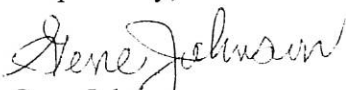
In addition, over the past year, I also represented our organization on the Attorney General's FATAL Task Force, reviewing the DUI laws in the State of Kansas. At that time it was brought to our attention that there was some questions regarding the third time offender of DUI, and how the court viewed criminal intent. Senate Bill 334 would clear up this problem as far as the language regarding criminal intent.

Keeping in mind that the third time offense is a felony under present law. We can only imagine how many times that individual has broken the DUI laws in the State of Kansas before getting the third time conviction. These are the individuals that our tougher DUI laws are designed to remove from our roadways in order to make Kansas a safer place from these multiple DUI offenders.

Our organization enthusiastically support Senate Bill 334 and hope that this committee takes positive action in moving this proposed legislation through the legislative process during the 1999 session.

Thank you for allowing me to appear this committee today and I will attempt to answer any questions.

Respectfully,



Gene Johnson

Legislative Liaison

Kansas Community Safety Action Project Coordinators Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK

Testimony in Support of

Senate Bill 334

Senate Bill No. 334 amends K.S.A. 21-3204, which allows for strict liability crimes if they are misdemeanor, tobacco or traffic violations, by adding to that list certain traffic-related offenses for which repeat violations are classified as felony offenses. The bill is a legislative attempt to solve conflicts in the general strict liability statute and the more specific felony language in K.S.A. 8-262, driving while suspended; 8-267, driving while a habitual violator; 8-1567, driving under the influence; and 8-1567a, drivers under 21 with .02 BAT. These conflicts have been resolved by the Kansas Supreme Court by reading in the additional element of knowledge in K.S.A. 8-267 in State v. Lewis, 263 Kan. 843 (1998); and in K.S.A. 8-262 in State v. Thomas, ___ Kan. ___, 970 P2d 981 (1998). Instead of requiring the State to prove beyond a reasonable doubt that a defendant knew his or her license was suspended or that they had been declared a habitual violator, the bill merely extends strict liability to cover those offenses. In increasing the penalty for repeat violators, there has been no legislative effort to also change the elements of the crime: otherwise, a person convicted could not be a repeat offender.

We have some concerns regarding application of the bill on the DUI statutes. Since the under 21 statute, 8-1567a, remains an infraction for which the penalty is only an administrative license sanction, it is doubtful a court would require additional elements. More importantly, applying the bill to the DUI statute, 8-1567, may be premature, and could create a Sexton problem. In State v. Sexton, 232 Kan. 539 (1983), the State appealed dismissal of an attempted conspiracy to commit murder charge, based on the trial court's conclusion that a defendant could not conspire with an undercover officer, and attempted conspiracy was not a crime. In affirming the trial court, the Supreme Court noted that since the incident occurred, the Legislature had created the more specific offense of criminal solicitation which, due to the successful lobbying effort of the Johnson County District Attorney and KCDA, covered the offense in the case on appeal. The Court concluded that the subsequent legislative action was conclusive evidence of legislative intent that the crime of attempted conspiracy did not exist. By passing legislation attempting to alter the DUI statute, prior to a ruling by our appellate courts, the Legislature may be indicating that felony DUI offenses prior to passage of SB 334 could not be strict liability offenses. The result would be dismissal of many felony DUI convictions already on the books.

There is reason to think that the appellate courts will treat DUI differently than it has other felony cases involving traffic offenses: 1) The Courts have already acknowledged that felony DUI penalties are more specific than general sentencing statutes; 2) the element of knowledge in a DUI is already more obvious than in the other statutes, i.e. a person pulled out of their car, forced to take field tests, etc. which is much more obvious receiving notice from a state bureaucracy; and 3) the Court may also recognize that requiring knowledge as an element may lead to the ludicrous application of the intoxication defense to a DUI.

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Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (785) 271-7525 • 1 (800) 228-6233

KANSAS STATE OFFICE

March 16, 1999

Senator Tim Emert, Chairman
Senate Judiciary Committee
State Capitol Room 356 E.
Topeka, Kansas 66612

Dear Senator Emert and Committee Members:

Kansas MADD will not be able to have a representative available to testify on behalf of Senate Bill 334 on Wednesday, March 17, 1999. Kansas MADD would like to submit written testimony in support of Senate Bill 334.

During 1997, Kansas recorded 3,205 alcohol-related crashes involving more than 7,000 individuals of which 86 were killed and 2,508 were injured. The estimated societal cost of these crashes was estimated at \$158.4 million. KDOT, NHTSA.

Kansas averages more than 20,000 DUI arrests per year. Approximately 7% (1,400) of all individuals arrested are arrested for third an/or subsequent DUI offenses within a five year period. Approximately 12% (600) of all repeat offenders are arrested driving on a suspended or revoked license. DCCCA.

Kansas MADD supports Senate Bill 334 which would impose absolute liability offenses for DUI, DUI while suspended, and habitual violator. We ask your support for this important piece of legislation.

Sincerely,

Dee Meyer

Dee Meyer
State Chairperson
Kansas MADD

Written
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Sen Jud
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