

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:37 a.m. on January 16, 2001 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:

Nancy Lindberg, Office of Attorney General (AG)
Judge Thomas Tuggle, Kansas District Judges Association (KDJA)
Kyle Smith, Kansas Bureau of Investigation (KBI)

Others attending: see attached list

Minutes of January 11, 2001 were approved on a motion by Senator Pugh, seconded by Senator O'Connor. Carried.

Conferee Lindberg discussed proposals for changes to current law as recommended by the AG's Traffic and Alcohol Laws Task Force regarding the following: DUI criminal penalties and administrative sanctions; DUI by any person less than 21 years of age; and aggravated battery. (attachment 1) During discussion it was determined that the Committee will be provided with updated bedspace projection data from the Sentencing Commission. Senator Adkins moved to introduce the three requested bills, Goodwin seconded. Carried.

Conferee Tuggle, representing the KDJA, discussed and requested introduction of two bills relating to the Judges Retirement System. The bills would change the formula for computing judges retirement pay, increasing the retirement accrual rate immediately in specific instances and providing a gradual reinstatement of previously legislated accrual rates in other instances. (attachment 2) Following discussion, Senator Oleen moved to introduce the bills, Senator Gilstrap seconded. Carried.

Conferee Smith requested introduction of a bill to adopt The National Crime Prevention and Privacy Compact. He stated the Compact "would establish both a legal framework for the cooperative exchange of criminal-history records for noncriminal-justice purposes and a Compact Council to monitor system operations and promulgate necessary rules and procedures." He discussed how the system would be more efficient and more cost effective. (attachment 3) Following discussion, Senator O'Connor moved to introduce the bill, Senator Adkins seconded. Carried.

The meeting adjourned at 10:16 a.m. The next scheduled meeting is January 17, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 16, 2001

NAME	REPRESENTING
Roy Meyer	Tripelson Law Firm
Greg DeBaker	Nat'l Congress for Fathers & Children
Paul Davis	KS Bar Assn.
John Federico	KS District Judges Assn
Tom Tuggle	KS District Judges' Assn.
Julie Numrich	Federico Consulting
Kyle Smith	KBT
Barb Conant	KS Trial Lawyers Assoc
Fay Jones	KSC
Jan Brash	KSC
Joe Herold	KSC
KEVIN GRAHAM	A.G.
Julienne Maska	AG
Doug Smith	Pinegar-Smith Company
Marsha Strahan	CWA
Aui Hyten	Office of Judicial Admin.
Susan Richard	KCOAA
Denny Burgess	Kansas District Judges Assn.
Chris Collins	Kansas Medical Society

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 16, 2001

NAME	REPRESENTING
Shelley King	KADC
Marlee Carpenter	KCCT
Jeff Bottanberg	KS Staff Ass'n
Colin Mullen	Whitney Danson PA
Ladun Bose	Sen. Lyon Office Staff



State of Kansas

Office of the Attorney General

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ATTORNEY GENERAL

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ATTORNEY GENERAL CARLA STOVALL'S

FAR-REACHING ALTERATION OF TRAFFIC AND ALCOHOL LAWS TASK FORCE LEGISLATIVE RECOMMENDATIONS

JANUARY, 2001

I. A. DUI Criminal Penalties and Administrative Sanctions

Current

Proposed

1st CONVICTION w/i 5 yrs: B Misdemeanor

1st CONVICTION *in lifetime* B Misdemeanor

Criminal:

48 hrs - 6 months jail or

100 hrs community service

\$200 - \$500 fine

Complete ADSAP educ. or treatment

48 hrs- 6 months jail or

100 hrs community service

\$500 - \$1,000 fine

Complete ADSAP educ. or treatment

Administrative:

License suspended 30 days/and restricted
330 days for test failure

License suspended 1 yr for refusal

License reinstatement fee \$50

License suspended 30 days/and restricted
330 days for test failure

License suspended for 1 yr for refusal

License reinstatement fee \$200

2nd CONVICTION w/i 5 yrs: A Misdemeanor

2nd CONVICTION *in lifetime* A Misdemeanor

Criminal:

48 hrs + 3 days work release - 1 yr
(90 days minimum sentence)

\$500 - \$1,000 fine

Ignition interlock required if BAC
is .15 or above after admin.
suspension expires

10 days - 1 yr (90 days minimum sentence)

**Work release/house arrest permitted after
10 days.**

\$1,000 - \$1,500 fine

Ignition interlock required if BAC is .15
or above after admin. suspension expires

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No treatment required unless
released on probation/parole

***Mandatory inpatient or outpatient
treatment (not education)***

Administrative:

License suspended 1 yr for failure
License suspended 1 yr for refusal
License reinstatement fee \$50

License suspended 1 yr for failure
License suspended **2 yrs** for refusal
License reinstatement fee **\$400**

3rd CONVICTION w/i 5 yrs: Felony crime(nongrid) 3rd CONVICTION ***in lifetime***

Criminal:

48 hrs + 88 days work release - 1 yr
(90 days minimum sentence)
\$1,000 - \$2,500 fine
Ignition interlock required if BAC is
.15 or above after admin. suspension
expires
Optional treatment

***120 days - 1 yr (work release/house
arrest permitted after 120 days)
\$1,500 - \$2,500 fine
Ignition interlock required if BAC is
.15 or above after admin. suspension
expires
Mandatory inpatient or outpatient
treatment (not education)***

Administrative:

License suspended 1 yr for failure
License suspended 1 yr for refusal
License reinstatement fee \$50

License suspended 1 yr for failure
License suspended **3 yrs** for refusal
License reinstatement fee **\$600**

4th CONVICTION w/i 5 yrs: Felony crime(nongrid) 4th CONVICTION ***in lifetime***

Criminal:

48 hrs + 88 days work release - 1 yr
(90 days minimum sentence)
\$1,000 - \$2,500 fine
Court can revoke license tag or
temporary registration for one year
Optional treatment

***15 months imprisonment in DOC
before parole
\$2,500 fine
Court can revoke license tag or
temporary registration for one year
Mandatory inpatient or outpatient
treatment (not education)***

Administrative:

License suspended 1 yr for failure
License suspended 1 yr for refusal
License reinstatement fee \$50

License suspended 1 yr for failure
License revoked 10 yrs for refusal
License reinstatement fee **\$800**

5th CONVICTION w/i 5 yrs: Felony crime (nongrid) 5th CONVICTION *in lifetime*

Criminal:

48 hrs + 88 days work release - 1 yr (90 days minimum sentence)	<i>15 months imprisonment in DOC before parole</i>
\$1,000 - \$2,500 fine	<i>\$2,500 fine</i>
Court can revoke license tag or temporary registration for one year	Court can revoke license tag or temporary registration for one year
Optional treatment	<i>Mandatory inpatient or outpatient treatment (not education)</i>

Administrative:

License suspended 1 yr for failure	<i>License revoked for lifetime</i>
License suspended 1 yr for refusal	<i>License revoked for lifetime</i>
License reinstatement fee \$50	<i>Reinstatement not permitted</i>

B. Risking A Child's Safety (K.S.A. 8-1567)

- Enhance the applicable DUI penalty by 30 days for persons who have a child under 14 years of age in the vehicle at the time they are driving under the influence of alcohol or drugs.

C. DUI Test Refusal

- Refusal to take a breath, blood or urine test as requested by a law enforcement officer would be a class B misdemeanor. (Under current law, this is administrative only.)

D. DUI Diversions

- DUI diversions shall be limited to one per lifetime.

Administrative Hearing Issues

- Amend administrative hearing procedures in K.S.A. 8-1002(h)(2) to clarify that the testing equipment and person operating the testing equipment is certified by KDHE and the testing protocols are in accordance with KDHE. Also, amend the language stating "the person was operating a vehicle" to "the person was operating or *attempting* to operate a vehicle."
- Amend K.S.A. 65-1,107(a) and (b) to add "*testing protocol*."
- Allow a \$50 subpoena fee to be charged for each law enforcement officer subpoenaed to attend and or testify in the administrative hearing. The law enforcement agency would receive the fee.

- Allow for administrative hearings to be conducted telephonically and/or by video at the discretion of Kansas Department of Revenue.
- Set out specific documents and evidence which the licensee is to have access prior to the administrative hearing.
- The signed statement of the officer, (DC27), would represent the testimony of the officer and would stand on its own except in the event the officer has been subpoenaed.
- Change references within K.S.A. 8-1002, such as in 8-1002(g) to "*calendar* days" instead of "days."
- Similar changes should be made in the Uniform Commercial Driver's License Act to reflect those set out above, as appropriate.

II. A. DUI By Any Person Less Than 21 Years Of Age
(K.S.A. 8-1567a)

- Amend the probable cause standard from "reasonable grounds to believe the person was operating a motor vehicle while under the influence of alcohol or drugs" to "reasonable grounds to believe the person has been operating or *attempting* to operate a vehicle while *having alcohol or drugs in such person's system.*"
- Criminal penalty: traffic infraction and \$200.00 fine.
- If a change is made in K.S.A.8-1567a to base the test request upon "reasonable grounds to believe that the person has alcohol in his or her person's system," there should be a change in the language in K.S.A. 8-1001 and 8-1002 to adapt to that change, since it is the same test.

B. Preliminary Breath Test (PBT) Refusal

- Refusal to take PBT test would be increased from a traffic infraction to a class C misdemeanor.

III. Aggravated Battery (K.S.A. 21-3414)

- In response to *State v. Huser*, 265 Kan. 228 (1998), add provisions for unintentionally causing bodily harm or great bodily harm to another person while committing or attempting to commit a violation of driving while under the influence of alcohol or drugs, fleeing or attempting to elude a police officer or boating under the influence of alcohol or drugs.
- Penalties: If great bodily harm is inflicted, severity level 6 person felony; if bodily harm is caused whereby great bodily harm can be inflicted, severity level 9 person felony; if bodily harm is inflicted, class A person misdemeanor.

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KANSAS DISTRICT JUDGES' ASSOCIATION

Post Office Box 423
Concordia, Kansas 66901

January 16, 2001

Hon. John L. Vratil, Chair
Senate Judiciary Committee
State Capitol Building
Topeka, KS 66601

Re: Judges' retirement.

Dear Senator Vratil & Committee Members:

The Kansas District Judges' Association has voted to seek legislation during the 2001 legislative session to increase retirement accrual rate from the current 3.5% annually with a cap of 70% of the final average salary for those who went on the bench after June 30, 1987, to 5% for the first 10 years and 3.5% thereafter with a cap of 80% of the final average salary. The 1973 legislature established an accrual rate of 5% for the first 10 years and 3.5% thereafter, but for some reason the 1987 legislature changed the accrual rate to a straight 3.5%.

There are several reasons for our legislative proposal, but the problem becomes apparent when you take the situation of an experienced attorney who goes on the bench at age 50. The judge, after 10 years on the bench, would have accrued a benefit of 35% of the judge's final average salary (10 years x 3.5% = 35%). At age 62 this judge's retirement benefit would be 42% (12 years x 3.5% = 42%). As you know, the benefit is typically further reduced as a joint annuity between the judge and the spouse.

It is good public policy to attract experienced attorneys to the bench, which from a compensation standpoint requires two things: (a) enough money to live on while he or she is on the bench, in other words something in the range of what an experienced attorney makes in private practice; and, (b) enough money for him/her (and a spouse) to live on in retirement. Thanks to the support of the Governor and the legislature we now have a more competitive salary to offer experienced attorneys considering going on the bench, but we do not have an adequate retirement plan to offer. An experienced attorney will likely take a reduction in pay to go on the bench and he or she will be giving up contributions to a tax deferred retirement plan.

As I mentioned, it is good public policy to attract experienced attorneys to the bench which we feel we are starting to do, however with attorneys starting their judicial career later the adequacy of the retirement plan becomes even more critical. The Kansas District Judges' Association is urging the legislature to change the retirement benefit so there will be a more rapid accrual of retirement benefits, as it was before July 1, 1987. In other words, give back what was taken away.

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To accomplish this, the association has drafted two bills to amend K.S.A. 20-2610 (copies of which are enclosed).

The first bill would immediately provide the 5% for 10 years and 3.5% thereafter for all judges retiring after June 30, 2001, up to a maximum benefit of 80%. The second bill would gradually reinstate the 5%/3.5% accrual rate by permitting those judges who came on the bench after June 30, 1987, to accrue 10 years of served at 5% prospectively and the balance at 3.5%, again up to a maximum benefit of 80%. The problem with the latter bill is that it is of minimal help to those who are nearing retirement.

I am also enclosing a letter of October 31, 2000, from the KPERS staff setting out the cost for the two proposals.

The judges' association respectfully requests that this legislation be recommended for passage.

Sincerely,



Thomas M. Tuggle

TMT/jr
enclosures



RECEIVED NOV 03 2000

October 31, 2000

Judge Thomas Tuggle
Kansas Judicial Center
301 SW 10th Ave.
Topeka, KS 66612-1507

Dear Judge Tuggle:

This is in reply to your recent letter requesting cost information on two proposals to the Judges Retirement System

- (1) For members hired after 1987, change the benefit formula to 5% for the first 10 years of service and 3.5% for years greater than 10 with a maximum benefit of 80% of final average salary.

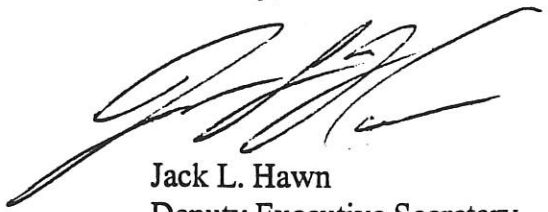
Increase in Unfunded Actuarial Liability (UAL)	\$2.3 M
Increase in employer contribution rate	3.52%
Additional first year employer contributions	\$.720

- (2) For members hired after 1987, change the benefit formula to provide a 5% benefit multiplier for years of service completed after July 1, 2001, up to a maximum of 10 years. A benefit multiplier of 3.5% applies to all other years of service. Maximum benefit is increased to 80% of final average salary.

Increase in Unfunded Actuarial Liability (UAL)	\$0.0 M
Increase in employer contribution rate	2.31%
Additional first year employer contributions	\$.473

Please let me know if you have any questions.

Sincerely,



Jack L. Hawn
Deputy Executive Secretary



Common sense change – For the common good.

VoteYES
for Constitutional Amendment No.1



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Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

Bill Request
Before the Senate Judiciary Committee
Kyle G. Smith
Kansas Bureau of Investigations
Director of Public and Governmental Affairs
January 16, 2001

Chairman Vratil and members of the Committee,

I am pleased to appear today on behalf of the KBI and request legislation that will substantially assist the dissemination of criminal history record information to non-law enforcement agencies. The National Crime Prevention and Privacy Compact ("Compact") will allow for decentralized and more efficient exchange of criminal history records for noncriminal-justice purposes among the states and the federal government.

Use of fingerprint-based criminal-history record information for noncriminal-justice purposes is increasingly in demand. This bill would do nothing to expand or diminish the noncriminal-justice purposes for which criminal history records may be used; it is merely intended to facilitate their exchange in a more efficient and effective manner. Specifically, this Compact would establish both a legal framework for the cooperative exchange of criminal-history records for noncriminal-justice purposes, and a Compact Council to monitor system operations and promulgate necessary rules and procedures.

The primary goal of the Compact is to provide a decentralized national records system that will provide at least the same level of service as the existing centralized FBI record system at reduced cost. Nine other states have already adopted the compact and it is expected that all states will follow suit to obtain the advantages of reduced cost.

I've provided a draft copy of the compact for the Revisor's office. Thank you for your consideration.

Sen Jud
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