

Approved

Date: 3-12-02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:39 a.m. on March 11, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Adkins (excused)
Senator Pugh (excused)

Committee staff present:

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

Conferees appearing before the committee:
Representative Kathe Lloyd

Others attending: see attached list

The minutes of the March 8th, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

Action to create substitute bill:

HB 2075—re: fingerprinting of alleged juvenile offenders

SB 515—methamphetamine and other substances

SB 612—methamphetamine enforcement grants; forfeiture proceeds; Kansas criminal justice council, duties

Following discussion, Senator Schmidt made a motion to merge Sections 2-6 of SB 515 and all of SB 612 into Senate Sub for HB 2075, Senator Donovan seconded. Carried.

HB 2230--concerning suspension or restriction of drivers licenses

Following discussion, Senator Schmidt moved to insert language into HB 2230 which would expand alternatives for judges in truancy cases, Senator Umbarger seconded. Carried.

The committee intends to review both of these substitute bills next week.

HB 2623—forgery; sentencing

Following discussion, Senator O'Connor moved to amend HB 2623 by making technical changes which will resolve conflict between the 2001 and 2002 bills and correct inconsistent statutory references on page 4, and to recommend the bill be placed on the consent calendar, Senator Donovan seconded. Carried.

Written testimony supporting **HB 2623** was submitted by Barbara Toombs, Sentencing Commission. (attachment 1)

HB 2611—worthless checks

Conferee Representative Lloyd testified in support of **HB 2611**, a bill which increases the criminal penalty for giving a worthless check from \$10 to \$30. She discussed the events initiating a need for the bill. (attachment 2) Following discussion Senator O'Connor moved to recommend HB 2611 favorable for passage, Senator Schmidt seconded. Carried.

Written testimony supporting **HB 2611** was submitted by Frances Kastner, Kansas Food Dealers Association (attachment 3) and Marlee Carpenter, Kansas Chamber of Commerce and Industry. (attachment 4)

Final action:

HB 2630—medical expenses of prisoners

Committee discussed a proposed amendment by the Riley County Counselor.(attachment 5) Following discussion, Senator Oleen agreed to, if warranted, amend the bill on the senate floor when further information regarding the proposed amendment is received. Senator Schmidt moved to amend **HB 2630** “in a manner that accomplishes the following purpose: to make clear that in a circumstance where you have a county inmate who has health insurance who then incurs health care costs that are borne by the county that the county can seek to recover against the insurance company in the same manner that the county would seek to recover against the individual and that the language to accomplish that be based as tightly as possible giving the revisor appropriate discretion on the language in existing law in the juvenile justice code.” seconded by Senator Goodwin. Carried. Following further discussion, Senator Donovan moved to give staff the latitude to make technical changes where needed and pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

HB 2629—fingerprinting of certain personnel at the Department of Administration

Following the Chair’s review of **HB 2629**, Senator Haley moved to recommend the bill favorably for passage, Senator Schmidt seconded. Carried.

The meeting adjourned at 10:15 a.m. The next meeting is March 12, 2002.



State of Kansas

KANSAS SENTENCING COMMISSION

Honorable Paul E. Miller, Chairman
District Attorney Paul Morrison, Vice Chairman
Barbara S. Tombs, Executive Director

MEMORANDUM

TO: Senate Judiciary Committee

FROM: Barbara Tombs, Executive Director

SUBJECT: Testimony on HB 2623

DATE: March 6, 2002

During the 2001 Legislative session, HB 2296 was introduced and passed into law. HB 2296 amended the forgery statute, K.S.A. 21-3710, to include 30 days mandatory jail time for a second conviction of forgery and 45 days mandatory jail time for a third and subsequent conviction. The mandatory jail time was designated to be served in county jails and not in a state correctional facility.

Section 1 of HB 2623 proposes to correct an error in K.S.A. 2001 Supp. 21-4704(i) by changing the reference from subsections (b)(2) and (b)(3) of K.S.A. 2001 Supp. 21-3710, to subsection (b)(3) and (b)(4) instead. These latter two subsection references are that part of K.S.A. 2001 Supp. 21-3710 that refers to the mandatory jail time sentences for a second, or a third or subsequent conviction for forgery, not being served in a Kansas Department of Corrections facility.

The proposed bill is technical in nature and intended to correct the subsections referenced in the previous year's bill. The proposed bill would have no impact on prison admissions or prison population levels.

The Sentencing Commission respectfully requests your consideration and passage of this bill.

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KATHE LLOYD
417 NORTHBRIDGE COURT
CLAY CENTER, KANSAS 67432
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TOPEKA
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PUBLIC SAFETY BUDGET

HB 2611

CLAY COUNTY, KANSAS
OFFICE OF THE COUNTY ATTORNEY

DOUGLAS F. MARTIN
COUNTY ATTORNEY

2ND FLOOR COURTHOUSE
P.O. BOX 134
CLAY CENTER, KANSAS 67432

(785) 632-3226
Fax: (785) 632-2651

July 12, 2001

The Honorable Kathe Lloyd
417 N. Ridge Court
Clay Center, Ks. 67432

Dear Kathe:

A number of merchants in Clay County have asked me to request that you propose an amendment to revise K.S.A. 21-3707 regarding criminal worthless check cases.

Currently, a merchant gets only the amount of the check back in restitution, plus \$10.

The Legislature recently changed the civil statute to allow the merchant to get restitution in a civil case, plus \$30 for their time and expenses. However, that statute does not apply to criminal cases for worthless checks brought by my office.

I strongly encourage you to support amending K.S.A. 21-3707 so that a merchant will recover the cost of their check plus \$30, so that this statute will be equal with the civil recovery statutes.

In addition, the criminal statute, K.S.A. 21-3707 should be revised to allow merchants to send their "7 day letter" by regular U.S. mail instead of certified mail.

Please let me know if you have questions.

Very truly yours,

Douglas F. Martin
Clay County Attorney

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60-2610. Civil liability for worthless check. a. If a person gives a worthless check, the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the incurred service charge, interest at the statutory rate and the costs of collection including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following:

(1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than \$500; or

(2) \$100.

The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(b) The amounts specified by subsection (a) shall be recoverable in a civil action brought by or on behalf of the holder of the check only if: (1) Not less than 14 days before filing the civil action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check, the incurred service charge and accrued interest; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded.

The written demand shall be sent by first class mail, to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer. The written demand shall include notice that, if the money is not paid within 14 days, triple damages in addition to an amount of money equal to the sum of the amount of the check, the incurred service charge, court costs, accrued interest, the costs of collection, including but not limited to, reasonable attorney fees unless the court otherwise orders, may be incurred by the maker or drawer of the check.

Notice required by subsection (b)(1) shall state the exact amount and date due, as well as an estimate of the amount that may be incurred if the amount demanded is not paid by the specified date.

(c) Subsequent to the filing of an action under this section but prior to the commencement of a dispositional hearing by the court, the defendant may tender to the plaintiff as satisfaction of the

claim, an amount of money equal to the sum of the amount of the check, the incurred service charge, accrued interest, the costs of collection including, but not limited to, reasonable attorney fees and court costs. The plaintiff shall include in the petition a statement alleging that the defendant may tender such amount as satisfaction of the claim as provided in this subsection. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the commencement of the dispositional hearing by the court, the case shall be dismissed by the plaintiff. For purposes of this subsection only, the amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100 as provided in subsections (a)(1) and (2). For purposes of this subsection, a dispositional hearing means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment against the defendant. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(d) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(e) Any amount previously paid as restitution or reparations to the holder of the check by or on behalf of its maker or drawer shall be credited

against the amount for which the maker or drawer is liable under subsection (a).

(f) Conviction of giving a worthless check or habitually giving a worthless check, as defined by K.S.A. 21-3707, and amendments thereto, shall not be a prerequisite or bar to recovery pursuant to this section.

(g) The service charge on a check which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of each check, order or draft in full upon its presentation, shall not exceed \$30.

(h) As used in this section, "giving a worthless check" means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent:

(1) With intent to defraud or in payment for a preexisting debt; or

(2) Which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation; and

(3) for which the maker or drawer has not tendered to the holder's agent the amount of money demanded and within the time allowed by the demand required in subsection (b).

History: L. 1986, ch. 223, § 1; L. 1990, ch. 209, § 1; L. 1991, ch. 72, § 2; L. 1994, ch. 273, § 14; L. 1995, ch. 230, § 3; L. 1996, ch. 203, § 2; L. 2000, ch. 175, § 5; L. 2001, ch. 186, § 3; May 24.

Law Review and Bar Journal References:

"Are We Not Treating the Judiciary as the 'Ugly Duckling' of Government?" Ed Collister, 9 Kan. J.L. & Pub. Pol'y, No. 2, 302 (1999).

"1999 Legislative Wrap Up," Ron Smith, 68 J.K.B.A. No. 7, 16 (1999).

Attorney General's Opinions:

Giving worthless check: prima facie evidence of intent to defraud: demand for service charge. 94-141.



EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

OFFICERS

SENATE JUDICIARY COMMITTEE March 6, 2002

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ARNIE GRAHAM
Emporia

SUPPORTING HB 2611

ASST. TREASURER
JOHN CUNNINGHAM
Shawnee Mission

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Abilene

**DIRECTOR OF
GOVERNMENTAL AFFAIRS**

FRANCES KASTNER

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes retailers, manufacturers and distributors of food products throughout the State of Kansas.

We thank you for passing the bill in 2001 making it clear we can charge \$30 for worthless checks our members receive and believe the charges should be raised to \$30 in this bill also.

We supported HB 2611 as it was introduced by Repr. Lloyd in the House. Sending a notice by restricted mail adds not only the extra postage but also the time of personnel going to the post office to mail the notice. This seems to be an added layer of expense that is not necessary.

Anyone who is trying to avoid being served a notice on a check (which they knew was worthless when they wrote it) certainly will not go to the post office to pick up a letter sent by restricted mail. We support the original version of HB 2611 which allows first class mail.

Thank you for the opportunity to express our views.

Frances Kastner, Director
Governmental Affairs KFDA

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LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2611

March 7, 2002

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Judiciary Committee

by

Marlee Carpenter
Executive Director – Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter and I am Executive Director of the Kansas Retail Council, an affiliate of the Kansas Chamber of Commerce and Industry. I am here today in support of HB 2611.

Last session, legislation passed that made changes to the civil worthless check statute. We testified in favor of those changes and thank this Committee and the Legislature for making significant

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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and beneficial changes to the worthless check statute. HB 2611 would make one change in the criminal worthless check statute, making the two laws conform, by increasing the worthless check service charge from \$10 to \$30.

As we stated last session, worthless checks are a large problem for many retailers. In 1999, U.S. consumers wrote 68 billion checks of which 612 million personal checks bounced. These worthless checks totaled \$19.9 billion.

The number of checks written each year is increasing, as is the number of checks that bounce. Retailers lose millions of dollars each year processing and prosecuting bad check claims. Retailers do not recover their costs in many cases, which increases the cost of doing business. Retailers have no choice but to pass the costs of worthless checks to the consumers by increasing prices or decreasing services.

Thank you for your time today and we urge you to support HB 2611. I will be happy to answer any questions.

HOUSE BILL No. 2630

By Representative Boston

1-11

AN ACT concerning counties; relating to medical expenses of prisoners amending K.S.A. 19-1910 and 19-4444 and repealing the existing sections.

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

Section 1. K.S.A. 19-444 is hereby amended to read as follows: 19-4444. The agency shall approve all expenditures to be made by and claims to be paid on behalf of such agency and the law enforcement department and shall certify the same to the board of county commissioners of the county to be allowed from the funds provided for the operation of such agency and department, except that all costs incurred by the agency or department for medical care and treatment of prisoners held within the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources. *When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within such county, the county may seek reimbursement of such expenses from the prisoner.* **When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within such county, and the medial expenses were a result of injuries occurring during an arrest by or while in the custody of a law enforcement unit other than the agency or department, the county may seek reimbursement of such expenses from the other law enforcement unit.**

Sec. 2. K.S.A. 19-1910 is hereby amended to read as follows: 19-1910.
(a) When a prisoner is committed to a county jail in a criminal action, the board of county commissioners shall allow the sheriff reasonable charges for maintaining such prisoner. All costs incurred by the county jail for medical care and treatment of prisoners held with the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources. *When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within such county, the county may seek reimbursement of such expenses from the prisoner.* **When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within such county, and the medial expenses were a result of injuries occurring during an arrest by or while in the custody of a law enforcement unit other than the agency or department, the county may seek reimbursement of such expenses from the other law enforcement unit.**

(b) When a prisoner is delivered to a county jail pursuant to K.S.A. 75-5217 and amendments thereto, the costs of holding such prisoner shall be paid as provided in K.S.A. 19-1930 and amendments thereto.

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Sec. ~~2~~ 3. K.S.A. 19-1910 and 19-444 is are hereby repealed.
Sec. ~~3~~ 4. This act shall take effect and be in force from and after its publication in
the statute book.

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