

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on February 3, 2003 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters-Revisor of Statutes
Mitch Rice-Revisor of Statutes
Jerry Ann Donaldson-Legislative Research Department
Bev Renner-Committee Secretary

Conferees appearing before the committee:

Ranking Minority Member Jim Ward
Kyle Smith-Special Agent, Kansas Bureau of Investigation
Vice-Chairperson Tim Owens

Representative Dillmore was recognized on a Point of Personal Privilege. He introduced pages from Brooks Middle School in Wichita including his granddaughter accompanied by his daughter.

Representative Kassebaum made a motion to introduce as committee bills five requests on behalf of the Kansas County District Attorney Association; 1) to amend 22-3402 to clarify the impact of speedy trial and intended costs of delaying trial, 2) to introduce drug legislation to address findings in *Frazier* decision, 3) return to pre-1998 language of K.S.A. 21-3516 regarding sexual exploitation of a child, 4) create the offense of exposing a child to the manufacturing of a controlled substance, and, 5) add aggravated incest to the definition of sexually violent crimes in K.S.A. 22-3717. These bills are being drafted. Representative Carlin seconded the motion. The motion carried.

Kyle Smith, Special Agent, Kansas Bureau of Investigation requested bill introduction on behalf of the Kansas Peace Officers Association (Attachment 1). The bill would tighten the sentencing provisions regarding those who endanger a child while manufacturing and selling drugs.

Vice-Chairperson Owens made a motion to introduce this bill request as a committee bill. Seconded by Representative Carter. The motion carried.

Vice-Chairperson Owens, on behalf of Judge Slater, Johnson County and others, made a motion to introduce legislation as a committee bill to provide penalty provisions for truancy. Seconded by Representative Dillmore. The motion carried.

HB 2049: Creating the office of district attorney in judicial districts that vote for approval.

Chairperson Loyd opened the hearing on HB 2049.

Jill Wolters, Revisor of Statutes explained that under current law, in order to have a district attorney, it must be set out statutorily. According to statutes, those locations are Shawnee, Johnson, Wyandotte, Sedgwick, Reno and Douglass counties. This bill would allow counties in a judicial district to join together to establish a district attorney in their district in two ways; 1) The Board of County Commissioners could pass a resolution and place it on the ballot or, 2) A petition of the voters in a judicial district could put it on the ballot. The county attorney would be discontinued and a district attorney system would be established in the judicial district if the vote was favorable. The district attorney or a deputy assistant would have to spend at least 60 hours a month in the county seat. The counties would contribute to salary based upon their population at the salary level of a district court judge.

Ranking Minority Member Jim Ward presented testimony in support of **HB 2049** (Attachment 2). This bill was introduced for three reasons; 1) It does not mandate a district attorney area but the people are

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 3, 2003, in Room 526-S of the Capitol.

allowed the option. 2) The decision is in the hands of voters whether or not they think their judicial resources could be better used under a D.A. system with one person responsible and deputies accountable to that one person, and, 3) Continue to use the current system where each county has their own county attorney. To be fair, population apportionment makes sure that everyone is invested. The 60 hour stipulation insures that the larger counties are not favored and each member county is represented. The public petition requires at least 2% of the qualified electors from each county within the judicial district. The elected district attorney would hire deputies who are accountable to them and would insure that resources were used properly, and, depending upon the judicial district appropriation procedures, the district attorney would have to justify appropriations based upon results.

Representative Goering suggested that the bill should contain some procedure for remedying funding disagreements. This would give an understanding that there is a mechanism to resolve inter-county disputes.

Steve Kearney representing the Kansas County District Attorney's Association in support of the bill offered to stand for questions but none were offered.

Chair-person Loyd closed the hearing on HB 2049.

The meeting was adjourned at 2:21 p.m. The next scheduled meeting is February 4, 2003.

Kansas Peace Officers Association

Bill Request
Kyle G. Smith
February 3, 2003

Chairman Lloyd and members of the Committee.

On behalf of the Kansas Peace Officers Association I appear today to request a bill tightening the sentencing provisions regarding those who endanger our children while making and selling drugs.

The first proposal would amend K.S.A. 21-4717(a), which lists grounds for which a sentencing judge may enhance a sentence. Currently that statute appropriately lists selling drugs in the immediate proximity of children as grounds to for an upward departure. We would like to suggest that it also include 'manufacturing' drugs such as methamphetamine around children. The danger to children is probably greater and deserves consideration by the judge.

The second proposal would be to amend the provision in K.S.A. 65-4161 and K.S.A. 6104163 that enhances the sentence for trafficking drugs within 1000' feet of a school. The requested amendment would add other places where children congregate: licensed day cares, public parks and playgrounds, to the prohibition. Drafts are attached.

Thank you for your consideration and I'd be happy to answer any questions.

House Corr : J. J.
2-3-03
Attachment 1

Draft

K.S.A. 21-4717.

(a) The following aggravating factors, which apply to drug crimes committed on or after July 1, 1993, under the sentencing guidelines system, may be considered in determining whether substantial and compelling reasons for departure exist:

(1) The crime was committed as part of a major organized drug manufacture, production, cultivation or delivery activity. Two or more of the following nonexclusive factors constitute evidence of major organized drug manufacture, production, cultivation or delivery activity:

(A) The offender derived a substantial amount of money or asset ownership from the illegal drug sale activity.

(B) The presence of a substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity.

(C) The presence of drug transaction records or customer lists that indicate a drug sale activity of major size.

(D) The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or packaging material.

(E) Building acquisitions or building modifications including but not limited to painting, wiring, plumbing or lighting which advanced or facilitated the commission of the offense.

(F) Possession of large amounts of illegal drugs or substantial quantities of controlled substances.

(G) A showing that the offender has engaged in repeated criminal acts associated with the manufacture, production, cultivation or delivery of controlled substances.

(H) The offender manufactured or attempted to manufacture controlled substances in the immediate presence of a person under 18 years of age.

(2) The offender possessed illegal drugs:

(A) With intent to sell, which were sold or were offered for sale to a person under 18 years of age; or

(B) with the intent to sell, deliver or distribute or which were sold or offered for sale in the immediate presence of a person under 18 years of age.

(3) The offender, 18 or more years of age, employs, hires, uses, persuades, induces, entices or coerces any individual under 16 years of age to violate or assist in avoiding detection or apprehension for violation of any provision of the uniform controlled substances act, K.S.A. 65-4101 *et seq.* and amendments thereto or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit a violation of any provision of the uniform controlled substances act regardless of whether the offender knew the age of the individual under 16 years of age.

(4) The offender was incarcerated during the commission of the offense.

(b) In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

History: L. 1992, ch. 239, § 17; L. 1993, ch. 291, § 276; L. 1994, ch. 341, § 3; L. 2000, ch. 181, § 10; July 1.

SUBSTANCES

65-4161. Unlawful acts relating to sale or distribution of opiates, opium, narcotic drugs or designated stimulants; penalties; acts within 1,000 feet of school property. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense or compound any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b), (c) and (d), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a), such person shall be guilty of a drug severity level 2 felony if such person is 18 or more years of age and the substances involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any *licensed day care, public park or playground, or* school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(f) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(g) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

History: L. 1994, ch. 291, § 86; L. 1994, ch. 338, § 2; July 1.

65-4163. Unlawful acts relating to sale or distribution of depressants, stimulants or hallucinogenic drugs or other substances; penalties; acts within 1,000 feet of school property.

(a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, deliver or distribute; cultivate; prescribe; administer; deliver; distribute; dispense or compound:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto or designated in subsection (g) of K.S.A. 65-4109 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

Except as provided in subsection (b), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (a) for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any *licensed day care, public park or playground, or* school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 and such person is 18 or more years of age, such person shall be guilty of a drug severity level 2 felony.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(c) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(d) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(e) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

History: L. 1994, ch. 291, § 88; L. 1994, ch. 338, § 4; L. 2000, ch. 108, § 6; Apr. 27.

JIM WARD
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HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CORRECTIONS AND JUVENILE JUSTICE
 JUDICIARY
 UTILITIES

TESTIMONY OF REPRESENTATIVE JIM WARD
 ON BEHALF OF HB 2049 BEFORE
 HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

I am a former Assistant District Attorney for Sedgwick County. I was privileged to handle every type of case which can arise in such an office from traffic to murder, juvenile to consumer protection. I am here today to request your support for HB 2049.

HB 2049 allows multi county Judicial Districts to convert from the County Attorney system to the District Attorney method of prosecution upon a successful vote of the people within the Judicial district.

Currently, Kansas law provides that in those Judicial Districts that are wholly comprised of one county, there shall be a District Attorney with assistants to prosecute criminal cases. Those counties are the five largest counties in Kansas of Sedgwick, Johnson, Wyandotte, Shawnee, and Douglas. In multi county Judicial Districts each county has a county attorney for prosecution of criminal cases.

This bill provides for the electorate of a Judicial District to determine which system best represents them as a method of criminal prosecution.

HB 2049 provides two methods for placing this proposition on the ballot. One is through resolutions from Boards of County Commissions within a Judicial District. The other method provides for a public petition of not less than 5% of the qualified electors of the judicial district. Said 5% must have at least 2% from each county within the judicial district.

Upon a successful vote which is defined as a majority of the electors within a Judicial District, the District Attorney system will be adopted for that Judicial District. The DA will then be elected at the next general election. The various county attorneys within the Judicial District shall remain in office until that election and the swearing in of the newly elected District Attorney.

There are provisions which provide for cost sharing between the counties, appoint of assistants and office space.

I request this committee report House Bill 2049 to the House favorably. I stand for questions.

H. Corr & JJ
 2-3-03
 Attachment 2