

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 3, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Judge Eric R. Yost, 18<sup>th</sup> Judicial District  
Senator Journey  
Hal Hudson, Director, National Federation of Independent Business

Others attending:

See attached list.

Chairman Vratil called the meeting to order and asked if there were bill introductions.

Senator Bruce introduced a conceptual bill that would correct language in a statute. The Senator explained that *State of Kansas vs. Campbell*, in December, fixed the *Frazier* problem, which was an appellate court decision that lowered the intent to use a precursor to manufacture methamphetamine from a severity level 1 to level 4. The *Campbell* decision reversed that. A couple days ago the Supreme Court reversed itself by reconsidering the motion. Senator stated the bill that would address the Supreme Court's concern with the statutory language so that intent to use amphetamines as a precursor to manufacture methamphetamine would be changed from a severity level 4 to a severity level 1. Senator Bruce moved, seconded by Senator Umbarger, and the motion carried.

Senator Schmidt introduced a bill that would expand "drug free zones" to include licensed day cares, public parks and playgrounds. Senator Schmidt moved, seconded by Senator Goodwin, and the motion carried.

Senator Bruce introduced a bill, on behalf of Senator Journey, to fix a loophole in the Brady law. Currently, a background check is required to purchase a gun. The problem being addressed by the bill is to make information available to law enforcement so when an NCIC check is done, persons found mentally incompetent by the courts will show up in the system. Senator Bruce moved, seconded by Senator Journey, and motion carried.

Chairman Vratil opened the hearing on **SB 61**.

**SB 61 Divorce/child custody; shared residency, child resides with both parents on an equal/near equal basis**

Proponent:

Judge Eric R. Yost serves as Presiding Judge in Family Law for Sedgwick County, which has around 8,000 cases filed annually involving child custody. In a number of cases the court currently awards joint custody with shared residential arrangements with the parents. The bill takes the list of residency options found in K.S.A. 60-1610 (a) 5 and adds the language of "shared residency" as an option in the statutes. Chairman Vratil clarified with Judge Yost that the bill be amended on page 4, line 28 to add "primarily", strike the words "or both" and strike the "s" on parents, so it reads "in which the child resides primarily with one parent on a basis consistent with the best interests of the child". Judge Yost concurred. (Attachment 1)

Chairman Vratil closed the hearing on **SB 61** and opened the hearing on **SB 71**.

**SB 71 Creating the crime of automated teller machine robbery and aggravated automated teller**

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 3, 2005, in Room 123-S of the Capitol.

**machine robbery**

**Proponent:**

Senator Journey stated the bill supplements K.S.A. 21-3426 and 21-3427 with two new classes of robbery. The Senator stated that ATM robberies last longer than an average robbery, due to the fact that often the robber goes with the victim from ATM machine to ATM machine, and the victim is terrorized for an extended period of time. Senator Journey stated that the bill reflects the societal policy against the new and more violent crime, and gives prosecutors one more "tool" in their toolbox with which to charge a criminal with besides robbery and kidnaping. Senator Journey answered several questions from the Committee regarding the severity level of the crime. Chairman Vratil stated that on the bill, lines 16-17, rather than "to effect an automated teller machine transaction," a more clear phrase might be "through the use of an automated teller machine transaction." Senator Journey concurred. (Attachment 2)

Chairman Vratil closed the hearing on **SB 71** and opened the hearing on **SB 72**.

**SB 72 Worthless checks, more than once in a seven-day period, increased penalty**

**Proponents:**

Senator Journey testified that the bill increases the threshold for felony giving a worthless check from \$500 to \$1,000, and that there are two operative sections of the bill amending K.S.A. 21-3707. Section (e) (1) (B) makes a severity level 7 nonperson felony out of giving multiple worthless checks, drafts, or orders in a seven-day period an aggregate amount of \$25,000 or more. Section (e) (2) (B) makes it a severity level 9 nonperson felony to give multiple worthless checks in a seven-day period if the combined total of those checks, drafts, or orders is at least \$1,000 but less than \$25,000. (Attachment 3)

Hal Hudson testified on behalf of the National Federation of Independent Business, stating that many small businesses feel they must accept checks as payment for goods and services in order to be competitive with larger businesses. However, when it comes to recovering their losses from bad checks, getting a judgment in court is of little help if enforcement and collection cannot be completed. (Attachment 4)

Senator Donovan stated that, as business owner, for the fiscal year ending August 31, his company wrote off thousands of dollars of insufficient checks, and that was after paying many dollars to try and collect the funds. The Senator stated that this is costly to the State of Kansas as well, because taxes were not collected and paid on these write-offs.

Chairman Vratil closed the hearing on **SB 72**.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 7, 2005.

Continue to Route

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/3/05

NAME	REPRESENTING
MIKE PURDAN	TARP
Janelle Nuessen	Hein Law Firm
Hal Hudson	NFIB/KS - Topeka
Marjorie Emsminger	Farm Bureau / MORAN
Michelle Peterson	Kansas Environmental Consulting
Matt Goddard	Heartland Community Bankers Assoc.
Doug Wareham	Kansas Bankers Assn.
J. Butler	KSC
B. Harmon	KSC
P. Briggs	KSC
Jim May	Foulston Siefkin LLP
Jim Chort	KBA
Eric Yost	Jud.
Dan Kern	Pinegar - Smith
Kern Barlow	KTLA-
Sarah Novakovic	Federico Consulting

**Testimony of Judge Eric R. Yost**

**Senate Bill 61**

**February 3, 2005**

Dear Chairman Vratil and Committee Members:

Thank you for introducing Senate Bill 61, and thank you for the opportunity to be heard on this legislation.

The Family Law Department in Sedgwick County handles thousands of custody matters every year. In a significant number of those cases, the Court awards joint custody, with shared residency, for the parents. The statutes, however, do not list "shared residency" as one of the residency options, and this legislation corrects that.

SB 61 simply takes the list of residency options found at K.S.A. 60-1610(a)(5), and adds a shared residency option. Shared residency may not be the best option available in all cases, or even in a majority of cases. Indeed, respected authorities on child development question how good shared residency is for children in the long run. But as a practical matter, shared residency is an attractive option in a number of situations, and should be listed as an option for judges who are called upon to make such decisions.

Thank you for your consideration of this matter.

Judge Eric R. Yost  
18th Judicial District  
Family Law Presiding Judge

Senate Judiciary

2.3.05

Attachment 1

## SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT  
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TOPEKA

## SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE  
(JOINT), CHAIR  
HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

Testimony in Support of Senate Bill 71  
Presented by State Senator Phillip B. Journey, 26<sup>th</sup> District

On February 3rd, 2005, before the Senate Judiciary Committee, the Honorable John Vratil, Chair.

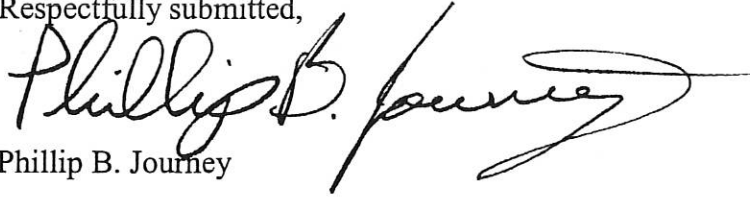
Mr. Chairman, ladies and gentleman of the committee, it is a pleasure to be before you today as a proponent of this bill. Senate Bill 71 is a piece of legislation that is very important to the residents of Sedgwick County and the State of Kansas. It is a simple piece of legislation with two sections. It is important to the residents of Sedgwick County and the State of Kansas due to the extraordinary nature of crimes perpetrated involving automatic teller machines and their customers. Last session I introduced SB333 to require banks to implement free software that when a customer entered a reverse Personal Identification Number or PIN number, law enforcement would automatically be informed that the distress PIN had been entered, the location of the ATM, the account holder's name, and if integrated with the Division of Motor Vehicle records, the likely car's description. Opponents said ATM crime was not significant enough to warrant the cost. This bill would facilitate the documentation of the growing and violent crime trend. This bill supplements K.S.A. 21-3426 and 21-3427 with two new classes of robbery. Senate Bill 71 which increases the criminal penalties imposed for the crimes of robbery and aggravated robbery at an automatic teller machine, from a Level 5 Person Felony (PF) to a Level 4 PF and from a Level 3 PF to a Level 2 PF, respectively.

While many of us are aware of the violent and sadistic nature of the Carr murders in Wichita, other ATM crimes in Wichita have been similarly brutal. ATM crimes are not your normal everyday robbery where the criminal approaches the victim, demands money or property and then leaves upon receipt. These crimes tend to go on for hours, or even days, as the criminal must repeatedly approach the ATM machines to remove more and more money each time. In many cases, the victim is terrorized for an extended period of time, far greater than a normal robbery.

My experience in the criminal justice system consists of working on over 60,000 criminal and traffic cases with over 21 years of experience in Kansas Courts. I practice mainly in the Sedgwick County area and have reviewed thousands of police reports. I have spoken with hundreds of victims of violent crime and understand in many respects the pain they are forced to endure. I recognize that the fiscal note of potential cost may put some off of this proposal; however, other bills I have filed if passed would offset these costs and when weighed against the human cost of the violent crimes and when factored in is an economic positive.

I want to thank the committee for it's time and attention in this matter and urge the committee to pass this bill out with a favorable recommendation, and I will stand for questions.

Respectfully submitted,

A handwritten signature in black ink, reading "Phillip B. Journey". The signature is written in a cursive style with a large, sweeping flourish at the end.

Phillip B. Journey

SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE  
(JOINT). CHAIR  
HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATIONCORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

Testimony in Support of Senate Bill 72  
Presented by State Senator Phillip B. Journey, 26<sup>th</sup> District

On February 3rd, 2005, before the Senate Judiciary Committee, the Honorable John Vratil, Chair.

First I'd like to thank the committee for allowing me to testify in support of Senate Bill 72. I would also like to thank the committee for allowing me to make this a committee bill for your consideration.

Senate Bill 72 mirrors the increase of the threshold for felony giving a worthless check as we did with felony theft last year. It increases the threshold from \$500 to \$1000. While this level of felony is a presumptive probation disposition in the sentencing guidelines it will reduce the number of potential defendants to be incarcerated due to probation violations. This should largely offset any potential DOC beds needed for the new cases charged as felonies due to aggregation. Senate Bill 72 mirrors modifications made two years ago to K.S.A. 21-3729. That statute deals with the criminal use of a financial card. That statute was modified by the Kansas Legislature and signed by the Governor to allow the aggregate of financial transactions within a seven-day period to be made a felony. For example, if someone made six \$100 fraudulent credit card transactions in a seven-day period, it could be charged as a felony as opposed to six separate counts of misdemeanor counts. Senate Bill 72 accomplishes the same thing in dealing with worthless checks. There are two operative sections of the bill amending K.S.A. 21-3707. Adding Section (e) (1) (B), which makes a level 7 nonperson felony out of giving multiple worthless checks, drafts, or orders in a seven-day period in an aggregate amount of \$25,000 or more; and, an amendment adding to K.S.A. 21-3707 Section (e) (2) a new Section (B) which makes it a level 9 nonperson felony to give multiple worthless checks in a seven-day period if the combined total of those checks, drafts, or orders is at least \$1000 but less than \$25,000. It is important to remember that the basic structure of the statute is not changed. An individual who mistakenly writes a number of checks in excess of the balance in their account, would still have an opportunity to cure that problem as state law requires that a certified letter be sent to the drawer of the checks or the maker of the checks giving them up to 21 days to make good on the worthless checks. The statute simply imposes a presumption of criminal intent, but that is still a rebuttable presumption in criminal court.

I have now practiced law in excess of 21 years in Sedgwick County, Kansas, working on over 60,000 criminal and traffic cases. For eight years I served my penance for being a lawyer, working under contract for one or two days a week in Wichita Municipal Court on misdemeanor cases. I can recall on many instances where the defendant had multiple checks in excess of


Senate Judiciary

2-3-05Attachment 3

\$2500 in the aggregate, but was simply charged with 50 misdemeanor counts as opposed to one felony count. Municipal Courts do not have the probation resources necessary to monitor restitution to the victims in these financial crimes. Municipal Courts do not have the probation resources necessary to monitor defendants to insure their compliance with court orders for drug or alcohol treatment which in many cases is the trigger for this criminal behavior. In these times when the state legislature is contemplating tax increases on many individuals and businesses in the State, we should with the other hand help these businesses maintain their financial solvency and send a message to people who would abuse the privilege of having a checking account in this State. District Court Probation Services and Community Corrections Probation Services in the State of Kansas are generally not available in Municipal Court cases. In many cases Community Corrections is not available for misdemeanor charges in District Court placing these defendants, upon conviction, with Court Services or Community Corrections as the Court may desire increases the likelihood that these persons while being granted probation would be monitored closely enough to hopefully motivate them to correct the behavior that precipitated these issues.

I sincerely appreciate the committee's time and attention in these matters and would urge the committee to pass this legislation out of committee with a favorable recommendation.

Respectfully submitted,



Phillip B. Journey



KANSAS

**Statement by  
Hal Hudson, State Director  
National Federation of Independent Business  
Before the Senate Judiciary Committee  
Thursday, February 3, 2005**

Mr. Chairman and members of the Judiciary Committee:

My name is Hal Hudson, and I am the State Director for the nearly 6,000 small businesses who are members of NFIB. I appear here today to support enactment of Senate Bill 72.

Year-after-year, I hear complaints from small business owners that the passing of bad checks is a serious problem for them. Perhaps the increased penalties provided for in S.B. 72 will help.

Many small businesses feel they must accept checks as payment for goods and services, or loose business to their larger competitors who accept checks. Yet, when it comes to recover their loss from a bad check, there is little help available.

Local county or district attorneys turn an unsympathetic ear, even though passing a worthless check is clearly a violation of law. Even getting a judgment in court is of little help if enforcement and collection cannot be completed.

If the amount of the check is too small, even collection attorneys, who make their living this way, don't want to be bothered.

That brings us back to S.B. 72. Perhaps the increased penalties provided in this act will make the passer of worthless checks think twice before engaging in the practice too often.

Make no mistake. I do not see S.B. 72 as the panacea. But it may help.

Therefore, on behalf of the members of NFIB, I support enactment of S.B. 72.

Thank you for allowing me to present our views on this subject.