Approved: 3-10-06
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 30, 2006 in Room 313-S of the Capitol.

All members were present except:
Becky Hutchins- excused
Delia Garcia- excused
Michael Peterson- excused
Mike Kiegerl- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Representative Tim Owens
Lieutenant John Eichkorn, Kansas Highway Patrol
Mark Bennett, Kansas County & District Attorneys Association

Representative Marti Crow appeared before the committee with a bill request to set the limitations on the placement of sexual offender treatment facilities. She made the motion to have her request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Chairman O'Neal opened the hearing on **HB 2586 - test refusal for driving under the influence, first time, if granted diversion, administrative penalty for drivers license 30 day suspension, 330 restricted**.

Representative Tim Owens appeared as the sponsor of the proposed bill because it would be a much better and more practical approach than what is currently being done. It would allow anyone who refuses to submit to a Breathalyzer test on a first offense to be able to enter into a diversion agreement in lieu of further criminal proceedings. (Attachment 1)

Lieutenant John Eichkorn, Kansas Highway Patrol, appeared in opposition to the bill. Breathalyzer test are an important part of the evidence when building a case. The proposed bill would cause an increase in test refusals if the individuals know that they can later enter into a diversion and receive nearly the same punishment as for failing a test. Current laws are in place to serve as a deterrent to drunk drivers. (Attachment 2)

The committee requested information on how may individuals who are convicted of a 1st time DUI re-offend. Also, information from Kansas Department of Transportation as to whether the state would lose money from the Federal Government if the provisions are enacted due to their requirement of a hard suspension on 1st time offenders and pushing for stronger DUI laws.

The hearing on **HB 2586** was closed.

The hearing on **HB 2617 - violation of protective order includes an order issued in a criminal case ordering the defendant to refrain from having contact with another person**, was opened.

Mark Bennett, Kansas County & District Attorneys Association, explained that current law addresses instances where a no contact order has been issued as a condition of bond. The problem is with those individuals who do not bond out and are contacting the victim or witnesses to influence how they will testify. The proposed bill will criminalize the act and will allow law enforcement to stop this type of behavior. (Attachment 3)

Written testimony in support of the proposed bill was distributed from Kansas Coalition Against Sexual and Domestic Violence (Attachment 4)

The hearing on **HB 2617** was closed.

The committee meeting adjourned at 4:15 p.m The next meeting was scheduled for 3:30 p.m. January 31, 2006 in room 313-S

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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COMMITTEE ASSIGNMENTS
Taxation, Judiciary

January 25, 2006

CHAIRMAN O'NEAL AND MEMBERS OF THE JUDICIARY COMMITTEE,

THANK YOU FOR THE OPPORTUNITY TO PRESENT HOUSE BILL 2586 FOR YOUR CONSIDERATION.

THIS BILL WOULD AMEND K.S.A. 8-1014 WITH RESPECT TO THE ADMINISTRATIVE PENALTIES FOR REFUSAL TO SUBMIT TO A BREATHALYZER TEST WHEN STOPPED FOR SUSPICION OF DRIVING UNDER THE INFLUENCE. CURRENTLY IF A PERSON IS STOPPED BY LAW ENFORCEMENT FOR SUSPICION OF DRIVING UNDER THE INFLUENCE AND REFUSES TO TAKE THE BREATHALYZER TEST, THE STATUTE CALLS FOR AN AUTOMATIC SUSPENSION OF THAT PERSON'S DRIVERS LICENSE FOR A PERIOD OF ONE YEAR ON A FIRST OFFENSE. THIS IS REGARDLESS OF THE OUTCOME OF ANY TRIAL ON THE ISSUE OR ANY SENTENCE HANDED OUT BY A COURT OF APPROPRIATE JURISDICTION.

THIS BILL WOULD MAKE A NARROW ADJUSTMENT OF THE ADMINISTRATIVE PENALTY FOR CERTAIN INDIVIDUALS WHO MEET THE SPECIAL REQUIREMENTS OF THE AMENDED STATUTE, UNDER A NEW SECTION I. IF A PERSON REFUSES TO TAKE A BREATHALYZER TEST ON A FIRST OCCURRENCE AND HAS ENTERED INTO A DIVERSION AGREEMENT IN LIEU OF FURTHER CRIMINAL PROCEEDINGS PURSUANT TO K.S.A. 8-1567, AND AMENDMENTS THERETO, THE DIVISION OF MOTOR VEHICLES SHALL SUSPEND THE PERSONS DRIVING PRIVILEGES FOR 30 DAYS AND SHALL RESTRICT THE PERSONS DRIVING PRIVILEGES FOR AN ADDITIONAL 330 DAYS AS SET OUT IN K.S.A. 8-292 (a)1, (a)2, (a)3, AND (a)4.

THAT IS THE TECHNICAL EXPLANATION. NOW LET ME GIVE YOU THE PRACTICAL EXPLANATION. IF A PERSON IS A FIRST TIME OFFENDER WHO IS STOPPED BY LAW ENFORCEMENT FOR SUSPECTED DUI, HE/SHE IS ASKED TO SUBMIT TO A BREATHALYZER TEST TO DETERMINE IF AND HOW MUCH BLOOD ALCOHOL CONTENT HE/SHE HAS. IF THAT PERSON DECLINES TO TAKE THE TEST THEY WILL AUTOMATICALLY UNDER CURRENT LAW, LOSE THEIR LICENSE FOR A YEAR UNDER ADMINISTRATIVE REGULATIONS OF THE MOTOR VEHICLE DEPARTMENT. IF THAT PERSON IS A FIRST TIME OFFENDER AND IS UNDER THE INFLUENCE, THEY MAY NOT BE AWARE OF THE LAW RELATING TO SUCH A CIRCUMSTANCE AND EVEN THOUGH THE LAW ENFORCEMENT OFFICER EXPLAINS THE SITUATION TO THEM, THEIR "UNDER THE INFLUENCE" STATUS MAY PREVENT THEM FROM MAKING A VERY CLEAR DECISION. THE COMBINATION OF EVENTS COUPLED WITH THE FACT THAT

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AN INDIVIDUAL WILL NOT HAVE HAD LEGAL COUNSEL FOR GUIDANCE COULD LEAD TO AN INEQUITABLE SITUATION.

PEOPLE USUALLY DECLINE TO TAKE THE TEST FOR ONE OF TWO REASONS. EITHER THEY ARE TOTALLY UNFAMILIAR WITH THE LAW RELATING TO THE PENALTIES FOR DUI AND THE REFUSAL AND MAKE A JUDGMENT BASED UPON FEAR AND APPREHENSION, OR THEY KNOW THAT THEY ARE UNDER THE INFLUENCE AND DON'T WANT TO CONFIRM IT WITH THE TEST. LATER ON IF THEY GO TO TRIAL THEY COULD MAKE IT MORE DIFFICULT FOR THE PROSECUTOR TO PROVE THE CASE AGAINST THEM. HENCE THE REFUSAL TO TAKE THE TEST. THIS IS NOT WHY I FILED THIS BILL.

THERE ARE FIRST TIME OFFENDERS WHO MAKE THE ILL-FATED DECISION TO DECLINE THE TEST AT THE SCENE OF THE ARREST, WHO LATER AGREE TO A DIVERSION PROGRAM WHICH IS REALLY A CONTRACTUAL ARRANGEMENT WITH THE PROSECUTION THAT THEY WILL ASSUME RESPONSIBILITY FOR THEIR ACTIONS AND TAKE A TREATMENT PROGRAM IN EXCHANGE FOR NOT HAVING THE CRIMINAL PROSECUTION PROCEED. BUT WITH THE REFUSAL THEY STILL LOSE THEIR LICENSE AND OFTEN TIMES THEIR JOB AND ANY WAY TO GET TO AND FROM THEIR ALCOHOL TREATMENT PROGRAMS OR MEDICAL EMERGENCIES. IF A PERSON IS WILLING TO ASSUME RESPONSIBILITY FOR THEIR ACTIONS AT THIS STAGE, AND ARE WILLING TO ENTER INTO A DIVERSION PROGRAM WHICH INCLUDES DRUG AND ALCOHOL TREATMENT, I BELIEVE IT IS EQUITABLE TO ALLOW THEM TO HAVE THE SAME DRIVING PRIVILEGES ALLOWED A PERSON WHO IS CONVICTED OF A FIRST TIME OFFENSE. THAT WAY THEY WILL HAVE ASSUMED RESPONSIBILITY FOR THEIR OWN ACTIONS; WILL HAVE AGREED TO ENTER INTO A TREATMENT PROGRAM OF SOME SORT; AND WILL HAVE HAD THE ABILITY TO RETAIN THEIR JOB, TO ATTEND DRUG AND ALCOHOL TREATMENT, AND TO GET TO MEDICAL EMERGENCIES WHILE ON A RESTRICTED LICENSE.

THIS IS ONLY FOR THOSE PEOPLE WHO MEET THE LIMITED CRITERIA BUT IN ALL LIKELIHOOD WILL SAVE JOBS AND MAY EVEN PROVIDE AN INCENTIVE FOR PEOPLE TO ENTER INTO A DIVERSION PROGRAM INSTEAD OF TRYING THE CASE. THIS IS NOT A "SOFT ON CRIME" BILL. RATHER IT IS A HOLD THEM ACCOUNTABLE BILL THAT ALSO ADDRESSES THE FACT THAT A FIRST TIME OFFENDER WHO ADMITS RESPONSIBILITY SHOULD NOT BE PREVENTED FROM WORKING OR GOING TO TREATMENT JUST BECAUSE OF AN INITIAL REFUSAL TO TAKE A TEST. I WOULD APPRECIATE YOUR SUPPORT FOR THIS VERY PRACTICAL SOLUTION TO A FIRST TIME OFFENDER ISSUE AND WILL BE HAPPY TO STAND FOR QUESTIONS.

Sincerely,

Thomas C. Owens
Representative, 19th District

KANSAS

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2586
to
House Judiciary Committee

Presented by
Lieutenant John Eichkorn
Kansas Highway Patrol

January 30, 2006

Good afternoon, Mr. Chairman and members of the committee. My name is Lieutenant John Eichkorn and on behalf of Colonel William Seck and the Kansas Highway Patrol, it is a pleasure to appear before you today to comment on House Bill 2586.

Under HB 2586, if an offender refuses to take an alcohol test on a first occurrence, and later entered into a diversion agreement, their driver's license would be suspended for 30 days and restricted for an additional 330 days. Under current law, if a driver consents to a test and fails, their license is suspended for 30 days but is suspended for one year for a test refusal.

It is important to maintain the integrity of evidentiary tests. When an offender refuses to take an alcohol test, it leaves an officer with one less piece of evidence to build a case. Although officers may still articulate in court whether a driver was intoxicated, evidence collected during evidentiary testing makes the officer's case stronger. The Patrol is concerned HB 2586 could result in an increase in test refusals. If drivers know they can refuse a test, later enter into a diversion agreement, and still receive nearly the same punishment as failing a test, we could see an increase in refusals. The laws and penalties pursuant to intoxicated driving must serve as a deterrent to drunk drivers.

The Patrol has zero tolerance for impaired driving, and troopers work diligently to remove these drivers from the roads to save their lives and the lives of other motorists. In 2005, the Patrol saw an increase in alcohol evidentiary tests given and an increase in DUI arrests. Of all fatal crashes in 2004, 25 percent were alcohol related. During the same period, 8.5 percent of all injury crashes were also alcohol related. We must all continue to work together to make sure Kansas is tough on impaired driving in an overall effort to save lives.

The Patrol recommends the committee take a closer look at this bill to ensure we aren't encouraging impaired drivers to refuse evidentiary tests. I appreciate the opportunity to address you today, and I will be happy to answer any questions you may have.

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Chairman O'Neal & Members of the House Judiciary Committee

HOUSE BILL 2617

Proposes adding subparagraph 7 to the existing language of ***K.S.A. 21-3843***, Violation of a Protective Order. Currently, the statute criminalizes "knowingly or intentionally" violating a:

(1) P.F.A under ***K.S.A. 60-3105**, etc,*
(2) "Protective order" issued by a court or tribunal of any State or Indian Tribe;
(3) Restraining order
(4) A "no contact order" issued as a condition of bond, probation, diversion, post-release or suspended sentence
(5) A "no contact order" issued as condition of appeal bond.
(6) Protection from Stalking order issued under ***K.S.A. 60-31a05***

When a suspect is brought before a Judge for his or her first appearance, the Judge sets a bond and any bond conditions that are appropriate, to include "no contact" with specific witnesses. For the suspect who makes bond and then initiates such prohibited contact, the current statute is adequate. For the suspect who goes so far as to take actions designed at "*preventing or dissuading*," a witness or victim from testifying, ***K.S.A. 21-3832***, Intimidation of a Witness, is available.

What about the suspect who has been issued a "no contact" order as a condition of bond which he or she cannot make, who continues to contact – and thereby influence – witnesses or victims from his or her jail cell? Such contact is not covered by the current language of ***K.S.A. 21-3843***.

Proposed HB 2617 proposes adding subsection 7 to remedy this situation:

7. "*an order issued in a criminal case that order the defendant to refrain from having any direct or indirect contact with another person*."

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If added, this language would cover the following common situations:

a. The suspect who is unable to make bond and continues to have contact with witnesses or victims he/she which would be prohibited if they were out on bond. The only consequence to this behavior now comes is if it can be **proven** that such contact was intended to "prevent or dissuade" a witness or victim from testifying (see Intimidation of a Witness, ***K.S.A. 21-3832***) – which is often difficult if the contact in question had the intended consequence and the witness or victim is now unwilling to go to law enforcement.

b. Contact from jail with a witness or victim when said contact does not rise to the level of an overt attempt to "prevent or dissuade" that witness from testifying. In domestic violence cases, for instance, promises from the inmate that he will "change," may not be of a threatening nature, but the effect is the same–a reluctant witness who is no longer liable to appear for subsequent court dates.

This addition would also be of benefit to suspect in gang-related activities who may be in contact from their cell with fellow gang-members listed as witnesses to the offense. The witness in such a scenarios is highly unlikely to advise law enforcement of either fact or content of such contact. Knowing this, the inmate is free to ply the witness with threats, promises, or simply guilt to influence said witness. If contact alone is criminalized, law enforcement will be better equipped to stop this behavior.

In short, the proposed amendment would benefit any situation where a suspect has motive to influence a witness or victim. The more serious the charge, the higher the bond and, consequently, the greater the incarcerated suspect's motive to influence. The proposed amendment is necessary to combat this reality.

Marc Bennett, 18th Judicial District
Assistant District Attorney

Kansas Coalition Against Sexual and Domestic Violence

KCSDV
UNITED AGAINST VIOLENCE

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House Bill 2617
Proponent
January 30, 2006

Chairman O'Neal and Members of the House Judiciary Committee;

KCSDV supports the intent of HB 2617. Domestic Violence Advocates report a consistent problem of offenders calling victims from the jail. Sometimes those calls are clearly meant to intimidate and harass the victim and other times they are calls expressing remorse, which often have the same effect as intimidating calls.

Some jails are able to prevent calls to victims by restricting direct access to telephones. K.S.A. 22-2802 requires no contact provisions if the person is being bonded out for a person felony or misdemeanor. These conditions apply for at least 72-hours. Subsection (7) of this statute implies that these conditions of release are effective even if the person is still being detained or for some reason cannot make bond.

K.S.A. 21-3843 (a) (4) states that violation of a pretrial release order prohibiting direct or indirect contact with another person is criminal and it appears that the provisions in HB 2617 are somewhat redundant. However, given that contact from jails is still a recurrent problem, HB 2617 may serve to better clarify such restrictions.

Therefore, KCSDV supports the intent of HB 2617.

Submitted by:

Sandy Barnett
Executive Director

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