

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 28, 2007 in Room 313-S of the Capitol.

All members were present except:
Delia Garcia- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Senator John Vratil
Tammy Williams, City of Overland Park
Sandy Jacquot, League of Kansas Municipalities
Ed Klumpp, Kansas Association of Chiefs of Police
Representative Jeff King
Stuart Little, Johnson County
Senator Phil Journey
Jim Clark, Kansas Bar Association
Pete Bodyk, Kansas Department of Transportation
Pam Moses, Chief Clerk 27th Judicial District, Reno County
Jeanne Turner, Chief Clerk 5th Judicial District, Chase & Lyon Counties
Pat Scalia, Board of Indigents Defense

The hearing on **SB 57 - repealing K.S.A. 20-351a report on certain judgeships**, was opened.

Senator John Vratil appeared as the sponsor of the proposed bill which would repeal the requirement of the Chief Justice providing an annual report of district magistrate judge positions created or eliminated to the House & Senate Judiciary Committees. ([Attachment 1](#))

The hearing on **SB 57** was closed.

The hearing on **SB 31 - jurisdiction of municipal courts**, was opened.

Tammy Williams, City of Overland Park, appeared as a proponent to the bill. She explained that it would clarify that municipal courts would have jurisdiction to hear and determine cases involving violations of city ordinances and certain other violations that could be charged as a felony in district court. The proposed bill addresses a current Kansas Supreme Court decision, State v. Elliott, which held that municipalities do not have jurisdiction over those types of violations. ([Attachment 2](#))

Sandy Jacquot, League of Kansas Municipalities, appeared in support of the bill. She stated that it would help enhance the penalties for crimes that could be committed at a later time. ([Attachment 3](#))

Ed Klumpp, Kansas Association of Chiefs of Police, appeared as a proponent to the bill. He commented that most of these types of cases go to District & County Attorneys to prosecute. Many of these types of cases are not prosecuted because they are low level types of crimes. ([Attachment 4](#))

Stuart Little, Johnson County, provided a balloon that would clarify that prosecutors for municipalities would need to check a defendant's NCIC record to check with their prior driving history. ([Attachment 5](#))

Representative Jeff King appeared before the committee with a request to amend the bill to correct an ambiguity concerning municipal court jurisdiction over juveniles who violate municipal ordinances that do not have a Kansas statutory counterpart. ([Attachment 6](#)).

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 28, 2007 in Room 313-S of the Capitol.

An attorney general's opinion issued in 1997 stated that state law grants municipal courts the right to try alleged violations of "a penal ordinance that proscribes conduct that is not prohibited by statute such as a curfew violation." While some municipal courts follow this opinion, others do not. ([Attachment 7](#))

Committee members suggested that violations of municipal ordinances are handled under the CINC code and wondered if the amendment would really be needed.

The hearing on **SB 31** was closed.

The hearing on **SB 35 - DUI computation of time to request administrative hearings**, was opened.

Senator Phil Journey appeared as the sponsor of the proposed bill. He stated that it would clarify how time would be computed to determine if a request for an administrative hearing was filed in a timely manner. ([Attachment 8](#))

Jim Clark, Kansas Bar Association, appeared before the committee as a proponent of the bill. He stated that other statutes refer to the method of computation and not a specific number of days. This would simply unify several statutes. ([Attachment 9](#))

Pete Bodyk, Kansas Department of Transportation, informed the committee that the National Highway Traffic Safety Administration (NHTSA) has informed KDOT that Kansas is currently out of compliance with two of the federal codes:

- Kansas has allowed for a license to operate a motorized bicycle for 1 year which is the period of the hard suspension. Federal law does not allow any license. Kansas would lose approximately \$7.6 million in 2008 and \$7.7 million in 2009 in federal funds. ([Attachment 10](#))
- Kansas requires an ignition interlock device be installed on any vehicle the offender drives. Federal law requires it to be on "each of the vehicles" that are registered to the offender. Kansas could lose approximately \$7.3 million this fiscal year. ([Attachment 11](#))

The hearing on **SB 35** was closed.

The hearing on **SB 53 - civil procedure; release of dormant judgements**, was opened.

Pam Moses, Chief Clerk 27th Judicial District, appeared as a proponent of the bill. It would modify how a judgement is released by requiring the judge to make a legal determination and sign the release. Currently, the judgement is made by the clerk. ([Attachment 12](#))

The hearing on **SB 53** was closed.

The hearing on **SB 51 - vital statistics, list of deceased residents, district court clerk**, was opened.

Jeanne Turner, Chief Clerk 5th Judicial District, appeared in support of the bill. She explained that it would require the Department of Health & Environment to provide to district court a list of deceased residents of that county who were at least age 18 and for whom death certificates have been filed. The list would be used to update the jury pool. ([Attachment 13](#))

The hearing on **SB 51** was closed.

The hearing on **SB 75 - compensation for attorney representing indigent defendants**, was opened.

Pat Scalia, Board of Indigents Defense, appeared before the committee as a proponent of the bill. She reminded the committee that last legislative session the Judiciary Committee increased hourly compensation to \$80 per hour for attorneys representing indigent defendants. Somehow through the process, the bill was changed to allow for indigent defense offices to be installed in counties where they were needed.

Ms. Scalia conducted public hearings and found that a number of judicial districts preferred to retain the

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 28, 2007 in Room 313-S of the Capitol.

assigned counsel they currently had and offered to accept a lower hourly rate than the \$80 per hour to remain cost effective. The proposed bill would allow for a chief judge to enter into agreement with counsel on the rate of compensation. (Attachment 14)

The hearing on **SB 75** was closed.

SB 57 - repealing K.S.A. 20-351a report on certain judgeships

Representative Kinzer made the motion to report SB 57 favorably for passage, and because of its non-controversial nature, be placed on the consent calendar. Representative Owens seconded the motion. The motion carried.

SB 53 - civil procedure; release of dormant judgements

Representative Pauls made the motion to report SB 53 favorably for passage, and because of its non-controversial nature, be placed on the consent calendar. Representative Owens seconded the motion. The motion carried.

SB 51 - vital statistics, list of deceased residents, district court clerk

Representative Crow made the motion to report SB 51 favorably for passage, and because of its non-controversial nature, be placed on the consent calendar. Representative Colloton seconded the motion. The motion carried.

SB 75 - compensation for attorney representing indigent defendants

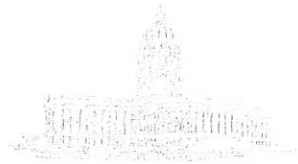
Representative Goyle made the motion to change "specify" to "negotiate" on page 2, line 2. Representative Davis seconded the motion. The motion carried.

Representative Roth made the motion to report SB 75 favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for March 1, 2007.

State of Kansas

JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
JOHNSON COUNTY
LEGISLATIVE HOTLINE
1-800-432-3924



COMMITTEE ASSIGNMENTS
CHAIR: JUDICIARY
VICE CHAIR: EDUCATION
MEMBER: FEDERAL AND STATE AFFAIRS
ORGANIZATION, CALENDAR
AND RULES
SENTENCING COMMISSION
INTERSTATE COOPERATION

Vice President Kansas Senate

Testimony presented to
the House Judiciary Committee
by Senator John Vratil
February 28, 2007
concerning Senate Bill 57

Thank you for the opportunity to appear before the House Judiciary Committee in support of Senate Bill 57. Senate Bill 57 would repeal the requirement that the Chief Justice of the Kansas Supreme Court annually report to the Chairpersons of the Senate and House Judiciary Committees all district magistrate judge positions created or eliminated and all district judge positions created pursuant to K.S.A. 20-352, 20-353, 20-354, or 20-355..

The statute, K.S.A. 20-351a, served a purpose at the time of court unification during the 1980s. However, unification has long since been completed. Today, the chairpersons of the respective judiciary committees know the status of judicial positions.

We anticipate the fiscal impact of the change requested in Senate Bill 57 to be insignificant. It would include two first class postage stamps, personnel time to produce two letters, and the requisite paper, envelopes, and technology. We do not have a cost basis to compute the fiscal impact beyond the savings obtained with regard to the first class stamps.

Thank you for your time. I request that you give careful consideration to Senate Bill 57.

A handwritten signature in black ink that reads "John Vratil".

House Judiciary

Date 2-28-07

Attachment # 1

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Testimony Before The
House Judiciary Committee
Regarding
Senate Bill 31

February 26, 2007

The City of Overland Park appreciates the opportunity to appear before this Committee and present testimony in support of Senate Bill 31, which would enhance municipal court jurisdiction in certain cases.

On April 28, 2006, the Kansas Supreme Court issued its ruling in *State v. Elliott*, 281 Kan. 583, 133 P.3d 1253 (2006), holding that municipal courts do not have subject matter jurisdiction over crimes designated as felonies, in particular third or subsequent Driving Under the Influence (DUI) charges. Given the development of the law in this area, the ruling in and of itself comes as no surprise; however, the Kansas Supreme Court suggests for the first time in *Elliott* that it will look beyond the face of the complaint for jurisdiction. The Court will not rely solely on how the offense has been charged but will consider the actual number of prior DUI convictions a defendant has to determine if the municipal court had subject matter jurisdiction. The Court's decision in this case has made it difficult for judges in municipal court to know if they have jurisdiction over a particular matter as it is often difficult to determine how many priors an individual actually has. This legislation is an attempt to remedy that uncertainty.

Prior to the Court's decision in *Elliott*, many municipal courts acted on the assumption that municipal jurisdiction referenced above was determined by the charging document or complaint.¹ If a complaint charged a second time DUI, the courts determined they had jurisdiction regardless of whether it actually was a second time offense or a third or subsequent offense. The charging decision, it was believed, was entirely a prosecutorial one and the court did not look beyond the face of the complaint for subject matter jurisdiction. If a city ordinance violation was charged for a crime that was committed in the city limits, that was enough to establish subject matter jurisdiction in municipal court. *Elliott* changed that with the suggestion that the Court will look beyond the complaint to establish jurisdiction. As a result of this decision, municipal judges and prosecutors face a myriad of jurisdictional issues some of which are discussed below.

Even given the best of intentions, prosecutors and judges may not be aware of prior convictions at the time of charging or sentencing. Some of the reasons they may be unaware

¹ See *State v. Dyke*, 33 Kan. App. 2d 167 (2003).

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are as follows:

1. The prosecution has the burden of proving the defendant's criminal history. The defendant is not required to admit his or her criminal history. In fact, a defendant can misrepresent his or her criminal history or even his or her identity during a presentence investigation.²
2. The five-year decay in DUI convictions for enhancement purposes was eliminated by the legislature in 2001; and currently lifetime convictions are counted for DUI enhancement (and thus, misdemeanor or felony level determinations). When the five-year decay was in place, the Kansas Division of Motor Vehicles dropped DUI convictions from motorists driving records after five years. When the decay was removed, the Division did not reinstate those convictions. Therefore, any convictions prior to 1996 are not discoverable on a Kansas driving record. In addition, out-of-state convictions that decay, may no longer be listed on a person's certified driving record from their licensing state.
3. Due to manpower or resource shortages, some local jurisdictions do not input DUI conviction information into the NCIC III criminal history database; or if they do, they are sometimes years behind in this data entry. Therefore, a court or prosecutor may not be aware of convictions or pending cases. In addition, a person may have several pending in neighboring jurisdictions at the same time and until the conviction is recorded, no one jurisdiction would know about the other. This is particularly true in areas such as Johnson County, where there are 19 different municipalities and courts.
4. Prior to July 1, 2006, DUIs could be expunged after five years.³ Although such records can be revealed to courts and prosecutors upon a showing of a subsequent conviction,⁴ expunged records are often very difficult to locate due to the fact that they are "sealed" and some local courts delete all reference to them in their database.

Given the foregoing, a municipal court could unknowingly sentence a third or subsequent DUI offender as a first or second time offender. When the person is subsequently charged with more serious crimes, he or she can reveal the true nature of his or her priors and get the municipal court convictions voided. In another possible scenario, the person would wait until the statute of limitations had run on filing a DUI charge and then ask that prior convictions be voided for lack of subject matter jurisdiction.

The City is supportive of having municipal court jurisdiction expanded to permit the City to prosecute those cases where we cannot "prove up" a prior or when the district

² See, *State v. Tolliver*, 22 Kan.App.2d 374 (1996); *State v. Spencer*, 31 Kan.App.2d 681 (2003).

³ See, K.S.A. § 12-4516(b)(2) (2001). This law was revised in 2006 to prohibit expungement of DUI, however it appears that the prohibition may only apply to cases charged after July 1, 2006. See, 2006 Session Laws, Chapter 171, and *State v. Anderson*, 12 Kan.App.2d 342 (1987).

⁴ K.S.A. § 12-4516(h)(3) and (6).

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attorney's office declines to prosecute. This will permit the City to prosecute those cases that would otherwise fall through the cracks.

Thank you for your consideration.



League of Kansas Municipalities

TO: House Judiciary Committee
FROM: Sandy Jacquot, Director of Law/General Counsel
DATE: February 28, 2007
RE: Support for SB 31

Thank you for allowing me to testify on behalf of the League of Kansas Municipalities and our member cities in favor of SB 31. This bill would clarify the jurisdiction of municipal courts in certain situations when they adjudicate a crime that later is found to have been a felony due to prior convictions. In *State v. Elliott*, 281 Kan. 583, the Kansas Supreme Court held that municipal courts do not have jurisdiction over crimes that are felonies, particularly third and subsequent DUI charges. In that case and in many situations in municipal court, despite attempting to ascertain whether or not the defendant had prior DUI convictions, the municipal court adjudicated the defendant on what should have gone to district court as a felony. The convictions were voided and unable to be used in district court to enhance the defendant's sentence. This raises questions about municipal court jurisdiction on any crime that uses prior convictions or dollar amounts of damage or theft to enhance the severity of the crime.

This bill effectuates the policy of the Legislature to enhance the penalties for some crimes by allowing jurisdiction in municipal court for certain violations that might later be found to be felonies. Justice is served by allowing such jurisdiction and LKM urges the committee to report SB 31 favorably for passage.

**WRITTEN TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF SB 31
Presented by Ed Klumpp
On behalf of the
Kansas Association of Chiefs of Police**

February 28, 2007

This testimony is in support of SB31. The essence of this bill is to allow municipal courts to prosecute cases where the case would normally be tried in municipal court were it not for statutory provisions upgrading the case to a felony because of prior convictions. The most common of these cases are driving while suspended, DUI, and theft.

In practice, those cases would go to the District/County Attorneys first, and if they are not prosecuted as felonies, the cities would be allowed to prosecute them, not as felonies but as misdemeanors. Currently many such cases simply are not prosecuted anywhere at any level of crime, and the person violating the crime is not held accountable.

The reasons for those cases not proceeding in District Court are varied. The most common appears to be the inability to obtain the proper documentation on the prior convictions or the lack of documentation that the defendant knowingly and voluntarily waived their right to council. Other reasons include lack of capacity and the belief that if the case will ultimately proceed in District Court as a misdemeanor it should instead proceed in the municipal court that would have handled it if the prior convictions were not present.

This bill will help hold these criminals accountable for their actions, at least at some level, avoiding a frequent occurrence allowing no consequence for their actions. It is important these cases get prosecuted with the ability to then develop a case where all the paperwork will be obtainable if there is yet another violation of the law by the perpetrator.

This bill does not appear to allow the municipal court prosecution of a case declined by the District/County attorney simply on the basis of case load. We believe this is also a valid reason for allowing the municipal court to proceed and would ask the committee to consider an amendment that would allow prosecution in these limited cases when the District/County Attorney declines prosecution for other reasons. The important thing is for the District/County Attorney to have the opportunity to file, if they don't, the city prosecutor should have that option.

We strongly encourage the committee to recommend this bill to pass.



Ed Klumpp
Chief of Police-Retired
Topeka Police Department

Legislative Committee Chair
Kansas Association of Chiefs of Police

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House Judiciary

Date 2-28-07

Attachment # 4

SENATE BILL No. 31

By Senator Emler

1-8

10 AN ACT concerning municipal courts; relating to jurisdiction; amending
11 K.S.A. 12-4104 and 22-2601 and repealing the existing sections.
12
13 Be it enacted by the Legislature of the State of Kansas:
14 Section 1. K.S.A. 12-4104 is hereby amended to read as follows: 12-
15 4104. (a) ~~The municipal court of each city shall have jurisdiction to hear~~
16 ~~and determine cases involving violations of the ordinances of the city.~~
17 ~~Search warrants shall not issue out of a municipal court not issue search~~
18 ~~warrants.~~
19 (b) The municipal court of each city shall have jurisdiction to hear
20 and determine cases involving violations of the ordinances of the city.
21 ~~Such violations may include violations of ordinances that prohibit acts~~
22 ~~prohibited by state statutes, except for sentencing provisions. In addition,~~
23 ~~the municipal~~ court shall have jurisdiction in the following
24 circumstances:
25 (1) (A) A violation that may be charged as a felony in the district
26 court, due solely to an enhancement based upon the number of prior
27 convictions. In order to have jurisdiction of such violation in municipal
28 court, the prosecution must have made reasonable efforts to check the
29 defendant's NCIC history and to obtain the defendant's driving history
30 record, and at least one of the following circumstances must be present:
31 (i) The prior convictions used to determine enhancement to the felony
32 level were without the assistance of counsel and the prosecution is unable
33 to establish that the right to counsel was knowingly and voluntarily
34 waived;
35 (ii) the city prosecutor or the county or district attorney is unable to
36 obtain certified copies of the record of conviction of the necessary number
37 of prior convictions for the felony enhancement and the defendant has
38 not stipulated, in writing, to the number of prior convictions necessary
39 for the felony enhancement; or
40 (iii) due to any other facts or circumstances, the defendant may be
41 sentenced for only a misdemeanor in district court.
42 (B) Charging of the case as an ordinance violation shall not be done to
43 avoid the enhanced penalty.

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Attachment # 5

STATE OF KANSAS

COMMITTEE ASSIGNMENTS
TAXATION
TRANSPORTATION
GOVERNMENT EFFICIENCY

JEFF KING

REPRESENTATIVE, 12TH DISTRICT

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INDEPENDENCE, KANSAS 67301
(620) 331-9888

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TOPEKA, KANSAS 66612
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TOPEKA

HOUSE OF

REPRESENTATIVES

TO: House Judiciary Committee

FROM: Jeff King, Representative, 12th District

SUBJECT: Testimony In Support of the Proposed Amendment to SB 31

DATE: February 28, 2007

Thank you for the opportunity to testify before you today in favor of the proposed amendment to SB 31. This amendment would correct an ambiguity concerning municipal court jurisdiction over juveniles who violate a municipal ordinance that **does not** have a Kansas statutory counterpart. Often, municipal ordinances will prohibit that same conduct as state statute (examples include theft and battery). Kansas law is clear in such cases that district courts have exclusive jurisdiction. The proposed amendment would not change that system.

Kansas statutes are less clear, however, on whether municipal courts have jurisdiction to hear juvenile cases under local ordinances that have **no counterpart** in state law. The Kansas Attorney General issued a 1997 opinion (attached to this testimony) finding that state law grants municipal courts the right to try alleged violations of "a penal ordinance that proscribes conduct that is not prohibited by statute such as a curfew violation." While it is my understanding that most municipal court judges follow this opinion, some do not. My proposed amendment, if adopted, would end this uncertainty and provide clear guidance to municipal court judges that they have the authority to hear alleged violations of unique local penal ordinances.

Besides clarifying an ambiguity in existing law, this proposed amendment ensures that local ordinances are adjudicated in the forum best suited to hear these disputes. As this committee knows, district court judges are best situated to consider violations of state laws. Especially in judicial districts that include numerous towns and cities, district court judges are ill-prepared to address the nuances of each town's ordinances. Municipal judges, however, are trained to deal with the specifics of their individual community's ordinances. To take advantage of the special knowledge of municipal court judges and to eliminate an ambiguity in existing law, I urge this committee to adopt this amendment to SB 31.

Thank you for your time and consideration of my request.

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As Amended by Senate Committee

Session of 2007

SENATE BILL No. 31

By Senator Emler

1-8

10 AN ACT concerning municipal courts; relating to jurisdiction; amending
11 K.S.A. 12-4104 and 22-2601 and repealing the existing sections.

and K.S.A. 2006 Supp. 38-2302

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 12-4104 is hereby amended to read as follows: 12-
15 4104. (a) The municipal court of each city shall ~~have jurisdiction to hear~~
16 ~~and determine cases involving violations of the ordinances of the city.~~
17 ~~Search warrants shall not issue out of a municipal court not issue search~~
18 ~~warrants.~~

19 (b) *The municipal court of each city shall have jurisdiction to hear*
20 *and determine cases involving violations of the ordinances of the city.*
21 ~~Such violations may include violations of ordinances that prohibit acts~~
22 ~~prohibited by state statutes, except for sentencing provisions.~~ **In addition,**
23 **the municipal court shall have jurisdiction in the following**
24 **circumstances:**

and cases involving juveniles who are 10 or more years of age but less than 18 years of age who have violated a city ordinance that proscribes an act that is not prohibited by state law

25 (1) (A) *A violation that may be charged as a felony in the district*
26 *court, due solely to an enhancement based upon the number of prior*
27 *convictions. In order to have jurisdiction of such violation in municipal*
28 *court, at least one of the following circumstances must be present:*

29 (i) *The prior convictions used to determine enhancement to the felony*
30 *level were without the assistance of counsel and the prosecution is unable*
31 *to establish that the right to counsel was knowingly and voluntarily*
32 *waived;*

33 (ii) *the city prosecutor or the county or district attorney is unable to*
34 *obtain certified copies of the record of conviction of the necessary number*
35 *of prior convictions for the felony enhancement and the defendant has*
36 *not stipulated, in writing, to the number of prior convictions necessary*
37 *for the felony enhancement; or*

38 (iii) *due to any other facts or circumstances, the defendant may be*
39 *sentenced for only a misdemeanor in district court.*

40 (B) *Charging of the case as an ordinance violation shall not be done*
41 *to avoid the enhanced penalty.*

42 (2) (A) *A violation that, due to a statutory enhancement provision,*
43 *could have been charged as a felony in the district court due solely to an*

6-3

1 *enhancement based upon the dollar amount of damage or loss if the county*
2 *or district attorney has declined felony prosecution.*

3 *(B) Charging of the case as an ordinance violation shall not be done*
4 *in an effort to avoid the enhanced penalty. The municipal court shall have*
5 *jurisdiction to hear such case as an ordinance violation if a dollar amount*
6 *of damage or loss exists.*

7 Sec. 2. K.S.A. 22-2601 is hereby amended to read as follows: 22-
8 2601. The district court shall have exclusive jurisdiction to try all cases of
9 felony and other criminal cases under the laws of the state of Kansas,
10 *except that the district court shall have concurrent jurisdiction with mu-*
11 *nicipal courts as provided in K.S.A. 12-4104, and amendments thereto.*

Sec. 3. K.S.A. 2006 Supp. 38-2302. [see attached]
Renumber remaining sections accordingly.

12 Sec. 3. K.S.A. 12-4104 and 22-2601 are hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the statute book.

and K.S.A. 2006 Supp. 38-2302

Sec. 3. K.S.A. 2006 Supp. 38-2302 is hereby amended to read as follows: 38-2302.
As used in this code, unless the context otherwise requires:

(a) "Commissioner" means the commissioner of juvenile justice.

(b) "Conditional release" means release from a term of commitment in a juvenile correctional facility for an aftercare term pursuant to K.S.A. 2006 Supp. 38-2369, and amendments thereto, under conditions established by the commissioner.

(c) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 2006 Supp. 38-2306, and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2006 Supp. 38-2307, and amendments thereto, in a proceeding pursuant to this code.

(d) "Educational institution" means all schools at the elementary and secondary levels.

(e) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsections (a)(1) through (5) of K.S.A. 72-89b03, and amendments thereto.

(f) "Institution" means the following institutions: the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility, the Topeka juvenile correctional facility and the Kansas juvenile correctional complex.

(g) "Investigator" means an employee of the juvenile justice authority assigned by the commissioner with the responsibility for investigations concerning employees at the juvenile correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional facility.

(h) "Jail" means: (1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(i) "Juvenile" means a person to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

(j) "Juvenile correctional facility" means a facility operated by the commissioner for the commitment of juvenile offenders.

(k) "Juvenile corrections officer" means a certified employee of the juvenile justice authority working at a juvenile correctional facility assigned by the commissioner with responsibility for maintaining custody, security and control of juveniles in the custody of the commissioner at a juvenile correctional facility.

(l) "Juvenile detention facility" means a public or private facility licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which is used for the lawful custody of alleged or adjudicated juvenile offenders.

(m) "Juvenile intake and assessment worker" means a responsible adult authorized to perform

intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(n) "Juvenile offender" means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include: (1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(3) a person under 18 years of age who previously has been:

(A) Convicted as an adult under the Kansas criminal code;

(B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2006 Supp. 38-2364, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 2006 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction;

(4) a person under 18 years of age who has violated a city ordinance that proscribes an act that is not prohibited by state law.

(o) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(p) "Parent" when used in relation to a juvenile, includes a guardian and every person who is, by law, liable to maintain, care for or support the juvenile.

(q) "Risk assessment tool" means an instrument administered to juveniles which delivers a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to the community.

(r) "Sanctions house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(s) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(t) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.



March 27, 1997

ATTORNEY GENERAL OPINION NO. **97-31**

The Honorable Tim Carmody
State Representative, 16th District
State Capitol, Room 115-S
Topeka, Kansas 66612

Re: Cities and Municipalities--Code for Municipal Courts; General Provisions--
Jurisdiction of Municipal Court; Ordinance Violations With No Statutory
Counterpart

Minors--Kansas Juvenile Offender Code--Definitions; Definition of Juvenile
Offender

Synopsis: A juvenile who violates an ordinance that proscribes conduct that is not prohibited by statute has not committed an act that would constitute a felony or misdemeanor as defined by K.S.A. 1996 Supp. 21-3105 and thus may be prosecuted in municipal court. Cited herein: K.S.A. 1996 Supp. 21-3105; K.S.A. 21-3512; 21-3701; 21-4501; K.S.A. 1996 Supp. 21-4502; 21-4503a; 38-1602; K.S.A. 38-1604.

* * *

Dear Representative Carmody:

You request our opinion concerning whether a juvenile may be prosecuted in municipal court when charged with a violation of a municipal ordinance that does not have a statutory counterpart. The examples you provide include ordinances regarding curfew violations, defacing property, and riding a bicycle on a sidewalk. The Kansas Municipal Court Manual states that municipal courts have no jurisdiction over juveniles charged with non-traffic ordinance violations and that such complaints should be dismissed and referred to the district court for prosecution under the Juvenile Offender Code (Code). (See section 3.06 of the Kansas Municipal Court Manual.)

The Code applies only to "juvenile offenders." K.S.A. 38-1604. K.S.A. 1996 Supp. 38-1602(b) defines "juvenile offender", in part, as follows:

"(a) 'Juvenile' means a person 10 or more years of age but less than 18 years of age.

"(b) 'Juvenile offender' means a person who does an **act** while a juvenile **which** if done by an adult **would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105** . . . but does not include:

"(1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117 . . . [a traffic offense includes most city traffic ordinances.]" (Emphasis added).

House Judiciary

Date 2-28-07Attachment # 7

..S.A. 1996 Supp. 21-3105 provides, in part as follows:

"**A crime is an act** or omission **defined by law** and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized . . . Crimes are classified as felonies, misdemeanors and traffic infractions.

"(1) A felony is a crime punishable by death or imprisonment in any state correctional institution or a crime which is defined as a felony by law.

....

"(4) All other crimes are misdemeanors." (Emphasis added).

The enactment of the Kansas Criminal Code does not preempt a city from enacting ordinances defining and penalizing criminal conduct provided the ordinance does not conflict with a state statute. **Garten Enterprises Inc. v. City of Kansas City**, 219 Kan. 620 (1976); **City of Junction City v. Lee**, 216 Kan. 495 (1975). Some municipal ordinances mirror criminal statutes by prohibiting the same criminal behavior. Examples of this type of ordinance include those prohibiting theft, prostitution, and battery. However, the majority of ordinances have no criminal statutory counterpart. Examples of this type of ordinance include those dealing with curfew and graffiti. Initially, we must determine whether the conduct prohibited by this second type of ordinance are "acts . . . that would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105." If so, then a juvenile who engages in such conduct may be a juvenile offender subject to the Juvenile Offender Code and exclusive jurisdiction of the district court.

Both felonies and misdemeanors are defined as "crimes" in K.S.A. 1996 Supp. 21-3105 and a crime is an act that is "defined by law" and which carries a penalty. Does "law" as used in this statute mean only state statutes or does the term encompass municipal ordinances as well? If the term includes both statutes and municipal ordinances, then a juvenile who violates a penal ordinance has committed a "crime" pursuant to K.S.A. 1996 Supp. 21-3105 and may be subject to the Juvenile Offender Code. If the term refers only to state statutes, then a juvenile who violates a penal ordinance that proscribes an act that is not prohibited by state law has not committed a "crime" pursuant to K.S.A. 1996 Supp. 21-3105 and is not subject to the Juvenile Offender Code.

An ordinance of a municipal corporation is a local law. 56 Am.Jur.2d *Municipal Corporations* § 343. There is a difference of opinion, however, whether ordinances are "laws" within the meaning of statutory or constitutional provisions. 56 Am.Jur.2d *Municipal Corporations* §§ 343, 345. In **United States Fidelity and Guarantee v. Guenther**, 281 U.S. 34, 50 S.Ct. 165, 74 L.Ed. 683 (1930), the United States Supreme Court construed an accident insurance policy that excluded coverage of an insured when the insured's automobile was being operated by a person under the age limit "fixed by law" and concluded that such law included a municipal ordinance that prohibited an automobile owner from permitting a minor under 18 years of age to operate the automobile. In that case, the Court concluded that the term "law" could be used in its generic sense as meaning the rules of conduct prescribed by a controlling authority and having binding legal force which could include a municipal ordinance as well as a statute.

While there are no Kansas appellate court decisions on point, the consensus appears to be that whether a municipal ordinance is a law depends upon the intent of the statute. In **In re Hurston**, 112 Kan. 238, 234 (1922), the Kansas Supreme Court concluded that a statute that provided for incarceration in the State Industrial Farm for Women upon conviction of any offense "against the criminal laws of this state" did not include city ordinance violations. In **In re Sanford**, 117 Kan. 750 (1925), the Court determined that a violation of an ordinance did not constitute a "misdemeanor involving moral turpitude" for purposes of disbaring an attorney. Finally, in **City of Burlington v.**

7-2

Stockwell, 1 Kan.App. 414 (1895), the newly created Kansas Court of Appeals held that a violation of a city ordinance was not a misdemeanor for purposes of determining the jurisdiction of the newly created Court of Appeals. [However, on appeal to the Kansas Supreme Court, the latter concluded that the Kansas Court of Appeals did have jurisdiction over such appeals because the Legislature was using the term "misdemeanor" in its general sense as opposed to the more specific definition under the Code of Criminal Procedure. *City of Burlington v. Stockwell*, 56 Kan. 208 (1895)].

The predecessor statute to K.S.A. 1996 Supp. 21-3105 used the term "public offense" rather than "crime." K.S.A. 62-104, 62-105 [Repealed L. 1969, ch. 180]. A public offense was defined as "any act...for which the laws of this state prescribe a punishment." When the criminal code was revised in 1969, the term "crime" replaced "public offense" and was defined simply as an act "defined by law." We could find no legislative history or Kansas appellate decisions that support an expansion of the term "law" as used in K.S.A. 1996 Supp. 21-3105 to include municipal ordinances.

We think that the better interpretation of "defined by law" as used in K.S.A. 1996 Supp. 21-3105 means only those laws enacted by the legislature. Consequently, a juvenile who violates a penal ordinance that proscribes conduct that is not prohibited by statute such as a curfew violation has not committed an act that would constitute a felony or misdemeanor as defined by K.S.A. 1996 Supp. 21-3105 and may be prosecuted in municipal court.

Very truly yours,

CARLA J. STOVALL
Attorney General of Kansas

Mary Feighny
Assistant Attorney General

CJS:JLM:MF;jm



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SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

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

CORRECTIONS AND JUVENILE JUSTICE
OVERSIGHT (JOINT)

**Testimony in Support of Senate Bill 35
Before the House Judiciary Committee
February 28th, 2007**

It is a privilege and an honor to have the opportunity to address the House Judiciary Committee and offer comments and support of Senate Bill 35.

Senate Bill 35 amends K.S.A. 8-1020 making the provisions of K.S.A. 60-206 and amendments thereto defining the computation of time to determination if the request for an administrative hearing to the Department of Revenue was filed in a timely manner. Such hearings may be requested by any individual served with a Department of Revenue form DC27. Failure to file such request results in the automatic suspension of driving privileges for a period of up to the remaining time the Kansan has left in this world.

Having practiced criminal and traffic law for over 20 years working on over 60,000 cases, this peculiar public policy established previously in the law is an inconsistent application of time limits requiring the Department of Revenue to receive and the alleged driver to transmit request for hearings on legal holidays or weekends when state offices are closed. Such requirements simply set an administrative trap for unsuspecting respondents to the administrative action and is an unnecessary inconvenience on counsel practicing law in the State of Kansas to require transmittal of these requests when state offices are not open.

There is no substantive change in the rights, privileges, or duties of the Department of Revenue or the drivers in these administrative actions other than to bring the hearing request requirement into line with other time limits for requesting hearings, appeals, or other legal action. Enactment of Senate Bill 35 will help create a consistent statutory structure that will improve the administration of justice and the quality of due process in Kansas jurisprudence.

Respectfully submitted,

Senator Phillip B. Journey
State Senator 26th District

House Judiciary
Date 2-28-07
Attachment # 8



KANSAS BAR
ASSOCIATION

Testimony in Support of
Senate Bill No. 35

Presented to the House Judiciary Committee
February 28, 2007

The Kansas Bar Association is a voluntary, professional association of over 6,700 members dedicated to serving Kansas lawyers, their clients, and the people of Kansas.

The KBA supports **SB 35** because it enhances the continuing efforts of the courts, the legislature and legal practitioners toward predictability and uniformity, as exemplified by the unification of the Kansas court system in 1977 and the adoption of the Administrative Procedure Act in 1984.

K.S.A. 60-206 does not establish specific time periods, but a method of computing those time periods. There may be valid reasons why an administrative agency may want to set specific time periods for hearings or appeals. However, there is no good reason why computation of such time periods should be as varied in number as there are state agencies. Other procedures, such as Civil Procedure for Limited Actions, K.S.A. 61-2909, and by reference, procedures under the Small Claims Act, already refer to the method of computation in 60-206; as does the Consumer Protection Act, K.S.A. 50-640. Given the need for uniformity in the computation of time, the two statutes in this bill even recognize the general acceptance of the 60-206 computation method but in a perverse manner, by specifically rejecting it.

The Kansas Bar Association urges the House Judiciary Committee to recommend **SB 35** for passage.

Jim Clark
KBA Legislative Counsel

* * *

House Judiciary
Date 2-28-07
Attachment # 9

**TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE**

**REGARDING SENATE BILL 35
DUI of Alcohol, Concerning Administrative Hearings, Computation of Time**

February 28, 2007

Mr. Chairman and Committee Members:

I am Pete Bodyk, Chief of the Bureau of Traffic Safety. On behalf of the Kansas Department of Transportation (KDOT), I am here to provide testimony regarding the proposed amendments to Senate Bill 35, an act relating to driving under the influence of alcohol or drugs; concerning administrative hearings; relating to the computation of time.

The National Highway Traffic Safety Administration (NHTSA) recently informed KDOT that two current Kansas statutes place the state out of compliance with 23 USC 164 of the federal code. The federal code requires certain minimum penalties for repeat DUI offenders.

The penalty for non-compliance is a transfer of three percent of the state's core highway construction funds to safety programs, which may address either alcohol-impaired driving or hazard elimination projects. The penalty would amount to a transfer of approximately \$7.6 million in 2008 and \$7.7 million in 2009, based on currently authorized federal funding levels. The transfer would continue as long as the state remains non-compliant.

We have received preliminary information from NHTSA that the proposed amendments will bring the state into compliance, although an official determination from NHTSA is still pending.

Thank you for your time, I will gladly stand for questions.

Representative O'Neal
Chairman, House Judiciary Committee

NHTSA has informed the Kansas Dept of Transportation that we are not in compliance with the federal requirements for a "repeat intoxicated driver law." Being out of compliance would cause three percent of the state's core highway construction funds for Interstate Maintenance, National Highway System, and Surface Transportation Program to be transferred to safety programs to address alcohol-impaired driving or hazard elimination. This would be approximately \$7.3 million in the current year.

Repeat intoxicated driver law means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall:

- (B) Be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles.

Current Kansas law: "*....restrict the persons driving privileges....to driving only a motor vehicle equipped with an ignition interlock device.*"

We will be providing language to bring Kansas into compliance with the federal requirement and HB 2012 seems like it would be the appropriate vehicle to do this.

Pete Bodyk, Chief
KDOT Bureau of Traffic Safety

BUREAU OF TRAFFIC SAFETY

Pete Bodyk., Chief

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House Judiciary

Date 2-28-07

Attachment # 11

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February 28, 2007

**Senate Bill 53
Dormant Judgments Release of Record
K.S.A. 60-2403**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators concerning Senate Bill 53 relating to Dormant Judgments Release of Record in K.S.A. 60-2403.

Our purpose is to modify how the judgment is released. Currently, the statute requires releasing the judgment by the clerk of the court when requested to do so. There are three areas listed in the statute that addresses this issue. They are: K.S.A. 60-2403a (1); K.S.A. 60-2403b (1); and K.S.A. 60-2403d.

In order to release the judgment the clerk must research the case and make a legal determination as to whether the judgment should be released. This places the Clerk of the District Court in the capacity of determining the outcome of the release. We believe the judge should make the legal determination and sign the release.

Again, thank you for allowing us the opportunity to appear before you today on this bill. I will be glad to answer any questions you may have.

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Chief Clerk of District Court
Twenty-seventh Judicial District
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House Judiciary
Date 2-28-07
Attachment # 12

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TESTIMONY

By: Jeanne S. Turner, Clerk of the District Court
Lyon County, Kansas

Mr. Chairman & Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding Senate Bill 51. This bill proposes that the state registrar shall furnish to the Clerk of the District Court, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall be used solely by the Clerk of the District Court for the purposes of updating jury records.

We currently send out jury questionnaires to potential jurors from a driver's license list that is obtained from the Division of Motor Vehicles by the Office of Judicial Administration. Since driver's licenses are valid for several years, there are a lot of names on the list of persons who are deceased.

It is our hope that obtaining a list of deceased residents from the state registrar would prevent our office from sending out questionnaires to deceased residents. This would save postage for our office and prevent individuals from having to call our office to tell us that this person is deceased. This can be very upsetting to families who have suffered a loss.

Again, thank you for your time and attention regarding this testimony on Senate Bill 51. I would be happy to answer any questions you may have.

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House Judiciary
Date 2-28-07
Attachment # 13

TESTIMONY

STATE BOARD OF INDIGENTS' DEFENSE SERVICES BEFORE THE SENATE JUDICIARY COMMITTEE

Senate Bill 75

Chairman O'Neal and Members of the Committee:

The Board of Indigents' Defense Services requested this proposed legislation. This bill would change the current statutory language from requiring the Board to pay \$80 per hour for assigned counsel services to language that will allow the Board to contract with private attorneys for rates lower than \$80 per hour and to allow the chief judge of a judicial district to set an hourly rate for the local voluntary panel of assigned attorneys at less than \$80 per hour.

This legislation is needed to enable the Board to accomplish its mission of providing the Constitutional right to counsel and related defense services in a cost effective manner. Last session, when the hourly rate paid to assigned counsel was increased from \$50 to \$80 per hour, the first increase for assigned counsel in 18 years, there was the following direction: "The executive director of the board of indigents' defense services is hereby directed to open additional public defender offices in locations where it is cost effective." (Omnibus, HB 2968 Sec 50)

Accordingly, I compared the cost of opening public defender offices with the cost of paying assigned counsel \$80 per hour. I then scheduled public hearings in those districts where a public defender office would be cost effective. In each one of those districts, both the bench and the local attorneys preferred to retain the assigned counsel system and offered to accept a lower hourly rate to remain cost effective. A list of those counties, the agreed hourly rate, and the savings to the state general fund follows this testimony. Additional counties will be added with the passage of this legislation because the potential for a legal challenge to the payment of less than \$80 per hour will be removed. Additionally, this agency currently has in place 21 contracts with attorneys and we need the ability to continue to contract in order to save state general funds.

House Judiciary

Date 2-28-07

Attachment # 14

Current Savings FY07

Agreement		Hourly Rate	Savings
7/1/06	Wyandotte	\$62	\$109,571
10/1/06	Clark, Ford, Gray, Kiowa, Meade, Cherokee, Crawford, Labette	\$69	\$23,442
1/1/07	McPherson, Harvey	\$62	(Not yet available)

Projected Savings at Minimum FY08

County	Hours	Hourly Rate	Equals	Hourly Rate	Equals	Savings
Wyandotte	12,960	\$80	\$1,036,800	\$62	\$803,520	\$233,280
McPherson, Harvey	5,785	\$80	\$462,800	\$62	\$358,670	\$104,130
Clark, Ford, Gray, Kiowa, Mead, Cherokee, Crawford, Labette	13,343	\$80	\$1,067,440	\$69	\$920,667	\$146,773

Respectfully submitted,

Patricia A. Scalia
Executive Director