

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 28, 2008 in Room 313-S of the Capitol.

All members were present except:
Annie Kuether- excused

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

Conferees appearing before the committee:
Juliene Maska, Governor's Grants Program
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Representative Pat Colloton
Lt. Mike Life, President, Kansas Narcotics Officers Association
Jeff Brandau, KBI Narcotics Supervisor
Jennifer Roth, Kansas Association of Criminal Defense Lawyers

Juliene Maska, Governor's Grants Program, appeared before the committee with requests for three committee bills.

1. Creating a domestic violence tag for all crimes related to domestic violence, a new definition for domestic violence and repeal the domestic battery statute.
2. Allow a sexual assault victim to obtain an examination without requiring the victim to report the crime to law enforcement.
3. The Federal S.T.O.P. Violence Against Women Act Grant requires the prohibiting of polygraph examinations of sexual assault victims as a condition for proceeding with an investigation.

Kinzer made the motion to have the requests introduced as committee bills. Representative Garcia seconded the motion. The motion carried.

Helen Pedigo, Executive Director, Kansas Sentencing Commission, appeared before the committee with a request for a committee bill. It would extend a community corrections pilot program, for one year, in Johnson County. The program allows for the secretary of corrections to make grants to counties for the development, implementation, operation and improvement of community correctional services.

Kinzer made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Representative Colloton requested a bill introduction that would allow court to order a \$400 fee from those convicted of crimes to cover the costs of laboratory analysis. She made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

The hearing on HB 2545 - controlled substances, ecstasy and certain meth substances a felony, was opened.

Chairman O'Neal reminded the committee that there was a hearing on the proposed bill during the 2007 Legislative Session.

Lt. Mike Life, President, Kansas Narcotics Officers Association, appeared before the committee in support of the bill. He stated that some teenagers take ecstasy because if they get caught "it's only a misdemeanor." The penalties are not as severe as with some other types of drugs. Ecstasy changes individuals substantially. The proposed bill would make the use of it a felony. Ecstasy use is on the rise. KBI statistics show that from 2005 through 2006 ecstasy use increased 85% . (Attachment #1)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 28, 2008 in Room 313-S of the Capitol.

Jeff Brandau, KBI Narcotics Supervisor, spoke in favor of the bill. Raising the penalty of a “club drug” will, hopefully, help our youths consider these types of drugs as dangerous, not only because of short term effects but also long term brain damage. (Attachment #2)

Written testimony, in support of the bill, was provided by the Kansas Association of Chiefs of Police and the Kansas Peace Officers’ Association. (Attachments #3 & 4)

Jennifer Roth, Kansas Association of Criminal Defense Lawyers, appeared before the committee in opposition of the proposed bill. She stated that there is not any education across the state about the harms of these types of drugs and encouraged the State to provide for some type of public educational program. This should be done before it’s made a felony as not to harm records of teenagers. (Attachment # 5)

Helen Pedigo stated that the fiscal note was based on 2006 arrest/convictions so it probably would need to be readjusted. The KBI projections are based on number of labs that are tested. The actual number is probably somewhere in between the two estimates. The fiscal note is still pretty close for this year.

The hearing on **HB 2545** was closed.

SB 366 - traffic citations; methods of giving notice of failure to comply

Representative Watkins made the motion to report SB 366 favorably for passage. Representative Goyle seconded the motion.

Watkins made the substitute motion to amend the bill with revisors technical amendments. Representative Goyle seconded the motion. The motion carried.

The committee meeting adjourned at 4:45 p.m. The next meeting is scheduled for January 29, 2008.

**WRITTEN TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HB 2545
Presented by Lt. Michael D. Life
On behalf of the
Kansas Narcotics Officers Association**

January 28, 2008

House Judiciary Committee
Rep. Mike O'Neal, Chairman

Mr. Chairman and Committee Members,

This testimony is in support of HB 2545

Mr. Chairman and Members of the Committee, I am Lt. Mike Life with the Junction City Police Department. I have been a police officer for 22 years. For 14 of those years I have been working narcotics investigations exclusively. I am the supervisor of a county wide drug task force and am the current president of the Kansas Narcotics Officers Association. I am here on behalf of the Kansas Narcotics Officers Association. We are a proponent of HB 2545.

HB 2545 addresses and I'd like to say, fixes, 2 deficiencies currently in Kansas statute 65-4162. These deficiencies are, first, the statute does not address the seriousness of Ecstasy and designer drugs, and second, it does not increase penalties for repeat offenders except with marijuana.

3,4, methylenedioxymethamphetamine, which is frequently referred to by the acronym MDMA or the street name of Ecstasy, is a dangerous drug. There is substantial scientific evidence that proves it has numerous risks associated with its use. For some people, Ecstasy can be addictive. In one survey of Ecstasy users, 43% met the accepted diagnostic criteria for dependence.

Ecstasy can also interfere with the body's ability to regulate temperature, sometimes leading to a sharp increase in body temperature (hyperthermia), resulting in liver, kidney and cardiovascular system failure, and death.

Research in animals links Ecstasy exposure to long-term damage to neurons that are involved in mood, thinking, and judgment. A study in nonhuman primates showed that exposure to Ecstasy for only 4 days caused damage to serotonin nerve terminals that was evident 6 to 7 years later.

For the purposes of brevity in this testimony, I will not quote the research and data individually but will list sources for this data at the bottom of my written testimony. The

House Judiciary
Date 1-28-08
Attachment # 1

bottom line is Ecstasy is a dangerous drug, it causes brain damage, and people can die from it.

State wide Ecstasy use is on the rise. According to Kansas Bureau of Investigations statistics, from 2005 through 2006 total arrests in Kansas under 65-4162 were down 15%. Most of these were for marijuana. Now in that same time period, if you just look at arrests for Ecstasy and the related designer drugs under the same statute, you will see an increase of 84%.¹ In my own jurisdiction, 5 years ago you never saw Ecstasy but now it's readily available.

For most Ecstasy users, this drug is thought of as harmless and with no risks. This way of thinking is only validated by its current misdemeanor status under current Kansas law. Changing this drug to a felony will address the seriousness of its use, and assure that people arrested for it will be placed on monitored probation to receive the attention and help they need. This change will have minimal impact on prison populations.

The remaining 9 drugs proposed by HB 2545 for change to felony status are all amphetamine or methamphetamine derivatives, or commonly called "designer" drugs. "Designer" drugs are drugs created when a chemist takes the basic design of known illegal drugs, and changes the molecule a little bit in order to by-pass the laws. Again, these are all amphetamine or methamphetamine derivatives and do not belong in misdemeanor status.

The second deficiency currently in 65-4162 is the fact that there is no increased deterrent for repeat offenders, unless they are repeat offenders for marijuana exclusively. The proposed changes in HB 2545 will change that deterrent to repeat offenders for all the misdemeanor class drugs in 65-4162.

In conclusion, on behalf of the Kansas Narcotics Officers Association, we believe HB 2545 is a good bill and support the changes to 65-4162 which are proposed by it. I want to thank you for the opportunity to speak to you and I will be happy to respond to any questions you may have.

Sources of Information

- a. National Institute on Drug Abuse, InfoFacts: MDMA, May 2006, located at: <http://www.drugabuse.gov/infofacts/ecstasy.html>
- b. National Institute on Drug Abuse, Research Report: MDMA (Ecstasy) Abuse, March 2006, located at: <http://www.nida.nih.gov/ResearchReports/MDMA/>
- c. National Institute on Drug Abuse, Study Suggests Cognitive Deficits in MDMA-Only Drug Abusers, 2005, located at http://www.drugabuse.gov/NIDA_notes/NNvol119N5/Study.html

¹ Kansas Bureau of Investigation statistics do not include Kansas City, Topeka, or most of Johnson County.

- d. National Drug Intelligence Center, Fast Facts: MDMA (Ecstasy), 2003, located at <http://www.usdoj.gov/ndic/pubs3/3494/index.htm>
- e. Testimony Before the Subcommittee on Criminal Justice, Drug Policy and human Resources, Committee on Government Reform, United States House of Representatives-Research on MDMA, Glen R. Hanson, D.D.S., Ph.D., September 19, 2002, located at <http://www.drugabuse.gov/Testimony/9-19-02Testimony.html>
- f. Office of National Drug Control Policy, Club Drugs, February 2007, located at <http://www.whitehousedrugpolicy.gov/drugfact/club/index.html>
- g. National Drug Intelligence Center, NIDA Conference Highlights Scientific Findings on MDMA/Ecstasy, December 2001, located at http://www.drugabuse.gov/NIDA_Notes/NNV0116N5/Conference.html
- h. National Drug Intelligence Center, MDMA May Reduce Gray Matter in Key Brain Regions, January 2005, located at http://www.drugabuse.gov/NIDA_notes/NNvol19N5/MDMA/html
- i. National Drug Intelligence Center, NIDA's Latest Research Report Focuses on MDMA (Ecstasy) Abuse, January 2005, located at http://drugabuse.gov/NIDA_notes/NNvol19N5/tearoff.html



Kansas Bureau of Investigation

Robert E. Blecha
Director

Testimony in Support of HB 2545
Before the House Judiciary Committee
Jeffery Brandau, Special Agent in Charge
Kansas Bureau of Investigation
January 28, 2008

Paul Morrison
Attorney General

Chairman O'Neal and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in strong support of HB 2545, raising the penalty for simple possession of MDMA, more commonly known as the club drug "ecstasy".

The use and perception that 'club drug' use is somehow safer than other illicit drugs is a dangerous problem. 3,4 Methylenedioxymethamphetamine, a.k.a. MDMA or Ecstasy is the most common 'club drug' used in Kansas. A combination of stimulant and hallucinogen, the feeling of euphoria and reduction in restraints make it a natural for people, especially young adults, out to 'party'. But as explained in the attached National Institute of Drug Abuse information sheet, the risks are similar to using other stimulants such as cocaine and methamphetamine – up to and including death.

The use of 'club drugs' is a threat to our citizens, but in particular our young adults, whom are most likely to use "club drugs. Use of these "club drugs" by our young people is a threat not only because of the short term physical effects but in the long term from "neurotoxicity." Studies have shown that exposure to MDMA for only 4 days causes damage to serotonin nerve terminals in the brain, that can be evident 6 to 7 years later. Serotonin in the central nervous system, is believed to play an important role as a neurotransmitter, in the inhibition of anger, aggression, body temperature, mood, sleep, sexuality, and appetite.

MDMA is most often sold in the form of a tablet or pill. This gives the purchaser the illusion of being manufactured by a pharmaceutical company. This is not the case, many different binders and chemicals can be combined to produce a pill that is marketed as MDMA. The hidden problem being users may get a combination of drugs, including methamphetamine, and not just the MDMA they thought they purchased. This unknowing and unexpected drug usage can lead to even more serious toxicity.

In Kansas, there seems to be a growing trend of use of MDMA and its various permutations, based upon cases submitted to the KBI's forensic laboratory:

Calendar Year 2004: 48 cases
Calendar Year 2005: 78 cases
Calendar Year 2006: 143 cases
Calendar Year 2007: 122 cases

House Judiciary
Date 1-28-08
Attachment # 2

HB 2545 addresses this problem by increasing the penalty for possession of MDMA and its sister creations to a level 4 drug felony, the same as for cocaine or methamphetamine possession. The State of Kansas needs to make a statement to potential users of "club drugs" that we do not condone the use or possession and that the State considers possession of these dangerous drugs a felony. The non-prison sanctions under SB 123 will still apply to these cases; this gives the magistrate the ability to provide the user with treatment. It also sends the clear message that the use of these club drugs is a dangerous and illegal activity.

If we punish the use or possession of these drugs as a misdemeanor, the same as marijuana, then young people reason it is no more dangerous than marijuana. Instead, since it is as dangerous as methamphetamine or cocaine, we should punish it like methamphetamine or cocaine.

Thank you for your time and attention. I would be happy to try and answer any questions.



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WRITTEN TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB 2545 Presented by Ed Klumpp

January 28, 2008

This testimony is in support of HB 2545 which enhances the penalties for possession of certain drugs, primarily party drugs including MDMA, also commonly known as ecstasy. Recognizing the current concern for the sentencing structure of drug violations, we closely looked at the necessity of this bill and the indicators for the magnitude of this drug problem.

The 2007 Kansas Communities That Care Survey shows an increase in the number of 10th, and 12th graders using MDMA every year for the last three years. One might assume this is another big city problem. But it is not just in the big cities of Kansas. The survey shows the top seven counties in percentage of youth responding "1 to 2 times" when asked how often they had used MDMA in the past 30 days are: Morton, Marion, Osborn, Scott, Meade, Grant, and Rooks. Several counties tie for 8th place including Atchison, Ford, Harper, Kingman, and Pratt. Johnson, Shawnee and Sedgwick counties are lower, but not by much. This is clearly a statewide problem impacting the rural as well as the urban communities.

MDMA is a drug commonly seen at RAVES and party settings. It is a drug whose users are often our youth who see the drug as a relatively "safe" drug. This misconception about the risks is supported by the current state statute status of a misdemeanor. Ecstasy is a stimulant resulting in extended periods of high activity beyond normal physical capacity. Medical research has shown there are serious health effects to the brain with extended use of ecstasy. Risks also include stroke, heart attack and cardiovascular system failure.

The passage of this bill will clearly establish a public policy recognizing the hazards of this abused drug and send a message to our youth that it is not a safe recreational drug.

We urge you to recommend HB 2545 favorably for passage.

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 1-28-08
Attachment # 3

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Testimony to the Senate Judiciary Committee In Support of HB2545

January 28, 2008

The Kansas Peace Officers Association supports the proposed changes to the law dealing with MDMA, also known as ecstasy.

MDMA continues to be a problem in many areas of Kansas. Metropolitan areas as well as more rural areas all report the use of MDMA by our high school age youth and young adults. It is important the statutes evolve to recognize the drugs being abused in Kansas and to make a statement of the significance of the resulting dangers.

Many times our youth are exposed to MDMA at parties where it is introduced by adults. The proposals in this bill will add teeth to the law enforcement efforts to stop this flow while in the possession of those bringing it to the parties, hopefully in some cases prior to the distribution to our youth.

We encourage you to recommend this bill to pass.

A handwritten signature in black ink, appearing to read "Ed Klumpp".

Ed Klumpp
Legislative Committee Chair, Kansas Peace Officers' Association

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House Judiciary

Date 1-28-08

Attachment # 4

In Unity There Is Strength

House Judiciary Committee
January 28, 2008

Testimony prepared by
Jennifer Roth, Legislative Committee Chairperson
Kansas Association of Criminal Defense Lawyers
Opponent of House Bill 2545

The Kansas Association of Criminal Defense Lawyers (KACDL) is a nonprofit organization made up of over 250 Kansans dedicated to justice and due process for those accused of crimes. KACDL opposes House Bill 2545 because **it unnecessarily creates another drug felony with a high price not only in dollar terms, but in human terms as well.**

HB 2545 does two things: 1) it would increase the severity level for possession of certain hallucinogenic drugs (such as MDMA, commonly known as Ecstasy) from a Class A misdemeanor to a severity level 4 drug felony and 2) would make a second or subsequent conviction of **any** hallucinogenic drug a severity level 4 drug felony (currently only marijuana is subject to felony enhancement upon a second or subsequent conviction).

The fiscal note prepared in 2007 contains an estimate of **\$680,700 to \$1,134,500 in the coming fiscal year** alone for additional 2003 SB 123 treatment. Furthermore, the fiscal note indicates a need for 27 to 46 prison beds (presumably per year) by FY 2017. While I am no statistician, this number seems low. According to the Kansas Sentencing Commission 2007 Report to the Legislature (p. 14 of 39), out of the 1,744 SB 123 cases that were closed as of November 30, 2006 (spanning from November 1, 2003 to November 30, 2006), **29%** were closed because of probation revocation. Using similar math, if 150 to 250 people in FY 2009 are subject to SB 123 treatment under changes made by HB 2545, and almost 30% are eventually revoked, that is about **45 to 75 additional people per year facing prison upon revocation from SB 123 probation**, rather than 27 to 46.

Frankly, the monetary issue is nothing compared to human cost. Under HB 2545, **150 to 250 people per year will become felons** where before they would have been facing a misdemeanor. That is 150 to 250 new people per year who will have problems getting a job, student loans/an education, a place to live, licenses for certain employment, benefits for them and/or their family and all of the other consequences that come with a felony conviction.

Last year, the proponents to this bill argued that Ecstasy arrests have increased and this drug is being marketed to kids. **The response should not be to give those same kids felony records.** Juveniles adjudicated of this offense would have a felony on their record that could affect their criminal history score (among other effects) in the future. Why not put the \$680,000-1,000,000 to work by getting juveniles and adults drug treatment while on misdemeanor probation?

Respectfully submitted,
Jennifer Roth
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House Judiciary
Date 1-28-08
Attachment # 5