

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on February 4, 2008, in Room 123-S of the Capitol.

All members were present except.

Barbara Allen arrived, 9:39 A.M.
Donald Betts arrived, 9:36 A.M.
Terry Bruce arrived, 9:37 A.M.
Les Donovan arrived, 9:37 A.M.
Greta Goodwin, excused
Julia Lynn arrived, 9:39 A.M.
Dwayne Umbarger arrived, 9:36 A.M.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Kathy Olson, Kansas Bankers Association
Travis Harrow, Assistant District Attorney, Ford County

Others attending:

See attached list.

Bill Introductions

Tim Madden requested introduction of a bill regarding the moratorium on residential restrictions of sex offenders. The moratorium should not interfere with a locality's ability to regulate through zoning the location of congregate dwellings of offenders such as group homes. Senator Umbarger moved, Senator Schmidt seconded, to introduce the bill. Motion carried.

Kathy Porter requested introduction of a bill to establish a family dispute resolution funded by an increase in docket fees. Senator Betts moved, Senator Umbarger seconded, to introduce the bill. Motion carried.

The Chairman opened the hearing on SB 467–Manufactured housing, filing of security notice.

Kathy Olson appeared in support stating this is a small technical change to the Kansas statute on manufactured homes to conform to the US Bankruptcy Code and Kansas law regarding vehicles (Attachment 1).

Written testimony in support of SB 467 was submitted by:

Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association (Attachment 2).

There being no further conferees the hearing on SB 467 was closed.

The hearing on SB 476–Arrest for violating condition of probation or conditions of release was opened.

Travis Harrod spoke in support, stating SB 476 would correct an unintended consequence of the statutory language of Kansas Statutes 22-3716(a) and 75-5217(b) regarding the arrest of probationers and parolees for violations of conditions of release (Attachment 3). In response to the Kansas Supreme Court decision *State v. Anderson*, this bill will remove the requirement that when an offender is arrested for violation of condition of release, a written order for the detention must be simultaneously delivered.

Tim Madden appeared in favor, supporting Mr. Harrow's testimony, indicating SB 476 will allow court services officers, community corrections services officers, and parole officers to authorize law enforcement officials to arrest an offender under supervision through a verbal order (Attachment 4).

There being no further conferees the hearing on SB 476 was closed.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on February 4, 2008, in Room 123-S of the Capitol.

The Chairman opened the hearing on **SB 46–Defacing identification marks of a firearm, increase from class B nonperson misdemeanor to a severity level 10, nonperson felony.**

Senator Journey testified in support as sponsor of the bill (Attachment 5). The bill will raise the level of criminality for defacing identification marks of a firearm to be more aligned with federal criminal statutes. Such an act is usually done in anticipation of another crime and should be taken into account by raising this to a felony crime.

There being no further conferees the hearing on **SB 46** was closed.

Senator Vratil called for final action on **SB 301–Criminal procedure, expungement.** The Chairman requested Senator Betts review the bill. The Senator distributed a balloon with several technical amendments (Attachment 6). The staff revisor reminded the committee the bill as drafted includes district courts, not just municipal courts.

Senator Betts moved, Senator Umbarger seconded, to amend SB 301 as reflected in the balloon that was distributed. Motion carried.

Senator Haley moved, Senator Betts seconded, to recommend SB 301 favorably for passage as amended. Motion carried.

The Chairman called for final action on **SB 414–Electors of county or counties may establish an office of the district attorney; salary based on felony caseload.** The Chairman reviewed the bill.

Senator Schmidt indicated there may be the need for a technical change to page 3, lines 26-33 to reflect language that was agreed to by the interim committee. The Chairman indicated the bill will be postponed so the revisor may review and correct the bill with the correct language.

Senator Umbarger suggested since there was time, and there appeared no opposition, the committee might take final action on **SB 467** heard earlier in the meeting. The committee agreed.

Chairman Vratil called for final action on **SB 467–Manufactured housing, filing of security notice.**

Senator Donovan moved, Senator Betts seconded, to recommend SB 467 favorably for passage and place it on the consent calendar. Motion carried.

The meeting adjourned at 10:19 A.M. The next scheduled meeting is February 5, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 4, 2008

NAME	REPRESENTING
Ed Cross	Pinegar, Smith
C.W. Klebe	KIOGA
Sharmika Stamps	A.G.
Jeff Bottorby	Kansas African Affairs Commission
Callie Harthe	State Fair
Marilyn Nichols	Ks Assn for Justice (KsAJ)
SEAN MILER	Ks. Register of Needs Association
Richard Samsing	CAPITOL STRATEGIES
Kevin Murray	Kerned ASSOC.
Kathy Porter	KACSO
Tim Madden	Judicial Branch
JEREMY S BARCLAY	KBOC
TRAVIS HARRON	KBOC
	FORD COUNTY ATTORNEY'S OFC



February 4, 2008

To: Senate Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 467: Filing of Notice of Security Interest on Manufactured Homes

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to appear in favor of SB 467 which would amend K.S.A. 58-4204(g), dealing with the timing of filing a notice of security interest (NOSI) on manufactured homes.

Currently, the law allows a lender 10 days after the sale or delivery of a manufactured home to the owner, to file its notice of security interest with the Department of Revenue, Division of Vehicles. Several years ago, the Bankruptcy Code was amended to expand the period for lien perfection to relate back to the attachment of the security interest from 20 to 30 days. At that time, the Kansas legislature changed the statute dealing with the filing of an NOSI for vehicles to 30 days (K.S.A. 8-135(c)(5), but we inadvertently neglected to request a similar change to the manufactured home statute.

This bill would simply change the Kansas statute on manufactured homes (which are titled property) to conform to the US Bankruptcy Code and the Kansas law with regard to vehicles.

Thank you and on behalf of the Kansas Bankers Association, I respectfully request your favorable consideration of this bill.



3521 SW 5th Street
Topeka, KS 66606
785-357-5256
785-357-5257 fax
kmha1@sbcglobal.net

**Testimony
Senate
Judiciary Committee**

TO: Senator John Vratil, Chairman
And Members of the Committee

FROM: Martha Neu Smith
Executive Director

RE: SB 467 – Notice of Security Interest on Manufactured Homes

Chairman Vratil and members of the Committee, thank you for the opportunity to comment in support of SB 467.

Kansas Manufactured Housing Association is a statewide trade association, which represents all facets of the manufactured housing industry including manufacturers, retail centers, community owners and operators, finance and insurance companies, service and supplier companies and transporters.

Simply put, KMHA members like the change proposed in SB 467, which modifies the filing time requirement for security interest on a manufactured home from 10 days to 30 days.

Again, thank you for the opportunity to comment in support of SB 467.

Senate Judiciary
2-4-08
Attachment 2



FORD COUNTY ATTORNEY'S OFFICE
Ford County Government Center
P.O. Box 1057, 100 Gunsmoke
Dodge City, Kansas 67801
(620) 227-4510 Fax: (620) 227-4626
Diversion Program - (620) 227-4505

John Sauer
County Attorney
Assistant County Attorneys
Travis Harrod
Michael Giardine
Natalie Randall
David Belling
Scott James
Seth Meyer
Diversion Officer
Sheena Gingerich

Senate Committee on Judiciary
February 4, 2008

Testimony in support of Senate Bill 476

Chairman Vratil and Honorable Members of the Senate Judiciary Committee:

My name is Travis Harrod and I currently serve as First Assistant Ford County Attorney. I come here today as a proponent of Senate Bill 476 on behalf of Ford County Attorney's Office and the Kansas County and District Attorneys Association.

SB 476 corrects what I and others in law enforcement believe to be an unintentional consequence of the statutory language of Kansas Statutes 22-3716(a) and 75-5217(a), which deal with arrest of probationers and parolees respectively for violations of their conditions of release. SB 476 corrects the statutory language to allow probation and parole officers to issue verbal arrest orders to law enforcement personnel.

To illustrate the current problem I'll share with you an incident from Ford County, though for sake of brevity and narrative I've cut out a lot of extraneous details so we can focus on the issue at hand.

In November of 2006 Officer Hornback of the Dodge City Police Department responded to a fight in progress call at a Dodge City bar. When Officer Hornback arrived he observed a young man he knew to be Jason leaving the bar. Officer Hornback knew Jason to be a member of a criminal street gang, and further he knew that Jason was currently on parole from the Dept. of Corrections for sale of drugs. Officer Hornback approached Jason in the parking lot and observed Jason to be visibly intoxicated. Officer Hornback believed that Jason's drinking at the bar was a violation of Jason's parole conditions. Officer Hornback detained Jason while Hornback called Jason's parole officer at home. Though it was 2:00 in morning, Jason's parole officer answered Officer Hornback's call and informed him that Jason was on parole, and that drinking alcohol was a violation of Jason's parole. The parole officer asked Officer Hornback to have Jason submit to a Preliminary Breath Test, at which time Jason blew a .105 Blood Alcohol Content. The parole officer over the phone, instructed Officer Hornback to arrest Jason for violating the conditions of his parole, namely drinking at a bar and violation of his house arrest. In a search incident to arrest Officer Hornback found a baggie of cocaine in Jason's pants pocket. Jason was transported to jail by Officer Hornback, at which time Jason threw up several times in Hornback's police cruiser due to his drunkenness. At the jail, Officer Hornback and Jason were met a short time later by Jason's parole officer, at which time Jason was formally served with his arrest and detain order for his parole violation.

Jason was subsequently charged with Possession of Cocaine, which with his criminal history score of A, would result in a presumptive standard prison sentence of 40 months consecutive to his time remaining in his Sale of Narcotics case.

Senate Judiciary

2-4-08

Attachment 3

From the point of view of the police and prosecutors this story does not have a happy ending. Jason's attorney, citing *State of Kansas vs. Anderson*, 34 Kan.App.2d 375 (2005), caused the District Court to suppress the cocaine evidence found when Jason was searched after being arrested for his parole violation. Without the cocaine evidence, the State was forced to drop its case against Jason.

The long and the short of *State vs. Anderson* is that a plain reading of our statutes says that a law enforcement officer may not arrest a probationer or parolee based solely on a violation of condition of probation/parole unless the policeman has the written order to arrest and detain in his possession when the arrest is made. The Court went on to state that authorization to arrest cannot be given by a probation or parole officer over the phone to police even if the probation/parole officer is writing out the arrest and detain order at that moment and will meet the police at the scene, jail etc. Thus any evidence seized during such an arrest would be inadmissible.

Without the power to receive a verbal arrest and detain order from a probation/parole officer over the phone, Police, Sheriff's Deputies and other street level law enforcement agents are seriously handicapped in enforcing the conditions of probation or parole. The best case scenario at present is the violation happens while the police are accompanied by a probation or parole officer whom has the power to arrest a probationer/parolee without a warrant. Otherwise, police can only observe the violation, report the violation to the probation/parole officer during business hours, and then police may attempt to relocate and arrest the violator when a written arrest and detain order is in hand. By giving probation and parole officers the power to issue verbal arrest orders, law enforcement personnel gain the ability to arrest probationers/parolees at the time of violation and further encourages compliance with the conditions of probation and parole.

Thank you for the opportunity to present testimony. I urge your full support of SB 476 and would be happy to answer any questions.



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 476
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 4, 2008

The Department of Corrections supports SB 476. SB 476 amends the provisions of K.S.A. 22-3716 and 75-5217 to allow court services officers, community correctional services officers, and parole officers to authorize other law enforcement officers to arrest a probationer or parolee through a verbal order. Current law, authorizes probation and parole officers to arrest an offender under their supervision without a warrant, however, when those officers authorize other law enforcement officers to make the arrest, the authorization must be in writing. SB 476 also deletes the requirement that when an offender who allegedly violated a condition of release supervision is placed in jail, a written order for the detention must simultaneously be delivered.

The due process rights of persons under release supervision would not be negated by SB 476 since those persons would still be provided with a timely statement of charges and their detention justified in writing. SB 476 would address the Kansas Supreme Court's observation in State v. Anderson, 281 Kan. 896; 136 P.3d 406 (2006) that if the Legislature had intended to allow for oral authorization from parole officers to other law enforcement personnel to arrest parole violators, it could have amended the law that requires such authorization be in writing. The Supreme Court further noted that Kansas has not amended its laws to echo provisions in other jurisdictions allowing oral arrest and detain orders.

SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT
P.O. BOX 471
HAYSVILLE, KS 67060

STATE CAPITOL—221-E
300 S.W. 10TH AVENUE
TOPEKA, KANSAS 66612
(785) 296-7367

E-mail: journey@senate.state.ks.us



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 before the Kansas State Senate Judiciary Committee
in Support of Senate Bill 46
on February 4th, 2008
The Honorable John Vratil Presiding**

Senate Bill 46 is a simple piece of legislation that changes the severity level of the crime of defacing the identification marks of a firearm which under current law is a Class B misdemeanor punishable by up to six months in custody and a \$1,000 fine to a severity level 10, nonperson felony.

One of the purposes of this bill is to raise the level of criminality of this act to become more aligned with federal criminal statutes. Currently, under criminal statutes of the United States, defacing the serial number or the identification marks of a firearm is a felony under Chapter 18 of the United States code with penalties of several years in custody. While the amount of time the defendant might serve on a sentence when convicted under state law as proposed would still be similar to a Class B misdemeanor, assuming that his or her criminal history is not above a Category I or H, it would still have the sanctions of felony conviction imposed upon the defendant as they should be. It's important to remember that when an individual chooses to attempt to remove the serial numbers from a firearm that it is usually done in anticipation of another crime such as a homicide or an effort to thwart the investigation of the theft of that firearm from another person. Firearms are, of course, an instrumentality or machine that can be the means to cause serious injury or death. The characteristics of the firearm are taken into account by raising this to a felony crime just as we currently have felony crimes for removing anti-theft devices in an attempt to commit a misdemeanor theft for shoplifting.

I hope that the Committee sees the rationale behind this modification of this criminality of current Kansas law increasing it to the lowest-level felony in our current sentencing grid, and that the Committee will support passage of this legislation. Your time and attention are sincerely appreciated.

Respectfully submitted,

Senator Phillip B. Journey
State Senator 26th District

Senate Judiciary

2-4-08

Attachment 5

SENATE BILL No. 301

By Senator Betts

2-6

21-4619 and K.S.A. 2007 Supp. 12-4516

9 AN ACT concerning criminal procedure; dealing with expungement;
10 amending K.S.A. ~~2006 Supp. 12-4516 and 21-4619~~ and repealing the
11 existing sections; ~~also repealing K.S.A. 2006 Supp. 21-4619.~~

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

14 Section 1. K.S.A. 2006 Supp. 12-4516 is hereby amended to read as
15 follows: 12-4516. (a) (1) Except as provided in subsection (b) or (c), any
16 person who has been convicted of a violation of a city ordinance of this
17 state may petition the convicting court for the expungement of such con-
18 viction and related arrest records if ~~three~~ two or more years have elapsed
19 since the person:

- 20 (A) Satisfied the sentence imposed; or
- 21 (B) was discharged from probation, parole or a suspended sentence.
- 22 (2) Except as provided in subsection (b) or (c), any person who has
- 23 fulfilled the terms of a diversion agreement based on a violation of a city
- 24 ordinance of this state may petition the court for the expungement of
- 25 such diversion agreement and related arrest records if three or more years
- 26 have elapsed since the terms of the diversion agreement were fulfilled.
- 27 (b) No person may petition for expungement until five or more years
- 28 have elapsed since the person satisfied the sentence imposed or the terms
- 29 of a diversion agreement or was discharged from probation, parole, con-
- 30 ditional release or a suspended sentence, if such person was convicted of
- 31 the violation of a city ordinance which would also constitute:

- 32 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-
- 33 ments thereto;
- 34 (2) driving while the privilege to operate a motor vehicle on the public
- 35 highways of this state has been canceled, suspended or revoked, as pro-
- 36 hibited by K.S.A. 8-262, and amendments thereto;
- 37 (3) perjury resulting from a violation of K.S.A. 8-261a, and amend-
- 38 ments thereto;
- 39 (4) a violation of the provisions of the fifth clause of K.S.A. 8-142,
- 40 and amendments thereto, relating to fraudulent applications;
- 41 (5) any crime punishable as a felony wherein a motor vehicle was
- 42 used in the perpetration of such crime;
- 43 (6) failing to stop at the scene of an accident and perform the duties

1 statement that the request is being made to aid in determining qualifi-
2 cations: (A) To be an employee of the state gaming agency; or (B) to be
3 an employee of a tribal gaming commission or to hold a license issued
4 pursuant to a tribal-gaming compact;

5 (12) the Kansas securities commissioner or a designee of the com-
6 missioner, and the request is accompanied by a statement that the request
7 is being made in conjunction with an application for registration as a
8 broker-dealer, agent, investment adviser or investment adviser represen-
9 tative by such agency and the application was submitted by the person
10 whose record has been expunged;

11 (13) the Kansas ~~law enforcement training~~ commission *on peace offi-*
12 *cers' standards and training* and the request is accompanied by a state-
13 ment that the request is being made to aid in determining certification
14 eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq.,
15 and amendments thereto;

16 (14) a law enforcement agency and the request is accompanied by a
17 statement that the request is being made to aid in determining eligibility
18 for employment as a law enforcement officer as defined by K.S.A. 22-
19 2202, and amendments thereto; or

20 (15) the attorney general and the request is accompanied by a state-
21 ment that the request is being made to aid in determining qualifications
22 for a license to carry a concealed weapon pursuant to the personal and
23 family protection act.

24 (j) *The docket fee collected at the time the petition for expungement*
25 *is filed shall be disbursed in accordance with K.S.A. 20-362, and amend-*
26 *ments thereto.*

27 Sec. 3. K.S.A. ~~2006 Supp. 12-4516, 21-4619 and 21-4619c~~ are hereby
28 repealed.

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

21-4619 and K.S.A. 2007 Supp 12-4516

Proposed Amendments to
Senate Bill 301

Section 1. K.S.A. 2007 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsection (b) or (c), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if ~~three~~ two or more years have elapsed since the person:

(A) Satisfied the sentence imposed; or

(B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsection (b) or (c), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(12) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(13) the attorney general, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(14) the Kansas sentencing commission;

(15) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto; or

(16) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto.

Sec. 2. K.S.A. 21-4619 is hereby amended to read as follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if ~~three~~ two or more years have elapsed

since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b) and (c), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another