

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:35 a.m. on January 20, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Terry Bruce- excused
Senator David Haley- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Kyle Smith, Kansas Association of Chiefs of Police
Danny Thayer, Chief, Neodesha Police Department
Thomas R. Williams, Sheriff, Allen County, Kansas

Others attending:

See attached list.

Bill Introductions

Diane Minear, Kansas Secretary of State's Office requested the introduction of two bills. The first pertains to Letters of Good Standing and the second pertains to Return of Filings.

Martha Gabehart, Kansas Commission on Disability Concerns, requested the introduction of a bill which would amend the Kansas Act Against Discrimination to bring it into alignment with the Americans with Disabilities Act.

The bills were introduced without objection and referred to the Revisor for drafting.

The Chairman opened the hearing on **SB 26 - Additional months added to sentences for certain drug felonies involving firearms**. Staff revisor, Jason Thompson reviewed the bill.

Senator Derek Schmidt spoke in support, indicating the issue was introduced last session but carried a very significant impact on prison space. This bill has been reworked so as to have the same policy impact without the need for additional prison beds. (Attachment 1)

Kyle Smith, appeared in favor stating the illegal drug industry often turn to the possession of firearms to "protect" their interest. The firearms are used to intimidate and are usually fired at the first sign of a perceived threat without concern for themselves or others. Often it is innocent people killed or injured as a result of the use of firearms with a drug related crime. (Attachment 2)

Written testimony in support of **SB 26** was submitted by:

Thomas R. Williams, Sheriff, Allen County, Kansas (Attachment 3)

There being no further conferees, the hearing on **SB 26** was closed.

The Chairman opened the hearing on **SB 28 - Transportation of controlled substances; same penalty as open container of liquor**. Staff revisor, Jason Thompson reviewed the bill.

Senator Derek Schmidt spoke in support as sponsor of the bill which would make transporting a controlled substance or controlled substance analog to the elements of transportation of an open container of alcohol. This bill will provide law enforcement one more tool in the fight against illegal drug use. (Attachment 4)

Chief Danny Thayer appeared in favor stating it not uncommon to find varying amounts of illegal drugs when

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 a.m. on January 20, 2009, in Room 545-N of the Capitol.

a traffic stop is initiated. Kansas has strict laws pertaining to drivers who are under the influence of either intoxicating liquor or drugs and additional laws for drivers or passengers that possess open containers. Currently, the State of Kansas has no law that affect a person's license who is transportation illegal or illegally possessed drugs and their analogs. The enactment of **SB 28** would apply the same driving sanctions for the transportation of illegal drugs. (Attachment 5)

Kyle Smith testified in favor stating many DUI offenders are using both alcohol and illegal drugs at the time of their arrest, some solely impaired by illegal drugs. The open container law was designed to address the availability for consumption while traveling our roadways. This bill will provide the same sanctions to address the availability of illegal drugs for ingestion by vehicle occupants while traveling our roadways (Attachment 6)

There being no further conferees, the hearing on **SB 28** was closed.

The next meeting is scheduled for January 21, 2009.

The meeting was adjourned at 10:25 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-20-09

NAME	REPRESENTING
Danny Thayer	Woodesha Police Dept.
Emily Pinkerton	Umberger - Lukem
Branche Myers	Ks Human Rights Commission
Martha Gabelent	Ks Com on Disability Concerns
Adam Chingren	Sen. Julia Lynn
Richard Samoniego	Kennedy & Assoc.
Uma White	OJA
JEREMY S BARCLAY	KDOC
Sammy Dickson	Staff Management / Amazon
Mark Drummond	Sen. Haley (Intern)
Andrew Holmes	Sen. Bruce (Intern)
SEAN MILLER	CAPITOL STRATEGIES
Joseph Molina	Ks BAR ASSOC
Stephane Mickelsen	Ks Sec of State
Diane Milner	Ks Sec. of State
Jim Garkner	Posnelli
Mike Reecht	Adler Brader
Julley	Sprint & System

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Senator Derek Schmidt
Majority Leader

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Vice Chair: Assessment & Taxation
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Testimony in Support of Senate Bill 26
Presented to the Senate Judiciary Committee
By Senator Derek Schmidt

January 20, 2009

Mr. Chairman, members of the committee, thank you for the opportunity to testify today in support of Senate Bill 26.

More than a year ago, the Sheriff of Allen County, Tom Williams, approached me with a concern about Kansas sentencing policy as it relates to the possession of firearms by felons. Sheriff Williams pointed out that, under federal law, additional penalties attached to felons who possess, brandish or discharge firearms in the commission of their felonies. Kansas law has no similar provision, except the reversal of presumptive probation to presumptive incarceration in certain cases where a gun is involved in the commission of a felony.

Sheriff Williams pointed out that he and his officers are in particular danger when a felon is carrying a firearm. The presence of a firearm suggests that the felon, no matter what felony he or she is engaged in, is prepared to use violence, including against law enforcement officers attempting to thwart the crime. The sheriff asked me a simple question: Why should we not treat more severely those who obviously are prepared to use deadly force against officers or citizens as compared with those who are not?

I thought that was a reasonable question. Last year, this committee introduced legislation that would have created a federal-style sentencing enhancement for Kansas felons who have firearms during their crimes. The committee elected not to advance the legislation, I believe principally because of concerns about the bed space impact.

Over the summer and fall, I worked with Sheriff Williams and with others in the Kansas law enforcement community to attempt to narrow the legislation to a point that would still advance its objectives but that would reduce the prison space impact. The result of that effort is before you today as Senate Bill 26.

This legislation proposes to create a sentencing enhancement, parallel to that in federal law, for persons who commit drug felonies while possessing a firearm. This seems a reasonable approach to narrowing the scope of the bill for the following reasons:

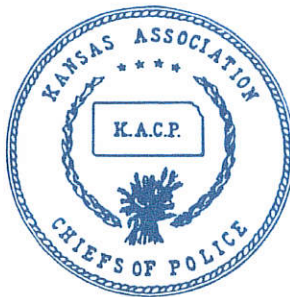
1. Illegal drugs and guns don't mix. Law enforcement officers have many tales to share about criminals who are high on drugs and, therefore, even more unpredictable than in other times and whose judgment in the use of firearms is, therefore, impeded.
2. This approach is consistent with the overall state policy of trying to reserve prison beds for violent offenders and to move non-violent drug offenders toward other avenues of intervention. Clearly, the drug offender – whether a user, a manufacturer, or a trafficker – who comes prepared with a firearm is contemplating the likelihood of using violence and perhaps deadly force during commission of the underlying drug felony.

For these reasons, I believe this idea has merit to help improve the safety of Kansans to help in the sorting of violent drug felons from non-violent drug felons – even before they actually resort to violence and, therefore, create victims.

Thank you for considering this proposal. I would stand for questions.

Senate Judiciary

1-20-09
Attachment 1



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January 20, 2009

**Testimony To The Senate Judiciary Committee
In Support Of SB 26
Use Of A Firearm In Furtherance Of A Drug Felony**

Chairman Owen and Committee members,

Our communities continue to be plagued by criminals who perpetrate serious drug crimes, especially those involving the manufacturing and distribution of illegal drugs. The very nature of these crimes creates an inherent risk to unwitting people in their vicinity, the participants themselves, and to law enforcement. Firearms are prevalent among the participants which significantly increases the associated risks.

The actors in the illegal drug industry often turn to the possession of firearms to "protect" their interests. Unlike persons conducting legal business in our community, they do not turn to law enforcement to investigate attempts by other illegal operatives to steal from them or cause them other harms. They deal with these things themselves, predominantly by arming themselves for defense and intimidation, as well as acts of aggression and revenge. The tactics of these thugs are usually to shoot at the first sign of a perceived threat and to not concern themselves with either the accuracy of their threat perception nor collateral injuries or death.

While I am unable to give you exact statistical data, practical experience and anecdotal information provides clear evidence that firearm related homicides and injuries commonly have their roots in illegal drug activity. These firearm incidents include rip-offs between criminals, collection of drug debts, elimination of competition, turf wars, and revenge against persons perceived to be assisting law enforcement or competitors.

Sadly, many times when these heartless felons engage in their shooting activities it is innocent people who are killed or injured. This has included children and adults as they find themselves in the middle of these violent events where they live, work and play.

Senate Judiciary

1-20-09

Over the years law enforcement has been confronted with the presence of firearms with an increasing frequency as they investigate this criminal activity, serve search warrants and make arrests. You may recall several officers in Kansas killed and wounded by gunfire over the past years while conducting law enforcement operations directly against drug felons.

Any action taken to reduce the number of firearms used by this class of criminals will reduce the exposure of our law abiding citizens and our law enforcement officers. If these criminals know they face additional criminal sanctions due to possessing a firearm to further their criminal activity they will not as frequently do so. The key to this is not only that there is an additional penalty for the use of a firearm while committing a drug felony; but for that penalty to include a significant sentence and a consecutive sentence.

We have seen some success with similar programs involving federal legislation and federal prosecution aimed at persons prohibited from owning firearms. For example the "Ceasefire" program shows positive results in reducing the frequency of previously convicted felons carrying firearms. This proposed state legislation uses a similar tactic but focuses on a different set of criminals who are more commonly prosecuted through state courts.

The approach of this bill is directly on target to have the desired effect on streetwise thugs endangering our law abiding citizens and increasing the risk to our law enforcement officers.

- It focuses on persons committing drug felonies.
- It provides for increased penalties based on the level of use of the firearm.
- It imposes an additional prison sanction when a firearm is used to further a targeted illegal activity.
- The sanction is significant enough to produce the desired result.

We strongly encourage you to report this bill favorably for passage to the Senate.



Ed Klumpp
Legislative Committee Chair
eklumpp@cox.net
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Thomas R. Williams Sheriff

Shannon Moore Undersheriff

Allen County Law Enforcement Center

Senate Judiciary Committee

January 20, 2009

In Support of SB 26

January 15, 2009

Testimony of Sheriff Thomas R. Williams, Allen County Kansas


Dear Chairman and Members of the Committee:

Thank you for the opportunity to give testimony and offer my complete support for the bill that will mimic the federal law and numerous other states' statutes concerning firearms used in drug felonies. I have thirty plus years of law enforcement experience, ranging from a rookie patrol officer, to a supervisor of patrol, to a Senior Special Agent for the KBI, and now a Sheriff, serving in my second term.

There are two major issues I would like to point out to you as reasons for this bill:

This bill places the responsibility for violations exactly where it should rest, on the individual that decides to use a firearm in a drug crime. In today's world, drugs and firearms are inevitably linked together. I can tell you it is imperative that we break that link. This bill would help.

We are asking young men and women to risk their lives to enforce drug laws. In Kansas there presently is not a sufficient 'cost' associated with selling drugs and using firearms to support their criminal acts. Drug addiction may not be deterred by penalties but choosing to also carry a gun can be: This bill would make those individuals pay a heavy cost. The bill would not impact in any way on a citizen's right to bear arms which I fully support; instead it would place responsibility on the citizen who decides to violate the drug laws while armed.




By passage of this statute you will make it clear that using or possessing a firearm in connection with other criminal activity will not be tolerated. For too long, criminals, especially those that deal in illegal narcotics or drugs have used firearms as part of doing business. I have interviewed a number of dealers and criminals who understood that carrying or using a firearm in connection with illegal activity made their job easier and safer. They also understood that in Kansas the possession of a firearm, even concealed, presented to them no real additional penalty. For example a person caught with Methamphetamine for distribution in his pocket and a handgun under his jacket would face the Charge of Possession of Methamphetamine for sale and Criminal Possession of a Firearm. The Methamphetamine charge would be a Felony but the Concealment of a Firearm would be a Class A nonperson misdemeanor, and it would almost always be run concurrent with the more serious drug offense.

And while Methamphetamine is certainly a dangerous drug, its victims are a finite circle and tend to choose their own involvement. The firearm however in the hands of a person who has already chosen to ignore laws is a great danger to even innocent persons who might cross their path or just be in the area. The firearm poses a constant danger to citizens, as well as law enforcement who might deal with this person, who may well be under the influence of a mind altering drug.

This statute makes it clear that in Kansas there will be a cost to “doing business as usual.” I don’t think for a minute that most persons who deal in criminal activity will do a cost benefit analysis of carrying or using a firearm. The goal of this statute will not immediately be for deterrence. Instead it will be to set a boundary that we as Kansans say will not be crossed. That will eventually lead to deterrence as the word gets out.

The second issue involves the last time I testified for a similar bill in front of this committee. Someone asked why make a bill for firearms and leave out other weapons like bats, and knives. The best explanation that day for an answer was from a member of the committee. He recalled many years prior



of being assaulted with a firearm. He remembered in great detail the events and particularly the gun. I have had three firearms pulled on me in the course of my career, along with numerous, bats, clubs, knives, a two by four and one weed whacker. I can't tell you much about the bats, knives, etc. but I can tell you everything about the three firearms. I can tell you the people around me, the weather, the conversation, the circumstances, and yes just like your member I can tell you everything about each weapon except for the serial numbers. I can tell you that your member and I knew instinctively that the firearm we were staring at meant instant death. I can back away from a knife, I can put an obstacle between me and a bat or club, I can run away from a two by four, or yes even a crazed person with a weed whacker, but I can't do any of those things with a firearm.

I was actually insulted by the question until I realized that the person who asked the question didn't live in my world. That means that men and women who wear the badge are doing their jobs and making your lives safer. Those same men and women however do live in my world and they deserve to know that the State of Kansas by enacting this legislation are supporting and defending them.

Thank you for your time and allowing me to voice my support.

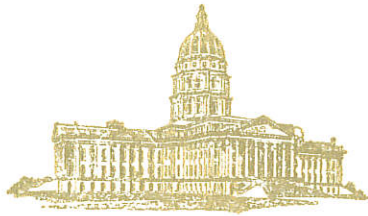
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Testimony in Support of Senate Bill 28
Presented to the Senate Judiciary Committee
By Senator Derek Schmidt

January 20, 2009

Mr. Chairman, members of the committee, thank you for the opportunity to testify today in support of Senate Bill 28.

I asked the committee to introduce this legislation at the suggestion of Danny Thayer, the police chief of Neodesha. Chief Thayer suggested this idea to me several months ago when we were visiting about public safety policy.

Chief Thayer's question to me was simple: Why is it that if an officer stops a person and discovers that he has an open container of beer in the passenger area of the car, the remedies available include the various administrative and other penalties under the open container law. But if that same driver has a container of narcotics in the passenger seat, the open container law does not apply?

I thought that was a reasonable question and a good concept that should be brought to the committee for its consideration. Senate Bill 28 would amend the open container law to include illegal drugs as well as alcohol. The rationale behind this proposal is the same as the rationale behind the open container law related to alcohol. And this gives law enforcement one more tool in the fight against illegal drug use.

Mr. Chairman, Chief Thayer is here today to testify in support of this proposal. I will allow him to explore the concept in greater detail if the committee wishes.

Thank you for the opportunity to testify today.

Senate Judiciary

1-20-09

Attachment 4

NEODESHA POLICE DEPARTMENT

108 South 4th Street
Neodesha, Kansas 66757

Phone 620-325-3031

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My name is Danny Thayer. I have been with the Neodesha Police Department for the last 24 years and have been the Chief for the last 10. Over the years that I have been involved in law enforcement the drug culture has changed and the use of drugs has increased. It is not uncommon for law enforcement officers to initiate a traffic stop on a vehicle and find that there is small to large amounts of marijuana, methamphetamine, cocaine, illegally possessed prescription drugs and other narcotics. The state has already demonstrated its concern of those drivers who are under the influence of either intoxicating liquor or drugs by making the DUI law K.S.A. 08-1567. The state has also shown concern for the drivers and passengers of vehicles using the roads of Kansas that possess open containers of alcohol or cereal malt beverages. In the current law the first offense of someone caught transporting an open container calls for a fine. Any second or subsequent convictions will lead to the suspension of the persons driving privileges for one year. Currently the State of Kansas has no laws that affect a person license who is transporting illegal or illegally possessed drugs and their analogs.

With Senate Bill No. 28 those same driving sanctions would be extending to the transportation of controlled substances or controlled substance analog. A large number of the individuals that Neodesha Police Department deals with have very little or no concern for the laws of Kansas. It is not unusual for us to have repeat offenders on drug and driving offenses. There will be individuals who continue to transport illegal drugs and drive after they are suspended. As an example to that in the past year Neodesha Police Department had 16 traffic stops in which drugs were found in the vehicles and 44 traffic stops that involved suspended or revoked drivers licenses. Once these offenders have their licenses suspended and continue to operate a motor vehicle officers can at that point make a traffic stop because of the knowledge that they are driving while suspended. I am sure that these stops will lead to additional seizures of controlled substances. I fully support Senate Bill No. 28 and although it is a small step it is a large step in the right direction.

Senate Judiciary

1-20-09

Attachment 5



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January 20, 2009

Testimony To The Senate Judiciary Committee In Support Of SB 28 Sanctions For The Transportation Of Illegal Drugs

Chairman Owen and Committee members,

We are usually reluctant to support additional reasons for suspending driver's licenses. However, this proposal seems to just make good sense. In light of the long standing sanction against drivers who transport open alcohol in the passenger compartment of a motor vehicle, it only makes sense to include in that sanction the transportation of illegal drugs in the same manner.

DUI offences are not only perpetrated by offenders being intoxicated by alcohol. Many DUI offenders are using both alcohol and illegal drugs at the time of their arrests. Some are impaired solely by the use of illegal drugs. Some offenders actually use those drugs inside the motor vehicles as they travel our roadways. They pose the same risks to us, our families, and other users of the roadway as alcohol abusers.

The suspension of the driver's license for transporting open alcohol was designed to address the availability for consumption by vehicle occupants while traveling our roadways. Most, if not all, experienced Kansas law enforcement officers can easily relate car stops revealing drug use within the vehicle. This proposal provides the same sanctions to address the availability of illegal drugs for ingestion by vehicle occupants while traveling our roadways.

We encourage you to report this bill favorably for passage to the Senate.

Ed Klumpp
Legislative Committee Chair
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Senate Judiciary

1-20-09

Proposed Amendment

SENATE BILL No. 28

Kyle Smith
Kansas Peace Officer's Association

Issue:

Citing K.S.A.65-4101 for the definition of "controlled substance" would include schedule V, K.S.A. 65-4113. Schedule V contains drugs that have minimal potential for abuse and can be purchased without a prescription such as codeine cough medicine and pseudoephedrine products. As written the bill would make it a crime to drive with Sudafed in your pocket, clearly not the intent. (the definition of a "controlled substance analog" in K.S.A. 65-4101 only includes Schedule I and II).

Proposed Amendment:

Section 1. K.S.A. 2008 Supp. 8-1599 is hereby amended to read as follows: 8-1599. (a) As used in this section,:

(1) "Alcoholic beverage" means any alcoholic liquor, as defined by K.S.A. 41-102 and amendments thereto, or any cereal malt beverage, as defined by K.S.A. 41-2701, and amendments thereto.

(2) **"Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109 and 65-4111, and amendments to these sections.**

(3) "Controlled substance analog" has the meanings provided by K.S.A. 65-4101, and amendments thereto.

(34) "Highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.