

Approved: 3/5/09
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 16, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Jason Watkins-excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the committee:

Greg Benefiel, Douglas County District Court
Doug Wells, Attorney

Others attending:

See attached list.

The hearing on **HB 2226 - Allowing the attorney general or the county or district attorney to request of the district court the convening of a grand jury to investigate alleged violations of serious felonies** was opened.

Chairman Kinzer spoke as the sponsor of this bill and provided the committee with the background information leading to this bill. This bill was originally requested by Greg and Missy Smith, whose daughter Kelsey, was the victim of a horrific abduction from a local Target Department Store parking lot and subsequently raped and strangled. At the time the murder was apprehended, the Prosecutor was able to use a grand jury that was in place. Since grand jury proceedings are sealed, this move by the Prosecutor sheltered the family from having to sit thru a preliminary hearing and spared re-living the crime all over again, viewing horrific pictures and reduced the exposure to the media with such details. This bill would give the Prosecutors the right to call a grand jury in certain instances of horrific crimes.

Keith Schroeder, Reno County District Attorney provided written testimony in support of the bill. ([Attachment 1](#))

Greg and Missy Smith, Surviving Parents, provided written testimony as proponents of the bill. ([Attachment 2](#))

There were no opponents.

The hearing on **HB 2226** was closed.

The hearing on **HB 2263 - Establishing aggravated driving under the influence, modifying existing DUI statutes** was opened.

Jill Ann Wolters, Staff Revisor, provided the committee with an overview of the bill which creates the crime of aggravated driving under the influence and revises penalties for certain driving under the influence (DUI) violations. ([Attachment 3](#))

Greg Benefiel, Douglas County District Attorney, spoke as a proponent of the bill. The current DUI statute provides two distinct standards defining a driver who is legally impaired. The first being a driver who submits to alcohol testing as required and is in violation if that driver's blood or breath alcohol is .080 or greater. Second, the driver who refuses testing, however, faces a less stringent standard that requires the State to prove the driver was under the influence of alcohol and/or drugs to a degree that renders the person incapable of safely driving a vehicle. Many have learned to work the system by refusing testing. This new

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bill would address these issues. (Attachment 4)

Doug Wells, Attorney, Topeka, Kansas, testified in opposition of the bill. He stated the bill makes massive changes in the area of DUI law without the benefit of an interim committee to study the impact of these changes. He addressed the following issues:

1. The cost of the bill is too great
2. "Impaired to the slightest degree"
3. Creation of per se drug offenses
4. The unnecessary creation of new crimes and penalties
5. Increased terms of the confinement
6. Increased terms of driver's license suspension
7. Prima facia changes
8. Determination of "serious injury"
9. Preliminary breath test
10. Lifetime look back
11. Criminalization of under 21 breath test result

In conclusion he said many of the changes proposed are too costly, already covered in existing law to a substantial degree, are not scientifically supported and are unfair. At the same time he did agree that some of the changes are appropriate. He stated changes in K.S.A. 8-1020 should be made as outlined in paragraph 6b; further discovery in driver's license hearings should be permitted as enumerated in paragraph 6b. The lifetime look back period should be eliminated and the advisory for a preliminary breath test should be made mandatory.

Mark Schultz, Attorney provided written testimony in opposition of the bill. (Attachment 5)

The hearing on HB 2263 was closed.

HB 2201 - Conditions on licensee if delinquent in child support.

Melissa Doeblin provided the committee with a review of the bill.

Representative Goyle made the motion to report HB 2201 for passage. Representative Kuether seconded the motion.

Representative Brookens made the motion to amend Section 1(b)(1) from "The support debtor owes past due child support equal to or greater than \$1000 to read " The support debtor owes past due child support equal to or greater than three months support. Representative Crow seconded the motion.
Motion carried.

Representative Brookens made a motion to amend Paragraph Line 22 "to create notice" if Items (1), (2) and (3) had incurred. Representative Goyle seconded the motion. Motion carried.

Representative Goyle made a motion to report HB 2201 favorably for passage as amended.
Representative Whitham seconded the motion. Motion carried.

HB 2210 - Child in need of care; jurisdiction in CINC

After a brief discussion regarding the cost savings and the possible cost in the long run, the Committee chose "No Action."

HB 2164 - Judges and justices, mandatory retirement at 75, may elect to serve until end of current term.

Representative Whitham made the motion to report HB 2164 favorably for passage. Representative Kleebe seconded the motion.

Representative Brookens proposed an amendment that would require retirement upon reaching the age

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of 75. Representative Colloton seconded the motion.

Motion failed.

In answer to a question, the staff advised that Highway Patrol do not have a mandatory retirement age.

Representative King made a substitute motion to amend the bill to lift the age restriction altogether.

Motion failed.

Representative Crow made the motion to report **HB 2164** favorably for passage.

Representative Pauls seconded.

Motion carried.

The next meeting is scheduled for February 17, 2009.

The meeting was adjourned at 5:40 p.m.