

Approved: May 8, 2012

(Date)

**MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE
COMMITTEE**

The meeting was called to order by Chairperson Pat Colloton at 1:00 PM on Wednesday, March 14, 2012 in 144-S of the Capitol.

All members were present except:

Lance Kinzer

Committee staff present:

Jackie Lunn, Committee Assistant

Lauren Douglass, Legislative Research

Robert Allison-Gallimore, Legislative Research

Sean Ostrow, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Brian Mason

Susan Mason

Attorney General Derek Schmidt

Christine Ladner, Assistant Attorney General

Heather Morgan, Youthville

Sarah Robinson, Wichita Childrens Home

Karen Whittman, Assistant Attorney General and Traffic Safety Resource Prosecutor

Steve Howe, KCDAA

Stuart Little, Kansas Community Corrections Association (KCCA)

Others in attendance:

See attached list.

Chairperson Colloton recognized ***Representative Kelly who voting on the prevailing side, made a motion to reconsider SB 306–Intimidation of a witness; including SRS personnel and mandatory abuse reporters as protected witnesses,. Representative Cassidy seconded. Motion carried.***

A discussion followed.

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Representative Kelly made a motion to change the effective date from July 1, 2012 to publication. Representative Cassidy seconded. Motion carried.

Representative Kelly made a motion to pass SB 306 out favorably as amended. Representative Cassidy seconded. Motion carried.

Next, Chairperson Colloton called the committee's attention to a technical cleanup amendment on SB 394—Relating to transfer or discharge of certain offenders. (Attachment 1) Jason Thompson, Office of the Revisor of Statutes, explained the amendment creating a justice reinvestment working group at the Kansas Department of Corrections.

Representative McCray-Miller made a motion, voting on the prevailing side, to reconsider SB 394. Representative Kelly seconded.

A discussion followed.

Representative Meier made a motion to adopt the amendment and pass the bill out as amended. Representative McCray-Miller seconded. Motion carried.

Chairperson Colloton opened the hearing on HB 2771—Relating to appeals; trials; violations of the uniform act regulating traffic on highways and called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill. Mr. Ostrow explained that no appeal shall be filed until after the sentence has been imposed.

Chairperson Colloton introduced Brian Mason, a private citizen, to give his testimony as a proponent of the bill. Mr. Mason provided written copies of his testimony for the committee and staff, (Attachment 2). Mr. Mason stated his daughter was killed in a car wreck and the driver was only charged with a traffic violation because the driver was allowed to file an appeal before the Judge announced his decision to the families involved. He stated this bill would not help his daughter but would help others from this happening to them. He urged the committee to please support this bill.

Chairperson Colloton introduced Susan Mason, Brian Mason's wife, to give her testimony as a proponent on the bill. Mrs. Mason provided written copies of her testimony for the committee and staff, (Attachment 3). She stated she had been working with Lance Kinzer for a while on HB 2771. She went on to say she would like to tell their story which is the reason HB 2771 has been introduced. During their lunch hour from school, their daughter (16 years old), niece (15

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years old) and 3 (16 year olds) of their friends went to a Quick Shop to get something to eat and then they were heading to a park. The 16 year old driver failed to yield at a stop sign and drove right out in front of a semi. The crash killed 3 passengers instantly and a little while later at the hospital. The driver survived; her statement to the highway patrolman was, in effect, the girls had seen the semi coming and tried to tell her but she thought they were playing a game so she didn't look and drove out into the intersection. This happened March 27, 2008. The state then pressed charges of 4 counts of misdemeanor vehicular homicide and 1 count of failure to yield. We went to court in February, 2009 in front of the Magistrate Judge who found the driver guilty of all charges. Because it was such an emotional trial, the judge set a date a month later for sentencing, getting the presentence investigation and asked us to prepare victim impact statements. Meanwhile the defense would appeal. As we were waiting for this date to come we received a phone call from the District Attorney who informed us that the District Judge had read the case and made his decision before the sentencing date came. He overturned the case without seeing the court ordered presentence investigation (which would have shown a 90 mph speeding ticket in a 65 mph zone, one week before the crash) or the victim impact statements. We were stunned to say the least! She didn't know that this ever could happen, appeal done before the first court was finished, and they never got to do victim impact statements. He only found her guilty of failure to yield, fining her \$60, losing her license for one year, & 10 days in juvenile hall but those 10 days were suspended as long as she paid the fine in 60 days which of course was paid in time. According to what they were told, he didn't have to contact any victims that he was doing this because when there are "only" traffic infractions, there are no victims. She went on to say, meanwhile 4 girls are still dead with 4 families grieving. The District Attorney decided not to appeal. She told them that she didn't think she could win. We know that this bill won't change anything with our court decision, but we would like to make it where no other parents have to go through what they been through; losing their girls and then feeling like the District Judge just slapped them in the face on top of it. For this reason we are asking that the laws are changed to address this issue. In closing, she stated they hope the committee will consider this bill as seriously as we do and give it their support.

Chairperson Colloton referred the committee to the proponent "written only" testimonies of others who lost loved ones in the same accident, which are listed below:

- Dana McDaniel ([Attachment 4](#))
- Calvin and Rita Hall ([Attachment 5](#))
- Randy and Denise McDowell ([Attachment 6](#))

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Chairperson Colloton also called the committee's attention to the neutral "written only" testimony of Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association. ([Attachment 7](#))

Chairperson Colloton called for any others wishing to testify or speak to the bill. There were none, so she closed the hearing on **HB 2771** and recognized Representative Cassidy.

Representative Cassidy made a motion to amend the substance from SB 453-Driving under the influence, into the empty shell SB 104. Representative Kelly seconded. Motion carried.

Chairperson Colloton opened the informational hearing on DUI. (**SB 453**, which is still in the Senate) She moved the committee's attention to a memorandum from Jason Thompson, Office of the Revisor of Statutes. ([Attachment 8](#)) She then called on Mr. Thompson to explain the memo. He stated **SB 453**, as amended, would amend various administrative and criminal statutes related to driving under the influence (DUI) and serve as a follow-up to the DUI bill passed in 2011. He explained the changes to the committee.

Chairperson Colloton introduced Karen Whittman, Attorney General's Office to give her testimony as a proponent regarding the DUI bill. Ms. Whittman provided written copies of her testimony for the committee and staff, ([Attachment 9](#)). She stated she is an Assistant Attorney General and the Traffic Safety Resource Prosecutor for the State and is appearing today on behalf of Attorney General Derek Schmidt. She went on to say, weak penalties for refusing to take a breath or blood test have created a giant loophole in Kansas law. Drunk drivers know they have a good chance of avoiding a DUI conviction and taking responsibility for their actions by refusing to submit to the tests which would clearly show whether they were guilty of driving drunk and putting other people's lives at risk. The new crime of refusing to take the blood or breath test should be counted as a prior DUI for charging purposes. If this is not implemented--again the legislature would create a benefit to the DUI offender to plea to this and not have it count in his criminal history concerning drunk driving. In closing, she encouraged the committee to support the DUI bill.

Chairperson Colloton introduced Steve Howe, Kansas County and District Attorneys Association, to give his testimony as a proponent of the DUI bill. Mr. Howe provided written copies of his testimony for the committee and staff, ([Attachment 10](#)). He stated one of the most important provisions dealt with the criminalizing of the refusal to submit to a breath test. Prosecutors throughout the State are facing a large volume of DUI offenders who refuse to perform field sobriety and breath, blood or urine tests. These professional drunks have numerous

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prior convictions and have become savvy enough to avoid cooperating with law enforcement. This leaves law enforcement and prosecutors with little evidence to convict them of their crimes. This has resulted in significant criminal justice resources being expended on these cases. He went on to say. For example, their jurisdiction has had 43 DUI jury trials in the last two years, 33 of which involved a defendant who refused to perform any tests. Criminalizing the refusal to take a breath, blood, or urine test would hold the professional drunks accountable for their actions while creating a safer environment for Kansans. In closing he stated they are asking that the committee either allow for a balloon amendment or any other mechanism to adopt this type of language in the bill. The penalties should be consistent with those for DUI offenders (as presently set forth in **Senate Bill 453**).

Chairperson Colloton called on Scott Schultz, Executive Director, Kansas sentencing asking if there was a prison bed impact on the DUI bill. Director Schultz stated there will be no prison bed impact with this bill.

Chairperson Colloton introduced Stuart Little, Kansas Community Corrections Association (KCCA), to give his testimony as a neutral party of the DUI bill. Mr. Little provided written copy of his testimony for the committee and staff, (Attachment 11). He stated he was here today to offer some comments regarding the current DUI law. Community corrections agencies are responsible for the supervision of most medium and high-risk DUI offenders. There is one issue the KCCA wants to make sure receives some attention from the Legislature during their review of the DUI law. The DUI bill approved in the FY 2012 budget for the Kansas Department of Corrections \$1.5 million State General Fund for community corrections. The Governor's budget for FY 12 includes those funds. Additionally, the bill approved an estimated \$1.1 million in increased fines and fees. One section, Sec. 8 (q) established a fine increase of \$250 for DUI offenses to be deposited in the "community corrections supervision fund." The bill also created fees from those seeking modifications of their current DUI status in Sec. 15 (g) which would deposit revenues in excess of \$100,000 into the "community corrections supervision fund." The Kansas Department of Corrections FY 2012 and FY 2013 budgets submitted to the Office of the Governor, included the \$1.5 million in SGF, but they have not included expenditures from the \$1.1 million created in the new "community corrections supervision fund." That means there is \$1.1 million the Legislature appropriated for FY 2013 that is not included in their budget submission. There have been meetings and communication with the Department of Corrections to discuss this issue. It is their understanding that the KDOC decided they would not spend the fee fund money in the year it is received but would first collect the revenue in FY 12 and then distribute the dollars in FY 2013. It also has been suggested that local courts are not participating in the fee collection process that is seriously limiting the funding that was

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estimated. They would request the committee's attention to this subject and encourage some legislative guidance to encourage the Kansas Department of Corrections to spend some the enhanced fee funds in the current year and not wait for the next fiscal year.

A question and answer session followed.

Chairperson Colloton called the committee's attention to the neutral "written only" testimony of Kyle Smith, Assistant Attorney General/Deputy Director, KBI. ([Attachment 12](#))

Chairperson Colloton introduced Gene Johnson, Chairman, Sunflower Alcohol Safety Action Project, Inc., to give his testimony as a neutral part to the DUI bill. Mr. Johnson provided written copies of his testimony for the committee and staff, ([Attachment 13](#)). Mr. Johnson stated their agency has been serving the Third Judicial District since 1984. Administrative Judge Nancy Parrish, with the approval of the remaining judges in the Third Judicial District, has positively supported their organization by continuing to re-certify their agency to provide presentence evaluations and supervision monitoring services of individuals convicted of DUI. Since 1984 they have provided some 16,277 presentence evaluations and investigations to the Courts. Currently, alcohol and drug evaluations submitted for DUI occurrences after July 1, 2011 will not contain a driving history or criminal history as was the practice in Shawnee County. Misdemeanor offenders of DUI are now not subject to the presentence report or investigation. The law now only requires evaluation of the offenders' alcohol/drug problems, nothing more. It ensures that the only information the evaluator has available is provided by the offender. Additionally, the offender's criminal history won't be received by a sentencing Judge until the offender has committed and is convicted of a 3rd or subsequent offense of DUI. The Sunflower Alcohol Safety Action Project requests that an exception be made for the Third Judicial District Shawnee County, and that language prior to the 2011 legislative session be restored to K.S.A. 8-1008.

A discussion followed.

Chairperson Colloton called for any others wishing to testify or speak to the bill. There were none, so she closed the informational hearing on DUI and opened the hearing on ***HB 2779—Human trafficking; crimes of commercial sexual exploitation of a child, selling sexual relations, promoting the sale of sexual relations and buying sexual relations.***

The Chair introduced Derik Schmidt, Kansas Attorney General, to give his testimony as a proponent of the bill. Attorney General Schmidt provided written copies of his testimony for the

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committee and staff, (Attachment 14). He stated he was here in support of **HB 2779**, which will strengthen our anti-human trafficking laws in Kansas. This bill proposes a strong step forward for the ongoing Kansas fight against human trafficking. In recent years, we have put in place strong criminal penalties for traffickers as well as critical law enforcement tools such as asset forfeiture. This bill proposes to build on that. He went on to review the following highlights of the bill which are listed below:

- Strengthening the role of the Office of the Attorney General in providing training and support for local law enforcement agencies and prosecutors in human trafficking investigations and prosecutions.
- Strengthening the law that prohibits the use of 14 to 17-year-olds for commercial sex services by creating the new crime Commercial Sexual Exploitation of a Child.
- Strengthening support for victims of human trafficking and providing a source of funding for victim-support services.
- Strengthening the ability of courts to remove victims of human trafficking from the circumstance in which they are trafficked.

In closing he stated he believes this bill is a strong and reasonable step to take this year, and he is grateful for the Committee's interest.

Chairperson Colloton introduced Christine Ladner, Chair of the Attorney General Derek Schmidt's Human Trafficking Advisory Board (HTAB) to give her testimony as a proponent of the bill. Ms. Ladner provided written copies of her testimony for the committee and staff, (Attachment 15). She stated she has been a prosecutor for twenty-three (23) years, the majority of that time spent prosecuting sex crimes and crimes against children, including cases of sexual exploitation and human trafficking. Commercial sexual exploitation and human trafficking are occurring in Kansas at a rate in which the state is currently unprepared to address. Both Wichita and Kansas City have been recognized as major originating cities for human trafficking. Officers located in the Wichita-Sedgwick County Exploited and Missing Child Unit report that sex traffickers often pick up runaways within 48 hours of their being on the streets and transport them to either Dallas or Chicago within 72 hours. While originally noticed in Wichita and Kansas City, human trafficking reports from victim service agencies indicate it is also occurring in many mid-level communities across the state.¹

She went on to say, both knowledge of the prevalence of trafficking in Kansas and effective response to trafficking remain elusive due to lack of awareness, lack of identification measures,

¹ Victim Service Agency Semi-annual Reports to the Office of Attorney General, 2011.

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lack of experience in investigating and prosecuting these cases, absence of tracking protocol, and limited strategic response. Kansas law enforcement officers surveyed indicated they feel ill equipped to effectively respond to human trafficking crime and need training in this area. Of those Kansas officers interviewed in a 2009-2010 ongoing face-to-face research survey, 100% expressed a perceived need for training on the following topics associated with human trafficking: current federal and state laws, identifying cases, methods for investigating cases, understanding the rights of victims, and understanding how law enforcement's response to victims impacts the victim's mental health and ability to cooperate with investigations and prosecution. As elsewhere in the country, the vast majority of victims of human trafficking in Kansas are not people from other countries, but our own children. Under federal law, any juvenile subjected to commercial sexual exploitation is a victim of human trafficking. This population of juvenile victims of trafficking is at least 250,000 per year nationwide, versus the estimated number of foreign victims at fewer than 20,000. In closing, she stated she supports this bill and urged the committee to take it under consideration.

A question and answer session followed.

Chairperson Colloton introduced Heather Morgan, Public Affairs Officer, United Methodist Youthville, to give her testimony as a proponent of the bill. Ms. Morgan provided written copies of her testimony for committee and staff, ([Attachment 16](#)). She stated the United Methodist Youthville currently operates the only Secure Care Facility in Kansas. Their facility is located in Newton and contains 12 beds for females. To be admitted to their facility a child has been found to be a child in need of care and a judge must provide a valid court order authorizing placement due to the youth's history of running from other placements and the youth's inability to be housed safely in another setting. About 40 percent of the girls in their Secure Care Facility are victims of human trafficking. They currently have a small waiting list to be admitted to the facility. Currently, youth usually stay around 120 days with the longest stays lasting around 180 days. While in Secure Care the girls are provided schooling in the facility by the local school district and only leave the facility when accompanied by at least two staff to receive medical treatment. They work very intensely with the girls while they are in the facility to ensure they receive any substance abuse or mental health treatment that they need. She went on to say, they also provide a best practice cognitive behavioral therapy program called, "Thinking for a Change." This program helps girls examine their thinking patterns and breaks the cycle of thinking that they had while they were engaged in the human trafficking. They see the need for Secure Care services as critical to help these girls break the cycle that they have been engaged in, provide them treatment to help them heal, and then change their thinking so they can become productive members of society. The need for treatment is great and they believe additional

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Secure Care beds would be utilized if they were available. This bill creates a funding mechanism by creating the Human Trafficking Fund that would allow funding to be utilized to create more beds to ensure youth involved in this behavior are able to be held securely while receiving help. To open another 12 beds, Youthville would need \$50,000 in upfront funding to retrofit another housing unit to make it secure to house these girls. Currently, the Secure Care rate paid for by the SRS Child Welfare Contractors is \$168 a day with an additional grant from the state that brings the per day rate up to \$220 per day. The fund created by this bill, along with the financial penalties created by the people who traffick these girls would be invested well into additional treatment for the victims. United Methodist Youthville strongly supports the passage of this bill. They do suggest some language clean-up that would ensure that the state does not jeopardize federal IV-E dollars related to the direct placement of youth in the custody of the Secretary of SRS, clarifying that Youth Residential Facilities are not secure settings appropriate for runners, and some friendly technical clean-up language that may be needed. In closing, she stated they stand ready to work with the authors of this bill to ensure this measure is passed to better protect and serve the victims of human trafficking in Kansas.

A question and answer session followed.

Due to the time being short, the Chair suspended the hearing to address some unfinished business of the committee and recognized ***Representative Brookens who, voting on the prevailing side, made a motion to reconsider Sub for SB 307 - Lesser included crimes; felony murder, which was passed out of the committee at the last meeting. Representative Goodman seconded. Motion carried.***

Chairperson Colloton continued the hearing on **HB 2779** and called on Sarah Robinson, Executive Director, Wichita Children's Home, to give her testimony as a proponent of the bill. Ms. Robinson provided written copies of her testimony for the committee and staff, (**Attachment 17**). She stated that the Wichita Children's Center offers shelter for law enforcement admissions and homeless youth and as mobile street outreach program, a transitional living program for 17 to 22 year olds, a resource center for runaway and homeless youth, and most recently a program that provides services for 13 to 24 year olds who are victims of sexual assault. Because many highways come together in Wichita, their community is known as the originating site for the human trafficking world. She went on to say, they have seen youth for many years who are victims of the domestic minor trafficking. They have seen these youth move in and out of programs because their needs are so difficult to address. These youth need comprehensive treatment in order to come terms with this horrific situation. This bill offers these victims a future through the funding of treatment and training. In closing, she stated they stand ready to

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develop programs to help these young people receive the care that they deserve. They support this bill and asked the committee to support it also.

Chairperson Colloton called the committee's attention to the following "written only" proponent testimony on the bill:

- Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association (Attachment 18)
- Michael Schuttloffel, Kansas Catholic Conference (Attachment 19)
- Bruce Linhos, Children's Alliance (Attachment 20)
- Gina Meier-Hummel, Director Children and Family Services, SRS (Attachment 21)

A discussion followed with the Chair calling for any others wishing to speak or testify to the bill. Heather Morgan and Gina Meir-Hummel both spoke. Chairperson Colloton asked for them to work with Representative Brookens before the committee worked the bill and closed the hearing on **HB 2779**.

Representative Brookens made a motion to amend HB 2779 into the empty shell of SB 46. Representative Cassidy seconded. Motion carried.

Chairperson Colloton adjourned the meeting at 3:30 PM with the next meeting scheduled for March 15, 2012, at 1:00 PM in room 144 S.