

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 8, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused

David Haley- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Helen Pedigo, Office of Revisor of Statutes

Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Jay Hinkel, City of Wichita

Mike Taylor, Unified Government of Wyandotte County

Erik Satorius, City of Overland Park

Sandy Jacquot, League of Kansas Municipalities

Jim Clark, Kansas Bar Association

Debbie Rosacker, Assistant Director, State Board of Indigents' Defense Services

Vernon Chinn, Pratt County Sheriff

Kevin Graham, Assistant Attorney General

Kyle Smith, Special Agent, Kansas Peace Officers

Others attending:

See attached list.

Chairman Vratil opened the hearing on **Sub HB 2113**.

Sub HB 2113 Municipal court collecting fines and court costs

Proponents:

Jay Hinkel, Attorney with the City of Wichita, testified in support of the bill. Mr. Hinkel asked the Committee to help the Wichita Municipal Court more effectively collect on the growing problem of delinquent fines. Mr. Hinkel testified that there were \$28.7 million in delinquent fines and the collection rate is only 20 percent, or \$5.75 million, through collection agencies which charge a 19.5 percent fee. By converting the unpaid fines to civil judgements, the Municipal Court would save approximately six months and a significant amount of paperwork on each civil judgement, and would not burden the District Courts. Chairman Vratil asked that Mr. Hinkel find out how much revenue is generated from fines that are paid. (Attachment 1)

Mike Taylor, Public Relations Director for The Unified Government of Wyandotte County, testified in support of the bill. Mr. Taylor stated that the collection of fines owed is a fairness and equity issue, that people who break the law should pay the fines. Mr. Taylor stated he would like to see the original language put back in the bill so that municipalities can require the payment of collection costs from individuals who refuse to pay their fines. Chairman Vratil questioned what the compliance rate was for Wyandotte County. Mr. Taylor was not sure but offered that of the revenue collected through collection agencies was comparable to those of Wichita, at between 15 percent and 20 percent. (Attachment 2)

Erik Satorius, City of Overland Park, Kansas, stated that his written testimony was sufficient to express the City's message to the Committee. Chairman Vratil questioned Mr. Satorius about the percent of fines that were collected. Mr. Satorius stated he estimated that 90 percent of all fines are paid, and the City of Overland Park does not have a high compliance problem. Mr. Satorius stated the City wanted to encourage the Committee to reinstate the original language in the bill so that municipalities may require individuals to pay the collection costs. (Attachment 3)

Sandy Jacquot, League of Kansas Municipalities, testified in support of the bill. The League is also supportive of adding in the original language into the bill so that the cost of collection would be assessed from

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the individual who had not paid the fine. (Attachment 4)

Chairman Vratil stated that the House amendment took out the provisions that would have allowed the cost of collections in criminal and traffic cases. He questioned whether civil cases could be added, and Representative Huy, a guest at the meeting, stated that this was originally her amendment and would be open to adding civil cases.

Senator Betts asked if the total revenues paid to the City of Wichita from fines could be provided to the Committee. Mr. Hinkel stated he could find out the amount and provide it.

Chairman Vratil closed the hearing on **Sub HB 2113** and opened the hearing on **HB 2129**.

HB 2129 Compensation for attorneys representing indigent defendants, \$80 per hour

Proponents:

Jim Clark, Kansas Bar Association Legislative Counsel, testified in support of the bill. Mr. Clark stated that the current hourly rate of \$50 has not been increased since 1988, and is inadequate especially when compared with appointments to criminal cases in federal court at \$90 per hour. (Attachments 5 & 6)

Senator Schmidt stated in his county, Montgomery County, they have a public defender that earns around \$45,000 annually. Senator Schmidt questioned whether it may be more financially wise to consider having public defenders in other counties. Mr. Clark responded that in small counties it wouldn't work because there may not be enough cases to support such a system. Senator Journey also stated that county attorneys may be paid at a lower rate, but they also are provided with health benefits, retirement benefits, an office, secretary, and all the things private attorneys have to provide for themselves. Additionally, Senator Journey stated that there are caps, regardless of the number of hours worked on indigent cases, and an attorney is limited on how much may be collected.

Chairman Vratil questioned if anyone had a proposal for where the money should come from to pay the hourly rate difference and noted that the fiscal note was \$3.2 million dollars.

Debbie Rosacker, Assistant Director with the State Board of Indigents' Defense Services, stated that written testimony was provided by Pat Scalia, Executive Director. Ms. Rosacker stated that the Board was concerned that if the hourly rate was not increased, they might be subject to legal action and could be mandated to increase fees. Ms. Rosacker noted that in the Stephans case, the Kansas Supreme Court suggested that the Board of Indigents' Defense consider the overhead cost of attorneys to determine a payment rate that would not be confiscatory. Ms. Rosacker stated that if they had to open additional public defender officers across Kansas, it could cost up to \$6 million dollars, which is more than the \$3.2 million they are asking for. (Attachment 7) Senator Journey asked if Ms. Rosacker could provide the Committee what the reimbursement rates are. Ms. Rosacker stated that the rates depend on what is ordered by the judge, but she would try to provide some information.

Written testimony was submitted by Chief Judge Thomas Tuggle, Kansas District Judges Association. (Attachment 8)

Chairman Vratil closed the hearing on **HB 2129** and opened the hearing on **HB 2180**.

HB 2180 Inherently dangerous felonies

Proponents:

Vernon Chinn, Pratt County Sheriff, testified on behalf of the Sheriffs Association in support of the bill. He stated that suspects fleeing in a car are like a 4,000 pound speeding bullet, and the officer never knows in advance just how it is going to end when suspects are pursued. (Attachment 9)

Kevin Graham, Assistant Attorney General, testified in support of the bill. Mr. Graham stated that if an individual flees from the police and there is a crash and someone dies, there are basically three options on what could be charged: reckless second degree murder, involuntary manslaughter, and homicide. The charge

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depends on the level of negligence or intentional “add acts” when the party flees. Mr. Graham gave an example: the lights come on behind an individual and the individual hits the gas and all he is doing is speeding; he runs into the car in front of him and someone dies as a result. There is case law in the state that indicates that this is a vehicular homicide, a Class A misdemeanor, as there was only one violation, speeding. If there are multiples, such as driving in and out of traffic swerving, the individual cuts someone off and hits a person on the side of the road, the charge might be a little higher, involuntary manslaughter. If there are numerous dangerous acts, swerving in and out, hitting several cars and a police officer, perhaps then the charge would be second degree murder. And finally, with a conviction on this charge, the individual would get prison time. The bill would give due punishment if an individual is “fleeing and eluding” and hits someone, as they will be looking at least involuntary manslaughter; if the individual gets to “felony fleeing and eluding” with multiple traffic violations and a death, then the individual is looking at felony murder, or first degree murder, with a twenty-year to life sentence. (Attachment 10)

Chairman Vratil questioned Mr. Graham regarding the bed space impact report, which is 3-9 additional beds in 2006, and 23-35 additional beds for 2015. The Chairman stated that the impact was similar to the impact of **SB 179**, but when the two impact reports are added together, they are fairly substantial figures. The Chairman asked Mr. Graham if he could have one or the other bill passed, which one would it be. Mr. Graham stated they are both good bills and deserve to be passed, that these are people who should not be on the street.

Kyle Smith, Special Agent for the Kansas Bureau of Investigation, testified on behalf of the Kansas Peace Officers Association. Mr. Smith stated that by placing the crime of “flee and elude” as a serious crime that may cause death, the savings in lives, injuries and property clearly justify the relatively small prison bed impact. (Attachment 11)

Written testimony was submitted by R. Michael Jennings, Kansas County & District Attorneys Association. (Attachment 12)

Chairman Vratil closed the hearing on **HB 2180**.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 9, 2005.