

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 13, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Duston Slinkard, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigations  
Mike Life, Kansas Narcotics Officers Association  
Detective Gary Borstelman, Johnson County Sheriff's Office  
Ed Klump, Kansas Association of Chief's of Police  
Helen Pedigo, Kansas Sentencing Commission  
Chris Joseph, Kansas Professional Bail Bonds Association  
Shane Rolf, Kansas Association of Professional Sureties  
Pat Scalia, Kansas Board of Indigents' Defense Services  
Wendell Betts, Shawnee County Public Defender Office  
Tom Barte, Northeast Kansas Conflict Office  
Connie Alvery, Wyandotte, county District Attorney's Office  
Judge Peter Ruddick, 10<sup>th</sup> Judicial District, Johnson County  
Chief Judge Richard Smith, 6<sup>th</sup> Judicial District  
Rick Guinn, Chief Counsel, Office of the Attorney General

The hearing on **HB 2545 – controlled substances, ecstasy and certain meth substances a felony**, was opened.

Kyle Smith, KBI, appeared before the committee as a proponent to the bill. He stated that filing of ecstasy cases have continued to rise since 2004. The proposed bill would increase the penalty for possession of this drug to a level 4 drug felony, which is the same as for cocaine. It sends a clear message that the use of this drug is dangerous and just as illegal as other drugs. (Attachment 1)

Mike Life, Kansas Narcotics Officers Association, stated that the proposed bill fixes two problems with current law: doesn't address the seriousness of ecstasy and doesn't increase penalties for repeat offenders. The charge of a level 4 drug felony should have minimal impact on prison populations. The increase in the sentence for repeat offenders will hopefully deter some individuals. (Attachment 2)

Detective Gary Borstelman, Johnson County Sheriff's Office, commented that ecstasy is "marketed" towards ages 12- 16 years olds. It's routinely sold at rave parties and other social events which young people attend. It's a dangerous drug and should be treated as so. (Attachment 3)

Ed Klumpp, Kansas Association Chief's of Police, provided the committee with a chart from the 2006 Kansas Communities That Care Survey showing an increase in the number of 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> graders using this drug. (Attachment 4)

The hearing on **HB 2545** was closed.

The hearing on **SB 324 – repealing certain KSA sections concerning certain crimes**, was opened.

Helen Pedigo, Kansas Sentencing Commission, explained that the proposed bill simply repeals or amends statutes that fall into two categories: outdated class D&F felony penalties and repealing several statutes. The Commission proposed the bill to help clean up the criminal statute and eliminate those that are unnecessary. (Attachment 5)

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The hearing on **SB 324** was closed.

The hearing on **SB 203 – release prior to trial, appearance bonds, cash deposit required to equal amount of bond**, was opened.

Chris Joseph, Kansas Professional Bail Bonds Association, appeared before the committee as a proponent to the bill. He stated that the bill does two things:

- (1) eliminates the judicially- created form of bail bonding
- (2) clarifies when bonds may be forfeited and revoked, thereby creating uniformity across the state

In October 1993, Shawnee County District Court adopted local rule 3.324, which created the “own recognizance-cash deposit bond” (ORCD Bond). In February 1994, Attorney General Stephan issued an opinion concluding that the Shawnee County bond program was prohibited by statute. He stated that “while the courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions.”

In January 1995 the Kansas Supreme Court Administrative Order 96 created an ORCD Bond. Order 96 authorizes judges to allow defendants to post bond by paying 10% of the total bond, in the form of cash, to the district court clerk. The court keeps this 10% as an administrative fee. However, in conflict with itself the Kansas Supreme Court has a Court Rule 114 which prohibits ORCD bonds.

Mr. Joseph explained that some courts have taken to forfeiting bonds and order bondsmen to pay when a defendant violates some other condition of bond, such as refraining from the use of drugs or alcohol. The proposed bill would simply recognize that the purpose of bail is to guarantee that a defendant will appear in court and should not be forfeited for any other reason than no failure to appear. (Attachment 6)

Shane Rolf, Kansas Association of Professional Sureties, stated that the proposed bill would not restrict the ability of a judge to control who may write bonds in his judicial district, would continue to allow him to set appearance bonds in a reasonable amount that would guarantee the appearance of a defendant. It would clarify that only the legislature has the authority to provide funding mechanisms for the courts. (Attachment 7)

American Bail Coalition, Kansas Professional Sureties, Kansas Professional Bail Bond Association, Mannie’s Bonding Company, Manuel Baraban, did not appear before the committee but requested their written testimony in support of the bill be included in the committee minutes. (Attachments 8-12)

Pat Scalia, Kansas Board of Indigents’ Defense Services, appeared as an opponent of the bill because it would impact the amount of money they receive in reimbursement fees for attorneys. (Attachment 13)

Wendell Betts, Shawnee County Public Defender Office, appeared as an opponent of the bill. He believes the courts have constitutional authority to do bonding because it helps the court with their functions. ORCD bonding is only a bad deal to the bondsmen because they lose money. Individuals bonding out lose 10% of their money either way. (Attachment 14)

Tom Bartee, Northeast Kansas Conflict Office, appeared before the committee as an opponent of the bill. He stated that the ORCD bonds are beneficial to those individuals who are not wealthy and do not have anything to put up as collateral. He cited Article 3, Section 3 of the Kansas Constitution for allowing the court the authority for bonding because there is no express prohibition that the courts can’t collect bonds. (Attachment 15) Chairman O’Neal pointed out that the Order 96 refers to Article 1, Section 3.

Connie Alvery, Wyandotte County District Attorney’s Office, was concerned that the bill would take away the courts authority to require ORCD bonds or a combination of cash plus assets, or cash with work release. (Attachment 16)

Judge Peter Ruddick, 10<sup>th</sup> Judicial District, explained that Johnson County does ORCD bonds by combination of local rule, Supreme Court rule and constitutional authority. They require a 10% deposit of the total amount of the bond. 10% of that amount is retained for administrative fees. Once the case is concluded the remaining

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funds are first applied to restitution, appointed counsel fees, and court costs. Any remaining funds are returned to the defendant. (Attachment 17)

Chief Judge Richard Smith, 6<sup>th</sup> Judicial District, appeared before the committee in opposition of the bill. He commented that any available funds that they are now collecting towards restitution would be given back to the bondsmen if **SB 203** passes. (Attachment 18)

Rick Guinn, Chief Counsel, Office of Attorney General, commented that the issue before the committee is really one of public policy. Allowing the courts the ability to do ORCD bonds provides for greater protection for victims by allowing the fees to fund bonding supervision, therefore, allowing a closer watch on those accused of crimes. (Attachment 19)

The Office of Judicial Administration, 14<sup>th</sup> Judicial District, The Kansas Judges' Association, Kansas Association of Criminal Defense Lawyers, and Johnson County Sheriff's Office, did not appear before the committee but requested their testimony in opposition of the bill be included in the committee minutes. (Attachments 20-24)

The hearing on **SB 203** was closed.

The committee meeting adjourned at 6:10 p.m.