Approved: 2-11-93
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 2, 1993 in room 313-S of the Statehouse.

All members were present.

Committee staff present:

Jerry Donaldson, Legislative Research
Mike Heim, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Representative David Adkins
Representative Alex Scott
Chuck Simmons, Department of Corrections

Hearings on HB 2112 were opened dealing with the crime of carjacking.

Representative David Adkins appeared before the committee as the sponsor of the bill. He testified that the purpose of HB 2112 is to create the crime of carjacking. Carjacking victimizes not only those who drive automobiles that are involved in the incident but all drivers. He believes that by identifying the crime of carjacking, and providing stiff penalties for the act (severity level 2 person felony under the sentencing guidelines which would result in imprisonment between 133-125 months), it would hopefully provide a deterrent for this kind of problem. (Attachment #1)

Chairman O'Neal made the statement that in section 1 the proposed language is "carjacking is the taking of a motor vehicle, from the person or presence of another by force or by threat of bodily harm to any person". If we take a look at the traditional robbery definition it is a requirement that it be by threat of bodily harm.

Jill Wolters, Legislative Research, stated that when the judicial code recodification takes effect the language for robbery will be "..by force or by threat of bodily harm to any person".

Representative Alex Scott appeared before the committee as a proponent to the bill. He stated that carjacking presents an opportunity for organized crime to develop an entirely new industry. (Attachment #2)

Hearings on HB 2112 were closed.

Hearings on HB 2100 were opened creating the crime of unlawful sexual relations and obstruction of legal process.

Chuck Simmons, Department of Correction, appeared before the committee as a proponent. The first section of this bill provides that it would be unlawful for an employee to engage in sexual relations with an inmate or parolee. Violation of this law would be a severity level 10 offense under the sentencing guidelines. The second section makes it clear that it is a felony offense for an individual to obstruct or resist the service of a warrant for a parole or probation violation from a felony offense. (Attachment #3)

Hearings on HB 2100 were closed.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 2, 1993.

Hearing on HB 2099 was opened amending the definition of community service work in the Tort Claims Act.

Chuck Simmons, Department of Corrections, appeared in support of this bill. This bill would include parolees and conditional releasees in the definition of community service work so they would be exempt from liability. (Attachment #4)

Hearings on HB 2099 were closed.

Chairman O'Neal announced the appointment of Representative Everhart, Representative Macy, Representative Plummer, and himself to serve on a sub-committee to review sex related offense legislation that we have in the committee.

The Committee adjourned at 4:30 p.m. The next Committee meeting is February 3, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 2, 1993

NAME	ADDRESS	ORGANIZATION
Donald Labson	McPherson	Intern
Mike McClenahan	Topeka	City of Topeka
Angela Bryan	Lawrence	Intern
Tami Gubas	Lawrence	Intern
Carmen Brewer	Topeka	KTLA
Kathie Sparks	"	Div. of Budget
BLAINE CARTER	"	KSC
Jacqueline Cortright	"	KSC
JIM CLARK	Topeka	KCDAA
Charles Simmons	Topeka	Ks. Dept. of Corrections
Matt Lynch	Topeka	Jud. Council
Paul Shelby	Topeka	OJA
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
STEVE RODINA	TOPEKA	KHP
JERRY S. COLE	TOPEKA	APPROPRIATIONS

State of Kansas
House of Representatives

State Capitol
Room 448-N
Topeka, Kansas 66612-1504
(913) 296-7693

Committee Assignments

Taxation
Judiciary

David Adkins
Representative, 28th District

Testimony of Representative David Adkins, House Judiciary Committee, February 2, 1993 regarding 1993 H.B. 2112, a bill creating the crime of carjacking.

Chairman O'Neal and Members of the Committee.

It is my pleasure to appear before this committee on behalf of myself and the 68 other sponsors of H.B. 2112. I appreciate your willingness to hold hearings on this bill. The purpose of H.B. 2112 is to create a new crime in Kansas known as carjacking. It is my hope that by specifically designating the act of carjacking to be a crime and providing stiff penalties for those that commit the crime, we as lawmakers can provide an effective deterrent.

The increasingly popular crime involving the armed or strong armed theft of automobiles deserves to be classified as a specific felony apart from more general crimes for which an offender may be prosecuted. Those who commit this offense not only violate the person and property of their victims, but also terrorize the victims by depriving them of their mobility and their feeling of safety. Due to this recent trend, the security that drivers and passengers traditionally have come to expect while inside an automobile now is in question. Although the violations committed in this new wave of crime could result in charges under current law for

HOUSE JUDICIARY
Attachment #1
02-2-93

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infractions such as assault, robbery or aggravated robbery, the actions of these criminals are so deliberate and heinous as to warrant a carjacking charge with a harsh penalty of a severity Level 2 person felony (which under the Kansas Sentencing Guidelines would result in imprisonment of between 113 and 125 months). Such a severe punishment is necessary if the bill is to be an effective deterrent to the recent auto theft trend. A specific new felony that simply carried the same penalties available under current law would be useless as a deterrent.

Attention is being paid to "carjacking" as more and more people find themselves being robbed of their cars at gunpoint. There has been a significant increase in carjackings in the Kansas City area, just has there has been in many other communities around the country. According to a national survey of FBI field offices, the problem is most severe in Los Angeles, Washington, New York City, Newark, Houston and San Juan. During the first eleven months of 1992, Kansas City, Missouri recording an average of 15 carjackings a month, but 17 were committed in the first half of December alone. Statistics for the remainder of the month are incomplete pending investigation, but information indicates that December's total may be 22 to 25, nearly 200 carjackings in Kansas City, Missouri in 1992.

It is difficult to know how many carjackings have been committed in Kansas since our state does not maintain specific crime statistics on the crime of carjacking. The KBI has indicated to me that a new reporting system has been initiated and beginning in January of 1993 carjacking statistics will be collected by that agency.

A federal statute regarding carjacking was signed into law on October 25, 1992. This law is known as the "Anti Car Theft Act of 1992." I have attached a copy of the pertinent provisions of that law to this testimony. The federal law declares that it is now "a federal offense if, (1) a

firearm is used to take a vehicle from an individual and (2) the vehicle has been, at anytime, transported, shipped or received in either interstate or foreign commerce." This means that taking the vehicle across state lines during the commission of the crime is not necessary for federal charges to be applied. The federal law calls for sentences of up to 15 years for simple carjacking. If there is bodily injury to victims, the penalty is up to 25 years. In instances resulting in death as a result of a commission of a crime, the penalty can be life imprisonment. In addition, the statute provides for fines up to $250,000. Congress also authorized the FBI to assist in the investigation of carjackings. The federal law requires the use of a firearm in a carjacking if the federal court is to have jurisdiction. House Bill 2112 would allow prosecution of carjackers in Kansas courts regardless of whether a firearm was used.

I believe that by enacting a severe carjacking statute at the state level we provide prosecutors with maximum flexibility in deciding whether to bring charges against an individual in state or federal jurisdictions. This flexibility may be especially appropriate in light of the fact that carjackings usually are also committed simultaneously with a number of other offenses for which federal jurisdiction would not be appropriate.

Carjackings in Kansas can be prosecuted currently under the robbery statute (KSA 21-3426) or the aggravated robbery statute (KSA 21-3427). A copy of these statutes is attached to this testimony. An individual convicted of robbery is guilty of a Class C felony for which a minimum sentence of three to five years and a maximum sentence of ten to twenty years could be imposed under current law. Under the new sentencing guidelines to take effect July 1, 1993 an individual convicted of robbery would be guilty of a Level 5 person felony. This would subject the individual to imprisonment of between 50 and 55 months. Aggravated robbery is a Class B felony under current law. An individual convicted of aggravated robbery is subject to a sentence

of between a minimum of 5 to 15 years to a maximum of 20 years to life. Under the new sentencing guidelines aggravated robbery would be classified as a Level 3 person felony for which a sentence of between 74 to 83 months could be imposed. The purpose of H.B. 2112 is to enhance the penalty for carjacking from a Level 3 person felony to a Level 2 person felony.

I believe that there are a large number of motorists in our state that no longer feel safe in the privacy of their automobile. This is true for motorists in both rural and urban communities. The members of this Committee and the Kansas House have the opportunity to send a strong message to the would be terrorists contemplating the crime of carjacking. I appreciate the opportunity to provide this Committee with my testimony and I would urge the Committee to report H.B. 2112 favorably for passage.

I would be happy to respond to any inquiries.

Respectfully submitted,

David J. Adkins

David J. Adkins
State Representative
28th District, Leawood

21-3426 Robbery. Robbery is the taking of property from the person or presence of another by threat of bodily harm to his person or the person of another by force. Robbery is a Class C Felony.

21-3427 Aggravated Robbery. Aggravated Robbery is a robbery committed by a person who is armed with a dangerous weapon or who inflicts bodily harm upon any person in the course of such robbery. Aggravated robbery is a Class B Felony.

ANTI-CAR-THEFT ACT OF 1992

Mr. SCHUMER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4542) to prevent and deter auto theft, as amended.

The Clerk read as follows:

H.R. 4542

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti Car Theft Act of 1992".

TITLE I—TOUGHER LAW ENFORCEMENT AGAINST AUTO THEFT

Subtitle A—Enhanced Penalties for Auto Theft

SEC. 101. FEDERAL PENALTIES FOR ARMED ROBBERIES OF AUTOS.

(a) IN GENERAL.—Chapter 103 of title 18, United States Code, is amended by adding at the end the following:

"§ 2119. Motor vehicles

"Whoever, possessing a firearm as defined in section 921 of this title, takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall—

"(1) be fined under this title or imprisoned not more than 15 years, or both,

"(2) if serious bodily injury (as defined in section 1365 of this title) results, be fined under this title or imprisoned not more than 25 years, or both, and

"(3) if death results, be fined under this title or imprisoned for any number of years up to life, or both.".

(b) FEDERAL COOPERATION TO PREVENT "CARJACKING" AND MOTOR VEHICLE THEFT.—In view of the increase of motor vehicle theft with its growing threat to human life and to the economic well-being of the Nation, the Attorney General, acting through the Federal Bureau of Investigation and the United States Attorneys, are urged to work with State and local officials to investigate car thefts, including violations of section 2119 of title 18, United States Code, for armed carjacking, and as appropriate and consistent with prosecutorial discretion, prosecute persons who allegedly violate such law and other relevant Federal statutes.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 103 of title 18, United States Code, is amended by adding at the end the following new item:

"2119. Motor vehicles.".

Category→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	193 183 173	178 170 161	167 158 150	154 146 138	141 134 127	127 122 115	116 110 104	103 97 92
II	154 146 138	144 137 130	135 128 121	125 119 113	115 109 103	105 100 95	96 91 86	86 82 77	77 73 68
III	103 97 92	95 90 86	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	86 81 77	81 77 72	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	68 65 61	64 60 57	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS
JUDICIARY
PUBLIC HEALTH AND WELFARE

TESTIMONY ON HB 2112
BY REPRESENTATIVE ALEX SCOTT
FEBRUARY 2, 1993

Thank you Mr. Chairman and members of the committee for allowing me to appear and testify.

Since we have not had a carjacking that has come to my attention in Geary County, much of what I shall speak about is information I've gleamed from other areas. When I visited Washington, D.C. during the latter part of November there were numerous articles in The Washington Post and also in the local news about carjacking in the nations capitol. On one occasion an FBI agent was approached by an armed carjacker, and he drew his service revolver and the carjacker was killed in the commission of the crime.

The sophistication that exists where carjacking has been made into a business is rather interesting. The technique appears to be as follows: the car or vehicle that is targeted for carjacking is seized at an appropriate opportunity and then taken to a place where it can be dismantled. The car is taken apart carefully, and all parts are maintained until the car reaches an unrepairable state. This may involve having the chassis and part of the body being intact but most of the remainder of the car being absent.

The vehicle is placed on the street where it is picked up and impounded in a suitable place until it can be sold and be retitled. The main objective of the carjackers is to secure a new title for what is left

and thus divert the paper trail of ownership. Once this is accomplished the remaining hulk is purchased. Once in possession of a new title the vehicle is re-assembled by the carjackers and can be sold as a used car at an auction or a used car lot.

Carjacking represents a more sinister face than casual theft and joy riding. It represents an opportunity for organized crime to develop an entirely new industry. Action should be taken to eliminate carjacking before it significantly invades Kansas. I support H.B. 2112 and encourage you to do the same.

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Joan Finney
Governor

Gary Stotts
Secretary

To: House Judiciary Committee

From: Gary Stotts
Secretary of Corrections

Date: February 2, 1993

Subject: House Bill 2100

The Department of Corrections requested this bill to address two problems which have been experienced in recent years. The first is a problem of sexual relationships between employees and inmates. This bill provides that it would be unlawful for an employee of the Department of Corrections, or an employee of a contractor who is under contract to provide services in a correctional institution, to engage in sexual relations with an inmate or parolee. Consent of the inmate or parolee would not be a defense to this law. Violation of this law would be a severity level 10 offense under sentencing guidelines after that law goes into effect July 1, 1993.

Last session this proposal passed both the Senate (SB 556 by a vote of 40-0) and the House (Amendments to SB 358) but was not incorporated into a Conference Committee report. In addition, although the relationship between the inmate and the employee may appear to be voluntary on the part of both parties, it is clear that an employee is in a position of authority over inmates or parolees. This authority position creates the opportunity for an employee to gain sexual favors from an inmate through pressure or coercion whether direct or indirect, or the promise of preferential treatment. Even when the inmate may appear to consent, this may not in fact be the case. As such, the legislation provides that the employee would not be able to use the consent of the inmate as a defense to a prosecution for this offense.

Personal relationships between employees and inmates adversely impact the security and orderly operation of correctional facilities. The credibility of the employee, and the Department, is diminished by such relationships and the opportunity for pressure to introduce contraband or take

part in other improper activities is increased. This makes the facility less secure and less safe for other employees and inmates.

Several states (Georgia, Hawaii, California, Ohio, and Tennessee) have recently experienced problems of correctional employees engaging in sexual activity with inmates. As a matter of public policy we should implement measures designed to deter such conduct. This is such a measure.

In the past the Department of Corrections has taken disciplinary action against employees who have been found to have participated in sexual relationships with inmates. When such incidents have been confirmed the disciplinary action has been to terminate the employee. However, the threat of disciplinary action has not fully resolved the problem. Unfortunately, some employees still participate in this kind of activity. To create a greater deterrent to such activity, it is suggested that the activity be made unlawful.

The second section of HB 2100 is intended to clarify the offense of obstructing legal process or official duty as defined in K.S.A. 21-3808. The intent of the proposed amendments is to make it clear that it is a felony offense for an individual to obstruct or resist the service of a warrant for a parole or probation violation from a felony offense.

A court in Shawnee County has ruled that parole revocation is a civil process and not a criminal process. Consequently, the court held that an individual who resisted or interfered with service of a warrant for parole violation could not be convicted of a felony under K.S.A. 21-3808. We believe that if an individual is on parole or probation from a felony offense and resists or interferes with service of a parole or probation violation warrant, that individual is committing a felony offense.

If an individual believes that they face only a misdemeanor offense, he or she may be more likely to resist service of a warrant for parole or probation violation. Any resistance a law enforcement officer receives places that officer at a greater risk to his or her personal safety. In addition, as a matter of public safety it is important that individuals for whom parole or probation warrants have been issued be taken into custody as soon as possible. Law enforcement officers should be encouraged to take this action. Treating resistance or interference to the service of the warrant as a misdemeanor offense diminishes the importance of doing so.

Favorable action on this proposal will provide an additional supervision and public safety tool in dealing with felony offenders.

GS:CES/pa

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Joan Finney
Governor

Gary Stotts
Secretary

To: House Judiciary Committee

From: Gary Stotts
Secretary of Corrections

Date: February 2, 1993

Subject: House Bill 2099

This bill would amend K.S.A. 1992 Supp. 75-6102(e), which is part of the Kansas Tort Claims Act, regarding the definition of "Community service work." The following provision would be included in the definition of "community service work": "(6) or as a condition of parole, conditional release, or post release supervision, as defined by the Kansas sentencing guidelines act in section 3 of chapter 239 of the 1992 Session Laws of Kansas, as ordered by the Kansas parole board or by the secretary of corrections." Pursuant to K.S.A. 1992 Supp. 75-6104(s) there is an exemption from liability for a governmental entity for damages resulting from performance of community service work.

The current exemption from liability for community services work extends to work performed by a person: (1) under contract of diversion; (2) community corrections assignment; (3) suspension of sentence or probation; (4) in lieu of fine; (5) condition of placement pursuant to K.S.A. 38-1663. The definition does not include community service work performed as a condition of parole, or conditional release. The Kansas Parole Board has placed on some parolees and conditional releasees the condition of performing community service work. To include parolees and conditional releasees within the definition of community service work is consistent with the rationale for the other groups now included.

Due to SB 479 regarding sentencing guidelines which was enacted by the 1992 Legislature and which will go into effect July 1, 1993, the terms "post-release supervision" and "non-prison sanction" should also be included within the exemption for "community service work". Post-release supervision is the equivalent of parole while non-prison sanctions include placement on probation, community corrections, conservation camp, and other community-based sanctions.

GS:CES/pa

HOUSE JUDICIARY
Attachment #4
02-02-93