

## 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 March 10, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Tim Carmody - Absent  
Representative David Heinemann - Excused  
Representative Elaine Wells - Excused

Committee staff present:

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

Conferees appearing before the Committee:

Senator Mark Parkinson  
Kathie Holmes, Chairperson of McGruff Program  
David Kearney, Principal, Tomahawk Elementary School  
Sgt. Susan Sivok, Olathe Police Department  
Steve Star, KBI  
Paul Shelby, Office of Judicial Administration  
Diana Jones, Clerk of District Court, Finney County

Hearings on SB 211 were opened prohibiting fees for certain request of criminal history record information.

Senator Mark Parkinson appeared before the committee as a proponent of the bill. He explained that this proposed legislation would provide that there would be no costs for background checks for block parent programs or Project McGruff programs done by the KBI. He explained that these programs provide a safe place for children to go in case of an emergency or after school. These programs are funded through parents. He also stated the KBI has no objections to the bill. (Attachment #1)

Kathie Holmes, Chairperson, McGruff Program, appeared before the committee in support of the bill. She stated that last year the McGruff Program paid the KBI \$540 to perform background checks for 27 homes. She showed the committee the McGruff sign. (Attachment #2)

David Kearney, Principal, Tomahawk Elementary School, appeared before the committee as a proponent of the bill. The elimination of the fee charged by the KBI would send a message that the safety of the state's children is of the utmost importance. (Attachment #3)

Sgt. Susan Sivok, Olathe Police Department, appeared before the committee in support of the bill. She stated that SB 211 promotes safety for our children. Without the passage of this proposed bill many communities will be unable to offer this program due to the cost for criminal history checks. (Attachment #4)

Hearings on SB 211 were closed.

Hearings on SB 291 were opened regarding law enforcement officer's use of force in making arrest.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on March 10, 1993.

Steve Star, KBI, appeared before the committee as a proponent to the bill. He stated that this is primarily a clean-up bill that would clarify statutory language of when a law enforcement officer is justified in using lethal force. This would pick up the language in the Supreme Court case Tennessee v. Garner using the words "probable cause". (Attachment #5)

Hearings on SB 291 were closed.

Hearings on SB 314 were opened regarding the clerk of the court's requirement of preparing defendant's notice of appeal being eliminated.

Paul Shelby, Office of Judicial Administration, appeared before the committee as proponent of the bill. He stated that this bill was requested by the Kansas Association of District Court Clerks and Administrators.

Diana Jones, Chief Clerk, Finney County, appeared before the committee as a proponent of the bill. This proposed bill would amend K.S.A. 22-3424 which allows the defendant to request preparation of notice of appeal by the clerk of the court. She stated that this in conflict with K.S.A. 20-3133 which stated that "It shall be unlawful for clerks of the district court or any of their deputies to write any petition or answer or other pleadings in any proceedings, or perform any service as an attorney or counselor at law in any case or cases pending in the court in which they are either clerk or deputy.. " This requires action beyond their authority and because they are not trained in the proper docketing of an appeal this provision would put the clerks in danger of being personally liable. (Attachment #6)

The Chairman questioned that if an individual needs assistance after this law goes into effect where are they going to get it.

Jones responded that they have to request counsel if they are indigent. If it is a felony appointed council is required by the Rule and Regulations of the State Board of Indigents' Defense Service. If it is a misdemeanor they have to request appointed counsel.

The Chairman stated that if they were not inclined to have counsel appointed and needed their appeal perfected, how would they go about doing that.

Jones stated that you are always entitled to represent yourself.

Representative Rock stated that it is not automatic that counsel is appointed and that the only time it is required is when there is possible jail time involved.

Hearings on SB 314 were closed.

SB 211 - prohibiting fees for certain request of criminal history record information.

Representative Adkins made a motion to report SB 211 favorably for passage. Representative Robinett seconded the motion.

Representative Garner made a substitute motion to include the following language "Any criminal history record information disseminated to a noncriminal justice person or agency shall only include information resulting in a conviction." Representative Smith seconded the motion. The motion carried.

Representative Rock made a motion to make SB 211 effective upon publication in the Kansas Register. Representative Pauls seconded the motion. The motion carried.

Representative Adkins renewed the motion to report SB 211 favorably for passage as amended. Representative Robinett seconded the motion. The motion carried.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on March 10, 1993.

SB 291 - law enforcement officer's use of force in making arrest.

Representative Everhart made a motion to report SB 291 favorably for passage. Representative Rock seconded the motion. The motion carried.

Representative Everhart made a motion to have SB 291 placed on the consent calendar. Representative Mayans seconded the motion. The motion carried.

SB 314 - the clerk of the court's requirement of preparing defendant's notice of appeal eliminated.

Representative Smith made a motion to report SB 214 favorably for passage. Representative Pauls seconded the motion. The motion carried.

Representative Pauls made a motion to have SB 291 placed on the consent calendar. Representative Scott seconded the motion. The motion carried.

Representative Adkins made a motion to approve Committee minutes of February 25, 26 and March 1 as amended. Representative Mayans seconded the motion. The motion carried.

The Committee adjourned at 4:30 p.m. The next Committee meeting is March 11, 1993 at 3:30 p.m. in room 313-S.

## GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE MARCH 10, 1993

[illegible]

MARK PARKINSON  
SENATOR, 23RD DISTRICT  
REPRESENTING GARDNER, OLATHE,  
OVERLAND PARK, SPRING HILL  
16000 W. 136TH TERRACE  
OLATHE, KANSAS 66062  
913-829-5044



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
CHAIRMAN: LOCAL GOVERNMENT  
MEMBER: JUDICIARY  
FEDERAL AND STATE AFFAIRS  
ELECTIONS

**TO: HOUSE JUDICIARY COMMITTEE**  
**FROM: SENATOR MARK PARKINSON**  
**DATE: MARCH 10, 1993**  
**RE: TESTIMONY IN SUPPORT OF SB 211**

At the outset, I would like to thank Chairman O'Neal for granting a hearing on this bill and providing us an opportunity to discuss the need for this legislation.

This legislation would provide that background checks for persons who volunteer to serve in block parent programs or in Project McGruff programs be done by the KBI at no cost. Currently, there is a \$10.00 fee.

Block parent and Project McGruff programs provide children with a place to go after school in the event of an emergency. Typically, a neighborhood develops a block parent program and then attempts to identify one house per block to serve as a safe haven for children who face emergency situations. The homes are then marked, and children who find themselves in an emergency are welcome to go to those homes in order to seek protection, call the police, or whatever the situation calls for.

These programs are not funded at all by the state or federal government. Instead, they are simply volunteer groups that are formed to help kids. Most or all of these programs require that a criminal background check be performed on the adults who live in the identified homes. The KBI charges \$10.00 per adult for these checks, and that is the law that we are attempting to change.

The reason for the \$10.00 charge is somewhat complicated. Suffice to say that the KBI performs over 60,000 checks per year for KDHE at no charge. These are done primarily for for profit day care centers. Because the KBI receives no reimbursement from KDHE for these checks, it must artificially inflate the costs of the checks that it does for other groups. This is true even of non-profit groups like block parent programs. The result is a \$10.00 charge.

The problem with the \$10.00 charge is that it is precluding the development of these programs in some areas. A program can easily have \$2,000.00 in background checks, and that is simply too much money for some parent groups to afford.

HOUSE JUDICIARY  
Attachment #1  
03-10-93

This bill would eliminate the charge. It is not opposed by the KBI. In addition, this legislation passed both the House and the Senate last year by a unanimous vote. The bill that passed last year also contained a provision that would allow the KBI to charge KDHE for the checks. Because that provision was included, the Governor vetoed the bill. That provision is not included this year in this legislation.

There will be others here today that will discuss the importance of these block parent programs and the assistance that this legislation would provide. Again, I appreciate the opportunity to appear before this committee and thank you for your consideration of this legislation.

TESTIMONY  
KATHIE A. HOLMES, MCGRUFF HOUSE CHAIRPERSON  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
MARCH 10, 1993

MR. CHAIRMAN AND COMMITTEE MEMBERS:

THANK YOU FOR YOUR TIME AND CONSIDERATION OF SENATE BILL 211.

MY NAME IS KATHIE HOLMES. I RESIDE IN OLATHE AND HAVE TWO CHILDREN ATTENDING SCHOOL THERE. I AM ATTENDING TODAY'S MEETING IN MY CAPACITY AS COORDINATOR OF THE MCGRUFF HOUSE PROGRAM AT TOMAHAWK ELEMENTARY SCHOOL.

AS PARENTS, OUR CHILDREN'S SAFETY IS ONE OF THE MOST IMPORTANT ISSUES THAT WE FACE. THE MCGRUFF HOUSE PROGRAM AND OTHER SIMILAR BLOCK MOTHER TYPE PROGRAMS ARE VERY BASIC, COMMON SENSE WAYS TO MAKE OUR NEIGHBORHOODS SAFER FOR OUR CHILDREN. THE PROGRAM PROMOTES COMMUNICATION BETWEEN HOME, SCHOOL AND POLICE.

LAST YEAR OUR PROGRAM PAID THE K.B.I. \$540 TO PERFORM BACKGROUND CHECKS ON VOLUNTEERS FOR TWENTY-SEVEN HOMES IN OUR NEIGHBORHOOD. THE BACKGROUND CHECKS ARE AN IMPORTANT PART OF SCREENING OUR VOLUNTEERS. HOWEVER, THE K.B.I. COST IS PROHIBITIVE FOR MANY OF OUR SCHOOL NEIGHBORHOODS. AFTER STARTING OUR PROGRAM WE WERE CONTACTED BY MANY OTHER ELEMENTARY SCHOOLS IN OLATHE. SOME HAVE BEEN ABLE TO RAISE THE MONEY TO START PROGRAMS BUT MANY SIMPLY DO NOT HAVE THE FUNDS. SADLY, THOSE ARE THE SCHOOLS THAT MOST NEED A MCGRUFF HOUSE PROGRAM.

THE PROGRAM IS LARGELY PREVENTATIVE - PREVENTION IS HARD TO MEASURE! WE HAVE NOTIFIED OUR VOLUNTEERS OF POTENTIALLY DANGEROUS SITUATIONS IN OUR NEIGHBORHOOD SIX TIMES SINCE MARCH OF 1992.

I BELIEVE OUR CHILDREN'S SAFETY RESTS IN OUR HANDS, AND OUR HANDS ARE TIED BY THE K.B.I. FEES. THE FUTURE GROWTH OF CHILDREN'S SAFETY PROGRAMS SUCH AS MCGRUFF CAN BE INSURED BY YOUR SUPPORT OF THIS BILL.

I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

Brought to you by:

**TOMAHAWK ELEMENTARY  
BOOSTER CLUB**

**OLATHE DISTRICT SCHOOLS  
OLATHE POLICE DEPARTMENT**

The McGruff House Program is Coordinated by:

**National McGruff House Network**  
1879 South Main, Suite 180  
Salt Lake City, Utah 84115  
(801) 486-8691

As a licensed program of:

**National Crime Prevention Council**  
1700 K Street, N. W., 2nd Floor  
Washington, D. C. 20006  
(202) 466-6272  
Attn: Coalition & State Services

The McGruff Campaign is substantially funded by the  
Bureau of Justice Assistance, Office of Justice Programs,  
U. S. Department of Justice.

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Help Me

**TAKE A BITE OUT OF  
CRIME®**



With The  
**McGruff House  
Program**

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## **What is a McGruff House?**

A McGruff House is a temporary haven for children who find themselves in emergency or frightening situations such as being bullied, followed, or hurt while walking in a neighborhood.

## **What do McGruff House participants do?**

They provide emergency assistance for children as they go to and from school and are at play in the area.

### **McGruff House participants do:**

- o Telephone appropriate authorities for help;
- o Reassure and aid children who are frightened or lost;
- o Assist children who have medical emergencies by getting appropriate attention;
- o Assist those who are in immediate fear of becoming victims of personal crime or thefts, child abuse, gangs, or bullies; and
- o Report crimes and suspicious activities to law enforcement officials and provide descriptions of vehicles and suspects where possible.

### **McGruff House participants do not:**

- o Personally provide first aid except in extreme emergency situations and then only if qualified;
- o Act as an escort service;
- o Assume the role of neighborhood supervisor;
- o Enforce laws;
- o Provide toilet facilities;
- o Provide a place to "warm up" or "cool down";
- o Provide food or beverages; or
- o Guarantee safety.

## **Why McGruff House?**

**First, McGruff.** McGruff, the Crime Dog, is recognized by 99% of America's children because they've seen him on television or because he has visited their school. One in five U.S. families moves yearly; using a symbol recognized nationwide makes sense.

**Second, the McGruff House Program has built-in safeguards against abuses.** While it is impossible to guarantee the safety of children in any program, reasonable precautions have been taken in designing the McGruff House Program. Adults who volunteer their homes agree to a law-enforcement records check. The distribution of McGruff House Signs is strictly controlled.

**Third, McGruff House is a locally operated program.** It is a service provided by the community for the well-being of children. It is a partnership of local law enforcement, a school or school system, and a community organization.

**Fourth, McGruff House is a nationwide program that represents a partnership among a national organization, state governments, and local communities.** This partnership enables communities to benefit from the visibility of the national effort and to join with other communities in implementing a program with consistent standards, guidelines, and safeguards.

For More Information Call:

**TOMAHAWK ELEMENTARY SCHOOL  
780-7690  
OR  
KATHIE HOLMES  
782-6636**

**NATIONAL MCGRUFF HOUSE NETWORK  
PROGRESS REPORT**

**June 16, 1992**

Between October of 1990 and June of 1992 271 additional communities have joined the National McGruff House Network bringing the total McGruff House communities to 738.

Note: Pre 1987 communities 125 plus

The largest McGruff House Program community, Omaha Nebraska, has 1,032 McGruff Houses. Four of our communities have more than 700 McGruff Houses each. They are Minneapolis, Minnesota; Missoula, Montana; Prince William County, Virginia, and Salt Lake County in Utah.

The number of existing programs within a community range from one in Wilton, New York, to a potential fifty-five in Kansas City, and thirty-five in Plano, Texas. Kansas City is organized through the local school district. The fifty-five programs indicate one program per school.

A total of 91,000 McGruff Houses are in service as of this date.

A total of 7,000 utility trucks and trained drivers are participating in the McGruff Truck Program with a total of 15 companies.

Minnegasco and Northern States Power are in the process of changing from their "McGruff Safety Watch" to the McGruff Truck Program.

Seven companies have been screened and sent letters of acceptance into the McGruff Truck Program. This will now add three municipalities, one co-op utility, plus one gas, one telephone, and one power company to the Network. The Clark County School District has joined the McGruff Truck effort. They have formed a Coalition of five utility companies and the school district.

McGruff House inquiries have been received from urban, suburban, and rural communities nationwide. Local Housing Authority requests are on the increase.

There are currently forty-eight (48) states, with at least one community participating in McGruff House and or McGruff Truck.

nmhnpbld.n91



# TOMAHAWK ELEMENTARY SCHOOL



13820 BROUGHAM DRIVE  
OLATHE, KANSAS 66062  
DAVID KEARNEY, PRINCIPAL



TESTIMONY  
DAVID KEARNEY, PRINCIPAL  
TOMAHAWK ELEMENTARY, OLATHE, KANSAS  
REGARDING, SENATE BILL 211  
WEDNESDAY, MARCH 10, 1993

Mr. Chairman and Members of the Sub-Committee:

My name is David Kearney. I am principal of Tomahawk Elementary in Olathe, Kansas. I am here today to testify in support of Senate Bill 211.

For the last thirteen months, Tomahawk Elementary and the Olathe Police Department have been involved in a partnership involving the establishment of the McGruff House Program in our school district. McGruff Houses are a nationally recognized program that provide a safe place for children to go when they find themselves in an emergency or frightening situation. Tomahawk's decision to be involved in this particular safe house program stems from the extensive regulations established by the national headquarters and its' recognition by the National Crime Prevention Council. The program's components take a proactive stance toward safety by involving students, parents, and the entire community in awareness education.

Our involvement was made possible by a very insightful and caring booster club that provided funding. Their financial backing covered the start-up costs which were approximately \$700.00. The major expense of establishing the program in Kansas is a charge for background checks performed on volunteers by the K.B.I. The checks, which are a very valuable component of this program, enhance the program effectiveness. However, the \$10.00 check must be conducted annually for every parent volunteer. At Tomahawk the annual budget would run approximately one thousand dollars to qualify us for continued national endorsement. These expenses would represent a major portion of our yearly budget which has traditionally been used to purchase teaching supplies and pay for student field trips.

As the Program at Tomahawk has gained exposure, I have been approached by several Olathe principals and parent representatives about the possibility of establishing McGruff Houses at their schools. They all feel the program is one that is extremely valuable, yet extremely expensive for the limited funds in parent clubs. Essentially, the \$10.00 per person fee is eliminating a large amount of schools and children from involvement in this valuable program.

On behalf of the children of Kansas, I would like to request that legislation be enacted to eliminate the fee charged by the K.B.I. for background checks involving McGruff Houses. Legislative action would send a clear message that the safety of the state's children is of utmost importance. It would allow parents to establish programs without the tremendous financial commitment. But most importantly, it would increase the sense of security of children in communities throughout the state.

HOUSE JUDICIARY  
Attachment #3

03-10-93



MEMORANDUM

**TO:** Members of the House Judicial Committee

**FROM:** Sgt. . Susan Sivok, Olathe Police Department, Crime Prevention and D.A.R.E.  
Supervisor

**SUBJECT:** Senate Bill 211; Fees Waived for Criminal History Records Checks for McGruff House Program

**DATE:** March 10, 1993

On behalf of the Olathe Police Department, I would like to thank you for the opportunity to appear today on this matter of great importance to our community and our children. The Olathe Police Department strongly supports Senate Bill 211, which helps promote safety for our children.

Support for Senate Bill 211 will aid communities such as Olathe in providing an effective Crime Prevention Program for our children. Without the passage of this bill many communities will be unable to offer this program due to costs required for criminal history records checks. These records checks help provide safeguards to ensure our children's safety when they seek assistance in emergency or frightening situations from approved McGruff House volunteers.

Implementation of the McGruff House Program has enabled us to effectively educate the children in our schools on safety issues, train McGruff House volunteers to be the eyes and the ears of our neighborhood and enable them to provide a safe haven for children.

McGruff House provides a lasting partnership between police departments, schools, and parents. This partnership helps make the program effective. I strongly urge you to support Senate Bill 211 and make crime prevention programs such as McGruff House available to any community in Kansas regardless of their economic status.



ROBERT B. DAVENPORT  
DIRECTOR

# KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL  
STATE OF KANSAS  
1620 TYLER  
TOPEKA, KANSAS 66612-1837  
(913) 232-6000



ROBERT T. STEPHAN  
ATTORNEY GENERAL

**TESTIMONY**  
**KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL**  
**KANSAS BUREAU OF INVESTIGATION**  
**BEFORE THE HOUSE JUDICIARY COMMITTEE**  
**IN SUPPORT OF SENATE BILL 291**  
**MARCH 10, 1993**

Mr. Chairman and Members of the Committee:

I appear today in support of Senate Bill 291 which is primarily a clean-up bill clarifying statutory language on when a law enforcement officer is justified in using lethal force.

In the 1985 U.S. Supreme Court case Tennessee v. Garner, it was held that lethal force may not be utilized to stop a fleeing felon unless the officer had probable cause to believe that the person had committed a felony involving great bodily harm. The statute was amended in an effort to come into compliance with that decision, however, rather than use the court's language of "probable cause" the term "reasonably believes" was used.

The Kansas Law Enforcement Training Center (KLETC) has requested that I attempt to correct this difference in language. Their concern is that "reasonably believes" is quite similar to "reasonable suspicion" a term of art in the field of criminal justice which is substantially lower than probable cause. As such, they are afraid that some law enforcement officer or law enforcement agency might read the statute and not realize or apply the proper standard.

This bill does not change the law, but merely correctly reflects it. I would be happy to answer any questions.

Senate Bill No. 314  
House Judiciary Committee

Testimony of Diana Jones  
Chief Clerk, 25th Judicial District

Mr. Chairman:

I appreciate the opportunity to appear today to discuss Senate Bill No. 314 which amends the criminal appeal procedures for indigent defendants.

The proposed amendment would strike the last sentence of K.S.A. 22-3424 which allows the defendant to request preparation of a notice of appeal by the clerk of the court. I understand this wording to have been taken directly from the Federal Rules on Criminal Procedure; however, federal clerks are often law trained, and this is in conflict with K.S.A. 20-3133 which says in part:

"It shall be unlawful for clerks of the district court or any of their deputies to write any petition or answer or other pleadings in any proceedings, or perform any service as an attorney or counselor at law in any case or cases pending in the court in which they are either clerk or deputy..."

Attorneys appointed to represent indigent defendants on felony cases are governed by the Rules and Regulations Adopted by the State Board of Indigents' Defense Services wherein they are required to file notices of appeal in a timely manner [105-3-9(3)]. Misdemeanants have the option of requesting appointment of counsel to represent them from the local panel paid by the county if they are indigent.

Because this sentence requires action beyond the scope of our authority and we are not trained in the proper docketing of an appeal with the Appellate or Supreme Courts, it appears this provision would place the clerk/deputy in danger of standing personally liable since they would be acting beyond the scope of their bond.

For these reasons we are urging the committee to consider our concerns and amend the statute as proposed.