

Approved: 4-2-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on March 11, 1993 in Room 514-S of the Capitol.

All members were present except: All present

Committee staff present: Michael Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Doug Roth, Deputy District Attorney, Sedgwick County
Rep. Gwen Welshimer
Helen Stephens, Kansas Peace Officers Association
Helen Pedigo, Kansas Sentencing Commission
Mike Jennings, Assistant District Attorney, Sedgwick County
Henry Callahan, Kansas City, Kansas Police Department
Vickie Meyer, Wyandotte County D.A.

Others attending: See attached list

SB 237 - Unlawful deprivation of property.

Doug Roth, Deputy District Attorney, Sedgwick County, appeared in support of SB 237 which would raise deprivation of property that is a motor vehicle from a misdemeanor to a Class E felony (Attachment 1). Mr. Roth emphasized the hardship on the victims when cars are stolen for joy riding.

Representative Gwen Welshimer testified in support of SB 237 stating a stolen car is traumatic for a victim who must go to work, the doctor or appointments (Attachment 2). She requested that the \$500 limit in the bill be deleted so that any crime of stealing a car is included.

Helen Stephens, Kansas Peace Officers Association, appeared in support of SB 237 and requested an amendment that auto deprivation be a Class E felony for the first three convictions, but after the third conviction it would go on criminal history as a person felony.

Helen Pedigo, Sentencing Commission, testified in opposition to SB 237 stating if the bill is passed classifying auto deprivation as a felony, the Sentencing Commission recommends classifying it at nondrug severity level 10, one level below theft of property valued at \$500-\$25,000 (Attachment 3).

Senator Barbara Lawrence submitted written testimony in support of SB 237 (Attachment 4).

SB 281 - Unlawful acts relating to enterprise activity.

Mike Jennings, Assistant D.A., Sedgwick County, testified that present criminal code is focused almost entirely on the investigation and prosecution of individual criminal acts and SB 281 would allow prosecution of criminal acts committed as a way of participating in a group or enterprise (Attachment 5). He emphasized the focus is not on group membership, but on committing a crime to participate in the activities of a group.

Henry Callahan, Kansas City, Kansas Police Department, testified that his Department has been combating gang activity since 1988. He noted they are working with local business and citizens to provide employment for kids this summer, as well as sponsoring basketball programs after school. Mr. Callahan emphasized we must create incentive programs to compete with the incentive programs drug dealers offer to get kids involved. Mr. Callahan supports SB 281 stating this kind of legislation is needed to prosecute gang activity, particularly the hard core members.

Vickie Meyer, Wyandotte County D.A., told the Committee, as a prosecutor in the Juvenile Division, she must prosecute children for murder when the defendant was told by older gang members to commit the crime.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on March 11, 1993.

She sees SB 281 as a tool to prosecute the older gang members who are corrupting young children. Senator Vancrum questioned how persons who were not present at the time of the crime could be prosecuted under the language of SB 281.

The meeting was adjourned at 11:05 a.m. The next meeting is scheduled for March 12, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-11-9

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Julene Maske	Topeka	A.G. office
Douglas R. Roth	Wichita	D.A. Office
Nelen Stephens	Topeka	KPOA
Nelen Pedigo	Topeka	KSC
FRED PHELPS, JR.	TOPEKA	KDOC
HAROLD P. TITS	TOPEKA	AARP CCF
Vicki Meyer	Kansas City, KS	Wyandotte County District Attorney
HENRY C. CAULANAN JR	KANSAS CITY, KANSAS	WYANDOTTE CO. KANSAS CITY KS PD
JOHN D. MYERS	KANSAS CITY KANSAS	WYANDOTTE CO. KANSAS CITY KS. PD
Ron Smith	Topeka	Ks Bar Assoc
TO Delmon	Topeka	KSCPD
SUSAN SOMERS	Topeka	KSCPA
BOB LANE	KCK	KCK P.D.
J.P. Smyth	Topeka	Palmer Companies
Rich Fayse	Topeka	Palmer Cos.
Laura Boggan	Topeka	Sen. Karr's office
Catherine Haldeman	Wichita	City of Wichita
Kyle G. Smith	Topeka	KBT
SCOTT TEESELINO	Topeka	KBI
Deb Smith	Topeka	KBI
KOPER FRANZKO	Topeka	Ks Gov. Consulting
Tisha Cameron	Topeka	Corporation En. Plan.
Basilyn James-Martin	Topeka	SR 3- Youth/Adult Servs.
JIM CLARK	Topeka	KCDAA

SENATE JUDICIARY

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE

by
Douglas R. Roth
First Deputy District Attorney
Wichita, Kansas

REGARDING SENATE BILL 237

In many cases prosecutors have encountered difficulties in the prosecution of persons who have committed motor vehicle theft. Under Kansas law, in order to constitute a felony, a theft of a motor vehicle must be done with the intent to deprive the owner permanently of the possession, use or benefit of the automobile, and the value of the motor vehicle must be at least Five Hundred Dollars (\$500.00).

Joy riding, which is the taking of a motor vehicle with the intent to deprive the owner of the temporary use of the motor vehicle, is a Class A Misdemeanor. Most auto thieves understand the distinction under Kansas law and usually claim the motor vehicle was taken with the intent that it would be eventually returned to the owner.

The Kansas Legislature, as a policy matter, needs to reevaluate the severity level it has established for joy riding. This is especially true in light of the substantial hardships motor vehicle theft creates for the victim. Furthermore, the Legislature needs to deal with the increased temporary theft of automobiles by gang members and others for the purpose of commission of other crimes, especially violent crimes. For these reasons, the District Attorney's Office in Wichita, Kansas, strongly supports Senate Bill 237 establishing temporary criminal deprivation of a motor vehicle as a felony offense.

SJ

3-11-93

Attachment 1

STATE OF KANSAS

GWEN WELSHIMER
REPRESENTATIVE, EIGHTY-EIGHTH DISTRICT
SEDGWICK COUNTY
6103 CASTLE
WICHITA, KANSAS 67218
316-685-1930

DURING SESSION
LEGISLATIVE HOTLINE
1-800-432-3924



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: TAXATION
INSURANCE
LOCAL GOVERNMENT
ADMINISTRATIVE RULES & REGULATIONS

MARCH 11, 1993

TO: SENATE JUDICIAL COMMITTEE

FROM: REP. GWEN WELSHIMER

Gwen Welshimer

SUBJECT: TESTIMONY ON SB237 - AUTOTHEFT

LAST YEAR, THE KANSAS LEGISLATURE ELEVATED THE CRIME OF DRIVE-BY SHOOTINGS FROM A MISDEMEANOR TO A FELONY. REPORTS OF THE CRIME DROPPED FROM 46 IN MARCH TO 25 IN APRIL 1992.

GETTING TOUGH ON CRIME DOES PAY OFF. IT IS ONLY REASONABLE TO ASSUME THAT ANY DEGREE OF REDUCTION IN CRIME BY REASONABLE EFFORTS ON THE PART OF THE KANSAS LEGISLATURE WILL SAVE A LIFE OR PREVENT TRAUMA FOR A KANSAS FAMILY.

VEHICLE THEFT IS NOT ADDRESSED SERIOUSLY IN KANSAS LAW EVEN THOUGH IT IS A TRAUMATIC CRIME REGARDLESS OF THE FINANCIAL WORTH OF THE VEHICLE. VICTIMS HAVE EMERGENCIES, NEED TO GO TO WORK, TO THE DOCTOR, APPOINTMENTS.

KANSAS STOLEN CARS ARE FOUND AS FAR AWAY AS CANADA. OWNERS ARE EXPECTED TO TRAVEL TO CANADA TO RETRIEVE THEIR VEHICLE. OFTEN OWNERS CANNOT AFFORD THE TRIP AND THEY LOSE THEIR CARS TO A POLICE DEPARTMENT AUCTION. WHEN THE OWNERS DISCOVER THAT LITTLE OR NOTHING WILL BE DONE WITH CAR THEIVES WHO ARE APPREHENDED, THEY LOSE RESPECT FOR LAW ENFORCEMENT AGENCIES, PROSECUTERS, AND THE LEGISLATURE.

TOUGHER LAWS ARE DETERRENTS. OVER THIS PAST YEAR, THERE HAVE BEEN NUMEROUS TELEVISION DOCUMENTARIES DEPICTING THE CRIME IN PROCESS ALONG WITH INTERVIEWS WITH THE OFFENDERS. OFFENDERS WHO RESPOND ARE USUALLY YOUNG MALES WHO SAY THEY DO IT "BECAUSE THEY CAN GET AWAY WITH IT...YOU DON'T GET IN TROUBLE FOR IT," THEY SAY.

500 CARS A MONTH ARE STOLEN IN WICHITA, NOT INCLUDING THOSE CLASSIFIED AS BURGLARIES WHICH ARE TAKEN FROM RESIDENTIAL GARAGES. AUTOTHEFT IS A NATIONAL PROBLEM OF GROWING CONCERN. OTHER STATES ARE ADDRESSING THIS ISSUE. KANSAS NEEDS TO DO THE SAME. PLEASE GIVE OUR DISTRICT ATTORNEYS THE LAWS THEY NEED TO CORRECT THIS PROBLEM FOR KANSAS.

ST

3-11-93

Attachment 2



State of Kansas
KANSAS SENTENCING COMMISSION

To: Senate Judiciary Committee

From: Helen J. Pedigo
Acting Executive Director

Date: March 11, 1993

Re: Senate Bill 237 - Unlawful Deprivation of Property

The K.B.I. reported 32 arrests for 1992 and 111 convictions for this crime. The difference is probably attributable to charges of felony theft or similar felony property crimes, which are then reduced to unlawful deprivation of property.

Of the 111 convictions of the class A misdemeanor, 29 offenders served a jail term, 32 offenders served a jail term with probation and 15 offenders were fined. If convicted of a class A misdemeanor, the offender could serve up to a year in jail.

We oppose classifying this crime as a felony. However, if this bill is passed we would recommend classifying it at nondrug severity level 10, one level below theft of property valued at \$500 - \$25,000.

STATE OF KANSAS

BARBARA LAWRENCE

SENATOR, 30TH DISTRICT
SEDGWICK COUNTY
315 N. ROOSEVELT
WICHITA, KANSAS 67208
(316) 685-7500

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

CHAIRMAN: ELECTIONS, REAPPORTIONMENT
& GOVERNMENTAL STANDARDS
MEMBER: WAYS AND MEANS
ORGANIZATION, CALENDAR AND
RULES
ENERGY & NATURAL RESOURCES
FINANCIAL INSTITUTIONS
& INSURANCE
JOINT COMMITTEE ON ARTS
& CULTURE
KANSAS FILM COMMISSION

March 11, 1993

TO: Senate Judicial Committee

FROM: Senator Barbara Lawrence

SUBJECT: Testimony on SB 237 - Auto theft

SB 237 would simply raise deprivation of property that is a motor vehicle from a misdemeanor to a class E felony.

In Wichita, alone, there are 500 cars a month stolen from private driveways, parking lots, or off the streets. Most of the perpetrators are young males who know that the penalties for joyriding are minimal.

This crime can take a serious toll on the victims, especially if they are in any way handicapped or elderly.

Raising this activity to a felony would send a message to our youth that this is a very grave matter, and one that society will not tolerate.

I would ask the committee's serious consideration of SB 237.

SJ

3-11-93

Attachment 4

STATEMENT ACCOMPANYING THE CRIMINAL ACTIVITIES ACT

1. The Need for the Act.

Our present criminal code is focused almost entirely on the investigation and prosecution of individual criminal acts. This approach does not address crimes committed as part of a broader enterprise. The present code ignores the increased harm often produced when crimes are committed as a way of participating in a group or and enterprise.' Despite the increased harm, there is no separate sanction against such concerted criminal activity such as through drug organizations or street gangs. There is no separate sanction against individuals for committing crimes through such enterprises. This has become a serious gap in societies defenses.

It is serious because of the clear and present risk of a magnified harm flowing from criminal acts committed as a way of participating in groups. A street gang, or a drug distribution network can do far more harm in the same amount of time then any single individual can do in that same amount of time.

It is serious because of the statement we allow to be made by the continued functioning of the enterprises, the members of which intentionally encourage the commission of criminal activities as part of the group's activities.

The criminal activity act is a serious, yet limited, response to meet the seriousness of this breach in society's defenses. The Act imposes sanctions only on the individuals who chose to leverage their criminality by securing their place in an organized group through a predicate criminal act. The Legislature's adoption of this Act will be an important and effective step in discouraging individual's from participating in an organization through the commission of a crime.

2. Section 2. The Crime Itself.

The substantive offense is not complicated. It prohibits intentionally participating in any enterprise by committing a predicate crime. The prohibition is focused on the commission of one or more of the predicate offenses listed in the act. If a person commits one of the listed offenses, the issue then becomes whether the person not only committed the crime but also whether the person did so to participate in the activities of an enterprise. If they did, the last issue is whether the enterprise existed and whether the activity the individual was participating in was an activity of this enterprise.

Subsection (b) makes clear that the aid and abet, attempt, conspiracy and solicitation provisions of the criminal code apply to the substantive offense in subsection (a) of the act. The elements of liability under these

provisions are intended to be the same under the act as for other crimes.

3. Definitions.

The definition of enterprise includes any combination of three or more persons or entities. An enterprise may be carried on for a single purpose or for multiple purposes. The definition of enterprise is broad to avoid any artificial limitation on the scope of the substantive crime itself. The broad definition serves the Act's dominant intent of prohibiting the commission of the predicate crimes as a means of participating in an enterprise. The intent is not to prohibit lawful participation in an enterprise. Hence, what is prohibited is the commission of a predicate crime as a way of participating in an enterprise. The Act does not prohibit participation in an enterprise per se. Thus, the definition of enterprise is important only insofar as it explains the elements of the substantive offense itself. The definition does not create a crime. Freedom of association is protected by this act because the act applies only to persons who commit one or more predicate crimes.

The definition of profits includes competitive advantage flowing from the violation. While the coverage of the term profits, as the term "enterprise" is broad, the application of the criminal sanction is narrow applying only to those who commit one or more of the predicate crimes.

The definition of "entity" includes legal and illegal entities, public and private, governmental, non-governmental, financial as well as non-financial. The intent is to focus on the criminal activity, not the kind of organization it may otherwise be.

The term "conduct" is defined to make clear that the act applies to any persons at all levels of an enterprise, from the highest to the lowest, who participates in the enterprise by committing a predicate crime.

SAMPLE JURY INSTRUCTION NO. 1

The defendant is charged with a violation of the criminal activity act in Count I. The defendant pleads not guilty.

To establish this charge, each of the following must be proven:

1. An enterprise existed;
2. A purpose or activity of the enterprise was the commission of the crime of (Aggravated Robbery);
3. The defendant intentionally (established) (participated in an activity of) (conducted an activity of) (pursued any purpose of) (participate in any profits of) the enterprise;
4. The defendant did so through the commission of the crime of (Aggravated Robbery);
5. That the foregoing occurred in _____ County, Kansas, on or about the _____ day of _____, 199__.

SAMPLE JURY INSTRUCTION NO. 2

As used herein, the term "enterprise" means three or more persons, entities, or a combination of both, which intentionally collaborate in any way in carrying on any activity or purpose of the enterprise, even though:

1. The persons or entities may not know each others identity;
2. The persons or entities may change from time to time; or,
3. The persons or entities may stand in a wholesaler-retailer, or other arms-length relationship in carrying on such activity or purpose;

The activity or purpose of the enterprise may be legal as well as illegal so long as it is an activity or purpose of the enterprise.

SAMPLE JURY INSTRUCTION NO. 3

To establish the charge of Aggravated Robbery, each of the following claims must be proved:

1. That the defendant intentionally took property from the (person) (presence) of _____;
2. That the taking was by (threat of bodily harm to _____) (force);
3. That the defendant (was armed with a dangerous weapon) (inflicted bodily harm on any person in the course of such conduct);