

Approved: 3/7/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 16, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Martin (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

John Bork, Deputy Attorney General
Linda Sebastain, Kansas State Nurses Association
Kyle Smith, Kansas Bureau of Investigation for Kansas Peace Officers Association
Jim Clark, Kansas County District Attorneys
Jim Young, Special Agent, Kansas Bureau of Investigation

Others attending: See attached list

Chairman Moran announced to the Committee there would be special meetings scheduled for next week. He also extended a special invitation from the Kansas Bar Association to a luncheon at 12:00 noon on March 1 at the Top of the Tower.

Chairman Moran reminded the sub-committee chairmen to schedule hearings on bills referred to their committees and to have dates of meetings placed in the calendar.

SB 607--crimes and penalties-stalking

John Bork, Deputy Attorney General testified in favor of SB 607 and answered questions from the Committee. Mr. Bork suggested three amendments to SB 607 (Attachment No. 1).

Linda Sebastain, Kansas State Nurses Association testified in favor of SB 607 and provided written testimony (Attachment No. 2).

Chairman Moran closed hearings on SB 607.

SB 617--criminal discharge of firearm at an unoccupied dwelling

Kyle Smith, Kansas Bureau of Investigation testified in support of SB 617 and provided written testimony (Attachment No. 3). He said SB 617 makes the drive-by shooting of an unoccupied home a person felony, rather than a non-person felony.

Jim Clark, Kansas County District Attorneys Association testified in support of SB 617 and answered questions from the Committee.

SB 618--failure to register an aircraft

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 16, 1994.

Kyle Smith, Kansas Bureau of Investigation testified in support of SB 618 and provided written testimony (Attachment No. 4).

Jim Young, Special Agent, Kansas Bureau of Investigation testified in support of SB 618 and answered questions from the Committee.

A motion was made by Senator Oleen, seconded by Senator Feleciano to recommend SB 618 favorably. The motion carried.

A motion was made by Senator Parkinson, seconded by Senator Feleciano to report SB 617 favorably. The motion carried.

A motion was made by Senator Ranson, seconded by Senator Harris to amend SB 607 by striking lines 38 and 29. The motion carried.

SB 607 will be taken up at a later date.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 17, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary

DATE: 2/14/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Linda Sebastian	Topeka	K S N A
Panda Byrne	Topeka	Menninger
Alan Ladd	Topeka	K-W-I-CFM
Sue Ledbetter	Topeka	NOLO
John Smith	Topeka	KBI / A6
Julienne Maske	Topeka	Abakpie
Paul Shelby	Topeka	DIA
Donna McDaniel	Topeka	Sen Burke's office
Gail Williams	Oakland Park	Sen. Sen.
Harold Gerch	O.P.	Sr. Citizen
Toni Wheeler	TOPEKA	SEN. KARR'S OFC.
JOHN BORK	TOPEKA	ATTORNEY GENERAL
RW Apple	NY	Times
Bob Martha	TOPEKA	Sen. Karr's office
Jim CLARK	Topeka	KCDAA
Jennifer Brandeborn	KC	PCAL
Robert Franco	Topeka	Ks Gov Consulting
Jim Young	Topeka	KBI
Dan H. Harrison	Topeka	KBI
Lisa Moots	"	ASC
McCathy	"	BID
John	"	KBI
Jane Worth	Shawnee KS	visitor
Julia Miller	Oakland PK KS	"
Jann Hadel	O.P. KS	visitor
Jim Hadel	O.P. KS	"

Name	Address	Group/Organization
Matt Truett	Tapeks	HP

Thanks,

you

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coming

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**Testimony of
JOHN K. BORK
Deputy Attorney General
Re: S.B. 607
Before the Committee on Judiciary
February 16, 1994**

Mr. Chairman and Committee Members:

On behalf of Attorney General Robert T. Stephan I am here today in support of Senate Bill No. 607 and to offer three amendments to the bill. Two of the amendments I suggest for the bill are the result of talking to law enforcement officers throughout the state regarding stalking. These amendments address their concerns about the bill.

The first suggested amendment is to change the initial definition of stalking. Under Section (a), stalking is "the intentional, malicious and repeated following and harassment of another person." We are suggesting that "and" be changed to "or". Following a person repeatedly may be a form of harassment under the definition in section 1. It is a knowing and intentional course of conduct directed at a specific person which seriously alarms, annoys or harasses the person and which serves no legitimate purpose. So following could be

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harassment. However, when you say following and harassment, law enforcement officers and prosecutors are interpreting that to mean that something besides mere following is necessary: the stalker must engage in some type of harassment in addition to the following. I do not believe this was ever the intent of the bill. Repeated following of another person can be as emotionally distressful as following and some other type of harassment. In some cases it may be worse than following coupled with some kind of harassment. This amendment would make prosecution possible where there is repeated following but no other form of harassment.

The next amendment is that we have added a definition of "repeated". We have spelled out that this means two or more times. This may seem rather elementary, but I have talked to many well-intentioned law enforcement officers who believe that repeated means a number of times, several times or at least more than two times. This just removes any doubt that the law enforcement officers, prosecutors or the juries might have.

The amendments to the stalking law made by Senate Bill 607 increase the penalties for stalking making it a severity level 8 or severity level 7 person felony. The other amendment that we suggest to Senate Bill 607 makes a second conviction of stalking the same person a severity level 6 person felony.

These increased penalties reflect the problem that stalking has become in our society. In general terms stalking

involves one person's obsessive behavior toward another person. The stalker's actions may be motivated by an intense affection for or an extreme dislike of the victim. Stalking behavior may be overtly irrational or violent or be centered upon benign acts that in another context might be welcome or considered flattering by the receiving party. Over time the stalker's behavior may have life threatening consequences for the victim. It is a complex social problem. The uncertain motives and intentions of the suspected stalker and his obsessive and unpredictable behavior places victims at great risk of bodily injury or death as well as psychological trauma. It is a method of terrorizing a person, every bit as frightening as an orally communicated threat to cause great bodily harm to another.

Stalking, committed for the first time without a temporary restraining order or injunction in place is a severity level 8 person felony. This puts it in the range of aggravated assault, a severity level 7 person felony and criminal threat, a severity level 9 person felony. If stalking is committed when there is a temporary restraining order or injunction in place prohibiting the behavior it goes up a notch in severity. This makes sense. If the stalker has already been told by a court not to engage in this type of behavior and persists, the penalty should be stiffer.

The third amendment that we suggest to Senate Bill 607 makes a second conviction of stalking the same person within seven years of a prior conviction, a severity level 6 person

felony. If a person has only one person felony to his determent, and is convicted of a severity level 7 person felony, he would still be in the presumptive probation range. It is our belief that a person convicted of stalking the same person the second time deserves and needs to go to prison. For this reason we have suggested a severity level 6. Under this level a person with one prior person felony has a presumptive sentence of 34 months.

These changes all reflect the belief that stalking is a serious crime. Yet, with these changes I do not think that we run the risk of overcrowding our prisons with stalkers. To convict somebody of stalking you must show that the action is intentional and malicious. You must further show that the course of conduct engaged in by the stalker is such that would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person being stalked. Actions that are merely annoying, bothersome, or maddening, do not fall within the prohibition against stalking. The law is designed to prevent a serious invasion of a person's rights. The penalties should reflect this.

We ask your favorable consideration of Senate Bill 607 with the amendments that we have suggested. Thank you very much.

SENATE BILL No. 607

By Committee on Judiciary

1-26

AN ACT concerning crimes and penalties; relating to stalking; amending K.S.A. 1993 Supp. 21-3438 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1993 Supp. 21-3438 is hereby amended to read as follows: 21-3438. (a) Stalking is the intentional, malicious and repeated following ~~and harassment~~ of another person.

Stalking is a ~~class B person misdemeanor severity level 8, person felony.~~

(b) Any person who violates subsection (a) when there is a temporary restraining order or an injunction, or both, in effect prohibiting the behavior described in subsection (a) against the same person, is guilty of a ~~class A person misdemeanor severity level 7, person felony.~~

~~(c) Any person who has a second or subsequent conviction occurring against such person, within seven years of a prior conviction under subsection (a) involving the same victim, is guilty of a class A person misdemeanor.~~

~~(d) (c) For the purposes of this section:~~

(1) "Harassment" means a knowing and intentional course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person; and

(2) "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

~~(e) (d) This section shall not apply to conduct which occurs during labor picketing.~~

Sec. 2. K.S.A. 1993 Supp. 21-3438 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

or

(c) Any person who has a second or subsequent conviction occurring against such person, within seven years of a prior conviction under subsection (a) involving the same victim, is guilty of a severity level 6, person felony.

(3) "repeated" means two or more times.

FOR MORE INFORMATION CONTACT:
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913-233-8638
Date: February 16, 1994

S.B. 607 Crimes and Penalties--Stalking

Chairperson Moran and members of the Senate Judiciary Committee my name is Linda Sebastian M.N., ARNP and I represent the Kansas State Nurses Association. I am speaking in support of Senate Bill 607. As Director of the Women's Program at Menninger, I have worked with women who have been victims of stalkers. I conduct both group and individual psychotherapy.

Stalking is a relatively new phenomenon that has become the concern of the police and justice system. The first anti-stalking law was passed in California in 1990. Since then, 47 states have enacted anti-stalking legislation. The purpose of stalking legislation is to prevent a stalking victim from being injured or killed. It puts more emphasis on the seriousness of the crime by making the act of stalking a felony. Because it is difficult to think about these issues in an abstract global way, let me share with you one client's experience. I worked with this woman some time ago. For purposes of confidentiality, I will call her Jane. This is not her real name.

Jane accepted a date for coffee with a man who she met at work. She had no idea of his history of background or what she was getting into. After dating this man for several weeks, she became aware of his jealousy and temper and told him she did not want to see him again. Her hell began then. At the time, she was working full-time, supporting herself and her three children.

The man started calling her at work and at home all hours of the day. He followed her all over town. He came to her door one night and punched her in the face in front of her children. He assaulted her in the parking lot at her work place. He made threats on the phone to her, her children, her ex-husband and her co-workers. She filed charges, but he was let go on several occasions after a short time in jail or a fine. She lost her job because of his harassment. She let her ex-husband have custody of her children because she was fearful for their well-being. She told her friends to stay away because she did not want them harmed.

Kansas State Nurses Association Constituent of The American Nurses Association

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She sought and received a restraining order, which enraged him. He came to her house with a gun and started yelling. A neighbor called the police. When Jane heard about this, she went into the Battered Women's Shelter. The man found out where she was and made bomb threats, so she left. The man followed her to a shopping center and started beating her. She was hospitalized for her injuries and then was transferred to the psychiatric unit because she was so anxious and depressed. I started seeing her when she was referred for psychotherapy.

Jane lived in terror. She was constantly fearful of noises, of movements, of people and of the outside. She carried a gun with her at all times, even to take a shower. She did not sleep at night and had nightmares constantly. She was even fearful of coming to see me in case he found out who she was seeing. She was depressed, hopeless, anxious, and angry. She lost custody of her children because her ex-husband used her unstable mental state in court. She was totally isolated from her family and friends. She felt betrayed by the police and the court system and felt she had no protection. I saw her one time after the initial intake session. She was angry because some of her charges from the last beating had been dropped. Then I received word that Jane had killed herself.

This woman truly was a victim of a stalker. I do not know the nature of the stalker's obsession or much about him. I do know that the trauma of being stalked was overwhelming for Jane.

I urge you to vote for S.B. 607. Stalking is a serious crime and this legislation reflects this. I will be glad to answer any questions you have.

Reference:

Project to Develop a Model Anti-Stalking Code for States. National Criminal Justice Association. National Institute of Justice: Washington, DC. October 1993.

a:94legislation/orange/sb607/1a



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TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 617
February 16, 1994

Mr. Chairman and Members of the Committee:

I appear today on behalf of the over 3,000 members of the Kansas Peace Officers Association in support of SB 617. This bill changes one word which can have a very beneficial impact in the fight against gangs. While not changing the severity level, SB 617 makes the drive-by shooting of an unoccupied home a person felony, rather than a non-person felony. While not affecting the sentence a person would receive for the commission of this offense, it would have a substantial impact on their placement on the sentencing grid for future sentencing if they continue to commit unlawful acts.

Since drive-by shootings are a common exercise in intimidation by violent street gangs, this change will pay benefits in enabling us to incarcerate gang members for longer periods of time, assuming they don't change their ways.

Currently, burglary of an unoccupied home is a person felony and we feel it as at least intrusive to fire a clip load of bullets through a home as to reach in a window and grab a radio.

On behalf of law enforcement officers throughout Kansas I would ask your support of SB 617 and I would be happy to stand for questions.

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TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 618
February 16, 1994

Mr. Chairman and Members of the Committee:

I appear today on behalf of the Kansas Bureau of Investigation in support of SB 618. I find myself in the peculiar situation of having to explain obscure illegal activity that does not make headlines every day, as opposed to other flashier issues which have been the topics of discussion of this committee so far this session. The KBI, with the Kansas National Guard, has been conducting an investigation called Operation Drop-In. The whys and wherefores of this program can best be explained by Special Agent Jim Young, who is also here to testify, but in short, we started a proactive check of airplanes in Kansas.

It soon became evident during the course of this investigation that there are an incredibly large number of airplanes being parked or stored at Kansas airports which have in some form or fashion fraudulent registration. This may take the form of non-registered airplanes or planes registered to non-existent businesses, individuals, or merely altering the tail numbers displayed on the planes, so identification of the actual owner is made more difficult or impossible. The apparent reasons for this phony registration is to hide the actual owners, avoid taxes, facilitate actual drug smuggling or the investment of illegal proceeds in the purchase of an airplane.

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Under current law the false registrations are a violation of FAA regulations, but not crimes. Both because it is merely a regulatory violation and also because there are insufficient investigative personnel working for the FAA to pay attention to small rural airports, current federal law is ineffective in dealing with this problem, as evidenced by the large number of planes we have located.

SB 618 is based upon comparable state statutes from Florida, which obviously has been dealing with these problems a little longer and more extensively than Kansas.

Finally, by making these phony registrations a criminal offense, even just level 8 with presumptive probation, would allow law enforcement to seize the airplanes as evidence and thus prevent their sudden departure from the state when law enforcement starts nosing around. This experience was also encountered during Operation Drop-In.

At this time I would like Special Agent Jim Young to provide some additional and more detailed testimony regarding this problem. Thank you.

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