

Approved: April 7, 1995  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 9, 1995 in Room 313-S-of the Capitol.

All members were present.

Committee staff present: Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Paul Shelby, Office of Judicial Administration  
Representative Gwen Welshimer  
Rick Stone, Chief of Police Wichita  
Jim Clark, Kansas County & District Attorney's Association  
Jennifer Lind-Spahn, Assistant District Attorney, Wichita  
Pat Barns, Kansas Auto Dealers  
Mike Miller, Kansas Independent Auto Dealers Association  
Representative Joel Rutledge  
Representative John Toplikar  
Representative Greta Goodwin  
Gary Jarchow, Wichita Court Trustee

Paul Shelby, Office of Judicial Administration, appeared before the committee with two bill requests. The first related to judicial positions and residency requirements. The second dealt with the district nominating commission. (Attachment 1)

Representative Graeber made a motion to have these two bill requests introduced as committee bills. Representative Ott seconded the motion. The motion carried.

Hearings on HB 2223 - criminal deprivation of property & HB 2315 - expanding the definition of prima facie evidence of intent to permanently deprive the owner of property, were opened.

Representative Gwen Welshimer appeared before the committee as a sponsor of HB 2223. She commented that the Legislature has done many things to toughen the crime laws but joyriding and auto theft has been left untouched and needs to be addressed. (Attachment 2)

Rick Stone, Chief of Police, Wichita, appeared before the committee as a proponent of HB 2223. He stated that police departments are having problems with auto theft. The current laws make it a felony to steal the tires off a car but if one takes the whole car they can usually be charged only with a misdemeanor. Stealing a car is usually the first step to a more serious crime. (Attachment 3)

Jim Clark, Kansas County & District Attorney's Association, appeared before the committee in support of the bill. He told the committee that this bill recognizes that the days of the carefree fad of teenage joyriding has been replaced with obtaining a vehicle for drive-by shooting. (Attachment 4)

Jennifer Lind-Spahn, Assistant Sedgwick County District Attorney, appeared before the committee with three amendments on HB 2223. The first would change the license suspension from 30 days to 90 days. The next would eliminate the prima facie requirement in (b) and the last would change (d) to reflect the applicability to the misdemeanor portion of the statute only. (Attachment 5)

Pat Barns, Kansas Auto Dealers, appeared before the committee as a proponent of HB 2223. She commented that the bill would give a sufficient punishment for the offense but suggested that a penalty of not less than \$500 and 100 hours of community service be added to the bill. (Attachment 6)

Mike Miller, Kansas Independent Auto Dealers Association, appeared before the committee as a proponent of HB 2223. He stated that joy riding is a very big part of auto theft, where teenagers test drive vehicles and never bring them back. (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on February 9, 1995.

Representative Joel Rutledge appeared before the committee as the sponsor of **HB 2315**. He explained that proving intent to permanently deprive one of their vehicle is difficult and would make it easier to show intent.

Hearings on **HB 2223 & 2315** were closed.

Hearings on **HB 2412** - include in the crime of perjury presenting false testimony to a legislative committee, were opened.

Representative Toplikar appeared before the committee as the sponsor of the bill. He explained that each conferee would receive notice that it would be an act of perjury if they intentionally and knowingly falsely testify before or give false written testimony to a legislative committee. The crime would be a severity level 9, nonperson felony. (Attachment 8) He received information from National Conference of State Legislators as to how other states handle this issue. (Attachment 9)

Hearings on **HB 2412** were closed.

Hearings on **HB 2219** - child support enforcement; penalties to payor for failure to pay over support withheld from obligor's paycheck, were opened.

Gary Jarchow, Court Trustee, appeared before the committee in support of the proposed bill. He stated that most employers are very diligent in withholding child support and sending it to the courts but there are some that do not remit the payment. There should be harsher penalties for not sending the payment to the courts. (Attachment 10)

Hearings on **HB 2219** remained opened.

The committee meeting adjourned at 5:00 p.m. The next meeting is scheduled for February 13, 1995.

## HOUSE JUDICIARY COMMITTEE

### 1995 LEGISLATIVE PROPOSALS

Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

#### 1. Judicial Positions and Residency Amendments

The Judicial Apportionment statutes (K.S.A. 4-202 et seq.) have been amended to agree with actual changes which have been made over the years. They have also been amended to remove specific residency and/or position location designations for district judges. We have amended K.S.A. 20-331, by deleting the word "nomination." K.S.A. 20-338 is amended only to clean up some inconsistencies with other changes which were made in the past.

#### 2. District Nominating Commissions Amendments

Most of the amendments are technical and administrative in nature. K.S.A. 1994 Supp. 20-2904 is amended to delete the requirement that a ballot had to contain separate votes equal in number to the number of vacancies to be filled in order for the ballot to be valid. K.S.A. 1994 Supp. 20-2906 is amended to address the problem in Johnson County when they changed from a three-member to a five-member county commission. K.S.A. 20-2909 is amended to clarify and lengthen the time for the nominating commissions to do their work from 30 to 45 days. K.S.A. 20-2915 is amended to clarify that the Supreme Court will determine the effective date for filling vacant District Magistrate Judge's positions.

**We request introduction of these bills by the committee.**

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  
 LOCAL GOVERNMENT  
 ADMINISTRATIVE RULES & REGULATIONS

DATE: February 9, 1995  
 TO: Chairman Michael O'Neal  
 Members of House Judicial Committee  
 FROM: Rep. Gwen Welshimer  
 SUBJECT: HB2223, Deprivation of Property, Joyriding

*Gwen Welshimer*

HB2223 is a bill that addresses the devastation that many Kansans experience when their vehicle is stolen. The bill specifically addresses the total frustration and disillusionment with police, prosecutors, and the Legislature when justice is not done.

Five cars were stolen within two weeks in the month of October in one neighborhood in Wichita...mine. It's time to get tough on this crime! The most devastating of the five cars stolen was the car with the least real dollar value.

A college student and neighbor of mine purchased an old car, repaired it, painted it, put in a tape player, and added things to it to have it the way he wanted over a period of months. His entire net worth was tied up in this car, his only asset, with liability insurance only, which is all he could afford. He had to park on the street in front of the house because Mom and Dad had their cars in the garage. In the still of the night, his little gem disappeared. Recovery for this young man is probably more difficult than recovery for someone who owns an expensive new car.

I am the victim of two stolen cars. One was found being driven by three teenagers. The driver, caught red-handed, explained to officers that a man gavethem the car and said it was O.K. to drive it. This man supposedly had left the state. There were three people in the police records with the same name. Obviously, this is the standard "if you are caught, say this" excuse. It works every time because officers can't prove that the thief intended to permanently deprive the owner of the vehicle.

HB2223 goes one stop beyond the question of permanent deprivation. It creates the crime of operating a stolen vehicle.

Please give this bill serious consideration. We have done many good things to toughen our crime laws in Kansas, but joyriding and autotheft has been left untouched and still frustrates our Kansas citizens unmercifully.

House Judiciary  
 2-09-95  
 Attachment 2



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Wichita

LYNN MENAGH  
Region V  
Norton

ROGER SCHROEDER  
Region VI  
Garden City

Honorable Members of the Committee,

Thank you for this opportunity to testify in support of House Bill 2223. My name is Rick Stone and I reside in Wichita. I am here today representing the Kansas Association of Chiefs of Police (K.A.C.P.), as the Legislative Committee Chairperson charged with the responsibility of sponsoring or reviewing legislation that may effect the public safety of the citizens of Kansas.

On behalf of the over two hundred Chiefs of Police from all across our state, we are very pleased to lend our endorsement to this bill which would provide a real penalty for one of the fastest growing crimes in our State.

While I also am today authorized to represent the City of Wichita in their support of this legislation, it is important for everyone to know that auto theft is not just a crime that effects the larger cities. The need for this legislation, as perceived by law enforcement agencies all across Kansas, is underscored by the fact that the K.A.C.P. chose only two types of legislation to sponsor in this year's session and this bill represents one of those two choices due to its importance to all of us.

If you need any statistical evidence to support the need for stronger laws to punish car thieves you need only to look at our own figures in Wichita for an example. In 1983, there were 982 auto thefts reported. In 1993, the figure had risen to 3,118 or an increase of over 200%.

The simple fact is that our current laws make it a felony to steal the tires off a car but make it a misdemeanor to steal the whole car! Does this make sense? Of course not.

While we have enjoyed some significant double digit decreases in violent crime in our city during the last year, the crime of auto theft increased significantly and we should not ignore this serious problem.

Thank you.

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## Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612

(913) 357-6351 • FAX (913) 357-6352

EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

### Testimony in Support of

### HOUSE BILL NO. 2223

The Kansas County and District Attorneys Association appears in support of HB 2223, which raises the penalty for unlawful deprivation of property of a motor vehicle from a class A misdemeanor to a level 7 nonperson felony.

The bill recognizes the reality of the present-day, where the carefree fad of teenage "joyriding" has been replaced with the necessity of obtaining a vehicle for a drive-by shooting.

The bill also recognizes the reality of the fact that criminal deprivation of property is the only instance where getting caught in the act can result in a prosecution for a lesser charge.

We have some concern with the language beginning at line 24: "In any prosecution pursuant to this subsection...". The concerns are that this will be construed as an attempt to shift the burden of proof, which is prohibited by the U.S. Supreme Court decision of Sandstrom v. Montana.



OFFICE OF THE DISTRICT ATTORNEY  
EIGHTEENTH JUDICIAL DISTRICT

NOLA FOULSTON  
District Attorney

SEDGWICK COUNTY COURTHOUSE  
535 N. MAIN  
WICHITA, KANSAS 67203

(316) 383-7281  
FAX: (316) 383-7266

TESTIMONY IN SUPPORT OF  
SENATE BILL No. 141  
and  
HOUSE BILL No. 2223  
February 9, 1995

*An act concerning crimes and punishment; relating to criminal deprivation of property; amending K.S. A. 1994 Supp. 21-3705 and repealing the existing section.*

Mr. Chairman, Ladies and Gentlemen of the Committee:

Thank you for the opportunity to testify before you in support of a bill amending the existing Criminal Deprivation statute to make it felonious conduct when such property involves a motor vehicle. The necessity of increasing the penalties is not only demonstrated by the increased incidences of such activity in the largest jurisdiction in this state, Sedgwick County, but in other locales, both rural and urban, in the State of Kansas. This bill is supported by state-wide law enforcement and prosecutors, as well as by citizens, your constituents, and by businesses, all who have suffered economic loss as a result of this oft-repeated criminal activity. Our review of the bill recommends the following changes:

Elimination of the prima facie requirement in paragraph (b). It is our opinion that as drafted, this language would do nothing to enhance prosecution and could present additional appellate issues;

Change the time frame for license suspension from the 30 days as proposed to 90 days;

Change (d) to reflect applicability to the misdemeanor portion of the statute only. The sentencing guidelines and sentencing structure provide that as a condition of probation, the court can impose a sentence of 30 days in the county jail.

The changes to this bill are reflected on the attached document.

  
District Attorney Nola Foulston

SENATE BILL NO. 141

By Committee on Judiciary

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AN ACT concerning crimes and punishment; relating to criminal deprivation of property; amending K.S.A. 1994 Supp. 21-3705 and repealing the existing section.

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

Section 1. K.S.A. 1994 Supp. 21-3705 is hereby amended to read as follows: 21-3705:

(a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.

(b) Criminal deprivation of property when such property is a motor vehicle, as defined in K.S.A. 8-1437 and amendments thereto, is a severity level 7, nonperson felony. In any prosecution pursuant to this subsection, proof that such person was operating such motor vehicle shall be prima facie evidence that such person knew such motor vehicle was being operated without the owner's consent. In addition to any other penalty prescribed by law, a person shall be fined not less than \$100 and have such person's driving privileges suspended for 90 days.

(c) Criminal deprivation of property when such property is property other than a motor vehicle, as defined in K.S.A. 8-1437 and amendments thereto, is a class A nonperson misdemeanor.

(d) Upon a second or subsequent conviction of this subsection (a), a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this section relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

Sec. 2. K.S.A. 1994 Supp. 321-3705 is hereby repealed.

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

TESTIMONY BEFORE THE HOUSE COMMITTEE ON JUDICIARY

THURSDAY, FEBRUARY 9, 1995 by  
the KANSAS AUTOMOBILE DEALERS ASSOCIATION

RE: HOUSE BILL 2223

Mr. Chairman or members of the Committee, I am Pat Barnes, legal counsel for the Kansas Automobile Dealers Association representing the franchised new car and truck dealers of Kansas. As always, we appreciate the opportunity to appear before you to express our views and support for House Bill 2223 which deals with the issue of "joy-riding."

Joy-Riding can occur in a number of circumstances, but when applied to our members it typically involves deceptively obtaining a new or used vehicle from a dealer's lot through either falsely representing one's intent to test drive the vehicle or surreptitiously entering upon the lot after hours or at other times and taking a vehicle. The present law defines this crime to occur when the intent is to deprive the owner of only the temporary use of the vehicle, without consent. It can also include groups of individuals who for fun or whatever other reason obtain a vehicle and make use of it without the least regard or concern for the owners or others they may injure in the negligent operation of such a vehicle.

Regardless of the reason, it results in thousands of dollars in damage and lost value to Kansas businesses each year. For those of you who may not see how that translates into both losses for our government and economy, there are two points I would like to make. First, once the car is driven in the fashion we are complaining about, it is not the same article for sale it once was. This means we get a lower price, which translates to lower sales

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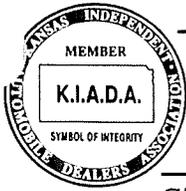
tax and lower profits and, therefore, lower income taxes to the State. The cost also translates to a law enforcement expense since the resources available for crime enforcement, including prosecution, are finite. Even this leaves aside loss or damage from accidents occurring in these vehicles.

We think that the present deterrent and punishment to this type of activity is insufficient. This bill would cure that insufficiency by increasing the severity of this offense to a "Level 7, Non-Person Felony" and, additionally, a fine of not less than \$100 and suspension of one's driving privileges for 30 days.

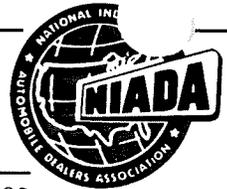
This bill would also streamline the ability to prosecute the case due to the presumption it creates.

If we have any criticism of the bill, it would be that we would like to see the penalty not less than \$500, and we would also suggest the addition of 100 hours in community service as a penalty.

This measure is one of the better means available to you today as a legislature to improve upon the methods we have to combat crime in this state. Please give it your favorable approval.



# KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION



Citizens Bank & Trust Building • 6th & Humboldt • Manhattan, Kansas 66502  
Phone: 913-776-0044 FAX: 913-776-7085

February 9, 1995

TO: HOUSE JUDICIARY COMMITTEE

SUBJECT: HB 2223--CRIMINAL DEPRIVATION OF PROPERTY

FROM: KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Mike Miller representing the Kansas Independent Automobile Dealers Association, an organization of over 230 used vehicle dealers.

We are appearing in favor of HB 2223 which would add penalties for criminal deprivation of a motor vehicle. This bill would establish a severity level 7, nonperson felony, fine \$100 and suspend driving privileges for 30 days.

I am a vehicle dealer in Topeka, and I can tell you vehicles are being stolen at an alarming rate. No one in the state is excluded from having their vehicle stolen. A February 7, 1995 article in the Capital Journal indicates that used car dealerships, new car dealerships, credit unions, individuals and other businesses currently have vehicles that are on a "hot list" for having a vehicle stolen since January 1. A total of 41 cars were stolen between January 1 and January 19. Fourteen vehicle thefts are still being investigated.

The article states that there was no pattern to the thefts, and they were occurring in all parts of Topeka. Police detectives say the thieves tend to be teenagers and young adults looking for transportation, and then they abandon the vehicle with body damage or minus stereo equipment. This is what is commonly known as a joy ride.

During the years I have been selling used vehicles, I have had cars taken on test drives and not returned. I have had vehicles also taken after hours. Most of these vehicles were abandoned or found in Topeka, one was recovered in Pennsylvania, and one has yet to be recovered.

I have taken steps to help identify who test drives my vehicles by validating a driver's license and an insurance card. This helps eliminate the test driving of vehicles which could end in nothing more than a joy ride. I have also put the security device called "The Club" on the vehicles more prone to be taken after business hours. But this is not enough.

*Individually we struggle to be heard—Collectively w*

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HB 2223 is a step in the right direction, but we would request that this be amended by raising the fine from \$100 to \$500 and adding restitution in an amount equal to the damages sustained on the vehicle.

This would give vehicle dealers as well as individuals a needed tool in combating this growing problem. This would take the joy out of joy riding. We urge you to approve HB 2223.

Thank you for your time and consideration.



Leading to return of  
**STOLEN JEEP RENEGADE CJS**

Topeka (913) 267-7540

Description: Brown in color. Primer on fender. No Top - No Doors - No Tag.  
Fancy wheels, white letter tires. High Back Bucket Seats.  
V8 Motor. 3 speed transmission

Case #25537-94 Topeka Police  
VIN # J7FB3AH070536

**\$ REWARD \$**

Innovative Auto Marketing • 4200 S. Topeka

*(Recovered 1-31-95)*

# Police say car thefts on rise, release 'hot list' of vehicles

2-7-95

By TIM HRENCHIR  
The Capital-Journal

**P**olice are looking for 14 vehicles stolen this year in Topeka, ranging from a 1967 AMC car to a 1995 Chevy truck.

Those vehicles were identified Monday in a "hot list" released by police. Detective Steve Damron made the list public at a time when he's seeing many more auto thefts than normal. The most recent statistics from police show 41 cars were stolen between Jan. 1 and Jan. 19 in Topeka.

Police see no pattern to the thefts, which are occurring in all parts of the city. They don't think there are any "chop shops" in this area where stolen vehicles would be dismantled for parts.

Detectives say the thieves tend to be teenagers and young adults who use the vehicles for transportation before abandoning them — often with body damage or minus stereo equipment.

Monday's list named 14 missing vehicles:

■ A white 1983 Chevrolet four-door car stolen Friday from the 1600 block of N. Kansas Avenue. Its license plate number is JNT488.

■ Orange and white 1994 Honda CR250 motorcycle stolen Friday from 2808 S.W. Arrowhead.

■ Blue 1995 Chevrolet pickup stolen Thursday from 3731 S.W. Topeka Blvd.

■ Gray 1981 Chevrolet Monte Carlo two-door stolen Jan. 31 from 401 S.E. 34th. License plate is JQP107.

■ Blue 1982 Oldsmobile 98 four-door stolen Jan. 28 from 540 S.E. 29th.

■ White 1985 Chevrolet Monte Carlo stolen Jan. 23 from 1010 S.W. Polk. License plate is JQ0953.

■ White 1975 Dodge Caravan stolen Jan. 19 from 912 S.E. 6th.

■ Red 1989 Ford Aerostar van stolen Jan. 19 from 832 S.E. Lawrence.

■ White and red 1968 Chevrolet pickup truck stolen Jan. 18 from 1106 N.W. Topeka Blvd.

■ Blue 1992 Toyota Camry four-door stolen Jan. 18 from 1600 S.W. Fillmore. License plate is 63934.

■ Black 1987 Honda moped stolen Jan. 18 from 4208 S.W. 29th. License plate is GTV20.

■ Brown 1982 Oldsmobile Custom Cruiser station wagon, stolen Jan. 11 from 3100 S.E. 6th. License plate is HGZ193.

■ Blue 1967 AMC Ambassador two-door stolen Jan. 9 from 520 S.E. Leland.

■ White 1988 Honda Civic four-door, stolen Jan. 3 from 2037 S.W. Gage Blvd.

7-3

# REWARD

for return of truck



## STOLEN FROM

Innovative Auto Marketing  
4200 S. Topeka

Topeka, Ks 913 267-7540

1982 CHEV. 3/4T 4X4

4spd. Lockouts Gooseneck set up

VIN# 1GCEK14H8CJ138910

Color: Blue / Gray

Date Stolen: 1-8-94

Case # Topeka Police: 589-94

# STATE OF KANSAS

JOHN M. TOPLIKAR

REPRESENTATIVE, 15TH DISTRICT

507 E. SPRUCE  
OLATHE, KS 66061



HOUSE OF REPRESENTATIVES

OFFICE: 155 EAST  
TOPEKA, KS 66612  
(913) 296-7683

## Testimony on HB 2412 February 9, 1995

Mr. Chairman, Members of the Committee

Section B of the bill calls for a posting of a notice concerning perjury, to serve as a friendly reminder that conferees should use factual persuasive statements. At first thought, it might seem harsh to "warn" a person to tell the truth by means of a sign on the wall. But if you reflect a moment on what has already come to be in our society, the posting of a sign should not offend anyone or prevent any citizen from sharing his or her feelings on an issue. We have other friendly reminder notices posted throughout this capitol building. For example, the first thing I see when coming into the statehouse is a "No Smoking" sign. This does and should not alienate the public. I see other signs in areas of the building--"No Food or Drink" and so on, and am always reminded of the ramifications of writing a bad check at the grocery register by a posting to reference acceptable conduct.

My point is, no reasonable person should feel alienated because we expect them to tell the truth.

I have, along with the co-sponsors, submitted this legislation not because we think that the majority of conferees lie in their testimony, but because we believe that our open legislative process is the central element in preserving our government "of the people, by the people and for the people." We believe the responsibility rests on our shoulders to protect the truth in our deliberations as we attempt to find the facts on which to create, repeal, or modify our laws.

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We, as lawmakers, fully expect our statutes to be upheld, and if not, we expect those people who would violate our laws to be prosecuted. We should expect that our laws will be followed to the letter. But what if we draft laws not founded in fact? What if we pass laws based on hearsay--do we care if false information is relied upon? Do we really expect that someone may be found guilty and convicted of breaking a law created from emotional or whimsical testimony? It would be unjust to hold anyone accountable to the letter of such a law.

In this so-called "information age" in which we now live we will be asked to update our laws to keep pace with advancing scientific and technological developments.

Mr. William Esrey of Sprint at the KCCI luncheon Tuesday said that "technology is information and information is power". Most Kansans are still technologically illiterate. That's scary. If we are moving into an age where technology will involve everything we do and we as citizen representatives are not truly informed in high tech issues, then power may be wrenched from the people. Mr. Esrey said that we can lead if we are literate in technology or we can be led. My hope is that in committee testimony we do everything we can to ensure we are led down the right path. In addressing new problem areas of the law we, the "citizen legislature" are increasingly going to need to rely on expert testimony in order to make sound judgement.

The decisions we make can help some companies prosper, expand, and create many jobs for Kansas. Wrong decisions could cause bankruptcy and in the long run could cost many citizens their livelihood. Billions of dollars are at stake in the fact finding process in our committee hearings.

It is our duty as elected to this part time job to create the best atmosphere for truth in facts on which to base our judgements. It has been said that it is our job to filter out the truth and weed out the lies. How many of us really believe that we have never been deceived, tricked, or bamboozled? I contend our job should be more than subjecting ourselves to a guessing game and for the sake of the people we serve, we should strive for a higher way to discern facts before making our decisions.

I hope you will support this legislation. Thank you.

THU, FEB 9, 1995

R

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DOCUMENT ID: RAP9109455  
RULE TITLE: Oversight Powers  
RULE NUMBER: Rule 6.55  
STATE: FL  
CHAMBER: House  
EFFECTIVE DATE: 03/05/91  
COMMITTEE, STANDING COMMITTEE, DISCIPLINE

Rule 6.55  
Oversight Powers

- (a) Each standing or select committee or subcommittee is authorized to invite public officials and employees and private individuals to appear before the committee for the purpose of submitting information to it.
- (b) Each committee is authorized to maintain a continuous review of the work of the state agencies concerned with its subject area and the performance of the functions of government within each such subject area, and for this purpose to request reports from time to time, in such form as such committee shall designate, concerning the operation of any state agency and presenting any proposal or recommendation such agency may have with regard to existing laws or proposed legislation in its subject area.
- (c) In order to carry out its duties each standing or select committee or subcommittee is empowered with the right and authority to inspect and investigate the books, records, papers, documents, data, operation, and physical plant of any public agency in this state.

Issuance of Subpoena

- (d) In order to carry out its duties each standing or select committee or subcommittee, whenever required, may issue subpoena and other necessary process to compel the attendance of witnesses before such committee or the taking of a deposition pursuant to Rule 6.56(h). The chairman of the standing or select committee shall issue said process on behalf of the standing or select committee or subcommittee thereof. The chairman or any other member of such committee may administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before such committee for the purpose of testifying in any matter about which such committee may desire evidence.
- (e) Each standing or select committee or subcommittee, whenever required, may also compel by subpoena duces tecum the production of any books, letters, or other documentary evidence it may desire to examine in reference to any matter before it. The chairman of the standing or select committee shall issue process on behalf of the standing or select committee or subcommittee thereof.

Contempt Proceedings

- (f) Either house may punish by fine or imprisonment any person not a Member who shall have been guilty of disorderly or contemptuous conduct in its

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presence or of a refusal to obey its lawful summons.

A person shall be deemed in contempt if he:

- (1) Fails or refuses to appear in compliance with a subpoena or, having appeared fails or refuses to testify under oath or affirmation.
- (2) Fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, paper or other document subpoenaed by or on behalf of such committee, or
- (3) Commits any other act or offense against such committee which, if committed against the Legislature or either house thereof, would constitute contempt.

A standing or select committee or subcommittee may, by majority vote of all of its members, apply to the House for contempt citation. The application shall be considered as though the alleged contempt had been committed in or against the House itself. If such committee is meeting during the interim, its application shall be made to the circuit court pursuant to subsection (i)(8) of this Rule.

A person guilty of contempt under the provision of this Rule shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ninety days or both, or shall be subject to such other punishment as the House may, in the exercise of its inherent powers, impose prior to and in lieu of the imposition of the aforementioned penalty.

(g) The sheriffs in the several counties shall make such service and execute all process or orders when required by standing or select committees or subcommittees. Sheriffs shall be paid as provided for in section 30.231, Florida Statutes.

False Swearing

(h) Whoever willfully affirms or swears falsely in regard to any material matter or thing before any standing or select committee or subcommittee is guilty of perjury in an official proceeding, which is a felony of the third degree, and shall be punished as provided in section 775.082, section 775.083, or section 775.084, Florida Statutes.

Rights of Witnesses

(i) All witnesses summoned before any standing or select committee or subcommittee shall receive reimbursement for travel expenses and per diem at the rates provided in section 112.061, Florida Statutes. However, the fact that such reimbursement is not tendered at the time the subpoena is served shall not excuse the witness from appearing as directed therein.

(1) Service of a subpoena requiring the attendance of a person at a meeting of a standing or select committee or subcommittee shall be made in the manner provided by law for the service of subpoenas in civil action at least seven calendar days prior to the date of the meeting unless a shorter period

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of time is authorized by majority vote of all the members of such committee. If a shorter period of time is authorized, the persons subpoenaed shall be given reasonable notice of the meeting, consistent with the particular circumstances involved.

(2) Any person who is served with a subpoena to attend a meeting of any standing or select committee or subcommittee also shall be served with a general statement informing him of the subject matter of such committee's investigation or inquiry and a notice that he may be accompanied at the meeting by private counsel.

(3) Upon the request of any party and the approval of a majority of the standing or select committee or subcommittee, the chairman or in his absence the vice chairman, shall instruct all witnesses to leave the meeting room and retire to a designated place. The witness will be instructed by the chairman, or in his absence the vice chairman, not to discuss his testimony or the testimony of any other person with anyone until the meeting has been adjourned and the witness discharged by the chairman. The witness shall be further instructed that should any person discuss or attempt to discuss the matter under investigation with them after receiving such instructions he shall bring such matter to the attention of such committee. No member of such committee or representative thereof may discuss any matter or matters pertinent to the subject matter under investigation with witnesses to be called before such committee from the time that these instructions are given until the meeting has been adjourned and the witness discharged by the chairman. Any person violating this Rule shall be in contempt of the Legislature.

(4) Any standing or select committee or subcommittee taking sworn testimony from witnesses as provided herein shall cause a record to be made of all proceedings, in which testimony or other evidence is demanded or adduced which record shall include rulings of the chair, questions of such committee and its staff, the testimony or responses of witnesses, sworn written statements submitted to the committee and such other matters as the committee or its chairman may direct.

(5) A witness at a meeting upon his advance request and at his own expense, shall be furnished a certified transcript of his testimony at the meeting.

#### Right of Other Persons to be Heard

(6) Any person whose name is mentioned or who is otherwise identified during a meeting being conducted for the purpose of taking sworn testimony from witnesses of any standing or select committee or subcommittee and who, in the opinion of such committee, may be adversely affected thereby, may, upon his request or upon the request of any member of such committee, appear personally before such committee and testify on his own behalf, or, with such committee's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record of the meeting. Any such witness, however, shall prior to filing such statement, consent to answer questions from such committee regarding the contents of the statement.

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(7) Upon the consent of a majority of its members, any standing or select committee or subcommittee may permit any other person to appear and testify at a meeting or submit a sworn written statement of facts or other documentary evidence for incorporation into the record. No request to appear, appearance or submission shall limit in any way the committee's power of subpoena. Any such witness, however, shall prior to filing such statement, consent to answer questions from any standing or select committee or subcommittee regarding the contents of the statement.

#### Enforcement of Subpoena Out of Session

(8) Should any witness fail to respond to the lawful subpoena of any standing or select committee or subcommittee at a time when the Legislature is not in session or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, such committee may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in his possession which is lawfully demanded. The failure of any witness to comply with such order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly.

Note: For conduct of meetings of investigative committees, see Rule 6.56.

DOCUMENT ID: RAP9109456  
RULE TITLE: Conduct of Meetings of Investigative Committees  
RULE NUMBER: Rule 6.56  
STATE: FL  
CHAMBER: House  
EFFECTIVE DATE: 03/05/91  
COMMITTEE, STANDING COMMITTEE

#### Rule 6.56 Conduct of Meetings of Investigative Committees

Each standing or select committee or subcommittee shall comply with the following procedures with respect to compelling attendance of witnesses, production of documents or evidence, and the conduct of meetings before such committee.

If any standing or select committee or subcommittee fails in any material respect to comply with the requirements of this Rule, any person subject to subpoena or subpoena duces tecum, who is injured by such failure shall be relieved of any requirement to attend the meeting for which the subpoena was issued, or, if present, to testify or produce evidence therein; and such failure shall be a complete defense in any proceeding against such person for contempt or other punishment.

In addition to the requirements of Rule 6.55, the following rules of

procedure will be followed at all meetings of standing or select committees or subcommittees:

(a) A standing or select committee or subcommittee may exercise its powers during sessions of the Legislature, and in the interim.

(b) A standing or select committee or subcommittee which conducts meetings for the purpose of taking sworn testimony from witnesses shall consist of not less than five members.

(c) A quorum of a standing or select committee or subcommittee which conducts meetings for the purpose of taking sworn testimony from witnesses shall consist of four or more authorized members, but at no time less than a majority of the total authorized membership.

(d) No action shall be taken by a standing or select committee or subcommittee at any meeting unless a quorum is present. Such committees may act by a majority vote of the members present and voting at a meeting at which there is a quorum, unless the rules or any law require a greater number or proportion.

(e) Any standing or select committee or subcommittee thereof, when conducting a meeting for the purpose of taking sworn testimony, shall give each member of the committee not less than three calendar days written notice of any meeting to be held when the Legislature is in session and at least seven calendar days written notice of any meeting to be held when the Legislature is not in session. Such notices shall include a statement of the subject matter of the meeting.

(f) The presiding member at a meeting may direct a witness to answer any relevant question or furnish any relevant book, paper or other document, the production of which has been required by subpoena duces tecum. Unless the direction is overruled by a majority vote of the committee members present, disobedience shall constitute contempt as defined in Rule 6.55(f).

(g) Before or during a meeting, a witness or his counsel may file with the standing or select committee or subcommittee, for incorporation into the record of the meeting, sworn written statements relevant to the purpose, subject matter and scope of the committee's investigation or inquiry. Any such witness, however, shall prior to filing such statement, consent to answer questions from such committee regarding the contents of the statement.

(h) Where the chairman of any committee determines that such procedure would expedite the inquiry or save expenses, the chairman, with the concurrence of the Speaker, may authorize the conduct of proceedings by depositions, interrogatories or compulsory production of documents as provided in this Rule. These proceedings shall be in the nature of statements under oath taken by a state's attorney. Counsel for persons under investigation may be allowed to attend such depositions at the discretion of the chairman. Participation by such counsel at the depositions may also be allowed at the discretion of the chairman. Any requests for attendance or participation should be addressed to the

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chairman. If the requests are denied, a person may appeal the chairman's ruling to the Speaker but there shall be no stay of proceedings pending such appeal.

Where counsel for persons subject to depositions are allowed to participate in the proceedings under the guidelines of the committee, testimony or other evidence taken may be introduced before the committee whether or not the persons or their counsel avail themselves of the opportunity.

(1) The chairman, with the concurrence of the Speaker, may authorize a lawyer for the committee to take depositions of witnesses before a court reporter or notary public of this state. The deposition notice and/or the subpoena used therewith may identify persons either by name or by job description and such persons may be required to attend and give testimony pursuant to the guidelines.

(2) The chairman, with the concurrence of the Speaker, may authorize the issuance of interrogatories to be answered under oath and these shall require the person to whom they are directed to appear before a notary public or court reporter and answer the questions under oath. These may be served by mail or by personal service and shall be answered under oath no later than seven days from the date of mailing or three days from the date of personal service. Any interrogatory may require that a person to whom it is directed (identified by name or job description) return the interrogatory in the mail or have it available for delivery to the lawyer for the committee on a date certain.

(3) Should any substantive or procedural question arise during any proceedings authorized by Rule 6.56(h), the question shall be referred to the chairman of the committee or to any committee member designated by the chairman to pass on such questions. Communication shall be made with the chairman or any designated committee member by the most rapid available means, including telephone, and the resolution of such questions, including without limitation questions on the scope of the discovery may be communicated by telephone. If any person is dissatisfied with such a decision, appeal may be had to the Speaker but there shall be no stay of proceedings pending such appeal.

DOCUMENT ID: RAP9118421  
RULE TITLE: STANDING COMMITTEES; SUBPOENA POWER; PUNISHMENT FOR CONTEMPT  
RULE NUMBER: Rule 6.33  
STATE: LA  
CHAMBER: House  
EFFECTIVE DATE: 03/01/91  
STANDING COMMITTEE, DISCIPLINE

Rule 6.33

STANDING COMMITTEES; SUBPOENA POWER; PUNISHMENT FOR CONTEMPT

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Each standing committee established by House Rule 6.1, each joint committee established pursuant to the authority granted in House Rule 6.29, and any subcommittee of such standing or joint committee is hereby specifically and expressly granted the power and authority to hold hearings, subpoena witnesses, administer oaths, require the production of books and records and to do all other things necessary to accomplish the purposes of the study or investigation assigned to it by the House or by the legislature or by a majority of the members of the committee; provided, however, that where a study or investigation is undertaken during the interim between sessions, a subpoena or a subpoena duces tecum shall issue only upon the approval of a majority of the members of the standing committee and upon the rendition of a special order of the Nineteenth Judicial Court, or of any other judicial district court subject to general rules of venue, authorizing the committee to issue the subpoena or subpoena duces tecum, in which order the court may prescribe such requirements and conditions as it may consider just and reasonable. In the event a subpoena or subpoena duces tecum is not honored, such committees also shall have the power to punish for contempt. In addition, such committees shall have the power to provide for the prosecution of any individual for refusal to testify, false swearing or perjury before the committee in accordance with the laws of this state.

DOCUMENT ID: RAP9118571  
 RULE TITLE: WITNESSES; SUBPOENA POWER; PUNISHMENT FOR CONTEMPT  
 RULE NUMBER: Rule 15.11  
 STATE: LA  
 CHAMBER: House  
 EFFECTIVE DATE: 03/01/91  
 DISCIPLINE

Rule 15.11

WITNESSES; SUBPOENA POWER; PUNISHMENT FOR CONTEMPT

- A. Only those persons called by the committee shall be permitted to testify as witnesses, provided that the committee complies with Rule 15.9(3). Before a witness is permitted to testify he shall be sworn or affirm to speak the truth and nothing but the truth.
- B. The select committee is hereby specifically and expressly granted the power and authority, with the written approval of the chairman of the committee, to hold hearings, subpoena witnesses, administer oaths, require the production of books and records, and to do all other things necessary to accomplish the purposes of its hearings and deliberations.
- C. In the event a subpoena or subpoena duces tecum is not honored, the select committee also shall have the power to punish for contempt and to provide for the prosecution of any individual for refusal to testify, false swearing, or perjury before the select committee in accordance with law.

DOCUMENT ID: RAP9122046  
 RULE TITLE: POWERS AND RESPONSIBILITIES OF COMMITTEES

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RULE NUMBER: Rule 2.102  
STATE: MI  
CHAMBER: Senate  
EFFECTIVE DATE: 01/03/91  
COMMITTEE

Rule 2.102  
POWERS AND RESPONSIBILITIES OF COMMITTEES

A) Any Senator, while acting as a member of a committee, shall have authority to administer oaths to such persons as shall be examined before the committee of which he or she is a member (MCL 4.85).

B) Any committee may, by resolution of the Senate, be authorized to administer oaths, subpoena witnesses, and examine the books and records of any persons, partnerships, or corporations involved in a matter properly before any committee (MCL 4.101).

C) Any witness, or attorney representing a witness, may be punished for contempt by the Legislature if:

1) During a committee investigation and pursuant to a committee subpoena, he or she:

a) Refuses to be sworn or testify, or

b) Fails on demand to produce any papers, books, or documents touching any matter under investigation, or

c) Otherwise neglects or refuses to obey the committee subpoena.

2) He or she is guilty of contempt, meaning a deliberate interference with the duties and powers of the Legislature, while in attendance at a committee hearing.

D) Contempt of the Legislature shall be punishable as provided by law (MCL 4.82 and 4.83).

DOCUMENT ID: RAP9127053  
RULE TITLE: Subpoena Procedure  
RULE NUMBER: Rule 3, Section 20  
STATE: NE  
CHAMBER: Senate  
EFFECTIVE DATE: 01/09/91  
COMMITTEE, DISCIPLINE

Rule 3, Section 20

Subpoena Procedure

It is within the inherent power of any legislative committee to gather

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information pursuant to its regular functions, and to conduct investigations of matters within its subject-matter jurisdiction.

A committee's power of subpoena should not be exercised unless the committee has determined that no other method of securing the desired information would be successful or practicable, and that the matter is of primary importance to the welfare of the State of Nebraska.

A committee of the Legislature conducting an investigation and gathering information, whether pursuant to legislative direction or pursuant to its regular functions of oversight and bill preparation, shall observe the following procedures in addition to regular committee procedures whenever subpoenas are issued:

(A) Issuance of Subpoenas. (i) A committee may, by a majority vote of all of its members taken at a meeting properly called, issue a subpoena requiring a person to appear before the committee and be examined in reference to any matter within the scope of the inquiry or investigation being conducted by the committee, but only when the committee has received prior approval by a majority vote of the Executive Board to issue subpoenas in connection with the specific inquiry or investigation in question. (ii) The committee may, in the same manner, issue a subpoena or subpoena duces tecum requiring any person to appear before the committee and bring with him or her any books, papers, or other documents pertinent thereto. (iii) While the Legislature is in session, a committee deciding to issue subpoenas must promptly report each issuance to the Legislature. A record shall be made in the Journal reflecting the date the subpoena was issued, to whom it was issued, for what purpose it was issued, and the date on which testimony or production of documents is to take place. Under extraordinary circumstances, the identity of the person subpoenaed may be withheld from publication if necessary to protect the safety of an individual or the confidentiality of the matters to be heard. (iv) A person subpoenaed to attend a hearing of a committee shall receive the same fees and allowances as a person subpoenaed to give testimony in an action pending in a court of record.

(B) Notice to Witnesses. (i) Service of a subpoena requiring the attendance of a person at a hearing of a committee shall be made in the manner provided by law for the service of subpoenas in civil actions at least seven days prior to the date of the hearing unless a shorter period of time is authorized by a majority vote of all of the members of the committee in a particular instance when, in their opinion, the giving of seven days' notice is not practicable; but if a shorter period of time is authorized, the person subpoenaed shall be given reasonable notice of the hearing, consistent with the particular circumstances involved. (ii) Any person who is served with a subpoena to attend a hearing of a committee shall also be served with a copy of the act defining the purpose of the committee, a copy of the rules under which the committee functions, a general statement informing him or her of the subject matter of the committee's investigation or inquiry, and a notice that he or she may be accompanied at the hearing by counsel of his or her own choosing.

(C) Conduct of the Hearing. (i) No committee which has issued a subpoena directing a witness to appear at a hearing shall question the witness unless

a quorum is present throughout the questioning. (ii) The hearing shall be public unless the committee, by a majority vote of all of its members, determines that a hearing should not be open to the public in a particular instance, due to rare and extraordinary circumstances consistent with Legislative Rule 3, Section 15(b) regarding closed meetings. (iii) The chairperson of the committee shall preside at all hearings and shall conduct the examination of witnesses himself or herself or supervise the examination by other members of the committee. The committee may, by a majority vote of all its members, authorize the questioning of a witness by the committee's counsel or by special counsel.

(D) Right to Counsel and Submission of Questions. (i) Every witness at the hearing may be accompanied by counsel of his or her own choosing, who may advise the witness of his or her rights, subject to reasonable limitations which the committee may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing. (ii) Any witness at the hearing, or a witness' counsel, may submit to the committee proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the committee shall ask such of the questions as it deems appropriate and relevant to the subject matter of the hearing.

(E) Testimony. (i) The committee shall cause a verbatim record to be made of all proceedings in which testimony or other evidence is demanded or offered, which record shall include rulings of the chair, questions of the committee and its counsel, the testimony or responses of witnesses, sworn written statements submitted to the committee and read into the record, and such other matters as the committee or its chair may direct. (ii) All testimony given or offered at the hearing shall be under oath or affirmation if the witness has been subpoenaed, and in other cases if a majority of the committee members present at the hearing so decide. (iii) The presiding member at the hearing may direct a witness to answer any relevant question or furnish any relevant book, paper, or other document, the production of which has been required by subpoena duces tecum. Unless the direction is overruled by a majority vote of the committee members present, disobedience shall constitute a contempt. (iv) A witness at the hearing or his or her counsel, with the consent of a majority of the committee's members present at the hearing, may file with the committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter, and scope of the committee's investigation or inquiry. (v) Testimony and other evidence given or offered at a hearing closed to the public shall not be made public unless authorized by a majority vote of all of the members of the committee, which authorization shall also specify the form and manner in which the testimony or other evidence may be released. (vi) A witness at a closed hearing, upon request and at his or her own expense, shall be furnished a transcript of his or her testimony at the hearing.

(F) Interested Persons. (i) Any person whose name is mentioned or who is otherwise identified during the hearing and who, in the opinion of the committee, may be adversely affected thereby, may, upon his or her request or upon the request of any member of the committee, appear personally before the committee and testify in his or her own behalf, or, with the committee's

consent, may file a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. (ii) Upon the consent of a majority of its members, a committee may invite any other person to appear at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No invitation to appear, and no request to appear, appearance, or submission of evidence shall limit in any way the committee's power of subpoena. (iii) Any person who appears before a committee pursuant to this section shall have all the rights, privileges, and responsibilities of a witness provided to all other witnesses.

(G) Contempt. A person shall be in contempt if he or she: (i) Fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation; (ii) Fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, paper, or other document subpoenaed by or on behalf of a committee; or (iii) Commits any other act or offense against a committee which, if committed against the Legislature, would constitute a contempt. The chairperson of a committee may apply to the Legislature or, during the interim, to the district court of any county to compel obedience by proceedings for contempt.

(H) Penalties. (i) A person guilty of contempt under the provision of these rules shall be subject to punishment pursuant to RRS 50-105 and 50-106 during the session, or to RRS 50-407 when the Legislature is not in session. (ii) If a committee fails in any material respect to comply with the requirements of these rules, any person subject to a subpoena or a subpoena duces tecum who is injured by such failure shall be relieved of any requirement to attend the hearing for which the subpoena was issued or, if present, to testify or produce evidence therein; and such failure shall be a complete defense in any proceeding against such person for contempt or other punishment. (iii) Any member or employee of the Legislature, other than the witness concerned or his or her counsel who knowingly violates subsections of these rules concerning the publication of testimony taken at a closed hearing, shall be in contempt of the Legislature or, if a member of the Legislature, shall be subject to sanction or suspension according to the statutes governing the Legislature. The Speaker on his or her own motion or on the application of any person claiming to have been injured or prejudiced by an unauthorized disclosure may institute proceedings for the determination of the issue and for the imposition of penalties provided herein. Nothing in this subsection shall limit any power which the Legislature may have to discipline a member or employee or to impose a penalty in the absence of action by a prosecuting officer or court.

(I) Limitation of Rules. Nothing contained in this section shall be construed to limit or prohibit the acquisition of evidence or information by any committee by any lawful means not provided for herein.

DOCUMENT ID: RAP9140489  
 RULE TITLE: CONTEMPT PROCEEDINGS  
 RULE NUMBER: Rule 13.1

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STATE: SC  
CHAMBER: House  
EFFECTIVE DATE: 01/08/91  
PRESIDING OFFICER, COMMITTEE OF THE WHOLE, CONDUCT OF MEMBERS, ETHICS,  
DISCIPLINE

Rule 13.1  
CONTEMPT PROCEEDINGS

(A) Upon a report to the Speaker of conduct by a person which is contemptuous or otherwise violative of House Rules 11 or 12, the Speaker shall refer the matter to the House Ethics Committee for a hearing. At the conclusion of the hearing the Chairman of the House Ethics Committee shall submit a report, with a transcript of the hearing, to the Speaker. The Speaker then shall call the House into open session as a Committee of the Whole to consider the report and transcript and render such action as is appropriate unless the Ethics Committee makes a finding that the conduct in question is neither contemptuous nor violative of House Rules and dismissed the matter.

(B) In the event that a person is not a member of the House and is found in contempt of the House, and contemnor must be fined not less than five hundred dollars but not more than one thousand dollars.

DOCUMENT ID: RAP9143589  
RULE TITLE: Power To Issue Process  
RULE NUMBER: Rule 4 Section 22  
STATE: TX  
CHAMBER: House  
EFFECTIVE DATE: 01/14/91  
COMMITTEE

Rule 4 Section 22  
Power To Issue Process

By a record vote of not less than two-thirds of those present and voting, a quorum being present, each standing committee shall have the power and authority to issue process to witnesses at any place in the State of Texas, to compel their attendance, and to compel the production of all books, records, and instruments. If necessary to obtain compliance with subpoenas or other process, the committee shall have the power to issue writs of attachment. All process issued by the committee may be addressed to and served by either a sergeant-at-arms appointed by the committee or by any peace officer of the State of Texas. The committee shall also have the power to cite and have prosecuted for contempt, in the manner provided by law, anyone disobeying the subpoenas or other process lawfully issued by the committee. The chair of the committee shall issue, in the name of the committee, the subpoenas and other process as the committee may direct.

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DOCUMENT ID: RAP9148429  
RULE TITLE: Jurisdiction of Committees  
RULE NUMBER: Rule 77  
STATE: WV  
CHAMBER: House  
EFFECTIVE DATE: 01/09/91  
STANDING COMMITTEE

Rule 77  
Jurisdiction of Committees

In general and without limitation, standing committees shall have functions and jurisdiction of subjects and other matters as follows:

1. Committee on Agriculture and Natural Resources: (a) Agriculture generally, including agricultural production and marketing, animal industry and animal health, adulteration of seeds, commercial feeding stuffs and commercial fertilizer, processed foods, insect pests and pesticides, soil conservation, milk and milk products, meats and meat products, agricultural extension service, etymology and plant quarantine, poultry and poultry products, and human nutrition and home economics; and (b) natural resources in general, including game and fish, forests and wildlife areas, parks and recreation, water resources and reclamation.
2. Committee on Banking and Insurance: (a) Banks and banking, and financial institutions generally; (b) control and regulation of all types of insurance, including organization, qualification and licensing of insurers; and (c) securities and exchanges.
3. Committee on Constitutional Revision: (a) Proposals to amend the Constitution of the United States or the Constitution of the State; and (b) legislation relating to constitutional conventions.
4. Committee on Education: (a) Education generally; (b) boards of education, and administration and control of schools, (c) textbooks and school curricula; (d) vocational education and rehabilitation; (e) qualifications, employment and tenure of teachers; (f) libraries; and (g) public schools and institutions of higher education.
5. Committee on Finance: (a) Tax and revenue measures increasing or decreasing the revenue or fiscal liability of the State; (b) collection of taxes and other revenue; (c) annual Budget Bills and supplementary appropriation bills; (d) proposals reducing public expenditures; (e) proposals relating to the principal and interest of the public debt; and (f) claims against the State.
6. Committee on Government Organization: (a) Legislation and proposals dealing with the Executive Department of state government with respect to creation, duties and functions; consolidation and abolition; and transfer, imposition and elimination of functions and duties of departments, commissions, boards, offices and agencies; and (b) measures relating to the Legislative Department, other than apportionment of representation and redistricting for the election of members of the two houses.

7. Committee on health and Human Resources: (a) Public health and public welfare generally; (b) mental health; (c) public and private hospitals and similar institutions; (d) prevention and control of communicable and infectious diseases; (e) pure food and drugs; (f) poison and narcotics; (g) correctional and penal institutions; and (h) public assistance and relief.

8. Committee on Industry and Labor: (a) Employment and establishment of industry; (b) labor standards; (c) labor statistics; (d) mediation and arbitration of labor disputes; (e) wages and hours of labor; (f) child labor; (g) safety and welfare of employees; and (h) industry and labor generally.

9. Committee on Interstate Cooperation: Constitute the House members of the West Virginia Commission on Interstate Cooperation as provided by Article 1-B, Chapter 29 of the Code.

10. Committee on the Judiciary: (a) Judicial proceedings, civil and criminal generally; (b) state and local courts and their officers; (c) crimes and their punishment; (d) corporations; (e) collection and enforcement of property taxes; (f) forfeited, delinquent, waste and unappropriated lands; (g) real property and estates therein; (h) domestic relations and family law, (i) revision and codification of the statutes of the State; (j) election laws; and (k) other matters of a nature not deemed properly referable to any other standing committee.

11. Committee on Political Subdivisions: (a) Counties, districts and municipalities generally; (b) division of the State into senatorial districts and apportionment of delegate representation in the House; and (c) division of the State into districts for the election of representatives to Congress.

12. Committee on Roads and Transportation: (a) Highways, public roads, railway, canals and waterways, aeronautics, aircraft and airways, (b) motor vehicle administration and registration; (c) licensing of motor vehicle operators and chauffeurs; (d) traffic regulation and laws of the road; and (e) regulation of motor carriers of passengers and property for hire.

13. Committee on Rules: (a) Rules, joint rules, order of business and parliamentary rules in general; (b) recesses and final adjournments of the House and the Legislature; (c) payment of money out of the contingent or other fund of the House or creating a charge upon the same; (d) employees and services to the House, and purchase of furniture, supplies and office equipment; (e) election and qualification of members of the House and state officers, privileges of members and officers of the House, and witnesses attending the House or any committee thereof, (f) punishment of members of the House for disorderly conduct, and punishment of any person not a member for contempt, disrespectful behavior in the presence of the House, obstructing its proceedings, and for any assault, threat or abuse of a member of the House; (g) House printing; (h) House Library, statuary and pictures, acceptance or purchase of works of art for the Capitol, purchase of books and manuscripts for the House, erection of monuments to the memory of individuals; and (i) sale of food and administration and assignment of

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office space in the House wing of the Capitol. (HR 4, Reg. Sess., 1947; HR 2, Reg. Sess., 1967; HR 4, Reg. Sess., 1977; HR 6, Reg. Sess., 1981.)

\*\*\* TOTAL RECORDS PRINTED - 9 \*\*\*

HB 2219  
House Judiciary Committee  
February 9, 1995

Testimony of Gary Jarchow  
Court Trustee, 18th Judicial District of Kansas

Representative O'Neal and members of the committee:

Thank you for the opportunity to appear before you to tell you why I support House Bill No. 2219.

I have been involved in child support enforcement work for over 24 years, first as an assistant district attorney in Sedgwick County and since July of 1985 as the Court Trustee there. I am involved daily in having income withholding orders served on Kansas employers.

In almost all our cases employers are very diligent and conscientious in following the Kansas income withholding law. The purpose of the law, to ensure prompt and regular payment of child support to custodial parents, is achieved by prompt and regular payments to the court by the employer.

There are, however, numerous instances in Sedgwick County each year in which an employer either fails to withhold after being served an income withholding order or does not remit payments withheld in a timely manner. When this happens, our first course of action is to contact the employer. We usually discover that the failure to withhold is due to an oversight or some mistake, and the employer promptly corrects the error. No further action is necessary.

Many times, however, the employer repeatedly fails to withhold or is late in sending in the money withheld. At any one time, there are an average of about a dozen cases in our office which fall in this category. Just last week, an employer told my legal assistant that he had not sent in the money withheld because of a "cash flow" problem. The same employer had given me the same excuse last November. Other employers have flat out told me that the reason they have not withheld is because they do not agree with the withholding law, that they think it is the employee's responsibility to make child support payments and not theirs. I believe, however, that the real reason in some cases is that there is collusion between the employee and employer because of personal friendship between them.

K.S.A. 23-4,108 (1)(i), which was meant to address problems of failure to withhold, presently only provides for a mandatory judgment against an employer or other payor of income in the amount that should have been paid in under the withholding order. This is not an adequate sanction against an employer whose failure to withhold and/or pay in is willful. Even though the section also provides for a possible judgment against an employer for the entire amount of the arrearage, our judges are reluctant to impose such a severe penalty, especially when the amount of arrearage in child support is large.

The suggested amendment provides for a mandatory penalty which is more severe, but not too severe. Its use would protect the worker by helping ensure that wages were not misappropriated by an employer and that the worker's child support obligation was promptly met by the employer. And, of course, it would help the custodial parent by ensuring that future payments by the employer were made in a more timely manner.

A severe penalty is already provided by Kansas law for employers who intentionally fail to pay wages in a timely manner [K.S.A. 44-315(b)]. A parent's not getting child support on time creates just as great a problem for the parent as a worker's not getting paid on time creates for a worker. Food and clothing cannot be bought, bills cannot be paid on time. When this occurs because of the intentional act of the employer, it is not unfair to impose a more severe mandatory penalty than the employer having to do what should have been done already.

I urge your favorable consideration of this bill.