

Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on February 11, 2011, in Room 548-S of the Capitol.

All members were present, except Senators Bruce and Donovan, who were excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Others attending:

See attached list.

The Chairman called the committee's attention to a letter from Senator Petersen withdrawing his request for the committee to introduce a bill creating the crime of participation in a criminal enterprise (Attachment 1). There was no objection to honoring the request.

The Chairman called the committee's attention to a letter from Nancy Parrish, Chief Judge of the Third Judicial District, expressing support for **SB 37 -- Sentencing; payment of fines; employment of county and city prisoners** (Attachment 2).

Committee Action:

The Chairman called the committee's attention to **SB 6 -- Criminal procedure; search incident to an arrest**.

Senator Haley moved, Senator Kelly seconded, that SB 6 be passed.

Senator Vratil made a substitute motion, Senator Pilcher-Cook seconded, to strike lines 1 through 12 on page 1 and to repeal the section. The motion was adopted.

Senator Schodorf asked, "What are the consequences of repealing the section?"

Senator Vratil responded, "Searches incident to an arrest would be governed by federal and state case law.

Senator Vratil moved, Senator Kelly seconded, that SB 6 be passed as amended. The motion was adopted.

Senator Haley voted no on the motion and asked that his vote be so recorded.

The Chairman called the committee's attention to **SB 23 -- Juvenile Jury Trial**.

Senator Vratil moved, Senator Schodorf seconded, that SB 23 be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 36 -- Exemption from creditors for assets held in qualified retirement plans and regular and Roth individual retirement accounts**.

Senator Schodorf moved, Senator King seconded, that SB 36 be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 55 -- Amending the crime of harassment by telecommunications device**.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on February 11, 2011, in Room 548-S of the Capitol.

Jason Thompson, Staff Revisor, distributed copies of a balloon amendment to **SB 55** (Attachment 3). The amendment would:

- Make the wording in the statute consistent
- Clarify the definition of a telecommunications device
- Specify other offenses which a person who violates the provisions of Section 1 also may be prosecuted

Senator King asked, "What is the meaning of the word "filthy" as used in line 11?"
Mr. Thompson said that he would have to check case law to be sure of its meaning.

Senator Vratil moved, Senator King seconded, that the word "filthy" be deleted in line 11. The motion was adopted.

Senator Vratil moved to further amend the bill, Senator Kelly seconded, by adopting the amendments proposed in the balloon distributed by Mr. Thompson. The motion was adopted.

Senator Schodorf moved, Senator Vratil seconded, that **SB 55** be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **SB 56 -- Amending the crime of criminal sodomy.**

Senator Vratil moved, Senator Haley seconded, that **SB 56** be passed. The motion was adopted.

Senators Lynn, Umbarger, King and Pilcher-Cook voted no on the motion and requested that their votes be so recorded.

Meeting adjourned at 10:30 A.M. The next meeting is scheduled for February 14, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 11, 2011

[illegible]

STATE OF KANSAS

2608 S.E. DRIVE
WICHITA, KANSAS 67216
(316) 264-1817

STATE CAPITOL, ROOM 224-E
TOPEKA, KANSAS 66612
(785) 296-7355
mike.petersen@senate.ks.gov



SENATOR MIKE PETERSEN

COMMITTEES
VICE CHAIR: UTILITIES
MEMBER: TRANSPORTATION
ETHICS & ELECTIONS
JOINT COMMITTEE ON
INFORMATION TECHNOLOGY

February 10, 2011

Chairman Owens,

I would like to withdraw my request for the committee to introduce a bill creating the crime of participation in a criminal enterprise.

Thank you,

A handwritten signature in cursive script that reads "Mike Petersen". The signature is written in dark ink and is positioned below the typed name "Senator Mike Petersen".

Senator Mike Petersen

Senate Judiciary

2-11-11

Attachment 1



KANSAS DISTRICT COURT

Chambers of
NANCY E. PARRISH
Chief Judge

Shawnee County Courthouse
Division Fourteen
Topeka, Kansas 66603-3922
(785) 233-8200 Ext. 4067
Fax (785) 291-4917

Officers:
NORMA DUNNAWAY
Administrative Assistant
APRIL SHEPARD
Official Court Reporter

Senate Committee on Judiciary
February 7, 2011
Testimony in Support of Senate Bill 37

Chairman Owens and members of the Senate Judiciary Committee, thank you for the opportunity to provide written testimony in support of Senate Bill 37. Senate Bill 37 corrects an inconsistency in Kansas statutes. Currently, K.S.A. 8-1567(j), the DUI statute, provides that in lieu of payment of a fine, the court can order that a defendant perform community service and receive a credit of \$5.00 for each full hour spent in that community service.

The purpose of SB 37 is to give a defendant who is housed in the county jail and convicted of other crimes the same amount of credit for community service as that provided in DUI cases. I, respectfully request your support of Senate Bill 37.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy Parrish".

Nancy Parrish
Chief Judge, Third Judicial District

Senate Judiciary

2-11-11

Attachment 2

SENATE BILL No. 55

By Committee on Judiciary

1-25

Prepared by
Jason Thompson
Senior Assistant

Senate Judiciary
2-11-11
Attachment 3

1 AN ACT concerning crimes and punishment; relating to harassment by
2 telecommunication device; amending section 184 of chapter 136 of
3 the 2010 Session Laws of Kansas and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. Section 184 of chapter 136 of the 2010 Session Laws of
7 Kansas is hereby amended to read as follows: Sec. 184. (a) Harassment
8 by telecommunication device is the use of:

9 (1) ~~Telephone communication~~ *A telecommunications device to:*

10 (A) Knowingly make or transmit any comment, request, suggestion
11 or, proposal, *image or text* which is obscene, lewd, lascivious, filthy *for*
12 indecent;

13 ~~(B) make a telephone call, whether or not conversation ensues, or~~
14 ~~transmit a telefacsimile communication with intent to abuse, threaten or~~
15 ~~harass any person at the called number;~~

16 ~~(B) make or transmit any comment, request, suggestion, proposal,~~
17 ~~image or text with intent to abuse, threaten or harass any person at the~~
18 ~~receiving end;~~

19 ~~(C) make or cause the telephone of another ring a~~
20 ~~telecommunications device to repeatedly ring or activate with intent to~~
21 ~~harass any person at the called number receiving end;~~

22 ~~(D) make repeated telephone calls, during which conversation~~
23 ~~ensues, or repeatedly transmit a telefacsimile communication with intent~~
24 ~~to harass any person at the called number;~~

25 ~~(E) (D) knowingly play any recording on a telephone, except~~
26 ~~recordings such as weather information or sports information when the~~
27 ~~number thereof is dialed, unless the person or group playing the recording~~
28 ~~shall be identified and state that it is a recording; or~~

29 ~~(F) (E) knowingly permit any telephone or telefacsimile~~
30 ~~communication machine telecommunications device under one's control~~
31 ~~to be used in violation of this paragraph.~~

32 (2) Telefacsimile communication to send or transmit such
33 communication to a court in the state of Kansas for a use other than court
34 business, with no requirement of culpable mental state.

5 (b) Harassment by telecommunication device is a class A nonperson
6 misdemeanor.

(B) make or transmit a call, whether or not conversation ensues, with intent to
abuse, threaten or harass any person at the receiving end; (A)

(C)

(D)

(E)

(F)

(c) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING."

(d) As used in this section, ~~"telefacsimile communication" means the use of electronic equipment to send or transmit a copy of a document via telephone line~~ "telecommunications device" includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of ~~telephone lines or services~~.

Sec. 2. Section 184 of chapter 136 of the 2010 Session Laws of Kansas is hereby repealed.

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

(B) an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto.

(e) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in sections 72, 73, 74 or 212 of chapter 136 of the 2010 Session Laws of Kansas.

(C)