

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on February 21, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Allen (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Senator David Adkins
Trista Curzydlo, Kansas Bar Association (written only)

Others attending: see attached list

SB 185 - Concerning driving under the influence; eliminating the voluntary intoxication defense

Chairman Vratil opened the hearing on **SB 185**. Senator Adkins testified in support of **SB 185** which provides Kansas law enforcement with another valuable tool to address drunk driving. He said that this legislation would provide for forfeiture of vehicles upon a third DUI offense with the proceeds being split between the law enforcement agency making the arrest and a DUI crime victims fund administered by the Attorney General. He added that the bill would also repeal the defense of voluntary intoxication in both criminal and civil proceedings. He attached to his written testimony a series of memoranda prepared by the UMKC law students that included a legislation statutory comparison, constitutional analysis of forfeiture, and a summary of Kansas vehicle forfeiture. (Attachment 1)

Discussion and questions regarded some of the asset forfeiture funds possibly going to drug education and treatment programs, voluntary intoxication defense in Kansas, and proof of intent issue.

Trista Beadles Curzydlo submitted written testimony on behalf of the Kansas Bar Association in opposition to **SB 185**. Ms. Curzydlo clarified KBA's concern regarding the Kansas standard asset seizure and forfeiture act. She stated that **SB 185** requires a conviction for an individual to be sentenced, but the proposal is not clear on if conviction is required prior to triggering seizure of the automobile or vessel. She said that the KBA is strongly opposed to any legislation that allows for seizure and forfeiture to occur without a conviction. Ms. Curzydlo also said another area of concern that needs remedied is that this bill allows for a law enforcement officer to seize an automobile or vessel "used in the commission" of the crime when the property seized may not belong to the individual charged with the crime. (Attachment 2)

Kyle Smith, Kansas Bureau of Investigation, commented briefly on the voluntary intoxication issue and the prosecution of some past cases.

After Committee discussion, the Chair closed the hearing on **SB 185**.

Final Action on:

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 21, 2003 in Room 123-S of the Capitol.

SB 123 - Drug convictions; possession is a level D4 classification; mandatory drug treatment; border boxes on D4 replaced with probation boxes

Chairman Vratil reviewed **SB 123**, and called for discussion and consideration of proposed amendments submitted by the Kansas Sentencing Commission. (Attachment 3) He explained that the concern of the opponents who testified on this bill focused on the retroactive provisions. He talked about the example given by one of the opponents to this bill of an offender charged with a Level 2 drug offense, and through plea bargaining the individual pleads guilty to D4 offense, which the result would be to make him eligible for a drug treatment program even though there was evidence that the severity of the offense was greater than D4. The Chair said he believed that information would be included in either the pre-sentencing report or the public safety review that would occur in each one of these cases so that information would be available to the judge in deciding whether that individual is a treat to public safety or eligible for the program.

After considerable discussion, questions, and clarifications by Barbara Tombs of the Kansas Sentencing Commission, the Chair called for a motion on the amendments proposed by the Kansas Sentencing Commission. Senator Goodwin made a motion to amend the bill with the amendments proposed by the Kansas Sentencing Commission, seconded by Senator Haley, and the motion carried.

Chairman Vratil distributed copies of the Department of Corrections proposed amendments to **SB 123**, and asked the Committee members to review them before the next meeting. (Attachment 4)

The Chair announced the Committee would continue final action on **SB 123** at the next scheduled meeting.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 24, 2003.