

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on January 29, 1993 in Room 514-S of the Capitol.

All members were present except: All present.

Committee staff present: Michael Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Nancy Lindberg, Office of the Attorney General
Kyle G. Smith, Assistant Attorney General, Kansas Bureau of Investigation
Ron Smith, Kansas Bar Association

Others attending: See attached list

INTRODUCTION OF BILLS

Nancy Lindberg, Office of the Attorney General, requested introduction of six bills as described in her memorandum pertaining to the following subjects: (1) enhanced civil penalties when elder or disabled persons are targeted; (2) deceptive acts and practices defined; (3) remedies of the Attorney General and procedure regarding consumer law; (4) training for law enforcement; (5) sentencing hearing for victims; (6) DOC notification; and (7) juvenile notification to victims (Attachment 1). Senator Bond moved introduction of the bills as outlined. Senator Vancrum seconded. Motion carried.

Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation, requested introduction of four bills as follows (Attachment 2):

1. a measure to allow at trials the admission of a certificate of laboratory results for blood alcohol and drug tests to deal with the problem of backlogs resulting from too few criminalists available to testify. Senator Parkinson moved introduction of the bill. Senator Vancrum seconded. Motion carried.
2. a bill to amend probation and parole statutes to allow a search of the convicted person, their residence and vehicle by the probation officer if the officer has a reasonable suspicion they are violating their probation; modeled on an anti-gang statute in California. Senator Emert moved introduction of the bill. Senator Bond seconded. Motion carried.
3. a measure to require that within 30 days of moving, convicted pedophiles register with the sheriff of the new county of residence. Senator Emert moved introduction of the bill. Senator Parkinson seconded. Motion carried.
4. a proposal to change the wording in the lethal force statute, K.S.A. 21-3215 from "reasonably believes" to "has probable cause" per findings by the U.S. Supreme Court. Mr. Smith stated this could be an amendment to another criminal justice bill. Senator Emert moved introduction of the bill. Senator Parkinson seconded. Motion carried.

Ron Smith, Kansas Bar Association, requested the re-introduction of 1991 HB 2052 which deals with the ability of courts to impose alternative dispute resolution fees out of settlements and judgments. Senator Bond moved introduction of the bill. Senator Oleen seconded. Motion carried.

Chairman Moran asked the Committee to introduce a bill requested by Senator Wisdom that amends K.S.A. 22-2911 dealing with diversion agreements providing that they be maintained in a confidential manner after completion of diversion. Senator Emert moved introduction of the bill. Senator Vancrum seconded. Motion carried.

Senator Emert requested the introduction of a bill to allow the use of videotapes "only" of minor children at preliminary hearings if they are the victims of a crime. Senator Emert's request served as the motion to introduce. Senator Bond seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m.
on January 29, 1993.

The meeting was adjourned at 10:40 a.m. The next meeting is scheduled for February 2, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-29-93

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January 29, 1993

TO: Senate Judiciary Committee
FROM: Attorney General Bob Stephan
RE: Legislative Requests

1. Enhance Civil Penalties - Amend K.S.A. 50-636 to enhance civil penalties when elder and/or disabled persons are targeted.
2. Deceptive Acts and Practices, Defined - Amend K.S.A. 50-626 to: 1) amend the Consumer Protection Act to include a prohibition against unsubstantiated claims by suppliers; 2) add that a supplier may not willfully make a false statement of material fact; and 3) bring into line the state of mind requirement for concealment, suppression or omission of material fact with the state of mind requirement for failure to state a material fact.
3. Remedies of the Attorney General and Procedure - 1) Amend K.S.A. 50-632(c)(4) to protect assets available to reimburse consumers; 2) amend K.S.A. 50-632(c)(6) concerning the standard for issuing a temporary restraining order under the Kansas consumer protection act; 3) amend K.S.A. 50-636 to clarify that violations which are continuing in nature become separate violations for each day the act or practice exists; and 4) amend K.S.A. 50-638 to establish the courts jurisdiction over any supplier engaging in any consumer transactions in this state.
4. Training for Law Enforcement - Amend K.S.A. 74-5607a(b) to mandate training for law enforcement on domestic violence and sexual assault. Statute should include state funding to do the training.
5. Sentencing Hearing - Amend K.S.A. 22-3424 (4) (c) - Since the victims' rights constitutional amendment passed, all victims have a right to be heard at sentencing. "...before imposing a sentence the court shall allow a victim or victim's family to address the court.

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Attachment 1

6. DOC Notification - Amend K.S.A.22-3718 to require notification by DOC to include chapter 21 article 33 when it is a crime against person, sex offense, or family relationship. Also, amend K.S.A 22-3718 to include notification of escape or when prisoner is dead.

7. Juvenile Notification - Amend K.S.A. 38-1652 and K.S.A. 74-7335 to allow victims and victims' families to be present for proceedings against juveniles who commit crimes against them. Also, clarify the notification statute K.S.A. 74-7335 by adding "the city attorney or municipal court clerk" for notifying victims of municipal court.



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ROBERT T. STEPHAN
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LEGISLATION REQUESTS
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
JANUARY 29, 1993

Mr. Chairman and Members of the Committee:

As most of you are aware, I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI), and I appreciate this opportunity to request legislation be introduced through this committee.

1. Use of Laboratory Certificates at Trial - In FY 92 approximately 66% of the cases wherein KBI Forensic Examiners are subpoenaed, they do not testify. Upon arrival, either the case is continued or the defendant enters a plea. Coupled with the dramatic increase in DUI and drug case subpoenas, the caseload is becoming overwhelming (see attachments). This results in an extreme waste, not only of the Criminalist's time, but consequentially creates additional scheduling problems for other trials as the Criminalist is obviously not conducting background exams or testifying elsewhere while traveling to and from the 'non' hearing. The resulting backlog slows down an already burdened system.

Inasmuch as there are not sufficient appropriations to hire enough Criminalists to meet the demand, we would propose adopting, a provision whereby a 'laboratory certificate' of the results of alcohol and drug tests would be prima facie evidence and admitted at trial in lieu of

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Attachment 2

actual testimony. Such statutes which have been adopted by at least twelve other states, provide that upon notice and hearing, the actual presence of the Criminalist can be compelled by the defense or the state, but experience has shown that it does significantly cut down the number of court cases. We would suggest this certificate provision be allowed in those cases involving blood alcohol exams and cases involving controlled substances violations. Such testimony is rarely challenged or a real issue at trial.

These certificates typically require that they be sworn, that the Criminalist provide information as to the type of analysis performed, results achieved, any conclusions reached upon that result, that the subscriber was the one who performed the analysis and made the conclusions, that the evidence seal was intact when received, the Criminalist's training and experience to perform the analysis, and the nature and condition of the equipment used.

At this time we are recommending New Jersey's Statute 2C:35-19 be the format followed. We believe this would result in a substantial savings to the State of Kansas and a speedier, more efficient administration of justice in Kansas with no loss of protection in those cases where the lab results are really at issue.

2. Modeled on an anti-gang statute from California, the KBI would request that the statutes dealing with probation and parole be amended to require as a standard condition of such supervision (absent any more restrictive condition), that the convicted person being supervised, their residence and vehicle are subject to search by the parole or probation

officer whenever said officer has a reasonable suspicion to believe they are violating the conditions of their supervised release.

Such a statute was affirmed by the United States Supreme Court as being constitutionally permissive. The California statute goes farther and requires that a probationer waive of any objection to such searches as a condition of probation. The probation officers are then teamed with law enforcement officers to target individuals who are seen running with gang members after their release.

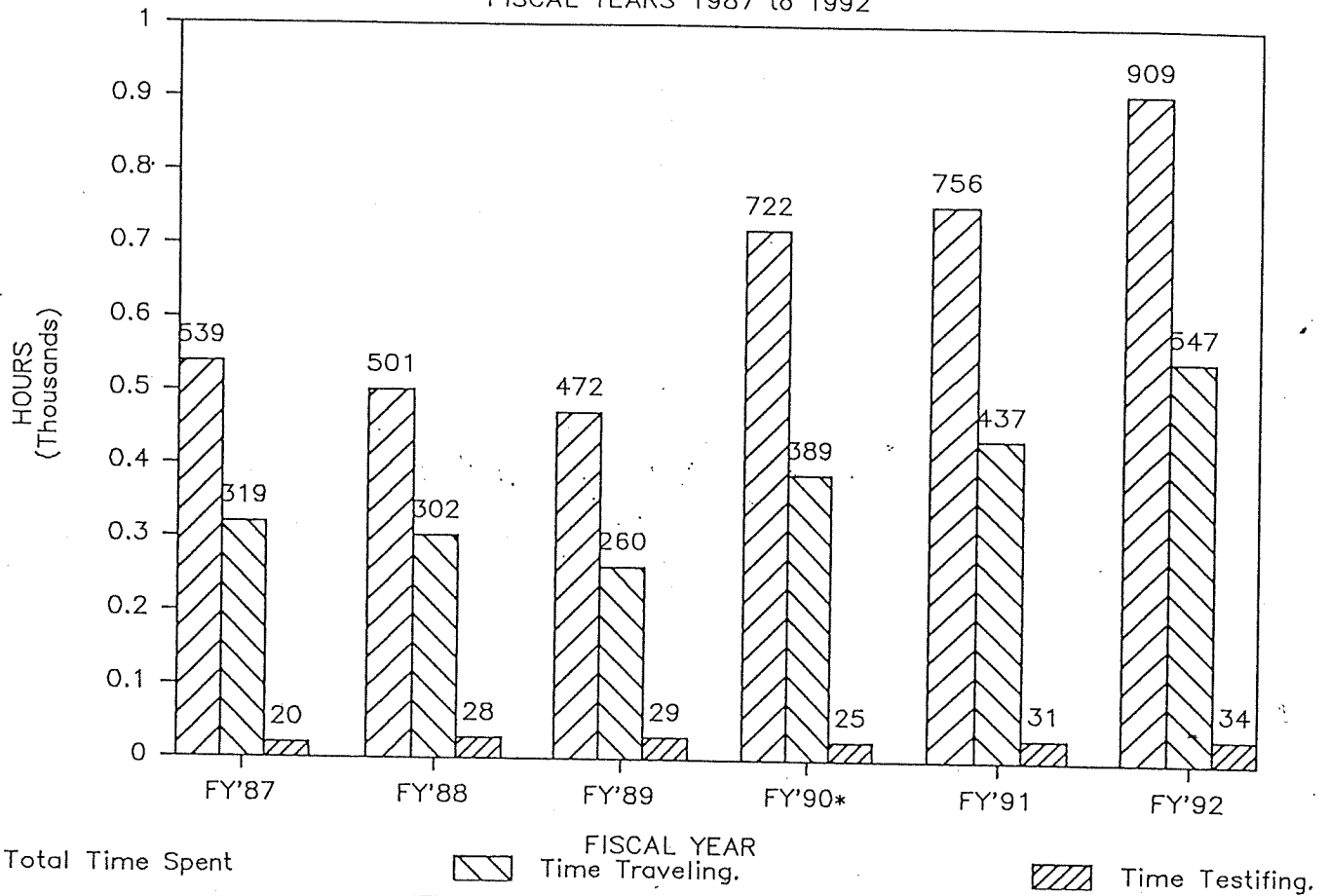
3. In response to the higher recidivist rate of sex offenders, in particular, pedophiles, the KBI would request that a statute be passed requiring a person convicted of a Section 35 or 36 crime be required, within 30 days of moving, to register with the sheriff of the county of their new residence. While probation and parole officers may have this information, it is not generally available to law enforcement and we believe that such information could help protect our children and our communities.

4. The Kansas statute explaining the use of lethal force to be used by law enforcement officers, K.S.A. 21-3215, contains language that differs slightly from what the United States Supreme Court has found to be the law. Perhaps, as an amendment to some other criminal justice bill there could be the technical correction changing "reasonably believes" to "has probable cause" in the third sentence of that statute.

Thank you again for this opportunity and I would be happy to answer any questions about these proposed bills.

KBI TOXICOLOGY COURT DATA

FISCAL YEARS 1987 to 1992



*First year of more than one person doing the BAT analysis.

SUBPOENA STATISTICS

	FY'87	FY'88	FY'89	FY'90	FY'91	FY'92
Number Received:	323	493	491	575	567	681
Times Testified:	37	38	40	45	50	52

**TOXICOLOGY
FY'92 in REVIEW**

From Fiscal Year 1991 to Fiscal Year 1992:

CASES

DUI-Drug case submissions up 14%.

BAT case submissions down 5%.

Total Toxicology case submissions down 2%.

COURT

Subpoenas received up 20%.

Total time spent on court up 20%.

Time spent traveling due to court up 25%.

Times testified up 0.4%.

The percentage of times testified verses times appeared dropped from 47% in FY'91 to only 34% in FY'92.