

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 10:40am on Thursday, January 21, 2016, 346-S of the Capitol.

All members were present except:
Senator Terry Bruce – Excused

Committee staff present:
Robert Gallimore, Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Natalie Scott, Office of Revisor of Statutes
Lauren Douglass, Legislative Research Department
Natalie Nelson, Legislative Research Department
Suzanne Nelson, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:
Todd Thompson, Leavenworth County Attorney, on behalf of the Kansas County and District Attorney's Association (KCDAA);
Jennifer Roth, on behalf of the Kansas Association of Criminal Defense Lawyers (KACDL);

Others in attendance:
[See Attached List](#)

Bill introductions

Senator Marci Francisco requested a committee bill that amends K.S.A. 75-4319 relating to the justifications for closing meetings, clarifying the references to other statutes, and eliminating the reference to two statutes that no longer exist. There being no questions or objections from the committee, the bill will be introduced.

Senator Molly Baumgardner requested introduction of a bill that pertains to open records and is an amended version of 2015 SB306 that was introduced last session. There being no questions or objections from the committee, the bill will be introduced. The Chair clarified that this new bill is being introduced so there will be no confusion between this bill and the bill that was introduced during the last session.

There being no other bill requests or introductions, Chair King opened the hearing on **SB327**.

Hearing on: SB327 — Allowing hearsay at preliminary hearings.

Jason Thompson gave an overview of the bill, which deals with changes to K.S.A. 22-2902, the preliminary examination statute under the code of criminal procedure. The changes requested are in lines 27 and 30. The stricken verbiage would alter the law to allow for the finding of probable cause in a preliminary hearing based on hearsay evidence, such as a videotape recording, regardless of the age

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of the child.

Jason answered a question from Senator Smith pertaining to hearsay evidence exceptions in other types of hearings. Jason stressed that in the bill before the committee, the change involves only preliminary examinations and victims or witnesses less than 13 years of age.

Todd Thompson, Leavenworth County Attorney, presented proponent testimony on behalf of KCDA. He related that passage of this bill would create cost and time savings for the Judiciary, defendants and prosecutors' offices. The cost of witness fees assessed to the defendant and the number of hours spent in court by all parties would be decreased. Because citizens would not be subjected to testify twice for their cases, e.g., the preliminary hearing and trial, the trauma and frustration these victims and witnesses experience would be reduced. Todd Thompson, together with Dan Dunbar, answered questions from Senator Smith, Senator Knox, Senator Love, and Chair King. ([Attachment 1](#))

There being no other questions and seeing no one else who wanted to give oral proponent testimony, the Chair directed the committee's attention to the written-only proponent testimony as follows:

Assistant Attorney General Steven Karrer on behalf of Attorney General Derek Schmidt ([Attachment 2](#));

Ed Klumpp, on behalf of the Associations of Kansas Chiefs of Police, Sheriffs, and Peace Officers ([Attachment 3](#));

Dan Dunbar, former prosecutor for Shawnee, Douglas, and Franklin counties ([Attachment 4](#)).

Jennifer Roth, on behalf of KACDL, presented testimony in opposition to **SB327**. She related that making these changes could hurt the state, defendants, victims, witnesses, and other participants in the criminal justice system. She declared that undoing this policy that has existed for almost 50 years and making the use of hearsay the rule rather than the exception is troubling. Ms. Roth further commented that more motions to suppress would be filed, thus creating more court time, not less.

She spoke about some concerns she has if this policy of hearsay use becomes the rule, not the exception, in our state. She closed by making three suggestions:

- 1) Require a baseline determination of reliability;
- 2) Require recording of victims' and witnesses' statements; and
- 3) Make criminal depositions more accessible to defendants.

Ms. Roth stated that this policy has evolved over almost 50 years and the legislature has always carved out new exceptions, rather than making hearsay the rule. She asked the committee to think about this in its consideration of **SB327**. ([Attachment 5](#))

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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Chair King asked for further opponents or neutral testimony. Seeing none, the Chair closed the hearing on **SB327**.

Possible action on bills previously heard

Chair King turned the committee's attention to working **SB22**. He called upon Nancy Strouse, Executive Director of the Kansas Judicial Council, who returned today with an answer to a question posed by Senator Petty at yesterday's hearing on **SB22**. Ms. Strouse related that currently, none of the Clerks of the District Court have the capability to electronically send certified copies of expungement orders to Clerks of the Municipal Courts. However, she continued, if and when the Clerks have that capability, **SB22** would absolutely allow them to make that kind of transmission of the documents.

Jason Thompson spoke briefly about the substitute bill and recommended that if the committee considers **SB22**, they adopt the substitute version containing the amendments to the 2015 bill.

*Senator Pettey moved that **Sub SB22** be adopted; seconded by Senator Haley; the motion carries.*

*Senator Pettey moved that **Sub SB22** be recommended favorably for passage; seconded by Senator Haley; the motion carries.*

Chair King turned the committee's attention to action on **SB19**.

*The Chair moved the committee adopt the amendments to **SB19**; seconded by Senator Petersen; the motion passes.*

*Senator Petersen moved that **SB19** as amended, be recommended favorably for passage; seconded by Senator Love; the motion carries.*

All business for the day being concluded, the meeting adjourned at 11:35 am. The next meeting will be Tuesday, January 26, 2016 at 10:30 am.