

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on March 5, 1985 in room 514-S of the Capitol.

All members were present except: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Jimmy D. Huff, Salina Police Department
Richard LaMunyon, Wichita Police Department
Bob Clester, Kansas Sheriffs Association
John Smith, Kansas Department of Revenue

Senate Bill 306 - Change of definitions of burglary and aggravated burglary.

Jimmy D. Huff, Salina Police Department, testified the department had requested this bill as a result of an investigation in Salina where a known burglar was turned loose by the courts when they were unable to prove a theft or a felony had been committed within. A copy of his testimony is attached (See Attachment I).

Richard LaMunyon, Wichita Police Department, stated the Kansas Chiefs of Police are in support of the bill. He said this bill would assist the law enforcement in some rare cases. He doesn't feel it is a problem case that is going to crowd the courts. If it is a misdemeanor the case has to be taken through the district court. He feels more comfortable taking the individual through district court and place in proper facility for testing, or whatever court would allow. This is a method to stop a loophole that exists in the burglary statute. Committee discussion followed with Mr. Huff.

Bob Clester, Kansas Sheriffs Association, testified the association has the same apprehensions and doubts that were raised in Salina. They felt closing this one loophole might be an advantage for them.

A committee member inquired, you are trying to do away with criminal intent, how do you justify that? Mr. LaMunyon explained, under the burglary statute, we couldn't get to this particular person. Committee discussion followed.

Senate Bill 307 - Consideration of D.U.I. diversion to require report of insurer as to coverage.

John Smith, Kansas Department of Revenue, testified drivers who enter into a diversion agreement in lieu of further criminal proceedings on a charge of driving under the influence of alcohol or drugs avoid the penalties for a first D.U.I. conviction. A copy of his testimony is attached (See Attachment II). Senator Frey, who had requested the bill, explained as a result of the diversion, people were getting their insurance cancelled. Mr. Smith responded, the department has talked to Fletcher Bell and the insurance companies can't do that. If you have a good clean driving record, there is nothing an insurance company can do. Committee discussion followed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./p.m. on March 5, 1985.

Senate Bill 167 - Admissibility of videotaped testimony by child witnesses in certain cases.

Senator Gaines had requested an attorney general's opinion regarding the bill (See Attachment III).

Following committee discussion, Senator Burke moved to report the bill favorably. Senator Gaines seconded the motion. Further committee discussion was held and Senator Burke withdrew his motion.

Senator Burke moved to amend the bill by adopting the proposed amendments presented by the Kansas Bar Association and also to provide for admissibility two weeks before hearing. Senator Steineger seconded the motion. The motion carried.

Senator Winter made a conceptual motion to amend the bill to allow use of earlier testimony in criminal proceedings. Senator Parrish seconded the motion. The motion carried.

Senator Burke moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

Senate Bill 110 - Medical malpractice procedures and limitations.

Senator Frey presented his proposal to the committee and explained this will be a substitute bill.

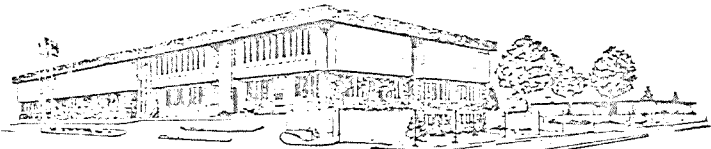
Senator Talkington presented his proposal to the committee.

The meeting adjourned.

Copy of guest list attached (See Attachment IV).

3-5-86

CITY OF SALINA



CHIEF OF POLICE

JOHN WOODY
AREA CODE 913-825-0571

SALINA POLICE DEPARTMENT

255 N. 10TH STREET
P.O. BOX 1086 SALINA, KANSAS 67402-1086

March 4, 1985

Sirs:

I am here as a representative of the Salina Police Department and the Kansas Peace Officers Association. The Salina Police Department had required this bill as a result of an investigation in Salina where a known burglar was turned loose by the Courts when we were unable to prove a theft or a felony had been committed within.

The burglar, in Salina, had committed a number of house burglaries where he entered a residence to "talk" to the persons inside, or "just look around." He would never commit a theft or a felony; therefore no burglary. It is needless to say that it was very difficult to explain to the victims involved that this subject was harmless and had no felony intent, when they would awake and find this subject in their bedroom saying he just wanted to talk.

In closing, I would point out that at a joint meeting of the Kansas Sheriff's Association and the Kansas Chiefs of Police, we voted unanimously to support this legislation, with the comment that a number of law enforcements had experienced this same problem.

Sincerely

John Woody
Chief of Police

Jimmy D. Huff
Captain

JH:sb

3/5/85 AM
Attach. I

3-5-85



Kansas

DEPARTMENT OF REVENUE

State Office Building
TOPEKA, KANSAS 66626

SENATE BILL NO. 307

Drivers who enter into a diversion agreement in lieu of further criminal proceedings on a charge of driving under the influence of alcohol or drugs avoid the penalties for a first D.U.I. conviction which include:

- 1. Not less than 48 hours imprisonment or 100 hours of public service.
- 2. Entry of a D.U.I. conviction on their public driving record.
- 3. A restriction or revocation of their driving privileges.

Such drivers are, however, required to have their insurance companies maintain on file with the Division of Vehicles proof of motor vehicle liability insurance for a period of three (3) years. This seems a small price to pay since State law requires all vehicle owners to maintain such insurance. The only difference is that these people must maintain evidence of such insurance on file with the division. In the interest of public safety this is no more than reasonable.

At the present time, if such person has an otherwise good driving record, their insurance policies cannot be cancelled nor non-renewal nor can their rates be increased even if the company knows of the diversion.

To remove this requirement may permit a potentially dangerous-and uninsured-driver to operate a motor vehicle on the highways.

SR-22 REQUIRED FY85

<u>D.U.I.</u>	<u>DIVERSIONS</u>	<u>NO INSURANCE</u>	<u>OTHER REASONS</u>	<u>TOTAL</u>
3,000	2,500	15,000	1,500	22,000

John W. Smith
Chief Administrator
Driver Licensing & Control

3/5/85
Attach. II



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

March 5, 1985

Senator Robert Frey, Chairman
Members of the Senate Judiciary Committee
State Capitol
Topeka, Kansas

Re: S.B. 167 - Videotape Testimony

Dear Senators:

Late last week I was requested to issue an opinion regarding the constitutionality of S.B. 167. Since your Committee needs an answer so quickly, I have chosen to respond by letter, rather than by formal opinion.

S.B. 167 would allow a child under 13 years of age who has been the victim of or a witness to child abuse or neglect or a victim of a crime to give a statement or testimony outside the courtroom on videotape which could then be admitted into evidence in a legal proceeding brought pursuant to the Kansas Code for the Care of Children or in a criminal case in which the child was the alleged victim. The issue is whether such a procedure would violate the Sixth Amendment right to confront one's accusers. Although there appear to be no cases which specifically resolve the issue as to videotaped testimony, recent cases on the right of confrontation would support the conclusion that S.B. 167 is constitutional as drafted.

Courts have held that the right of confrontation in criminal cases is not absolute, as is evidenced by the many exceptions to the hearsay rule. While the confrontation clause indicates a preference for face-to-face confrontation at trial, hearsay may be admitted in some instances if the

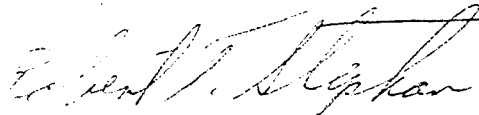
3/5/85
Attch. III

Senator Robert Frey, Chairman
Members of the Senate Judiciary Committee
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declarant is unavailable and there is a showing of "indicia of reliability." See State v. Rodriguez, 8 Kan.App.2d 353 (1983); State v. Pendleton, 10 Kan.App.2d 26 (1984). The Kansas Court of Appeals has determined that K.S.A. 60-460(dd) which permits child-victim hearsay to be admitted at trial does not violate the Sixth Amendment. The proposed bill permits far more confrontation than does K.S.A. 60-460(dd), by permitting defense counsel to be present and to cross-examine, and the defendant to view the child victim-witness without face-to-face contact. The bill establishes specific requirements as to the findings the court must make before such recording may be taken and admitted, and specifies how and by whom the recording may be made. In view of these safeguards and the above-mentioned cases, we believe S.B. 167 is constitutional.

I am greatly concerned with the difficulties in prosecuting child abusers and with the added emotional trauma prosecution may cause the victim. In that this bill would lessen the trauma and could enhance the chances of successful prosecution, I support it and urge your favorable recommendation.

Very truly yours,



Robert T. Stephan
Attorney General

RTS:BLH:may

Attch. III