

Approved March 5, 1987  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

Noon  
12:00 ~~xxxxx~~ a.m. on March 4, 1987 in room 519-S of the Capitol.

All members ~~were~~ present ~~except~~: Senator Frey, Hoferer, Feleciano, Gaines, Langworthy and Parrish.

Committee staff present:

Mike Heim, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys  
Clark Owens, Sedgwick County District Attorney  
Nick Tomasic, Wyandotte District Attorney  
Marjorie Van Buren, Office of Judicial Administrator  
Jim Florey, Douglas District Attorney  
Brenda Braden, Office of Attorney General

Senate Bill 289 - Docket fees, prosecuting attorneys' training fund.

Jim Clark, Kansas County and District Attorneys Association, testified in support of the bill. The bill raises the docket fee for the prosecuting attorneys training fund from fifty cents to one dollar. The docket fee was initiated in 1977, and it has not been raised since. Other than the docket fee, the state spends no money on prosecution services. The turnover of prosecutors is over 70% every four years. Criminal law is highly specialized and requires training. County governments are in the same financial bind as the state. Under the new tax law, unreimbursed employee expenses are not deductible, unless they exceed two percent of gross income. A copy of his handout is attached (See Attachment I).

Clark Owens, Sedgwick County District Attorney, testified the training fund bill has been a very good source of revenue for our office. He said they have 27 assistant district attorneys in the office. Historically they have sent prosecutors on an average of every two years to two programs, such as the seminar of the National District Attorneys Association. To get 12 hours in, they send them to local seminars. They have contributed half of the training fund to the Kansas Prosecutors Training Institute which expands the programs and is beneficial to them. Increasing the docket fee to one dollar is reasonable amount for training that we need.

Nick Tomasic, Wyandotte District Attorney, testified they are contributing one-half of training fund to Kansas County and District Attorneys Association to put on programs. He has 19 assistants and they need training. He stated we are doing this training for the people because the extra training is necessary, not because the supreme court said they had to do it. They try to send the assistants to as many seminars as possible in the State of Kansas, and then try to get somebody else to pay for out of state seminars. This helps the people when you have better prosecutors.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 519-S, Statehouse, at 12:00 Noon ~~a.m./p.m.~~ on March 4, 1987

Senate Bill 289 continued

Marjorie Van Buren, Office of Judicial Administrator, testified we do not have accurate data on the various prosecuting attorneys training funds. However, based on estimates from docket fee collections, I estimate that we are currently generating approximately \$122,300 for these funds. This increase would double that amount. It would appear that there would be a decrease in the State General Fund income of approximately \$10,000. A copy of her report is attached (See Attachment II). She stated her office is very supportive of the need for education for the prosecutors. She suggested, for simplicity of accounting, the office would prefer even dollar amount, if you are going to change it again.

Following discussion of the bill, Senator Gaines moved to amend the bill to provide fifty cents increase in each category listed on page 4 of the bill. Senator Langworthy seconded the motion, and the motion carried.

Senator Gaines moved to report the bill favorably as amended. Senator Langworthy seconded the motion, and the motion carried.

Senate Bill 272 - Criminal procedure, appeals by prosecution.

Jim Clark, Kansas County and District Attorneys Association, appeared in support of the bill. He testified the bill simply adds another instance when the prosecution may appeal a decision of the trial judge, specifically when the judge orders a new trial after a jury has already convicted the defendant. A copy of his testimony is attached (See Attachment III).

Jim Florey, Douglas District Attorney, appeared in support of the bill. He testified people make mistakes and an appeal of new trial orders would be infrequent. He said we need a mechanism in place in preference to the system we have now. No party should be forced to accept an error on the part of the trial court without any part of remedy. Without this remedy we have victimization of the crime victim. It is harmful to victim to go through another trial when the trial court is in error.

Clark Owens, Sedgwick District Attorney, stated it is not often a court will order a new trial. If the prosecutor has to try a case over he is eventually going to lose it. The prosecutor needs ability to order a new trial to appellate courts. He stated they don't file every appeal; they are very selective. They don't want to retry a case a year later. They want good appellate grounds to take to the supreme court. It is a victims rights contest.

Marjorie Van Buren, Office of Judicial Administrator, suggested providing the prosecuting attorney has automatic right to appeal. She recommended the bill be referred to the Judicial Council Law Advisory Committee for study.

Jim Florey added this has only come up three or four times in 20 years in Wyandotte County. Committee discussion was held on the bill.

Senate Bill 293 - Crimes and punishment, theft by deception.

Brenda Braden, Office of Attorney General, testified she has run into several cases which has been theft by deception. This bill

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 519-S, Statehouse, at 12:00 Noon on March 4, 1987

Senate Bill 293 continued

will change definition of deception to cover false promises as well. She said the office feels it is a very important need. This bill has been taken from the Illinois law. This is an impression created in an accomplice situation; a scheme to promise something in the future. The chairman inquired about the landlord situation where people promise things they don't intend to do. She replied she would like to see them exempt out in that particular instance.

Senator Gaines moved to amend the bill to include class A and B felonies. Senator Hoferer seconded the motion, and the motion carried.

This concluded the hearings on Senate Bills 289, 272 and 293.

Senate Bill 272 - Criminal procedure, appeals by prosecution.

Senator Gaines moved to report the bill favorably as amended. Senator Hoferer seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-4-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
MARJORIE VAN BUREN	TOPEKA	OJA
Brenda L. Braden	Topeka	AJ
NICK A TOMASIC	KCK. MO CO	D-A
JIM FLORY	LAWRENCE	D.A.
Clark Owens	Wichita	D.A.
Jim Clark	TOPEKA	KCDAA
Ric Silber		DoB

Attach. IV  
Senate Judiciary  
3-4-87

3-4-87  
non

OFFICE

Stephen R. Tatum, President  
C. Douglas Wright, Vice-President  
Sally Pokorny, Sec. Treasurer  
Roger K. Peterson, Past-President



DIRECTORS

Linda S. Trigg  
Steven L. Opat  
Daniel L. Love  
James E. Puntch, Jr.

## Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351  
EXECUTIVE DIRECTOR • JAMES W. CLARK

### Testimony in Support of

SB 289

The Kansas County and District Attorneys Association appears in support of SB 289, which raises the docket fee for the prosecuting attorneys training fund from \$.50 to \$1, for the following reasons:

1. The docket fee was initiated in 1977, and has not been raised since, even though the demands on prosecutors has increased considerably (i.e. DUI, child abuse, sex crimes, juvenile intake, diversion supervision, victim services, truancy investigation, and most probably, death penalty).
2. Other than the docket fee, the state spends no money on prosecution services, (yet at the same time, spends over \$3 million for indigent defense services.)
3. Turnover of prosecutors is over 70% every four years. The rate for elected officials was 67% in 1980, and 66% in 1984. The assistants turnover is even higher but more difficult to document. (Sedgwick County has lost 9 of its 27 assistants in the past year, Crawford County has turned over its entire staff of two assistants three different times in the past two years.)
4. Criminal law, and especially prosecution, is a highly specialized and fluctuating area, requiring considerable training simply to keep abreast.
5. County governments are in the same financial bind as the state, hence general fund moneys for training is unavailable.
6. Under the new tax law, unreimbursed employee expenses are not deductible, unless they exceed 2% of gross income. For full-time prosecutors, there is no business deduction. For part-time prosecutors that can deduct continuing education costs as a business deduction, the money is better spent on improving their private practice.

*Attach. I  
Senate Judiciary  
3-4-87*



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 West 10th  
Topeka, Kansas 66612-1507

(913) 296-2256

March 2, 1987

To: Gary Stotts, Acting Director of the Budget  
From: Jerry Sloan, Budget and Fiscal Officer  
Re: Senate Bill No. 289

This bill would increase certain docket fees by \$.50 and designate this addition to be deposited in the prosecuting attorney training fund of each county. This docket fee increase would be in traffic cases, fish and game cases, felony, misdemeanor, forfeited recognizance, and appeals from other courts and would be a \$.50 increase.

We do not have accurate data on the various prosecuting attorneys training funds. However, based on estimates from docket fee collections, I estimate that we are currently generating approximately \$122,300 for these funds. This increase would double that amount. It would appear that there would be a decrease in the State General Fund income of approximately \$10,000. This is based on the fact that for all bond forfeitures there would be no actual increase in monies received, merely a change of \$.50 of the money received from fines to the docket fee and then to the prosecuting attorney training fund. This same impact would occur in cases under the Kansas Code for Care of Children, the Kansas Juvenile Offender Code, and Mental Illness, Drug Abuse or Alcoholism Treatment actions.

There would also be a fiscal impact on some of the counties. Those counties that have their accounting process computerized would be required to modify these computer programs. I do not have an estimate on this cost.

JS:myb

*Attach. II  
Senate Judiciary  
3-4-87*

DOCKET FEE CHANGES

CIVIL

- 1974-- security for costs of \$25 per civil case changed to a \$35 docket fee. Chapter 168, L. 1974.
- 1982-- Chapter 60 civil case docket fee increase to \$55 from \$35. Chapter 61 civil case docket fee increased to \$30 if the case dollar limit runs from \$500.01 to \$5,000, and decreased to \$10 if the amount is \$500 or less, from \$15. Small claims procedure fee increased to \$10 from \$5. Counties to share civil docket fees. Chapter 116, L. 1982.
- 1984-- probate fees changed from graduated scale to docket fees for various types of cases. Marriage license fees increased to \$25 from \$17. Chapter 147, L. 1984.
- 1986-- small claims procedure docket fee changed to split \$10 or \$30 to parallel limited actions docket fee.

CRIMINAL

- 1974-- criminal docket fees established; \$40 for misdemeanor, \$70 for felony, \$100 for murder or manslaughter, \$40 for forfeited recognizance, and \$35 for appeals from other courts. Chapter 168, L. 1974.
- 1976-- traffic fees added to criminal docket fee statute, \$14.50 for cases disposed of by trial or hearing, \$10 if no trial or hearing conducted. Chapter 163, L. 1976.
- 1982-- criminal docket fees increased to \$144 for murder or manslaughter from \$100, other felony increased to \$114 from \$70, misdemeanor to \$84 from \$40, forfeited recognizance to \$44 from \$40, appeals from other courts to \$44 from \$35; traffic docket fee set at \$19. The \$4 increments are for distribution as \$3 to the Law Enforcement Training Center Fund and \$1 to the Victims Reparations Fund. Chapter 116, L. 1982.
- 1984-- traffic docket fee increased to \$25 from \$19, and other criminal docket fees increased \$1 so that all the fees are divisible by five. Chapter 148, L. 1984.
- 1985-- all criminal fees including traffic, fish and game, and watercraft violations increased \$1, and the additional dollar allocated to Crime Victims Reparation. Chapter 106, L. 1985.
- 1986-- all criminal docket fees including traffic, fish and game, and watercraft violation increased \$2 and the additional two dollars allocated to the Law Enforcement Training Center Fund. Chapter 146, L. 1986.

*Attach. II*  
*Sen. Jurd.*  
*3-4-87*

Stephen R. Tatum, President  
 C. Douglas Wright, Vice-President  
 Sally Pokorny, Sec. Treasurer  
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 EXECUTIVE DIRECTOR • JAMES W. CLARK

Testimony in Support of

SB 272

The Kansas County and District Attorneys Association appears in support of SB 272, which was introduced at our request. The bill simply adds another instance when the prosecution may appeal a decision of the trial judge, specifically when the judge orders a new trial after a jury has already convicted the defendant. (This bill does not allow an appeal after an acquittal, since the double jeopardy clause of the Constitution would preclude further prosecution).

Our reasoning is this, in a few isolated instances, the trial judge, by ordering a new trial, subjects the county and state to the considerable expense of another trial, and more importantly, subjects victims and witnesses to the additional inconvenience, expense, and in some cases, agony, of undergoing another trial.

A case in point is State v. Grimes, 229 Kan. 143, where a prominent doctor was convicted by a jury of his peers (and perhaps his patients) in Rice County for an aggravated battery involving the shooting of his wife's suspected paramour. Shortly after the trial, the U.S. Supreme Court, in Sandstrom v. Montana, 442 U.S. 510 (1979) ruled that an instruction on intent was unconstitutional. At the time of the trial court's decision, no Kansas Appellate Court had a chance to decide whether the Kansas instruction was also unconstitutional. The prosecutor, not wishing the additional expense and aggravation of the new trial, attempted to appeal under the present version of the statute, only to have the appeal dismissed some three months later, as not authorized by the statute. By the time the case returned to the trial court, the 180-day period for new trial had passed, and defendant (even though already convicted, was discharged. The public was outraged, the prosecutor was defeated in the next election, and most ironically, the Kansas Court of Appeals subsequently held that the Kansas instruction was correct, State v. Acheson, 3 Kan. App. 2d 705. This situation should not be allowed to be repeated.

Passing this bill will not lead to a host of new appeals by prosecutors. First, such an appeal requires releasing the defendant from custody. Second, the Kansas Supreme Court, in considering prosecutor appeals on suppression of evidence rulings, has required a showing of substantial significance, rather than mere attempts to show the trial judge made a mistake. State v. Newman, 235 Kan. 29.

*Attach III  
 Senate Judiciary  
 3-4-87*