

Approved 6-27-90  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at  
Chairperson

10:00 a.m./~~xxx~~ on March 13, 19 90 in room 514-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Frank Henderson, Jr., Kansas Parole Board  
Kyle Smith, Assistant Attorney General  
James Clark, Kansas County and District Attorneys Association  
Lieutenant William Jacobs, Kansas Highway Patrol  
James Malson, Kansas Bureau of Investigation Director  
Edwin Van Petten, Deputy Attorney General  
Larry Thomas, Kansas Bureau of Investigation

The Chairman opened the meeting by recognizing Frank Henderson, Jr., Chairman of the Kansas Parole Board. Mr. Henderson presented the Committee with a briefing on parole and corrections issues. (ATTACHMENT I)

Chairman Winter reopened the hearing for the drug prevention and enforcement measures continued from March 12, 1990.

- SB 683 - concerning controlled substances; relating to forfeiture of property; disposition of proceeds.
- SB 684 - concerning crimes and punishment; relating to anticipatory crimes; when adult uses child in certain crimes.
- SB 685 - concerning controlled substances; relating to forfeitures of property.
- SB 686 - concerning criminal prosecution; relating to the statute of limitations.
- SB 702 - concerning crimes and punishments; relating to fines, dispositions and forfeitures; creating the Kansas bureau of investigation special asset forfeiture fund and the Kansas highway patrol special asset forfeiture fund.
- SB 703 - concerning criminal procedures; relating to diversion agreements; when prohibited.
- SB 704 - concerning crimes and punishment; relating to classification of penalties; sentencing.
- SB 705 - concerning crimes and punishment; relating to the use of firearms in drug offenses.
- SB 706 - concerning the uniform controlled substances act; relating to definition of sell.
- SB 707 - concerning the uniform controlled substances act; creating a separate offense for unlawful manufacture of controlled substances.
- SB 708 - concerning criminal procedure; relating to preliminary examinations.
- SB 709 - concerning crimes and punishments; relating to conspiracy.
- SB 710 - concerning crimes and punishments; relating to murder in the first degree.
- HB 3039 - concerning controlled substances; relating to the forfeiture of property.

Kyle Smith, Assistant Attorney General, testified in support of SB 702. (ATTACHMENT II)  
Mr. Smith added that Attorney General Robert Stephan supports HB 3039.

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.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on March 13, 1990.

James Clark, Kansas County and District Attorneys Association, testified in support of SB 702. He stated that the bill answers concerns expressed by his association. (ATTACHMENT III)

Lieutenant William Jacobs, Kansas Highway Patrol, testified in support of SB 702. (ATTACHMENT IV)

James Malson, Director of Kansas Bureau of Investigation, stood in support of SB 702. He stated that the bill provides a good source that would allow a coalition to direct the use of funds.

Edwin Van Petten, Deputy Attorney General, testified in support of SB 703. (ATTACHMENT V)

James Clark, Kansas County and District Attorneys Association, presented a proposed amendment of SB 703 to the Committee and stated it was not presented in opposition but rather as an alternative. The bill treats a DUI diversion as a conviction for the purpose of counting it in subsequent convictions. (ATTACHMENT VI)

Mr. Clark offered additional suggested amendments to SB 704. (ATTACHMENT VII)

Kyle Smith, Assistant Attorney General, testified in support of SB 704 and with amendment suggestions. (ATTACHMENT VIII)

Mr. Smith added his testimony in support of SB 707. (ATTACHMENT IX)

Edwin Van Petten, Deputy Attorney General, testified in support of SB 710. (ATTACHMENT X)

Mr. Van Petten added his testimony in support of SB 705. (ATTACHMENT XI)

Larry Thomas, Special Agent of Kansas Bureau of Investigation, testified in support of SB 709. (ATTACHMENT XII)

Additional information was distributed to the committee concerning the bills being heard: selected newsclips from James Clark, Kansas County and District Attorneys Association, concerning sentencing of habitual criminals (ATTACHMENT XIII);

written testimony from Kyle Smith, Assistant Attorney General, in support of SB 706 (ATTACHMENT XIV) and SB 709 (ATTACHMENT XV);

written testimony from Edwin Van Petten, Deputy Attorney general, in support of SB 708 (ATTACHMENT XVI); and

written testimony from Galen Davis, Governor's Special Assistant on Drug Abuse, in support of SB 684, SB 686, and SB 702 through 710 inclusive. (ATTACHMENT XVII)

The meeting was adjourned.

GUEST LIST

COMM. FEE: SENATE JUDICIARY COMMITTEE

DATE: March 13, 1990

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NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Meredith Way	7110 Speaker Rd.	Page
Melanie Way	Kansas City, KS	"
Ange Williams	7121 Riverview	"
Wayne Ryba	Tampa, KS	Close Up Kansas
John Ryba	Tampa, KS	Close Up Kansas
Luriah Situs	Hillsboro, KS	"
David Watta	Peabody, KS	"
Ronda Chrisman	Bennington, KS	"
Jeff Walte	Bennington, KS	" "
Denise Zwahlen	DeSoto, KS	Close Up KS
Holly Opdycke	DeSoto, KS	Close Up KS
Scott Barnhart	Hutchinson, KS	Close Up KS
Ben Coats	KSC, Topeka	KSC
Frank Vandenberg	Topeka	Kansas Parole Board
Bryce Kehlman	DeSoto	Close Up Kansas
Dana Collins	DeSoto	Close Up Kansas
JAMES HEPLER	DE SOTO	CLOSE UP KANSAS
Bobby Shepherd	4220 Heritage Ct, Stilwell, KS	Close-Up Kansas
Francis Mathews	Hutchinson/Buhler	Close Up Kansas
Dina Meredith	PO Box 577, Buhler, KS	Close-Up Kansas
MARK KLOFFENSTEIN	1544 N. ROZERS #1611 Olathe, KS	CLOSE-UP KS (USD 229)
Shauna Balman	424 NORTH ARTHUR, ELDORADO, KANSAS 67042	Close-Up Kansas
Terri Newman	727 N. Washington Eldorado, KS	Close-Up KS
Clara J. Pomeroy	Kansas Topeka	Kansas Parole Board
Mark Gardner	1675 Montana Eldorado, KS 67042	Close-Up KS

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GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: March 13, 1990

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NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Gardner	1675 Mantana E/Dorado	Close Up Kansas
Jennifer Semensen	6020 Meadow Road E/Dorado	Close Up Kansas
Sue Bond	Overland Park	
ALAN NORRIS	E DORADO	Close Up Kansas
Morgan J. Bradshaw	3910 Burlington, Topeka 66604	For Legislators & Deputy Staff Services for Legal
Tim Stevens	Stilwell	Close-Up
Lt. BILL JACOBS	TOPEKA	K.H.P.
LTC Laynard Shearer	Topeka	KHP
Jim Malsam	TOPEKA	K.B.I.
Larry Thomas	Topeka	KBI
Ed Van Peltier	Topeka	A.G.
Kyle G. Smith	Topeka	KBI
Jim Clark	Ida	KIDAA
Bob Lyndell	Topeka	KDOC
Maynard	Topeka	AP
Don Smith		Ks. Bar Assoc
Selen Stephens	Topeka	KPIA
Nancy Lindberg	Topeka	AG
John R. Dole	..	KWPE

Frank S. Henderson, Jr.  
Chairman

Carla J. Stovall  
Vice-Chairman

Elwaine F. Pomeroy  
Member

George Rogers  
Member

Donald E. Mainey  
Member



Micah A. Ross  
Director

Sandra K. Smith  
Assistant Director

**KANSAS PAROLE BOARD**  
**LANDON STATE OFFICE BUILDING**  
**900 JACKSON STREET, 4TH FLOOR**  
**ROOM 452 S**  
**TOPEKA, KANSAS 66612-1220**  
**(913) 296-3469**

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Senate Judiciary Committee

Outline of Remarks

By Frank S. Henderson, Jr.

Chairman of the Board

March 13, 1990

The statutory responsibilities of the Kansas Parole Board are to:

Conduct parole hearings with individual inmates, for purposes of determining whether an inmate will be granted parole (K.S.A. 22-3717h);

Conduct an initial informational hearing with inmates, within a reasonable time after they have been committed to the custody of the Department of Corrections (K.S.A. 22-3717g);

Establish conditions of parole or Conditional Release, with which an inmate must comply (K.S.A. 22-3717j);

Revoke the parole or Conditional Release of an inmate when violations of the release conditions have occurred (K.S.A. 22-3722);

Discharge an inmate from parole or Conditional Release supervision when his obligations have been performed and the discharge is not compatible with best interests of society and the welfare of the individual (K.S.A. 22-3722);

Examine each application for pardon or commutation of sentence and submit a report to the Governor to aid him in making his final determination (K.S.A. 22-3701).

Time Calculations

Parole eligibility set by statute (K.S.A. 22-3725)  
Minimum sentence less Good Time

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Conditional Release set by statute (K.S.A. 22-3718)  
Maximum sentence less Good Time

Rate at which Good Time earned set by Legislature

Current rate of Good Time - 1 day earned for 1 day served (on sentence of 2 years or greater)

1 year minimum must serve 8 months

Life sentence must serve 15 years or 40 years For First Degree Murder under certain conditions with the enactment of SB 77 effective July 1, 1990

No authority to consider parole prior to Parole Eligibility

Unable to keep inmate beyond Conditional Release date

Distinctions between K.P.B. and D.O.C.

Parole Board and Department of Corrections separate agencies

KPB uses DOC files and relies on its information

DOC charged with making time calculations

Parole Eligibility reports prepared by DOC

Comment forms mailed by DOC

KPB does not:

Compute sentences

Determine custody levels

Place inmates in institutions

Transfer inmates

Decide disciplinary infractions

Award or withhold Good Time credits

Grant or deny furloughs

Supervise parolees

Initiate revocation proceedings

Employ parole officers

Have computer capabilities

Conduct research

K.S.A. 22-3717(f) requires parole hearing to be held during the month prior to the month an inmate becomes parole eligible

Parole hearings are held at the penal institutions

Days spent in following institutions for hearings

Kansas Correctional Institution at Lansing - 1

Kansas State Penitentiary; Osawatomie Correctional Facility;

Fort Scott Work Release - 4

Kansas State Industrial Reformatory; Hutchinson Correctional

Work Facility; Hutchinson Work Release Center; Larned

State Security Hospital - 5

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Ellsworth Correctional Facility - 1  
Norton Correctional Facility; Stockton  
Correctional Facility - 1  
El Dorado Honor Camp; Toronto Honor Camp; Contract  
Jail Placements - 1  
Winfield Correctional Facility - 1  
Wichita Work Release Center - 1  
Topeka Correctional Facility - 1  
Forbes Correctional Facility - 1  
Kansas Correctional Vocational Training Center; State  
State Resource Work - 1  
Wichita Public Comments - 1  
Kansas City Public Comments - 1  
Topeka Public Comments - 1

On day or days scheduled for parole hearings at an institution, Parole Board sees all inmates entitled to a hearing that month

Factors considered in making parole decision

Crime  
Criminal history  
Program participation  
Disciplinary record  
Parole plan  
Public comments  
Prison capacity

Statutory standard "able & willing to be law abiding member of society"

Parole eligibility does not constitute parole suitability

HB 2199 found in Chapter 103 of 1989 Session Laws, codified practice of KPB to consider comments of the victim and the victim's family; comments of the public; and comments from officials

HB 2199 also mandates that KPB consider capacity of state correctional institutions

HB 2199 does not require KPB to give notice, but KPB is committed to helping make notification procedure workable

KPB has changed procedures in light of HB 2199

Notices of public comment sessions are being sent out earlier

Case numbers are now listed on notices of public comment sessions

Public input is received prior to parole hearings at public comment sessions

Public comment sessions are held each month in Kansas City, Topeka and Wichita

Public comment sessions are held the month before the parole hearing

Notices of public comment sessions are mailed out at end of month before the month of the public comment session

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5 members on KPB, but only 3 serve on a panel

Panel of 3 has full authority of Board, except in some A and B felony cases

Our workload has increased

FY 1985	-	2325
FY 1986	-	2718
FY 1987	-	3072
FY 1988	-	3945
FY 1989	-	4457
First Half of FY 1990	-	2980

Types of Decisions Which Can Be Made

Parole

- "Parole to approved plan..."
- "Parole upon notification of completion of program agreement."
- "Parole upon acceptance into residential treatment placement."
- Parole upon acceptance into residential aftercare program."

Parole plan is submitted by inmate to DOC

Plan is approved or disapproved

Inmate cannot be released prior to Parole Eligibility Date

Pass - Denial of parole

- 1 year maximum for C,D, E felonies
- 3 year maximum for A and B felonies
- Annual file review if pass more than 1 year

Pass reasons must be given

- Serious nature & circumstances of offense
- Disciplinary reports
- Objections
- New crimes in institutions
- Failure on probation/parole

KPB can recommend programs if no program agreement

Continue

- "Continue for completion of program agreement"  
Report is submitted upon completion & decision made
- "Continue for additional information"  
Information is received & reviewed and decision made
- "Continue for pre-release and/or work release"  
Report is submitted upon completion & decision made

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Procedures upon Release

KPB sets conditions for parole and Conditional Release

Comply with substance abuse treatment aftercare  
recommendations

Mental Health Counseling

No contact with victim or victim's family

AA/NA

Abstinence from alcoholic beverages

Employment within 30 days

No unsupervised contact with minor children

Parole Officer can also set conditions

DOC determines level of releasee supervision

Conditional release most likely not parole suitable

Revocations

Warrant issued by Secretary of Corrections

Morrissey hearing conducted in field to determine  
probable cause

KPB conducts final revocation hearing at institution

Discharges

Must occur when maximum date of sentence reached

May occur when 2 years of supervision elapsed

Parole Officer recommends discharge

Parole Officer's supervisor concurs

Report is submitted to KPB which addresses:

Compliance with conditions of release

Employment status

Payment of restitution & court costs

Existence of any law enforcement contacts

KPB makes discharge decision

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Parole Eligibility in Recent Years

Minimum	Prior to 7/1/79	7/1/79 to 7/1/82	7/1/82 to 5/19/88	5/19/88 8/1/89	Since 8/1/89
1 year	*121 days	10 months	9 months	9 months	8 months
2 years	*121 days	1 yr. 6 mo.	1 yr. 5 mo. 7d	1 yr.5 mo.7d	1 year
3 years	*121 days	2 years	2 yr.1 mo.15d	2 years	1 yr. 6 mo.
4 years	*121 days	2 yr. 6 mo.	2 yr.10 mos.15d	2 yr. 6 mo.	2 years
5 years	*121 days	3 years	3 yr.6 mo.22d	3 years	2 yr. 6 mo.
10 years	*certified	5 yr. 6 mo.	7 yr. 22 days	5 yr. 6 mo.	5 years
20 years	*certified	10 yr. 6 mo.	14 yr.1 mo.15d	10 yr. 6 mo.	10 years
LIFE	15 years	15 years	15 years each	15 years each	15 years each
40 years	15 years	15 years	28 yr. 3 mo.	20 yr. 6 mo.	20 years

Conditional Release in Recent Years

Maximum	Prior to 7/1/79	7/1/79 to 7/1/82	7/1/82 to 5/19/88	5/19/88 to 8/1/89	Since 8/1/89
2 years	1 yr 6 mo.	1 yr. 6 mo.	1 yr.5 mo. 7d	1 yr.5 mo.7d	1 year
3 years	2 years	2 years	2 yr.1 mo.15d	2 years	1 yr. 6 mo.
4 years	2 yr. 6 mo.	2 yr. 6 m.	2 yr.10 mo.15d	2 yr. 6 mo.	2 years
5 years	3 years	3 years	3 yr.6 mo. 22d	3 years	2 yr. 6 mo.
10 years	5 yr. 6 mo.	5 yr. 6 mo.	7 yr. 22 days	5 yr. 6 mo.	5 years
20 years	10 yr. 6 mo.	10 yr. 6 mo.	14 yr.1 mo. 15d	10 yr. 6 mo.	10 years
40 years	20 yr. 6 mo.	20 yr.6 mo.	28 yr. 3 mo.	20 yr. 6 mo.	20 years
LIFE	NONE	NONE	NONE	NONE	NONE

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 702  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

Senate Bill 702 strikes at the main motive for drug trafficking profit. The lure of easy money makes the lucrative drug trade tempting not only to those already in it, but to children and others who see the quick wealth that drugs can create. We need to do everything we can to take the profit out of drug trafficking.

Section 1 of Senate Bill 702 provides for more realistic scheduling of maximum possible fines. If one of the goals of punishment is deterrence, the current maximums are ridiculously low. I don't believe there will be many cases where the full maximum amounts would be appropriate or possible, but when those cases arise the court should have the flexibility to make the punishment fit the crime.

The remaining sections deal with our forfeiture statutes and are an attempt to facilitate the forfeiture of drug profits by the criminal justice system. Principal points are:

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1. Allowing homestead forfeiture for felony violations of federal drug law; presently we are only permitted to proceed with forfeitures based on Kansas convictions.

2. Creating a rebuttable presumption that property of a person is subject to forfeiture if it can be shown the person was participating in drug trafficking, and during the same time frame property was acquired without reasonable legitimate sources of income to pay for that property.

3. Restore the burden of proof to preponderance of the evidence as is found in federal law, the model act, and originally in the Kansas law.

4. Prevent offenders from disposing of property after committing the law violation, but prior to seizure by establishing that the right to forfeiture is effective at the time of the commission of the illegal conduct, not at the time of seizure. This is the same problem as addressed in Senate Bill 685.

5. Providing that the assets seized by state law enforcement agencies may be turned against the drug traffickers by allowing state law enforcement agencies to utilize these proceeds in additional drug investigations, much as is done when local agencies are involved. Kansas is one of only two states in the nation that fails to utilize this option to help fund the drug war.

I would be happy to answer any questions.

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and/or Psilocybin.....	100
Opium.....	100
Oxycodone.....	25
Pentazocine.....	50
Peyote.....	100
Phencyclidine/PCP.....	5
Phentermine.....	50
Phenylacetone P <sup>2</sup> P.....	25
Psilocin.....	2
Psilocybin.....	2
Tetrahydrocannabinol.....	5
3-Methylfentanyl.....	1
3,4-Methylene-dioxyamphetamine/MDA.....	10
3,4-Methylene-dioxymethamphetamine/ MDMA.....	10

(b) Any reference to a particular controlled substance in this section includes all salts, isomers and all salts of isomers. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed.

(c) The scale amounts for all controlled substances in this section refer to the total weight of the controlled substance. If any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

History: L. 1988, ch. 257, § 3; July 1.

**65-4135. Forfeitures.** (a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this act;

(2) all raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this act;

(3) all property which is used or intended for use as a container for property described in subsection (a)(1) or (2);

(4) all conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession, concealment, purchase, exchange or giving away of property described in subsection (a)(1) or (2) in violation of this act, if such violation constitutes a felony, but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture

under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act, if such violation constitutes a felony;

(B) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(C) a conveyance is not subject to forfeiture for a violation of subsection (c) of K.S.A. 65-4123 and amendments thereto; and

(D) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;

(5) all books, records and research products and materials, including formulas, microfilm, tapes and data which are used or intended for use in violation of this act;

(6) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the uniform controlled substances act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments and securities used, or intended to be used, to facilitate any violation of the uniform controlled substances act, except that no property shall be forfeited under this subsection (a)(6), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent. All moneys, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia or to forfeitable records of the importation, manufacture or disposition of controlled substances, are presumed in the manner provided in K.S.A. 60-414 and amendments thereto to be forfeitable under this subsection (a)(6). Under this subsection (a)(6), the burden of proof shall be upon claimants of the property to rebut this presumption; and

(7) all real property, including any building or structure thereon, which is used or intended for use in violation of this act, if such violation constitutes a felony, except:

(A) A homestead shall not be subject to forfeiture under this section unless the claimant of the homestead has been convicted of a violation of K.S.A. 65-4127a or 65-4127b and amendments thereto, if such violation constitutes a felony, which involves the unlawful manufacturing, compounding, selling, offering

for sale, possessing with intent to sell, possessing, importing or exporting a controlled substance, or has been convicted of or attempted to commit such offense. A homestead shall be subject to forfeiture under this section if the forfeiture of the homestead arises from the conviction, act, conduct or transaction of the claimant so convicted, if the claimant so convicted had consented to the forfeiture of the homestead by commission of the offense.

(B) real property is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(C) real property is not subject to forfeiture for a violation of subsection (a)(6) of K.S.A. 65-4123 and amendments thereto;

(D) a forfeiture of real property encumbered by a bona fide mortgage interest is subject to the interest of the secured party or parties;

(b) Property subject to forfeiture under this section may be seized by any law enforcement officer upon process issued by a court having jurisdiction over the property, or by a law enforcement officer without process if:

(1) The seizure is incidental to a lawful search conducted by a law enforcement officer;

(2) the property is the subject of a prior judgment of a court of this state or municipality under this section;

(3) there is probable cause to believe that the property was used in violation of this section;

(c) In the event of seizure of property under this section (b), proceedings pursuant to K.S.A. 65-4171 shall be initiated promptly.

(d) Property taken or forfeited under this section shall not be subject to forfeiture and shall be deemed to be in the custody of the law enforcement agency seizing it. The law enforcement agency shall file orders of the district court for the forfeiture proceeding over the forfeiture proceeding. If the property is seized under this section, the law enforcement agency seizing it shall:

(1) Place the property in a secure location;

(2) remove the property from the jurisdiction of the court having jurisdiction over the forfeiture proceeding;

(3) require the board of directors of the law enforcement agency to file a report with the court for disposition in accordance with this section.

(e) Controlled substances that are possessed, transferred or offered for sale in violation of this section shall be

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unless it appears that the person in charge of the controlling party or privy to a violation constitutes

is subject to forfeiture by reason of any act or omission of the owner thereof to have committed without the owner's consent;

is not subject to forfeiture under subsection (c) of K.S.A. 65-4123 and amendments thereto; and

of a conveyance encumbered by a security interest is subject to forfeiture if the secured party or parties; records and research products including formulas, microfilm, and are used or intended for this act;

of value furnished, or intended, in exchange for a controlled substance in violation of the uniform controlled substances act, all proceeds traceable to the violation, and all moneys, notes and securities used, or intended to facilitate any violation of the uniform controlled substances act, shall be forfeited under this act to the extent of the interest in the property by reason of any act or omission of the owner to have committed without the owner's consent. All moneys, coins and securities in close proximity to controlled substances, to forfeitable records or distributing paraphernalia, records of the importation and disposition of controlled substances in the manner provided in K.S.A. 65-414 and amendments thereto under this subsection shall be subject to forfeiture under this subsection (a)(6), the burden of proof shall be on the claimants of the property interest; and

including any building which is used or intended for this act, if such violation constitutes a violation of this act, except:

shall not be subject to forfeiture under this subsection unless the claimant has been convicted of a violation of K.S.A. 65-4127a or 65-4127b and such violation constitutes a violation of the unlawful possession, offering

for sale, possessing with intent to sell, processing, importing or exporting of a controlled substance, or has been convicted of conspiracy or attempt to commit such a violation. The homestead shall be subject to forfeiture under this section if the forfeiture proceedings and the conviction arise from the same violation, act, conduct or transaction and, in that event, the claimant so convicted shall be presumed to have consented to the forfeiture of the homestead by commission of the violation;

(B) real property is not subject to forfeiture under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(C) real property is not subject to forfeiture for a violation of subsection (c) of K.S.A. 65-4123 and amendments thereto; and

(D) a forfeiture of real property encumbered by a bona fide mortgage or lien is subject to the interest of the secured party or parties.

(b) Property subject to forfeiture under this act may be seized by any law enforcement officer upon process issued by any district court having jurisdiction over the property. Seizure by a law enforcement officer may be made without process if:

(1) The seizure is incident to a lawful arrest or a lawful search conducted by a law enforcement officer;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state or municipality under this act; or

(3) there is probable cause to believe that the property was used in violation of this act.

(c) In the event of seizure pursuant to subsection (b), proceedings pursuant to K.S.A. 1988 Supp. 65-4171 shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement agency seizing it subject only to the orders of the district court having jurisdiction over the forfeiture proceedings. When property is seized under this act, the law enforcement agency seizing it may:

(1) Place the property under seal;

(2) remove the property to a place designated by it; or

(3) require the board to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) Controlled substances listed in schedule I that are possessed, transferred, sold or offered for sale in violation of this act are con-

traband and shall be seized and summarily forfeited to the Kansas bureau of investigation. Controlled substances listed in schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the Kansas bureau of investigation.

(f) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

(g) The failure, upon demand by the law enforcement agency having jurisdiction, of the person in occupancy or in control of land or premises upon which the species of plants described in subsection (f) are growing or being stored, to produce an appropriate registration, or proof that such person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(h) Nothing in this act should be construed to mean that law enforcement officials or employees may use property seized under this act for personal use.

**History:** L. 1972, ch. 234, § 35; L. 1984, ch. 237, § 3; L. 1986, ch. 243, § 2; L. 1987, ch. 114, § 2; L. 1988, ch. 258, § 1; July 1.

**Attorney General's Opinions:**

Controlled substances; forfeitures. 86-11.

Controlled substances; dealer defined; forfeiture of conveyance. 88-29.

**65-4136. Same; burden of proof, exemption or exception to act; liability of officers.**

(a) It is not necessary for the state or a law enforcement agency seeking forfeiture of property pursuant to K.S.A. 65-4135 and amendments thereto to negate any exemption or exception in this act in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration, title, deed, lien, mortgage or security interest, such person is presumed in the manner provided in K.S.A. 60-414 and amendments thereto not to be the holder of the registration, title, deed, lien, mortgage or security interest. The burden of proof is upon the claimant to rebut the presumption.

(c) No liability is imposed by this act upon any authorized state, county or municipal of-

Summary of Testimony

Before the Senate Judiciary Committee

Senate Bill 702

Presented by the Kansas Highway Patrol  
(Lieutenant William Jacobs)

March 12, 1990

Appeared in Support

The Kansas Highway Patrol strongly supports Senate Bill 702. Senate Bill 702 contains several statute amendments which tend to create harsher penalties for criminals, especially those who commit crimes involving drugs. The Patrol has supported many such measures in the past and will continue to do so in the future.

Section one amends KSA 21-4503 to substantially increase the amount of fines that may be assessed on those who commit felonies in this State.

Section two provides that homesteads be subject to forfeiture for violation of the uniform controlled substance act, KSA 65-4101 et seq. or to comparable federal law violations.

Section three would allow the court to grant a law enforcement agency possession of forfeited property back to the time of conduct that resulted in the forfeiture, rather than to the date of the seizure.

The three amendments discussed above are very productive in being a deterrent to someone dealing in illegal drugs, but we feel that the provisions in section four would be a positive step in the right direction to use funds generated by forfeitures to continue the ongoing fight against the drug dealers by the Kansas Highway Patrol and the Kansas Bureau of Investigation.

Section four creates a Kansas Highway Patrol special asset forfeiture fund and a Kansas Bureau of Investigation special asset forfeiture fund to receive those assets which are forfeited to these two agencies. Local agencies such as police departments and sheriff departments were afforded this type of fund by the 1988 Legislature, but the current law requires that monies currently forfeited to the Highway Patrol and the Bureau of Investigation be deposited in the State General Fund.

It is very difficult to predict how much revenue would be generated into these funds because of the uncertainty of how many asset forfeitures would take place in the future or how much money would be involved.

There would be no additional cost to the Highway Patrol in maintaining these funds since they would just become another bookkeeping account within our present accounting section.

*Senate Judiciary Committee*  
3-13-90  
Attachment IV page 1 of 2

Again, the Patrol would reiterate how important this fund would be in the State's fight against drugs. After all, through the everyday efforts of the Patrol in dealing with the motoring public, our officers have the opportunity to come into contact with the many persons who are transporting drugs across our state. It would be ironic to use funds derived from drug dealers to fight the continuous battle against other dealers.

With the money derived from such a fund, the Patrol could continue the intensive training required, and purchase necessary equipment, to combat the ever-growing problem of drug dealing in Kansas.

The Kansas Bureau of Investigation could also combat this crime in a more efficient manner if they had these type of funds.

With the thought in mind that we, as a major state law enforcement agency, are charged by law to help rid the State of Kansas of the growing problem of drug use, we respectfully ask your favorable consideration of Senate Bill 702.

(3-13-90)  
IV 2/2





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY  
EDWIN A. VAN PETTEN, DEPUTY ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 703  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am pleased to ask your support for Senate Bill 703, which provides that drug offenses can no longer be diverted. No penalty can have any deterrent effect, no matter how severe, if it is not also certain.

The problem of drug abuse must be fought on many fronts -- enforcement, treatment and education. We can no longer afford to give the message that drug abuse and trafficking offenses can be diverted and treated as if they never happened. It is no longer appropriate to be concerned about some casual user being branded with the stigma of being convicted of his own folly. It must be made clear to the consumers as well as the dealers that drug abuse will no longer be tolerated in Kansas

Thank you for your consideration.

*Senate Judiciary Committee*  
*3-13-90*  
*Attachment V page 1 of 1*

SENATE BILL No. 703

By Committee on Judiciary

2-20

KCDAA

Proposed Amendment

*Senate Judiciary Committee*  
*3-13-96*  
*Attachment VII*  
*page 1 of 3*

9 AN ACT concerning criminal procedures; relating to diversion agree-  
10 ments; when prohibited; amending K.S.A. 22-2908 and repealing  
11 the existing section.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 22-2908 is hereby amended to read as follows:  
15 22-2908. (1) In determining whether diversion of a defendant is in  
16 the interests of justice and of benefit to the defendant and the  
17 community, the county or district attorney shall consider at least  
18 the following factors among all factors considered:

19 (a) The nature of the crime charged and the circumstances sur-  
20 rounding it;

21 (b) any special characteristics or circumstances of the defendant;

22 (c) whether the defendant is a first-time offender and if the de-  
23 fendant has previously participated in diversion, according to the  
24 certification of the Kansas bureau of investigation or the division of  
25 vehicles of the department of revenue;

26 (d) whether there is a probability that the defendant will coop-  
27 erate with and benefit from diversion;

28 (e) whether the available diversion program is appropriate to the  
29 needs of the defendant;

30 (f) the impact of the diversion of the defendant upon the  
31 community;

32 (g) recommendations, if any, of the involved law enforcement  
33 agency;

34 (h) recommendations, if any, of the victim;

35 (i) provisions for restitution; and

36 (j) any mitigating circumstances.

37 (2) A county or district attorney shall not enter into a diversion  
38 agreement in lieu of further criminal proceedings on a complaint if:

9 (a) The complaint alleges a violation of K.S.A. 8-1567 and amend-  
40 ments thereto and the defendant: (i) Has previously participated in  
41 diversion upon a complaint alleging a violation of that statute or an  
42 ordinance of a city in this state which prohibits the acts prohibited  
43 by that statute; (ii) has previously been convicted of or pleaded *nolo*

1 *contendere* to a violation of that statute or a violation of a law of  
2 another state or of a political subdivision of this or any other state,  
3 which law prohibits the acts prohibited by that statute; or (iii) during  
4 the time of the alleged violation was involved in a motor vehicle  
5 accident or collision resulting in personal injury or death; or

6 (b) the complaint alleges that the defendant committed a class  
7 A or B felony; or

8 ~~(c) the complaint alleges a violation or violations of K.S.A. 65-~~  
9 ~~4127a or 65-4127b and amendments thereto.~~ *and 22-2909*  
10 ~~Sec. 23~~ K.S.A. 22-2908 is hereby repealed.  
11 ~~Sec. 24~~ This act shall take effect and be in force from and after  
12 its publication in the statute book.

(3-13-90)  
VI 2/3

New Section 2.

**22-2909.** Provisions of diversion agreement; waiver of speedy trial and jury trial, when; alcohol and drug related offenses; stay of criminal proceedings; filing of agreements.  
(a) A diversion agreement shall provide that if

the defendant fulfills the obligations of the program described therein, as determined by the county or district attorney, the county or district attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant and the county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

*the complaint alleges a violation or violations of K.S.A. 65-4127a or 65-4127b and amendments thereto.*

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567 and amendments thereto for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567 and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in

K.S.A. 8-1008 and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008 and amendments thereto.

If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may restrict the defendant's driving privileges, in addition to any suspension and restriction required by K.S.A. 1988 Supp. 8-1014, to driving only under the following circumstances: (1) In going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto; (5) at such times of the day as may be specified by the diversion agreement; and (6) to such places as may be specified by the diversion agreement.

In lieu of restricting the defendant's driving privileges as provided above, or in lieu of suspending or revoking such privileges, the diversion agreement may restrict the defendant's driving privileges to driving only a motor vehicle equipped with a functioning ignition interlock device, as defined by K.S.A. 1988 Supp. 8-1013, which is approved by the division of vehicles of the department of revenue and is obtained, installed and maintained at the defendant's expense. Any fine required by this subsection[\*] shall be reduced by the diversion agreement in an amount equal to the expense incurred by the defendant for obtaining, installing and maintaining such device.

Restrictions imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement restricting a person's driving privileges under this subsection, the county or district attorney shall require that the license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the diversion agreement. Upon its receipt, the division of vehicles shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's driving privileges and

that a certified copy of the diversion agreement imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence. The county or district attorney shall furnish to any person whose driving privileges have been restricted under this subsection a copy of the diversion agreement, which for a period of 30 days only shall be recognized as a valid Kansas driver's license pending issuance of the restricted license as provided in this subsection.

Upon expiration of the period of time for which restrictions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior to expiration. Violation of restrictions imposed under this subsection is a misdemeanor subject to punishment and driver's license suspension as provided by K.S.A. 1987 Supp. 8-291 and amendments thereto.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may suspend or revoke the defendant's driving privileges. Suspension or revocation imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement suspending or revoking a defendant's driving privileges pursuant to this subsection, the county or district attorney shall require that such license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division to be retained by the division.

Upon expiration of the period of time for which suspension or revocation is imposed pursuant to this subsection, the licensee may apply to the division for the return of the license

previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been otherwise suspended or revoked prior to expiration.

(f) If the county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(g) Except diversion agreements reported under subsection (h), the county or district attorney shall forward to the Kansas bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to any county, district or city attorney or court.

(h) At the time of filing the diversion agreement with the district court, the county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto. The copy of the agreement shall be made available upon request to any county, district or city attorney or court.

(3-13-90)  
VI 3/3

SENATE BILL No. 704

By Committee on Judiciary

2-20

9 AN ACT concerning crimes and punishment; relating to classification  
10 of penalties; sentencing; amending K.S.A. 1989 Supp. 21-4504,  
11 21-4606a and 21-4606b and repealing the existing sections.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1989 Supp. 21-4504 is hereby amended to read  
15 as follows: 21-4504. (a) If a defendant is convicted of a felony specified  
16 in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated  
17 a second time *or in K.S.A. 65-4127b and amendments thereto*, the  
18 punishment for which is confinement in the custody of the secretary  
19 of corrections *after having previously been convicted of a felony*,  
20 the trial judge may sentence the defendant as follows, upon motion  
21 of the prosecuting attorney:

22 (1) The court may fix a minimum sentence of not less than the  
23 least nor more than twice the greatest minimum sentence authorized  
24 by K.S.A. 21-4501 and amendments thereto, for the crime for which  
25 the defendant is convicted; and

26 (2) the court may fix a maximum sentence of not less than the  
27 least nor more than twice the greatest maximum sentence provided  
28 by K.S.A. 21-4501 and amendments thereto, for the crime.

29 (b) If a defendant is convicted of a felony specified in article 34,  
30 35 or 36 of chapter 21 of Kansas Statutes Annotated *or in K.S.A.*  
31 *65-4127b and amendments thereto, a third or subsequent time, hav-*  
32 *ing been convicted at least twice before for felony offenses*, the trial  
33 judge shall sentence the defendant as follows, upon motion of the  
34 prosecuting attorney:

35 (1) The court shall fix a minimum sentence of not less than the  
36 greatest nor more than three times the greatest minimum sentence  
37 authorized by K.S.A. 21-4501 and amendments thereto, for the crime  
38 for which the defendant is convicted; and

39 (2) the court may fix a maximum sentence of not less than the  
40 least nor more than three times the greatest maximum sentence  
41 provided by K.S.A. 21-4501 and amendments thereto, for the crime.

42 (c) If a defendant is convicted of a felony other than a felony  
43 specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes

*Senate Judiciary Committee*  
*3-13-98*  
*Attachment VII page 1 of 3*



1 Annotated or in K.S.A. 65-4127b and amendments thereto, ~~a third~~  
2 ~~or subsequent time,~~ the trial judge shall sentence the defendant as  
3 follows, upon motion of the prosecuting attorney:

having been convicted at least twice before  
for felony offenses,

4 (1) The court shall fix a minimum sentence of not less than the  
5 greatest nor more than two times the greatest minimum sentence  
6 authorized by K.S.A. 21-4501 and amendments thereto, for the crime  
7 for which the defendant is convicted; and

8 (2) the court may fix a maximum sentence of not less than the  
9 least nor more than two times the greatest maximum sentence pro-  
10 vided by K.S.A. 21-4501 and amendments thereto, for the crime.

11 (d) If any portion of a sentence imposed under K.S.A. 21-107a,  
12 and amendments thereto, or under this section, is determined to  
13 be invalid by any court because a prior felony conviction is itself  
14 invalid, upon resentencing the court may consider evidence of any  
15 other prior felony conviction that could have been utilized under  
16 K.S.A. 21-107a, and amendments thereto, or under this section, at  
17 the time the original sentence was imposed, whether or not it was  
18 introduced at that time, except that if the defendant was originally  
19 sentenced as a second offender, the defendant shall not be resent-  
20 enced as a third offender.

21 (e) The provisions of this section shall not be applicable to:

22 (1) Any person convicted of a felony of which a prior conviction  
23 of a felony is a necessary element; or

24 (2) any person convicted of a felony for which a prior conviction  
25 of such felony is considered in establishing the class of felony for  
26 which the person may be sentenced.

27 (f) A judgment may be rendered pursuant to this section only  
28 after the court finds from competent evidence the fact of former  
29 convictions for felony committed by the prisoner, in or out of the  
30 state.

31 Sec. 2. K.S.A. 1989 Supp. 21-4606a is hereby amended to read  
32 as follows: 21-4606a. The presumptive sentence for a person who  
33 has never before been convicted of a felony, but has now been  
34 convicted of a class D or E felony or convicted of an attempt to  
35 commit a class D felony shall be probation, unless the conviction is  
36 of a crime *or of an attempt to commit a crime* specified in article  
37 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated or the crime  
38 is a felony violation of K.S.A. 65-4127b, and amendments thereto,  
39 which involved the manufacture, sale, offer for sale or possession  
40 with intent to sell such controlled substances *or in the uniform*  
41 *controlled substances act*. In determining whether to impose the  
42 presumptive sentence, the court shall consider any prior record of  
43 the person's having been convicted or having been adjudicated to

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VII  
2/3

1 have committed, while a juvenile, an offense which would constitute  
2 a felony if committed by an adult. If the presumptive sentence  
3 provided by this section is not imposed, the provisions of K.S.A.  
4 1989 Supp. 21-4606b shall apply.

5 Sec. 3. K.S.A. 1989 Supp. 21-4606b is hereby amended to read  
6 as follows: 21-4606b. (1) If probation is not granted pursuant to  
7 K.S.A. 21-4606a, and amendments thereto, the presumptive sen-  
8 tence for a person convicted of a class D or E felony shall be  
9 assignment to a community correctional services program on terms  
10 the court determines.

11 (2) In determining whether to impose the presumptive sentence  
12 provided by this section, the court shall consider whether any of  
13 the following aggravating circumstances existed:

14 (a) Whether the crime is a felony violation of K.S.A. 65-4127b  
15 and amendments thereto which involved the manufacture, sale, offer  
16 for sale or possession with intent to sell such controlled substances  
17 *or of the uniform controlled substances act or an attempt to commit*  
18 *such an offense;*

19 (b) whether the crime is a crime specified in article 34, 35 or  
20 36 of chapter 21 of the Kansas Statutes Annotated *or an attempt to*  
21 *commit such an offense;* or

22 (c) any prior record of the person's having been convicted of a  
23 felony or having been adjudicated to have committed, while a ju-  
24 venile, an offense which would constitute a felony if committed by  
25 an adult.

26 Sec. 4. K.S.A. 1989 Supp. 21-4504, 21-4606a and 21-4606b are  
27 hereby repealed.

28 Sec. 5. This act shall take effect and be in force from and after  
29 its publication in the statute book.

(3-13-90)  
VII  
3/3



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 704  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am appearing in support of Senate Bill 704. This bill can be considered remedial in the sense that it reestablishes penalties that were, I believe, inadvertently reduced last year in Senate Bill 49. In particular, repeat traffickers in such drugs as LSD and PCP, received a reduction in the possible sentence under the Habitual Criminal Act. This bill would correct that reduction.

There is a correction needed in the bill:

Section 2 and Section 3 are missing the deleted portions of the current statute. Attached to this testimony is a corrected copy. The purpose of replacing the specific reference to K.S.A. 65-4127b with the reference to the Uniform Controlled Substances Act, is again the apparent oversight that the attempted sale of 500 pounds of cocaine is a class D felony, and after Senate Bill 49, Kansas would grant presumptive probation to such an offender if it was a first offense. Surely, that was not the intent, and the proposed amendments would correct that oversight.

I would be happy to answer any questions.

*Senate Judiciary Committee*  
*3-13-90*  
*Attachment VIII page 1 of 2*



1 Annotated or in K.S.A. 65-4127b and amendments thereto, a third  
2 or subsequent time, the trial judge shall sentence the defendant as  
3 follows, upon motion of the prosecuting attorney:

4 (1) The court shall fix a minimum sentence of not less than the  
5 greatest nor more than two times the greatest minimum sentence  
6 authorized by K.S.A. 21-4501 and amendments thereto, for the crime  
7 for which the defendant is convicted; and

8 (2) the court may fix a maximum sentence of not less than the  
9 least nor more than two times the greatest maximum sentence pro-  
10 vided by K.S.A. 21-4501 and amendments thereto, for the crime.

11 (d) If any portion of a sentence imposed under K.S.A. 21-107a,  
12 and amendments thereto, or under this section, is determined to  
13 be invalid by any court because a prior felony conviction is itself  
14 invalid, upon resentencing the court may consider evidence of any  
15 other prior felony conviction that could have been utilized under  
16 K.S.A. 21-107a, and amendments thereto, or under this section, at  
17 the time the original sentence was imposed, whether or not it was  
18 introduced at that time, except that if the defendant was originally  
19 sentenced as a second offender, the defendant shall not be resent-  
20 enced as a third offender.

21 (e) The provisions of this section shall not be applicable to:

22 (1) Any person convicted of a felony of which a prior conviction  
23 of a felony is a necessary element; or

24 (2) any person convicted of a felony for which a prior conviction  
25 of such felony is considered in establishing the class of felony for  
26 which the person may be sentenced.

27 (f) A judgment may be rendered pursuant to this section only  
28 after the court finds from competent evidence the fact of former  
29 convictions for felony committed by the prisoner, in or out of the  
30 state.

31 Sec. 2. K.S.A. 1989 Supp. 21-4606a is hereby amended to read  
32 as follows: 21-4606a. The presumptive sentence for a person who  
33 has never before been convicted of a felony; but has now been  
34 convicted of a class D or E felony or convicted of an attempt to  
35 commit a class D felony shall be probation, unless the conviction is  
36 of a crime or of an attempt to commit a crime specified in article  
37 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated ~~or the crime~~  
38 ~~is a felony violation of K.S.A. 65-4127b, and amendments thereto,~~  
39 ~~which involved the manufacture, sale, offer for sale or possession~~  
40 ~~with intent to sell such controlled substances or in the uniform~~  
41 ~~controlled substances act.~~ In determining whether to impose the  
42 presumptive sentence, the court shall consider any prior record of  
43 the person's having been convicted or having been adjudicated to

1 have committed, while a juvenile, an offense which would constitute  
2 a felony if committed by an adult. If the presumptive sentence  
3 provided by this section is not imposed, the provisions of K.S.A.  
4 1989 Supp. 21-4606b shall apply.

5 Sec. 3. K.S.A. 1989 Supp. 21-4606b is hereby amended to read  
6 as follows: 21-4606b. (1) If probation is not granted pursuant to  
7 K.S.A. 21-4606a, and amendments thereto, the presumptive sen-  
8 tence for a person convicted of a class D or E felony shall be  
9 assignment to a community correctional services program on terms  
10 the court determines.

11 (2) In determining whether to impose the presumptive sentence  
12 provided by this section, the court shall consider whether any of  
13 the following aggravating circumstances existed:

14 (a) Whether the crime is a felony violation ~~of K.S.A. 65-4127b~~  
15 ~~and amendments thereto which involved the manufacture, sale, offer~~  
16 ~~for sale or possession with intent to sell such controlled substances~~  
17 ~~of the uniform controlled substances act or an attempt to commit~~  
18 ~~such an offense;~~

19 (b) whether the crime is a crime specified in article 34, 35 or  
20 36 of chapter 21 of the Kansas Statutes Annotated ~~or an attempt to~~  
21 ~~commit such an offense;~~ or

22 (c) any prior record of the person's having been convicted of a  
23 felony or having been adjudicated to have committed, while a ju-  
24 venile, an offense which would constitute a felony if committed by  
25 an adult.

26 Sec. 4. K.S.A. 1989 Supp. 21-4504, 21-4606a and 21-4606b are  
27 hereby repealed.

28 Sec. 5. This act shall take effect and be in force from and after  
29 its publication in the statute book.

(3-13-90)  
VIII  
2/2



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 707  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

I am pleased to appear on behalf of Attorney General Robert T. Stephan to support the passage of Senate Bill 707 dealing with the production of drugs in Kansas. The main thrust of this bill is to deal with the growing problem of methamphetamine, commonly referred to as "crank", "crystal" or "speed".

While having much the same stimulant effect as cocaine, methamphetamine has a longer 'high', is usually produced chemically within this country and has the dangerous side effect of creating paranoia in it's users. In short, it poses an even more deadly threat to our society than cocaine. On top of this, an even more deadly form known as "ice" is beginning to appear in this country from Asia, and so the problem of methamphetamine looms even greater in the years to come.

Section 1 creates a new offense for the illegal manufacture of a controlled substance. Manufacturing of methamphetamines has moved across this country from California to Texas to Oklahoma and into Kansas. As these clandestine laboratories have traveled, the states where they have

*Senate Judiciary Committee*  
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proliferated have generally adopted stiff mandatory sentences for the unlawful manufacture of drugs. We are seeing more and more of such clandestine laboratories in Kansas. In fact, there is good evidence that drug traffickers have actually come to Kansas to manufacture methamphetamine on the advice of legal counsel due to our relatively mild penalties.

This bill would follow the lead of states such as California, Texas and Oklahoma, by establishing a sentence of not less than 20 years and a fine of not less than \$300,000. Under current law, realistic time in prison for manufacturing of methamphetamine would be approximately 1 1/2 years. Besides the creation of a dangerous drug, clandestine laboratories create toxic waste sites and fire and explosion dangers as well. To clean up a toxic waste site in accordance with EPA requirements can and has cost tens of thousands of dollars.

Section 2 provides that all costs and expenses resulting from the seizure, disposition and decontamination of an unlawful manufacturing site shall be assessed against the defendant.

As stated above, it appears methamphetamine as dangerous, if not more dangerous than cocaine, and therefore Section 3 places methamphetamine in the same statutory framework as cocaine.

Section 4 merely removes methamphetamine from it's present location in the statutory structure.

I firmly believe we must take these steps and make every effort possible to deter the manufacturing and production of this deadly drug in Kansas.

I would be happy to answer any questions.

(3-13-90)  
IX 2/2



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY

EDWIN A. VAN PETTEN, DEPUTY ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 710  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am here in support of Senate Bill 710. As noted in previous testimony on Senate Bill 705, the drug trade deals not only in narcotics, but in death. Whether it is competitors, late paying customers, law enforcement officers, witnesses or merely someone who got in the way, the legacy of drug trade is all too often murder.

Senate Bill 710 amends our murder in the first degree statute to specifically include the killing of a human being in the course of a felony drug violation.

Given the propensity to weapons, paranoia and hallucinations, we need deterrents and when deterrents fail, the ability to protect society by incarcerating those who cause death in the search of their drug profits.

Thank you for your consideration.

*Senate Judiciary Committee*  
*3-13-90*  
*Attachment V page 1 of 1*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY

EDWIN A. VAN PETTEN, DEPUTY ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 705  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am appearing as a proponent of Senate Bill 705. This creates a new offense of utilizing a firearm in a drug violation.

This bill addresses the deadly marriage of drugs and guns. A nearly identical statute has been in place for several years in the federal system in recognition of this same problem.

Unlike other criminals, who need fear only the police, drug traffickers are subject to the depredations of other criminals and competitors who are obviously aware that they possess large amounts of drugs and cash. To exacerbate this already volatile situation, some drugs such as methamphetamine, actually induce paranoia in their users and others, like LSD, create hallucinations.

We must make every effort to discourage the "Miami Vice" syndrome of drug dealers carrying as much and as heavy of firepower as they can muster. The drive-by shootings occurring even here in Topeka are evidence of the arms race in the drug community.

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*3-13-90*  
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What makes Senate Bill 705 an effective deterrent, as shown by the federal lead is that it mandates a five year sentence to be given in addition to the underlying drug offense and prohibits probation and suspension of sentence.

Hopefully, this will deter some traffickers from their trigger-happy ways, but if not, it will at least provide a definite remedy to protect society from those who insist on mixing drugs and death.

Thank you for your consideration.

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JAMES G. MALSON  
DIRECTOR

# KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL  
STATE OF KANSAS  
1620 TYLER  
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ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY  
SPECIAL AGENT LARRY J. THOMAS  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 709  
MARCH 13, 1990

Mr. Chairman and Members of the Committee:

My name is Larry Thomas. I've been a Special Agent with the Kansas Bureau of Investigation (KBI) since 1984, assigned to the Narcotics Division. I'm here today on behalf of the Kansas Peace Officer's Association as well as a representative for the KBI, to testify on behalf of the proposed amendment to Senate Bill 709.

We are asking for your support in the revision of K.S.A. 21-3302 upgrading the class of a conspiracy charge to make it the same class of felony as the crime that persons have conspired to commit.

A primary goal of law enforcement authorities today is to strike at the top level of narcotics distribution pyramids in an effort to create the largest impact possible when conducting an investigation.

Experienced narcotics violators as well as those who have been trained in methods of avoiding detection are aware that if you isolate yourself from the actual transaction involving the transfer of narcotics or cash the chances of being arrested for narcotics distribution is greatly reduced.

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*3-13-90*  
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The top level narcotics dealers use this knowledge and insulate themselves from the risk of arrest by having other persons handling the controlled substances. They can conduct their drug business without ever touching the profits until the cash has been laundered and given the appearance of legitimate income. Frequently the persons at the top of the distribution pyramids, the person profiting most from the narcotics distribution, are charged with crimes carrying far less penalty assessments than the lower-level traffickers who were caught holding the narcotics.

Several of the investigations that I have been involved with that have resulted in conspiracy charges stemmed from electronic eavesdropping investigations. The average cost of conducting an electronic eavesdropping investigation is approximately \$40,000. The elevation of conspiracy charges to the same level as the sell/possession charges would give the judicial system the potential to make a greater impact in the war on drugs.

Some of the states which have already upgraded conspiracy crimes to the same level as the crime which is the goal of the conspiracy based their action on the following reasons. First, the realization that a group of persons acting together in the furtherance of committing a crime can carry out more sophisticated schemes. Second, with the increased complexity available through the resources of a group acting together, there is a much greater chance of being successful in meeting their goal. Third, a group has the capability of affecting a larger number of people in the course of carrying out their plan.

We as law enforcement officers are astonished at the rapidly increasing level of sophistication displayed by top level narcotics

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dealers. Their development and use of counter-surveillance, concealment and money laundering activities make it necessary to escalate our means of attack on their organizations.

Being cognizant of the fact that when narcotics dealers join together to conspire to distribute narcotics their chances of success are much greater, I believe it is our responsibility to strengthen our line of defense as it pertains to our conspiracy laws.

On behalf of the 3,000 members of the KPOA, I strongly urge that Senate Bill 709 be amended to make conspiracy to commit a felony violation of K.S.A. 65-4127a or 65-4127b, and amendments thereto the same class felony as the crime which the person has agreed to commit or assist to commit.

Thank you for your consideration. I will be pleased to answer any questions.

(3-13-90)

XII

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## New law not used by judge

### Long sentence sought in killing

By Tony Rizzo  
Of the Metropolitan Staff

In what appears to be the first test of a controversial Kansas law, a Johnson County judge on Thursday denied efforts by prosecutors to sentence convicted murderer Ernest Lee Thomas Jr. as a habitual criminal.

District Judge Robert Jones did sentence Thomas to life in prison for murdering 77-year-old Marguerite Martin last January. He also imposed a 15 year-to-life sentence for robbing her and ordered that the sentences run consecutively.

But Jones said he had no choice other than to deny the prosecution's request to apply the habitual criminal act that would have doubled the time Thomas must serve before being eligible for parole on the robbery conviction.

Thomas, 37, now must serve at least 22 years before he is eligible for parole.

Kansas' habitual criminal law, which previously allowed judges to double or triple the sentences of repeat offenders was modified drastically by the Kansas Legislature in its last session.

The law, which went into effect July 1, is vague and open to several interpretations, attorneys in the

See JUDGE, B-7, Col. 1

# Judge doesn't apply new habitual criminal law in slaying

Continued from Page B-1

case argued Thursday.

The amendments to the law were part of Senate Bill 49, which was drafted to ease crowding in the Kansas prison system and which has been roundly criticized by state law enforcement officers.

"The intent of the law was to clear the prisons," Jones said in making his ruling. "It is not for this court to second-guess or overrule the Legislature."

In Thomas' case, District Attorney Paul Morrison presented evidence of a previous conviction Thomas had in Texas in 1974 for aggravated kidnapping.

Thomas also has four other previous convictions for burglary and theft, but because they are crimes against property and not crimes against persons, they cannot be considered as a basis for invoking the act under the new law.

Morrison asked the judge to invoke the habitual criminal act with the robbery count and order it to run consecutively with the life sentence in the murder.

A person sentenced to life in prison in Kansas is eligible for parole after 15 years.

The question of the legality of doubling a life sentence in Kansas, which in effect doubles the time before parole eligibility to 30 years, has not been cleared up by two attorney general's opinions and a state Supreme Court ruling that gave conflicting views.

In denying the state's motion, the judge sided with Thomas' attorney, Roy Holliday Jr., who argued that the new law does not allow convictions outside of Kansas to be used as a basis for sentence enhancement.

Holliday also argued and the judge agreed that the law appears to say that the person must have committed the same type of crime twice in order for it to apply. For exam-

ple, if a person's sentence were to be extended for a robbery, the previous conviction would have to be for a robbery.

"If it was available to the court, the court would sentence you as an habitual criminal," Jones told Thomas. "But the court must follow the law just like everyone else."

Morrison said he was disappointed in the decision, but said he understood why Jones ruled the way he did. Under the old law, the judge would have been required to triple Thomas' sentence.

"It hurts us because the law used to be a significant tool for dealing with hard-core criminals," the district attorney said. "It allowed us to keep violent offenders off of the street for much longer periods of time."

Morrison left open the possibility of appealing the ruling to get questions about the law cleared up by the Supreme Court, but he did say he will go back to the Legislature and talk about changing parts of the law.

Both Morrison and Holliday said the issues raised Thursday broke new legal ground in Kansas. Other legal authorities agreed.

While the lawyers argued their cases, Members of Martin's family sat patiently in the courtroom. Thomas, his hands and feet shackled, sat slumped in his chair for most of the hearing.

Martin, a grandmother and retired schoolteacher, was killed Jan. 18 in the Olathe liquor store owned by her son and where she worked. Her throat was slashed and about \$135 was taken from the store.

The case set another legal precedent when DNA profiling was used to link blood found in Thomas' car to Martin. It was the first use of such evidence in a Kansas City area courtroom.

Thomas denied killing Martin and on Thursday said, "I'm not guilty your honor."

Senate Judiciary Committee  
3-13-90  
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# Sentencing stresses

# loophole in law

By SEAN REILLY

Daily News Reporter

Crime may pay.

Confusion reigns in court-houses and legal circles in Kansas because of revisions to state laws regarding the sentencing of criminals.

Johnson County District Attorney Paul Morrison and defense attorney Roy Holliday Jr. Thursday argued the merits of state law Senate Bill 49 in a county courtroom.

At question was whether Ernest Lee Thomas, 37, a convicted murderer, was eligible to be declared a habitual criminal.

Thomas was sentenced Thursday on charges of first degree murder and aggravated robbery. Thomas killed Marge Martin, 77, Olathe, the morning of Jan. 18 while she worked at her son's Olathe liquor store.

Holliday argued before Judge Robert Jones that a 1974 felony conviction of Thomas for aggravated kidnapping in Texas should not be considered according to the new Kansas law.

Thomas served eight years of a 5- to 20-year prison term for the crime.

Under the habitual criminal statute, the "court is without authority" in the Thomas case, Holliday said.

Texas laws are "foreign" to Kansas, Holliday said. For Thomas to be declared a repeat offender, he must have violated other specific Kansas laws as outlined in the bill.

Senate Bill 49, which modifies the Habitual Criminal Act, went to effect July 1. Under section 23 it states:

"If a defendant is convicted of a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated a second time," a prosecutor may ask for a doubling of the minimum sentence.

Article 34 includes murders; 35, sex crimes; and 36, family crimes such as incest and non-support of a child.

Thomas has no prior convictions under any Kansas statutes, Holliday said.

(Continued to page 2A)

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Judge Jones was precluded from using any Texas conviction to double Thomas's sentences, Holliday said.

Arguing counter to Holliday, Morrison said the key word not used in the bill was "from."

Thomas's past conviction does not have to come "from" any of the articles; 34, 35 or 36, Morrison said.

The crime merely has to be one that was against an individual, such as kidnapping, to double Thomas' sentence, Morrison said.

After a 45-minute hearing that ended at 12:15 p.m., Jones postponed Thomas' sentencing until 4 p.m. Thursday to study the issue before rendering a decision.

Jones reviewed SB 49, which was passed by lawmakers during this year's legislative session, and concluded that Holliday was correct in his argument.

"The new statute does not apply to out-of-state statutes," Jones said.

The judge took time to tell spectators, mostly family members of the murder victim, that it was for the legislature to make the laws, "not this court." The court must abide by the laws set forth, he said.

"The intent of the legislature was to clear the prisons," Jones said. "It's not for this court to second guess the legislature...."

"The out-of-state conviction doesn't apply."

Mark Severt, assistant district attorney for Sedgwick County, is preparing a legal response regarding a defense attorney's

arguments on SB 49.

"We have some cases dealing with that (SB 49)," Severt said.

The case Severt is involved with is the first degree murder conviction of Jimmie Hobbs, who killed Donald Bass in February. Hobbs also was convicted of aggravated robbery.

Severt asked for a tripling of Hobbs' sentences.

Hobbs had at least three previous convictions of burglary and theft, Severt said.

Burglary and theft convictions are not considered crimes against persons.

A Sedgwick County judge found he was able to double Hobbs' murder sentence but not triple it, Severt said.

The old law allowed tripling of a sentence if there were three previous felony convictions, Severt said.

SB 49 inserted language a sentence could be tripled if previous convictions were classified under the three articles, which exclude burglary and theft, Severt said.

Hobbs' attorney argued that the murder conviction was the first violation of article 34, Severt said.

Jim Clark, Topeka, executive director of the Kansas County and District Attorneys Association, acknowledged there are questions throughout the state about SB 49.

The legislative act commonly is referred to as the "prison overcrowding bill." Its purpose was to reduce prison populations at Kansas facilities.

Strictly interpreted, criminals are better off committing a variety of crimes to avoid being

declared a repeat offender, Clark said.

"You can repeat all you want, as long it is not the same crime," he said.

Prior to SB 49 amending the sentencing statutes, any criminal with felony convictions was eligible to be labeled a repeat convict.

However, now a repeat offender is declared only if previous convictions qualify within the three established categories, Clark said.

An individual convicted of a property crime who later commits a crime under any of the three articles can't be declared a habitual criminal, Clark said.

For example, in the past, a convict with two prior forgery felony convictions and most recently convicted of a murder was eligible to have the minimum sentence tripled, Clark said.

That possibility no longer exists, Clark said.

"The way it reads, you have to have committed one of those crimes (34, 25 or 36) before. It sort of pays a criminal not to specialize," Clark said.

"You are better off committing a burglary or forgery before you do your murder, and you will avoid your habitual," Clark said.

Adding to the confusion is subsection C, Clark said.

If an individual has been convicted of two murders and is on parole, but commits a crime not under the three articles, the previous murder convictions cannot be used to enhance the latest sentence, Clark said in reading the new law.

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# Murderer avoids tough sentence

By SEAN REILLY

Daily News Reporter

A transient convicted of murdering an Olathe liquor store clerk Thursday successfully avoided being ordered to serve a minimum of 30 years.

Ernest L. Thomas, 37, was ordered by Johnson County District Court to serve at least 22 years for the murder and robbery of Marge Martin, 77. Martin's throat was slashed deeply on the morning of Jan. 18 while working at her son's liquor store.

Johnson County District Attorney Paul Morrison requested

that Judge Robert Jones declare Thomas a habitual criminal and double the sentences on each count and run the term consecutively.

Thomas would have received a double life sentence for murder and a minimum 30 years to life for robbery. Thomas would have been forced to serve 30 years before being eligible to apply for parole.

However, Jones, after reviewing a newly-passed state law that changed parts of the law governing habitual criminals (see related story this page), declared he wasn't able to

classify Thomas a habitual criminal.

Thomas was sentenced to life on the first degree murder charge and from 15 years to life for aggravated robbery. The sentences are to run consecutively. Thomas is eligible to apply for parole in 22 years.

Jones was scheduled to sentence Thomas at 11:15 a.m. Thursday. He postponed to 4 p.m. Thursday to review the state law brought into question.

Thomas' attorney, Roy Holliday Jr., argued that previous felony convictions from Texas were exempt from being con-

sidered as criteria in determining a habitual criminal under the Kansas act.

"The judge could be right, and probably is right," Morrison said of the decision not to double Thomas' sentences.

Jones' decision came as no surprise, Morrison said. There have been problems with the new law passed during this year's legislature, he said.

"This is a classic example: If it ain't broke, don't fix it," Morrison said.

The legislature meddled with sentencing law and inserted poor wording, Morrison said.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 706  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Stephan, I am pleased to be here in support of Senate Bill 706. This bill is designed to negate what is commonly known as the procuring agent defense utilized by persons who are involved in assisting in the sale of illegal drugs.

The defendant argues in his defense that he or she was acting as an agent of the buyer and only procuring the drug, not acting as an agent of the seller in selling the drug. This allows many defendants to avoid being successfully prosecuted for sale despite their active, willing and voluntary participation in assisting drug sales.

Last fall at the Kansas County and District Attorneys Association fall conference, Richard Wintery, who is now Director of the National Drug Prosecution Center expressed amazement that Kansas still allowed the procuring agent defense and recommended the statutory change.

Senate Bill 706 accomplishes this by defining the term "sell" in the Uniform Controlled Substances Act to include any transfer regardless of agency relationship. Thank you for your consideration.

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 709  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am here in support of Senate Bill 709. In large scale drug investigations, particularly those that necessitate the use of electronic surveillance, the nature of the investigation results in many conspiracies being discovered, but perhaps only one chargeable sale.

As law enforcement has grown more sophisticated in its techniques and started to target the larger drug operations, the traffickers have responded in growing more sophisticated as well. Truly high level financiers and leaders will insulate themselves to the degree that they cannot be tied to a particular drug transaction. However, through the use of electronic surveillance, we can clearly demonstrate their involvement in the overall conspiracy, but under current law conspirators to the sale of drugs face much less severe penalties. This results in the foot soldiers being charged with class C felonies for sale, but the general only being charged with a class E felony for conspiracy.

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Senate Bill 709 is designed to rectify this paradox by setting the conspiracy to commit a felony drug violation at the same level as the underlying crime. It seem ludicrous that our most culpable defendant can only be charged with a class E felony, which even has presumptive probation in Kansas.

Thank you for your consideration.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY  
EDWIN A. VAN PETTEN, DEPUTY ATTORNEY GENERAL  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
REGARDING SENATE BILL 708  
MARCH 12, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am very pleased to appear in support of Senate Bill 708, a bill which will save the state money.

The right to a preliminary hearing is statutory, not constitutional. It is merely a procedural safeguard, the purpose of which is for a court to determine whether probable cause exists that a crime has been committed and the person charged committed that offense. Since the right to a preliminary hearing is granted by statute, the form of that preliminary hearing can also be set by statute. As is done in the federal system, this bill proposes the authorization of hearsay evidence at this preliminary stage of the criminal proceedings.

The streamlined preliminary hearing system proposed by this bill would result in massive savings of time for the court, the prosecutor and law enforcement officers. Based on Bureau of Justice statistics, drug offenses accounted for 17% of all defendants convicted in 1980 and 30% of all defendants convicted in 1987. Preliminary hearings which are now

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dragged out for three or four days, could be conducted in a matter of hours with no loss of constitutionally protected rights to the defendant. Further, preliminary hearings would no longer have to be continued due to the unavailability of a particular witness, which would further speed the overcrowded dockets of our courts.

Finally, and most importantly, the victims and witnesses in all crimes would benefit by avoiding the inconvenience, expense and all too frequent, leave in abuse that occurs in preliminary hearings.

Intimidation is just as much a tool of the drug trade as guns or scales. This bill will reduce the opportunity for intimidation, but as has been shown in the federal system, still protect the defendant's rights.

Thank you for your consideration.

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STATE OF KANSAS



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Mike Hayden Governor

Testimony Concerning  
Senate Bills 684, 686, 702-710  
Presented to  
the Senate Judiciary Committee  
March 12, 1990  
by  
Galen Davis  
Governor's Special Assistant on Drug Abuse

Mr. Chairman, Members of the Committee:

I appreciate the opportunity to appear before you today representing Governor Hayden's support for tougher drug legislation. As Attorney General Stephan has testified, Governor Hayden requested a thorough review of this state's drug laws to ensure a comprehensive approach to our anti-drug statutes. Many of the bills before you today have resulted from the Attorney General's February 7, 1990, report to Governor Hayden. These bills, namely Senate Bills 686 and 702 through 710, provide an excellent foundation for additional or enhanced anti-drug legislation. They reflect significant, thorough research and criminal prosecution experience. Clearly, Attorney General Stephan is to be commended for providing these recommendations.

Governor Hayden, through the Toward A Drug-Free Kansas Program, supports a comprehensive approach to combat drug abuse, crime, and related violence. This approach includes drug education in our schools, drug prevention in our communities, drug treatment for those who could not otherwise afford it, diligent drug law enforcement, and strong, swift, and sure legislative sanctions.

The Governor recognizes the volume of legislation before you and the complexity of many of these bills that may necessitate an interim study. There are, however, several bills that we would encourage and support your favorable recommendation on during this session. These bills include:

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Senate Bill 686

This bill proposes extending the statute of limitations to five years, which is needed for prosecution of drug trafficking crimes that involve vast criminal organizations and complex illegal financial transactions.

Senate Bill 702

Drug trafficking is one of the most financially motivated criminal enterprises in our society. We must seize every opportunity to discourage or punish drug dealing. By significantly raising the possible fines, we strike at the very heart of the dope pushers' motivation. Governor Hayden also has proposed enhanced fines in House Bill 2769.

Senate Bill 704

This bill would include serious drug offenses with Article 34, 35, and 36 statutes which were generally exempted from more lenient sentences under the 1989 Senate Bill 49.

Senate Bill 707

Clearly the use and trafficking of methamphetamine is escalating in our rural communities as well as our cities. Meth labs manufacture stimulant drugs that are as potentially dangerous as cocaine or crack. Ever-changing illegal formulas are creating methamphetamine drugs such as "ice" which have multiplied stimulant, paranoia, and violence related characteristics.

Methamphetamine possession should be placed under the more serious provisions of K.S.A. 1989, Supp. 65-4127a. Illicit manufacture of methamphetamines should be placed under some type of enhanced penalty as should the cultivation of controlled substances. Each are overt criminal acts which are spreading the plague of drug abuse, crime, and violence in Kansas.

Additional Anti-Drug Bills Under Consideration

Governor Hayden proposed HB 2770 to counter unscrupulous adults who would seek to involve juveniles in drug trafficking. This bill has passed the House. You may wish to consider this bill as you discuss SB 684. We believe the intent of these two bills is very similar.

Additionally, Governor Hayden has proposed HB 2782 which addresses the trafficking of drugs near schools and HB 2769 which strives to hold drug users more accountable. These two bills are still under consideration in House Committees.

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Interim Study

Governor Hayden would encourage you to consider an interim study for SB 703, 705, 706, 708, 709, 710 and legislation on money laundering, a continuing criminal enterprise statute, and a racketeer influenced and corrupt organization law (RICO).

Conclusion

These recommendations are being made based on our review of the Report To The Governor by Attorney General Stephan, review of the bills before you, and subsequent discussions with Attorney General Stephan. Your favorable consideration of Senate Bills 686, 702, 704 and 707 will be appreciated. We will be pleased to work further with you and Attorney General Stephan on the other bills that are being considered today.

Thank you for your consideration.

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