

Approved: 1-15-98  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:15 a.m. on January 14, 1998 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson Legislative Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: Carla Stovall, Attorney General (AG)  
Kyle Smith, Kansas Bureau of Investigation (KBI)  
Helen Stephens, Kansas Peace Officers Association (KPA),  
Kansas Sheriff's Association (KSA)

Others attending: See attached list

**SB 407 - Amendments to Kansas offender registration act relating to penalty enhancement time periods and collection of specimens**

Conferee Stovall testified in support of **SB 407**. She covered the evolution of the Kansas Offender Registration Act, K.S.A. 21-4901 et seq. stating that this Act brings the state in compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Predator Act, 42 U.S.C. Section 14071, a federal mandate to states to establish state registration systems for certain offenders. She further described changes to the Act that have been made, and discussed additional changes which would clarify the language of the Act and bring the Act into compliance with the Wetterling Act. She urged the Committee's favorable consideration of the proposed changes. (attachment 1)

Conferee Smith testified in support of **SB 407**, discussing changes in the Kansas Offender Registration Act which would "simplify and tighten" the Act. He defined the need for an increase in the penalty for failure to register and discussed balloon amendments which provide language clarification. (attachment 2) The Chair requested Conferee Smith draft and present the AG's recommendations in balloon form. Following discussion it was the consensus of the Committee to revisit **SB 407** when the balloon is available. (attachment 2)

Conferee Stephens testified in support of **SB 407** as amended and requested consideration of an amendment to New Sec. 6, lines 25-28 adding language which would protect the state and employees of the state from any liability resulting from the enforcement of **SB 407**. (attachment 3)

**SB 404 - Increasing the civil penalty for odometer fraud to not more than \$10,000**

Conferee Clark, at the request of the Chair, summarized his research regarding the number of odometer fraud prosecutions in the last three to five years. He had made inquiries of both Johnson and Sedgwick Counties and found that no such cases had been filed. (attachment 4) Following discussion Senator Bond moved to pass the bill out favorably as printed, Senator Oleen seconded. Motion carried.

**SB 405 - Change the name of administrative law judges to presiding officers' allowing, not requiring, the office to employ court reporters**

Following the Chair's description of **SB 405** Senator Bond moved to pass the bill out favorably as amended, Senator Oleen seconded. Following discussion regarding certain language in the bill, the motion carried.

There was further discussion on certain language in the **SB 404**. Senator Bond made a motion to reconsider action on SB 404, Sen. Pugh seconded. Motion carried.

The meeting adjourned at 10:50 a.m. The next scheduled meeting will be January 15, 1998.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-14-98

NAME	REPRESENTING
Whitney Damon	Kansas Bar Assn.
Kyle Smith	KBI
Keele Newton	AG
N. Lindberg	AG
Deb Kridger	QA
Barrie Ann Brown	KS Gov Cons.
Heather Spodell	Whitney Damon, AG
Jim Clark	KCDAA
Jan Nohr	AG
Julienne Mascha	AG
Kathy Porter	OVA
Glenn M. Schibler	KTPA
Jelen Stephens	KPOA/KSA
Janelle White	Budget
William Welsch	Budget
Carric Keacht	SMO
Larry Klemm	League of Kansas Municipalities
Kim Pentico	KCSDV
Amy Bollig	KCSAV

Natalie Haag

Governor's office



State of Kansas

## Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

SENATE JUDICIARY  
ATTORNEY GENERAL CARLA J. STOVALL'S  
TESTIMONY IN SUPPORT OF  
SENATE BILL NO. 407  
JANUARY 14, 1998

MAIN PHONE: (913) 296-2215  
FAX: 296-6296  
TTY: 291-3767

Dear Chairman Emert and Members of the Committee:

I am pleased to be here today to testify in favor of Senate Bill 407. I would like to thank you for the opportunity to discuss changes that need to be made to the Kansas Offender Registration Act, K.S.A. 21-4901 *et seq.* to continue our efforts at achieving compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Predator Act, 42 U.S.C. Section 14071. The Jacob Wetterling Act mandates the establishment of state registration systems for certain offenders. This federal act conditions receipt of federal Byrne Grant funds upon the establishment of registration requirements for persons convicted of certain crimes against minors and sexually violent offenses. The original deadline for compliance was September 13, 1997. However, upon good cause shown, the State of Kansas was granted a two year extension to achieve compliance.

Last year, I had the opportunity to testify before you regarding changes to the Act as well. The legislature's willingness to expand the Act to include the number of crimes for which registration is applicable to include other violent offenses was a critical step in the Act's evolution. Furthermore, the legislature adopted several other changes requested by my office, namely, requiring address verification checks to be conducted by the Kansas Bureau of Investigation every 90 days; placing a mandatory ten year registration requirement on all first time offenders; expanding registrant information to include documentation of any treatment received for a mental abnormality or personality disorder; and maintaining the confidentiality of victims. These changes have had a significant and positive effect on the enforcement of this Act and the protection of victims and potential victims.

However, there are some additional changes to the Act that I feel are necessary, not only to clarify the language of the Act, but to bring our Act in compliance with the Wetterling Act. I would urge your favorable consideration of these proposed changes:

1. Regarding the changes to K.S.A. 1997 Supp. 21-2511, the new language will serve to clarify the section, but will not substantively alter the content of the section.

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*att. 1*

2. Regarding the three identical paragraphs that are stricken from K.S.A. 1997 Supp. 22-4902, this is an effort to clarify the language as well. You'll notice that an almost identical paragraph is inserted at the end of this section and encompasses all offenders who register under the Act. This section is identical to the three paragraphs that were previously stricken because it mandates that, upon a conviction under the Act, the court shall be responsible for certifying that a person is an offender under the act and should be required to include any such certification in the order of commitment.

However, the new paragraph adds the caveat that if the court fails to comply with this certification requirement, this should in no way alleviate any offender of the requirement to register and comply with the Act. This will prevent offenders from challenging their requirement to register based on the court's failure, for whatever reason, to certify that their conviction makes them subject to the Act.

The last sentence of this italicized section states that a conviction from another state shall constitute a conviction for purposes of this section. I would propose that the term "state" be replaced by the term "jurisdiction". This will ensure that offenders' convictions for certain federal crimes will not slip through the cracks.

3. An offender who violates any provisions of the Act is guilty of a class A, nonperson misdemeanor. K.S.A. 22-4903. This does not provide enough of an impetus for the offender to comply with the Act because the penalty is not very severe. In fact, most prosecutors would have difficulty revoking the probation or parole of an offender if the offender's only new violation is a class A, nonperson misdemeanor violation. We need to get the attention of these offenders, as well as the county and district attorneys prosecuting them, by increasing this penalty to a felony. I would propose that the penalty be a severity level 8, nonperson felony.

It is a fact that several offenders will violate the Act not only by failing to register, or failing to notify authorities of a new address, but by providing false or misleading information in their registration forms. This is essentially the same offense as Making false information, K.S.A. 1997 Supp. 21-3711, which is a severity level 8, nonperson felony. Hence, it is reasonable to assign this same penalty for all violations of the Act. Not only will this make the penalties for failing to register and providing false information consistent, it will serve as more of an incentive for these offenders to comply with the Act. Moreover, the Department of Corrections has advised that the Parole Board will not revoke parole for new misdemeanor convictions, but it will revoke parole for new felony convictions.

4. I would also propose that an additional criminal violation be created to penalize those offenders who commit another sex offense while already in violation of the Act. While the penalty described in K.S.A. 22-4903 applies to those offenders who fail to comply with registration, I would submit that a separate offense should apply to those offenders who not only are noncompliant with the Act, but are re-offending in our communities as well. This offense

should not only be considered a separate offense from the underlying new sex offense, but should be mandated to be served consecutively to the new offense.

5. Offenders required to register under the Act who relocate to another county currently have 15 days to register with the sheriff of the county in which they reside. However, offenders who move out of state have 10 days to register in the new state. The time period for offenders relocating to another county to notify the sheriff should be shortened to 10 days. Ten days is still a reasonable time for the offender to relocate and notify the sheriff. Additionally, this is consistent with the rest of the notice provisions of the Act.

6. An offender who moves to another county is required to notify the sheriff of the county in which such person was last registered and the Kansas Bureau of Investigation of any change of address within 10 days. However, an offender who moves out of state is currently required to inform only the law enforcement agency where the offender last registered of this new address. To achieve consistency throughout the Act, this provision regarding offenders who move out of state should be modified to require the offender to notify the Kansas Bureau of Investigation of this new change of address as well.

7. There should be civil immunity provided for any employee of the state acting within the scope of the employee's employment as a result of requiring an offender to register or an offender's failure to register.

Additionally, any member of the media who, in good faith, reports, prints or provides registrant information under the Act should not be liable in a civil action for damages or other relief arising from the reporting of said information, provided the information pertains to an offense committed prior to April 14, 1994.

8. Registrant information is subject to the Kansas open records act. 1997 K.S.A. Supp. 22-4909. However, the Kansas Supreme Court, in *State v. Myers*, 923 P.2d 1024, 260 Kan. 669 (Kan. 1996), held that there shall be no public access to registrant information regarding offenses occurring prior to April 14, 1994. We must revisit this issue and devise a system for the release of this information.

I propose that the registrant information regarding offenses committed prior to April 14, 1994 be released as follows: (1) Upon request, a member of the general public may obtain from the local sheriff's department any registrant information regarding a specific individual or a specific address, provided the person requesting the information provides that name or address at the time of the request; (2) Upon request, employers may obtain from the local sheriff's department any registrant information regarding a specific prospective employee, provided the employer requesting the information provides the prospective employee's name at the time of the request; (3) Upon request, representatives from schools, day-care facilities and any other entities that provide services to children shall be allowed to inspect the entire list of registered sex offenders at the local sheriff's department.

This system would allow very limited access to registrant information of offenders who committed their offenses prior to April 14, 1994, because any registrant information obtained would be in response to a very narrow search. Furthermore, it would allow necessary protection for those organizations involved in the well-being of children.

9. While Senator Emert has graciously permitted me to present some of these proposed changes to you today conceptually, my staff is in the process of drafting the necessary language for these changes and we will be working with the Revisor's office to finalize the formal language.

10. I would also like to apprise the Committee of the status of the *State v. Scott* decision. In that decision, the Court of Appeals held that, as applied to the defendant, the unrestricted public access to the defendant's registrant information required by the Act was grossly disproportionate to the crime he committed. The Court ordered that the defendant's registrant information shall not be open to inspection by the public or subject to the provisions of the Kansas Open Records Act.

The Kansas Supreme Court recently granted my Petition for Review in that case and oral arguments are scheduled for the week of April 13, 1998.

I would appreciate your support of these bills and I am happy to stand for any questions. Thank you.



## Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

TESTIMONY  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE SENATE JUDICIARY  
IN SUPPORT OF SENATE BILL 407  
JANUARY 14, 1998

Mr. Chairman and Members of the Committee:

My name is Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation and on behalf of Director Larry Welch, I am pleased to be here to testify in favor of SB 407. This legislation is the outgrowth of an interim study and suggestions made by Director Welch and the Department of Corrections to make needed changes to simplify and tighten the Kansas Offender Registration Act.

In addition to some clarification language, the biggest change contained in SB 407 is the increase in the penalty for failure to register. As the interim committee heard this summer, the threat of misdemeanor prosecution apparently did not provide enough incentive to encourage all the offenders to either register or notify authorities when they moved. Unfortunately, their failure to abide by the act resulted in some innocent people being mistakenly judged as offenders when they moved into residences previously occupied by offenders.

As testified to by Director Welch this summer, a change in the penalty for violating the act from a class A misdemeanor to a felony will provide substantial and meaningful incentive to comply. The Parole Board will revoke parole for new felony violations, while they will not for misdemeanors. As the majority of offender registrants are still on parole, this would put

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*att. 2*

some needed teeth into the act, protect the public and assure a higher degree of accuracy in the records.

At the suggestion of the Department of Corrections, SB 407 was drafted making violation a level 10 non-person felony. I would respectfully suggest that this be raised to a level 8 non-person felony for the following reasons.

Currently, if a registrant were to lie and give a false address on their registration, it would constitute the crime of making false information, K.S.A. 21-3711, which is a level 8 non-person felony. If SB 407 were passed as drafted, there would be a lesser offense for wholly failing to register than there would be for registering falsely. For consistency sake, the penalty should be the same.

Second, as a class A misdemeanor, if a person were convicted for failure to register or of some other violation of the act, it is punishable by up to 12 months in the county jail. While the main thrust of making violations a felony is to allow for certain parole revocation, nevertheless, a level 10 felony is punishable by a term of imprisonment of only 5-7 months. A level 8, which is still only 7-9 months, is closer to the current time frame while still being a presumptive probation with minimal impact on actual bed space in the prison system.

As shown in the attached balloon, there are two other suggested amendments we would like the committee to consider. The first is on page 6, line 27, substituting the word "jurisdiction" for the word "state". This would allow the Offender Registration Act to apply if a person had previously been convicted in federal court as well as the courts of other states.

The third amendment is designed to address a problem that occasionally rises where mandatory language of the act requires the KBI to take and analyze samples even though a previous sample has already been obtained and analyzed. This is a duplication without any gain



of accuracy and wastes time and resources of our lab. As such, we request the language be added in section 1 that The "*Kansas bureau of investigation may waive the collection of samples and analysis of genetic marker groupings if the KBI finds that such samples already exist within available data bases of Kansas or other jurisdictions*". This language would give us discretion to allow samples not to be taken if they would be redundant.

I would be happy to stand for any questions.

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1 groupings.

2 (f) The genetic marker groupings shall be maintained by the Kansas  
3 bureau of investigation. The Kansas bureau of investigation shall establish,  
4 implement and maintain a statewide automated personal identification  
5 system capable of, but not limited to, classifying, matching and storing  
6 analysis of DNA (deoxyribonucleic acid) and other biological molecules.  
7 The genetic marker grouping analysis information and identification sys-  
8 tem as established by this act shall be compatible with the procedures  
9 specified by the federal bureau of investigation's combined DNA index  
10 system (CODIS). The Kansas bureau of investigation may participate in  
11 the CODIS program by sharing data and utilizing compatible test pro-  
12 cedures, laboratory equipment, supplies and computer software.

13 (g) The genetic marker grouping analysis information obtained pur-  
14 suant to this act shall be confidential and shall be released only to law  
15 enforcement officers of the United States, of other states or territories,  
16 of the insular possessions of the United States, or foreign countries duly  
17 authorized to receive the same, to all law enforcement officers of the state  
18 of Kansas and to all prosecutor's agencies.

19 (h) The Kansas bureau of investigation shall be the state central re-  
20 pository for all genetic marker grouping analysis information obtained  
21 pursuant to this act. The Kansas bureau of investigation may promulgate  
22 rules and regulations for the form and manner of the collection of blood  
23 and saliva samples and other procedures for the operation of this act. The  
24 provisions of the Kansas administrative procedure act shall apply to all  
25 actions taken under the rules and regulations so promulgated.

26 Sec. 2. K.S.A. 1997 Supp. 22-4902 is hereby amended to read as  
27 follows: 22-4902. As used in this act, unless the context otherwise re-  
28 quires:

29 (a) "Offender" means: (1) A sex offender as defined in subsection (b);  
30 (2) a violent offender as defined in subsection (d); (3) any person who,  
31 on and after the effective date of this act, is convicted of any of the  
32 following crimes when the victim is less than 18 years of age:

33 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments  
34 thereto, except by a parent;

35 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-  
36 ments thereto; or

37 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments  
38 thereto, except by a parent;

39 (4) any person convicted of any of the following criminal sexual con-  
40 duct if one of the parties involved is less than 18 years of age:

41 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

42 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-  
43 3505, and amendments thereto;

(i) The Kansas bureau of investigation may waive  
the collection of samples and analysis of genetic  
marker groupings if the KBI finds that such samples  
already exist within available data bases of Kansas  
or other jurisdictions.

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of

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1 or

2 (7) an attempt, conspiracy or criminal solicitation, as defined in  
3 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-  
4 fense defined in this subsection.

5 Upon such conviction, the court shall certify that the person is an of-  
6 fender subject to the provisions of K.S.A. 22-4001 *et seq.* and amend-  
7 ments thereto and shall include this certification in the order of commit-  
8 ment. Convictions which result from or are connected with the same act,  
9 or result from crimes committed at the same time, shall be counted for  
10 the purpose of this section as one conviction. Any conviction set aside  
11 pursuant to law is not a conviction for purposes of this section. A convic-  
12 tion from another state shall constitute a conviction for purposes of this  
13 section.

14 (e) "Law enforcement agency having jurisdiction" means the sheriff  
15 of the county in which the offender expects to reside upon the offender's  
16 discharge, parole or release.

17 (f) Upon any such conviction as provided in this section, the court  
18 shall certify that the person is an offender subject to the provisions of  
19 K.S.A. 22-4901 *et seq.* and amendments thereto and shall include this  
20 certification in the order of commitment. Failure to certify by the court  
21 as provided by this section does not alleviate any person required to reg-  
22 ister from any of the requirements imposed upon such person by the  
23 Kansas offender registration act. Convictions which result from or are  
24 from or connected with the same act, or result from crimes committed at  
25 the same time, shall be counted for the purpose of this section as one  
26 conviction. Any conviction set aside pursuant to law is not a conviction  
27 for purposes of this section. A conviction from another state shall consti-  
28 tute a conviction for purposes of this section.

jurisdiction

29 Sec. 3. K.S.A. 22-4903 is hereby amended to read as follows: 22-  
30 4903. Any person who is required to register as provided in this act who  
31 violates any of the provisions of this act is guilty of a class A nonperson  
32 misdemeanor severity level 10, nonperson felony.

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33 Sec. 4. K.S.A. 1997 Supp. 22-4904 is hereby amended to read as  
34 follows: 22-4904. (a) (1) Except as provided in subsection (a)(2), within  
35 15 10 days of the offender coming into any county in which the offender  
36 resides or is temporarily domiciled for more than 15 10 days, the offender  
37 shall register with the sheriff of the county.

38 (2) Within 15 10 days of the offender coming into any county in which  
39 the offender resides or temporarily resides for more than 15 10 days, any  
40 offender who has provided the information and completed and signed  
41 the registration form as required in K.S.A. 22-4905 and amendments  
42 thereto, shall verify with the sheriff of the county that the sheriff has  
43 received such offender's information and registration form.

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**KANSAS PEACE OFFICERS ASSOCIATION**  
and  
**KANSAS SHERIFFS ASSOCIATION**

**January 14, 1998**  
**Senate Judiciary Committee**  
**Senate Bill 407**

Mr. Chairman and Members of the Committee:

I am Helen Stephens representing the Kansas Peace Officers Association and the Kansas Sheriffs Association.

We are here to support passage of SB 407 as amended; in particular, raising the penalty to a level 10, nonperson felony for noncompliance.

We also request your consideration of an amendment to New Sec. 6, lines 25-28. The new language would read as follows:

"Nothing in the Kansas offender registration act shall create a cause of action against the state, an employee of the state, **or an employee of any subdivision of the state** acting within the scope of the employee's employment as a result of requiring an offender to register or an offender's failure to register.

Since the subdivisions of the state are involved in the process, as defined on pages 6 and 7 of SB 407; we believe it is appropriate and necessary for this addition.

Thank you for this opportunity and I would stand for questions.

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*att 3*

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## Kansas County & District Attorneys Association

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January 14, 1998

TO: Chairperson Emert and Members of the Senate Judiciary Committee

FROM: *Jim Clark*, KCDAAs Executive Director

RE: **SB 404**, Odometer Fraud Prosecutions

Regarding questions raised during the hearing on SB 404, I made inquiries of both Johnson and Sedgwick Counties, which have the most active white collar and consumer protection cases. No one in either office could remember filing an odometer fraud case in the last three to five years. They attributed this to:

- a) lack of investigations/complaints; and
- b) those that were referred to them had a problem with proving both knowledge and jurisdiction. Since most "rolled" vehicles come from out of state it is difficult to show who did it and in which state. One assistant d.a. with ancient knowledge recalled a further prosecution difficulty: the expense of locating and transporting out-of-state witnesses to the trial.

cc: Jim Welch, Ass't AG

*Senate Judiciary*  
*1-14-98*  
*att. 4*