

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:37 a.m. on March 14, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Pugh (excused)

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Judge Richard Ballinger, 18<sup>th</sup> Judicial District, Wichita, Kansas  
Tom Stanton, Assistant District Attorney, Reno County, Kansas  
Doug Hansen, Kansas City Kansas Police Department  
Shawn Beck, Kansas City Kansas Police Department

Others attending: see attached list

The minutes of the March 13<sup>th</sup>, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

**HB 2697—allowing judges discretion to transfer a chapter 61 case to a chapter 60 case**

Conferee Ballinger testified in support of **HB 2697**, a bill which would authorize judges to exercise discretion in converting limited actions cases to general civil cases. The conferee discussed the bill and stated that it would expedite cases as well as eliminate the use of current law as a vehicle to delay cases and frustrate Chapter 61 cases. (attachment 1) Discussion followed.

**HB 2075—proposed substitute bill concerning methamphetamine and other substances****SB 515—methamphetamine and other substances****SB 612—use of asset forfeited property for methamphetamine enforcement.**

The Chair described the proposed substitute bill, a bill which addresses the statewide methamphetamine (meth) problem, stating that it contains sections 2-6 of **SB 515** and the provisions of **SB 612**. Senator Schmidt explained the purpose of the substitute bill stating that it provides an equitable way to alleviate the disproportionate burden placed on local taxpayers in rural areas who are dealing with the statewide methamphetamine problem. (no attachment)

Conferee Stanton testified in support of **HB 2075**. He presented a breakdown of the most serious meth cases in his county, discussed the costs of investigation and the lack of funding, and offered his support of the meth enforcement fund. He further discussed why he did not support the reduction of criminal penalties as proposed in **SB 515** and offered alternative suggestions. He also asked Committee to consider an amendment to the bill to clarify the definition of “manufacture.” (attachment 2)

Conferee Hansen testified in support of **HB 2075**. He discussed provisions from **SB 515** and **SB 612** which address arson, pressurized anhydrous ammonia, and the grant enforcement program and stated that they greatly increase the ability of law enforcement to combat the growing meth problem in Kansas. (attachment 3)

Conferee Beck testified in support of **HB 2075**. He described his experience as a clandestine operations officer working on meth cases and discussed the need for funding for KCPD for proper equipment and certification training. (no attachment)

The meeting adjourned at 10:35 a.m. The March 15<sup>th</sup> meeting is on call of the Chair and the next scheduled meeting is March 18<sup>th</sup>.

## SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-14-02

NAME	REPRESENTING
Connie Burns	Whitney B. Damron, P.A.
P. Bally	18 <sup>th</sup> Judicial Dist
Debbie Kellee	18 <sup>th</sup> Judicial Dist Ct
Jeff Rothberg	Kansas Peace Officers Ass'n
Doug Hesse	K.C.K. Police Dept.
Shaw Rock	K.C.K. Police Dept.
Brenda Harmon	KSC
Joe Herold	KSC
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Ani Hyten	JUDICIAL BRANCH
Jean Barber	KADC
Ken Brone	Hein Law Firm
Lee Palmer	KFB
Marlee Carpenter	KCFI
Doug Wareham	Kansas Agribusiness Retailers Assn.

Chairperson and members of the Senate Judiciary Committee:

I appreciate the opportunity to appear before you today as a resource for the proposed change in K.S.A. 61-2910. I am the current presiding judge in the Civil Department for the 18<sup>th</sup> Judicial District, located in Wichita, Kansas.

In 2001, there were over 400 Chapter 60 cases filed and over 26,000 Chapter 61 cases filed in our jurisdiction alone. Each year this figure continues to increase. The proposed change simply allows the judges the discretion to transfer the case to Chapter 60 procedures instead of mandatory transfers.

In the last year, the provisions of 61-2910 have been used in an increasing amount. Yesterday, I had two cases up for trial and each had an attorney requesting the transfer. What this effectively does is delay the proceedings. This legislature created the 61 cases as an economical and expedited way our community can have small cases brought to judgment. With the mandatory provisions in the current law, the cases are delayed and the goal of the Chapter 61 cases is frustrated. There are also conflicts in the current laws. The defendant currently sets the forcible detainer actions for trial within eight days of the first appearance. If a defendant appears and requests a transfer to chapter 60, this conflicts with the eight-day requirement contained in 61-3807.

The old statute, K.S.A. 61-1729 gave the courts the discretion when it said, "...may upon motion of a party and order of the court for good cause shown." This language allows those judges to continue on with the transfer where justice requires and deny those cases where there is no real need for the added expense and time.

Richard T. Ballinger  
Division 13  
Presiding Judge, Civil Department  
18<sup>th</sup>

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1 DISTRICT ATTORNEY  
Keith E. Schroeder

DEPUTY DISTRICT ATTORNEY  
Thomas R. Stanton

ASSISTANT DISTRICT ATTORNEYS  
Linda L. Blackburn  
F. Terry Bruce  
Benjamin J. Fisher  
Faith A.J. Maughan

**OFFICE OF THE  
DISTRICT ATTORNEY**

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To: The Honorable Members of the Kansas Senate Judiciary Committee

From: Thomas R. Stanton, Deputy Reno County District Attorney

Re: Senate Judiciary Hearing Testimony on HB 2075 as amended by the provisions of  
SB 612 and SB 515

Date: March 14, 2002

Mr. Chairman and Members of the Committee:

I have been involved in the prosecution of felony drug offenses in Kansas for nearly eleven years. The first two years of that time I prosecuted a total of six methamphetamine cases, and none of those cases involved the manufacture of the drug. Since January 1, 2002, I have filed or prepared for filing thirty-nine methamphetamine-related cases. A break-down of the most serious charge filed in each case is as follows: Manufacturing or attempted manufacturing of methamphetamine: sixteen; unlawful possession of ephedrine with the intent to manufacture methamphetamine: four; possession of methamphetamine with the intent to sell: one; possession of methamphetamine: thirteen; possession of drug paraphernalia with the intent to manufacture methamphetamine or possession of anhydrous ammonia with the intent to manufacture methamphetamine: five. I have at least fifteen additional methamphetamine manufacturing or possession cases that have been forwarded to me for review for charges. Kansas has a serious methamphetamine problem.

Legislation has been introduced this term pursuant to HB 612 (now HB 2075) to create a statewide methamphetamine enforcement fund to assist local jurisdictions with the high cost of fighting the methamphetamine crisis in Kansas. With federal funds becoming more scarce for this purpose, it is imperative that such a fund be created. I support the creation of such a fund by any means that this body can accomplish the task. It is my understanding that the creation of such a fund is also supported by the Kansas County and District Attorney's Association.

SB 515 has also been amended into HB 2075. I ask that this body take careful action on that measure. I want to make it clear that I do not support the reduction of the penalty for unlawful

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possession of ephedrine or other methamphetamine precursors from a level one drug felony to a level two drug felony. K.S.A. 2001 Supp. 65-7006 should not be amended in any way. I agree with Mike Jennings from the Sedgwick County District Attorney's Office that reducing the criminal penalties for this crime would be a "major blunder." As the law now stands, persons found to be in possession of large quantities of ephedrine or pseudoephedrine pills or large amounts of processed ephedrine or pseudoephedrine powder, along with other items used for the manufacture of methamphetamine, can be prosecuted at the same level as those who are caught in the actual process of manufacturing methamphetamine. The crimes must remain at the same level because the possession and processing of the ephedrine or pseudoephedrine is, in reality, the first step in the manufacturing process. Reduction in the penalty for unlawful possession of the precursor chemicals required for the manufacture of methamphetamine serves no logical purpose.

A review of SB 515, now HB 2075, appears to seek new tools to prosecute methamphetamine cases that provide penalties for manufacturing-related crimes that establish presumptive prison sanctions that do not involve the lengthy sentences mandated by level one drug offenses. If that is the goal, it would be more logical to simply amend K.S.A. 2001 Supp. 65-4152 to provide level two drug felony sanctions for the possession of certain chemicals or drug paraphernalia with the intent to manufacture a controlled substance. The provisions of the proposed legislation regarding other chemicals required for the manufacturing process (red phosphorous, lithium metal, sodium metal, iodine, anhydrous ammonia or pressurized ammonia) and paraphernalia unique to the manufacturing process, such as gassing generators, could be easily added to the paraphernalia statute to achieve the result desired by this legislation. I urge you to resist the effort to amend K.S.A. 65-7006.

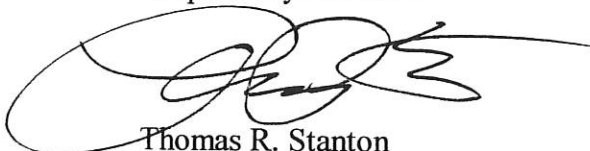
Finally, I ask you to consider an amendment to K.S.A. 65-4101(n) to clarify the definition of "manufacture" by adding the word "or" as follows:

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly *or* by extraction from substances . . . ."

The modification is required to remove any ambiguities in the scope of the statute.

Thank you for the opportunity to address you on these matters. If I can be of further assistance to you in any way, please let me know.

Respectfully submitted



Thomas R. Stanton

# Polsinelli | Shalton | Welte

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## Memorandum

**TO:** THE HONORABLE JOHN VRATIL, CHAIRMAN SENATE JUDICIARY COMMITTEE

**FROM:** KANSAS PEACE OFFICERS ASSOCIATION

**RE:** HB 2075

**DATE:** MARCH 14, 2002

On behalf of the approximately 4,800 members of the Kansas Peace Officers Association and the Kansas Sheriffs' Association, we appear today in support of HB 2075. HB 2075 contains provisions from Senate Bills 612 and 515, the contents of which greatly increase the ability of law enforcement to combat the growing methamphetamine problem in Kansas.

SB 515 expands the definition of arson to include an accidental fire or explosion caused by the manufacture of methamphetamine or another controlled substance. Such addition to the arson statutes is necessary, since, due to the highly explosive nature of the ingredients, law enforcement officers arriving on the scene of a supposed meth lab are placed in great danger by the presence of such chemicals. Therefore, an arson charge is justified for such fires, since the person intended to manufacture a highly flammable substance that he or she knew posed a great danger to themselves and others.

We also support the criminalization of the possession of pressurized ammonia in a container not approved by the Department of Agriculture. It is the experience of law enforcement that farmers and those that use such substance use extreme caution when handling it, and would never use unapproved and unsafe containers.

We also want to strongly state that the KPOA and KSA fully support the concept contained in SB 612, which would create a grant program to award grants to local units of government to fight meth production in areas in which a high incidence of its manufacture and sale occur. As many of you are aware, meth devastates communities by not only the effects of its use, but also by the long lasting effects of the cleanup and supervision of manufacturing sites, and in many instances the local communities do not have the ability to effectively deal with the cleanup. These grants are an acceptable use of forfeiture monies, and are fully supported by law enforcement.

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