

Approved

Date: 3-25-02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:43 a.m. on March 20, 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:

Representative Bob Bethell
Jerry Hereden, Williams Corporation
David Zabel, Assistant District Attorney, Douglas County
Kevin Graham, Office of the Attorney General

Others attending: see attached list

The minutes of the March 19th, 2002 meeting were approved on a motion by Senator O'Connor, seconded by Senator Goodwin. Carried.

HB 2752--re: theft; defining certain crimes related to certain pipelines

Representative Bethell testified in support of **HB 2752**, a bill which would make it a crime to tamper with certain pipelines including anhydrous ammonia pipelines. The Conferee discussed why he has an interest in, and need for, the provisions in this bill. He stated the bill will add needed security to Kansas pipelines and have a positive impact on reducing methamphetamine production.(attachment 1)

Conferee Hereden testified in support of **HB 2752**. He informed Committee about the type, distance in miles, and location of Williams pipeline in Kansas and discussed the company's current efforts to deal with pipeline tampering. He further discussed the goals of this bill.(attachment 2)

HB 2735--aggravated battery

Conferee Zabel testified in support of **HB 2735**, a bill which would amend the current definition of aggravated battery to include unintentionally causing bodily harm or great bodily harm to another person while driving under the influence of drugs or alcohol. He provided detail on the intent of the bill and cited case law to support his argument that "the current battery statute does not adequately address a DUI that results in bodily harm."(attachment 3)

Conferee Graham testified in support of **HB 2735**. He reviewed the history of the bill, discussed the attorney general's strong support of the bill and clarified the provisions in it.(attachment 4) He briefly discussed the effect the passage of the bill would have on prison population.(attachment 5)

Final action:

HB 2709--uniform commercial code; re: secured transactions

Following a review of the bill by the Chair and discussion by Committee, Senator Goodwin moved to amend HB 2709 by deleting Section 4 and 5 and renumbering the subsequent sections, Senator Umbarger seconded. Carried. Following further discussion, Senator Oleen moved to pass the bill out favorably as amended, Senator Haley seconded. Carried.

HB 2772--court costs; re: laboratory analysis fee

The Chair reviewed the bill and referenced a letter written by Kyle Smith which recommends an increase in lab analysis fees from \$150 to \$300.(attachment 6) Senator Donovan moved to increase the lab analysis fees from \$150 to \$300 and to grant the revisor drafting leeway, Senator Schmidt seconded. Lengthy discussion followed. Senator Donovan amended his motion to increase the lab analysis fees from \$150 to \$400 with instructions to the revisor to make the bill less "wordy," Senator Schmidt seconded. Carried with Senator Haley requesting his nay vote be recorded. Senator Adkins moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried with Senator Haley requesting his nay vote be recorded.

The meeting adjourned at 10:23. The next scheduled meeting is March 21, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-20-02

NAME	REPRESENTING
Sandy Jacquet	LKM
Connie Burns	Whitney B Damron, PA
Tom Brono	Williams Co.
Jerry Hereden	Williams
Joe Herold	KSC
Brinda Harman	KSC
Barb Jombs	KSC
Kyle Smith	KBT
Jean Barber	KADC
Jack Graves	P-21 - Duke + N-M
David Zabel	KCDAA
KEVIN GRAHAM	A.G.
ALbert Murray	JJA
Kathley Olsen	Ks Bankers Assn
Jamie Dole	
Cassidy Palmer	
Kaylynn Witt	
Tommy Mavrin	NGHS
Stephanie Spradlin	Mr. J

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COMMITTEE ASSIGNMENT
 VICE-CHAIR: KANSAS FUTURES
 MEMBER: APPROPRIATIONS
 SOCIAL SERVICES BUDGET
 STATE CAPITOL—ROOM 175-W
 TOPEKA, KS 66612-1504
 785-296-7693

TOPEKA

Testimony on HB 2752

Thank you Chairman and Vratil members of the Senate Judiciary Committee, I am Bob Bethell and I represent the 113th District of Kansas. The 113th District covers many square miles of Kansas, not as many as some in the western part of the State and not as many today as it will in the future. My interest in HB 2752 is because with the vastness of the District comes the opportunity to have many miles of pipelines carrying various products from points of production to the point of final usage of these products.

The miles of pipeline in Dist 113 are a small portion of the miles in Kansas, and the concern about Security the pipelines and the safety of the residents becomes foremost. The happenings of September 11, 2002 have brought to the minds of many Americans how truly free we have been. Freedom that has allowed us to have little or no thought or worry about the damage that could be done to property but more importantly the lives of our citizens if someone were to tamper with or damage these pipelines.

It is at times like these that we must as a society consider the crime of tampering with the property of others and also the consequences of such tampering, both of those who may be injured by the actions of others as well as those who are doing the tampering. The severity of the action brings with it the necessity of making an impression on those who have little regard for their own safety, the property of others or the general welfare of the residents of Kansas.

Chairman Vratil and members of the committee may say that this bill is designed to provide a penalty for the tampering with only some of the pipelines, namely those carrying anhydrous ammonia. That position is real but is only a portion of the concern that is addressed by HB 2752. Anhydrous ammonia is a component in the manufacture of Methamphetamine, which is illegal, and a concern of many of the people of Kansas. The passage of HB 2752 will add needed security to all pipelines in Kansas and will have a positive impact on reducing the illegal production of Meth.

Thank you again for allowing me to come before you today, and I will stand for any questions.

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Subject: Testimony for 27512

Prepared by: Jerry Hereden, government affairs representative

Date of testimony: March 21, 2002

1. How many miles of pipeline does Williams have in Kansas?

Williams has 3,244 miles of transportation pipe, 1,829 miles of natural gas liquids pipe, 1,907 miles of gathering pipe, 1,407 miles of petroleum pipe and 357 miles of anhydrous ammonia line.

2. Where are Williams pipelines located in Kansas?

Williams has pipelines that span Kansas from as far west as Liberal and as far northeast as Atchison.

Williams has pipelines that run through large communities such as Topeka, Lawrence, Independence, Coffeyville and near Wichita.

Williams' anhydrous ammonia lines runs through the center to the eastern section of the state, encompassing Salina, Langdon, Hutchinson and McPherson.

Additionally, Williams has 7 terminals in Kansas and 24 compressor stations.

3. Has Williams had trouble with people tampering with its pipelines?

Yes. In 2001, there were at least 31 known incidents of theft and vandalism from Williams' ammonia pipeline in Kansas. These thefts have occurred in the day and night. There were 13 incidents in Salina; 4 in Langdon; 8 in Hutchinson; and 6 in McPherson.

4. Why are thieves stealing anhydrous ammonia?

They use the ammonia to make methamphetamines.

5. How are thieves stealing the ammonia?

They are opening the valves of the pipeline and then filling cylinders with the ammonia.

6. What are the dangers of tampering with pipelines?

- The loss of lives can occur.
- There are risks to property.
- Crucial services to communities can possibly be lost. This could impact residents or an industry's ability to create products.
- A pipeline rupture could impact several square miles.

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7. Does your company monitor its pipelines?

Yes. We patrol our pipelines by air and through a computer system.

8. As for ammonia, are there dangers in stealing it from pipelines?

The pipelines have extremely high pressure and an unintended release of anhydrous ammonia vapors is possible. This could result in serious burns to the skin. Anhydrous ammonia vapors also are lethal if inhaled. Anhydrous ammonia actually displaces oxygen when breathing.

Additionally, anhydrous ammonia vapors are attracted to moisture. A vapor cloud could get into a stream or river, contaminating fish.

It's important to note that anhydrous ammonia is not an explosive product.

9. Has Williams tried to stop the thieves from stealing anhydrous ammonia from its pipelines?

Williams has attempted deterrents, such as enclosing the valves with locked metal boxes. It also has placed fences around these areas and posted warning signs. However, the thieves have become bolder using cutting torches and drills on the high pressure pipeline.

Williams expertise is in operating pipelines – not catching criminals.

10. How is HB2752 good for Kansas?

It provides tools to punish people who tamper with and steal products from pipelines. Tampering with pipelines is dangerous, risky business and should be a serious crime.

11. What are the goals of this bill?

The goals are to:

- Set criminal penalties, making it worthwhile for law enforcement to arrest those people who tamper or steal from pipelines.
- Prevent serious injuries.
- Decrease the development of methamphetamines.
- To protect Williams' employees and the public.

Senate Judiciary Committee
Testimony 3/20/2002
In Support of House Bill 2735
Kansas County and District Attorneys Association
David P. Zabel
Douglas County Assistant District Attorney
785-841-0211

I appreciate the opportunity to appear before this committee on behalf of the Kansas County and District Attorneys Association to support this legislation. House Bill 2735 would fix a gap in the Aggravated Battery Statute that was created when the statute was amended in 1992. Without House Bill 2735, persons who cause bodily harm to other individuals while they drive under the influence of alcohol cannot be effectively prosecuted as felons. The current state of the law is inconsistent with Kansas's tough stance on DUI related offenses.

INTENT OF HOUSE BILL 2735

House Bill 2735 would create an additional theory in which a defendant could be criminally liable for the crime of Aggravated Battery. In Kansas, an aggravated battery (always a felony although the "severity level" varies depending on the theory) is distinguished from a simple battery (always a B misdemeanor) by the added element of "great bodily harm." If great bodily harm actually occurs, then the offense is considered a severity level four (4) felony if the act was intentional, or a severity level five (5) felony if the act was reckless. If great bodily harm did not actually occur, but a deadly weapon was used (like a vehicle), or the act was committed in a manner whereby great bodily harm could occur, the offense is considered a severity level seven (7) felony if intentional or a severity level eight (8) felony if the act was reckless. House Bill 2735 would create a situation where a person would be guilty of Aggravated Battery if the crime of Driving Under the Influence of Alcohol (DUI) resulted in bodily harm or great bodily harm to another. The former would be a severity level four (4) felony and the latter would be a severity level seven (7) felony.

HOUSE BILL 2735 IS CONSISTENT WITH PUBLIC POLICY AND EXISTING STATUTES

Kansas has recently taken legislative measures to more aggressively prosecute persons who drive under the influence of alcohol. This is evident in the amendments to the DUI statute, which increased the minimum mandatory penalties and abolished any time frame in which prior DUI convictions could be used to enhance penalties. Kansas also recognizes that a DUI that results in death should be considered more serious than a non-fatal DUI. A DUI that results in death constitutes the crime of Involuntary Manslaughter. A showing that the act itself was intentional or reckless is not required. House Bill 2735 simply seeks to apply that same standard to situations where a DUI results in bodily harm or great bodily harm to another person. Like the crime of Involuntary Manslaughter, there would be no requirement that the harm be done intentionally or even recklessly if a DUI was proven.

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WHY THE CURRENT AGGRAVATED BATTERY STATUTE DOES NOT ADEQUATELY ADDRESS A DUI THAT RESULTS IN BODILY HARM.

Prior to 1993, a DUI that resulted in bodily harm would have been prosecuted under the Vehicular Battery Statute. This statute was nearly identical to the proposed amendments of House Bill 2735. However, in 1993, the Aggravated Battery statute was amended to include reckless conduct. Prior to the 1993 amendments, an aggravated battery could only be proven if the act was intentional. Simultaneously with amending the Aggravated Battery statute, the Legislature repealed the Vehicular Battery Statute. Presumably, this was done because the Legislature contemplated that a DUI that resulted in bodily harm to another could be effectively prosecuted as a Reckless Aggravated Battery. The rationale being that a person who consumes enough alcohol to be over the legal limit and then chooses to drive a car has acted recklessly. Unfortunately the Kansas Supreme Court has not agreed with this rationale and has held that "reckless" conduct cannot be proven simply by the act of driving while intoxicated.

THE EFFECT OF STATE v. HUSER

On August 18, 1996, a drunk driver struck two pedestrians as they crossed the street in Manhattan, Kansas. The pedestrians were injured but not killed. There was ample evidence that the defendant was intoxicated and he was charged with Reckless Aggravated Battery. The theory was that the reckless act was the decision to drive after becoming intoxicated. The Kansas Supreme Court stated that the recklessness had to be specifically related to driving behavior such as weaving, crossing the center line of the roadway, speeding, etc. Because there was no evidence of such driving behavior, they concluded that the defendant could not be charged with an Aggravated Battery. The Court considered the argument that the reckless behavior was the decision to drink to the point of intoxication and then operate a motor vehicle. However, the Court squarely rejected this argument. Given how the term "reckless" had been legislatively defined and judicially interpreted, the Court did not think it had a choice. "Reckless" is defined by Kansas law as "conduct done under circumstances that show a realization of the imminence of danger to the person of another and a conscious and unjustifiable disregard of that danger." "Reckless" has also been defined as "wanton and willful disregard for human life."

IRONY OF CURRENT LAW

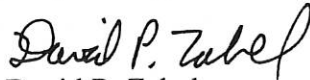
The result of the *Huser* Court's interpretation of "recklessness" is that it is nearly impossible to effectively prosecute a drunk driver for Aggravated Battery unless their driving behavior is reckless. Even if reckless driving behavior is present, the more intoxicated a driver is the less likely he/she is going to be found to have driven "recklessly." For example, a driver who consumes enough alcohol that he/she is slightly over the legal limit may purposely speed, weave, and otherwise drive in a "reckless" manner. If another person was injured because of that behavior then that person could be prosecuted for Reckless Aggravated Battery because the erratic driving was consciously done and, therefore, that driver acted with willful disregard of human life. However, if a driver consumed so much alcohol that he/she was well over the legal

limit, that driver may be so intoxicated that he/she simply passes out while driving and hits another vehicle or a pedestrian. Given that "reckless" requires a conscious disregard for human life, the more intoxicated a person is, the less that person meets the definition of "reckless." Ironically, the slightly-intoxicated driver may be found guilty for a Reckless Aggravated Battery, but the extremely-intoxicated driver definitely will not be. Neither driver will have committed an Aggravated Battery unless there is reckless driving behavior.

HOUSE BILL 2735 WOULD FILL THE GAP

The amendments to the Aggravated Battery Statute that House Bill 2745 proposes would merely return Kansas to the pre-1993 law where an intoxicated driver who injured another person was criminally liable. Although the Legislature apparently assumed that amending the Aggravated Battery statute to include reckless behavior would abrogate the need for the vehicular battery statute, the *Huser* case shows that there is a need for this legislation. This Legislature would not tolerate a situation where a drunk driver could kill another person and not be liable for a felony offense and it should not tolerate the current situation where a drunk driver can injure another person and not be criminally liable for a felony offense.

Respectfully,



David P. Zabel

Douglas County Assistant District Attorney



State of Kansas

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TESTIMONY OF
ASSISTANT ATTORNEY GENERAL KEVIN A. GRAHAM
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: HOUSE BILL 2735
March 20, 2002

Chairperson Vratil and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to express support for House Bill 2735 as amended by the House.

House Bill 2735 proposes amending the aggravated battery statute, K.S.A. 21-3414, to include unintentionally causing great bodily harm or bodily harm while driving under the influence of alcohol or drugs. This change in law is necessary as a result of the Kansas Supreme Court's decision in the case of *State v. Huser*, 265 Kan. 228 (1998), where the Court held that simply driving while intoxicated and causing an injury does not necessarily equate to reckless conduct as currently required under the aggravated battery statute. Attorney General Stovall feels very strongly that there should be appropriate felony penalties for individuals who seriously injure innocent victims while in the commission of the crime of driving under the influence and that the crime of aggravated battery should apply to those cases.

There is absolutely no denying the fact that drunk driving is a serious and deadly problem in our State and our nation. Drunk driving is the number one cause of injury nationwide of young people. As you may be aware, in 1998 Attorney General Stovall convened the Far-Reaching Alteration of Traffic and Alcohol Laws Task Force (FATAL), to conduct a comprehensive examination of current traffic and alcohol laws and provide recommendations to change those laws. One of the FATAL Task Force's original recommendations for legislative change was to amend the aggravated battery statute, K.S.A. 21-3414, in the manner the statute is amended by House Bill 2735.

On behalf of Attorney General Stovall I urge your favorable consideration of House Bill 2735 as amended by the House.

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Bedspace Impact Assessment
House Bill 2735
Aggravated Battery while Committing a Violation of K.S.A. 8-1567

AMENDMENT

KEY ASSUMPTIONS

- The target inmates in this bill include any persons who are convicted of “aggravated battery of **unintentionally causing great bodily harm to another person** and **unintentionally causing bodily harm to another person** while committing a violation of K.S.A. 8-1567”.
- “**Unintentionally causing great bodily harm to another person**” is designated as a severity level 5, person felony and “**unintentionally causing bodily harm to another person**” is designated as a severity level 8, person felony.
- Projected admission to prison is assumed to increase by an annual average of half percent. Bed space impacts are in relation to the baseline forecast produced in September 2001 by the Kansas Sentencing Commission.
- Percentage of target inmate sentences served in prison is assumed to be 85 percent, which is in consistent with the official projections released in September 2001.
- The average length of stay in prison for the new N5 inmates is assumed to be 49 months and the average length of stay in prison for N8 inmates is assumed to be 14 months.

Unintentionally Causing Great Bodily Harm To Another Person-N5

- **Scenario One:** It is assumed that 2% (12 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing great bodily harm to another person**” and eventually be sentenced to prison.
- **Scenario Two:** It is assumed that 5% (30 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing great bodily harm to another person**” and eventually be sentenced to prison.
- **Scenario Three:** It is assumed that 10% (60 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing great bodily harm to another person**” and eventually be sentenced to prison.

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Unintentionally Causing Bodily Harm To Another Person-N8

- **Scenario One:** It is assumed that 5% (30 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing bodily harm to another person** ” and eventually be sentenced to probation while 20 months later violating their probation term and subsequently be sentenced to prison.
- **Scenario Two:** It is assumed that 10% (60 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing bodily harm to another person** ” and eventually be sentenced to probation while 20 months later violating their probation term and subsequently be sentenced to prison.
- **Scenario Three:** It is assumed that 25% (151 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing bodily harm to another person** ” and eventually be sentenced to probation while 20 months later violating their probation term and subsequently be sentenced to prison.

FINDINGS

- There was no offender sentenced to prison under the crime of aggravated battery of **unintentionally causing great bodily harm to another person** or **unintentionally causing bodily harm to another person** while committing a violation of K.S.A. 8-1567”, during FY 2001.
- There were 602 offenders sentenced to probation under K.S.A. 8-1567 during FY 2001.

Unintentionally Causing Great Bodily Harm To Another Person-N5

- **Scenario One:** If 2% (12 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing great bodily harm to another person** ” and eventually be sentenced to prison, by the year 2003 there will be 12 beds needed and by the year 2012 there will be 43 beds needed.
- **Scenario Two:** If 5% (30 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing great bodily harm to another person** ” and eventually be sentenced to prison, by the year 2003 there will be 30 beds needed and by the year 2012 there will be 109 beds needed.
- **Scenario Three:** If 10% (60 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of

unintentionally causing great bodily harm to another person ” and eventually be sentenced to prison, by the year 2003 there will be 60 beds needed and by the year 2012 there will be 218 beds needed.

Unintentionally Causing Bodily Harm To Another Person-N8

- **Scenario One:** If 5% (30 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing bodily harm to another person ”** and eventually be sentenced to probation while 20 months later violating their probation term and subsequently be sentenced to prison, by the year 2003 there will be no bed needed and by the year 2012 there will be 32 beds needed.
- **Scenario Two:** If 10% (60 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing bodily harm to another person ”** and eventually be sentenced to probation while 20 months later violating their probation term and subsequently be sentenced to prison, by the year 2003 there will be no beds needed and by the year 2012 there will be 63 beds needed.
- **Scenario Three:** If 25% (151 offenders) each year of the 602 offenders sentenced under K.S.A. 8-1567 during FY 2001 will be convicted of the crime of “aggravated battery of **unintentionally causing bodily harm to another person ”** and eventually be sentenced to probation while 20 months later violating their probation term and subsequently be sentenced to prison, by the year 2003 there will be no beds needed and by the year 2012 there will be 158 beds needed.

**Unintentionally Causing Great Bodily Harm To Another Person-N5
Bed Space Impact Assessment - Amendment**

June of Each Year	Scenario #1 2% (12 Offenders) Every Year		Scenario #2 5% (30 Offenders) Every Year		Scenario #3 10% (60 Offenders) Every Year	
	Admissions	Beds Needed	Admissions	Beds Needed	Admissions	Beds Needed
2003	12	12	30	30	60	60
2004	12	24	30	60	61	121
2005	12	36	30	90	61	182
2006	12	42	31	106	61	212
2007	12	42	31	107	62	213
2008	12	42	31	108	62	216
2009	12	42	31	108	62	213
2010	12	42	31	107	62	216
2011	13	42	31	107	63	216
2012	13	43	32	109	63	218

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**Unintentionally Causing Bodily Harm To Another Person-N8
Bed Space Impact Assessment - Amendment**

June of Each Year	Scenario #1 5% (30 Offenders) Every Year		Scenario #2 10% (60 Offenders) Every Year		Scenario #3 25% (151 Offenders) Every Year	
	Admissions	Beds Needed	Admissions	Beds Needed	Admissions	Beds Needed
2003	0	0	0	0	0	0
2004	10	10	20	20	51	51
2005	30	30	61	61	153	150
2006	31	31	61	61	154	153
2007	31	29	62	61	155	155
2008	31	31	62	61	156	154
2009	31	31	62	62	156	156
2010	31	31	62	61	157	155
2011	31	31	63	63	158	157
2012	32	32	63	63	159	158

House Bill 2735 Total Bed Space Impact Assessment -Amendment

June of Each Year	Scenario #1		Scenario #2		Scenario #3	
	Admissions	Beds Needed	Admissions	Beds Needed	Admissions	Beds Needed
2003	12	12	30	30	60	60
2004	22	34	50	80	112	172
2005	42	66	91	151	214	332
2006	43	73	92	167	215	365
2007	43	71	93	168	217	368
2008	43	73	93	169	218	370
2009	43	73	93	170	218	369
2010	43	73	93	168	219	371
2011	44	73	94	170	221	373
2012	45	75	95	172	222	376



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

March 19, 2002

To: Senate Judiciary Committee
From: Kyle Smith, Director of Public and Governmental Affairs
Re: HB 2772 Lab fee fund

At Monday's hearing Chairman Vratil raised the issue of the adequacy of the \$150 lab fee fund, given that it had never been raised in the history of the statute. As I advised the committee the \$150 figure was 'borrowed' from an Oklahoma statute. Not counting the hours the highly trained scientists put into an exam or the cost of the very expensive instruments, the consumable supplies alone far exceed the funds raised. These costs range greatly, depending on the forensic discipline and type of examination, e.g. it costs \$900 for DNA exams in a homicide/rape case; \$773 for chemistry exams in a clandestine meth lab case; and \$38 for toxicology exams in a DUI case. Due to the difficulty in calculating damages, the \$150 figure was more of a "liquidated damages" approach rather than an exact average or serious effort to cover all costs

Based on past expenditures, it costs \$54,451 per month to operate the laboratory. With the budgeted general funds of \$56,579 for FY 2003, our laboratory would be able to operate only for one month. The rest we hope to make up out of the lab fee fund.

While inflation has certainly impacted the effectiveness of the fee, the costs of improved technology (e.g. the \$900 per DNA sample) have really made the fee totally inadequate.

The KBI would appreciate the committee considering amending HB 2772 by increasing the fee charged to those convicted by the use of the forensic laboratories to \$300. Even at just a 5% per year inflation rate this would just cover the 10 years since the law was passed, let alone the far greater increased costs of technology.

I note the latest house effort to solve the state budget crisis includes 'capturing' all fee funds. This would essentially cause us to shut down all the KBI forensic laboratories around August first. Under this approach, raising the fee would help the state budget but do nothing to assist the KBI or local law enforcement agencies that rely on our scientists.

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