

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on February 20, 2007, in Room 123-S of the Capitol.

All members were present except:

Julia Lynn arrived, 9:37 A.M.
Barbara Allen arrived, 9:38 A.M.
Derek Schmidt arrived, 9:39 A.M.
Phil Journey arrived, 9:40 A.M.
David Haley arrived, 9:40 A.M.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Kyle Smith, Deputy Director, Kansas Bureau of Investigation
Debra Billingsley, Executive Director, Kansas State Board of Pharmacy

Others attending:

See attached list.

Approval of Minutes

Senator Umbarger moved, Senator Goodwin seconded to approve the Committee minutes of January 30, 2007. Motion carried.

The hearing on **SB 270--Ephedrine and pseudoephedrine; purchase, sale; pharmacy log; prohibiting direct access by customers; immunity; statewide uniformity** was opened.

Kyle Smith appeared in support, describing the intent of the bill (Attachment 1). Mr. Smith indicated the bill will reconcile laws so state pharmacists and law enforcement will have one set of rules to follow. Mr. Smith explained several proposed friendly amendments with his testimony intended to simplify and clarify the bill.

Debra Billingsley testified in support, indicating enactment of this bill as it relates to pharmacies will be consistent with existing federal laws under which they currently operate (Attachment 2). Ms. Billingsley agreed with the proposed amendments by Kyle Smith.

There being no further conferees, the hearing on **SB 270** was closed.

The Chairman called for final action on **SB 203--Release prior to trial, appearance bonds; cash deposit required to equal amount of bond; court administrative fees prohibited**. The Chairman brought the committee's attention to information provided by Kathy Porter, a brief synopsis from a Performance Audit Report, May 1994 (Attachment 3). Senator Vratil indicated the committee would skip over **SB 203** while awaiting copies of a balloon amendment from Senator Journey.

The Chairman called for final action on **SB 237--Collection of certain specimens, probable cause determination**. The Chairman reviewed the bill, indicating he was not aware of any proposed amendments.

Senator Bruce moved, Senator Betts seconded, to table SB 237. Senator Journey made a substitute motion to refer SB 237 to an interim study. Senator Lynn seconded the motion. Motion carried.

The Chairman called for final action on **SB 253--Public offices of district and county attorney and district court judge; ineligibility to hold offices based on criminal record**. The Chairman reviewed the bill.

Senator Bruce moved, Senator Betts seconded, to table SB 253. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on February 20, 2007, in Room 123-S of the Capitol.

The Chairman called for final action on **SB 259--Secretary of state, corporations and partnerships**. The Chairman reviewed the bill, indicating a proposed amendment by Melissa Wangeman, Secretary of State's Office, to page 6, line 29, after "nonpayment of taxes," to insert the language "or fees, or".

Senator Bruce moved, Senator Haley seconded, to adopt the amendment as described by Senator Vratil. Motion carried.

Senator Donovan moved, Senator Goodwin seconded, to recommend **SB 259**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 269--Kansas code for care of children, service of process**. Senator Vratil reviewed the bill, indicating there were no know proposed amendments.

Senator Goodwin moved, Senator Schmidt seconded, to recommend **SB 269** favorably for passage. Motion carried.

The Chairman called for final action on **SB 184--Paying costs related to sexually violent predators** and distributed a balloon amendment proposed by Senator Reitz (Attachment 4). The Chairman invited Senator Reitz to explain his proposed amendment.

Senator Schmidt moved, Senator Umbarger seconded, to amend **SB 184** as proposed in the balloon amendment. Motion carried. Senators Journey and Haley voted "no" and requested their votes recorded.

Senator Haley moved, Senator Betts seconded, to make the bill effective on 1 July 2008. Motion failed.

Senator Schmidt moved, Senator Goodwin seconded, to recommend **SB 184**, as amended, favorably for passage. Motion carried.

The committee returned to final action on **SB 203--Release prior to trial, appearance bonds; cash deposit required to equal amount of bond; court administrative fees prohibited**. A proposed balloon amendment was distributed which would restore the current statutory language (Attachment 5).

Senator Umbarger moved, Senator Bruce seconded, to adopt the proposed amendment as reflected the balloon amendment. Motion carried.

Senator Journey moved, Senator Lynn seconded, to recommend **SB 203**, as amended, favorably for passage. Motion carried.

The Chairman reminded everyone that all bills must be out of committee and read into the Senate floor by February 24, 2007.

The meeting adjourned at 10:31 A.M. The next scheduled meeting is February 21, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/20/07

NAME	REPRESENTING
Terry Gross	A.G.
Jim CLARK	KBA
Dan Gibb	KSAG
Helen Pedigo	Sentencing Commission
Melissa Wengemann	
Jesse BORDON	Sec. of State
Sandy Ramez	KCSAV
Kathy Purton	Judicial Branch
Judy Males	KAC
Hal	John Peterman
Kenn Barone	KPBBA
Jame Joseph	KPBBA
Adrienne Strecker	Sen. Lee
Jennifer Flouy	KHPA
Bob Keller	JCSB
Ron Seiber	KPC
Telra Billingsley	KBOP
MIKE LARKIN	KS PHARMACEUTISTS ASSOC.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-10-07 (CONT.)

NAME	REPRESENTING
MATT P. MARTZ	VIA CAROLINA HEALTH SYSTEM
Jennifer Crow	SRS
Julene Maslin	Gov office



Kansas Bureau of Investigation

Larry Welch
Director

Paul Morrison
Attorney General

**Testimony
In support of SB 270
Senate Judiciary Committee
Kyle Smith, Deputy Director
Kansas Bureau of Investigation
February 20, 2007**

Chairman Vratil and Members of the Committee,

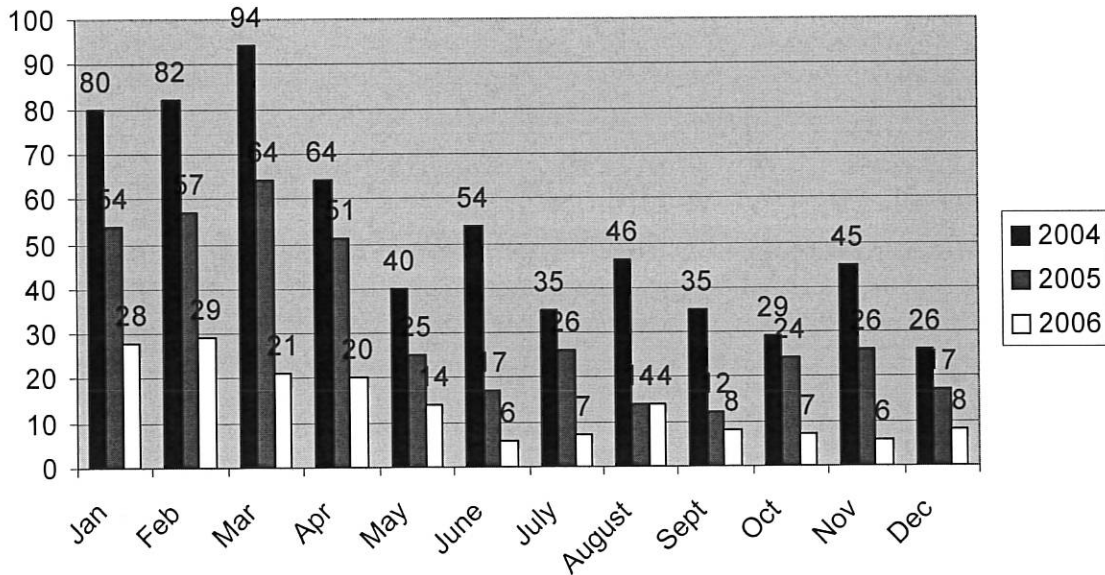
I appear today on behalf of the Kansas Bureau of Investigation in support of SB 270, a bill that will enhance our ability to fight methamphetamine production in Kansas. SB 270 primarily merges one of the most effective pieces of crime fighting legislation ever passed in Kansas, with the later federal meth fighting efforts passed last year.

The effectiveness of the Matt Samuels Act has been truly miraculous. Kansas has had an almost 80% drop in the number of meth labs found in Kansas since that law went into effect on June 1, 2005. More than mere numbers, that fact means fewer explosions, fires, injured or killed first responders, law enforcement officers and children. You should rightly take great pride in these accomplishments as they are a direct result of your legislation. (See graph below)

The success of the Kansas and other states in restricting access to the precursor chemicals used to make methamphetamine, primarily pseudoephedrine and ephedrine, spurred the federal government to adopt similar legislation. Contained in HR 199, the "USA Patriot Improvement and Reauthorization Act of 2005" were several provisions restricting the sale of these precursor chemicals. In some ways the federal law was more comprehensive such as by including liquid and gelcap forms of the chemicals, and in other ways it was weaker such as by not placing the chemicals on a controlled substances schedule, thus allowing 'self regulated' sales at truck stops and other retail outlets. The federal legislation specifically did not preempt states from having stricter controls.

SB 270 is an attempt to reconcile the two laws so that pharmacists and law enforcement will have one set of rules to follow. We do have some balloon amendments, see below, which are friendly amendments intended to simplify and clarify.

Kansas Methamphetamine Incidents December 31, 2006



2004 Yearly Total 630
 2005 Yearly Total 387
 2006 Yearly Total 168

- Section 1 copies the 'self certification' process that the federal government created to deal with the essentially unregulated retailers that were allowed to keep selling the precursors under the federal law. There is really no reason to duplicate this process and have both the federal and state governments do this process. So we would respectfully suggest striking section 1 and section (k)(3) of section 2 as duplicative and unnecessary.
- Section 2. On page 3, SB 270 adds language mirroring the federal law, regarding the details in logs required to be kept whenever the precursors are sold. Consistency here is very useful. The self-certification language in section (k) at the bottom of page 3 to line 2 of page 4 is probably unnecessary and duplicative and, as mentioned above and in our balloon, we would suggest striking the proposed language. However, in our balloon we suggest an alternative section (l) that allows a sale of a two-dosage unit package without using the log. This would mimic the federal law, which also allows the sale, without use of logs, of these packages containing less than 60 milligrams of controlled substance.

On page 4, lines 3-11 we would also respectfully suggest striking the current section (l) which makes it a misdemeanor for pharmacist to sell too much psuedoephedrine/ephedrine (3 packages now, 3.6 grams under proposal). Pharmacists are already well regulated and assisting any intentional violation of the law could result in loss of their license as well as an 'aid and abet' charge. The primary intent is to go after the meth cooks or their suppliers who are buying the products in excessive amounts.

- Section 3 amends K.S.A. 65-4113, commonly referred to as schedule V, by striking an exception that was given in 2005 for liquids and gel cap forms of ephedrine and psuedoephedrine.
- Section 4 follows the federal example of specifically not preempting more stringent local law by allowing more stringent ordinances and resolutions.
- Section 5, amends KSA 65-7006, by creating a class A misdemeanor crime of purchasing more than 9 grams in a thirty-day period. In our balloon, we suggest following the federal law and most of our surrounding states, by making it illegal to buy more than 3.6 grams in a single transaction or more than 9 grams in any thirty day period. The 7.5 gram internet/postal restriction is dropped due to section 3 making all forms a scheduled drug and so all sales should be governed by the pharmaceutical act.

There was some concern in 2005 when we passed the Matt Samuels act whether such a criminal offense might raise what in now sometimes called the 'McAdams' problem. I think the McAdams concern is not a problem.

The McAdams line of cases dealt with statutes that made the same act illegal under two different statutes with different penalties. Specifically the possession of psuedoephedrine with the intent to manufacture was illegal under both Kansas statutes for possession of manufacturing paraphernalia KSA 65-153(a)(4) - a level 4 drug felony and the possession of precursor with intent statute, KSA 65-7006 - then a level 1 drug. The key here is that the elements of the crime - possessing psuedoephedrine with intent to manufacture - were covered by two statutes so the court in McAdams said that the variance in penalty was a violation of equal protection.

Here, however, the two crimes have different elements: K.S.A. 65-7006 still makes it illegal to possess psuedoephedrine with the intent to manufacture, but the new crime would make it illegal to purchase psuedoephedrine if certain amounts were exceeded in

certain time frames. In other words, if you can prove intent to manufacture, you charge K.S.A. 65-7006, if you have nothing to prove the element of specific intent, but you can prove that he purchased X number of packages in the last 30 days, then you would charge the new offense. Each crime has an element different than the other (intent to manufacture versus purchasing in violation of time frames) so it is not the same activity covered by two statutes.

It should also be noted that the misdemeanor violation seems to be working in Oklahoma and other states that also passed schedule V legislation.

I hope this rather long testimony and the balloon explanations are helpful to the committee. SB 207 tackles complicated issues and statutes but, as we have seen with the Matt Samuels Act, this approach can have major impact increasing public safety. I would be happy to answer any questions.

KBI Balloon Amendments
New strike-throughs are double and new language is in bold italic.

Session of 2007

SENATE BILL No. 270

By Senators V. Schmidt and D. Schmidt

AN ACT concerning controlled substances; relating to ephedrine and pseudoephedrine; amending K.S.A. 2006 Supp. 65-1643, 65-4113, 65-4166 and 65-7006 and repealing the existing sections.

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

~~New Section 1. The attorney general shall adopt rules and regulations establishing criteria for self-certifications pursuant to K.S.A. 65-1643, and amendments thereto. The criteria shall provide that a separate certification is required for each place of business at which a licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist sells a controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto. The attorney general shall establish a program regarding such certifications and training through an internet site of the office of the attorney general. Promptly after receiving a certification, the attorney general shall make available a copy of the certification to the Kansas bureau of investigation and local law enforcement officials.~~

This language duplicates federal functions and is unnecessary.

Sec. 2. K.S.A. 2006 Supp. 65-1643 is hereby amended to read as follows: 65-1643. It shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a regis-

tration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board:

(1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board; (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; (3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

(e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to mid-level practitioners, to pharmacists or to medical care facilities.

(f) Except as otherwise provided in this subsection (f), for any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

(g) For any person to sell any drugs manufactured and sold only in

the state of Kansas, unless the label and directions on such drugs shall first have been approved by the board.

(h) For any person to operate an institutional drug room without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1637a and amendments thereto and any rules and regulations adopted pursuant thereto.

(i) For any person to be a pharmacy student without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy student registration fee of \$25 to the board.

(j) For any person to operate a veterinary medical teaching hospital pharmacy without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1662 and amendments thereto and any rules and regulations adopted pursuant thereto.

(k) For any person to sell or distribute in a pharmacy a controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, unless:

(1) (A) Such controlled substance is sold or distributed by a licensed pharmacist, a registered pharmacy technician or a pharmacy intern or clerk supervised by a licensed pharmacist; and

(B) any person purchasing, receiving or otherwise acquiring any such controlled substance produces a photo identification showing the date of birth of the person and signs a log *and enters in the log such person's address and the date and time of sale*. The log or database required by the board shall be available for inspection during regular business hours to the board of pharmacy and any law enforcement officer; or

(C) *the seller determines that the name entered in the log corresponds to the name provided on such identification and that the date and time entered are correct; and*

(D) *the seller enters in the log the name of the controlled substance and the quantity sold;*

(2) there is a lawful prescription; or

~~(3) the pharmacy has submitted to the attorney general a self-certification that any licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist, employed by such pharmacy has undergone training provided by the seller to ensure that such individuals understand the requirements that apply under this subsection and in accordance with criteria established by the attorney general. The pharmacy shall maintain a copy of such certification and records demonstrating such individuals have undergone the training.~~

(3) the transaction involves only a 2 dosage unit blister pack containing a total of no more than 60 milligrams of the controlled substance.

~~(l) For any person to sell or distribute in a pharmacy four or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, (1) to a specific customer within any seven-day period, in an amount which exceeds a daily amount of 3.6 grams, without regard to the number of transactions, or~~

~~(2) unless such controlled substance is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, the product is packaged in unit dose packets or pouches.~~

~~(m)(l) For any pharmacy to allow customers to have direct access to any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments there. Such controlled substance shall be placed behind the counter or stored in a locked cabinet that is located in an area~~

Again, this sytem duplicates the federal system and is not needed under the proposed bill.

Follows federal exemption of 2-unit sales from log requirement.

Stiking this and adding to sec. 5 focuses crime on meth cooks, not pharmacists.

of the pharmacy to which customers do not have direct access.
(m) A seller who in good faith releases information in a log pursuant to subsection (k) to any law enforcement officer is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton or willful misconduct.

Sec. 3. K.S.A. 2006 Supp. 65-4113 is hereby amended to read as follows: 65-4113. (a) The controlled substances or drugs, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section are included in schedule V.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing the following narcotic drug or its salts:

Buprenorphine 9064

(c) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than .5 milligram of difenoxin (9168) and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Propylhexedrine (except when part of a compound used for nasal decongestion which is authorized to be sold lawfully over the counter without a prescription under the federal food, drug and cosmetic act, so long as it is used only for such purpose) 8161

(2) Pyrovalerone 1485

(e) ~~Except as provided in subsection (g),~~ Any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.

(f) ~~Except as provided in subsection (g),~~ Any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

(g) ~~The scheduling of the substances in subsections (e) and (f) shall not apply to any compounds, mixtures or preparations of ephedrine or pseudoephedrine which are in liquid, liquid capsule or gel capsule form.~~

Sec. 4. K.S.A. 2006 Supp. 65-4166 is hereby amended to read as follows: 65-4166. The provisions of ~~this act~~ K.S.A. 21-2501a, 65-1643, 65-4113, 65-4152, 65-4159, 65-7001 and 65-7006, and amendments thereto, and K.S.A. 2006 Supp. 75-722, and amendments thereto, and any rules

and regulations promulgated thereunder shall be applicable and uniform throughout this state and in all cities and counties therein. ~~No~~ A city or county shall *may* enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions of this act unless expressly authorized by law to do so. *more stringent than such provisions. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and such provisions.*

Sec. 5. K.S.A. 2006 Supp. 65-7006 is hereby amended to read as follows: 65-7006. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance.

(b) It shall be unlawful for any person to market, sell, distribute, advertise, or label any drug product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance.

(c) It shall be unlawful for any person to market, sell, distribute, advertise or label any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(d) *It shall be unlawful for any person to purchase, receive or otherwise acquire at retail more than **3.6 grams in any single transaction or more than nine grams within any thirty-day period** or by means of shipping through any private or commercial carrier or the postal service ~~7.5 grams~~ of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, within any thirty-day period.*

Copies federal law criminalizing excessive purchases.

(e) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines on the record that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(e) (f) A violation of ~~this section~~ subsection (a), (b) or (c) shall be a drug severity level 2 felony. A violation of subsection (d) shall be a class A nonperson misdemeanor

Sec. 6. K.S.A. 2006 Supp. 65-1643, 65-4113, 65-4166 and 65-7006 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS

BOARD OF PHARMACY
DEBRA L. BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony re: SB 270
Senate Judiciary Committee
Presented by Debra L. Billingsley
February 20, 2007

Chairman Vratil and members of the committee:

My name is Debra Billingsley, and I am the Executive Director of the Kansas State Board of Pharmacy. The Board of Pharmacy has the responsibility for safeguarding the state's drug supply and regulating those involved in the distribution or sale of medications. The Board registers pharmacies as well as retail dealers who sell over the counter drugs.

As of September 30, 2006 the Combat Methamphetamine Epidemic Act went into effect. SB 270 requires pharmacies to comply with the provisions of the federal law as it relates to the sale of schedule V products containing ephedrine or pseudoephedrine. The Board supports passage of SB 270 as it relates to pharmacies because it is consistent with federal law and therefore less confusing. The pharmacies are currently operating under federal law since it is stricter but the Board supports the clarifying language.

The Board also supports the amendment regarding merchants that are selling scheduled listed chemical products containing ephedrine, pseudoephedrine, or phenylpropanolamine that are exempt from scheduling under state law. The Board agrees with the friendly amendment submitted by the KBI which lifts the exemption of gelcaps and liquids from scheduling. Specifically, the Board is finding that many retailers are not registering with the Board. Those that are may be keeping log books but they do not have complete information. We have noted repeat sales of gelcaps that have a hard center with little or no documentation. The Board has discussed this option with the DEA and the DEA is supportive of all listed chemical products being scheduled. Therefore, the Board would recommend that all forms of ephedrine, pseudoephedrine and phenylpropanolamine be scheduled as a controlled substance. Almost every company has reformulated their cold medications so that there are many drugs available over the counter. It makes more sense for these dangerous drugs to be sold at the pharmacy rather than at the retail level.

Thank you for permitting me to testify today.

Debra Billingsley
Executive Secretary

LANDON STATE OFFICE BUILDING, 900 SW JACKSON STREET, ROOM 560, TOPEKA, KS 66612-

Phone 785-296-4056

Fax 785-296-8420

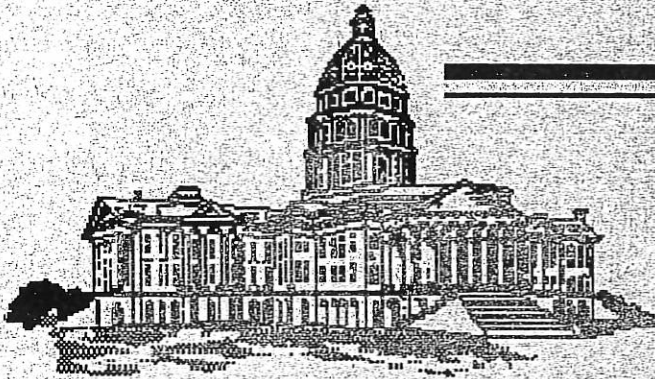
www.kansas.gov/pharmacy

pharmacy@phar

Senate Judiciary

2-20-07

Attachment 2



PERFORMANCE AUDIT REPORT

Reviewing District Courts' Handling of Appearance Bonds for Persons Charged With Crimes

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas

May 1994

94-34

Senate Judiciary

2-20-07

Attachment 3

general, this new program lowered bond amounts on some offenses, and allowed defendants to receive all their bond money back once all court appearances were made.

The 3rd judicial district's administrative judge told us he views low-risk cash bonds as different from the court bond program because they are strictly cash bonds. The court has the authority to establish cash bonds in amounts determined by the court.

The low-risk cash bonds differ from the former court bonds in the following ways:

- Defendants pay the court 100% of the low-risk cash bond, rather than 10% of the bond amount. However, bond amounts on many offenses have been lowered to 10% of their former amount; for example, an offense that had required a \$2,000 court bond will now require only a \$200 bond. In this example, a defendant is now liable for a total of only \$200, rather than \$2,000 as would have been the case under the court bond program.
- The district court keeps no portion of the low-risk cash bond money paid by the defendant. Under the former court bond program, the court kept 10% of the amount paid by the defendant. Because defendants who meet all court requirements gets back 100% of the bond amount posted (rather than 90%), defendants fare better monetarily with a low-risk cash bond than the former court bond.

Two Legislative Attempts to Prohibit the Court Bond Program Have Failed, and One Attempt to Legalize It Also Failed

The Kansas Legislature in three different years—1985, 1986, and 1987—considered legislation that would have either legalized or prohibited court bond programs in Kansas judicial districts. However, none of the bills became law.

The 1985 legislation would have allowed criminal defendants to post cash deposits with the courts of no more than 25% of the appearance bond amount. If the defendant fulfilled court requirements, he or she would have received 90% back, unless some or all of the money was needed to pay court costs or attorney fees. The remainder of the defendant's deposit would have been kept by the court and used at the discretion of the administrative judge, as is the case with the present court bond program.

The 1986 and 1987 legislation would have prohibited any cash bond other than a 100% cash bond. In addition, the bills would have prohibited the court from keeping any administrative fee.

According to an official in the Attorney General's Office, the low-risk cash bond program is a cash bond program the district court has the authority to establish. It is not a 10% cash deposit bond as was the former court bond program. Therefore, the low-risk cash bond program does not present the same concerns the Attorney General's opinion pointed out about the previous court bond program.

The remainder of this report describes court bond programs in each judicial district in greater detail, the use of court bond fees kept by the district courts, and the measures taken when participants in the court bond program do not meet court requirements.

SENATE BILL No. 184

By Senator Reitz

1-25

9 AN ACT concerning sexually violent predators; relating to costs of de-
10 termination; amending K.S.A. 59-29a04 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 59-29a04 is hereby amended to read as follows: 59-
15 29a04. (a) When it appears that the person presently confined may be a
16 sexually violent predator and the prosecutor's review committee ap-
17 pointed as provided in subsection (e) of K.S.A. 59-29a03, and amend-
18 ments thereto, has determined that the person meets the definition of a
19 sexually violent predator, the attorney general, within 75 days of the date
20 the attorney general received the written notice by the agency of jurisd-
21 iction as provided in subsection (a) of K.S.A. 59-29a03, and amendments
22 thereto, may file a petition in the county where the person was convicted
23 of or charged with a sexually violent offense alleging that the person is a
24 sexually violent predator and stating sufficient facts to support such
25 allegation.

26 (b) The provisions of this section are not jurisdictional, and failure to
27 comply with such provisions in no way prevents the attorney general from
28 proceeding against a person otherwise subject to the provision of K.S.A.
29 59-29a01 et seq., and amendments thereto.

30 (c) *Whenever a determination is made regarding whether a person*
31 *may be a sexually violent predator, the ~~Department of corrections shall~~*
32 *pay the county for all costs incurred, including, but not limited to costs*
33 *of investigation, prosecution, defense, juries, witness fees and expenses,*
34 *expert fees and expenses and other expenses related to determining*
35 *whether a person may be a sexually violent predator.*

36 Sec. 2. K.S.A. 59-29a04 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its
38 publication in the statute book.

state shall be responsible

office of the attorney general

Senate Judiciary
2-20-07
Attachment 4

SENATE BILL No. 203

By Committee on Judiciary

1-26

9 AN ACT concerning criminal procedure; relating to appearance bonds;
10 amending K.S.A. 22-2803 and K.S.A. 2006 Supp. 22-2802 and 22-2807
11 and repealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 22-2802 is hereby amended to read as
15 follows: 22-2802. (1) Any person charged with a crime shall, at the per-
16 son's first appearance before a magistrate, be ordered released pending
17 preliminary examination or trial upon the execution of an appearance
18 bond in an amount specified by the magistrate and sufficient to assure
19 the appearance of such person before the magistrate when ordered and
20 to assure the public safety. If the person is being bound over for a felony,
21 the bond shall also be conditioned on the person's appearance in the
22 district court or by way of a two-way electronic audio-video communi-
23 cation as provided in subsection ~~(H)~~ (I4) at the time required by the
24 court to answer the charge against such person and at any time thereafter
25 that the court requires. Unless the magistrate makes a specific finding
26 otherwise, if the person is being bonded out for a person felony or a
27 person misdemeanor, the bond shall be conditioned on the person being
28 prohibited from having any contact with the alleged victim of such offense
29 for a period of at least 72 hours. The magistrate may impose such of the
30 following additional conditions of release as will reasonably assure the
31 appearance of the person for preliminary examination or trial:

- 32 (a) Place the person in the custody of a designated person or organ-
33 ization agreeing to supervise such person;
- 34 (b) place restrictions on the travel, association or place of abode of
35 the person during the period of release;
- 36 (c) impose any other condition deemed reasonably necessary to as-
37 sure appearance as required, including a condition requiring that the
38 person return to custody during specified hours;
- 39 (d) place the person under a house arrest program pursuant to K.S.A.
40 21-4603b, and amendments thereto; or
- 41 (e) place the person under the supervision of a court services officer
42 responsible for monitoring the person's compliance with any conditions
43 of release ordered by the magistrate.

*Amendment to Phil Journey
from Doug Smith. Journey will
introduce when we work.*

5-2

1 (2) In addition to any conditions of release provided in subsection (1),
2 for any person charged with a felony, the magistrate may order such
3 person to submit to a drug abuse examination and evaluation in a public
4 or private treatment facility or state institution and, if determined by the
5 head of such facility or institution that such person is a drug abuser or
6 incapacitated by drugs, to submit to treatment for such drug abuse, as a
7 condition of release.

8 (3) ~~The appearance bond shall be executed with sufficient solvent
9 sureties who are residents of the state of Kansas by a surety authorized
10 by the commissioner of insurance to write insurance bonds or by a surety
11 authorized by the court pursuant to K.S.A. 22-2806, and amendments
12 thereto, unless the magistrate determines, in the exercise of such magis-
13 trate's discretion, that requiring sureties is not necessary to assure the
14 appearance of the person at the time ordered.~~



3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

15 (4) A deposit of cash in the amount of the bond may be made in lieu
16 of the execution of the bond by sureties pursuant to paragraph (3). Such
17 deposit shall be in the full amount of the bond and in no event shall a
18 deposit of cash in less than the full amount of bond be permitted. Any
19 person charged with a crime who is released on a cash bond shall be
20 entitled to a refund of all moneys paid for the cash bond after the final
21 disposition of the criminal case if the person complies with all require-
22 ments to appear in court. The court may not exclude the option of posting
23 bond pursuant to paragraph (3).

24 (5) The amount of the appearance bond shall be the same whether
25 executed as described in subsection (3) or posted with a deposit of cash
26 as described in subsection (4).

27 (6) In the discretion of the court, a person charged with a crime may
28 be released upon the person's own recognizance by guaranteeing payment
29 of the amount of the bond for the person's failure to comply with all
30 requirements to appear in court. The release of a person charged with a
31 crime upon the person's own recognizance shall not require the deposit
32 of any cash by the person.

33 (7) The court shall not impose any administrative fee or keep any
34 portion of a bond posted pursuant to this section.

35 (5) (8) In determining which conditions of release will reasonably
36 assure appearance and the public safety, the magistrate shall, on the basis
37 of available information, take into account the nature and circumstances
38 of the crime charged; the weight of the evidence against the defendant;
39 the defendant's family ties, employment, financial resources, character,
40 mental condition, length of residence in the community, record of con-
41 victions, record of appearance or failure to appear at court proceedings
42 or of flight to avoid prosecution; the likelihood or propensity of the de-
43 fendant to commit crimes while on release, including whether the de-

1 fendant will be likely to threaten, harass or cause injury to the victim of
2 the crime or any witnesses thereto; and whether the defendant is on
3 probation or parole from a previous offense at the time of the alleged
4 commission of the subsequent offense.

5 ~~(6)~~ (9) The appearance bond shall set forth all of the conditions of
6 release.

7 ~~(7)~~ (10) A person for whom conditions of release are imposed and
8 who continues to be detained as a result of the person's inability to meet
9 the conditions of release shall be entitled, upon application, to have the
10 conditions reviewed without unnecessary delay by the magistrate who
11 imposed them. If the magistrate who imposed conditions of release is not
12 available, any other magistrate in the county may review such conditions.

13 ~~(8)~~ (11) A magistrate ordering the release of a person on any condi-
14 tions specified in this section may at any time amend the order to impose
15 additional or different conditions of release. If the imposition of additional
16 or different conditions results in the detention of the person, the provi-
17 sions of subsection ~~(7)~~ (10) shall apply.

18 ~~(9)~~ (12) Statements or information offered in determining the condi-
19 tions of release need not conform to the rules of evidence. No statement
20 or admission of the defendant made at such a proceeding shall be received
21 as evidence in any subsequent proceeding against the defendant.

22 ~~(10)~~ (13) The appearance bond and any security required as a condi-
23 tion of the defendant's release shall be deposited in the office of the
24 magistrate or the clerk of the court where the release is ordered. If the
25 defendant is bound to appear before a magistrate or court other than the
26 one ordering the release, the order of release, together with the bond
27 and security shall be transmitted to the magistrate or clerk of the court
28 before whom the defendant is bound to appear.

29 ~~(11)~~ (14) Proceedings before a magistrate as provided in this section
30 to determine the release conditions of a person charged with a crime
31 including release upon execution of an appearance bond may be con-
32 ducted by two-way electronic audio-video communication between the
33 defendant and the judge in lieu of personal presence of the defendant or
34 defendant's counsel in the courtroom in the discretion of the court. The
35 defendant may be accompanied by the defendant's counsel. The defend-
36 ant shall be informed of the defendant's right to be personally present in
37 the courtroom during such proceeding if the defendant so requests. Ex-
38 ercising the right to be present shall in no way prejudice the defendant.

39 ~~(12)~~ (15) The magistrate may order the person to pay for any costs
40 associated with the supervision of the conditions of release of the ap-
41 pearance bond in an amount not to exceed \$10 per week of such
42 supervision.

43 Sec. 2. K.S.A. 22-2803 is hereby amended to read as follows: 22-

1 2803. A person who remains in custody after review of such person's
2 application pursuant to subsection ~~(6) or (7)~~ (9) or (10) of K.S.A. 22-2802
3 and amendments thereto by a district magistrate judge may apply to a
4 district judge of the judicial district in which the charge is pending to
5 modify the order fixing conditions of release. Such motion shall be de-
6 termined promptly.

7 Sec. 3. K.S.A. 2006 Supp. 22-2807 is hereby amended to read as
8 follows: 22-2807. (1) ~~If there is a breach of condition of a defendant fails~~
9 ~~to appear as directed by the court and guaranteed by an appearance bond,~~
10 the court in which the bond is deposited shall declare a forfeiture of the
11 bail.

12 (2) *An appearance bond may only be forfeited upon a failure to ap-*
13 *pear by the court. If a defendant violates any other condition of bond, the*
14 *bond may be revoked and the defendant remanded to custody. The mag-*
15 *istrate shall forthwith set a new bond pursuant to requirements of K.S.A.*
16 *22-2802, and amendments thereto.*

17 (3) The court may direct that a forfeiture be set aside, upon such
18 conditions as the court may impose, if it appears that justice does not
19 require the enforcement of the forfeiture.

20 ~~(3)~~ (4) When a forfeiture has not been set aside, the court shall on
21 motion enter a judgment of default and execution may issue thereon. If
22 the forfeiture has been decreed by a district magistrate judge and the
23 amount of the bond exceeds the limits of the civil jurisdiction prescribed
24 by law for a district magistrate judge, the judge shall notify the chief judge
25 in writing of the forfeiture and the matter shall be assigned to a district
26 judge who, on motion, shall enter a judgment of default. By entering into
27 a bond the obligors submit to the jurisdiction of any court having power
28 to enter judgment upon default and irrevocably appoint the clerk of that
29 court as their agent upon whom any papers affecting their liability may
30 be served. Their liability may be enforced on motion without the necessity
31 of an independent action. The motion and notice thereof may be served
32 on the clerk of the court, who shall forthwith mail copies to the obligors
33 to their last known addresses. No default judgment shall be entered
34 against the obligor in an appearance bond until more than 10 days after
35 notice is served as provided herein.

36 ~~(4)~~ (5) After entry of such judgment, the court may remit it in whole
37 or in part under the conditions applying to the setting aside of forfeiture
38 in subsection ~~(2)~~ (3).

39 Sec. 4. K.S.A. 22-2803 and K.S.A. 2006 Supp. 22-2802 and 22-2807
40 are hereby repealed.

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