

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:32 A.M. on March 12, 2007, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived, 9:39 A.M.  
Phil Journey arrived, 9:46 A.M.  
Derek Schmidt- excused  
Dwayne Umbarger arrived, 9:45 A.M.  
Donald Betts arrived, 9:39 A.M.  
David Haley- excused

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:

Dale Goter, City of Wichita  
Helen Pedigo, Executive Director, Kansas Sentencing Commission  
Lt. John Bannister, Wichita Police Department, Bomb Unit  
Rose Rozmiarek, Chief, Investigative Division, Office of the State Fire Marshall  
Representative Mario Goico

Others attending:

See attached list.

The hearing on **SB 366--Traffic citations; method of giving notice of failure to comply** was opened.

Dale Goter, proponent, stated **SB 366** would improve the efficiency and effectiveness for notifying motorists with delinquent traffic citations. A large number of "failure to comply" notices are returned as non-deliverable. By allowing the ticketing officer to give this notice it would save postage (Attachment 1).

There being no further conferees, the hearing on **SB 366** was closed.

The hearing on **HB 2087--Kansas sentencing commission assumes the functions of the state statistical analysis center from the Kansas criminal justice coordinating council** was opened.

Helen Pedigo appeared in support, briefing the committee on the bill and explaining the mutually agreeable House amendment (Attachment 2).

Written testimony in support of **HB 2087** was submitted by Roger Werholtz, Chair, Kansas Criminal Justice Coordination Council (Attachment 3).

There being no further conferees, the hearing on **HB 2087** was closed.

The Chairman opened the hearing on **HB 2062--Criminal use of explosives**.

Lt. John Bannister appeared as a proponent, indicating current statutes omit many commonly encountered devices and vague language opens it to differing interpretations by judges, prosecutors and defense lawyers (Attachment 4). Of special significance is language that defines a chemical reaction bombs and simulated or hoax explosive devices. Lt. Bannister voiced concern with current wording "explosive" versus "explosion" as well as the actual physical construction of a chemical reaction bomb and recommended better definition of chemical reactions bombs and simulated or hoax devices. He related a recent experience where teenage girls constructed several chemical reaction bombs using carbonated soda and aluminum foil and attacked another teen. The incident was prosecuted in Sedgwick County and the defense lawyer was able to successfully argue the case by attacking the wording of the statute.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:32 A.M. on March 12, 2007, in Room 123-S of the Capitol.

Senator Bruce stated that this particular question confronted the conference committee last session, and the legislative intent that the words "chemical compounds that form explosives" would indeed cover the situation Lt. Bannister described and the legislative branch opposed the interpretation and supports his amendment to clarify the language.

Rose Rozmiarek testified in support, indicating most terrorist attacks involve the use of explosives because the materials are easy to obtain and involve many normal household items (Attachment 5). Ms. Rozmiarek also stated the need to clarify "other explosive devices" which should include those constructed from consumer fireworks that can be purchased during the Fourth of July holiday season.

Another concern to the Fire Marshall's Office is the increasing number of bomb threats using simulated or hoax devices and the associated cost including building evacuations and business interruptions. Simulated or hoax devices, improvised fireworks devices, and chemical bombs can be used to draw first responders to a specific location only to have a more powerful explosive secondary device target the responders. Following a clarifying question, Ms. Rozmiarek responded that the term "Class C fireworks" was a Department of Transportation classification and is no longer used and that there is no current definition for the term "consumer fireworks".

Representative Goico appeared as a sponsor of the bill reviewing the need for clarifying language and reviewed changes made by the House (Attachment 6).

There being no further conferees, the hearing on **HB 2062** was closed.

The Chairman called for final action on **SB 351--Office of administrative hearings; exception to use of by the office of state bank commissioner.**

The Chairman reviewed the bill.

Senator Bruce moved, Senator Journey seconded, to amend SB 351 on page 2, line 32 striking the language beginning with the word "Except" and continuing through lines 41, ending with the word "professions". Motion carried.

Senator Journey moved, Senator Donovan seconded, to amend SB 351 on page 1, line 30, after the word "officers" insert "within 60 days". Motion carried.

Senator Journey moved, Senator Lynn seconded, to recommend SB 351, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2360--Arrest powers of federal law enforcement officers; removing the sunset.**

The Chairman reviewed the bill.

Senator Journey moved, Senator Goodwin seconded, to restore the language on page 1, line 43, and change the date to July 1, 2009. Motion carried.

Senator Journey moved, Senator Donovan seconded, to recommend HB 2360, as amended, favorably for passage. Motion carried.

Approval of Minutes

Senator Donovan moved, Senator Bruce seconded, to approve the Committee minutes of February 1, 2007 and February 5, 2007. Motion carried.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is March 13, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/12/07

NAME	REPRESENTING
Gail Bright	Office of the Kansas Securities Commissioner
Jeff Bo Hinboe	Kansas Sheriff's
Adam Courtney	OSBC
Juni Roa	KCSL
Jubene Mole	Covoffine
Willa De Castro	American Adoptions
Dallas Bauer	SRS
Michael Netherton	Sen. Mike Petersen
Helen Padigo	KSC
Brenda Hannon	KSC
Whitney Damra	KS Bar Assn.
Karl McNoiton	KSFMO
Rose Rozmiarek	KSFMO
Dale Gater	City of Wichita
MARIO GOICO, Rep	KANSAS HOUSE
Chris Bannister	Wichita Police Dept.
Lana Walsh	OWA
Edith Kish	DRC



# TESTIMONY

WICHITA

Dale Goter  
Government Relations Manager

City of Wichita  
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Wichita Phone: 316.268.4351  
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## Senate Judiciary Committee

### Hearing on SB366

#### Notice of suspension of driver's license

March 12, 2007

The City of Wichita supports enactment of Senate Bill 366 as a means of improving the efficiency and effectiveness of current procedures for notifying motorists with delinquent traffic citations.

Currently, when a person fails to comply with a traffic citation, the Municipal Court is required to "mail" a notice stating that if the person does not appear or pay the fine within 30 days, that person's driver's license will be suspended (KSA 8-2110). One-half of these "failure to comply" notices are returned undeliverable. If the officer giving a moving violation ticket could also "give" this notice, it would save the cost of postage.

More importantly, it would also reduce the perception that violators are not being given a notice of the suspension.

Senate Judiciary

3-12-07

Attachment 1



# KANSAS

## KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman  
Attorney General Paul Morrison, Vice Chairman  
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

### SENATE JUDICIARY COMMITTEE The Honorable John Vratil, Chairman

### TESTIMONY ON HOUSE BILL 2087 STATISTICAL ANALYSIS CENTER Helen Pedigo, Executive Director

Wednesday, February 28, 2007

Mr. Chairman and Committee members, thank you for the opportunity to appear before you today in support of House Bill 2087. We view this as a technical clean-up bill.

The State Statistical Analysis Center (SAC) designation is recognized by the Bureau of Justice Statistics within the United States Department of Justice. Each state has a SAC. Since 1994, the Kansas SAC has resided with the Criminal Justice Coordinating Council. The Council, at that time, was staffed by the staff of the Kansas Sentencing Commission.

In 2004, the Council was transferred to the Governor's Office in an effort to consolidate grants. The SAC language was included in the paragraph outlining the duties of the Council relating to the development of the Criminal Justice Information System (CJIS), and was not removed. From that point on, the Sentencing Commission no longer staffed the Council, but continued serving the SAC function by agreement with the Governor. The Commission feels that the statutes should be amended to reflect present practice.

The SAC designation comes with a renewable \$50,000 yearly grant to fund statistical research and reporting, including reporting information to the Bureau of Justice Statistics. The most recent grant was used to fund the 2003 SB 123 Drug Treatment Program Operations Manual, local update conferences, training, an 18-month post-implementation program evaluation and partial funding of salaries for staff who pull and analyze the data.

The House amended the bill in a manner that was mutually agreeable to the interested parties.

We ask you to consider this bill and pass it out of committee favorably. I would be happy to answer your questions.

Senate Judiciary  
3-12-07  
Attachment 2



# KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

## KANSAS CRIMINAL JUSTICE COORDINATING COUNCIL

February 28, 2007

The Honorable John Vratil  
Chair, Senate Judiciary Committee  
300 SW 10<sup>th</sup> Avenue, Room 281 East  
Topeka, KS 66612

**RE: House Bill 2087**

Dear Chair Vratil and Members of the Committee:

On behalf of the Kansas Criminal Justice Coordinating Council (KCJCC), we are in support of House Bill 2087 as amended by the House Judiciary Committee and passed by the House.

This bill amends K.S.A. 74-9501, which establishes the duties of the KCJCC, by moving the duties of the state statistical analysis center from the oversight of the KCJCC to the Kansas Sentencing Commission. This function has been the responsibility of the Kansas Sentencing Commission and the change is merely technical to include it as part of the duties of the Commission.

The KCJCC is representative of the governor, chief justice of the supreme court, the attorney general, the secretary of corrections, the commissioner of juvenile justice, the director of the Kansas bureau of investigation and the superintendent of the highway patrol. The KCJCC was created in 1994 to improve and coordinate the state's criminal justice activities. The council oversees the development and management of the Kansas Criminal Justice Information System (KCJIS). In addition to the oversight of the KCJCC the council is responsible for overseeing the criminal justice federal funding made available to Kansas through the U.S. Department of Justice.

The KCJCC requests your favorable consideration of this bill.

Sincerely,

  
Roger Werholtz, Chair  
Kansas Criminal Justice Coordinating Council



WICHITA

John "Chris" Bannister  
Bomb Squad Commander

# TESTIMONY

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**Senate Judiciary Committee**  
**House Bill 2062**  
**Criminal Use of Explosives**  
**March 12, 2007**

The City of Wichita is supportive of House Bill 2062 and its intent to clarify the current language in the Criminal Use of Explosive Statute (21-3731). Specifically, the inclusion of language that defines a chemical reaction bomb as well as a simulated or hoax explosive device.

As currently written, the Criminal Use of Explosive Statute leaves far too many commonly encountered devices out of the criminal definition, as well as leaving itself open to differing interpretations by judges, prosecutors and defense attorneys alike. For example, some criminal justice professionals from around Kansas believe the existing language of "*chemical compounds that form explosives*" adequately describes chemical reaction bombs and therefore proceed with criminal charges. However, there are just as many that believe this is an inadequate definition and therefore decline chemical reaction bombs for charging under this statute. Likewise, defense attorneys have been successful in defending their clients against prosecution based on the existing vague definition.

The problem lies with the current wording of the statute, "explosive" versus "explosion", as well as the actual physical construction of a chemical reaction bomb. I have witnessed the successful argument in court that components used to make a chemical reaction bomb (e.g. drain cleaner, aluminum foil, lye, dry ice, and/or water) are not "explosive" in and of themselves, nor do they form an "explosive" when they are mixed as described in the current statute. However, these chemicals do cause an explosion when mixed and placed inside a container. Chemical reaction bombs operate under the same principal as a pipe bomb and both are defined as mechanical explosions when detonated.

There are also numerous examples from around Kansas where public safety officials have received reports of suspect packages in and around buildings, highways, schools, hospitals, places of worship as well as public and private businesses. Many times these packages are found to be innocent in nature, but there are still many instances where the package was made to look like a real bomb, thereby causing unnecessary emergency response and the closing of day-to-day operations of the affected area. The current statute does not address simulated devices that are used to cause panic or disrupt commerce.

Therefore, we suggest the Legislature consider adding the proposed language to the current statute that would better define chemical reaction bombs and simulated or hoax devices.

Senate Judiciary

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Attachment 4



# K A N S A S

F. S. JACK ALEXANDER  
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS  
GOVERNOR

**TESTIMONY ON HB 2062**  
**SENATE JUDICIARY COMMITTEE**  
**CRIMINAL USE OF EXPLOSIVE STATUTE**  
**Rose Rozmiarek, State Fire Marshal**  
**March 12, 2007**

The office of the State Fire Marshal stands as a proponent on HB 2062. The legal use of explosives has an important place in our society and in the area of construction, development, and agriculture. The fire marshal's office investigate explosions and explosive related incidents throughout the state as well as license all explosive users, blasters, and storage facilities in the state as well as the 1.3 commercial fireworks operators. We do not want to restrict the legal use of these materials but when these materials get into the hands of person(s) who are not properly trained or have criminal intentions the result can be devastating.

Explosives are deadly materials in the hands of the wrong people. Explosives still are and will remain the weapon of choice for terrorist, domestic and international. Of all terrorist attacks, 87% involved the use of explosives. The main reason is that the materials are easy to obtain and use many normal household items. Our statutes need to change with the ever changing adaptations and technology criminals use to complete their crimes.

Another area addressed is the amendment to clarify other explosive devices. People, including teenagers, are constructing explosive devices from 1.4 consumer fireworks. These fireworks are the type you can purchase during the forth of July holiday season. One type of device law enforcement agencies in Kansas as well as across the nation are seeing is what is referred to as a 'sparkler bomb'. Last year in Frankfurt, Kansas became the first state to record a death due to this type of bomb. In a ten year period the nation recorded over 400 incidents involving improvised firework devices. It is also determined that this number is very low as these cases are not being reported to the national level because of the nature of the materials used, i.e. fireworks.

Another concern is the increasing bomb threats and use of simulated or hoax devices for public reaction or attention. A typical device incident would last a minimum of four hours with a minimal cost for the response into the thousands. All device calls must be treated as a real until proven otherwise. The members of bomb squads also perform other

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Voice 785-296-3401 Fax 785-296-0151 [www.accesskansas.org/firemarshal](http://www.accesskansas.org/firemarshal)

Senate Judiciary

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Attachment 5



duties and only conduct bomb responses when needed. These responders are then taken away from other law enforcement assignments.

Other costs to factor are building evacuations and business interruptions, many in our schools. Safety is foremost and until the incident is mitigated all precautions must be taken to secure the safety of all citizens of Kansas. This disruption of business can cost tens of thousands of dollars of loss income.

The last area to be addressed is in the area of first responder safety. First responders already have inherently dangerous positions but with this new threat of secondary devices it is increasing the dangers. The simulated or hoax devices, improvised fireworks devices, and chemical bombs can also be used to draw the first responders to a specific location only to have a more powerful explosive secondary device target the responders. The question used to be 'IF' but unfortunately it is now 'WHEN'. This has occurred in the state of Georgia just a few years ago and more recently, closer to home in Kansas City, Missouri.

We urge this committee to pass this bill out favorably.

MARIO GOICO  
 REPRESENTATIVE, 100TH DISTRICT  
 SEDGWICK COUNTY  
 1254 N. PINE GROVE CT.  
 WICHITA, KS 67212  
 316-721-3682



TOPEKA

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**WRITTEN TESTIMONY  
 FOR THE  
 SENATE JUDICIARY COMMITTEE  
 HB 2062 – CRIMINAL USE OF EXPLOSIVES**

This bill clarifies the current language in the Criminal Use of Explosives Statute, K.S.A 21-3731, by including language that defines a chemical reaction bomb and simulated explosive device. The bill would exclude consumer fireworks from the definition of explosive, except for when the consumer fireworks are modified or assembled in a manner not intended by the manufacturer. The bill would not prohibit the construction or use of explosives or simulated explosive devices by authorized personnel for legitimate public safety training, demonstration, or exhibition.

This bill is necessary because by the 18th Judicial District dismissed two cases that involved chemical reaction bomb and simulated explosive device in June 2005. Both of these cases had sufficient evidence to prosecute and convict; yet they were dismissed by the judge because of the vague language in the current Criminal Use of Explosives statute. The Sedgwick County District Attorney also believes the language is vague and needs better clarification before successful prosecution can be obtained. Since that time we have not had any cases accepted for prosecution in Sedgwick County; although several have occurred.

Let me explain the arguments that were successfully used in court. On chemical reaction bomb the argument was that components used to make this type of bomb are not an explosive item by themselves. Examples of some of these materials are: drain cleaner, aluminum foil, lye, dry ice, water and other common household products. These materials would not cause an explosion when they are mixed as described in the current statute. However, when mixed and placed inside a sealed container they would explode. These chemical reaction bombs operate similar to a pipe bomb, and both are defined as mechanical explosions when detonated.

The issue for simulated explosive device is that terrorists can accomplish their goal by developing an unnecessary emergency, causing panic among the public, and creating the need to evacuate an area which could result in an economic impact by closing businesses and day-to-day operations of the affected area. These are instances when a package made to look like a real bomb has been

Senate Judiciary

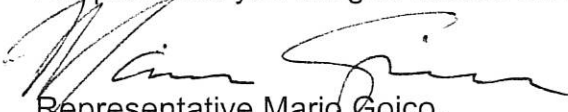
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left at a location. The current statute does not address simulated devices that are used to cause panic or disrupt commerce. .

The Wichita Police Department contacted every bomb squad in the State of Kansas to determine their success in prosecuting chemical reaction bombs and simulated explosive devices. The results were that every jurisdiction was prosecuting these cases differently, or not at all, because of the broad interpretation of the current statute by DA's and Judges.

The language of this bill was coordinated with the Wichita Police Department Bomb Squad, the Sedgwick County District Attorney, the Kansas State Fire Marshall, and Kansas City's Alcohol Tobacco and Firearms and Federal Bureau of Investigations.

I request that you will give House Bill 2062 consideration and pass if favorably.

  
Representative Mario Goico,  
District 100