

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:40 a.m. on February 17, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Others attending:

See attached list.

The Chairman called for final action on **SB 17 - Videotaping felony interrogations.** Jason Thompson, staff revisor, reviewed the bill.

Senator Haley had a substitute bill draft distributed. (Attachment 1) Jason Thompson, staff revisor, reviewed the substitute bill. Senator Haley moved, Senator Schodorf seconded, to replace SB 17 with Sub SB 17 as distributed to the committee. Motion carried.

Senator Schmidt moved, Senator Lynn seconded, to table SB 17. Motion carried.

The Chairman called for final action on **SB 32 - Evidence in civil actions; expression of apology by health care providers.** Jason Thompson, staff revisor, reviewed the bill.

Senator Pilcher-Cook moved, Senator Lynn seconded, to recommend SB 32 favorably for passage.

Senator Vratil moved, Senator Donovan seconded, a substitute motion to refer SB 32 to the Judicial Council for in-depth study. Motion carried.

The Chairman called for final action on **SB 88 - Children; permanency and priority of orders.** Senator Schmidt reviewed the testimony of February 16.

Senator Schodorf moved, Senator Kelly seconded, to refer SB 88 to an interim committee for further study. Motion carried.

The Chairman called for final action on **SB 154 - Civil procedure, habeas corpus, infectious disease.** Jason Thompson, staff revisor, reviewed the bill.

Senator Schmidt moved, Senator Donovan seconded to recommend SB 154 favorably for passage. Motion carried.

The Chairman called for final action on **SB 155 - Center for health and environmental statistics employees; fingerprinting, criminal history record checks.** Jason Thompson, staff revisor, reviewed the bill.

Senator Vratil moved, Senator Donovan seconded, to amend SB 155 on page 1, line 24, striking the word "top"; line 25, strike the word "top"; line 27, strike the letter "s" on the word "candidates"; line 35, strike the word "of" and insert the word "a" and strike the "s" off of the word "candidates". Motion carried.

Senator Kelly moved, Senator Vratil seconded, to amend SB 155 to apply only to new employees.

Following discussion, Senator Schmidt made a substitute motion, Senator Donovan seconded, to table SB 155. Motion carried.

The next meeting is scheduled for February 18, 2009. The meeting was adjourned at 10:20 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: TUES, FEB 17, 2009

NAME	REPRESENTING
Bob Keller	JCSO
Brett Wilson	JCSO
Matt Casey	GBA
Susan Kang	KDHE
JOSEPH MOLINA	Ks Dev Auth.
Chip Wheelen	HCSF Bd of Govs
Robin Clements	Public Solutions LLC
Nancy Zogelman	Polsinelli
John C. Botterberg	Sheriff
Tim Maddin	KDOC
Terry Symonds	KCSA
Jim Ror	KCSL
Donna Calabrese	KDHE
hou Zadi	KDHE
LANN WICK	Judicial Branch
ERIK SARTORIUS	City of Overland Park
JEAN MILVEL	CAPITOL STREETCART
Berend Hoops	Hein Law Firm

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues, FEB 17

NAME	REPRESENTING
JEREMY S BARCLAY	KDOC
Richard Samwigo	Kennedy Assoc.
Chad Austin	KHA
Holly Smith	Kansas Liberty
Richard Bauman	KFA
Karl Cornish	KAB
DEBORAH STERN	KS. HOSP. ASSN.
Cynthia Smith	SCL Health System
Dy Marshall	Judicial Council
Sister Therese Banzet	Sisters of Charity of Leavenworth
Ed Kump	KPOA * KACP

PROPOSED Substitute for SENATE BILL NO. 17

By

AN ACT concerning crimes, punishment and criminal procedure;
relating to evidence and videotaping of felony interrogations.

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

Section 1. (a) As used in this section:

(1) "Custodial interrogation" retains the meaning prescribed to it by the United States and Kansas Constitutions.

(2) "Place of detention" means a building under the control of a law enforcement unit, a courthouse holding facility for defendants in the custody of a jail or prison, a city or county jail or work release facility, a state prison, or a state security hospital or a facility operated by the department of social and rehabilitation services for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments thereto.

(3) "Video recording" means to capture the visual and audio components of an event in a manner that allows the event to be observed through that medium.

(b) (1) Effective July 1, 2009, except as provided in subsection (c), if a place of detention is equipped with one or more rooms capable of making a video recording, a video recording shall be made of a custodial interrogation conducted in such place of detention when the interrogation concerns an off-grid felony, a nondrug severity level 1 through 5 felony or a drug severity level 1 felony crime. The recording shall include the advice of rights. The recording shall not end until the interrogation is concluded. If the defendant elects to make or

Senate Judiciary

2-17-09
Attachment 1

sign a written statement during the course of a custodial interrogation, the making and signing of the writing shall be recorded.

(2) Effective July 1, 2010, except as provided in subsection (c), a video recording shall be made of a custodial interrogation conducted in any place of detention when the interrogation concerns an off-grid felony, a nondrug severity level 1 through 5 felony or a drug severity level 1 felony crime. The recording shall include the advice of rights. The recording shall not end until the interrogation is concluded. If the defendant elects to make or sign a written statement during the course of a custodial interrogation, the making and signing of the writing shall be recorded.

(c) A video recording of a statement under subsection (b) is not required if the oral, written or sign language statement was made:

(1) During an interrogation that was not recorded as required by subsection (b) because video recording was not feasible;

(2) spontaneously and not in response to a question;

(3) voluntarily, whether or not the result of an interrogation, and the statement has a bearing on the credibility of the accused as a witness;

(4) after questioning that is routinely asked during the processing of the arrest of a suspect;

(5) in an interrogation outside the state of Kansas;

(6) at a time when the interrogators are unaware that an offense covered by subsection (b) has occurred; or

(7) at a time when the person being interrogated is not a suspect for the offense to which the statement relates while the person is being interrogated for an offense other than an offense specified in subsection (b).

(d) If the court finds by a preponderance of the evidence that the defendant was subjected to an interrogation in violation of this section, the defendant shall be entitled to a jury instruction on the failure to record the interrogation. If the defendant requests such an instruction, the court shall instruct the jury that it is the law of Kansas to make a video recording of a custodial interrogation of a person suspected of committing the offense charged and because of the absence of any recording of the interrogation in the case before them, they should weigh evidence of the defendant's alleged statement with great caution and care.

(e) Every video recording required under this section shall be preserved until the defendant's conviction for an offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or until the prosecution of offenses related to the recorded statement is barred by law, whichever occurs later.

(f) Every video recording of any statement as required by this section shall be confidential and exempt from the Kansas open records act in accordance with K.S.A. 45-221, and amendments

thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.