Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:34 A.M. on January 18, 2011, in Room 548-S of the Capitol.

All members were present

Committee staff present:
Lauren Douglass, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:
James Colgan
Kyle Smith, KS Peace Officers Assn.
Ed Klumpp, KS Assn. of Chiefs of Police, KS Sheriffs Assn., KS Peace Officers Assn.

Others attending:
See attached list.

Bill Introductions:
Helen Pedigo, Special Counsel to the Chief Justice of the Kansas Supreme Court requested introduction of legislation, as follows:

- A bill concerning the Judicial Branch Surcharge
- A bill concerning e-filing
- A bill concerning the Debt Setoff Law
- A bill concerning the assessment of court costs in asset forfeiture cases
- A bill concerning the Senior Judge Program
- A bill concerning appeals of defendants sentenced under Jessica's Law

Ms. Pedigo gave a brief description of the proposed legislation and the reasons for the requests (Attachment 1). The bills were approved for introduction without objection.

The Chairman opened the Confirmation Hearings on the appointments of two persons to the State Board of Indigent Defense Services (BIDS):

Appearing before the committee was James Colgan, who introduced his wife, Ann, and gave a brief statement concerning his personal and professional background (Attachment 2). He noted that he had handled defense work for BIDS in his private practice of law.
In response to a question by Senator Vratil concerning a conflict of interest, Mr. Colgan stated he believed that there would not be a conflict since BIDS was not making a direct payment to him.
Mr. Colgan stated that BIDS reimburses attorneys handling BIDS cases, other than capital offense cases, at a rate of $62 per hour. In capital offense cases, the rate of reimbursement is $150 per hour. He noted that BIDS fixes the rate of reimbursement and the amounts paid do not cover the "overhead" expenses of the attorneys.

The Chairman called the committee's attention to the biographical and background information relating to the second appointee to BIDS, John Robert Weber (Attachment 3). The Chairman noted that Mr. Weber was being reappointed to BIDS and was not appearing before the committee.

Senator Vratil moved, Senator Umbarger seconded, that the committee recommend the confirmation of both appointments to the full senate. Motion carried.

The Chairman closed the Confirmation hearings.

MINUTES OF THE Senate Judiciary Committee at 9:34 A.M. on January 18, 2011, in Room 548-S of the Capitol.

The Chairman opened the hearings on **SB 6 -- Criminal procedure; search incident to arrest**.

Jason Thompson, Staff Revisor, reviewed the bill. Mr. Thompson also distributed a handout which contained a copy of 2010 SB 435, as amended by Senate Committee, and a copy of 2010 SB 435, as amended by House Committee (Attachment 4). Mr. Thompson noted that **SB 6** is identical to the original version of 2010 SB 435.

Senator Vratil stated that the language inserted into 2010 SB 435 is the law, whether or not that language is actually in the statute; it is the same as repealing K.S.A. 22-2501 (as the Senate had done in its version).

Senator Haley, as the sponsor of **SB 6**, spoke in favor of the bill. Senator Haley stated that the word "the" preceded the word "evidence" for 40 years. He noted in his testimony that the bill would codify the holding in the Kansas Supreme Court decision, *State v. Helling* (Attachment 5). He urged the committee to approve the bill to ensure due process.

Senator King asked, "Is K.S.A. 22-2501, as written, is unconstitutional?"
Senator Haley responded, "Yes."

Kyle Smith testified in opposition to **SB 6** (Attachment 6). Mr. Smith gave a brief overview of the law relating to searches and seizures. He concurs with Senator Haley's statement that the language of K.S.A. 22-2501 is unconstitutional, but changing the word "a" to "the" would make the statute narrower in application than required by the Supreme Court opinion. He suggested that the committee repeal K.S.A. 22-2501.

In response to a question by Senator Kelly concerning when a search may be conducted without a warrant, Mr. Smith explained that a law enforcement officer may conduct a warrantless search if there is a reasonable suspicion of the commission of another crime (as in the case of a stumbling driver and DUI offenses). He also explained the "plain view" doctrine that allows for a warrantless search.

Ed Klumpp testified in opposition to **SB 6** (Attachment 7). Mr. Klumpp stated that 44 other states have not attempted to codify the "search incident to arrest" case law and expressed his support of the repeal of K.S.A. 22-2501. He added that a statute is needed only if the Legislature wants to impose a stricter requirement than is allowed by the Constitution.

Written testimony in support of **SB 6** was submitted by Jennifer Roth, Kansas Association of Criminal Defense Lawyers (Attachment 8). Written testimony in opposition to **SB6** was submitted by Patrick Vogelsberg, Kansas County and District Attorney Association (Attachment 9).

The Chairman noted that the fiscal note indicated that there would be no fiscal impact.

Senator Bruce asked, "If K.S.A. 22-2501 is amended as provided in **SB 6**, could the statute still be unconstitutional?"
Kyle Smith responded, "Possibly."

The Chairman closed the hearings on **SB 6**.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for Monday, January 19, 2011.