

Approved: March 27, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Vice Chairperson Representative Becky Hutchins at 1:30 p.m. on March 6, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Powell, excused
Representative Rehorn, excused

Committee staff present: Theresa Kiernan, Revisor of Statutes
Russell Mills, Legislative Research
Mary Galligan, Legislative Research
Winnie Crapson, Secretary

Conferees appearing before the committee:

Proponents of HB 2725:

Representative Ruff
Doug Williams
William Iacono, University of Minnesota
Detective Bill Roche
Robert Beattie

Opponents of HB 2725

Robert A. Brisintine, Jr., American Polygraph Association
Tim Madden, Chief Counsel, Department of Corrections
Robert Blecha, Kansas Bureau of Investigation
Lt. John Sams, Topeka Police Department
Mike Mann, American and Kansas Associations of Police Polygraphers
Capt. David Burger, Kansas Peace Officers' Association
Sgt. Rusty James, Lenexa Police Department
Don Michaels
Theresa Michaels

Written testimony provided by:

Gary Davis, National and Kansas Polygraph Associations
Donald Williams, Investigations LLC
Gail Roberson, Sex Offender Treatment Program, Lansing Correctional Facility
Randy Rogers, Kansas Sheriffs' Association

Others attending: See attached list.

Vice Chairman Representative Hutchins opened the meeting.

Clyde Graeber, Secretary, Department of Health & Environment, outlined two bills he requested be introduced relating to the Land of Oz project.

Representative Cox moved, Representative Dahl seconded, that the two bills requested by Secretary Graeber be introduced: (1) to bring the statute that created the authority under the Kansas Tort Claims Act [HB 3021] and (2) to establish the Sunflower Army Ammunition Plant trust fund to receive the proceeds from the payment obligation surety bond [HB 3020]. Motion passed.

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Hearing was opened on:

HB 2725, The Kansas polygraph protection act.

Vice Chairman Hutchins referred the Committee to the memo by Mary Galligan, Kansas Legislative Research, giving an overview of **HB 2725** describing procedures for the use of polygraphs in criminal investigations and provisions creating crimes and a civil cause of action related to illegal polygraph use (Attachment #1).

Representative Ruff introduced the bill and noted fourteen states have applied some restrictions on the use of polygraphs and others are considering it.

Dr. William Iacono of the University of Minnesota presented testimony in support of the bill (Attachment #2). Dr. Iacono referred committee members to U.S. v. Scheffer, 523 US ___, 140 L Ed 2d 413, 118 Sct ___ (1998) and its citation of his article "The Scientific Status of Research on Polygraph Techniques in Modern Scientific Evidence. He was asked to provide to the committee a copy of the study cited by the Supreme Court. He noted there are widely divergent views regarding the accuracy of polygraph testing.

Douglas Williams presented testimony in support of the bill (Attachment #3) based upon his experiences administering polygraph tests.

William Roche, a police detective with the Concord CA Police Department, testified in support of the bill (Attachment #4), sharing his experiences with both pre-employment polygraphs and their utilization in criminal investigation.

Robert M. Beattie presented testimony in support of the bill (Attachment #5). His testimony was based upon his experience as a practicing attorney and professor at Friends University where his course teaches how the polygraph intertwines the disciplines of psychology and law. In response to questions from Representative Gilbert, Mr. Beattie said to his knowledge no license is required in Kansas for a polygraph examiner. He stated he did not find the proposed time restrictions in the bill unreasonable and he could find no studies supporting the use of polygraph for any kind of therapy.

Robert A. Brisentine, Jr., Chairman of the Legislative Committee of the American Polygraph Association, presented testimony in opposition to the bill (Attachment #6). He described the APA as a non-profit technical, professional and educational association establishing standards of ethical practices, techniques, instrumentation and training relating to polygraphs. The Association supports the passage of licensing legislation and opposes legislation that would unfairly deny the right to use polygraph examinations. Mr. Brisentine said in response to questions from Representative Edmonds about the accuracy of polygraph tests that he could provide information that in over 250 studies the range acceptable to scientific scrutiny is 85% to 95%. Vice Chairman Hutchins asked Mr. Brisentine to provide a copy of the review to the committee.

Tim Madden presented the written testimony of Charles E. Simmons, Secretary of Corrections (Attachment #7) describing the use of polygraph examinations as a component of the treatment program provided to sex offenders while incarcerated and during supervision of offenders on parole or postrelease. Mr. Madden presented a proposed amendment to **HB 2725** by adding a new Sec. 6 on page 2:

Sec. 6. The department of corrections and entities contracting to provide services to the department may utilize the polygraph examinations in the treatment of offenders. The department may utilize polygraph examinations for the purpose of supervising offenders and in investigations relating to the security and orderly operation of the department.

Robert Blecha, Assistant Director of the Kansas Bureau of Investigation, presented testimony in

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opposition to the bill ([Attachment #8](#)). He stated there are four polygraphists who perform examinations for the KBI and for state and local law enforcement agencies across the state. He described their use of polygraph examinations. Mr. Blecha stated the KBI never to his knowledge used polygraph results as the sole basis for hiring or firing.

Mr. Blecha had not seen the February 4 memorandum of Mary Galligan, Legislative Research. He was asked to provide the Committee with responses to the bullets in that memorandum.

Lt. John Sams presented testimony opposing the bill on behalf of the Topeka Police Department ([Attachment #9](#)) stating there currently exists adequate legislation and regulations on both the State and Federal levels to curtail any abuse and to allow anyone to seek remedy against such perceived abuse. He described the use of polygraphs by the Topeka Police Department.

Mike Mann presented testimony in opposition on behalf of the American Association of Police Polygraphists and the Kansas Association of Chiefs of Police ([Attachment #10](#)). The AAPP is a national association representing polygraph examiners. He stated it is the belief of the AAPP that scientific evidence strongly supports the high validity and reliability of the use of polygraphs and supports the continued scientific research on polygraph.

Capt. David Burger, Lenexa Police Department, presented testimony in opposition on behalf of the Kansas Peace Officers' Association ([Attachment #11](#)). He stated the polygraph is a reliable tool with a proven record of effectiveness. In response to a question about what would be a reasonable time to be hooked up to a polygraph, he said he believed reasonableness would be different in different situations.

Sgt. Rusty James, a polygraph examiner with the Lenexa Police Department, presented testimony on behalf of LPD in opposition to the bill ([Attachment #12](#)), stating that the polygraph is a valuable tool for law enforcement and this bill would severely restrict the use of polygraph testing in Kansas. He described the use of polygraphs in internal investigations.

Don Michaels and Theresa Michaels testified in opposition to the bill describing the benefits of use of polygraph examinations in the treatment of sex offenders.

Written testimony was presented by:

Gary Davis, Forensic Assessments, Inc., Vassar KS ([Attachment #13](#))

Gail Roberson, Counseling Center, Joplin MO ([Attachment #14](#))

Randy Rogers, Sheriff, Coffey County, Kansas Sheriff's Association ([Attachment #15](#))

Donald L. Williams, Investigations LLC, Wichita ([Attachment #16](#))

The hearing on **HB 2725** was closed.

The meeting adjourned at 2:50 p.m. The next scheduled meeting is March 7.