

Approved: August 25, 2011  
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:38 A.M. on March 4, 2011, in Room 548-S of the Capitol.

All members were present, except Senators Donovan and King, who were excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, 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:

Sarah Fertig, Executive Director, Kansas Sentencing Commission  
Mark Bennett, Deputy District Attorney Sedgwick County

Others attending:

See attached list.

The Chairman opened the hearings on **HB 2038 -- Amending the procedure regarding jury trials for upward departure sentences.**

Jason Thompson, Staff Revisor, reviewed the bill.

Sarah Fertig testified in support of **HB 2038 (Attachment 1)**. She stated the bill is necessary to comply with the holding in *State v. Horn* (2010), in which the Kansas Supreme Court held that a waiver of a jury trial does not constitute a waiver of a jury for an upward durational departure sentence proceeding.

Senator Bruce asked, "Did the Supreme Court hold the entire scheme unconstitutional?"

Ms. Fertig responded, "The Court's holding was limited to that portion of subsection (b)(4) of K.S.A. 21-4718 requiring upward durational departure sentence proceedings for defendants who have waived a jury trial. The Court held that.

Written testimony in support of **HB 2038** was submitted by Patrick Vogelsberg, Kansas County and District Attorneys Association (**Attachment 2**).

No testimony in opposition to **HB 2038** was offered.

The Chairman called the committee's attention to the fiscal note for **HB 2038**.

The Chairman closed the hearings on **HB 2038**.

The Chairman opened the hearings on **HB 2057 -- Adding Johnson County sheriff's laboratory and Sedgwick County regional forensic science center as admissible forensic examination centers.**

Jason Thompson, Staff Revisor, reviewed the bill.

Marc Bennett testified, on behalf of the Kansas County and District Attorneys Association, in support of **HB 2057 (Attachment 3)**. He stated the bill would authorize the reports and certificates concerning forensic examination of criminalists or other employees of the Johnson County Sheriff's Laboratory and the Sedgwick County Regional Forensic Science Center to be considered admissible in evidence in any hearing or trial. The bill includes procedural safeguards to insure that an offender's constitutional rights are protected. He added that the bill would result in a savings of time and money for Johnson and Sedgwick counties.

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Senator Kelly asked, "Who is covered by the current statute?"

Mr. Bennett replied, "Forensic scientists and employees of the KBI, Kansas Highway Patrol and certain federal agencies."

No testimony in opposition to **HB 2057** was offered.

The Chairman called the committee's attention to the fiscal note for **HB 2057**.

The Chairman closed the hearings on **HB 2057**.

The Chairman opened the hearings on **HB 2151 -- Concerning crimes; criminal procedure and punishment; relating to breach of privacy and blackmail.**

Jason Thompson, Staff Revisor, reviewed the bill.

Marc Bennett testified, on behalf of the Sedgwick County District Attorney and the Kansas County and District Attorneys Association, in support of **HB 2151** (Attachment 4). He stated that the bill would expand the crime of breach of privacy and would include the dissemination of, or permitting the dissemination of, any videotape, photograph, film, or image obtained in violation of the restriction explained above on installing or using a concealed device. The bill also increases the penalties for some of the acts that constitute breach of privacy.

Senator Bruce asked, "Does this affect cameras in a dressing room?"

Mr. Bennett responded, "That situation is covered in current law and there is no change in the law relating to cameras in dressing rooms."

Senator Kelly asked, "Is a person who is convicted of violating the statute placed on the sex offender list?"

Mr. Bennett responded, "Yes, if the prosecutor can prove that the violation was committed for sexually motivated purposes."

No testimony in opposition to **HB 2151** was offered.

The Chairman called the committee's attention to the fiscal note and prison bed impact statement for **HB 2151**.

The Chairman closed the hearings on **HB 2151**.

**Committee Action:**

The Chairman called the committee's attention to **HB 2038 -- Amending the procedure regarding jury trials for upward departure sentences.**

Senator Bruce moved, Senator Haley seconded, that **HB 2038** be passed. The motion was adopted.

The Chairman called the committee's attention to **HB 2057 -- Adding Johnson County sheriff's laboratory and Sedgwick County regional forensic science center as admissible forensic examination centers.**

Senator Lynn moved, Senator Pilcher-Cook seconded, that **HB 2057** be passed. The motion was adopted.

The Chairman called the committee's attention to **HB 2151 -- Concerning crimes; criminal procedure and punishment; relating to breach of privacy and blackmail.**

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:38 A.M. on March 4, 2011, in Room 548-S of the Capitol.

Senator Bruce moved, Senator Haley seconded, that **HB 2151** be passed. The motion was adopted.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 7, 2011.