

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

October 11-12, 2007
Room 123-S—Statehouse

Members Present

Senator John Vratil, Chairperson
Senator Greta Goodwin
Senator Phil Journey
Senator Derek Schmidt
Representative Sydney Carlin
Representative Marti Crow
Representative Lance Kinzer
Representative Bill Light
Representative Jan Pauls
Representative Marc Rhoades
Representative Vern Swanson

Members Excused

Representative Mike O'Neal, Vice-Chairperson
Senator Julia Lynn

Staff

Jill Wolters, Office of the Revisor of Statutes
Bruce Kinzie, Office of the Revisor of Statutes
Dustin Slinkard, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Carol Benoit, Chief of Staff for Senator Vratil
Ann McMorris, Committee Secretary

Conferees – Topic No 12 – Vehicular Homicide (October 11, 2007)

Representative Kenny Wilk
Denise Bixby, Citizen
Dennis Bixby, Citizen

Robin Jones, Citizen
Diane Meyer, Citizen
Ed Klumpp, Kansas Association of Chiefs of Police
John Wheeler, Kansas County and District Attorneys Association
Karen Wittman, Kansas County and District Attorneys Association and Office of
the Shawnee County District Attorney

Conferees - Topic No. 10—Submission of Blood or Other Biological Samples to the
Kansas Bureau of Investigation (October 11, 2007)

Jim Clark, Kansas Bar Association
Kyle Smith, Kansas Bureau of Investigation
Frank Denning, Johnson County Sheriff
Alan Hamm, Johnson County Sheriff's Office Crime Lab Division
Captain Glenn Kurtz, Sedgwick County Sheriff's Office

Conferees - Topic No. 11—Settlement of Surface Damages Between Landowners and
Their Farm Tenants and Gas and Oil Companies (October 12, 2007)

Erick Nordling, Southwest Kansas Royalty Owners Association
Greg Stucky, Southwest Kansas Royalty Owners Association
David Seely, Eastern Kansas Royalty Owners Association and Southwest Kansas
Royalty Owners Association
Kenny Carter, Eastern Kansas Royalty Owners Association
Terry Holdren, Kansas Farm Bureau
Ron DeGarmo, Southwest Kansas Royalty Owners Association
John Donley, Kansas Livestock Association
Dennis Hupe, Kansas Soybean Association
Carl Martin, Citizen
Bob Van Crum
Brent Moore, OXY USA, Inc.
Ed Cross, KIOGA
David Bleakley, Colt Energy, Inc.
Bill Hess, McCoy Petroleum Corporation
Ken White, White Exploration, Inc.
Rick Stinson, Lario Oil and Gas Company
Steve Dillard, Pickrell Drilling Company
David M. Dayvault, Abercrombie Energy
Jack Glaves, DCP Midstream

**Thursday, October 11
Morning Session**

*Moved by Senator Goodwin, seconded by Senator Journey, the minutes of the meetings
of the Special Committee on Judiciary held on September 18 and 19, 2007 be approved. Motion
carried.*

Chairperson Vratil opened the hearing on Topic No 12—Vehicular Homicide.

Representative Kenny Wilk reviewed the tragic events that brought the review of the vehicular homicide statutes to the attention of the Legislature. Senator Pine and Representative Wilk intend to introduce legislation in the 2008 Session to amend the vehicular homicide statutes. He introduced the conferees who lost a daughter on February 14, 2007, in a three-vehicle accident ([Attachment 1](#)).

Denise Bixby, mother of deceased Amanda Bixby, 19, spoke about her experience with the current vehicular homicide law. She described the events of the accident, her frustration with what she perceived as the lack of a thorough investigation by the police and that there was no drug testing of the man who caused the accident. She was further disheartened when she learned that the driver could not be charged with vehicular homicide because there was no evidence of impairment or intent. She felt the law had let someone who could have been punished more severely just walk away. She urged the Committee to implement mandatory drug testing and to rework the vehicular homicide law to identify more criteria for vehicular homicide ([Attachment 2](#)).

Dennis Bixby, father of deceased Amanda Bixby, provided details regarding the driver who caused the accident. He noted that the Kansas Supreme Court ruled in 2002 in *Kansas vs. Krovvidi*, that running a red light is simple negligence unless combined with other aggravating factors. Mr. Bixby stated that in the decision, it was noted that current law is “unconstitutionally vague” and the term “material deviation” needs to be defined. He detailed the reasons why the driver was not drug tested. The Kansas Highway Patrol has a mandatory drug testing policy, but under current Kansas law, whether to drug test or not is a policy generally left up to the county or police department to determine. He noted mandatory drug testing is essential to collecting evidence toward getting convictions. Education and indemnification are also needed for hospitals and emergency medical technicians who are fearful of lawsuits and are reluctant to run the test. He stated that politics and corruption may also be a factor in the lack of testing. He concluded by urging a solution to this problem by:

- Clarifying the law;
- Stiffening penalties for vehicular homicide; and
- Requiring mandatory drug testing.

A copy of the Motor Vehicle Accident Report of the February 14, 2007, accident that took his daughter’s life also was provided to the Committee ([Attachment 3](#)).

Robin Jones, Tonganoxie, a friend of the Bixby family, urged that the vehicular homicide laws of this state be amended and that mandatory drug and alcohol testing be required in all fatality traffic accidents ([Attachment 4](#)).

Diane Meyer, Manhattan, detailed the semi truck-car accident that killed her daughter three years ago. The ultimate outcome of the case in court was that the county attorney did not feel that it met the criteria for vehicular homicide. She urged the Legislature to adopt laws holding commercial truck drivers to occupational standards comparable, at least, to that of traffic controllers and pilots. She cited data from a 2006 Report to Congress on the Large Truck Crash Causation Study by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, and the National Highway Traffic Safety Administration. She also cited data from other U.S. government statistics collected in 2000-2006. She urged action as follows:

- Require immediate drug and alcohol testing in all large truck accidents resulting in injury or fatality;

- Require a minimum liability insurance coverage of \$3,000,000 per incident;
- Raise wrongful death limits for large trucks to \$1,000,000;
- Require impoundment by law enforcement of tractor, trailer, or truck until a full vehicle autopsy is performed by a qualified Department of Transportation official;
- Increase the punishment when a commercial vehicle is at fault; and
- Require data recorders be installed on all commercial trucks logging more than 100,000 miles per year by 2009 (Attachment 5).

Ed Klumpp, Kansas Association of Chiefs of Police, provided neutral testimony and stated the Association believed the current vehicular homicide law is adequate. He stated the crime should be reserved for the case where there is a substantial or material deviation from the standard of care of a reasonable person. He testified that vehicular homicide should not be charged in those cases where there is only ordinary negligence. The issue is whether accountability should be a civil process or a criminal process and whether jail time is the appropriate accountability tool. He offered insight into the difficulty law enforcement and prosecutors face in vehicular homicide cases (Attachment 6).

John P. Wheeler, Jr., Finney County Attorney, appeared on behalf of the County and District Attorneys Association (KCDA) in a neutral position. He provided the Committee insight on the issues Kansas prosecutors face when presented a case involving a death arising from a vehicular accident. He noted the vehicular homicide statute can hardly be considered clear and gives very little direction to the prosecutor. He stated the KCDA urges the Committee not to further restrict the discretion of the prosecutor in making the already difficult decisions in vehicular cases (Attachment 7).

Karen Wittman, Kansas County and District Attorneys' Association and Office of the Shawnee County District Attorney, described her role as the attorney in charge of all traffic-related offenses. She goes to the scene of the accident and gets details first hand. She spoke on the laws covering mandatory drug testing and commented on the present penalties (Attachment 8).

The Committee questioned each conferee as they completed their testimony.

Chairperson Vratil closed the hearing on Topic No. 12—Vehicular Homicide.

The Committee recessed for lunch and reconvened at 1:30 p.m.

Afternoon Session

Chairperson Vratil opened the hearing on Topic No. 10—Submission of Blood or Other Biological Samples to the Kansas Bureau of Investigation.

The staff of the Office of the Revisor of Statutes provided the Committee with a proposed balloon amendment to SB 237 (KSA 2006 Supp. 21-2511) (Attachment 9).

Jim Clark, Legislative Counsel, Kansas Bar Association (KBA), noted during the 2006 and 2007 Legislative Sessions, the Kansas Bar Association voiced its objection to the collection of DNA samples upon the arrest without warrant of an adult, or upon a juvenile being taken into custody without a court order. Authority for such collection was passed in the 2006 Legislative Session as part of HB 2554. His objections were:

- Removing a DNA sample from a human being is a search of that person; and
- A DNA sample is a much more intrusive collection than a fingerprint.

The KBA urged the Special Committee on Judiciary to recommend legislation prohibiting collection of DNA from an individual prior to a judicial determination of probable cause (Attachment 10).

Kyle Smith, Kansas Bureau of Investigation, testified as an opponent to the proposal. He discussed the constitutionality issues in collecting DNA samples and cited several court cases on this issue. He commented that the Legislature could view the collection of DNA samples as an identification tool such as collection of fingerprints, or as a search. He believes the language of SB 237 is unconstitutional. He noted that “booking” is the logical, reliable, and most cost-effective way to collect DNA (Attachment 11).

Frank Denning, Johnson County Sheriff, stated SB 237 creates an unnecessary step in DNA specimen collection process and adds an unwarranted layer of judicial review. He noted the advancement in DNA analysis has yielded a powerful investigative tool to aid in identifying those that prey upon our communities (Attachment 12).

Alan Hamm, Assistant Director, Johnson County Sheriff's Office Crime Lab Division, discussed the three arguments against collecting buccal swab samples from arrestees and provided an analysis of why these arguments should not be a barrier to DNA testing:

- Reliability of DNA results;
- Cost of DNA Analysis; and
- Invasion of individual privacy.

He noted there are no personal identifiers on any of the DNA profiles (Attachment 13).

Captain Glenn Kurtz, Sedgwick County Sheriff's Office, testified against SB 237 indicating it would create an additional workload for all of the sheriff's offices in the State and a significant hardship for the larger jails (Attachment 14).

Chairperson Vratil asked the staff of the Legislative Research Department to prepare a chronological history of the statutes on vehicular homicide from 1949 to present.

Chairperson Vratil closed the hearing on Topic No. 10—Submission of Blood or Other Biological Samples to the Kansas Bureau of Investigation.

The meeting was recessed until 9:00 a.m., October 12, 2007.

**Friday, October 12
Morning Session**

The Chairperson opened the hearing on Topic No. 11—Settlement of Surface Damages Between Landowners and Their Farm Tenants and Gas and Oil Companies

Due to the time element and the number of conferees for and against the proposed legislation, Chairperson Vratil allocated an hour for all proponents to present their testimony with thirty minutes for questions from the Committee and the same schedule for the opponents.

Erick Nordling, Southwest Kansas Royalty Owners Association (SWKROA), provided an overview of the issues and parties, the need for a surface owner notice and compensation act in Kansas, and an overview of what other states and national organizations have been doing to address similar issues. His power point presentation pictured:

- Oil and natural gas production in the United States;
- Parties to the oil and gas leasing in new fields and mature fields;
- Damages;
- Underlying tensions; and
- Legislation ([Attachment 15](#)).

Greg Stucky, SWKROA, discussed old and new oil and gas leases, and the little or no lease language addressing surface use by the oil company. He addressed various court cases involving surface owners and mineral owners and noted that 12 oil and gas producing states have passed legislation that addresses these issues in various ways. He provided a copy of the proposed bill draft to the Interim Committee ([Attachment 16](#)).

The bill proposed by the proponents has two primary components. First, the bill draft requires an oil company to notify the surface owner of its intended operations and make an offer to settle any damages and address any concerns that the surface owner has in connection with oil and gas development. Second, the bill draft does not unnecessarily impede the oil and gas operations when the oil company and surface owner cannot agree.

David Seely, Eastern Kansas Royalty Owners Association (EKROA) and SWKROA, briefly reviewed the various requirements in legislation passed by the 12 oil and gas producing states. He reviewed the proposed bill draft distributed to the Committee ([Attachment 17](#)).

Kenny Carter, EKROA, spoke in favor of surface damage legislation. His desire is for this legislation to create a workable agreement between landowners and oil and gas producers ([Attachment 18](#)).

Terry Holdren, Kansas Farm Bureau (KFB), stated its members believe that the Oil and Gas Surface Owners Notice and Compensation Act provides workable solutions that will continue to allow production and exploration and provide a minimal protection to surface owners who are conducting business operations on their land ([Attachment 19](#)).

Ron DeGarmo, SWKROA, is a farmer and rancher in favor of possible legislation to protect surface owners from surface damages due to gas and oil exploration. He found a lease recorded February 1, 1930; and after studying its terms for advantages to the surface owner, he noted that most leases do not offer much protection to the surface owner and tenant ([Attachment 20](#)).

John Donley, Kansas Livestock Association (KLA), spoke in favor of the proposed legislation ([Attachment 21](#)).

Dennis Hupe, Kansas Soybean Association (KSA), spoke in support of the proposed legislation ([Attachment 22](#)).

Carl Martin, Citizen and former president of Southwest College, Winfield, spoke of the heritage of the soil and need for surface protection.

Kirk Heger, Southwest Kansas Irrigation Association, only provided written testimony ([Attachment 23](#)).

David W. Bolton, Land for Quest Resource Corporation, only provided written testimony ([Attachment 24](#)).

Brent Moore, OXY USA, Inc., opposed introduction of legislation that would mandate the payment of surface damages by oil and gas operators to landowners or their tenants or both. As a general practice, and even though not required to do so by the express or implied covenants under the oil and gas lease, oil and gas operators pay surface owners for damages to their property. A surface damage act will cause deterioration in relationships between the co-users of the surface, increase litigation, and increase the cost of drilling wells ([Attachment 25](#)).

Ed Cross, KIOGA, spoke in opposition to the proposal. He testified that most states have found that their current systems adequately address the surface rights issue ([Attachment 26](#)).

David Bleakley, Colt Energy, Inc., noted normal damages to crops, fences, livestock, and restoration of drilling sites are all considered when making reasonable reimbursement to the surface owner. Issues differ in various parts of the state, and oil and gas leases are private contracts between the lessor and lessee. If all else fails, there is a remedy through the court system for either party (also see [Attachment 26](#)).

Bill Hess, McCoy Petroleum Corporation, has drilled wells in Kansas since 1970 and his company recognizes it is its duty to pay reasonable surface damages and losses incurred due to its activities. He testified it is preferable to settle the damage amount after drilling to make sure the damage amount paid accurately reflects the actual damage. He believes the Corporation's practices are indicative of most independent operators operating in western Kansas (also see [Attachment 26](#)).

Ken White, White Exploration, Inc., cited an informal survey he conducted with a group of operators in Kansas and presented the results in his testimony. According to his informal survey, the operators who responded were surprised that surface damage is even an issue. He opposed any legislation which will inhibit exploration due to the acts of others (also see [Attachment 26](#)).

Rick Stinson, Lario Oil and Gas Company, provided considerable information on leases, the rights of the surface owner and the mineral owner, quotes from Illinois statutes defining damages, the process of the Oklahoma Surface Damage Act, and the difficulty with bonding. He noted there are a lot of cases throughout the oil and gas producing states addressing these issues and there is no need for legislation (also see [Attachment 26](#)).

Steve Dillard, Pickrell Drilling Company, reiterated that Kansas is not like other states that have many surface owners that do not own minerals. Kansas does not have a significant amount of State or Federal lands that are leased for farming or ranching. The courts are already in place to handle the rare instances where damage settlements are disputed (also see [Attachment 26](#)).

David M. Dayvault, Abercrombie Energy, described the efforts of other states to address relations between oil and gas operators and surface owners. He noted most operators take a long term view that good relations with the surface owners and mineral owners are necessary to continue to explore and develop oil and gas in Kansas (also see Attachment 26).

Jack Glaves of DCP Midstream, noted Kansas Corporation Commission approval is required to drill and an application to drill a well is public record. There is a reclamation act on the books already.

Opponents indicated they had not seen the proposed draft of the bill prepared by the proponents.

Chairperson Vratil requested Legislative Research staff prepare a memorandum on oil and gas issues addressed in the Reclamation Act.

After discussion and questions from the Committee on the various issues, the Chair encouraged the two groups to communicate after all have had an opportunity to study the proposed legislation. He urged them to work out a solution and come back with a compromise position for the Committee to consider.

Chairperson Vratil closed the hearing on Topic No. 11—Settlement of Surface Damages Between Landowners and Their Farm Tenants and Gas and Oil Companies

Afternoon Session

The Chairperson opened for discussion and recommendations from the Committee Topic No. 6—Change in Judge in a Civil Action.

Chairperson Vratil explained the purpose of this proposal is to add a provision to Kansas Code of Civil Procedures to allow any litigant to request a change of judge for any reason or no reason. The proposal is limited to request for change of judge and the change would be mandatory.

Committee members discussed that the proposal is expensive to the court and the legislature. If there is no evidence that a problem exists and a problem exists, there is the question of whether the proposed change would solve the problem.

The Committee agreed that there is a lack of clarity in interpretation of the current statute. The Legislature needs to clarify whether there is a substantive requirement of proof for recusal or whether a mere allegation is sufficient. Although the Committee does not actively support one view over the other, the consensus of the Committee is to make a recommendation that will facilitate legislative discussion.

The Chairperson directed the staff from the Revisor's Office to draft an amendment to the current recusal statute so that it clearly requires the litigant to prove the allegations with substantive evidence.

Research staff was directed to indicate in the Committee report that there was little or no support for the proposed legislation because of the concerns in rural and urban areas. Further,

staff was to report that the Committee did conclude that there may be a difference of interpretation of the existing statute and clarification from the Legislature is necessary. The recommendation by the Committee is intended to facilitate a discussion on the issue.

The Chairperson closed discussion on Topic No. 6.

The Chairperson opened for discussion and recommendations from the Committee Topic No. 5—Subrogation Clauses in Health Insurance Contracts.

It was moved by Senator Journey, seconded by Representative Kinzer, to support the proposed legislation.

Substitute motion by Senator Goodwin, seconded by Representative Pauls, to oppose this proposal at this time and maybe revisit it at another time. Motion carried.

The Chairperson directed that the Committee report reflect the discussion and action taken on Topic No. 5. Chairperson Vratil closed discussion on Topic No. 5.

The Chairperson opened Committee discussion and recommendations on Topic No. 13—Indemnification Agreements.

This topic involved proposed changes in three bills introduced in 2007 - SB 379, HB 2262, and HB 2007.

The consensus of the Committee is they should make no recommendations on any of the three bills and strongly urged the interested parties to come to the table to review the problem.

Chairperson Vratil closed discussion on Topic No. 13.

The Chairperson opened Committee discussion and recommendations on Topic No. 9—Establishment of District Attorney Offices.

Staff from the Office of the Revisor of Statutes drafted two versions, 7rs1527 and 7rs1531, of a proposed bill to include the different recommendations the Committee had discussed in the hearing on Establishment of District Attorney Offices. In order to make policy decisions in the bill drafts, the Revisor's Office presented the Committee with the following information: (1) Felony caseload filings by fiscal year - 03-05 Average by District; (2) Felony caseload filings by fiscal year - Alphabetical by County; and (3) Felony caseload filings by fiscal year 2003-2005 Averages (Attachment 27).

Jill Wolters, Office of the Revisor of Statutes, reviewed language in 7rs1527 regarding felony case loads, participation by two or more counties to establish a District Attorney's Office, proposed tiers for reimbursement of the District Attorney's salary by the State, and the addition of a county to a District Attorney Office.

The Committee agreed on proposed reimbursement tiers: for filings of more than 400 felony cases, the state reimburses 100 percent of the District Attorney's salary; for filings of more than 275 and less than 400 felony cases, the state would reimburse 67 percent; for filings of more than 150 and less than 275 felony cases, the state would reimburse 33 percent; and for filings of 150 or fewer felony cases, the state would not be required to reimburse the county.

The Committee agreed that the Revisor's staff should modify the 7rs1527 draft as

discussed and bring it back to the Committee for further consideration at their next meeting.

Chairperson Vratil closed discussion on Topic No. 9

Prepared by Ann McMorris
Edited by Athena Andaya

Approved by Committee on:

November 8, 2007
(Date)