

Approved: July 13, 2012

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(Date)

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:40 p.m. Tuesday, March 6, 2012 in 346-S of the Capitol.

All members were present except:  
Mitch Holmes

Committee staff present:

Jason Thompson, Office of Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Helen Pedigo, Supreme Court of Kansas, on behalf of Hon. Mike Keeley, Chief  
Judge, 20<sup>th</sup> Judicial District  
Dorothy Stucky Halley, Office of the Attorney General  
Travis Harrod, Office of the Attorney General  
Steven M.S. Halley, Family Peace Initiative  
Sky Westerlund, representing Kansas Chapter, National Association of Social  
Workers  
Dr. Curt Brungardt, Batterer Intervention Program Advisory Board  
Mike Kaberline, Topeka, Kansas  
Judge William Kehr, Wichita Municipal Court  
Shawna Mobley, Correctional Counseling of Kansas  
Rose Matzek, Word of Life Counseling Center  
Joseph Molina, Kansas Bar Association  
Brandy Sutton, Kansas Credit Attorneys Association

Others in attendance:

See attached.

Chairman Kinzer advised he wanted to work several bills today before hearing the bills scheduled for the day. The Chairman first asked the Committee to consider **HB 2260–Kansas preservation of religious freedom act**, which was previously passed by this Committee.

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Procedurally, the Speaker of the House has decided any bills that are blessed will be bounced back to the Committee to reapprove and bounce back so they may be put on the General Orders.

*Representative Rubin moved, Representative Suellentrop seconded, to recommend **HB2260** favorably for passage as previously amended. Motion carried.*

Chairman Kinzer asked the Committee to consider **HB 2523–Health care providers, facilities, persons; right to refuse to participate in abortion procedures; changes**. Katherine McBride provided a brief overview of the bill content. Chairman Kinzer stated there was a balloon amendment and suggested it be handed out to the Committee. (Attachment 1) Ms. McBride stated the balloon crosses out of the bill every instance where it refers to a health care facility and inserts medical care facility, which is a defined term. It includes all types of hospitals but not hospices.

*Representative Rubin moved, Representative Kelly seconded to recommend **HB 2523** favorably for passage.*

*Chairman Kinzer moved, Representative Kelly seconded, that **HB 2523** be amended with the balloon amendment. Motion carried.*

Chairman Kinzer stated there was a second amendment, in a little different format, which was handed out. (Attachment 2) One of the things discussed when we had the hearing is in addition to K.S.A. 65-443 and 65-444, there is virtually identical language in K.S.A. 65-446 and 65-447 that deals with the issue of sterilization, as opposed to the issue of abortion. This would add the same medical care facility language, the defined term there, and add ‘the refer’ for language that is in **HB 2523** now with respect to the other sections. It does not include the language that talks about if a person reasonably believes it may result, because in consulting with others, I don’t think there is a medical procedure where there would be any plausible doubt as to whether the result was sterilization or not, so that language seemed unnecessary. The notion is these are all very similar statutes that typically conform to each other, in terms of the language, so if we update one set of the statutes, it may make sense to update the other statutes as well.

*Chairman Kinzer moved, Representative Kelly seconded, that **HB 2523** be amended with the second amendment. Motion carried.*

Representative Kuether voiced her opposition to this bill, stating they did discuss that there is no method of notice for a patient who would be going to any physician to know ahead of time that they are not going to be able to get full services. We discussed a situation where an eighteen

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year old woman would be sexually assaulted and end up in a hospital with her parents. After going through all of the procedures she would be tested for and whether she might think she got pregnant, if the doctor might not want to give her a morning after pill, the doctor would not have to refer her to another physician who could treat her, which seems to her to trump parental rights, and also seems to get in the midst of standard of care with the Board of Healing Arts. Representative Kuether stated she thinks this bill is a mistake and she will be voting no on the bill.

Representative Brookens stated he had a proposed amendment to the bill, which were some little changes. Beginning on line nine, it would read as follows, “which would, with reasonable medical probability, result in a termination of a”. This language is the appropriate language we use in law and he thinks it is more appropriate to refer to reasonable medical probability than what the person in their own mind thinks because they are medical related people and they do have the medical training to know what is in all reasonable medical probability going to result in a termination of pregnancy.

Representative Brookens moved, Representative Kuether seconded, on **HB 2523** to change line nine to read, “which would, with reasonable medical probability, result in a termination of a”.

Representative Patton offered it seems to him the purpose of this bill is to protect the personal beliefs and conscience of the individual who is being required to participate in a procedure, and so it is what that person reasonably believes that is the critical point for his own personal beliefs in terms of protection. The issue of reasonably medically probable is important for decision making for reasonable standard of care issues. This is not the focus of the bill, so he will be opposing the amendment.

Representative Brookens closed on his amendment.

Representative Brookens moved, Representative Kuether seconded, on **HB 2523** to change line nine to read, “which would, with reasonable medical probability, result in a termination of a”.  
Motion failed.

Representative Patton moved, Representative Hildebrand seconded, to recommend **HB 2523** favorably for passage as amended.

Representative Tietze made a substitute motion to amend. Her concern with the bill is it totally is on the side of the health care professional, with no regard for the patient who is seeing the health care professional. Physicians’ number one intent is to first do no harm. We are totally disregarding the precepts. Her amendment strikes “refer for”, which makes everything stand,

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and does not deny the health care professional the right to follow his own personal dictates. What it does say is they need to refer this to someone. (Attachment 3)

*Representative Tietze moved, Representative Kuether seconded, to amend **HB 2523** to strike on line six and line 10 the words “, refer for,” and add words on line 18 after the word “section.” “Any person exercising rights by this section shall make a referral for the performance, administration or prescription of a medical procedure, device or drug which would result in the termination of a pregnancy. A refusal to make such a referral may be reported to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action.” and strikes on line 22 the words “,referral for,”.*

Representative Patton stated he understands the amendment and the reason it is being offered. In certain medical procedures if the medical person decides not to do the procedure, a referral would be appropriate. In this particular situation we are dealing with strongly held personal beliefs that they simply do not want to participate in the taking of human life. The focus of this bill would be to allow that protection so they would not have to participate either by performing the medical procedure or referring them so it could be performed- both of which would violate that deeply held strong personal belief that is held by many Americans. Because of this, Representative Patton stated he opposed the amendment

Representative Tietze closed on her amendment.

*Representative Tietze moved, Representative Kuether seconded, to amend **HB 2523** to strike on line six and line 10 the words “, refer for,” and add words on line 18 after the word “section.” “Any person exercising rights by this section shall make a referral for the performance, administration or prescription of a medical procedure, device or drug which would result in the termination of a pregnancy. A refusal to make such a referral may be reported to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action.” and strikes on line 22 the words “,referral for,”. Motion failed.*

Representative Patton closed on his motion.

*Representative Patton moved, Representative Hildebrand seconded, to recommend **HB 2523** favorably for passage as amended. Motion carried.*

Chairman Kinzer asked the Committee to consider final action on **HB 2521–Imposition of civil penalties for alcohol and tobacco violations**. Chairman Kinzer advised he believes there is an agreed-to balloon amendment between the Office of the Attorney General and the proponents, and asked for the balloon to be handed out. (Attachment 4) Jason Thompson provided an overview of the bill content and what the proposed balloon would accomplish.

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Representative Rubin moved, Representative Kelly seconded, to recommend **HB 2521** favorably for passage.

Chairman Kinzer moved, Representative Brookens seconded, to amend **HB 2521** with the balloon amendment.

Representative Brookens stated the bill was heard when he was unable to attend. The bill now makes sense in light of these amendments. His question was whether the bill really does anything. Chairman Kinzer stated they received testimony that the current process was leaving people in limbo for an extended period of time and looking for a tight leash. His sense is after the sides conferred, subsequent to the hearing, they arrived at some language the proponents believe advances their interests while putting ABC in the position where they will still be able to do their job. How much this bill accomplishes and whether it accomplishes enough so this Committee wants to take action on it, he will be content with whatever decision the Committee makes in that regard.

Representative Brookens inquired whether in the hearings, the problem was time waiting for them to get notice there was a violation or, knowing that they have a violation, waiting to hear what the fine was. Chairman Kinzer stated to his recollection, it was on the latter issue.

Chairman Kinzer moved, Representative Brookens seconded, to amend **HB 2521** with the balloon amendment. Motion carried.

Representative Rubin moved, Representative Kelly seconded, to recommend **HB 2521** be favorably passed as amended. Motion carried.

Chairman Kinzer thanked the Committee for helping get through these three bills. He noted the last day to work bills was March 16<sup>th</sup>, and there is a full docket of Senate bills to hear. Chairman Kinzer advised Representative Patton would be chairing tomorrow's hearing in his absence, as he has a commitment that will take him away from the hearing. Chairman Kinzer also announced he would be working the bills being heard today in reverse order, with **SB 422** first, then **SB 322** and **SB 304**.

Chairman Kinzer opened the hearing on **SB 422-Relating to judges pro tem** and asked Jason Thompson to provide a brief overview of the bill.

Helen Pedigo testified as a proponent of **SB 422**, stating the bill is a simple one, and in those cases where a judge gets sick or they cannot make it to their docket, and when the district court judge needs to appoint someone, it gives them more time to do so without going through their

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departmental justice. She noted written testimony of the Honorable Chief Judge Mike Keeley has been provided. (Attachment 5)

Chairman Kinzer closed the hearing on **SB 422** and opened the hearing on **SB 322–Court fees and costs; judicial branch surcharge fund**. Jason Thompson provided an overview of the Judicial Branch Surcharge fund, which is set to expire in 2012. The bill adds two new sections where it is appropriate to add subsections to collect fees, and several where it is not appropriate they are fixing.

Helen Pedigo testified in support of **SB 322**, stating what they are trying to do in 34 pages is simply extend the judicial branch surcharge. Even though it is set to expire at the end of June, they have been asked by the Division of Budget to build that into their budget over the last two years. If the bill is not passed, it will cause them to have a \$10 million dollar additional problem in their budget, and they appreciate the Committee's consideration of this. Last year, the legislature increased the surcharge by 25 percent. Their filings have gone down about 10 percent, and they are not sure if it is because of the surcharge increase, the economy, or a combination of the two. They anticipate receiving about \$10 million dollars from the surcharge, and while there may be some discussion about cutting the surcharge, Ms. Pedigo asked the Committee not consider that, as even \$10 million dollars is important to the judicial branch. The surcharge goes to fund the non-judicial staff salaries and wages- our clerks, court services officers and those non judge positions within the judicial branch. (Attachment 6)

Joseph Molina testified in support of **SB 322**, stating the Kansas Bar Association wants to support the judicial surcharge extension. A few years ago when the surcharge was first implemented, they wanted this to help ensure access to the courts, and if it were eliminated now, this might damage that purpose. They would like to see the surcharge extended for another year. (Attachment 7)

Brandy Sutton testified as neutral on **SB 322**, stating the Kansas Credit Attorney Association made the difficult decision to remain silent on the surcharge increase last session, despite knowing the harmful effect it would have on their clients and the courts. Although they understand the surcharge is the only means of seeing that 100 percent of the funds paid are deposited into the court's coffers, instead of seeing them divvied up amongst 16 to 17 other groups, as happens with the docket fees. Revenue numbers reported by the court reveal their concerns are realistic, as most of the surcharge revenues are down by approximately \$1 million dollars with limited actions filing seeing a 14 percent drop. Ms. Sutton stated their clients are finding cheaper methods of recovering debts and enforcing judgments than those offered in the courts. Limited actions cases provide more collected revenue than any other category of cases filed with the least amount of taxation upon a judge's docket. However, this is changing and will continue to change as the fees disproportionately increase. (Attachment 8)

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Chairman Kinzer closed the hearing on **SB 322** and opened the hearing on **SB 304–Certified batterer intervention program act.** Jason Thompson provided an overview of the content of the bill. He stated a balloon amendment has been prepared and is being handed out now. (Attachment 9) In 2010, the legislature passed Jana’s law. Effective July 1, 2011, on all criminal cases filed in the district courts, if there was evidence that domestic violence was committed and the court determined this, there were special tags that could be flagged on the case, special treatment programs that had to be pursued, evaluations that had to be pursued, and this is the background for this entire bill. The amendatory sections of the bill can be found near the end of the bill. Beginning in Section 17, Page 23, it makes clear that this applies to municipal and district courts. On Page 22, Subsection (P) on line 28 and following, if filed in district court under K.S.A. 22-4616, it would require one to undergo a domestic violator assessment conducted by a certified batterer intervention program and then follow all recommendations made by such program. K.S.A. 12-4509, the municipal sentencing statute, has also been amended to reflect the same. As far as new sections go, Section one creates in the Office of the Attorney General the Batterer Intervention Program (BIP) Certification Unit. It defines its purpose, requires the Attorney General’s office to develop a set of tools and forms for the domestic violence offender assessments, and implements the programs, basically certifying the work that will be carried out by the BIP programs. New Section two discusses certification of these programs, requires an application, lays out all the requirements that will be in the application, indicates it will be valid for two years- which can be renewed, and there are also temporary permits issued that can be valid for 180 days and be renewed for certain circumstances. Mr. Thompson went on to explain the bill changes in other sections.

Dorothy Stucky Halley testified in support of **SB 304**, stating while we have come a long way in getting certified battery intervention program services located throughout the state on a voluntary basis and the development and use of a high quality standard assessment tool, there are some problems that will grow without establishing the appropriate guidelines regarding who can provide the assessment, who can provide intervention services and set criteria we need to meet. Those who perform assessments and provide intervention services must have specialized training in this field. Also, where certified programs are not required by the community, sub-standard programs can thrive. We are asking for the Committee to consider making one small change to **SB 304**. While measures taken in **SB 304** to grandfather in current service providers is beneficial, the current language will not provide adequate time for some, particularly in the Wichita area, to complete the certification process. Due to this, we ask that the Committee consider extending the date by which a program must be certified to January 1, 2013, to be eligible to be grandfathered in. (Attachment 10)

Travis Harrod testified in support of **SB 304** advising he is responsible for prosecution of domestic violence offenses referred to the office of the Attorney General. This bill completes the

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Work the Legislature began with the passage of *Senate Substitute for House Bill 2517*, the Domestic Violence Designation Law, in 2010. To insure accountability for offenders and safety for victims, **SB 304** gives the Attorney General the ability to create a universal set of standards and rules that BIP's must meet and continue to practice in order to be certified to provide BIP services. This will ensure victims of domestic violence and the offenders referred to BIP will receive the same level of intervention and service, no matter where they live in Kansas. (Attachment 11)

Steven M.S. Halley testified in support of **SB 304** advising he has been serving in some capacity in BIP programs for the last 18 years. He directs the Family Peace initiative BIP program at the YWCA in Topeka, a program that has been certified by the Attorney General's office. Studies of their program demonstrate people who batter can change if they receive a quality intervention assessment and program. **SB 304** will raise the bar for BIP programs across the state by eliminating substandard programs that do little to effect change in those who batter. (Attachment 12)

Sky Westerlund testified in support of **SB 304** stating that the Kansas Chapter, National Association of Social Workers (KNASW), identified a problem with the original bill that prevented their support. Their opposition was to the lack of a minimum standard of licensure for persons delivering the batterer intervention services. A compromise was worked out with the AG's office and the Kansas Coalition Against Sexual and Domestic Violence, and the bill was amended to reflect the agreement. KNASW now stands in support of **SB 304**. (Attachment 13)

Dr. Curt Brungardt testified in support of **SB 304** advising he is the co-chair of the Batterer Intervention Program advisory Board for Kansas Attorney General, Derrick Schmidt. The BIP Certification Act is a positive step forward in protecting victims and reducing the cycle of domestic violence. His step-daughter, Jana Mackey, was murdered on July 3, 2008 by her ex-boyfriend in Lawrence, Kansas. Two years ago, this entire building supported *HB 2517*, one of the most comprehensive domestic violence laws ever passed in this state. Today, **SB 304** will enhance and strengthen that landmark bill. (Attachment 14)

Michael Kaberline testified in support of **SB 304** advising he speaks from his experience as a Batterer. He shared his story about his anger problem and how he violently abused his wife, Jennifer, emotionally, verbally, physically, and sexually. He eventually was charged with violating a protection order, one count criminal threat, and phone harassment. He was ordered as a plea agreement to attend the Family Peace Initiative at the YWCA here in Topeka. He was held accountable and all his justification for his actions had to be removed. He had to get in touch with feelings that he did not want to acknowledge existed. He now has been violence free

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for almost two years. He and his wife now have a happy and healthy marriage, without abuse. He volunteers with Family Peace Initiative by sitting in two groups a week. (Attachment 15)

Judge William Kehr testified in opposition of **SB 304** advising he has been the city domestic violence judge for three years. He admitted this subject is not really a pleasant one to testify about. Before the state began to move forward with their own batterer intervention programs, the City of Wichita already took that mantle, back in the 1990's. They set up their own program, and have their own domestic violence court that handles battery and violation of protection orders, criminal assault, and trespass, and they all get domestic violence tags. There is always a victim's advocate in court every day, and there is usually someone from Catholic Services that comes to court to assist those who might need more assistance to get away from a situation. Judge Kehr is looking at the judicial system as it exists in Sedgwick County- given the volume that we handle, roughly 1,800 convictions or diversions annually, and Sedgwick County prosecutes approximately 300 cases a year for domestic violence. That is in a population base of 450,000 people.

Judge Kehr advised the Sedgwick County District Court does not have the facilities, the money, or the people to take over what the City of Wichita is doing and is in place right now. They do one-day, the 13-week, and 26-week diversion programs. The judge picks the program based on a conversation with the prosecutor, the advocate, and the victim- if they are in court. Sometimes the DV tag is the most important thing he can put on them, in case there is another occurrence, especially where there is no prosecution. After assessments, 90 percent of the people will need 24 weeks. Ten percent of the people fail probation. In 24 weeks, we will probably see more fail- conservatively another 25 percent. He agrees with the Attorney General if they can't go to class, cannot complete it for whatever reason, they should go to jail. Sadly, jail costs \$48 dollars a day in the City of Wichita. Assuming a controlling offense of six months on the first offense and 12 months on a second offense, if he were to cut his sentence all the way down to 60 days- which would be very small, somebody is going to do a lot of time at a great deal of expense. They are not necessarily going to get better, as the treatment information suggests that going to jail doesn't stop them from being batterers- it just keeps them in jail until they can batter again. The City costs on 1,800 cases, with a 25 percent failure rate at 60 days and \$48 dollars per day, costs the City of Wichita \$1,000,296 dollars. Our entire budget for jail is \$2,000,500 dollars. Judge Kehr said, frankly, he doesn't know how he would pay for it if it was requested.

Judge Kehr offered the City of Wichita decided several years ago it would be a good idea to put people in jail that didn't pay their fines. About \$3,000,000 dollars later they decided that wasn't a particularly good idea when the federal court said they couldn't do that, use the facilities as a debtor's prison. Despite what statistics may show, he sits in the court every day, and at least 60

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percent of the people are indigent. They cannot afford an attorney. These same people are now going to get an assessment, and then costs on top of that he does not think they can pay. Judge Kehr stated he cannot pay it through the City of Wichita, and there is no funding from the State of Kansas to pay for it. The situation creates an automatic failure. The analogy he would make is that you cannot have a debtor's prison, but if he is going to put someone in a situation where, by definition, he is going to fail because of poverty, isn't that the same thing? They are going to jail, and failure is just going to be slightly prolonged. Judge Kehr stated this legislation originally came up and it was designed for felony domestic violence, and the Municipal Court got sucked into the vortex of that because of the volume of cases that the City of Wichita had. Two problems are going to come up: we go through all of this process and there is a possibility that the City of Wichita will just walk away from it and say they cannot afford to do this- that is all the cases may not have any prosecution whatsoever; he doesn't know why one would want to have an imperfect product be pushed through the legislature- he is not sure he has enough qualified people in Sedgwick County who could do it if they wanted to. Originally, Judge Kehr is from western Kansas, from Hill City. He looked at the map of where providers are, and it looks like the closest to Hill City would be in Ellis County, which would probably be in Hays. This is going to create some problems and it needs to be retooled. ([Attachment 16](#))

Shawna Mobley testified in opposition of **SB 304** stating she has been working in the area of domestic violence for 20 years, and is happy to be able to share her interest on the bill. She has worked as a probation officer and in 1994 her first venture to become qualified to work in domestic violence was to attend and receive training at the Domestic Abuse Intervention Project in Duluth, Minnesota, which was the renowned program in this country. She has been to the Federal Law Enforcement Training Center to become a trainer for law enforcement officials as well. This helped her have the broader knowledge of not just working with the perpetrators but knowing how the system works. She has continued to grow and learn in the field, which is important in doing her job well. Ms. Mobley is concerned with the requirement for Behavioral Sciences Regulatory Board (BSRB) licensure. **SB 304** contains an unanticipated requirement that BIP providers possess the BSRB licensure in a community. Long-term BIP providers who have been engaged in the certification process may not meet this standard, immediately reducing the availability of credible BIP services in a community where 350 domestic violence arrests are made each month. She appreciates the suggestion that this requirement be delayed until 2013 and hopes to continue to be able to work in her chosen field of service. ([Attachment 17](#))

Rose Matzek testified in opposition of **SB 304** advising her concerns are over the bill requiring specific licensure by the BSRB for the director of the domestic violence treatment program and those who do assessments. Although she has worked for more than 10 years in this field, she is one who does not have the right letters behind her name. This, along with the need for programs to be certified by the Attorney General's office prior to the passage of this bill is a problem. As

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Program Director of the Word of Life Counseling Center's Domestic Violence Treatment in Wichita, Kansas, their program is not currently certified, but has been engaged in that process. We need more time for our program to meet these standards for certification. Also, clients will have to pay more for these services which is a concern. She is pleased that the requirement for delaying the deadline until 2013 has been worked out. (Attachment 18)

Chairman Kinzer closed the hearing on **SB 304**.

The next hearing is scheduled for March 7, 2012.

The meeting was adjourned at 5:47 p.m.