

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Wednesday, January 21, 2004, in Room 123-S of the Capitol.

All members were present except:
Senator Edward Pugh (E)

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee: Mike Jennings, Kansas County & District Attorneys' Assn.
Doug Smith, Kansas Credit Attorney's Assn.
Senator Derek Schmidt
March Ralston, Driver Control Bureau Chief, Division of Motor Vehicles
Randy Hearrell, Kansas Judicial Council
Jane Rhys, Kansas Council on Developmental Disabilities (written)
Michael Farmer, Exec. Director, Kansas Catholic

Conference

Tim Emert, former Senator
Jessica Kunen, Kansas Coalition Against Death Penalty
Bill Lucero, Kansas Coalition Against Death Penalty
Donna Schneweis, Kansas Coalition Against Death Penalty
Richard Ney, Kansas Coalition Against Death Penalty (written)

Others attending:
See Attached List.

Chairman Vratil called for bill introductions. Senator Janis Lee requested a bill relating to hypnotic exhibition, repealing K.S.A. 21-4007. Senator Goodwin moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

Senator Donovan offered a conceptual bill requested by U.S. Test Laboratory in Wichita that tests bullet proof vests that would allow the company to have a certain type weapon for use in testing purposes, but which are outlawed in Kansas. Senator Goodwin moved to introduce the conceptual bill, seconded by Senator O'Connor, and the motion carried.

Senator Schmidt requested introduction of a bill sponsored by Sen. Vratil and himself regarding amending the Code of Civil Procedure relating to appellate jurisdiction of the supreme court. Senator Schmidt moved that this bill be introduced, seconded by Senator Umbarger, and the motion carried.

Mike Jennings, representing the Kansas County and District Attorneys' Association, requested the Committee to introduce two bills. The first bill requests amendment of K.S.A. 22-3716(b). The Kansas County and District Attorney's Association wants the Court to be required to leave the sentence as it was originally imposed. This change would be accomplished by deleting the words "or any lesser sentence" from the subsection. The second bill would correct K.S.A. 21-4711(c)(2). This statute currently provides that prior DUI convictions will count as person felonies for criminal history purposes only if the crime of conviction is for involuntary manslaughter where the underlying DUI was for alcohol and drugs. The Kansas County and District Attorneys Association asked for the "and" to be deleted, and the phrase "and/or" be added. (Attachment 1) Senator Schmidt moved to introduce the two bills, seconded by Senator Umbarger, and the motion carried.

Doug Smith, representing the Kansas Credit Attorneys' Association, requested introduction of legislation amending K.S.A. 60-2310, which relates to wage garnishment. The Association requested an amendment

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to the statute that deletes subsection (d) and renumbers the remaining sections. The proposed legislation would remove language that prohibits the use of wage garnishment as a method of collection on assigned accounts. (Attachment 2) Senator Schmidt moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

SB 291 - Motor vehicles; limitation on definition on moving violation

Chairman Vratil opened the hearings on **SB 291**. Marcy Ralston, Kansas Division of Motor Vehicles, submitted written testimony for Carmen Alldritt, Director of Motor Vehicles, in support of **SB 291**. The Chairman pointed out that the bill was introduced by the Joint Committee on Administrative Rules and Regulations. (Attachment 3)

Director Alldritt's explained that this bill would make clear what is or is not a moving violation for the purpose of imposing sanctions against driving privileges for repeat offenders of moving violations. She noted that this bill does not contain the recently proposed amendments to K.A.R. 92-52-9, which contains additional violations to be considered as "moving violations". Failure to consider all traffic violations, when determining whether they are to be considered a "moving violation", could lead to certain drivers facing suspension while other drivers would not, for violation of similar infractions. Ms. Alldritt's testimony respectfully suggested the following additional statutes be listed: K.S.A. 8-244; 8-291; 8-1503; 8-1533; 8-1542; 8-1547; 8-1573; 8-1578; 8-1595; 8-1759; 8-1910; and 21-3442, She stated if these additional statutes are listed, the amendment to K.S.A. 8-249 would reflect the current administrative regulation, 92-52-9, which was made effective January 23, 2004.

Chairman Vratil advised Ms. Ralston if the Division of Motor Vehicles has any proposed amendments they wished the Committee to consider regarding this bill, the proposed amendments should be presented to the Committee in a balloon form. If the amendments are not presented by the Division then the Committee will probably not consider them.

There being no other conferees, Chairman Vratil closed the hearing on **SB 291**.

SB 297 - Permanent docket fee to fund the Judicial Council

Chairman Vratil opened the hearing on **SB 297**. Randy Hearrell testified that the Judicial Council supports the recommendation of the Special Committee on the Judiciary that docket fee funding for the Judicial Council be made permanent. Mr. Hearrell stated that in order to keep the funding for the Council and other recipients of docket fees under the statute at current levels, K.S.A. 2003 Supp 28-172a, 59-172a, 59-104, 60-1621 and 60-2001 will need to be amended to remove the phase out of the docket fee increase in those sections. He attached proposed amendments to his written testimony for the Committee's consideration. (Attachment 4)

Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, submitted written testimony in support of **SB 297**. (Attachment 5)

Having no other conferees, the Chairman closed the hearing on **SB 297**.

SB 158 - Moratorium on imposition of death penalty

Chairman Vratil opened the hearings on **SB 158**. Mike Farmer, Kansas Catholic Conference, spoke in support of the proposed legislation. He stated over the last three decades the National Conference of Catholic Bishops has issued many statements against the death penalty. He told the Committee that Pope John Paul II, while visiting St. Louis in 1999, called capital punishment "cruel and unnecessary" to keep society safe. Mr. Farmer said that a multitude of statistics gives further reason why the death penalty is not a good thing. (Attachment 6)

Former Senator Tim Emert testified in support of **SB 158**. He stated he served in the Senate for eight years and the issue of the death penalty was by far the most difficult issue that he voted on during his tenure. He encouraged passage of this proposed legislation.

Jessica Kunen, Kansas Coalition Against the Death Penalty, testified in support of **SB 158**. She stated the Kansas death penalty statute has significant problems that may take years to resolve in federal court, and

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a moratorium will allow these problems to be resolved before others are sentenced to death under its provisions. She pointed out three problem areas in the state statutes as outlined in her written testimony. (Attachment 7)

Bill Lucero, Kansas Coordinator of Murder Victims' Families for Reconciliation, spoke in favor of **SB 158**. He explained that his organization is part of a web of 5,000 members across the country made up of survivors of family members who were murdered. He stated that healing occurs only when one can address the issue through the loving assistance of friends, family, the community at large and other supportive parties such as ministry or therapy. The death penalty is not the answer to reaching a point of closure. He asked the Committee to keep in mind the plight of future families that can be spared from the turmoil that this death penalty invariably implies. He concluded by stating that any Kansas study must include provision to make sure that all Kansas victim (Attachment 8)

Donna Schneweis, Amnesty International, testified in support of **SB 158**. She talked about the geographic disparity that has arisen as a real concern in regard to the case dispositions in the two counties with the most capital filings, i.e. Sedgwick and Wyandotte, and the need for a study on same. In regards to racial disparity, Ms. Schneweis urged the Committee to read the written testimony submitted by Richard Ney, a capital crimes litigator who could not be in attendance at this meeting. She stated that after reviewing several Kansas cases, he concluded that Kansas was not immune from the very real question of racial disparity. (Attachment 9)

Written testimony was submitted by Richard Ney, Attorney with Ney, Adams, & Sylvester Law Firm, Wichita, KS, in support of **SB 158**. Mr. Ney pointed out that racial inequity has been a constant companion of the death penalty throughout America. He said history shows us that the death penalty in America has always been skewed in its infliction on the poor and on racial minorities. He concluded by stating that questions of racial disparity are yet another reason to stop and carefully study the death penalty in Kansas before moving forward. (Attachment 10)

General questions and discussion followed regarding the two moratoriums included in the bill, one on carrying out the death sentence during the two year period and the other one on imposing the death sentence during the two year period; racial makeup of individuals on death row; and whether there is disparity in regard to income level of defendants which often leads to this penalty.

Pat Scalia, Board of Indigent Defense, submitted written testimony as a neutral conferee on **SB 158**. Her testimony included death penalty case information and statistics. (Attachment 11)

The Chair adjourned the meeting at 10:30 a.m. The next scheduled meeting is January 22, 2004.