

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on February 3, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Gilstrap (E)

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

Conferees appearing before the committee:

Dan Hermes, Kansas Coordinators of Alcohol Safety Action Projects
Donna Doolin, Acting Director of Addiction & Prevention Services, Department of
Social and Rehabilitation Services
Kathy Porter, Office of Judicial Administration
Kyle Smith, Kansas Bureau of Investigation
Ron Hein, Prairie Band Potawatomi Nation and R.J. Reynolds Tobacco Co.
Manny Barbaran, Mannies Bonding Company (written testimony only)
Kathy Damron, Altria Group, Inc. (parent company of Philip Morris)

Others attending: see attached list

Chairman Vratil called for bill introductions. Senator Schmidt requested introduction of two bills. The first bill was for a resolution urging U.S. Department of Health to award grant funding to Kansas Experience Works Program. Senator Schmidt moved to introduce this proposed bill, seconded by Senator Umbarger, and the motion carried. The second bill Senator Schmidt requested to be introduced was for a bill authorizing fire departments to ask for reimbursement of cost from arsonists. Senator Schmidt moved to introduce this proposed bill, seconded by Senator Goodwin, and the motion carried.

Donna Schneweis, representing Amnesty International and Kansas Coalition Against the Death Penalty, requested a bill be introduced concerning crimes, criminal procedure and punishment; relating to a moratorium on the imposition of death sentences; creating a death penalty study commission and prescribing certain duties thereon. (Attachment 1) After brief discussion, Senator Goodwin made a motion to have the proposed bill introduced, seconded by Senator Umbarger, and the motion carried.

SB 27 - relating to alcohol and drug safety action education program requirements

The Chair opened the hearing on **SB 27**. Conferee Hermes testified in support of **SB 27**, and explained that the Kansas Coordinators of Alcohol Safety Action Projects (KCASAP) was primarily responsible for the evaluation, education, treatment or referral of DUI and other alcohol/drug related offenders. He said that subsequent to the revisions in the DUI laws several years ago, the education requirement for those that are convicted of driving under the influence has been limited to first time offenders. Mr. Hermes stated that they now have only one chance at providing effective education for DUI offenders and requiring a minimum of ten hours of course work and allowing the Secretary of SRS to approve programs in the state will provide a framework to increase the effectiveness of the courses in our state.

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(Attachment 2)

Conferee Doolin testified as a proponent of **SB 27**, and explained what this bill would require of people who are convicted of DUI offenses in regard to participation in a ten hour alcohol and drug safety action education program. She stated that as the designated single state authority on alcohol, tobacco, and other drugs of abuse issues, that SRS is the appropriate entity to ensure oversight and approval of his type of education program. She pointed out that SRS already has the licensing authority for over 200 alcohol and drug treatment programs across the state. Ms. Doolin said that uniformity in education programs was very important, and SRS supports the increased level of alcohol and drug education programs for DUI offenders. (Attachment 3)

Committee discussion included concerns expressed about the fiscal note on **SB 27** which calls for SRS adding two FTE positions at a cost of \$73,581 which would come out of the State General Fund. It was suggested that possibly the offenders be required to pay for the extra cost of the educational training. The Chair explained that the fiscal note on this bill pertained to the costs that SRS would incur to prepare the review procedures, conduct the certification reviews, and process related documentation. He suggested that SRS look into the possibility of a fee structure for this type program so that this bill would have a neutral fiscal note. (Attachment 4)

Conferee Porter testified as a neutral party on **SB 27**, and shared some of the concerns the judges had expressed in emails. The judges questioned the extension of the training to ten hours which would have to be done in more than one day which could create more hardship for a defendant if they had to take off work. Ms. Porter said the judges would like some guarantee that if this proposed bill was passed into law that there will be at least one approved program serving each judicial district, and that the fees charged will not be overly burdensome to offenders, who have already been assessed fines and evaluation fee. She added that the judges would also like to see some assurance that SRS would look at those programs that are currently providing evaluation services, and try to allow for some transition between the evaluation and treatment programs. (Attachment 5)

Following general discussion and questions, the Chair closed the hearing on **SB 27**.

SB 35 - criminal use or possession of body armor

The Chairman opened the hearing on **SB 35**. Conferee Smith testified in support of **SB 35**. He said that this bill would address two problems: (1) the use of body armor while committing crimes, and (2) prohibit persons who have been convicted of a person felony from owning such armor. He stated that these are reasonable and prudent limitations that would enhance public and officer safety. He requested a friendly amendment in section 2 at the end of the first sentence which would add "or felony violations of the controlled substances act". He explained that the amendment was necessary because drug manufacturing and trafficking crimes are some of the most dangerous ones worked by officers. He added that the use of body armor by the offender is premeditated. (Attachment 6)

Senator Pugh stated that he would like to recommend that criminal intent be put in the bill, and would like to see it redrafted to correct it. Senator Schmidt explained how this proposed bill was requested by the Sheriff of Wilson County for the past two years, and it was modeled after the South Carolina model.

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Senator Goodwin called attention to the fiscal note on **SB 35**. The Chair pointed out that the Kansas Sentencing Commission estimates that the passage of this bill could possibly increase prison admissions by two to twelve per year, and gave the estimated additional costs involved. (Attachment 7)

Question was also raised about this bill making it a severity level 5 person felony, and whether any thought should be given to making it a level 7 severity offense. Senator Schmidt also stated that he had a concern regarding the drafting of the section on the licensing of body armor by the county sheriff and who would have the authority to waive the licensing in regard to having 105 county sheriffs within the state.

Conferee Hein testified in support of **SB 35**, and noted there is no mention in this bill of federal law enforcement officers or Tribal law enforcement officers. He submitted a balloon amendment, with his written testimony, that would include Tribal law enforcement officers. (Attachment 8)

Written testimony was submitted by Manny Barbaran in support of **SB 35**, and in which he requested that professional surety service personnel be exempted due to safety concerns. (Attachment 9)

There being no opponents to appear before the Committee, the Chair closed the hearing on **SB 35**.

SB 48 - appeal bonds in litigation involving signatories or successor of the tobacco litigation agreement

Chairman Vratil opened the hearing on **SB 48**. Conferee Damron testified in support of **SB 48** on behalf of Altria Group, Inc., the parent company of Philip Morris. She said this proposed bill was an important step in protecting the historic Master Settlement Agreement (MSA) between the states and tobacco companies. She included with her testimony a chart showing the states where appeal bond limits exist. Ms. Damron stated that the proposed bill merely ensures that a full appeal of a potentially ruinous judgment may occur before the financial soundness of the tobacco companies, and hence MSA payments, are threatened. (Attachment 10)

Chairman Vratil reviewed with the Committee how the system works when a judgment is rendered in a district court, then plaintiff has the right to attempt to collect that judgment even though the case may be appealed unless the defendant posts an appeal bond. The Chair explained this is a bond intended to insure that if the appeal turns out to favor the plaintiff, the money will be there to pay the judgment and the defendant won't have an opportunity to dissipate assets while the appeal is pending. He added that under current Kansas law there is no limit on the amount of an appeal bond, although the statute says the appeal bond will be in the amount of 100% of the judgment.

Conferee Hein testified in support of **SB 48**, and explained what happened in the Florida case of a large judgment. He said that this proposed bill would cap the appeal bond in cases involving tobacco companies that are signatories to the Master Settlement Agreement. He stated that this bill would follow the lead of 12 other states, each of whom has recognized that this could be a real problem. He added that **SB 48** hurts nobody, and protects the plaintiff while the case is on appeal because it provides that if the tobacco companies are shown to be dissipating their assets the judge can require a higher bond. (Attachment 11)

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Chairman Vratil announced that the hearing on **SB 48** would be continued at the next meeting.

The minutes of the January 28 and 29 were approved on a motion by Senator Donovan, seconded by Senator Schmidt, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 4, 2003.