

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 27, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Stanton Hazlett, Office of the Disciplinary Administrator  
Senator Emler  
Jeff Bottenberg, Legislative Counsel, Kansas Sheriff's Association

Others attending:

See attached list.

Chairman Vratil opened the meeting and asked if there were bill introductions. Jim Clark, Kansas Bar Association, requested the introduction of a bill affecting the Consumer Protection Act to include the warranty of workmanship for a service contract. (Attachment 1) Senator O'Connor moved, seconded by Senator Goodwin, and the motion carried.

Commissioner Denise Everhart, Juvenile Justice Authority, requested the introduction of five bills: (1) an amendment to K.S.A. 38-1691, which would modify the Kansas statute to comply with the Federal Office of Juvenile Justice and Delinquency Programs sight and sound separation requirements between juveniles and adults; (2) an amendment to K.S.A. 38-1632 that would eliminate pre-adjudication custody of an offender to the commissioner; (3) an amendment to K.S.A. 38-1663 that would add clarifying language to the sentencing statute that makes it clear than an offender is in the custody of the commissioner when the offender has been directly committed to a juvenile correctional facility, and also for the period of aftercare; (4) an amendment to K.S.A. 38-1611 that would permit the taking of fingerprints and photographs of juveniles taken into custody pursuant to K.S.A. 38-1624 during processing at juvenile intake and assessment offices; and (5) an amendment to K.S.A. 21-3826 that would permit the Commissioner to be an official who can define contraband for purposes of criminal prosecution of employees who bring such contraband into a correctional institution. (Attachments 2-6) Senator Goodwin moved, seconded by Senator Umbarger, and the motion carried.

Senator O'Connor introduced a conceptual bill that would provide for civil legal action to be taken against individuals who are convicted of the crime of hosting parties where minors are in attendance and alcohol is served. Senator Umbarger moved, seconded by Senator O'Conner, and the motion carried.

Chairman Vratil opened the hearing on SB 39.

**SB 39–Service of process fees charge by sheriff; single payment for same case**

Proponents:

Senator Emler testified that this bill came about as a result of an experience in his law practice when he was serving subpoenas on two individuals for a hearing. He made out one check for \$10, which was the total fee for two subpoenas at \$5 each. The day before trial, Senator Emler received the subpoenas and the check back, because the Sheriff's office wanted two checks instead of one. Senator Emler checked with other colleagues and in other communities, and the fees were handled different ways. The bill would authorize one check or more to be acceptable, at the option of the person writing the check.

Jeff Bottenberg, Legislative Counsel for the Kansas Sheriff's Association, testified that the organization had no problem with this bill, that they were the primary supporter of the 2004 bill, HB 2293, which passed, requiring the \$5 fee for papers served by the sheriff. (Attachment 7)

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 27, 2005, in Room 123-S of the Capitol.

Chairman Vratil closed the hearing on **SB 39** and opened the hearing on **SB 36**.

### **SB 36 The supreme court may require applicants to practice law to be fingerprinted and submit to a national criminal history record check**

#### Proponent:

Stanton Hazlett testified on behalf of his office, the Office of Kansas Disciplinary Administrator, in support of the bill. The Disciplinary Administrator, who initially reviews every application for the board of law examiners, requested permission to take fingerprints, pursuant to the authority already granted by the Kansas Supreme Court rule 704 in order to: 1) provide a positive means of identification of applicants; and, 2) to conduct a criminal history background check on all applicants to verify the information provided by the applicants. The Supreme court authorized Mr. Hazlett's office to proceed to secure the necessary legislation. The cost of the background check will be borne by the applicants. (Attachment 8)

Chairman Vratil closed the hearing on **SB 36**. Chairman Vratil asked the Committee to give consideration to **SB 27**.

### **SB 27 Unlawfully selling drug products containing Ephedrine or Pseudoephedrine, pharmacy controls; rebuttable presumption of intent if possession of more than nine grams**

Chairman Vratil handed out written testimony from the Attorney General and asked the Committee to review it. (Attachment 9) Additionally, written testimony was handed out from the Kansas Bureau of Investigation. (Attachment 10) Chairman Vratil also handed out an outline of the bill and briefly discussed the outline. (Attachment 11) Chairman Vratil stated that, since the hearing, it has been learned that ephedrine and pseudoephedrine in liquid form and in gel cap form are precursors for the manufacturer of methamphetamine.

Chairman Vratil shared a letter from the Kansas Pharmacists Association. (Attachment 12) The Association supports restricted access to the tablets, liquids and gel caps. By restricted access, the Association means keeping the product behind the pharmacy or customer service counter, or on a locked shelf, unavailable to the general public. The Association asked that the Committee not make the product a Schedule V substance, primarily because of the record keeping and reporting requirements. The Association also supports the preemption of local ordinances so that all localities would have to comply with the state statute and could not impose more severe restrictions on the sale of the product. The Association asked that the nine gram limit be changed to a three package limit, which would be easier to keep track of the product.

Chairman Vratil passed out a letter from the Kansas Food Dealers Association. (Attachment 13) The Association believes restricted access to the product can be handled effectively, and they oppose scheduling the product as Schedule V substances.

Senator Bruce stated that federal legislation had been introduced in the past several days with language similar to the Oklahoma law. The federal act includes the nine gram limit, requires photo identification to purchase, and it is not limited to the liquid form but all ephedrine and pseudoephedrine products.

Chairman Vratil handed out a proposed amendment from Representative Scott Schwab, which would significantly reduce the requirements imposed by the bill. It would require identification and signing a log to purchase ephedrine and pseudoephedrine products. It would not apply to the liquid or gel caps, and the log would be available for inspection at any time. (Attachment 14)

Chairman Vratil handed out a proposed amendment from Senator Vicki Schmidt, concerning wholesalers and distributors of ephedrine and pseudoephedrine, requiring them to report to the Kansas Bureau of Investigation any transactions involving the purchase of an extraordinary quantity of the product. (Attachment 15)

Chairman Vratil handed out a proposed balloon amendment of the bill for the Committee to review. (Attachment 16) Senator Derek Schmidt also offered a proposed amendment to the new section (4). (Attachment 17) Chairman Vratil asked the Committee to review all the handouts and amendments over the next few days and then the bill would be considered again.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for January 31, 2005.