

Approved: _____

Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Lloyd at 1:30 P.M. on February 2, 2005 in Room 241-N of the Capitol.

All members were present except:

Mike Peterson- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Dr. Gary Daniels, Acting Secretary SRS
Jean Holthaus, Topeka Coalition on Adult Abuse
Julie Reid, Shawnee County Family Resource Center
Larry Hinton, Gatekeepers
Becca Waughn, Topeka Independent Living Resource Center
Martin Kennedy, Dept. Of Aging
Kevin Graham, Attorney General's Office
Michael Donnelly, Disability Rights Center of Kansas
Julia Bulter, KS Sentencing Commission
Donna Schneweis, State Death Penalty Abolition Coordinator
Kyle Smith, KBI

Others attending:

See attached list.

Representative O'Malley, appeared before the committee to request a bill introduction that would makes consensual sex in a public restroom considered lewd and lascivious behavior.

Representative Yoder made a motion that this request should be introduced as a committee bill. Representative Davis seconded the motion. The motion carried.

HB 2038 – Create multi-disciplinary groups for adult abuse parallel to those for children.

Chairman Loyd opened the hearing on HB 2038.

Representative Gordon provided the committee an introduction of the bill.

Gary Daniels, Acting Secretary, Social and Rehabilitation Services (SRS), appeared before the committee in support of the bill. (Attachment 1) The bill authorizes a multi-disciplinary team for adults in need of protective services and establishes a multi-disciplinary team which would bring together professionals with expertise in working with adults who are in need of protective services, to provide advice and consultation to SRS and other entities regarding cases referred to the team. The team would also serve as advocates for resources and help increase public awareness of adult abuse, neglect, and exploitation and work to eliminate its occurrence where possible. Statutory authority would also provide free exchange of information within the team and a process for obtaining additional information necessary to help resolve case situations.

Jean Holthaus, Topeka Coalition on Adult Abuse, offered support of the bill. (Attachment 2) Passage of this bill is a move toward reducing adult abuse, neglect, exploitation and fiduciary abuse and respectfully

encouraged the committee to pass the bill.

Julie Reid, Executive Director, Shawnee County Family Resource Center, offered an amendment on the bill and SRS is agreement with the amendment. ([Attachment 3](#))

Larry Hinton, Gatekeepers, appeared before the committee in support of the bill and the amendment. ([Attachment 4](#)) Gatekeepers is a strategy of the United Way of Greater Topeka, Success 4 Life initiative. The bill will provide another tool to improve the lives of Kansans in need and strengthen the effectiveness and efficiency of state and community resources. Additional members of the Success 4 Life coalition who wish to express their support of the bill:

- HealthAccess program of the Shawnee County Medical Society
- Julie Reid, Executive Director, Shawnee County Family Resource Center
- Angi Heller, Director of Friendly Visitors, Catholic Community Services
- Jane Metzger, Executive Director, Meals on Wheels of Shawnee & Jefferson Counties
- Monica Brede, Domestic Violence/Sexual Assault and Disability Advocate
- Elizabeth Nichole McClelland, Community Care Coordinator, SCFRC

Becca Vaughn, Topeka Independent Living Resource Center, explained to the committee that this bill is a good beginning to addressing needed changes to the current Adult Protective System (APS). ([Attachment 5](#)) The bill would expand protections and develop person-based solutions to issues of abuse, neglect and exploitation through a multi disciplinary team approach. The amendment to the bill, would provide unbiased and cost-effective resources and advocacy for adults in the APS, and that moving the authority for the investigatory and prosecutorial functions out of SRS and to the Disability Rights Center of Kansas would provide the measure of protections that Kansans deserve.

Sue Lockett, The Prairie Advocacy Center, Inc. provided written testimony in support of the team effort of **HB 2038**. ([Attachment 6](#))

Martin Kennedy, Department of Aging, provided written testimony in support of the multi disciplinary teams proposed in the bill. ([Attachment 7](#))

Kevin Graham, Office of the Attorney General, provided written testimony in opposition of the wording in the bill. ([Attachment 8](#)) Multi disciplinary advisory groups provide a great service and resource to the community, but caution that investigations of specific allegations of abuse, neglect, and exploitation should not be handled by committee and should remain the responsibility of SRS, KDOA & KDHE, and law enforcement.

Michael Donnelly, Disability Rights Center of Kansas, testified in opposition to the bill. ([Attachment 9](#)) The bill proposed does not require informed consent of the individual before the multi-disciplinary team discusses them, or their situation, the team is also given the power to request access to personal and private records and information without the persons consent. To supersede a person's right to consent to the state's involvement in their life, violates the promise of privacy as it relates to a person with disabilities and others who someone has alleged to be unable to manage or care for themselves. The proposed amendments would give the Team carte blanche to discuss whomever they choose to discuss with, or without that persons knowledge or consent. Amendment offered is for a practical implementation of the Team approach, with risks that must be managed.

Chairman Loyd closed the hearing on **HB 2038** and a subcommittee will be appointed to look at this issue.

Julia Butler, Kansas Sentencing Commission on Kansas Sentencing procedure, briefed the committee on the U.S. Supreme Court decision in [United States v. Booker](#) and [United States v. Fanfan](#) (January 12, 2005). ([Attachment 10](#)) The following was covered:

- Determining the Sentence
- Types of Departure
- [State v. Gould](#)
- [Blakely v. Washington](#)
- [U.S. v. Booker](#)

- U.S. v. Fanfan

The US Supreme Court concluded that the Sixth Amendment as construed in *Blakely* applied to the Federal Sentencing Guidelines. The Federal Sentencing Guidelines are no longer mandatory, but now are advisory.

FY 2004 Departure Statistics in Kansas

- Downward Dispositional Departures 564
- Downward Durational Departures 502
- Upward Dispositional Departures 111
- Upward Durational Departures 21

The Chairman presented the committee a news release and a memorandum from the US Sentencing Commission for information. (Attachment 11)

HB 2162 – Upward Departures from sentencing guidelines.

Chairman Loyd opened the hearing on HB 2162.

Representative Jim Ward appeared before the committee in favor of the bill. (Attachment 12) The bill allows for an upward departure (increase in the punishment) from the sentencing guidelines under certain circumstances.

Donna Schneweis, State Death Penalty Abolition Coordinator appeared before the committee in opposition of the bill. (Attachment 13) The portion of the bill that is being opposed is Section 1, (6) page 3, lines 26 – 29. This portion was not supposed to have been written into the bill.

Kyle Smith, KBI, provided the committee with neutral testimony, and offered technical language clean up on the bill. (Attachment 14) A technical note on page 1, line 42, the phrase “upon conviction of the defendant” is at least unnecessary and somewhat confusing and suggest the phrase be removed.

Chairman Loyd closed the hearing on HB 2162.

The meeting was adjourned at 3:15 pm. The next meeting is February 3, 2005.