

Approved: August 3, 2005

Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 7, 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:

Alma Weber, Murder Victims Families for Reconciliation
Sister Therese Bangert, Kansas Catholic Conference
Kevin O'Connor, Deputy District Attorney, Sedgwick County

Others attending:

See attached list.

Chairman Vratil called the meeting to order. There were no bill introductions.

Chairman Vratil announced that several individuals scheduled to testify on **SB 6** would be allowed to give their testimony before final action would be taken.

SB 6 Abolition of the Kansas death penalty

Proponents:

Alma Weber, with Murder Victims Families for Reconciliation, stated that even though her son, Paul, a State Parole Officer, had been murdered, she opposed the death penalty. (Attachment 1)

Sister Therese Bangert, representing Kansas Catholic Conference, stated that she is a Prison Chaplain and had been in attendance at many crime scenes and five death penalty trials. Sister stated that her experiences have taught her several things, including that most people think about a murder from the perspective of a loved one being murdered, but not of a loved one being the murderer. Sister stated that a lifelong burden is put on those we ask to be part of a killing. Sister also stated that an incredible expense goes in to convicting a person of murder, and that those dollars could be better spent in other more positive ways. (Attachment 2)

One testimony was provided in writing in support of the bill from Mary Ann Slattery, former Assistant District Attorney for Wyandotte County. (Attachment 3)

Neutral:

Kevin O'Connor, Deputy District Attorney in the Criminal Division of Sedgwick County, stated that he and Jerry Gorman, District Attorney in Wyandotte County, were present to address any questions of the Committee. Mr. O'Connor stated it has been almost 11 years that Kansas has had the death penalty, and he feels that the record is clear that prosecutors have taken their responsibility seriously and saved the death penalty for the worst of the worst. Mr. O'Connor addressed briefly the issues of whether the death penalty is a deterrent to crime, the cost of capital punishment, "innocents" on death row, and the geographical and racial disparity of prosecutions of capital punishment in Kansas. (Attachment 4) Mr. O'Connor answered several questions of Committee members about these issues.

Opponents:

Six testimonies were submitted in writing: Megan Heyka DeJohn; Larry Heyka; Elizabeth Heyka Daily; Barbara Oblander; Amy Scott; and the Lucille Gallegos family. (Attachments 5-10)

Chairman Vratil announced that final action would be taken at this time on **SB 6**.

Final Action:

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 7, 2005, in Room 123-S of the Capitol.

SB 6 Abolition of the Kansas death penalty

A motion was made to pass the bill out of Committee without recommendation. Senator Bruce moved, seconded by Senator Betts, and the motion carried.

Chairman Vratil announced that final action would be taken at this time on **SB 28**.

Final Action:

SB 28 Death penalty; if aggravating circumstances outweigh mitigating circumstances, the sentence is death; if circumstances are equal, the defendant is not sentenced to death

Chairman Vratil stated that there has been much testimony, including from the Sedgwick County District Attorney, the District Attorney from Johnson County, and the County and District Attorney's Association, all imploring the Committee not to "fix" this problem; likewise, there have been arguments on the other side of the issue. The Chairman asked for a motion on the bill. Senator Bruce motioned to pass the bill out of Committee without recommendation, and Senator Betts seconded the motion. Chairman Vratil asked if there was any discussion on the motion.

Senator Schmidt stated that the legislature is between a rock and a hard place on what is the right course of action on fixing the Kansas death penalty law. The legislature is being asked to make a judgment that is dependent upon what the United States Supreme Court may or may not do at some point in the future. If the legislature acts to fix the flaw in the Kansas statute which the Kansas Supreme Court has identified, and then if the U.S. Supreme Court chooses not to grant *certiorari* in the case on appeal, the legislature will certainly be blamed and may be culpable for the U.S. Supreme Court's decision not to take up that appeal. The consequences of the U.S. Supreme Court not taking up the appeal would mean that the seven men on death row who have been sentenced to death would never be executed. Senator Schmidt stated the legislature does not have within its power to reach "backwards" and change the law in a manner that affects the punishment of the seven. On the other hand, if the legislature chooses not to act, and then the U.S. Supreme Court, after the legislature has adjourned for this session, decides not to grant *certiorari*, the legislature would put Kansas in the position where Kansas has no death penalty law for at least an eight month period until the next legislative session, and in that period of time the legislature would be answerable to future victims if crimes were committed in that window of time.

Senator Schmidt stated that, in an attempt to find a third avenue, he is exploring with legal counsel two possibilities. The first possibility would be for the legislature, or at least the Senate, to go on record through the form of passing a resolution articulating some particular facts which the body is uniquely situated to express, such as why the legislature did not respond to change the *Kleypas* decision, which was a conscious decision and reliance upon the Court's articulation of what was thought to be the law. Then, the decision was reversed in *Marsh* and the Court's articulation went the other direction. Senator Schmidt suggested adding these things on the record might be useful to the State in its attempt to persuade the U.S. Supreme Court to consider Kansas' request for *certiorari* and the appeal. The second possibility Senator Schmidt is exploring is trying to determine whether it is possible, by an act of the Law or by an act of the Rule, to look at the scope of a potential special session that might occur this summer after the U.S. Supreme Court acts, so that the legislature could, if the body choose not to fix this problem now, address it in a narrowly focused session if and when it becomes clear that the U.S. Supreme Court has chosen not to hear the appeal.

Chairman called for a vote. A motion was made to pass the bill out of Committee without recommendation. Senator Bruce moved, seconded by Senator Betts, and the motion carried.

Chairman Vratil announced that the Committee would next consider final action on **SB 36**.

Final Action:

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

Senator Schmidt provided to the Committee a copy of the proposed amendment he offered, which would give

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 7, 2005, in Room 123-S of the Capitol.

the Supreme Court discretion to allow students who had graduated from a now defunct Wichita law school to apply to sit for the bar exam. (Attachment 11) Senator Schmidt moved to amend the bill, seconded by Senator Goodwin, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator Goodwin moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil asked the Committee to consider next taking action on **SB 30**.

SB 30 Exercising the state's option to provide an exemption to disqualification for public assistance to certain drug offender

Senator Journey provided to the Committee a copy of the proposed amendment he offered, which gives discretionary authority to a case worker to request a random urinalysis test to confirm an offender who is applying for state and federal assistance is drug free. (Attachment 12) Senator Bruce suggested that, for clarity, the words “for 30 days” be struck from the next to the last sentence, and the words “after 30 days” be added at the end of the last sentence. Senator Journey concurred. Senator Bruce motioned to make the change to the proposed amendment, seconded by Senator Journey, and the motion carried. Senator Journey clarified to the Committee that the state and federal assistance benefits, if suspended, would only affect the individual offender, and not the offender’s family or dependants. Senator Journey moved to amend the bill, seconded by Senator Donovan, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator Journey moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 8, 2005.