

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Monday, January 26, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Allen (E)
Senator Haley (E)
Senator Betts (E)
Senator Goodwin (E)

Committee staff present:

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

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation and Kansas Peace Officers Association
Randy Hearrell, Kansas Judicial Council
Senator Kay O'Connor
Jim Pritchard, Emporia Police Department and Kansas Peace Officers Association
Representative Peggy Long-Mast
Detective Sgt. Lane Ryno
Dan Riley, Chief Legal Council, Kansas Department of Agriculture
Richard Cram, Kansas Department of Revenue

Others attending:

See Attached List.

Chairman Vratil called for bill introductions. Kyle Smith, Kansas Bureau of Investigation, requested on behalf of the Kansas Law Enforcement Training Commission, a bill to help ensure the quality and integrity of Kansas law enforcement officers by requiring law enforcement officers to meet the highest standards. (Attachment 1)

The Chair called for Committee discussion, and having none opened the floor for a motion. Senator O'Connor made a motion to introduce the proposed legislation, seconded by Senator Donovan, and the motion carried.

Randy Hearrell, Kansas Judicial Council, appeared before the Committee and requested a bill recommended by the Judicial Council Death Penalty Advisory Committee that would amend K.S.A. 21-4635 and 21-4638 to provide that life without the possibility of parole instead of the "hard 50" be the sentence for persons who are convicted of capital murder but who do not receive the death penalty. (Attachment 2)

The Chair called for discussion on the proposed bill, and there was none. Senator Umbarger made a motion to introduce the bill, seconded by Senator Donovan, and the motion carried.

Senator Kay O'Connor requested a conceptual bill be introduced. The bill would put deadbeat parents under house arrest with work release if the parents are 90 days or more past due on child support payments. After brief discussion, the Chair called for a motion to introduce. Senator O'Connor moved that the conceptual bill be drafted and introduced, seconded by Senator Oleen, and the motion carried.

HB 2057 - Identity theft, defrauding for any benefit, not just economic

Chairman Vratil opened the hearing on **HB 2057**. Representative Peggy Long-Mast testified in support of the proposed legislation. She explained that she sponsored the bill, and that it would allow law enforcement to intervene and seek prosecution of identity theft before someone finds out the hard way that their good name and social security number have been abused. Representative Long-Mast stated that passing this legislation may prevent many from suffering great economic loss and complications in other areas of their life. (Attachment 4)

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Kyle Smith, representing the Kansas Peace Officers Association, urged the Committee to pass **HB 2057**. He stated that normally identify theft is used as a means of committing fraud, but there are other motives and other victims than just the financial ones. Mr. Smith said whether the intent is to gain access to restricted information or merely to destroy an ex-spouse's credit rating, the harm to the victim can be equally devastating. He added that loss of credit rating, legal expenses, embarrassment, difficulty in getting loans and employment frequently are experienced by the person whose identity is stolen, in addition to the loss of economic benefit. (Attachment 5)

Jim Pritchard, Emporia Police Department and the Kansas Peace Officers Association, spoke in favor of **HB 2057**. He requested a change that would make the language concerning identity theft more inclusive. Section 1, line 15, as drafted reads: "Identity Theft is knowingly and with intent to defraud for economic benefit, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor." The proposed change would include the "Intent to defraud for *any benefit, including but not limited to economic benefit,*". Mr. Pritchard gave several examples of intent to defraud that was not limited to economic benefit, and the repercussions of same as detailed in Mr. Pritchard's written testimony. (Attachment 6)

Chairman Vratil asked Kyle Smith to clarify the definition of identity theft relating to Subsection (a), line 15, which defines it as "knowingly and with intent to defraud for any benefit, obtaining, possessing,". He stated that there are two classes of punishment. One class is identity theft for economic benefit that is undefined. The Chairman asked if there needed to be a definition for identity theft for economic benefit, or more directly what is identify theft for economic benefit. Mr. Smith replied that there were some issues with the drafting, but by including the word "defraud" which has an economic flavor to it then the assumption of economic benefit was included. He gave a couple of examples. Mr. Smith said the changes are fairly simple, but the details are a little confusing at this point.

The Chair inquired about the phrase "knowingly and with intent to defraud", and why was there a need for the wording "for any benefit" in the language. He said there appeared to be an internal inconsistency in the language relative to saying economic benefit and any benefit. Mr. Smith responded that he wasn't claiming authorship on this bill, and that one or the other had to go. Representative Long-Mast offered that in the House discussion on **HB 2057**, the subject came up of giving a little more leniency in some cases relative to a minor's use of false identification to get into a drinking establishment. House members did not feel the penalty for that situation should be equal to the fraudulent use of false identification on a semi-permanent basis.

Chairman Vratil said he could understand the desire to distinguish between identify theft for economic benefit and identify theft for non-economic benefit, but felt there were some problems with the way the bill was drafted. If Mr. Smith's suggestion that using the word "defraud" has implications of economic benefits, then his definition was internally inconsistent. The Chair stated that there isn't a definition of identity theft for economic benefit, and asked what was identity theft for economic benefit. He gave examples of identity theft for non-economic benefit and examples of ways identity theft could be for economic benefit. He said there needed to be a better definition for identify theft for economic benefit. He requested Mr. Smith to work with Representative Long-Mast to come up with some alternative language.

Having no other conferees to appear on **HB 2057**, Chairman Vratil closed the hearing.

SB 141 -Phasing in the use of administrative hearings over years

Chairman Vratil opened the hearing on **SB 141**, and briefly explained the bill. Randy Hearrell, Kansas Judicial Council, testified as a proponent for the bill. Mr. Hearrell said the proposed legislation would change the Kansas Administrative Procedure Act (KAPA) concerning state agencies and hearing officers (which are called presiding officers). He explained that beginning July 1, 2005 and concluding July 1, 2009, all state agencies, boards and commission subject to KAPA would be "phased-in" to the requirement that the Office of Administrative Hearings (OAH) provide presiding officers for hearings. Mr. Hearrell stated that on and after July 1, 2009 the OAH would be a separate state agency.

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Mr. Hearrell gave background and historical information regarding administrative proceedings of state agencies. He said that approximately one-half of the proceedings are filed in accordance with KAPA. He explained that often the agency head (secretary, board, commission, etc.) designates someone to serve as presiding officer for an administrative hearing. He said that typically such presiding officer is a regular employee of the state agency or a private attorney hired by the agency on a contract basis. Mr. Hearrell added that if the presiding officer is not the agency head, the presiding officer renders an initial order, subject to review by the agency head on the agency head's motion or upon petition by any party. He stated that under **SB 141**, attorney hearing officers and support personnel from affected agencies, would transfer to the Office of Administrative Hearings along with all related property and records. The state agencies would be required to use hearing officers from the OAH to preside as hearing officers for their administrative hearings under KAPA.

Mr. Hearrell explained that the basic purpose of a central Office of Administrative Hearings is to give administrative hearing officers independence from agencies over whose proceedings they preside. He added that such independence will promote fairness in the hearing process and a perception of greater fairness, independence and impartiality if the presiding office is not dependent on the agency for continued employment or advancement. Mr. Hearrell stated that the central hearing office would allow cost reduction by allowing a more even distribution of workload. It would likely promote consistency among agency proceedings, and consistent policies on a number of issues common to state agencies. He also included in his testimony arguments against OAH which included that first, "We are doing a good job"; and second, creation of a central office would result in loss of agency expertise. He shared the opinion of the advisory committee which believes it is not unfair to place the burden on the agency to make known to the administrative hearing officer, and all parties, during the hearing process what the agency considers to be relevant matters of agency expertise or policy. He also went over the costs of the central panel system and projected savings thereto. These savings are detailed in his written testimony. (Attachment 8) Mr. Hearrell furnished copies of the Legislative Post Audit's Performance Audit Report as information which also reported costs. A copy of the Audit Report is available for access in the Legislative Research Department and Chairman Vratil's office. He referred to the Fiscal Note for **SB 141** which showed an estimated cost of \$236,620 based on needs estimated for FY 2005 only. (Attachment 9)

Mr. Hearrell offered balloon amendments to **SB 141**, and briefly explained the proposed amendments. (Attachment 10)

Following brief Committee questions and discussion, the Chairman called upon Richard Cram, Department of Revenue (DOR), who testified as a neutral conferee on **SB 141**. He stated that this bill proposed to create an office of administrative hearings independent of the Department of Administration which raised concerns for his department. He said their main concern was whether **SB 141** was being interpreted properly, and referred to Sections 3, 4 and Subsection 34(h)(4). He said DOR understands that this bill is intended to apply only to personnel involved in KAPA hearings. The DOR has no personnel exclusively dedicated to KAPA hearings. He said DOR officials who currently preside over KAPA administrative hearings and the support staff assisting them, perform these duties along with other assigned tasks. He gave examples of the various departments in DOR, and the problems they would incur if personnel was transferred to OAH.

In conclusion, Mr. Cram said that if DOR correctly reads **SB 141** as not requiring KAPA hearings presided over by various division or bureau directors to be moved to the Office of Administrative Hearings, then this bill would have minimal impact on the Department. However, he stated if DOR is incorrectly interpreting this bill, DOR requests that the bill be amended to clarify that the KAPA hearings currently presided over by the Director of ABC, Director of Taxation, and Director of Motor Vehicles are not to be affected by this legislation, and that no DOR personnel or resources are to be transferred to the Office of Administrative Appeals. (Attachment 11)

Following brief questioning and discussion, the Chairman encouraged Committee members to study KJC's submitted balloon amendments in preparation for working the bill. Chairman Vratil closed the hearing on **SB 141**.

The Chairman presented the minutes covering the January 14, 2004 meeting. Senator Donovan moved to

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approve the minutes as written, seconded by Senator Schmidt, and the motion carried.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is January 27, 2004.