

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Monday, March 15, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley - Arrived 10:05  
Senator Derek Schmidt - Arrived 9:44  
Senator Donald Betts (A)  
Senator Lana Oleen - Arrived 9:45

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor Statutes  
Helen Pedigo, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation  
Christi Cain, State Coordinator, Kansas Prevention Project Coordinator  
Chris Schneider, Assistant District Attorney, Wyandotte County  
Tom Stanton, Reno County Deputy Attorney  
Ed Klumpp, Chief of Police, Topeka  
Randall Hodgkinson, Deputy Appellate Defender, Topeka  
Representative Kathe Decker  
Lt. John Eickhorn, Kansas Highway Patrol  
Paul Morrison, District Attorney, Johnson County  
Representative Dean Newton (written testimony)  
Chris Kenney, District Attorney, Douglas County  
Rex Beasley, Deputy Attorney General  
Craig Kabeline, Executive Director, Kansas Area Agencies on Aging Association  
Darrell Donahue, Congressional District Coordinator for AARP Kansas  
Deanne Bacco, Executive Director, Kansas Advocates for Better Care (written testimony)  
Linda Wright, Chairperson, Elder Abuse Committee, Johnson County (written testimony)

Others attending: See attached list.

### **HB 2777 - Controlled substances; unlawfully manufacturing, compounding is manufacturing, not a part of selling, in response to State v. McAdam**

Chairman Vratil opened the hearing on **HB 2777**. Kyle Smith, Kansas Bureau of Investigation (KBI), testified in support of **HB 2777**. He explained that the bill was an effort to clear up an ambiguity and to clearly state what was legislative intent when this act was passed a couple of years ago. The Legislature intended to severely penalize manufacturing of meth. Mr. Smith stated the Legislature needed to clarify that KSA 65-4159, the manufacture of controlled substances, and have it be the only statute that criminalizes this particular activity. He said that House **Substitute HB 2777** does this by simply striking the word "compound" from 65-4161 and KSA 65-4163. (Attachment 1)

Cristi Cain, Kansas Methamphetamine Prevention Project, spoke in favor of **HB 2777**. She stated that the Kansas Methamphetamine Prevention Project supports legislative action that would correct the discrepancies between KSA 65-4159 and KSA 65-4161. She said it was very important that those convicted of the manufacture of meth receive long sentences in order to protect communities and deter manufacturers from other states coming to Kansas. (Attachment 2)

Chris Schneider, Assistant Wyandotte County District Attorney, appeared before the Committee in support of **HB 2777**, and to request legislation to remedy the effects of the decision of the Supreme Court in Kansas in the case of McAdam vs. State. He said the passage of **Substitute HB 2777**, which passed the House unanimously, would solve the problem for offenses under KSA 65-4159 in the future, and may well solve the problem of at least some of those convicted in the past being immediately released back into the various communities of the state. (Attachment 3)

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The Chair inquired relative to the new Section 3, which makes the bill retroactive to affect people convicted of drug offenses prior to the effective date of this act, how such retroactivity can be accomplished under the U.S. Constitution. Mr. Schneider responded that he did not know, and that would be up to the Supreme Court. He said the Supreme Court opened the window for prosecutors in the sexual predators cases, and considering how dangerous manufacturing of drugs is, he felt that the Court would support retroactivity.

Tom Stanton, Deputy Attorney for Reno County, testified in favor of **HB 2777**. He stated that many of the people involved in the manufacture of methamphetamine are multiple repeat offenders, and long sentences do have a deterrent effect. In regard to the retroactivity issue, the Supreme Court's McAdams case states that its facts are limited to that case. ([Attachment 4](#))

Ed Klumpp, Chief of Police for Topeka, submitted written testimony in support of **Sub. HB 2777**. ([Attachment 5](#))

Randall Hodgkinson, Public Defender for the Appellate Defenders' Office, appeared on his own behalf and stated that he was not testifying on behalf of the Deputy Appellate Defenders' Office. He said he was testifying in opposition to **HB 2777** because he had some personal concerns regarding the subject. Mr. Hodgkinson stated that he feels having manufacture, attempt to manufacture, and conspiracy to commit manufacture as Severity Level 1 drug offenses is grossly disproportionate and out of step with actual practice in the courts. He urged the Committee to take the opportunity to deliberately review the drug sentencing scheme. Mr. Hodgkinson attached a possible alternative study for consideration to his written testimony. ([Attachment 6](#))

Fiscal Note on **Sub. HB 2777** was distributed to Committee members. ([Attachment 7](#))

The Chair closed the hearing on **HB 2777**.

### **HB 2649 - Unlawful use of a controlled substance**

Chairman Vratil opened the hearing on **HB 2649**. Representative Kathe Decker testified in support stating that the bill was a prevention tool that would help families fight drug addiction, and limit testing to arrest for child abuse, aggravated assault battery and domestic battery. ([Attachment 8](#))

Lt. John Eichkorn, Kansas Highway Patrol, spoke in support of **HB 2649**. The bill would allow an officer to request a drug test from an individual if the officer had probable cause to believe the person used a controlled substance. The Patrol recommended a simple change to Section 2, line 30 that would remove the words "section 1". It would limit officers to requesting drug tests from those arrested for child abuse, aggravated assault, battery, or drug possession. ([Attachment 9](#))

Kyle Smith, Kansas Bureau of Investigation, testified in support of **HB 2649**. He said there was a minimal fiscal note on the bill. ([Attachment 10](#)) He explained the different levels of controlled substance or metabolite in a person's system that needs to be tested for, and the importance of same when prosecuting for these crimes. ([Attachment 11](#))

Brief Committee questions and discussion followed.

The Chairman closed the hearing on **HB 2649**.

### **HB 2693 - Mistreatment of a dependent adult; increasing penalties if value of financial gain is over \$500**

Chairman Vratil opened the hearing on **HB 2693**. Paul Morrison, Johnson County District Attorney, testified in support of the proposed bill. His office has had several cases in which unscrupulous people have taken advantage of dependant adults, usually elderly, taking property from them. He explained that the Kansas Court of Appeals has not supported the legal concept of such cases being charged and tried as violations of the theft statute. The Appeals Court has held violations of this nature are not thefts, but merely violations of the dependant adult statute. The Kansas Supreme Court recently denied Johnson County's petition requesting review of the decision creating a major loophole in the law. Mr. Morrison

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concluded that the bill simply aligns the taking of financial resources from a dependent adult with the same penalties in the theft statute without impacting the prison population in a significant way.  
(Attachment 12)

Representative Dean Newton submitted written testimony in favor of **HB 2693**. (Attachment 13)

Chris Kenney, Douglas County District Attorney, testified in support of **HB 2693**. Ms. Kenney stated that the proposed changes to KSA 21-3437 would create a greater deterrent of crimes against the elderly by punishing those who see vulnerable citizens as easy targets whose resources are there for the taking.  
(Attachment 14)

Rex Beasley, Attorney General's Office, spoke in favor of **HB 2693**. Under current law when a dependent adult becomes the victim of financial abuse, the crime is mistreatment of a dependent adult, and the offender, if found guilty of committing the crime suffers only a Class A person misdemeanor conviction, regardless of the amount of financial abuse or the total loss suffered by the victim.  
(Attachment 15)

Craig Kaberline, Kansas Area Agencies on Aging Association (K4A), testified in support of **HB 2693**. He stated that K4A believes it is important to strengthen the sentencing of those who are found guilty of mistreating a dependent person provides notice that acts such as taking a dependent person's money or other resources, inflicting physical harm or other mistreatment constitute serious criminal behavior in Kansas. He stated that **HB 2693** would provide dependent adults appropriate and equal status in our state's statutes, and will affirm the value of vulnerable adults in our state. (Attachment 16)

Darrell Donahue, AARP, spoke in support of **HB 2693**, and requested the expansion of protections and enhanced penalties to further protect vulnerable adults from abuse, neglect and exploitation.  
(Attachment 17)

Deanne Bacco, Advocates for Better Care, submitted written testimony in support of **HB 2693**.  
(Attachment 18)

Linda Wright, Elder Abuse Committee of the Johnson County Community Violence Action Council, submitted written testimony in favor of **HB 2693**. (Attachment 19)

Fiscal Note for **HB 2693** was distributed to Committee members. (Attachment 20)

Considerable discussion and questions followed.

There being no other conferees to testify, the Chairman closed the hearing on **HB 2693**.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is Tuesday, March 16, 2004.