

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 11, 2005, in Room 123-S of the Capitol.

Committee members absent: Derek Schmidt- excused

Committee staff present: Mike Heim, Kansas Legislative Research Department
Jerry Donaldson, 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:

Marlee Carpenter, Kansas Chamber of Commerce & Industry
Kathy Damron, Phillip Morris USA Inc
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Others attending: See attached list

Chairman Vratil welcomed all to the first meeting of the Senate Judiciary Committee for the 2005 Session. The Chair asked the Senators to introduce themselves and provide some brief background about their service and interests as Judiciary Committee members.

Chairman Vratil stated that the committee had no written rules and he had only one, not in writing, that everyone act in a civil manner and respect their fellow committee members and audience members. He indicated that committee meetings would be run as open meetings, and it was his intent that everyone have full and fair time to express their viewpoints. He also asked that everyone arrive in a timely manner. He asked if there were any committee members that would like to propose any new rules, but no proposals were offered.

The Chair called for bill introductions. Marlee Carpenter requested a bill that would change the way one introduced scientific evidence in a courtroom. It would move from the Frey standard to the Daubert standard. Basically, the Frey standard lets the jury decide whether the evidence is good evidence and should be considered, whereas with the Daubert standard, the judge is the gatekeeper and determines whether the jury should hear the evidence. (The Daubert standard is used in federal courts, and the Frey standard is used in Kansas courts.) (Attachment 1) Senator O'Connor moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

Kathy Damron, representing Phillip Morris USA Inc., requested a bill be introduced, called the "Allocable Share" amendment. It is model legislation passed in 39 other states. The bill would close a loophole that affects the non-participating manufacturers of cigarettes who are supposed to make payments to an escrow account. A loophole allows these companies to make the payments and immediately get the money back. (Attachment 2) Senator O'Connor moved to introduce the bill, seconded by Senator Goodwin, and the motion carried.

Chairman Vratil introduced a bill on behalf of Senator Barnett which would exempt Kansas from provisions of federal law which denies welfare payments. The Chair indicated a fiscal note would be obtained should the committee vote to introduce this bill. (Attachment 3) Senator Haley moved to introduce the bill, seconded by Senator Betts, and the motion carried.

Chairman Vratil introduced a bill to address the Kansas Supreme Court's decision in *Marsh* on December 17. The Court said that current law on capital offenses indicates that when a jury is considering both aggravating and mitigating factors, that the tie goes to the State and the death penalty can be imposed. The Court said that is unconstitutional, that the tie cannot go to the State but must go to the defendant. Senator O'Connor asked if the KBI or the Attorney General had taken a look at this, and Chairman Vratil indicated not at his initiative, that he had asked the Revisor's Office to draft the bill to fix the *Marsh* problem. Senator Bruce asked if the case was going to be appealed to the U.S. Supreme Court, and the Chair indicated that the

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Attorney General has indicated the intention to appeal it, but has also acknowledged the reality, which is there is a slim chance that the Supreme Court would consider the appeal. (Attachment 4) Senator O'Connor moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

Chairman Vratil introduced another bill, stating that there is an existing Kansas statute that says that in actions brought for the recovery of property damages only, sustained and caused by the negligent operation of a motor vehicle, and if the claim for damages is less than \$7,500, the prevailing party will be allowed reasonable attorney's fees. This bill would amend that existing statute by striking the \$7,500 limit. (Attachment 5) Senator Journey moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

Mike Heim and Jerry Donaldson, Kansas Legislative Research Department, covered most of the study topics and report recommendations provided in the Reports of the Special Committee on Judiciary to the 2005 Kansas Legislature (Attachment 6). Mr. Heim passed out a copy of the Judiciary Committee section of the report.

On the issue of eminent domain, the United States Supreme Court added an eminent domain, economic development and private property rights case to its Fall 2004 docket. It was recommended legislation be deferred until after the Court renders its decision. Senator O'Connor asked for clarification as to when the Court might render a decision. It was the general consensus that by June a decision might be expected. Senator O'Connor then asked whether the committee might expect to take up legislation on this issue next year, and this was affirmed.

Senator Betts asked for an elaboration and update of the Cowley County situation. Senator Goodwin shared that the eminent domain issue affecting Cowley County affected 22,000 acres of prime agricultural land, which had lakes and a beautiful valley that was popular. There were two developers that wanted to use eminent domain to take all the land and dam up the streams and lakes, to make a recreational lake for Sedgwick County. This concerned many of her constituents, including the ranchers and owners of the acres, which was the reason for the bill (2004 **SB461**), which was enacted. Since that time, there have been other parties that have become interested in this lake, from the Sedgwick County area, and the issue has been discussed openly. The Water Authority Board held extensive hearings during this past summer and decided there was no need for water in Sedgwick County, which was one of the prime reasons for taking this water in Cowley County. The Water Authority Board would not address this issue any further. Since that time, several committees in Wichita have held meetings, and the Cowley County lake was their number one project. In conclusion, Senator Goodwin indicated the issue is ongoing, as there has been more money garnered for support in Wichita. This has caused the ranchers and owners to be actively involved in sending out letters, because there is still concern that their land could be taken.

Regarding the statute of limitation issue for registration violations under the Uniform Securities Act, the Special Committee agreed to introduce, without recommendation, a bill (**HB2029**) which would expand the statute of limitations for private individuals bringing an action for securities registration violations under Section 38(j)(1) of 2004 **HB 2347**. The bill would provide for a statute of limitations of one year from the date of discovery of the registration violation with an overall two-year statute of limitation from the actual registration violation. (**HB 2347** was enacted by the 2004 Legislature with an effective date of July 1, 2006. The bill passed both Houses of the Legislature with a two-year statute of limitations, but the time frame was changed to one year in conference committee and was ultimately enacted as a one-year period.)

On the issue of access to victim information by law, the Special Committee believed the issue of the availability of crime victim information to the Secretary of Social and Rehabilitation Services in regard to the release of sexually violent predators has been resolved through a Memorandum of Understanding with the Department of Corrections. Therefore, it recommended no legislation on the topic.

On the death penalty and the mentally retarded, after discussion of this topic, the Special Committee concluded that a new bill should be drafted and prefiled based on 2004 **SB 355** that would correct some flaws in the bill. The new bill (2005 **SB14**) would contain an improved and expanded definition of "mentally retarded" and "mental retardation"; omit the age of onset language; delete the nexus language regarding the criminality provision that is contained in 2004 **SB 355**; include the pre-trial component of 2004 **SB 355** for

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a finding of mental retardation; include the post-trial provisions of 2004 **SB 355** regarding a special verdict on the question of a finding of mental retardation; and include the provision of new section 4 of 2004 **SB 355** that allows for the Kansas Board of Indigents' Defense Services to provide counsel for a person who is unrepresented in order to determine whether to file a petition for relief from the sentence of death on the grounds that the defendant was an individual who was mentally retarded at the time of the commission of the capital offense.

Chairman Vratil asked for clarification on the changes in the definition of "mental retardation". The current definition of mentally retarded means having significantly sub-average general intelligence, intellectual functioning to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct and to conform one's conduct to the requirements of law. The new definition of "mental retardation" would mean having significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior. Further, the definition of significantly sub-average general intellectual functioning means the performance which is two or more standard deviations from the mean score on a standardized intelligence test specified by the Secretary of SRS.

Chairman Vratil noted the meeting time was up. Senator O'Connor moved to adjourn the meeting, seconded by Senator Journey, and motion was carried. The meeting was adjourned at 10:30 A.M. The next meeting is scheduled for January 12, 2005.