

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 20, 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:

Sandra Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence
Senator Jay Emler
Kyle Smith, Special Agent, Kansas Bureau of Investigation

Others attending:

See attached list.

Chairman Vratil opened the meeting and asked for bill introductions. Sandra Barnett requested the introduction of three bills. The first bill expands Kansas' Rape Shield Law to cover any proceeding before the court. The second bill amends K.S.A. 21-3517 to remove the marital exemption from the sexual battery statute. The third bill increases the marriage license fee by \$50. Senator Haley moved, seconded by Senator Bruce, and the motion carried.

Senator Journey introduced a bill to modify child custody statutes language in K.S.A. 60-1610. The language of "shared residency" currently is utilized in court custody cases, and the bill amends the statute to reflect this. (Attachment 1) Senator Haley moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil opened the hearing on **SB 25**.

SB 25–Terrorism and illegal use of weapons of mass destruction, penalties, procedures

Proponents:

Senator Emler summarized that the Joint Committee on Kansas Security recommendation is that Kansas define terrorism as a crime in Kansas statutes. (Attachment 2)

Kyle Smith testified that the bill was drafted based on what is in federal law. The first three sections define terrorism and the weapons of mass destruction (biological, radioactive, and chemical agents) and the crime of money laundering. The balance of the bill amends the investigative statutes that are already in place in Kansas to include these new crimes. (Attachment 3)

There was discussion regarding the sections of the proposed bill. It was determined that language in section five of K.S.A. 21-3301(d), regarding the provisions for attempting to commit the crime of terrorism, should be in (c). Mr. Smith will work with the revisors to amend this.

A fiscal note was provided. (Attachment 4) There were no neutral or opposing testimonies on this bill.

Chairman Vratil closed the hearing on **SB 25**.

Chairman Vratil had staff prepare case briefs on the *Kleypas* case, handed down by the court in 2001, and *Marsh*, handed down December 17, 2004. (Attachments 5-6) Chairman Vratil requested that the Committee review the briefs to better understand the development of the law in this area and how it pertains to the death penalty.

Chairman Vratil asked the Committee to turn its attention to **SB 5**.

SB 5 Trade secret defined as in uniform trade secrets act

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Chairman Vratil pointed out there was a fiscal note describing the intent of the bill as taking the uniform definition of Trade Secrets and applying it consistently throughout the statute. (Attachment 7) The bill gives certain departments and officials the authority to examine and determine whether information is considered a trade secret. Senator O'Connor stated she had visited with Representative Kinser about this practice. It was not his intent to give authority to agencies or officials to determine what were trade secrets and that it was a drafting error. He had no objections to standardizing the language defining trade secrets. Senator Allen stated she chaired the interim committee and affirmed that Senator O'Connor was correct. The goal was to get one definition of trade secrets throughout the statutes.

Chairman Vratil announced he would not ask the Committee to take final action on the bill at this time. The Chairman requested that the minutes reflect that the Chair will work with the Revisor's Office to come up with amendatory language that would clearly indicate that any decision by an agency head concerning the confidentiality of a trade secret would be subject to the normal appeal process. Furthermore, when the Committee deals with the bill again and this proposed amendment, it will be the intent that the right to appeal be preserved.

Chairman Vratil asked the Committee to turn its attention to **SB 7**.

SB 7 In child custody/residency, relevant factors include whether parent is residing with registered offender or person convicted of child abuse; notification to other parent if parent is residing with such offender

The Chairman stated there was a fiscal note stating the affects of this bill could not be estimated. (Attachment 8) Senator Journey asked for clarification on the intent of this bill. Chairman Vratil indicated there were two factors which were whether or not an individual was a registered sex offender, and whether or not an individual had been convicted of child abuse. Senator Haley wanted to verify that this bill did not address indecent liberties with a child or whether or not grandparents were considered for keeping a child. Jill Wolters clarified that the bill deals with a divorce proceeding or, if a parent is not married, a custody proceeding. It could be that a grandparent would act as a parent. This is defined in the child in need of care statutes. Ms. Wolters stated that indecent liberties with a child and indecent solicitation and prostitution, are covered under offender registration, so if any one had committed that crime, they would be required to be registered and to notify the other parent.

Senator Goodwin suggested that the main thrust of this bill is the material change of circumstances, which in a domestic case, provides a means to file a motion with the court seeking modification of child custody orders. Chairman Vratil concurred that this was very important.

Chairman Vratil had some technical changes that he was going to take up with the Revisor, so no final action was taken. The Chairman stated that since there were no substantive amendments to the bill and the Committee was generally in favor of it, it would be brought back for final action very soon.

Chairman Vratil asked the Committee to consider **SB 24**.

SB 24 Confidential security records or information, not subject to subpoena or discovery

The Committee reviewed a fiscal note which indicated there was no fiscal impact. (Attachment 9) Senator O'Connor clarified that on page 8, line 2, (a) 45 needs to be changed to (a). Chairman Vratil concurred with this technical change. Chairman Vratil indicated the bill reconciles in a technical manner amendments that the legislature made in 2004 affecting the Open Records Act. On page 5, lines 33-41, which are deleted, an amendment was suggested to reinserted the language. Chairman Vratil wanted to discuss the bill, understand what amendments the Committee wanted to consider, then he'd bring the bill back in a balloon amendment for the Committee to deal with.

Senator Umbarger indicated that he had a constituent question page 1, line 26, the list of what would not be disclosed. Chairman Vratil said that current law, and the effect of that was to allow a public agency to withhold disclosure of information. For example, in the Cancer Registry, a patient does not have the right

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to sign off on whether information regarding the patient becomes public. The public agency that is in possession of the records determines whether they will or will not be disclosed.

Senator O'Connor clarified that the strike on page five was part of the exemptions to the Open Records Act, so she questioned if it that information was protected somewhere in the statutes. Ms. Wolters indicated that it was still in the Insurance statutes, and the strikes in the bill passed last year in **SB 552**.

Larrie Ann Lower, with the Kansas Association of Health Plans (KHAP), a guest in the audience, stated KHAP's concern was that legislative intent was not established to show that the changes made in the bill were done with the understanding that Chapter 40 would remain unchanged. If there was a court case, someone might say that the last act of the legislature was to pull the exemptions out of Open Records Act, and therefore it should not be in Chapter 40.

Chairman Vratil stated that the bill is just part of a much bigger issue that the legislature will have to face which is reauthorization of the acceptance to the Open Records Act. Chairman Vratil asked the Committee to go through the bill and see if there were any other amendments that anyone wanted to make before it is brought up again.

Senator Goodwin moved that the Committee adjourn, seconded by Senator Donovan, and the motion carried. The meeting was adjourned at 10:30 A.M. The next meeting is scheduled for January 24, 2005.