

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 14, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused

Donald Betts- excused

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:

Others attending:

See attached list.

Chairman Vratil opened the meeting and announced that there would be no final action taken on **HB 2104**, which deals with UCC securities interest in oil and gas production. The Chairman asked the Committee to consider final action on **HB 2268**.

Final Action:

HB 2268 Uniform interstate enforcement of domestic violence protection orders

Chairman Vratil passed out a proposed balloon amendment for consideration by the Committee. He explained that the balloon amendment was submitted by the interested parties and that he had written alternative language to that proposed in the box on page four of the bill. (Attachment 1) His language does the same thing in fewer words.

Senator Journey was curious why the sheriff was prohibited from notifying a respondent. Joyce Grover, Attorney for the Kansas Coalition Against Sexual and Domestic Violence and a guest in the meeting, stated that the language was inserted because of foreign orders. When the order has been issued in another state, it has already been served and entered into NCIC from another state. Senator Journey suggested that the language in the new proposed section 5 (c) should read, "A sheriff's department is prohibited from notifying or requiring notification of a respondent if the personal service is verified..." . Chairman Vratil stated the dilemma is that the initiator of a protective order, as the protected individual, doesn't want the respondent to know where he or she is residing, and so do not want the respondent notified of the filing of a foreign protection order. On the other hand, there is no way to know for certain that the respondent has been notified of the existence of the protection order. It is certainly not fair to not give notices to the respondent and then hold the person responsible for an order he knows nothing about.

Ms. Grover stated that the responsibility lies with the prosecutor to check NCIC. Chairman Vratil stated that the law doesn't say that. There is nothing in this statute which gives any reason to believe that the respondent has been served with a foreign protection order.

Ms. Grover stated in Section 4 (c) it says that, "if a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order..." Chairman Vratil noted what Ms. Grover was pointing to, but stated that Section 4 (c) is in direct contradiction with the amendment. Ms. Grover stated that the bolded language was added at the request of the Kansas Sheriffs Association because they didn't want to duplicate work that had already been done. Chairman Vratil asked the Committee to look at Section 4 (c). Chairman Vratil indicated that it explains why the House struck the language that it took out of the bill, in 5 (f). The Chairman suggested that the Committee defer to the House version.

A motion was made to strike from the bill Section 5 (f). Senator Journey moved, seconded by Senator Bruce, and the motion carried.

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Chairman Vratil reviewed new Section 10. Jill Wolters stated that the purpose of the section was to correct a drafting error. The intent of the section is that since there would be foreign protection orders that were in effect, that the date would make it valid so the State of Kansas would recognize them. Chairman Vratil suggested that the language be changed to "This act applies to all protection orders issued, before or after the effective date of the Act."

A motion was made to change the language in new Section 10 to the suggested language offered by Chairman Vratil. Senator Goodwin moved, seconded by Senator Donovan, and the motion carried.

There was discussion whether to allow a fee and use the language proposed by the balloon in 5 (b). A motion was made to allow a fee, not to exceed \$30, which may be waived if the party is unable to pay due to poverty, or if waived by the district court. Senator Journey moved, seconded by Senator O'Connor, and the motion carried.

A motion was made to strike page 3, lines 19-43 and page 4, line 1, and replace with the balloon language in new Section 5 (a), and strike on page 4, line 2, and replace with the new language for Section 5 (b). Senator Bruce moved, seconded by Senator Goodwin, and the motion carried.

A motion was made to recommend favorably the bill as amended. Senator Bruce moved, seconded by Senator Goodwin, and the motion carried.

Chairman Vratil turned the meeting over to Vice-Chair Bruce. The next bill reviewed by the Committee for final action was **SB 117**.

Final Action:

SB 117 If an offender resides within 1,000 feet of any licensed child care facility or any school, sheriff shall notify such facility or school

Vice-Chairman Bruce handed out a proposed amendment from Senator Brownlee. (Attachment 2) The bill incorporates a portion of **HB 2314** and requires that the Kansas Department of Health and Environment notify day care centers and the Kansas Board of Education notify schools, rather than the notification come from the county sheriff. Vice-Chairman Bruce stated that the legal draft of an amendment prepared by Senator Journey should be discarded (Attachment 3), as Senator Journey stated Senator Brownlee's amendment would work in lieu of his.

A motion was made to adopt the proposed balloon amendment. Senator Journey moved, seconded by Senator O'Connor, and the motion carried. A motion was made to recommend favorably the bill as amended. Senator Journey moved, seconded by Senator Donovan, and the motion carried.

Vice-Chairman Bruce asked the Committee to consider final action on **HB 2314**.

Final Action:

HB 2314 Timing of offender registration

A motion was made to amend the bill with the balloon amendment of **SB 117** incorporated into the bill. Senator Journey moved, seconded by Senator Schmidt, and the motion carried. A motion was made to recommend favorably the bill as amended. Senator Journey moved, seconded by Senator O'Connor, and the motion carried.

Vice-Chairman Bruce asked the Committee to consider final action on **HB 2016**.

HB 2016 Arbitration; validity of agreement; can apply to employer employee contracts and a tort claim

Senator Journey stated that the bill offers sweeping changes affecting how arbitration is done in Kansas. It involves waiving an individual's access to the courts. He had many concerns about the issue and made the motion that the Committee refer the issue to the Judicial Council for consideration and perhaps modification. Senator Schmidt suggested that, procedurally, we hollow out the bill, referring the issue to the Judicial

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Council, and inserting the 'guts' of **SB 179** in its place.

A motion was made to amend the bill by removing the contents of the bill and referring the subject matter to the Judicial Council to be studied, and replacing the contents with **SB 179**, using the language as recommended and passed favorably as amended out of Committee. Senator Journey moved, seconded by Senator Umbarger, and the motion carried. A motion was made to recommend favorably the substitute for the bill favorably as amended. Senator Journey moved, seconded by Senator O'Connor, and the motion carried.

Vice-Chairman Bruce asked the Committee to consider final action on **HB 2129**.

HB 2129 Compensation for attorneys representing indigent defendants, \$80 per hour

Senator Journey suggested that the increase was needed because the last increase was made in the late 1980s. Senator Goodwin stated that the increase would help the rural communities as well as the larger communities, that in the smaller communities the private attorneys are called on to serve indigent defendants and not necessarily by choice. Senator Donovan stated that this was a big hit to absorb, that if the legislature were bumping anything else by 60 percent, there would be an outcry. Senator Umbarger asked where the money was coming from and was advised from the state general fund. Senator Journey stated that the significant impact is in the initial year, but because there would be a revolving fund, it would not be as bad after the initial year. Senator Umbarger was stated that he felt this was one of the more legitimate uses of docket fees.

A motion was made by Senator Journey to recommend the bill favorably for passage, seconded by Senator Haley. Senator Journey withdrew and changed his motion to increase the compensation to \$65, effective July 1, 2005, and increase the compensation to \$80, effective July 1, 2006. Senator Journey moved, seconded by Senator Umbarger, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator Umbarger moved, seconded by Senator Journey, and the motion carried.

Vice-Chairman Bruce adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 15, 2005.