

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:33 A.M. on March 13, 2008, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived 9:37 A.M.
Greta Goodwin- excused
Barbara Allen- excused
Donald Betts- excused
Les Donovan arrived, 9:40 A.M.
David Haley arrived, 9:39 A.M.
Derek Schmidt arrived, 9:42 A.M.
Dwayne Umbarger arrived, 9:38 A.M.

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Judge Ernest Johnson, 29th Judicial District (Wyandotte County)
Roger Werholtz, Secretary, Kansas Department of Corrections
Dave Debenham, Deputy District Attorney, Shawnee County
Representative Bill Otto
Steve Schwarm, Kansas Judicial Council
Larry Magill, Kansas Association of Insurance Agents
Paul Allen, Chair, Board of Accountancy
Tony Scott, Kansas Society of CPAs
Richard Cram, Department of Revenue
Tom Whitaker, Kansas Motor Carriers Association
Gary Reser, Kansas Veterinarian Medical Association
John Campbell, Kansas Insurance Department
Rick Fleming, General Counsel, Kansas Security Commission
Yvonne Anderson, General Counsel, Kansas Dept. Of Health and Environment

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2780–Criminal procedure; new crime committed on probation or community correction, service of warrant for violation of original conviction.**

Judge Ernest Johnson spoke in support, reviewing the bill as suggested by the Kansas Re-entry Policy Council (Attachment 1). The bill's intended goal is to create a legislative requirement and implementation procedure to require the State to pursue the revocation of an earlier case of probation at the beginning of a new felony imprisonment rather than at the end.

Roger Werholtz appeared in support, stating his agreement with Judge Johnson (Attachment 2). The Secretary added the Department of Corrections has made significant progress in decreasing recidivism and the bill which requires local jurisdictions to notify the DOC will aid in the reentry efforts by resolving detainees in a timely manner.

David Debenham spoke in favor stating the Kansas County and District Attorney's Association believe that inmates will be in the best position to know if they have a probation violation warrant outstanding (Attachment 3). By placing the burden on the inmate to initiate the process of resolving probation violations it will ensure the inmate desires to have the matter resolved in a timely fashion in order to best take advantage of any rehabilitative programs.

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Written testimony in support of **HB 2780** was submitted by:

Marilyn Scafe, Executive Director, Kansas Re-entry Policy Board (Attachment 4)
Representative Pat Colloton (Attachment 5)

There being no further conferees, the hearing on **HB 2780** was closed.

The Chairman opened the hearing on **HB 2845–Increasing the penalties for theft and aiding escape when such crimes concern employees or volunteers of the department of corrections.**

Roger Werholtz testified in support, stating the proposed bill would make the failure to return security related property of the department a severity level 8 felony and raise assisting an offender in an escape to a severity level 4 (Attachment 6).

There being no further conferees, the hearing on **HB 2845** was closed.

The Chairman opened the hearing on **Sub HB 2618–Administrative procedure amendments; office of administrative hearings, presiding officers, actions negatively affecting licensure, judicial review.**

Representative Bill Otto appeared in support, providing a summary of the House floor amendment he sponsored (Attachment 7).

Steve Schwarm spoke in favor, stating the bill contains several Judicial Council recommendations (Attachment 8). Mr. Schwarm also stated the Council does not support portions of Section 1 and 2 containing House floor amendments. The amendments are particularly problematic and could cause unintended and costly consequences for the State and urged the committee to remove the amendments.

Larry Magill spoke in support of the original bill and voiced concern regarding the House floor amendment (Attachment 9).

Paul Allen testified in opposition, stating the profession of certified public accountancy is a highly technical profession with many procedures in place to ensure fair treatment (Attachment 10). Members of the Board possess the inherent knowledge, and understanding which is an invaluable tool in addressing and resolving issues. Prohibiting the Board from serving as a presiding officer would substitute one person's judgement for that of highly qualified professionals. Mr. Allen requested the Board of Accountancy be exempted from using the agency head as the presiding officer.

Tony Scott appeared in opposition (Attachment 11). The Kansas Society of Certified Public Accounts believe it is in the best interest of the State and the public to continue to be self-governed.

Richard Cram spoke in opposition, stating the bill infringes on the Department of Revenue's ability to administer the licensing provisions it is charged with enforcing (Attachment 12). Agency heads are uniquely situated to have in-depth knowledge of the laws and their appropriate applications. Mr. Cram also voiced strong concern regarding Section 1 as amended by the House which would require extensive research and analysis and extremely costly to the taxpayers of Kansas.

Tom Whitaker appeared in opposition to the amendment by the House Committee of the Whole (Attachment 13). In its present form **Sub HB 2618** is unworkable and would delegate authority of the Kansas government to other states.

Gary Reser testified in opposition, requesting the committee to reinstate language giving the Kansas Board of Veterinary Examiners the option to conduct its own hearings (Attachment 14).

John Campbell spoke in opposition, indicating there are at least 58 statutes in the Insurance Code that mandate KAPA (Kansas Administrative Procedure Act) procedures and all would have to be amended if the bill is enacted (Attachment 15). This will cause significant time delays and increased costs. Mr. Campbell also indicated the the House amendment regarding regulatory interpretations of other states would be extremely costly to research and maintain.

Rick Fleming appeared in opposition, indicating that while **Sub HB 2618** contains some improvements to

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the Kansas Administrative Procedure Act (KAPA) the removal of authority of agency heads is not one of them ([Attachment 16](#)). Such action would create inefficiencies in the system and undo the original intent of KAPA. Mr. Fleming stated that Sections 1 and 2 of the bill will put the job of protecting Kansas investors into the hands of whichever out-of-state official is the least inclined to protect them and urged removal of the House floor amendment.

Yvonne Anderson provided neutral testimony stating language in the bill is not clear regarding what is meant by “state official” or what form their interpretations must take to be considered ([Attachment 17](#)). In addition, unless such interpretations are published policies of the state, they are not readily available and thereby requiring extensive research by our State agencies. Ms. Anderson indicated the interpretation of other state officials could be found to be inconsistent with federal guidelines and ultimately could result in losses in federal funding and be subject to litigation. She urged the committee to remove Section 1 from **Sub HB 2618**.

Written testimony in support of **Sub HB 2618** was submitted by:

Robert Waller, Kansas Board of Emergency Medical Services ([Attachment 18](#))

Written testimony in opposition to **Sub HB 2618** was submitted by:

Pam Scott, Kansas Funeral Directors Association ([Attachment 19](#))

John Smith, Administrator, Kansas Department of Credit Unions ([Attachment 20](#))

Sherry Diel, Executive Director, Kansas Real Estate Commission ([Attachment 21](#))

Tom Thull, Kansas Bank Commissioner ([Attachment 22](#))

Cecil Kingsley, Chair, Kansas State Board of Technical Professions ([Attachment 23](#))

Patty Biggs, Kansas Parole Board ([Attachment 24](#))

Mack Smith, Executive Secretary, Kansas State Board of Mortuary Arts ([Attachment 25](#))

A. J. Kotich, Chief Counsel, Kansas Department of Labor ([Attachment 26](#))

Dr. Verle D. Carlson, DVM, President, Kansas Board of Veterinary Examiners ([Attachment 27](#))

Larry Buening, Kansas Medical Arts Board ([Attachment 28](#))

Trudy Aron, American Institute of Architects ([Attachment 29](#))

Phyliss Gilmore, Behavioral Sciences Regulatory Board ([Attachment 30](#))

Capt. Daniel Meyer, Kansas Highway Patrol ([Attachment 31](#))

Betty Wright, Kansas State Dental Board ([Attachment 32](#))

Tim Madden, Kansas Department of Corrections ([Attachment 33](#))

Neutral written testimony to **Sub HB 2618** was submitted by:

Joann Corpstein, Chief Counsel, Kansas Department on Aging ([Attachment 34](#))

Don Jordan, Secretary, Kansas Dept. of Rehabilitation and Social Services ([Attachment 35](#))