

Approved: May 08, 2012

(Date)

**MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE
COMMITTEE**

The meeting was called to order by Chairperson Pat Colloton at 12:00 PM on Thursday, March 15, 2012 in 144-S of the Capitol.

All members were present except:

Committee staff present:

Jackie Lunn, Committee Assistant
Lauren Douglass, Legislative Research
Robert Allison-Gallimore, Legislative Research
Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Debra Billingsly, Kansas Board of Pharmacy
Ron Wurz, Private Citizen
Kristi Smith, Private Citizen
Michael Schuttloffel, Kansas Catholic Conference
Robert Shaw Streepy, Private Citizen
Celeste Dixon, Private Citizen
Steven Becker, District Court Judge-Retired
Reverend John D. Kreidler, Bishop's Associate, Central States Synod of Evangelical
John Todd, Private Citizen
Carolyn Zimmerman, Private Citizen
State Representative Greg Smith
Missey Smith, Private Citizen
Amy Hanley, Assistant Attorney General
Kyle Smith, Assistant Attorney General/Deputy Director, KBI

Others in attendance:

See attached list.

Chairperson Colloton opened the hearing on **SB 325–Controlled substances schedules IV and V** and called on Deb Billingsly, Kansas Board of Pharmacy, to give her testimony as a proponent of the bill. Ms. Billingsly provided written copies of her testimony for the committee and staff, (Attachment 1) She stated the Board is created by statute and is comprised of seven

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members, each of whom is appointed by the Governor. Of the seven, six are licensed pharmacists and one is a member of the general public. She went on to say she is proposing in the bill to the Legislature that any drugs be classified as a scheduled controlled substance, the Board relies on the following factors set forth in K.S.A. 65-4102(b). Specifically, the proposal must state the reasons that the Board makes their recommendations by considering the following factors: 1) Potential for abuse; 2) the scientific evidence of its pharmacological effect, if known; 3) the state of current scientific knowledge regarding the substance; 4) the history and current pattern of abuse; 5) the scope, duration and significance of abuse; 6) the risk to the public health; 7) the potential of the substance to produce psychological or physiological dependence liability; and 8) whether the substance is an immediate precursor of a substance already controlled under this article. The Drug Enforcement Agency (DEA) also issues their rulings based on information provided by the DEA's Deputy Administrator and the Department of Health and Human Services using the same factors and criteria that the state uses. The DEA has already reviewed the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse and the relative potential for abuse of the drugs that the Board recommends be amended into the state schedule. The Board of Pharmacy recommends that the drug carisoprodol be added to Schedule IV. Schedule IV drugs have a lower potential for abuse relative to the drugs in Schedule III. They have current accepted medical uses in treatment in the United States. Carisoprodol has been marketed under the brand name of Soma and it also available as a generic drug. It has been approved by the FDA for the relief of discomfort associated with acute, painful musculoskeletal conditions. Carisoprodol was added to the federal schedule IV list effective January 11, 2012. The Board of Pharmacy recommends that Ezogabine, known chemically as N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester, be added to Schedule V. Schedule V substances have a low potential for abuse relative to the drugs in Schedule IV. They have a currently accepted medical use in treatment in the United States. Abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule IV. Ezogabine is a new chemical substance with central nervous system depressant properties and is classified as a sedative-hypnotic. It is used for the treatment of partial onset seizures. Ezogabine was added to the federal schedule V list effective December 15, 2011. New Section 3 also permits the distribution of samples of controlled substances listed in schedule V that are nonnarcotic depressants. This only applies to about three drugs and one of them is Lyrica®, a drug commonly used for the treatment of fibromyalgia. Kansas generally does not permit controlled substances to be distributed as a sample drug but the Board wanted to make an exception for this small classification of drugs. It would permit a patient to receive a sample prior to having a prescription filled to see if it could be tolerated. In closing, she asked the committee to support the bill.

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Chairperson Colloton called the committee's attention to **SB 407–Patient to receive certain information about patient's mammography examination** and asked the committee to review the written testimony from the following: Dr. Inciardia, Kansas University Medical Center located in Kansas City, (Attachment 2); a concerned mother, (Attachment 3); Peggy L. Johnson, Kansas Cancer Partnership, (Attachment 4); Jerry Slaughter, Executive Director, Kansas Medical Society, (Attachment 5). She asked them to review them because the bill could be amended into **SB 325** if it was the wish of the committee.

The chair called for any others to testify or speak to the bill. There were none, so she closed the hearing and stated if the committee did not have any objections they could work the bill today. There were no objections so she opened the floor for consideration of **SB 325**.

Representative Kelly made a motion to move the bill out favorably. Representative Cassidy seconded.

A discussion followed.

Chairperson Colloton moved to amend SB 407 into SB 325. Representative Brookens seconded. Motion carried.

Representative Kelly made a motion to move SB 325 out favorably as amended.

Representative Brookens seconded. Motion carried.

Next, Chairperson Colloton opened the informational hearing on the death penalty and introduced Ron Wurtz, Vice-Chair of the Kansas Coalition Against the Death Penalty, to give his testimony. Mr. Wurtz provided written copies of his testimony for the committee and staff, (Attachment 6). He stated those of us who support abolition of the death penalty do so believing that public safety can be protected and murderers held accountable without recourse to executions. He mentioned several cases where innocent were convicted and sent to prison for a number of years before they were released because of being found innocent. In closing, he stated they were in support of abolishing the death penalty.

Chairperson Colloton introduced Kristi Smith, a private citizen to give her testimony. Ms. Smith provided written copies of her testimony for the committee and staff, (Attachment 7). She told her story of a loved one being murdered trying to help his neighbor who had been shot. The offenders had received life in prison and she felt the death penalty would have been the best but over the years her feelings had changed and she is no longer in favor of the death penalty.

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Chairperson Colloton introduced Michael Schuttloffel, Kansas Catholic Conference to give his testimony. Mr. Schuttloffel provided written copies of his testimony for the committee and staff, ([Attachment 8](#)). He stated in recent years, the Catholic Church has cast a substantially more negative eye upon the use of the death penalty than it has in the past. Capital punishment should not be used when its negative effects outweigh whatever positive effects it might have, and recent popes and bishops have reached the conclusion that this is indeed the situation.

Chairperson Colloton introduced Robert Shawn Streepy, a former Reno County Attorney, to give his testimony. Mr. Streepy provided written copies of his testimony for the committee and staff, ([Attachment 9](#)). He stated he was appearing today to oppose the death penalty precisely because there are arbitrary and capricious elements in the decision to charge a case as a capital crime or to resolve a case by a plea which no level of oversight or review could ever mitigate.

Chairperson Colloton introduced Celeste Dixon, a private citizen to give her testimony. Ms. Dixon provided written copies of her testimony for the committee and staff, ([Attachment 10](#)). She stated that although she lives in Kansas, she is originally from Texas where her mother was murdered in a home robbery. At that time she was ok with the death penalty because the idea of a life for a life seemed fair. As the trial progressed she came to see the humanity in the defendant that shot her mother but she also came to understand the loss and pain that his execution would have on his family. When the trial was over and he was found guilty and sentenced to death this realization came to her when she saw the man's mother standing in the hallway outside the court room sobbing. She went on to say her family had just heard that the man that killed their mother would die, but this woman had just heard that her son was going to die. I did not feel a sense of closure after the man was executed and in the years following she has grown to oppose the death penalty.

Chairperson Colloton introduced Steven Becker, a retired District Court Judge, to give his testimony. Mr. Becker provided written copies of his testimony for the committee and staff, ([Attachment 11](#)). He stated he was a judge of the District Court in Reno County for 26 years. Most of his cases were criminal cases. He went on to say that in this environment of uncertainty and imperfection we impose the finality and irreversibility of the death penalty. As long as the death penalty is a part of our imperfect system, there will always be the unacceptable possibility of the execution of an innocent person. The entire judicial system struggles and conscientiously works toward minimizing this risk, but it cannot be eliminated. The experience of the risk, no matter how small, of executing an innocent person is unacceptable. In closing, he stated these are the reasons why he opposes the death penalty.

Chairperson Colloton introduced Reverend John D. Kriedler, Bishop's Associate, Central States Synod of Evangelical Lutheran Church of America. Reverend Kriedler provided written copies

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of his testimony for the committee and staff, ([Attachment 12](#)). He stated the Central States Synod of Evangelical Lutheran Church of America, and other communities of faith, recognize the responsibility of the state to protect its citizens, to maintain justice and to provide for public order. They also recognize that at times the state may feel there is need to take a life, but is not necessarily required. Taking a life may be the right of the state, but not necessarily the best means for fostering justice or public order. He went on to say that as people living in society, we are best served when they consistently choose for what will provide us opportunities to be better than we are. The death penalty is not such a case and there are other means of punishment available to the state. In closing, he stated they are opposed to the death penalty.

Chairperson Colloton introduced John Todd, a private citizen from Wichita. He has been involved in the grass-roots political process for many years, working as a volunteer coordinator with the Wichita Chapter for Americans for Prosperity. Mr. Todd provided written copies of his testimony for the committee and staff, ([Attachment 13](#)). Mr. Todd stated he is opposed to the death penalty. He went on to say the state legislature and court system should not be participating in “predetermined, state sponsored” murder that is not reversible in the event prosecutorial errors are made in our imperfect court system.

Chairperson Colloton introduced Carolyn Zimmerman to testify on behalf of Murder Victims’ Families for Reconciliation, (MVFR). Ms. Zimmerman provided written copies of her testimony for the committee and staff, ([Attachment 14](#)). She gave her story of her father being murdered and robbed several years ago and the killer/killers were never found. She went on to say it was an honor to speak on behalf of the MVFR and in the words of those who understand this plain fact: We cannot undo murder. But we can decide how we will spend the rest of our lives. In closing, she stated for her personally she believes the death penalty sows bad seeds and that is the way several other victims feel, also.

Chairperson Colloton called the committee’s attention to the “written only” testimony of those not in favor of the death penalty which are listed below:

- Donna Schnewwis, State Abolition Coordinator ([Attachment 15](#))
- Eddie Lowery, Exoneree from Kansas ([Attachment 16](#))
- Michael L. Birzer, Professor and Director of the School of Community Affairs, Wichita State University ([Attachment 17](#))
- Evangelical Lutheran Church of America ([Attachment 18](#))
- Kansas Coalition Against the Death Penalty ([Attachment 19](#))
- League of Women Voters ([Attachment 20](#))
- Paige Nichols, Kansas Association of Criminal Defense Lawyers ([Attachment 21](#))

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Chairperson Colloton moved the hearing those supporting the death penalty and introduced State Representative Greg Smith to give his testimony. Representative Smith provided written copies of his testimony for the committee and staff, ([Attachment 22](#)). He stated clearly the Founding Fathers of our country anticipated and found it normal to have capital punishment for certain crimes. It is not a constitutional issue and despite some stumbling over the years by the courts it is a legal punishment in the United States of America. He went on to say, some crimes are so heinous that no other penalty is warranted. The death penalty is a needed tool for the state. There is no credible evidence in Kansas that a death penalty case is too costly, or that innocent people have been either imprisoned or executed. The death penalty provides the state with a valuable tool to obtain information that can help the family of the victim and/or solve other crimes. In closing, he stated some crimes are so terrible that the only just punishment is death.

Chairperson Colloton introduced Missey Smith to give her testimony in support of the death penalty. Mrs. Smith provided written copies of her testimony for the committee and staff, ([Attachment 23](#)). Mrs. Smith stated she was the wife of State Representative Greg Smith and was there in support of their daughter, Kelsey. Kelsey was murdered and her killer was charged with capital punishment. She went on to say the state saves the death penalty for the worst of the worst. It is not used for the “accidental” murders. She told of a conversation with an FBI agenda and he told her that drug dealers will beat someone up but not shoot them because they don’t want to get the death penalty. In closing, she stated no one can guarantee that a murderer will not murder again and she supports having the death penalty in the state of Kansas.

Chairperson Colloton introduced Amy Hanley, Assistant General to give her testimony supporting the death penalty. Ms. Hanley provided written copies of her testimony for the committee and staff, ([Attachment 24](#)). Ms. Hanley stated she was the one that prosecuted the last death penalty case in Kansas. She went on to say, the death penalty is the appropriate penalty for the narrow class of heinous murderers subject to it. Specifically, it is only available for pre-meditated murders and requires an element beyond premeditation to be found. The Marsh Court found that the Kansas death penalty “rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination” in the *State v. Marsh*. In closing, she stated prosecutors approach these cases with consideration for what is right for the case, the victims, and the community. Ultimately, this issue is a matter of justice, of seeking the appropriate penalty for the crime. Kansas must ensure that justice is imposed for the heinous murders that qualify for the death penalty. Currently Kansas has nine murderers who are under the sentence of death. If the death penalty is abolished, the appropriate and just penalty to punish future murderers like these will no longer be available.

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Chairperson Colloton called the committee's attention to the "written only" testimony of the Kansas Attorney General, Derek Schmidt, who is in support of the death penalty, (Attachment 25).

Chairperson Colloton called for any others to speak. There were none so she closed the information hearing on the death penalty.

Next, the Chair moved the committee's attention to **SB 104-Driving under the influence**, and opened the floor for consideration. She recognized Jason Thompson, Office of the Revisor of Statutes, to explain an amendment submitted by Kyle Smith, Assistant Attorney General/Deputy Director, KBI, (Attachment 26). He stated the amendment would give the KBI authorization to adopt rules and regulations establishing: (a) Criteria for preliminary screening devices for testing saliva for law enforcement; (b) a list of preliminary screening devices which are approved for testing for saliva for law enforcement purposes and which law enforcement agencies may purchase and train officers to use as aids in determining probable cause to arrest and grounds for requiring testing.

A discussion followed.

Representative Wolf made a motion to add the \$250 back in the amount for each fine imposed for a violation of a city ordinance and it shall be remitted by the judge or clerk of the municipal court to the state treasurer and the state treasurer, upon receipt of the \$250 credit the entire amount to the community and corrections supervision. Representative Goodman seconded.

A discussion followed.

The Chair called for the motion on the floor. Motion carried.

The discussion continued.

Representative Brookens made a motion to move the effective date to January 1, 2013. Representative Moxley seconded.

The discussion continued with the Chair calling for a vote on the motion. Motion failed.

The discussion continued with the Representative Brookens making a motion to add making the payment of the evaluation fee to BIDS at the end of the judgment. Representative Wolf seconded. Motion carried.

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Representative Goodman made a motion to amend HB 2506–Issuance of motorized bicycle licenses to habitual violators, into SB 104. Representative Moxley seconded. Motion carried.

The discussion continued and the changes offered by Ed Klumpp representing the Sheriff's Association, (Attachment 27) were discussed.

The discussion continued with Representative Wolf making a motion to make refusal of test the same as DUI penalties. Representative Brookens seconded. Motion carried.

The discussion continued and Chairperson Colloton called on Scott Schultz, Executive Director of the Kansas Sentencing Committee to review the bed impact statement on the DUI bill. (Attachment 28) Director Schultz stated the bill would have no impact on prison admission and prison bed need.

Representative Wolf made a motion to move SB 104 out favorably, as amended and as a substitute bill. Representative Cassidy seconded. Motion carried.

Chairperson Colloton opened the floor for consideration of **SB 46- Human trafficking; crimes of commercial sexual exploitation of a child, selling sexual relations, promoting the sale of sexual relations and buying sexual relations**, and called the committee's attention to a brief review of the bill. (Attachment 29)

A lengthy discussion followed with the Revisor noting some technical changes that needed to be made. He provided written copies of his technical amendment, (Attachment 30)

Representative Brookens moved to adopt the technical changes needed by the Revisor. Representative Moxley seconded. Motion carried.

The discussion followed with the Chair calling on Representative Brookens to review the changes that he and Heather Morgan from Youthville had worked regarding language clean-up that would ensure that the state does not jeopardize federal IV-E dollars related to the direct placement of youth in the custody of the Secretary of SRS, clarifying that Youth Residential Facilities are not secure settings appropriate for runners, and some friendly technical clean-up language.

Representative McCray made a motion to adopt the amendment of Youthville. Representative Kelly seconded. Motion carried.

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A lengthy discussion continued.

Representative McCray-Miller made a motion to move SB 46 out favorable as amended and as a substitute bill. Representative Cassidy seconded. Motion carried.

Next, the Chair moved the committee's attention to **SB 307- Sub for SB 307 - Lesser included crimes; felony murder** and called on Representative Brookens to explain the balloon amendment. (Attachment 31) Representative Brookens explained that the amendment was the language of **SB 305- Time for criminal trials; competency decision time not counted against the state**, which had been amended into **SB 307** and then stricken before **SB 307** was passed out of the committee. His amendment addresses the concerns the committee had with the language in **SB 305** deleting and adding language makes it an acceptable compromise for the language.

Representative Brookens made a motion to adopt his amendment. Representative Goodman seconded. Motion carried.

A discussion followed.

Representative Brookens made a motion to pass SB 307 out as amended for passage. Representative Kelly seconded. Motion carried.

Representative Smith made a motion to amend SB 368—Amending provisions regarding supervision of drug offenders, into the shell of SB 305.

Meeting adjourned at 3:00 PM with the next meeting scheduled for March 27, 2012 at 4:00 PM in room 144 S.

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