

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 10:30 A.M. on February 18, 2005, in Room 519-S of the Capitol.

All members were present except:

Dwayne Umbarger- 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 announced the first order of business would be to hear the Sub-Committee report from Senator Donovan.

Senator Donovan stated that the Sub-Committee was assigned to consider five bills:

SB 135 Cruelty to animals, certain crimes a felony

SB 136 Transfer of certain real property in Wyandotte County upon death of owner to certain heirs

SB 137 Deprivation of rights under color of law

SB 171 Elimination of out of home services for youth ages 16 and up

SB 179 Enhancing penalties for offenses against children

Senator Donovan stated that the Sub-Committee did not take up **SB 135**, so there was no recommendation on the bill. The Sub-Committee had no recommendation for action on **SB136** and **SB 137**.

Senator Donovan reported that **SB 171** took the most time to review, as there was a long list of opponents, including several judges who testified. Senator Donovan stated it was a \$3.8 million dollar budget saving maneuver to take 16 and 17 year olds out of home service programs. The Sub-Committee unanimously recommended that **SB 171** be tabled.

Senator Donovan stated that the Sub-Committee recommended that **SB 179** be passed. The bill addressed the crime of pornography in regards to what crimes may be charged for pornographic pictures and information stored on a computer hard drive.

Chairman Vratil stated that these bills would be considered for final action during the following week. The Chairman asked the committee to consider final action on **SB 24**.

Final Action:

SB 24 Enhancing penalties for offenses against children

Chairman Vratil stated that this was a Homeland Security bill dealing with confidentiality of security records and information. The bill also contains some cleanup language and reconciliation of three open records bills passed last year. Chairman Vratil handed out a balloon amendment which deleted all the open records amendments made last year and returned the statute to where it was at the end of the 2003 legislative session. (Attachment 1) The Chairman stated the legislature needed a clean starting place where the law was consistent and there was no confusion as to what the law was, so the legislature could deal with the open records amendments and the exceptions to the Open Records Act contained in **SB 34**, currently in the Elections and Local Government Committee. **SB 34** will be the vehicle for the Senate to make a determination as to what exceptions to the Open Records Act it wants to continue in effect after July 1, 2005. A motion was made to adopt the balloon amendment to **SB24**. Senator O'Connor moved, seconded by Senator Bruce, and the motion carried. A motion was made to recommend the bill favorably as amended.

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Senator O'Connor moved, seconded by Senator Goodwin, and the motion carried.

Chairman Vratil announced that regarding **SB 75**, the interested parties were working on compromise language and will have an agreement the first of the week, or will identify the one thing that they cannot agree upon. The Chairman stated the Committee would plan to take action on the bill next week.

Chairman Vratil asked the Committee to consider final action on **SB 82**.

Final Action:

SB 82 Previous sexual conduct of complaining witness in sex offense prosecutions not admissible in any court proceeding

Chairman Vratil stated that this was the bill commonly referred to as an extension of the Rape Shield law. Currently, Kansas has a Rape Shield law which precludes the admission of evidence of previous sexual conduct of a complaining witness to a jury, but that law does not cover any pre-trial hearings or any other court proceedings. This bill would expand the scope of the Rape Shield law to prohibit the admission of any evidence of prior sexual conduct of a complaining witness in any court proceedings, including pre-trial hearings and arraignments. A motion was made to recommend the bill favorably. Senator Goodwin moved, seconded by Senator Betts, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **SB 83**.

Final Action:

SB 83 Sexual battery; striking the spousal exemption

Chairman Vratil stated that currently there is a sexual battery statute which excludes a spouse as an offender and gives immunity to the spouse. The bill would exclude that language and also make a spouse subject to the sexual battery statute.

Senator O'Connor questioned whether touching, could be construed as sexual battery. Senator Bruce noted that K.S.A. 21-3518, aggravated sexual battery, is a very serious person felony, a level 5. If a spouse goes beyond the point of mere touching, than that behavior should be covered by other sexual and rape laws.

Senator Donovan asked about a bed space impact. Chairman Vratil stated that it was a Class A misdemeanor, which is a prison sentence of up to a year in the county jail. Senator Journey stated that if two people cohabit, they don't have the protection of the law, but bad behavior would be covered under other laws. Senator Donovan asked about common-law situations, which are covered with this bill.

Senator Goodwin asked whether any other states have enacted a statute similar to the proposed bill. Sandy Barnett, Director of the Kansas Coalition Against Sexual and Domestic Violence (KCADSV) and a guest in the meeting, stated that states call the issue by various labels, so it would be difficult to clearly answer. Ms. Grover, legal counsel for the KCADSV, and a guest in the meeting, stated that some states call it first, second, or third degree sexual assault. Senator Goodwin stated that her concern was intentional touching. Chairman Vratil stated that unless there were an overzealous prosecutor, there would not be a problem with normal touching.

A motion was made to table the bill. Senator Donovan moved, seconded by Senator Goodwin, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **SB 96**.

Final Action:

SB 96 Punitive damage awards; splitting awards

Chairman Vratil stated that the bill would give punitive damage awards to the state. Under current law, punitive damages go to the successful plaintiff.

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Senator O'Connor questioned whether there was a fiscal estimate of what revenue might be generated for the state if the bill were passed. Chairman Vratil suggested that the Committee review the information previously provided by the Kansas Trial Lawyers Association (KTLA). According to the KTLA, the recent punitive damage awards in Kansas were: \$75,001 in 2000; \$30,250 in 2001; \$170,000-\$180,000 in 2002.

Chairman Vratil stated that the bill was probably not intended to be a revenue generator. It was an issue of public policy. Senator Bruce stated that a plaintiff's attorney may not seek any punitive award for a client if there were no incentive for the plaintiff or attorney to seek the damages.

Chairman Vratil stated that some states have passed laws where at least a portion of the punitive damages goes to the state. However, he knew of no state where 100 percent of the damages went to the state.

Senator Allen noted that no proponents testified in support of the bill, and there was only one written testimony. Senator Allen stated she opposed the bill.

Senator Donovan asked for clarification: if an attorney did not ask for punitive damages, then a judge could not award damages. Chairman Vratil stated that under Kansas law, a plaintiff is prohibited from alleging a cause of action for punitive damages and requesting punitive damages in the filing of their original petition. The law requires, after discovery has been concluded, that a motion be filed with the court asking for an award of punitive damages. The plaintiff must satisfy certain statutory requirements in order to file the motion.

Senator Journey stated that punitive damages are only awarded in egregious cases where there was intentional and willful conduct that caused the injury. A motion was made to table the bill. Senator Journey moved, seconded by Senator Allen, and more discussion followed.

Senator Schmidt stated that part of the purpose of hearing the bill was to have this discussion. There is something of a disconnect with the general public's perception about what is happening with respect to punitive damage awards in Kansas and what the evidence shows. With regards to public policy, the punitive damage award is to punish wrongdoing, not to compensate or enrich either the plaintiff or the plaintiff's counsel.

Senator Journey withdrew his motion to table the bill and Senator Allen withdrew her second on the motion.

Senator Schmidt proposed two amendments to the bill. (Attachment 2). In the first amendment, the first sum amount of a punitive award up to \$15,000 would be paid to the plaintiff. There would be a second category of punitive award, between \$15,000 to \$50,000, which would be split between the plaintiff and the state. Senator Schmidt stated that the second proposed amendment could be considered in addition to or in lieu of the first proposed amendment. It required all of the punitive damage award to go to the injured party and none to the attorney fees.

Senator Bruce stated he is in support of punitive damages. He believes it is strong policy to give the plaintiff the award, as the plaintiff was the injured party and bears the court costs and attorney fees.

Senator Donovan stated the Committee should keep in mind that punitive awards kick in only after damage awards are made. Also, punitives do not change the damage award amount a plaintiff receives for personal injuries. It is a step above actual damages awarded and is intended to punish the individual or corporation, as the case may be.

Chairman Vratil stated that under Kansas law, one may insure for actual damages, but it is against public policy in this state to insure against punitive damages.

Senator O'Connor stated that if the law were passed with the second amendment proposed by Senator Schmidt, there would be no incentive for the lawyer to seek a punitive award if the injured party wanted to seek punitive damages. Chairman Vratil stated that if an attorney is working on an hourly basis, he could still be paid for his time.

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A motion was made to amend the bill to adopt the first proposed amendment offered by Senator Schmidt. Senator Schmidt moved, seconded by Senator Donovan, but the motion failed.

A motion was made to amend the bill with the second proposed amendment offered by Senator Schmidt. Senator Schmidt moved, but the motion failed for lack of a second.

A motion was made to table the bill. Senator Journey moved, seconded by Senator Haley, and the motion carried.

Chairman Vratil adjourned the meeting at 11:30 A.M. The next meeting is scheduled for February 21, 2005.