

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:32 a.m. on January 22, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Derek Schmidt - excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes

Doug Taylor, Office of the Revisor of Statutes

Jerry Donaldson, Kansas Legislative Research Department

Athena Andaya, Kansas Legislative Research Department

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Jim Bush, Kansas Judicial Council, Probate Advisory Committee

Jennifer Roth, Kansas Association of Criminal Defense Lawyers

Jerry Gorman, Wyandotte Co. District Attorney, Kansas Co. & District Attorney's Assn.

Ed Klumpp, Kansas Chief's of Police and Kansas Peace Officers Assn.

Others attending:

See attached list.

Bill Introductions

Judge Phil Journey requested the introduction of two bills. The first would provide for a procedure to obtain a restricted driver's license while suspended for failure to comply with a traffic citation or court-ordered fine or restitution. The second bill concerns driver improvement clinics, fees, and the disposition of funds. The bills were introduced without objection.

Debbie Holyroid, Alzheimer's Association, requested the introduction of a bill that create the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The bill was introduced without objection.

Senator Owens alerted the committee members to written testimony in opposition to **SB 17** from Jennifer Roth, Kansas Association of Criminal Defense Lawyers. (Attachment 1)

The Chairman opened the hearing on **SB 34 - Continuation of certain exceptions to disclosure under the open records act.**

Written testimony in support of **SB 34** was submitted by:

Eric Sartorius, City of Overland Park, Kansas (Attachment 2)

There being no other conferees, the hearing on **SB 34** was closed.

The Chairman opened the hearing on **SB 45 - Kansas power of attorney act amendments.**

Jim Bush appeared in support indicating **SB 45** would make several amendments to the Kansas Power of Attorney Act. Specifically it would:

- authorize a physically unable but mentally competent person the ability to appoint a designated adult,
- requires the attorney to maintain all receipts, disbursements, and account for all transactions, and
- define the process for modifying or terminating the fiduciary relationship by the principal. (Attachment 3)

There being no other conferees, the hearing on **SB 45** was closed.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:32 a.m. on January 22, 2009, in Room 545-N of the Capitol.

Chairman Owens opened the hearing on **SB 17 - Videotaping felony interrogations**. Jason Thompson, staff revisor, reviewed the bill.

Senator David Haley spoke in support as sponsor of the bill. The bill would require all interrogations in which a felony crime has been or will be charged to be videotaped. Senator Haley stated the bill is intended to protect law enforcement as well as the general public by providing an inexpensive and unbiased record of interrogations. (Attachment 4)

Jennifer Roth testified in support indicating the bill has several positive aspects such as:

- the ability to prevent and/or disprove allegations of police misconduct,
- insure that exculpatory statements are accurately documented,
- will temper the influence of false confessions,
- prosecutors would be allowed to admit recordings at trial, and
- will allow judges to make rulings based on neutral accountings. (Attachment 5)

Jerry Gorman testified in opposition stating **SB 17** presents several issues of concern to prosecutors. Of foremost concern is that the bill creates an additional hurdle to prosecution that is not constitutionally mandated. In addition, the bill may have the unintended effect of punishing law enforcement for conduct beyond their control by creating a presumption of inadmissibility where no wrongful conduct occurred. Operator errors, power failures, economic limitations or geographic limitations may prohibit an otherwise admissible statement from being used as evidence. Mr. Gorman feels the present law need not be changed. (Attachment 6)

Ed Klumpp spoke against **SB 17** presenting several concerns. The bill would eliminate the use at trial of information obtained outside of a taped interrogation, has no provision for technical malfunctions of equipment, contains no provisions for interrogations in the field, lacks adequate definitions regarding key words and may be cost prohibitive for some agencies. In addition, Mr. Klumpp feels the requirement to videotape every felony interrogation is too broad of an application. The intended good of **SB 17** is far outweighed by the unintended problems the bill will create. (Attachment 7)

Written testimony in support of **SB 17** was submitted by:

Stephen Saloom, Policy Director, Innocence Project (Attachment 8)

Neutral written testimony was submitted on **SB 17** was submitted by:

Roger Werholtz, Secretary, Department of Corrections (Attachment 9)

There being no further conferees, the hearing on **SB 17** was closed.

The next meeting is scheduled for January 23, 2009.

The meeting was adjourned at 10:30 a.m.