

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Thursday, March 18, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley - Arrived 9:58  
Senator Derek Schmidt - Arrived 9:43  
Senator Edward Pugh - Arrived 9:41  
Senator Lana Oleen - Arrived 9:40  
Senator Les Donovan - Arrived 9:36

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor Statutes  
Helen Pedigo, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Jim Edwards, Kansas Association of School Boards and Kansas National Education Association  
Judy Moler, Kansas Association of Counties  
Kim Gulley, League of Kansas Municipalities  
Rick Thames, Kansas Press Association  
Terry Forsyth, Kansas National Education Association  
Harriett Lange, Kansas Association of Broadcasters  
Phill Kline, Attorney General (letter of support)  
Mary Prewitt, Chief Legal Council, Kansas Board of Regents  
Representative Janice Pauls  
Judge Ernie Johnson, Wyandotte District Court  
Kyle Smith, Kansas Bureau of Investigation  
Keith Schroeder, Reno County District Attorney  
Tim Madden, Department of Corrections  
Stuart Little, Kansas Community Corrections Association

Others attending: See attached list.

### **HB 2889 - KORA; records not required to be open**

Chairman Vratil opened the hearing on **HB 2889**. Jim Edwards, Kansas Association of School Boards and Kansas National Education Association (KNEA), testified in support of the proposed legislation. He explained that the bill that amends and extends exceptions included in the Kansas Open Records Act (KORA). He said the bill was worked on by parties the Interim Committee on Local Government last summer. The proposed bill is the result of the work of interested parties drafting changes to make available information that the parties believe should be made public while protecting the personal privacy of individuals. ([Attachment 1](#))

Judy Moler, Kansas Association of Counties, appeared before the Committee to speak in favor of **HB 2889**. Kansas Association of Counties supports the compromise language contained in the bill, but reserves the right to oppose any amendments offered to the bill. ([Attachment 2](#))

Kim Gulley, League of Kansas Municipalities (LKM), spoke in support of the bill. She said that **HB 2889** reflected a great deal of work and compromise regarding the KORA exemptions. ([Attachment 3](#))

Rick Thames, Kansas Press Association, testified in favor of **HB 2889**. The Kansas Press Association wholeheartedly supported the review and was committed to working with all parties to keep Kansas government as open as possible for all citizens. ([Attachment 4](#))

Terry Forsyth, Kansas National Education Association (KNEA), spoke in support of the proposed bill. He said the bill represented a compromise by a wide variety of groupson recommended changes to the

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KORA. ([Attachment 5](#))

Harriet Lange, Kansas Association of Broadcasters, testified in support of **HB 2889**. All the exceptions to open records in Kansas statutes are scheduled to sunset in July 1, 2005. She stated that **HB 2889** represents a positive step in reaching agreement on revisions to KORA. ([Attachment 6](#))

Attorney General, Phill Kline, submitted a letter of support of **HB 2889**. ([Attachment 7](#))

Mary Prewitt, Kansas Board of Regents, testified as a neutral conferee on **HB 2889**. She intended to inform the Committee of some concerns expressed by those at the state universities who deal with provisions of the Open Records Act on a regular basis. The state universities are concerned about the effect of opening to public scrutiny all agreements concerning state employees. She explained that the proposed amendment to subsection (a)(4) of KSA 45-221, found on page 1, line 30 of the bill, could be construed to open disciplinary records, performance agreements or similar information not currently open to public disclosure. Ms. Prewitt commented that with the addition of the "agreements" language, the entire document is subject to disclosure. It gives potential litigants and their attorneys information on the "value" of particular kinds of suits and may encourage litigation.

Ms. Prewitt testified that there is little public policy justification for disclosing employment compensation that is derived from private sources. She suggested that it would be helpful to agencies charged with interpreting the law to have a definition for the term "actual compensation". She referenced the current legal action pending involving provisions of KORA where "The Lawrence Journal World" sued the University of Kansas for disclosure of the terms of its contract with the new Athletic Director. She stated that in keeping with the longstanding practice of the Legislature, it would be most appropriate for the body to defer action on this amendment until the litigation was resolved. Ms. Prewitt enclosed with her written testimony copies of correspondence from the General Counsels to the University of Kansas, Kansas State University and Wichita State University provided by Reginald Robinson, President and CEO, of the Kansas Board of Regents. ([Attachment 8](#))

Following Committee questions and discussion, the Chairman closed the hearing on **HB 2889**.

### **HB 2869 - Preliminary examinations, admissibility of field tests for controlled substances**

Chairman Vratil opened the hearing on **HB 2869**. Representative Janice Pauls testified in support of the proposed legislation. Physical evidence accompanied by a completed evidence custody receipt showing such evidence continually in possession of law enforcement should be allowed into evidence at a preliminary hearing. It should be treated as if everyone in the chain of custody had testified in person. She explained that a preliminary exam is not required constitutionally, so the same constitutional protections do not apply at a trial. ([Attachment 9](#))

Judge Ernest Johnson, Wyandotte District Court, testified in favor of **HB 2869**. He explained that the bill relaxes, in a very specific area, the rules of evidence as applied by the court at a preliminary hearing. To bind a defendant charged with a felony over for trial, the State's evidence must be sufficient to demonstrate that the court has probable cause to believe a felony was committed by the defendant. He said this change in the statutes was needed because of the explosion in the number of drug cases in Kansas. In addition there has been a substantial law enforcement-related response by drug-testing companies in the last 20 years. This change is a legitimate legislative attempt to make more efficient the administration of justice. He attached to his submitted written testimony a proposed draft of alternative language. ([Attachment 10](#))

Chairman Vratil asked Judge Johnson if he wanted the Committee to consider the attached draft of alternative language which would replace sub-section (a) of the bill as requested by Representative Loyd. Judge Johnson answered "yes" if it did not conflict with the Kansas Bureau of Investigation's desires.

Kyle Smith, Kansas Bureau of Investigation, spoke in favor of **HB 2869** which he said saved money and time. He stated the system occasionally is abused and precious court time, attorney time, officer time, and forensic scientist's time is wasted on details that aren't really necessary. A preliminary hearing was not a constitutional right, but an additional process created by the Legislature and so the rules involved

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can be set by the Legislature. ([Attachment 11](#))

Keith Schroeder, Reno County District Attorney and on behalf of the Kansas County and District Attorneys Association, testified in support of **HB 2869**. The number of cases filed on adult criminal matters has doubled in Reno County over the past 15 years, and the number of drug related prosecutions has doubled over the past 5 years. Mr. Schroeder said that the amendments to **HB 2869** by the House permit an evidence custody receipt to be admitted as hearsay evidence at a preliminary hearing without requiring an evidence custodian or business records custodian to lay a foundation for its admission. ([Attachment 12](#))

Chairman Vratil closed the hearing on **HB 2869**.

**HB 2638 - Amendments to the community corrections act**

Chairman Vratil opened the hearing on **HB 2638**. Tim Madden, representing Secretary of Corrections, Roger Werholtz, testified in support of the proposed legislation. Secretary Werholtz submitted written testimony urging favorable consideration on **HB 2638**. Mr. Madden explained that this bill reinstates an eligibility criterion for community corrections placement repealed pursuant to passage of SB 123 last session, codifies a limitation of the use of community corrections grant funds to programs that relate to the criminogenic aspects of an offender, requires the community corrections advisory committee to recommend performance indicators and measurable objects for community corrections programs; extends to July 1, 2006, the Johnson County Community Corrections pilot program for community placement criteria pursuant to the District Court Rules of the 10<sup>th</sup> Judicial District, and emphasizes the role of counties in the supervision of their community corrections programs. ([Attachment 13](#))

Stuart Little, Kansas Community Corrections Association, spoke in support of **HB 2638**. He said that this bill would clarify the duties of community corrections agencies to include substance abuse and mental health services, as well as employment and residential services. He added the changes would also bring in line the definition of the community corrections population to include SB 123 offenders. ([Attachment 14](#))

Committee members were given copies of a statement of support from Patricia Biggs, Executive Director, Kansas Sentencing Commission. ([Attachment 15](#))

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is Friday, March 19, 2003.