

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:37 a.m. on March 3, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Tom Bartee, Kansas Association of Criminal Defense Lawyers
Kathy Porter, Office of Judicial Administration
Michelle Sweeney, Assoc. Community Mental Health Centers
John House, Staff Attorney, SRS
Rick Cagan, National Alliance on Mental Illness

Others attending:

See attached list.

The Chairman reopened the hearing on **SB 272 - Incompetent to stand trial; commitment, release procedures.**

Tom Bartee testified in opposition stating concerns that the bill may be unconstitutional. As written, the bill would subject incompetent defendants to burdensome release standards which could result in life-long commitments. A decision by the United States Supreme Court in *Jackson v. Indiana* barred the indefinite commitment of incompetent criminal defendants solely on the basis of their continued incompetence. Other decisions have found it is unconstitutional for a State to require an involuntarily committed person to bear the burden of proving that he is not a danger. Mr. Bartee feels enactment of **SB 272** would violate these decisions and would render unconstitutional our statutes governing the commitment and release of incompetent defendants. (Attachment 1)

Kathy Porter appeared in opposition requesting a change in language requiring hearings "at the institution." This requirement would be extremely costly and significantly reduce courtroom time for judges. Ms. Porter provided a proposed amendment where hearings could be conducted at the institution or by means of video telecommunications at the discretion of the trial court. (Attachment 2)

Michelle Sweeney spoke in opposition stating **SB 272** would significantly increase the time that an incompetent individual would be institutionalized. The bill would codify the inhuman treatment of individuals suffering from mental illness, dramatically increase costs to the State, and may be found unconstitutional. (Attachment 3)

John House spoke in opposition indicating several assumptions are made in **SB 272** including:

- the assumption that incompetency equates mental illness with dangerousness,
- the assumption that extended commitment equates a greater likelihood of restored competency,
- and the assumption that a state psychiatric institution is appropriate for indefinite detention.

The effects of these assumptions creates a new standard for initial and continued commitment of individuals without a determination of guilt at a significant cost to the State. Mr. House stated he is concerned the assumptions built into the bill would invite a strong challenge to the law on constitutional grounds. (Attachment 4)

Rick Cagan appeared in opposition stating **SB 272** represents bad public policy and ignores Supreme Court decisions regarding the indefinite commitment of persons deemed not competent to stand trial. Mr. Cagan recommended a program modeled on one from Oregon which may be a more appropriate solution to protecting public safety while fostering rehabilitation and recovery. (Attachment 5)

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on March 3, 2009, in Room 545-N of the Capitol.

There being no further conferees, members of the Committee posed questions to the conferees. Senator Bruce acknowledged the current system of involuntary commitment due to one's incompetency to stand trial needs to be improved to protect the public. Senator Bruce expressed a willingness to work with conferees opposed to **SB 272** to provide necessary changes to pass constitutionality. Tom Barte indicated he would assist Senator Bruce with this endeavor.

The hearing on **SB 272** was closed.

The Chairman called for final action on **SB 277 - Funding the recodification commission from judicial council funds; judicial performance commission not required to evaluate retired senior judges.**

Senator Donovan moved, Senator Schodorf seconded, to recommend SB 277 favorably for passage. Motion carried.

The Chairman called for final action on **SB 278 - Creating the Kansas highway safety commission; penalties for driving under the influence; district magistrate judge jurisdiction for DUI cases.**

Jason Thompson, staff revisor, distributed and reviewed a draft substitute. (Attachment 6)

Senator Schmidt moved, Senator Lynn seconded, to amend SB 278 by striking all language and substituting the language contained in the distributed substitute. Motion carried.

A proposed amendment to the substitute bill was distributed. (Attachment 7)

Senator Schmidt moved, Senator Bruce seconded, to amend Sub SB 278 as proposed in the distributed amendment. Motion carried.

Senator Schmidt distributed a proposed balloon amendment of **SB 157 - Driver improvement clinics, fees, disposition thereof; correctional services special revenue fund.** (Attachment 8)

Senator Schmidt moved, Senator Haley seconded, to amend Sub SB 278 by inserting the language found in the balloon version of SB 157. Motion carried.

Senator Schodorf moved, Senator Lynn seconded, to recommend Sub SB 278 as amended, favorably for passage. Motion carried.

The next meeting is scheduled for March 4, 2009.

The meeting was adjourned at 10:28 a.m.