

Approved: July 13, 2012

(Date)

## **MINUTES OF THE HOUSE JUDICIARY COMMITTEE**

The meeting was called to order by Vice-Chairperson Patton at 3:30 p.m. Wednesday, March 7, 2012 in 346-S of the Capitol.

All members were present except:

Mitch Holmes  
Rob Bruchman  
Gene Suellentrop  
Lance Kinzer

Committee staff present:

Katherine McBride, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Senator Oletha Faust-Goudeau  
Wendell Turner, Speaker, Kansas Silver Haired Legislature and Grandparent  
Jim Synder, Speaker Pro Tem, Kansas Silver Haired Legislature  
Ellen Ryan Johnson County, KS  
Dona Booe, President/CEO, Kansas Children's Service League  
Heather Morgan, United Methodists Youthville Child Welfare Services  
Ronald Nelson, PA, Shawnee Mission, KS  
Ed Klumpp, Representing Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association  
Ron Miller, Chief of Police, Topeka, Police Department  
Senator David Haley  
Kirk Ridgway, Kansas Sheriffs Association  
Brady Keith, Credit Management Services  
Mark Kahrs, Kansas Credit Attorneys Association  
Cynthia Smith, Sisters of Charity of Leavenworth Health System

Others in attendance:

See attached.

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Vice-Chairman Patton opened the hearing on **SB 262–Grandparent custody, visitation and residency**. Katherine McBride provided an overview of the bill content.

Senator Oletha Faust-Goudeau testified in support of **SB 262** stating she was pleased to introduce this legislation at the request of the Kansas Silver Haired Legislature. The bill strengthens the legislation that Governor Brownback has already signed into law. (Attachment 1)

Wendell Turner testified in support of **SB 262** advising he served as Speaker of the Kansas Silver Haired Legislature. He shared the budget for foster care is a challenge, as it costs over \$26,000 to keep a child in foster care. Grandparents work cheaper than foster parents, and most would pay for the privilege of taking care of their grandchildren rather than see them placed in a foster home. Mr. Turner told the true story of what happened to their grandchildren on May 4, 2007, the same evening as the Greensburg tornado. Social and Rehabilitation Services and the Wichita police took their grandsons, Barry and Troy, into protective custody of a caseworker affiliated with Youthville. The grandparents assumed they would be given temporary custody of the boys, but that was not the case. Eventually, the judge was going to place the boys into the foster care of one of Barry's 6<sup>th</sup> grade teachers. The grandparents got a lawyer and adamantly objected and the teacher withdrew from the arrangement. Mr. Turner noted he had provided a handout to the Committee members that pictures the teacher in the top right. He currently resides in the Cowley County jail awaiting trial for child molestation. That is the person Youthville picked to take care of his grandchildren over his wife and him. After spending several thousand dollars from their retirement fund on a lawyer, the boys came to live with them for 10 months. Youthville recommended they be sent back to the place they were taken from in conditions just as bad as they were removed from. Throughout this entire scenario, they, as the grandparents, were never allowed to speak in court and their lawyer was never allowed to attend the backroom meetings where they decided what to do with the boys. He urged passage of this bill to give grandparents the right to be considered in placement of children who are taken into protective custody. (Attachment 2)

Ellen Ryan testified in support of **SB 262** stating she was a resident of Johnson County, Kansas, a grandmother, retired Kansas family law attorney and recent “survivor” of a grandparent visitation case. The common thread of grandparent cases is about the constant worry about vulnerable children who do not have a voice of their own. According to the 2010 U.S. Census report, 7.5 million children now live with a grandparent. Common sense should tell us our laws should recognize this new reality and encourage the role of grandparents. It is not in the interests of the children or the State to minimize or dismiss grandparents as an important resource for at-risk children. She urged the Committee to support **SB 262**. (Attachment 3)

Jim Snyder testified in support of **SB 262** advising he served as Speaker Pro Tem for the Kansas Silver Haired Legislature. He favored passage of the bill for two reasons. The first is to

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keep families together and secondly, to provide a method by which the number of children in Foster Care is reduced for the benefit of both the child and the Kansas taxpayer. His written testimony includes an article from the Topeka Capital-Journal from November 7, 2011, which cites there are more than 5,200 children in foster care. (Attachment 4)

Dona Booe testified in support of **SB 262** advising the Kansas Children's Service League mission is "to promote the well-being of children." They are a licensed child-placing agency and provide resource family homes and private adoption services. When she testified in the Senate she expressed concern that the bill's original language could have resulted in unintended negative consequences in some private adoptions. They offered a friendly amendment to address that concern, and the amendment has been included in the version adopted by the House in Section 1 (4) (c). They now fully support **SB 262**. (Attachment 5)

Heather Morgan testified in support of **SB 262** stating K.S.A. 38-2255 requires the court, when a child found to be a child in need of care, to enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties. K.S.A. 38-2270 and 38-2272 outline the procedures for determining adoptive or permanent custodian resources for the child once parental rights have been terminated by the court. While relatives currently receive preference from the court when determining what is in the best interest of the child, **SB 262** as amended would strengthen the requirement as it relates to grandparents and require them to specifically receive consideration as a placement alternative and resource when determining custody, residency, and visitation for their grandchildren. (Attachment 6)

Ronald Nelson testified in opposition to **SB 262** stating he has practiced family law for over 25 years and the focus of his practice is on complex issues in family law. In Mr. Nelson's opinion, the bill, as written, would not do what its supporters desire and would give grandparents false hope that they will receive some consideration they would not already receive. He urged the committee to not approve this bill or to refer it to the Judicial Council for further study. (Attachment 7)

Vice-Chairman Patton closed the hearing on **SB 262** and opened the hearing on **Sub SB 282—Forfeiture, fleeing or eluding law enforcement.**

Senator David Haley testified as a neutral on **Sub SB 282** stating he is the ranking Minority member on the Senate Judiciary Committee and is appearing hear today because he believes the underlying bill makes sense and could produce a sound public policy in an effort to reduce car chases initiated by law enforcement. (Attachment 8) The Senate passed this bill with only one "No" vote, which was his. His concerns were presented during general orders before the Senate's Committee of the Whole but were not adopted. He is having two balloon amendments handed out he would like the Committee to consider that would define a distance in statute

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for “felony eluding” as failure to stop within one-half of a mile or more from first warning-sight and/or sound by initiating law enforcement, and designate all financial proceeds from the forfeited vehicles to the Crime Victim’s Fund or some other service oriented state generated fund. (Attachment 9)

Ed Klumpp testified in support of **Sub SB 282** stating what is proposed in this bill is an additional tool to discourage the violator from choosing to place the public at risk by attempting to elude an officer. A couple of years ago we amended the eluding act. That went into effect on July 1, 2009 and we saw a 17.6 percent drop. In 2010, it dropped by 40.2 percent. It did have a dramatic effect, as the 2010 level was the lowest since 2000. It is fashioned after a statute enacted in North Carolina. We are hoping this new forfeiture provision will deter attempt to elude cases, resulting in fewer offenses and thus fewer persons sentenced to prison and jail. More importantly, it is our hope it will result in a safer Kansas and reduce the damage and injury inflicted by these violators. We strongly urge passage of this bill as amended. (Attachment 10)

Chief Ron Miller testified in support of **Sub SB 282** advising vehicle pursuits do continue to occur at unacceptable rates across the nation and in Kansas. It is the decision of the violator to elude the pursuit. These violators show no regard for citizens and generally end up crashing his car. As far as putting a limit on distance that shows eluding, a half-mile distance on a Kansas interstate fleeing at 120 miles per hour is only 15 seconds of time. In the city, that same speed would not happen. A quarter mile distance is problematic, as a driver who drives up to a quarter mile will usually jump out of the car and abandon it. The distance is purposefully left out, but there are elements that identify to the arresting officer what is happening. Chief Miller agreed forfeiture of the vehicle is a good thing, but the funding only is an issue once the lien holders and are made whole. He supports passage of the bill as amended. (Attachment 11)

Vice-Chairman Patton closed the hearing on **Sub SB 282** and opened the hearing on **Sub SB 283–Sheriffs, civil process fees**. Jason Thompson provided an overview of the bill content. Jason clarified only one fee is collected even if subsequent trips needs to be made, the collection fee is still only \$15.

Kirk Ridgeway testified in support of **Sub SB 283** stating he encourages passage of the bill as amended on behalf of the Kansas Sheriff’s Association. The bill amends current law K.S.A. 28-110, which provides a fee of only \$5 for serving, or attempting to serve, each civil process. Our research shows the average cost for serving process in Kansas in 2011 averages out to be between \$25 and \$30 per attempt- far above the current fee being collected. This shortfall is being paid for by taxpayers, who are forced to subsidize all civil litigation in their county. Kansas is significantly lower compared to what surrounding states charge. Oklahoma charges \$50 per process, Colorado \$20 to \$160, and Missouri \$30 to \$50 plus mileage. The private sector

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charges \$50 to \$60 for up to four to five attempts to serve process. An increase in the statutory civil process fee to \$15 will help shift the burden from county taxpayers to the individuals, businesses, and private corporations who file suit and will help ease the enormous fiscal burdens on county governments throughout Kansas. (Attachment 12)

Sgt. Gary Farthing testified in support of **Sub SB 283** advising he has served as the Supervisor over the Civil Section in the Sedgwick County Sheriff's Office for the last four years and works on a day-in day-out basis with the issue addressed in this bill. This bill, which we are strongly supporting, would put us more in line with what it costs to provide service. He has watched our requests for civil servings maintain a level of about 100,000 servings per year. Economic difficulties have taken a toll on the state, and that includes Sedgwick County. The budgeted shortfalls have created losses in many areas including my own section; where once there were four commissioned and ten civilian deputies, we are down to three commissioned and eight civilian deputies. Our county is facing a \$9.3 million dollar deficit for 2013, which may create more losses as they try to figure out what they are going to be doing and taking away. However, the requests we receive for service are not decreasing. This bill, if passed, would put us more in line with all of the surrounding states and what they charge to serve process. More than that, it would put us more in line with what it really costs to provide the service. It would also shift the burden of this cost to those who are involved with these litigations and not the taxpayers. (Attachment 13)

Vice-Chairman Patton advised the Committee there is written testimony in support of **Sub SB 283** from Lieutenant Rick Newson, Johnson County Sheriff's Office (Attachment 14), Sergeant Bill Carr, Ford County Sheriff's Office (Attachment 15), and Nathan Eberline, Kansas Association of Counties (Attachment 16).

Brady Keith testified in opposition to **Sub SB 283** stating he is representing Credit Management Services in his capacity as Assistant General Counsel. Credit Management Services provides collections for medical services providers, banks, and other businesses across the state of Kansas. In doing so, Credit Management files many limited actions civil lawsuits each month in Kansas, and thus incurs costs associated with serving process upon defendants. This bill proposes to increase Kansas sheriffs' costs for serving process fees by 200 to 1400 percent, depending on the type of process being served. The proposed fee creates a potential windfall for sheriffs at the expense of litigants, including Kansas businesses and consumers. (Attachment 17)

Mark Kahrs testified in opposition to **Sub SB 283** stating he represents the Kansas Credit Attorneys Association. We represent businesses, small businesses, and particular individuals collecting debt accounts in the state of Kansas. Ensuring efficiency of the Kansas courts system and access for citizens to its remedies is of utmost importance and requires careful balance of

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competing interests and unintended consequences of any shifts in process. To that end, we propose leaving the entirety of K.S.A. 28-110 whole and intact as presently written, changing only the number for service set at \$5.00 (line 15 of **Sub SB 283**) and we recommend an increase of 100% to \$10.00 is fair and will cause the least harm to limited action filers. One of our concerns is confusion over whether there are additional charges for things such as attempts to serve process. Considerable effort could be expended to reshape Sub SB 283 to amend out contradictions. Attached to the written testimony is a proposed amendment submitted by the Kansas Credit Attorneys Association for your consideration. (Attachment 18)

Cynthia Smith testified in opposition to **Sub SB 283** stating she is Advocacy Counsel for Sisters of Charity of Leavenworth (SCL) Health System and they are opposed to the passage of this bill. SCL Health System has three hospitals in Kansas: St. Francis Health Center in Topeka, Providence Medical Center in Kansas City, and Saint John Hospital in Leavenworth. As good stewards of our resources, we have a responsibility to try and collect on medical bills that are not paid despite an abundance of opportunities for financial assistance. Unfortunately, hospitals must sometimes resort to legal action in order to collect on these bad debts. **Sub SB 283** would increase costs for collecting on bad debts for St. Francis Health Center- one hospital- by about \$94,000. We urge the Committee to reject Sub SB 283 and not build the sheriffs' budgets on the backs of our community hospitals. (Attachment 19)

Vice-Chairman Patton noted there is written testimony in opposition to **Sub SB 283** submitted by Chad Austin, Kansas Hospital Association. (Attachment 20)

Vice-Chairman Patton closed the hearing on **Sub SB 283**.

The next hearing is scheduled for March 8, 2012.

The hearing was adjourned at 5:17 p.m.