

Approved: May 11, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:35 PM on Wednesday, February 8, 2012 in 346-S of the Capitol.

All members were present.

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:

Representative Mike O'Neal, Speaker of the House of Representatives
Vicky Roper, Director of the Kansas Chapter of Child Abuse America, Kansas
Children's Service League
Kerry Cosgrove, Children's Advocacy Centers
Representative Jim Ward
Patricia Michaelis, Director, State Archives, Kansas State Historical Society
Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association,
Kansas Peace Officers Association
Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber
Chris Appel, Attorney- Shook, Hardy & Bacon L.L.P.
Callie Jill Denton, Director of Public Policy, Kansas Association For Justice

Others in attendance:

See attached.

Chairman Kinzer announced the Committee will not be taking final action on any bills today, but at the Committee meeting on February 9th, he plans to take final action on **HB 2207** and **HB 2313**. On February 13th, he plans to take final action on **HB 2482**, **HB 2483** and **HB 2530**.

Chairman Kinzer opened the meeting **on HB 2533—Amending requirements and penalties for failure to report suspected child abuse**. Katherine McBride provided an overview of the contents of the bill.

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Representative Mike O'Neal testified in support of **HB 2533** and stated if he sees an incident which happens nationally, it has been his policy to think about if the incident had happened in Kansas, would there be appropriate statutes in place to properly deal with the situation. This bill developed as a result of the situation in 2011 where former Penn State University football coach, Jerry Sandusky, was allegedly observed sexually assaulting and inappropriately interacting with underage boys on university property. After the initial allegation occurred, a subsequent investigation revealed eyewitness accounts of abuse, which were not reported to the university or law enforcement authorities. Representative O'Neal contacted the Revisor's Office and asked for a review of Kansas statutes to determine, in light of the Penn State incident, if there are adequate laws and mandatory reporting requirements on incidents and if not, which statutes should be considered in a first draft of legislation. The bill would amend current law to add adults who have authority over children to report cases of abuse. (Attachment 1)

Representative O'Neal advised although no one is present from the Kansas Board of Regents to testify, they have a balloon amendment to offer on **HB 2533**, which he has a copy of, and knows they had a concern that the bill might be too broad. Representative O'Neal provided his copy of the balloon for the revisor staff to review. (Attachment 2)

Vicky Roper testified in support of **HB 2533**, stating the Kansas Children's Service League (KCSL) mission is to protect and promote the well-being of Kansas children. As Director of the Kansas chapter of Prevent Child Abuse America (PCAA), she serves as policy director for Child Abuse Prevention at KCSL and for PCAA. KCSL and PCAA work collaboratively with the Kansas Department of Social and Rehabilitation Services (SRS) to produce A Guide to Reporting Child Abuse and Neglect in Kansas and with a variety of other partners such as Kansas Department of Health and Environment, Kansas State Department of Education, the Child Advocacy Centers, and law enforcement throughout the state. KCSL also coordinates a statewide Parent Helpline. The amendments will help ensure those who have contact with a child or have any authority over a child because of their position are held accountable for their actions or inactions as they relate to reporting possible child abuse and neglect. KCSL also would like to see all employees of SRS and Juvenile Justice Authority included in the group being held accountable and recommended language be included to address this. Additionally, KCSL recommends mandated reporters should have training to help them recognize the signs and symptoms of abuse and neglect. (Attachment 3)

Kerry Cosgrove testified in support of **HB 2533** stating the network of Children's Advocacy Centers (CACs) work with SRS and law enforcement agencies in more than 50 counties to coordinate joint, child-abuse investigations, forensic interviews of child victims, immediate medical and mental health treatment, and family and victim advocacy and support. Their abilities to serve abused children with their coordinated, efficient, and child-centered response is

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dependent on identification and reporting of suspected child abuse to the appropriate authorities. While CACs support the reporting of suspected child maltreatment, they ask for several things to be implemented with the bill: training for reporters, a system capacity to handle those reports, and clarification about reporting a child in immediate danger or threat of harm. ([Attachment 4](#))

Chairman Kinzer directed the Committee's attention to written testimony in support of **HB 2533** from Gina Meier-Hummel. ([Attachment 5](#))

Chairman Kinzer directed the Committee's attention to written neutral testimony on **HB 2533** from Joyce Grover. ([Attachment 6](#))

Chairman Kinzer directed the Committee's attention to written testimony in opposition of **HB 2533** from David Schauner. ([Attachment 7](#))

Chairman Kinzer closed the hearing on **HB 2533** and opened the hearing on **HB 2549—Preservation of government records by public officials, including e-mail and texting**. Katherine McBride provided an overview of the contents of the bill.

Representative Jim Ward testified in support of **HB 2549** stating the purpose of the bill is to say state agencies are required to preserve records. The bill updates the language to include modern technology such as e-mail, text messages, and other electronic records that have enduring value. ([Attachment 8](#))

Patricia Michaelis testified in support of **HB 2549** advising there is a State Records Board, chaired by a representative of the state Attorney General's office, that creates retention and disposition schedules for all of the records of state government. The Board determines how long records should be kept before being destroyed and whether there are any legal access restrictions pertaining to certain records. The State Historical Society is the keeper of the state's long-term records and has been concerned about preserving electronic records for some time. In response to the challenge, the Historical Society has joined with the chief information technology officers of all three branches of state government on a project called KEEP (Kansas Enterprise Electronic Preservation) to find a cost-effective way to preserve the state's long-term records. **HB 2549** clarifies record preservation laws apply to electronic records created and received by executive branch employees and specifically includes e-mail and texting. The State Historical Society shared several concerns about the bill including defining a "public official," preserving e-mail and texts in a state electronic filing system, and refining the phrase in New Section 6 of "all elected government officials," as the Records Board has not had scheduling authority for elected government officials except for those in the executive branch of state government and in county governments. ([Attachment 9](#))

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Chairman Kinzer directed the Committee to consider the written testimonies in support of **HB 2549** from Kent Cornish, with the Kansas Association of Broadcasters (Attachment 10), and Doug Anstaett, with the Kansas Press Association. (Attachment 11)

Chairman Kinzer directed the Committee to consider the written neutral testimony on **HB 2549** from Ed Klumpp, on behalf of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association. (Attachment 12)

Chairman Kinzer closed the hearing on **HB 2549** and opened the hearing on **HB 2106–Relating to trespass and liability; exceptions**. Chairman Kinzer stated this is a bill that was heard last year and tabled. According to the governing rules, bills tabled during the first year in the two-year cycle for considering legislation are no longer tabled in the second year and can be considered for a hearing like any other bill. Chairman Kinzer recalled when the bill was tabled, there seemed to be a general comfort level in attempting to codify existing law, but the Committee questioned whether enough was being achieved in the bill and was concerned the bill might interfere with the Castle Doctrine legislation that was previously passed. The balloon being handed out today represents the best efforts, over the period of time since the last hearing, to deal appropriately with these issues. Katherine McBride gave a brief overview on the content of the bill and balloon. (Attachment 13)

Eric Stafford testified in support of **HB 2106**, saying it is a common sense fix to the American Law Institute’s new Restatement, which states land possessors have a new duty to exercise reasonable care of trespassers on their land. So far, the Kansas courts have maintained property owners hold no duty of care to the trespasser. However, with this new restatement, our courts have often looked to those restatements for direction in cases. The bill is necessary to preempt any expansion of liability for trespassers on property for the property owners. (Attachment 14)

Chris Appel testified in support of **HB 2106** on behalf of the American Tort Reform Association and also testified on the bill in 2011. In last year’s testimony, there were two recommended changes to the bill in order to accurately codify Kansas’ existing common law regarding the duty of land possessors to trespassers. Mr. Appel stated he was pleased to see the new balloon includes the recommended changes, which would freeze current Kansas law and preempt courts from adopting a radical approach proposed by the new Restatement that would subject landowners to broad new liability. (Attachment 15)

Chairman Kinzer directed the Committee to consider written testimony in support of **HB 2106** from Luke Bell, Kansas Association of Realtors (Attachment 16) and Daniel Murray, National Federation of Independent Business. (Attachment 17)

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Callie Jill Denton testified as an opponent of **HB 2106** on behalf of the Kansas Association for Justice (KsAJ), and stated the KsAJ agrees maintaining the status quo is good, if that is the intent of the bill. The KsAJ believes Kansas case law and precedent carry great weight with the courts, and there is no indication that courts are deviating from established Kansas case law or turning to the Restatement 3rd for guidance at this time. In reviewing the balloon, the KsAJ suggests that maintaining the status quo and bringing into statute Kansas case law would be a lengthy and voluminous project to codify properly and questions whether it can be accomplished in this balloon. KsAJ believes **HB 2106** will create greater confusion and problems if it is passed in its current balloon form. (Attachment 18)

Chairman Kinzer closed the hearing on **HB 2106**.

The next meeting is scheduled for Thursday, February 9, 2012.

The meeting was adjourned at 5:10 p.m.