

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil upon adjournment of the Senate at 10:05 a.m. on March 21, 2003, in Room 531-N of the Capitol.

All members were present except: Senator Allen (E)
Senator Donovan (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Others attending: see attached list

Final action on:

HB 2090 - Scope of agency relationship for inmate work crews defined

Chairman Vratil reviewed HB 2090, and explained the purpose of the bill. He said there were no suggested amendments offered on the bill.

Senator O'Connor moved to recommend HB 2090 favorably, seconded by Senator Schmidt, and the motion carried.

HB 2314 - Kansas juvenile correctional complex

Chairman Vratil reviewed HB 2314, and stated it was in the nature of a technical amendment. He said there were no amendments suggested, and no fiscal note on this bill.

Senator Goodwin moved to recommend HB 2314 favorably, seconded by Senator Schmidt, and the motion carried.

HB 2138 - Forensic examinations; certification procedures

Chairman Vratil reviewed HB 2138, and said there were no recommended amendments or fiscal note on this bill.

Senator O'Connor moved to recommend HB 2138 favorably, seconded by Senator Schmidt, and the motion carried.

HB 2165- Civil liability for worthless checks, definition of giving a worthless check

Chairman Vratil reviewed HB 2165, and brief discussion took place on why the original language was included in the statutes.

Senator O'Connor moved to recommend HB 2165 be passed out favorably, and seconded by Senator Oleen for discussion purposes. Committee discussion followed, with the Chairman explaining that this language was originally included in the statute because some courts would not prosecute a worthless check charge when the check was given in payment of a pre-existing debt. It was noted that writing a worthless check is an attempt to defraud. After further discussion, the Chair called for a vote on the motion. The motion was defeated.

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Sub HB 2294 - Construction defects; contractors right to cure prior to filing a civil action; criminal penalties

Chairman Vratil reviewed **HB 2294**.

Senator O'Connor moved to recommend HB 2294 favorably, and seconded by Senator Goodwin. After brief discussion, the Chair called for a vote on the motion. The motion carried.

HB 2375 - Criminal procedure; preliminary examination, evidence, chain of custody

Chairman Vratil reviewed **HB 2294**, and Senator Schmidt commented that Mr. Drees, Ellis County Attorney, had provided the Committee with recommended amendments during the hearing. He stated that he believed those amendments were necessary to solve the problems and concerns Mr. Drees raised during the hearing. Senator Schmidt had visited with Mr. Drees about the amendments.

Senator Schmidt made a motion to adopt two sections of Mr. Drees' suggested amendments which included under "B" to correct language within the bill: (1) Line 20 should read as follows: "...evidence seized by law enforcement officers shall be admissible into evidence in the preliminary..."; and (2) Line 22 should read as follows: "...all persons who collected the evidence which gave rise to the forensic test, law enforcement officers who seized said evidence, evidence custodians and forensic examiners...".

(Attachment 1) The motion was seconded by Senator O'Connor.

Following discussion, the Chair called for a vote on the motion to amend. The motion carried.

Senator Schmidt made a motion to pass HB 2375 out favorably as amended, seconded by Senator O'Connor, and the motion failed.

HB 2032 - Eminent domain; interested parties; appeals; relocation assistance

Chairman Vratil reviewed **HB 2032**. He explained that the interested parties had gotten together and worked out acceptable language in the form of a balloon amendment attached to a cover letter from James McLean, Special Assistant to the Secretary/Director, Division of Public Affairs, Kansas Department of Transportation. Chairman Vratil said the parties involved with drafting the language were the Kansas League of Municipalities, the Kansas Judicial Council, and the City of Olathe. (Attachment 2)

The Chairman clarified the proposed amendments which started on page 2, beginning on line 23, which he said would essentially return the language to the way it was before the House amended it. The Chairman added that it would say, "*The only issue to be determined therein shall be the compensation required by K.S.A. 26-513 and amendments thereto.*". He explained that the relocation expenses are covered by the amendments on page 3, which deals with an award of relocation expenses and would require relocation expenses to be paid pursuant to an administrative procedure in all cases where the land owner whose property is being taken is forced to relocate to a different location. He added that it makes no difference whether federal funds are involved in the project or not.

Senator Goodwin made a motion to amend the bill as indicated in the balloon provided by Mr. McLean, seconded by Senator Gilstrap, and the motion to amend carried.

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Senator Gilstrap moved to recommend the bill favorably as amended, seconded by Senator O'Connor, and the motion carried.

HB 2035 - Children in need of care; right to counsel

Chairman Vratil reviewed **HB 2035**, and distributed an amendment he had requested staff to prepare. He explained that this amendment would return the bill to the form originally introduced by the Judicial Council. He stated that it was his belief that the House amendments emasculate the purpose of this bill. Chairman Vratil recalled that Professor Sheila Reynolds testified at the Senate hearing about what happens when a guardian *ad litem* is appointed to represent a minor child in a court case, and the guardian *ad litem* and minor child have a disagreement as to what is in the best interest of the child. He said that the guardian *ad litem* then has a conflict. Professor Reynolds suggested there might be a need for the judge to appoint a second attorney to represent the child when there is a conflict between the child and the guardian *ad litem*. The Chairman reiterated that the purpose of this bill was to give the judge the authority to appoint a second attorney if good cause were shown to the judge for the appointment. The Chairman explained the House took out the language described, and changed it to require the guardian *ad litem* to advise the judge of the conflict, but then the House didn't say what should happen after that. (Attachment 3)

Committee discussion followed. Senator Oleen made a motion to adopt the balloon amendment, seconded by Senator Schmidt, and the motion to amend carried.

Senator Goodwin moved to pass HB 2035 out favorably as amended, seconded by Senator Oleen, and the motion carried.

Chairman Vratil called the Committee's attention to **HB 2308**, and said it was a bill he did not intend on working this session. He stated it was a bill requested by the Joint Committee on Corrections and Juvenile Justice, but was suggesting that the bill be used as a vehicle to correct a problem that has come to his attention recently. The Chairman distributed copies of letters from Senate President Dave Kerr to Attorney General Phill Kline bringing this problem to the attention of the Attorney General, and Attorney General Kline's response to Senator Kerr in which he agreed with Senator Kerr's concerns. (Attachments 4 and 5)

After distributing copies of the proposed amendment (Attachment 6), the Chairman called upon Brad Smoot, representing the Kansas University Alumni Association. Mr. Smoot explained that this is a records question and concerns public universities and colleges and their related associations. K.S.A. 21-3904 could be interpreted to prohibit the use of student directory information by state colleges and universities and their affiliated support organizations which may offer students and alumni certain goods or services. Mr. Smoot said this was also an attempt to change the penalty to civil sanctions in accordance with other sections of the open records law instead of the criminal penalties that are currently in this statute.

After discussion, Senator Umbarger made a conceptual motion to change the language in the proposed amendment to HB 2308 to make it applicable in addition to the Regent's institutions, Washburn University, community colleges and the vocational schools. The motion was seconded by Senator Oleen,

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and the motion carried.

Senator O'Connor made a motion to delete all existing language in HB 2308, add the proposed amendment that the Committee had in writing in front of them with the addition of Senator Umbarger's conceptual amendment, and to recommend it as a substitute bill for HB 2308. The motion was seconded by Senator Schmidt, and the motion carried.

The meeting was adjourned at 11:05 a.m. The next scheduled meeting is March 24, 2003.