

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairperson Pat Colloton at 1:30 p.m. on February 11, 2009, in Room 535-N of the Capitol.

All members were present except:

Representative Lance Kinzer- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

State Representative Joe Patton
Deputy Desiree Wright, Shawnee County Sheriff's Office
Sally Zeller, PARS and Safe Streets Coalition
Michelle Cutrer, Private Citizen
Ron Hein, Kansas Restaurant and Hospitality Association
Melissa Johnson, Assistant Seward County Attorney
Steve McAllister, Solicitor General of Kansas, Attorney General's Office
Richard Saminengo, Kansas District Attorneys Association

Others attending:

See attached list.

HB 2233 - Criminal procedure, tolling speedy trial time during appeal by the prosecution.

Chairperson Colloton opened the hearing on **HB 2233** and recognized Steve McAllister, Solicitor General of Kansas, to give his testimony as a proponent of the bill. Solicitor General McAllister provided a copy of his testimony. (Attachment 1) He explained the bill would amend current law by defining "an appeal by the prosecution" which would include appeals, interlocutory appeals, and appeals that seek discretionary review in the Kansas Supreme Court or the U.S. Supreme Court. Appeals would be considered pending until the court that handles the final appeal issues a resolution.

Questions and answers followed.

Chairperson Colloton called for anyone else wishing to testify, there being none, she closed the hearing on **HB 2233**.

HB 2165 - Establishing recklessness as a standard in unlawfully hosting minors in a person's residence.

Chairperson Colloton opened the hearing on **HB 2165** and introduced State Representative Joe Patton to give his testimony as a proponent of the bill. Representative Patton provided a copy of his written testimony. (Attachment 2) He stated the bill would amend the definition of unlawfully hosting minors to include intentionally "or recklessly permitting" a person's property to be used by minors for the purposes of possessing or consuming alcoholic beverages. He explained why they added the word "reckless" to address concerns of the opponents of the bill.

Chairperson Colloton recognized Deputy Desiree Wright, Shawnee County Sheriff's Office, to give her testimony as a proponent of the bill. Deputy Wright provided a copy of her written testimony. (Attachment 3) She stated as a deputy assigned to two high schools, she knows how devastating underage drinking can be. She stated she has seen the devastation and the many tears shed at the loss of a youngster in an alcohol related accident. It is a major problem for law enforcement that there are adults who think it is no big deal to provide alcohol to minors. She has heard some parents say if their child is going to drink at a party, they would rather they just drink at home where they will be safe. In closing, she asked for support adding the wording "or reckless" to **HB 2165**.

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Chairperson Collation introduced Sally Zeller, PARS and Safe Streets Coalition, to give her testimony as a proponent of **HB 2165**. Ms. Zeller provided a written copy of her testimony. (Attachment 4) She stated they have concerns at how young underage drinking starts. They support the addition of the words “or recklessly” to the sentence on lines 15 and 16 which according to many of our law enforcement partners will help make this law more enforceable. The effective enforcement of this “social host” law is an important tool which will help reduce the rates of underage drinking by Kansas children and teens. In closing, she called the Committee’s attention to another handout *Inside the Adolescent Brain* (Attachment 5) and gave a brief review.

Chairperson Collation stated she would hold all questions until all the proponents have given their testimony and introduced Michelle Cutrer, a private citizen, to give her testimony as a proponent of **HB 2165**. Ms. Cutrer provided a written copy of her testimony. (Attachment 6) She stated she is a parent of teens and a professional who works with at risk teens and their families. She told of an incident involving her teenage son and underage drinking. They picked up their son at an underage drinking party at a residence. The father of the young man having the party told police officers he knew there were kids in his basement, but he had no idea they were drinking. After she returned home she spoke with her son and learned that this residence is a frequent party destination for him and his friends. They learned that there were no tickets issued or charges filed in this instance because the police officers stated the case would just be dismissed because of the present laws. In closing, she strongly encouraged the Committee to pass **HB 2165** in an effort to reduce the amount of underage drinking that occurs in our community.

Chairperson Collation opened the floor for questions of the proponents. A discussion followed.

Chairperson Collation introduced Ron Hein, Kansas Restaurant and Hospitality Association, to give his testimony as an opponent of **HB 2165**. Mr. Hein provided a written copy of his testimony. (Attachment 7) He stated they have concerns with the lessening of the standard of conduct prohibited from intentionally to reckless raises liability issues for proprietors of lodging establishments. He stated when the bill was originally being drafted, they had requested an exemption for lodging establishments. In closing, he stated they are opposed to this bill unless the lodging establishments can be exempted from the provisions of this criminal statute entirely.

Chairperson Collation called for any more questions, there being none she called the Committee’s attention to the “written only” opponent testimony of Melissa Johnson, Assistant Seward County Attorney. (Attachment 8)

There being no others to testify she closed the hearing on **HB 2165**

Chairperson Collation introduced Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas, School of Law, to give a presentation on *Constitutional Issues Surrounding Jury Trials in Juvenile Offender Cases*. Dr. Levy presented a written copy of his presentation (Attachment 9) He opened by stating the Judicial System has served two purposes. Society recognizes that juveniles have not yet reached the age of adulthood and may act unlawfully because of immaturity, the lack of appropriate parental supervision, and problematic family situations or emotional and other problems. The system is designed in part to implement the state’s “parental” rule, serving a rehabilitative function to help troubled young people by providing appropriate interventions and services. As a matter of social justice and to deter criminal behavior, the system also seeks to impose appropriate consequences.

He referred to the case, *In re L.M.*, and highlighted on the following:

- Purposes of the Code:
- Terminology and Operation of the Code
- Sentencing under the Code
- Confidentiality and Other Protections

He stated there will be implications of the *In re L.M.* case and highlighted on the following:

- Scope of the Right to a Jury Trial
- The Impact on the Juvenile Justice System
- Other Constitutional Criminal Procedure Rights
- Possible Responses

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In closing, Dr. Levy stated while *In re L.M.* may seem surprising, it is in many respects the inevitable product of the changing trend in responding to the problem of crime in general and juvenile crime in particular. As demands to “get tough” on crime have increased, the juvenile justice system has gotten tougher. He stated when he joined the Juvenile Offender/Child in Need of Care Advisory Committee of the Kansas Judicial Council, he was a relative newcomer to the Kansas Juvenile Justice System. One of his first reactions upon becoming more familiar with the Code was that it would only be a matter of time before the court somewhere held that juvenile offenders were entitled to a jury as a matter of constitutional right. The time came with the *In re L.M.* decision. It is now up to the Legislature to decide how best to address the implications of that decision.

Chairperson Collation opened the floor for questions and discussion.

HB 2099 - Withdrawal of guilty plea, time limitation.

Upon the conclusion of the questions and discussion, Chairperson Collation thanked Dr. Levy for his excellent presentation and moved the Committee’s attention to **HB 2099**. She stated this was the bill that was tabled in an earlier meeting waiting on new language. Chairperson Collation called on Jason Thompson, Revisor’s Office, to review the bill along with the amendment the Committee had approved in an earlier meeting. Chairperson called for the Committee’s wishes.

Representative Frownfelter made a motion to lift the bill from the table. Representative McCray-Miller seconded. Motion carried.

Representative Collation recognized Richard Saminengo, Kansas Association of District Attorneys to explain his amendment. (Attachment 10) He stated he was not offering an additional amendment, the documentation was clarification to address the issues of the Committee. Chairperson Collation addressed Mr. Saminengo stating the Committee had asked for him to bring back language and he had not. A discussion followed with the Committee.

Representative Pauls was recognized by Chairperson Collation. Representative Pauls made a suggestion on Page 2 of the balloon to say “time limitation here may be extended by the Court only upon additional affirmative showing excusable neglect by the defendant”. The discussion continued and not all the Committee members agreed with the suggestion.

Representative Pauls made the motion to amend the amended bill adding on Page 2, line 38 of the balloon “Time limitation herein may be extended by the Court only upon additional affirmative showing excusable neglect by the defendant” and pass it out favorably. Representative Brookens seconded.

A discussion followed.

Chairperson Collation called for a vote. Motion carried.

Chairperson Collation adjourned the meeting at 3:05 p.m. with the next scheduled meeting being February 12, 2009, in room 535N.

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