

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 13, 2005, in Room 123-S of the Capitol.

Committee members absent: Barbara Allen- excused

Committee staff present: Mike Heim, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Ron Hein, Kansas Restaurant and Hospitality Association
Stanton Hazlett, Office of Disciplinary Administrator
Kathleen Taylor Olsen, Kansas Bankers Association
Judge Nancy Parrish, Shawnee County District Court
Judge Tom Foster, Johnson County District Court
Judge Meryl Wilson, Riley County District Court

Others attending: See attached list

Chairman Vratil called the meeting to order. Ron Hein requested introduction of a bill known as the “obesity frivolous lawsuit act”. The bill’s intent is to prohibit civil liability for claims arising out of weight gain, obesity, or other generally known conditions allegedly caused or likely to result from long-term consumption of food. (Attachment 1) Senator Donovan moved to introduce the bill, seconded by Senator Betts, and the motion carried.

Stanton Hazlett requested introduction of a bill that would allow the Supreme Court and the State Board of Law Examiners to require applicants to practice law to be fingerprinted and submit to a national criminal history record check. (Attachment 2) Senator O’Connor moved to introduce the bill, seconded by Senator Umbarger, and the motion carried.

Kathleen Taylor Olsen requested introduction of a bill to amend K.S.A 60-1101, which established the basis for determining priority of claims against property under construction. The amendment would clarify the rule that allows a mortgagee to ensure the priority of the recorded mortgage against unknown lienholders by providing that those who have been paid in full and who no longer have a claim on the property cannot establish the priority date for subsequent lienholders; and requiring that the work done on the property which establishes the priority date for all subsequent lienholders be visible. (Attachment 3) Senator Goodwin moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

Chairman Vratil introduced and welcomed Judges Nancy Parrish, Tom Foster and Meryl Wilson. The Judges were present to share their thoughts on the state of the judiciary in Kansas. Judge Parrish provided a summary of statewide caseload filings and full time equivalent positions. (Attachment 4) She gave a brief overview of trends and changes from previous fiscal years. Increasing caseloads but minimal increases in judges have prompted the courts to look for innovative changes in order to handle caseloads. She highlighted some of these innovations.

Senator Goodwin asked Judge Parrish if she felt that there was a need for more court service officers throughout the state. Judge Parrish deferred to Kathy Porter (Office of Judicial Administration), who was in the audience. Ms. Porter stated that there was a need for more court service officers and that ten new officers were added last year.

Senator Donovan noted that according to the summary, civil cases have increased at a faster rate than criminal cases, and asked if there was a specific reason for the difference. Judge Parrish indicated that there has been a huge increase in limited action and collection cases, because it is now easier to collect in cases, such as for

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bad check debts.

Judge Foster spoke about Johnson County case filings which are up in almost every type of case. As a result, the court is using trained mediators to resolve issues out of court whenever possible. In house, the judges, including criminal judges, act as mediators and do mediation conferences for other judges. Although divorce cases have not increased, motions to modify custody have increased. Judge Foster also described an educational course developed to educate parents and provide them with skills for resolving issues. (Attachment 5) Senator O'Connor asked if the course is required. Judge Foster indicated that the court is required to identify families in conflict and may order the parents to participate in a course.

Senator Betts inquired if there were identifying factors that require a family to attend courses. Judge Foster indicated that usually a court service officer might be the first to identify a problem. Everyone divorcing who has children has to attend a basic class and some go on to mediation. If mediation is not successful, then home study and custody evaluation is ordered. If conflict issues are identified, a program may be recommended to the court.

Judge Wilson addressed a program known as the Parent Ally Project. The 21st Judicial District was one of two areas selected for a pilot project for one rural and one urban judicial district that allows parents in child in need of care proceedings to designate up to two people to be in court with them during hearings in the case involving their children. The Judge shared a handbook and two forms that were developed for the parents and potential allies to read and fill out. (Attachments 6 through 8) Since the program was initiated, there have been 68 child in need of care cases. Of these, 50 percent did not need the parent advocate project because children were not initially removed from the home. In 18 percent, the parent was not available. Another six percent of parents were already in state custody. In approximately 20 percent of the cases, parents were provided information about this project. Of those, only in two situations did a parent request a parent ally. Judge Wilson indicated that Sedgwick County's urban pilot program requires some type of formal training for the parents and the allies that are allowed into the courtroom.

Judge Wilson also talked about the protection from abuse filings (PFAs) and stalking. Judge Wilson shared that Riley County had 122 PFA filings last year. Of that number, 94 were dismissed. The dismissals were the result of victims not coming back to court, requests for PFAs to be dismissed, and a small percentage who were not eligible for PFAs. The large number of dismissals is frustrating to the courts since PFAs require a lot of paperwork and time, and a judge is required to be on duty whenever there is need for emergency orders. Additionally, the judges must set aside time on the court docket to hear these cases. On the issue of stalking, 28 cases were filed, and 22 were dismissed for the same reasons. The Office of Judicial Administration recently received a grant to make information more accessible and understandable for victims of domestic violence. A website is available to provide information on services available regarding emergency shelters and help for victims of domestic violence.

Senator Goodwin asked if any legislators have wanted to sit in Judge Wilson's court as a supporter of a child in need of care case. Judge Wilson responded, "no."

Chairman Vratil asked about the rate of compliance in PFAs and stalking cases. Judge Wilson shared his perception that often both parties either ignore the order or the victim asks the spouse to come back, so the parties violate the order. When asked if cases come back from enforcement, Judge Wilson indicated that they do. Chairman Vratil asked if there was anything that the legislature could do to improve or enhance the ability of courts and law enforcement officers to enforce PFAs or stalking orders. The Judge indicated that abusers are arrested on the spot and are unable to bond out for 48 hours. He indicated that the issue was a societal problem. Frequently, after the initial battering takes place, the victims (usually women) start asking themselves how they are going to survive, economically, without their partner. Judge Wilson indicated that it is important to make information more accessible to victims of abuse so they may obtain help to survive.

Chairman expressed appreciation to all the Judges for being present and sharing with the Committee.

Judge Parrish then recognized Art Thompson, Office Judiciary Administration (OJA), who provided a few facts regarding dispute resolution cases. Mr Thompson said OJA is expanding the use of dispute resolution, and mediation is the primary form of dispute resolution. Civil cases are the fastest growing group where

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dispute resolution is used. Almost all cases settle, and few cases go to a judge and jury. OJA is trying a number of different kinds of programs. In child in need of care cases in Wichita and other judicial districts, facilitators are used to deal with cases where children are removed from the home. More children are placed with the extended family, which helps the state, because the children are not placed in foster care. OJA is also working with the Kansas Water Office and a number of the natural resource agencies to try and resolve a number of public policy disputes. It is working with the Department of Administration on employment disputes. Wichita has also been experimenting in probate to have parties resolve issues rather than the courts.

Jill Wolters then continued to review her memorandum, "The Death Penalty, from *Kleypas* to *Marsh*." (Attachment 9) The central issue reviewed by the memo is whether the weighing equation set forth in K.S.A. 21-4624 (e) violates the Eighth and Fourteenth Amendments to the United States Constitution because it mandates death when aggravating and mitigating circumstances are equal. A tie would go to the state when aggravating and mitigating circumstances are equal. Ms. Wolters also discussed how two death penalty cases reviewed by the Kansas Supreme Court, *State v. Kleypas* and *State v. Marsh*, have impacted the Kansas death penalty statute interpretation.

Chairman Vratil said there are seven people on death row in Kansas, and the Attorney General has indicated he plans to appeal the *Marsh* decision to the U.S. Supreme Court, but he was far from certain that the Court would grant certiorari. The Chairman posed the question if the legislature were to adopt legislation fixing the problem the court identified in *Marsh*, would it not have the affect of mootng an appeal to the U.S. Supreme Court. Ms. Wolters gave a personal opinion that it might. Judge Foster indicated that a legislative fix would most likely correct the problem going forward but would not impact the seven people currently on death row.

Senator O'Connor raised the question whether all seven were in "equipoise". Judge Wilson stated that the verdict form does not indicate whether or not there is a tie, so we'd have no way of knowing whether the jury found the aggravating and mitigating circumstances equal.

Additional discussion ensued regarding what penalty might be imposed on the seven people on death row should the death penalty not be imposed. Chairman Vratil summarized by saying even though the legislative action can only be prospective, the Supreme Court's action was retrospective. It voids the sentencing portion of the statute which allows a sentence of death to be imposed. At the time these seven people were sentenced, there was no death penalty statute which allowed them to be sentenced to death, because of the Supreme Court's decision, which is retroactive. Chairman Vratil indicated the seven would be re-sentenced with whatever law was in effect on the date that they committed the crime in question, so it could be a "hard 40" or "hard 50" years, or life imprisonment.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for January 18, 2005.

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