

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 14, 2006 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Rick Fleming, Office of Kansas Securities Commissioner
Kyle Smith, Kansas Bureau of Investigation
Tempe Persyn, Self
Roger Werholtz, Secretary, Kansas Department of Corrections
Kerrie Platt, Sedgwick County Department of Corrections

Chairman O'Neal opened the hearing on **SB 366 - departure sentence; aggravating factors include offender playing a major role as the organizer.**

Rick Fleming, Office of Kansas Securities Commissioner, appeared before the committee in support of the bill. He explained that the bill amends the sentencing guidelines regarding upward departures by adding a new aggravating factor when a crime involves two or more offenders and the defendant played a major role in the crime as the organizer or ringleader. (Attachment 1)

Mr. Fleming commented that the senate amendment seems to suggest that a departure factor would only apply when the crime involves two or more "offenders". He was concerned that "offenders" means one who has been convicted and suggested it should be replaced with "persons" or something similar.

Kyle Smith, Kansas Bureau of Investigation, appeared as a proponent of the bill. He agreed that the term "offender" could have unintended consequences when a multiple of defendants are being prosecuted in separate cases and the leader is sentenced before the others are convicted. One could argue that because no other "offenders" had been convicted the departure factor does not apply. (Attachment 2) He suggested using the word "participants" in place of "offenders".

Senator Mike Petersen did not appear before the committee but requested his written testimony in support of the bill be included into the minutes. (Attachment 3)

The hearing on **SB 366** was closed.

The hearing on **SB 506 - persons required to register pursuant to the Kansas offender registration act; annual driver's licensed or identification card,** was opened.

Kyle Smith, Kansas Bureau of Investigation, appeared as a proponent of the bill. He explained the following provisions in the bill:

- It would prohibit cities and counties from adopting residential restrictions on sex offenders;
- Requires the Division of Vehicles to issue "readily distinguishable" driver's licenses and identification cards to registered sex offenders;
- Prohibits transitional release and conditional release facilities for sexually violent offenders being located within 2,000 feet of any facility where children are located;
- Permits judges to depart from requiring juvenile offenders from registering under the Kansas Offender Registration Act
- The Kansas Sex Offender Policy Board would study public notification and other issues related to sex offenders

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Tempe Persyn, Self, supported the provision in the bill which allows judges to relieve juvenile offenders from registering under the Kansas Offender Registration Act for substantiated and compelling reasons. She agreed that some juveniles should be required to register because of the severity of their crime. (Attachment 4)

Kyle Smith suggested that the law require juveniles to register but that their file not be part of the public record.

Roger Werholtz, Secretary, Kansas Department of Corrections, explained that DOC already has the ability to limit the residency of individuals through their parole officer. (Attachment 5)

Chairman O'Neal assigned the following members to a subcommittee on **SB 506**: Representative Kinzer, Chair, Watkins, Loyd, Pauls & Crow.

The hearing on **SB 351 - drug possession sentencing, drug abuse assessment after sentencing, not pre-sentence**, was opened.

Kerrie Platt, Sedgwick County Department of Corrections, was requested as a means to clarify when the non-prison drug sanction would apply and to save money on unnecessary assessments. It would provide that the non-prison sanction option and assessments would not apply to defendants who are residents of another state and who would be returned to that state and to offenders who are not lawfully present in the U.S. (Attachment 6)

The hearing on **SB 351** was closed.

SB 408 - animal cruelty

Representative Kinzer made the motion to define malicious as "the state of mind characterized by an intent to do a harmful act with evil mindedness or specific intent to injury". Representative Masterson seconded the motion. The motion carried.

Representative Hutchins made the motion to strike the language on page 2, lines 33-37 because the definition of "serious physical injury" is covered on page 1. Representative Pilcher-Cook seconded the motion. The motion carried.

Representative Pilcher-Cook made the motion to have the bill cross reference K.S.A. 2-2438 a(2)(x) to protect those individuals who do pest control. Representative Garcia seconded the motion. The motion carried.

Representative Pauls made the motion to amend in the Kansas Federation of Animal Owners balloon. (Attachment 7) Representative Hutchins seconded the motion. The motion carried

Representative Pilcher-Cook made the motion to correct the spelling on page 2, line 2 "treat" should be "threat". Representative Owens seconded the motion. The motion carried.

Representative Watkins made the motion to strike section 10 because it was already covered in section 7. Representative Masterson seconded the motion. The motion carried.

Representative Hutchins made the motion to place "intentionally" before "abandoning" on page 1, (2). Representative Pilcher-Cook seconded the motion. The motion carried.

Representative Owens made the motion to insert requirements for one to attend anger management treatment program during the 30 days one is serving his sentence in jail. Representative Kiegerl seconded the motion. The motion carried.

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Representative Colloton made the motion to strike the bold language on page 3, lines 1-7. Representative Kelley seconded the motion. The motion carried.

Representative Pilcher-Cook made the motion to replace subsection 10 by stating “killing of any animal in self defense or when an animal is posing a threat of bodily harm to a person.” Representative Watkins seconded the motion. There were concerns about individuals and animals protecting ones property. With permission of the second, Representative Pilcher-Cook withdrew her motion.

Representative Owens made the motion to strike section 3 because it was an unfunded mandate. Representative Hutchins seconded the motion. The motion carried.

Representative Loyd made the motion to make the fines consistent throughout the bill. Representative Owens seconded the motion. The motion carried.

Representative Owens made the motion to strike section 7 requiring registration with the Kansas Offender Registration Act. The motion was seconded. The motion carried.

Representative Hutchins made the motion to amend the bill to allow “Normal or accepted practices of animal husbandry means the careful or thrifty management of one’s herd or animals, including animal care practices common in the industry or region.” Representative Crow seconded the motion. The motion carried.

Representative Masterson made the motion to report **SB 408** favorably for passage, as amended. Representative Watkins seconded the motion. The motion carried.

The committee meeting adjourned at 6:15 p.m. The next meeting was scheduled for 3:30 p.m. on March 15, 2006 in room 313-S.