

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson John Barker at 3:30 pm on Thursday, March 19, 2015, 112-N of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Legislative Research Department
Robert Allison-Gallimore, Legislative Research Department
Katherine Goyette, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Connie Bahner, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:

No conferees present

Others in attendance:

[See Attached List](#)

Chairperson Barker thanked the committee for all their work this session. This is his first year as Chair of the House Judiciary Committee and he has really enjoyed it.

Chairperson Barker noted that there were minutes to approve from the February 16th meeting.

Representative Blaine Finch moved for the approval of the February 16, 2015 minutes, seconded by Representative John Whitmer. The minutes were approved.

Possible action on bills previously heard

SB11 - Regulated scrap metal; crime of theft and related sentencing provisions; regulation of scrap metal dealers, including unlawful acts and penalties

Chairperson Barker asked the committee to open their folders on **SB11**.

Vice-Chairperson Charles Macheers moved that **SB11** be reported favorably for passage, seconded by Representative Kyle Hoffman.

Representative James Todd stated that he has an amendment ([Attachment 1](#)).

Representative James Todd moved to amend **SB11** by adding on page 8 a \$25,000 damage requirement to the crime of aggravated criminal damage to property, seconded by Representative Mark Kahrs.

There was discussion concerning the damage amount between Chairperson Barker, Representatives Annie Kuether, Steven Becker, and Mark Kahrs, and Katherine Goyette.

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Representative James Todd withdrew his motion to amend **SB11**, with the approval of the second, Representative Mark Kahrs.

Representative James Todd moved to revise his proposed amendment to **SB11** by modifying the amount to \$5,000, seconded by Representative John Whitmer.

Representative Stephen Alford stated that he agrees with the \$5,000 amount.

Representative John Rubin asked for clarification on the offense level and the presumptive sentence.

Representative James Todd closed on his motion to amend **SB11**, a vote was taken, and the amendment passed.

Representative John Rubin stated that he is opposed to **SB11**. He serves on the Kansas Sentencing Commission. They prepare prison bed space impact statements for any proposed legislation in the criminal area. He distributed the Kansas Sentencing Commission Prison Bed Space Impacts ([Attachment 2](#)) to the committee. The current prison system is at 101% of capacity and projections are that the population will continue to grow. In relatively short order if the Legislature keeps creating new crimes and enhancing offense levels, they will be faced with two choices: To vote for very large tax increases so new prisons can be built or to start releasing sometimes dangerous felons early from prison. Based solely on the bed space limitations that the State has, it would be inappropriate to pass **SB11**. This bill is far too broad and creates a whole new, unnecessary bureaucracy. He is also concerned that one of the unintended consequences of this bill could drive small scrap metal dealers out of business.

Representative Jim Ward is also concerned about **SB11**. He suggests they make a law where a person would not be paid for ten days after receipt of the copper so they could verify the person's address. Another aspect of the law would be to penalize the scrap dealer if they paid the person sooner than the ten days. That way there's no prison bed impact and it slows down the process for a quick turn-around of money.

Representative Jim Ward moved to strip the contents of **SB11** and replace it with a statute that prohibits scrap dealers from paying a person for the sale of copper for ten days and that rules and regulations be developed to punish scrap metal dealers' licenses if they fail to comply, seconded by Representative John Rubin.

Chairperson John Barker stated that he hates to make law on the fly. This matter was taken up by the Judicial Council and has been seven years in the making. Many hours have been put into the development of this bill. Chairperson Barker recommends that the committee vote no on Representative Ward's motion.

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Representative Leslie Osterman stated that the bill also requires a lot of documentation. If the bill is gutted, they won't have all the background information that would be needed if criminal charges do have to be filed against them. It can cost a farmer \$25,000 to repair an irrigation system if it is stripped of its copper, and that can be devastating. He cannot support this amendment to **SB11**.

Representative John Carmichael also opposes the amendment. He also believes the committee has received some bad information about supposed agreements between scrap metal dealers throughout the state who think this is a good idea. Many scrap metal dealers didn't know about this bill and once they found out about it, they didn't agree with it. Testimony was provided suggesting that increased penalties will deter these thefts. He believes those who violate the law will continue to do so. This bill, amended or not, will not accomplish what it was intended to. He is prepared to pass the bill out of committee. If an amendment is made on the floor, he would seriously consider it at that time.

Representative Craig McPherson thinks this bill has a lot of problems. Consideration needs to be made as to what impact this bill will have on law-abiding citizens. A lot of people who handle scrap metal in a law-abiding way are being forced into the regulation and bureaucracy contained in this bill. He will support the amendment and has his own gut and go amendment that he may offer.

Representative Randy Powell is opposed to the amendment.

Representative Jim Ward closed on the amendment to **SB11**. A vote was taken and the amendment failed to pass.

Representative Pam Curtis advised that she has an amendment to **SB11** ([Attachment 3](#)).

Representative Pam Curtis moved to amend **SB11** by authorizing any local ordinance relating to scrap metal theft adopted prior to July 1, 2015 to remain in full force and effect, seconded by Representative Dennis Highberger.

Representative John Whitmer was concerned about the strength and effectiveness of a local ordinance.

Representative James Todd is concerned about the comprehensiveness of a local ordinance and a database for sharing information so he is opposed to the amendment.

Representative Pam Curtis closed on her motion. A vote was taken, and the amendment to **SB11** failed to pass.

Representative Craig McPherson intends to make a motion to substitute **SB 11** with the contents of **HB2161** ([Attachment 4](#)) which did not get a hearing in the Judiciary Committee prior to turn-around. He stated, however, the bill is of grave importance to a number of his constituents and other members of the committee.

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Representative Craig McPherson moved to strike the contents of **SB11** and add the contents of **HB2161** as a substitute bill. There was no second to the amendment so the amendment was withdrawn.

Chairperson Barker called for further discussion on **SB11**.

Vice-Chairperson Macheers moved to report **SB11, as amended**, favorably for passage, seconded by Representative Randy Powell. A vote was taken, and the Chairman stated that the ayes had it. Division was called. The Chairperson asked the committee to vote by raising their right hand. There were ten ayes and ten nays. Chairperson Barker voted in favor of passage. **SB11, as amended**, passed favorably.

Representative Todd was asked to carry **SB11**.

SB59 - An act concerning district magistrate judges; relating to jurisdiction; appeals

Chairperson Barker asked the committee to open their folders on **SB59**.

Chairperson Barker said he has a technical amendment ([Attachment 5](#)), which was distributed to the committee.

Representative Kyle Hoffman moved to favorably pass **SB59**, seconded by Representative Blaine Finch.

Representative Kyle Hoffman moved to amend **SB59** to clarify the language relating to the violations of the wildlife, parks and tourism laws, seconded by Representative Blaine Finch. A vote was taken, and the amendment to **SB59** passed favorably.

Representative Kyle Hoffman moved to pass **SB59, as amended**, seconded by Representative Blaine Finch. **SB59, as amended**, was favorably passed.

Chairperson Barker directed Representative Kyle Hoffman to carry the bill.

SB206 - An act concerning public agencies; relating to the state of Kansas and local units of government; providing certain powers to the attorney general for investigation of violations of the open records act and the open meetings act; open government fund.

Chairperson Barker asked for the committee's recommendation on **SB206**.

Representative Blaine Finch moved to report **SB206** favorably for passage, seconded by Representative Steven Becker.

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Representative Blaine Finch moved to amend **SB206** by adding the contents of **SB128**, seconded by Representative Steven Becker.

Katherine Goyette, Office of Revisor of Statutes, gave an overview of **SB128**.

Representative Blaine Finch closed on putting the contents of **SB128** into **SB206**. A vote was taken, and the amendment to **SB206** was favorably passed.

Representative Blaine Finch stated that he has an amendment to **SB206** ([Attachment 6](#)). The amendment contains compromise language that he worked out with the Attorney General's Office that adds the component of bad faith before attorney's fees would be awarded.

Representative Blaine Finch moved to amend **SB206**, seconded by Representative Jim Ward.

Representative Steven Becker stated that he likes the amendment and that he would also support **SB206**.

Representative Blaine Finch closed on his amendment to **SB206**. A vote was taken, and the amendment to **SB206** was favorably passed.

Representative Blaine Finch stated that he has another amendment. Katherine Goyette stated that the Attorney General brought to their attention that the term "public agency" should be replaced with "public body or agency" so that the language is consistent throughout the bill.

Representative Blaine Finch moved to amend **SB206**, seconded by Representative Jim Ward. A vote was taken, and the amendment to **SB206** passed favorably.

Representative Blaine Finch moved to report **SB206, as amended**, favorably for passage, seconded by Representative Jim Ward. A vote was taken and **SB206, as amended**, was favorably passed.

SB149 - An act concerning civil commitment of sexually violent predators.

Chairperson Barker directed the committee's attention to **SB149**.

Representative John Rubin moved to report **SB149** favorably for passage, seconded by Representative Mark Kahrs.

Representative John Rubin stated that he supports **SB149**. He agrees that due process rights should be afforded to individuals civilly committed to Larned State Hospital. He was a federal administrative law judge for ten years, and he can assure the committee that both at the federal and state levels virtually all

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essential due process rights are provided to individuals in the administrative hearing context. In addition, there are advantages for the civil commitment patient that they don't have under current law, including a faster adjudication of their appeals. Current law does not entitle patients to be present at their annual review hearings, and this bill provides that right. They will also be entitled to an independent mental evaluation when appealing their annual reviews, which will be funded by the government if the individual is indigent. This bill ensures all fundamental due process rights in the administrative hearing context and provides additional advantages that they don't currently have.

Representative John Carmichael stated that **SB149** is an important bill. Everyone is entitled to their constitutional rights no matter how heinous the crime. He cannot support a bill that sends individuals into an administrative hearing process without the right to an attorney.

Representative John Carmichael made a motion to amend **SB149** to provide the right to counsel at each stage of the administrative process for any individual who has been determined to be indigent at the time of sentencing or any individual who subsequent to sentencing has become indigent as defined in the criminal statutes for indigency. He further moved that the costs of retaining private counsel be paid for by the Kansas Department for Aging and Disability Services, seconded by Representative Dennis Highberger.

Representative Blaine Finch is concerned about the constitutionality of the new process. He is opposed to the amendment because he doesn't think it goes far enough. He says we don't want to do anything that jeopardizes the constitutionality of the law or it may cause people to be released who should not be. He has an amendment that takes out these new parts of the bill, but keeps in the parts that KDAD says they need about access to internet and reading materials. He would also ask the Chairman to send Sections 8 and 9 of the bill to Judicial Council for full review in light of the recent Kansas Court of Appeals decision, *In re Zishka*, issued March 6, 2015.

Representative John Carmichael withdrew his motion to amend **SB149**, with the agreement of Representative Highberger.

Representative Blaine Finch moved to strike the new Section 8 and new Section 9 of **SB149** and give the Revisor authority to clean up any conflicts that come from doing so, seconded by Representative John Carmichael.

Katherine Goyette, Office of Revisor of Statutes, stated that the removal of Sections 8 and 9 will reinstate current law.

Representative John Rubin is strongly opposed to the amendment for the reasons he previously stated. He discussed the *Zishka* case where appellant Zishka was denied adequate notice of his district court hearing, which will not happen with this bill if the Office of Administrative Hearings is involved. The appellant was also denied the chance to present an independent mental evaluation. This bill fixes that

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problem because it provides for an independent mental evaluation at every annual review which will be provided at government expense if the person cannot afford it.

Representative John Carmichael recommends sending the bill to Judicial Council.

Representative Mark Kahrs supports Representative Rubin's comments. The Attorney General fully vetted this bill. He opposes the amendment to **SB149**.

Representative Steven Becker is concerned that the burden falls on the mentally ill, unrepresented patient who is probably participating in the administrative hearing electronically.

Representative Craig McPherson thinks it is important to take steps to protect the rights of people incarcerated in these facilities. He is opposed to the amendment and supports **SB149**,

Representative Jim Ward supports the amendment.

Representative Blaine Finch closed on the amendment to **SB149**. A vote was taken, and the Chairperson noted that the ayes had it. Division was called. The Chairperson asked the committee to vote by raising their right hand. There were eleven ayes and ten nays. The amendment to **SB149** passed.

Representative Jim Ward moved to report **SB149, as amended**, favorably for passage, seconded by Representative Annie Kuether.

There was discussion concerning the annual hearings between Representatives Dennis Highberger, Representative Blaine Finch, and the Revisor.

Representative John Rubin stated that he still supports **SB149** even though the heart of the bill has been taken out. The Attorney General's Office has worked long and hard on the issues addressed in Sections 8 and 9, and this is what they decided. The amendment takes out everything the Attorney General wanted. There was a misstatement made before that mental evaluations would not be done in these annual reviews.

Representative Jim Ward called for point of order. He said they are no longer arguing the amendment. Chairperson Barker ruled that Representative Rubin could clarify the misrepresentation that was made. Representative Rubin says Section 9 calls for a mental evaluation at the annual review. Rubin still supports **SB149**.

Representative Blaine Finch stated that the remaining bill is still very important.

Representative Jim Ward closed on **SB149, as amended**. A vote was taken. **SB149, as amended**, passed.

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favorably.

HB2341 - An act concerning wildlife; relating to seizure of wildlife; disposal.

Chairperson Barker directed the committee's attention to **HB2341**.

Natalie Scott, Office of Revisor of Statutes, provided an overview of the bill. Questions were asked by Representative John Carmichael.

Representative Kyle Hoffman moved to report **HB2341** favorably for passage, seconded by Representative John Carmichael.

Representative James Todd stated that he was opposed to **HB2341** because he doesn't think people have property rights on wildlife.

Representative Kyle Hoffman closed on **HB2341**. A vote was taken, and **HB2341** was favorably passed.

HB2054 - An act enacting the public speech protection act.

Chairperson Barker asked the committee to open their folders on **HB2054**. Katherine Goyette, Office of Revisor of Statutes, gave an overview of the bill. She stated that a proposed amendment has been distributed ([Attachment 7](#)), as well as a comparison chart ([Attachment 8](#)) to show the differences between the underlying bill and the proposed amendment.

Representative Janice Pauls further explained **HB2054** to the committee. She noted that this bill came out of the Special Committee on Judiciary that met during the 2014 Interim.

Representative Janice Pauls moved to report **HB2054** favorably for passage, seconded by Representative Becky Hutchins.

Questions were asked by Representatives John Carmichael and Jim Ward.

Representative Janice Pauls moved to adopt the changes reflected on the comparison chart as Substitute for **HB2054**, seconded by Representative Becky Hutchins.

There was no further discussion.

Representative Janice Pauls closed on the motion to adopt the proposed amendments as a substitute for **HB2054**. A vote was taken, and the Chairman noted that the ayes have it. Division was called. There were sixteen ayes and four nays. The amendment to **HB2054** passed.

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Representative Janice Pauls moved to report **Substitute for HB2054** favorably for passage, seconded by Representative Becky Hutchins. A vote was taken, and **Substitute for HB2054** was favorably passed.

SB157 - An act concerning the revised Kansas code for care of children; relating to medicating a child.

Chairperson Barker directed the committee's attention to **SB157** and asked for the committee's pleasure.

Representative John Rubin moved to report **SB157** favorably for passage, seconded by Representative Mark Kahrs.

Representative John Carmichael stated that he has an amendment ([Attachment 9](#)). The original bill states that a parent could refuse to medicate their child based upon the medical advice of a physician. The term "physician" in Kansas law includes physicians who do not prescribe medication such as chiropractors, podiatrists, and natureopathic physicians. The amendment requires a medical examination by a currently licensed M.D. or D.O. Katherine Goyette, Office of Revisor of Statutes, further clarified the amendment and the definitions in the law.

Representative John Carmichael moved to amend **SB157**, seconded by Representative John Whitmer.

There was discussion between Representatives John Carmichael, John Rubin, Leslie Osterman, Charles Macheers, and Katherine Goyette concerning the definition of physician and whether military physicians would be included, as well as physicians in other states.

Representative John Carmichael revised his motion to amend **SB157** to include persons licensed to practice medicine and surgery in Kansas and adjoining states and practitioners of the healing arts of medicine in the United States armed forces while acting in the line of duty, seconded by Representative John Whitmer.

Representative John Rubin stated that he is opposed to the amendment in any form. He likes the word "physician."

There was further discussion between Representatives Becky Hutchins, Janice Pauls, Leslie Osterman, and Blaine Finch, Chairperson John Barker, and Katherine Goyette.

Representative Blaine Finch is opposed to the amendment to **SB157** and the bill.

Katherine Goyette, Office of Revisor of Statutes, read the amendment to **SB157** to the committee at the

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request of Representative John Carmichael.

Chairperson Barker called for a vote on the amendment to **SB157**. The amendment to **SB157** failed to pass.

Representative Dennis Highberger moved to pass the original balloon amendment to **SB157**, seconded by Representative John Carmichael. A vote was taken, and the amendment to **SB157** failed to pass.

Representative John Carmichael stated that he had tried to make this bill better, but he will not support **SB157** if it allows opinions from chiropractors, podiatrists, and other persons who are not licensed to practice medicine and surgery.

Representative John Rubin closed on his motion to report **SB157** favorably for passage. A vote was taken, and Chairperson Barker noted that the ayes had it. Division was called, and the Chairperson called for the committee to vote by raising their right hands. There were twelve ayes and nine nays. **SB157** was favorably passed.

Chairperson Barker asked the committee to thank the staff for all their work.

The meeting was adjourned at 5:57 p.m. No further meetings were scheduled.