

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY-B

October 20 and 21, 1977

Room 528 - State House

Members Present

Representative Dick Brewster, Chairman
Senator Ron Hein
Senator Joe Norvell
Senator Jim Parrish
Representative Ben Foster
Representative Mike Glover
Representative Fred Lorentz
Representative Phil Martin
Representative Kent Roth
Representative John Hayes

Staff Present

Art Griggs, Revisor of Statutes Office
Phill Jones, Kansas Legislative Research Department

Others Present

Senator Elwaine Pomeroy, Chairman of the Special Committee on Judiciary-A

October 20, 1977

Morning Session

Chairman Brewster called the meeting to order at 10:00 a.m. and directed the Committee's attention to Proposal No. 41.

Proposal No. 41 -- Death With Dignity

The first conferee was Senator John Simpson who spoke briefly about S.B. 297. Representative Brewster asked him what would be the effect of a directive without this or similar legislation and Senator Simpson said that it would have no legal effect as far as he knew. Representative Brewster asked what the effect would be if legislation of this type existed and there was an absence of a directive. Senator Simpson said that the matter would have to be worked out with the physician.

The next conferee was Alice V. Mehling, Executive Director of the Society for the Right to Die. A copy of her prepared testimony is attached as well as are materials supplied by her organization to Committee members. *None*

The third conferee was Robert Hudson, M.D., a teacher of internal medicine at the K.U. Medical Center. Doctor Hudson said he was speaking only as a professor and a citizen. He said that things were getting a little better but that there was still a long way to go. He said that he saw a real problem with whether these patients really do need this. He said that in 10 or 15 years this bill may be superfluous because changes were coming from outside the medical profession. He felt, though, that the bill might be a useful instrument now. He noted that the biological situation of dying is imprecise and often changing and trying to spell out the ordinary and extraordinary varies with each case. He said that the more specific you get in writing the bill the more problems you will have. He suggested leaving things as simple as possible.

He pointed out two problems he saw with the bill. First, Section 11 seems to negate the purpose of the bill. Second, there is a great problem with the omission of children from the bill. He asked what about the eight year old that might be in a position to donate a kidney. Representative Martin asked who should be making the final decision. Doctor Hudson said the wishes of the family are the most important where the patient is out of the picture and he said he was satisfied with the authority this bill gives to a physician.

Senator Pomeroy asked what about the situation where a person has an accident in a strange town, i.e., whether it was necessary to carry the directive with you or not. Representative Brewster said that maybe there could be a notation on the driver's license.

Senator Hein questioned whether there was a need to define the term "terminal illness" and he pointed out that the way this term is defined in S.B. 297 it could include a diabetic.

Ms. Mehling pointed out that the New Mexico bill has a provision for minors and that a large number of safeguards were included. She also said that the bill should have a suggested form of a directive but not a required form.

Proposal No. 38 -- Lien Laws

The Committee reviewed bill draft 7 R.S. 1668.

Afternoon Session

Chairman Brewster reconvened the meeting at 1:45 p.m., with testimony on lien laws being the first order of business.

Proposal No. 38 -- Lien Laws

Mr. Vernon Jarboe, President of Whelan's Lumber Company of Topeka and Chairman of the Legislative Committee of the Mid-America Lumbermen's Association, reported that his association agreed with the notice provision of the draft legislation but disagreed with regard to the manner in which notice is to be provided. Mr. Jarboe reported that suppliers usually do not know the owner for whom the lumber is being sold. Thus, the suppliers would have to spend all of their time trying to find out who the owners are if the suppliers are to try to give notice to the owners. Additionally, it would be a problem for the suppliers to give such a notice as this could be interpreted as questioning the integrity of the contractors who are customers of the suppliers.

Mr. Jarboe repeated that the biggest difficulty facing suppliers would be in locating the owner and that 10 days would not provide enough time to do this. He recommended that it should be the responsibility of the prime contractor to provide notice to the owner. As two other suggestions, Mr. Jarboe added that lending institutions could include a warning notice with transactions involving home improvement and home mortgage loans, with similar warnings being included when building permits are issued, and that an ongoing public information campaign about the possibility of liens should be conducted.

Proposal No. 39 -- Expungement and Annulment

Wichita Police Chief Richard Lamunyon reported that an average of 160 persons per month are applying for expungement in district court in his city, mostly for misdemeanor convictions but including some felonies. He felt that the present laws are too liberal and he would like to see a waiting period of more than two years, adding that five years would be more realistic, with any subsequent conviction serving as the beginning point rather than the date of the original conviction.

Chief Lamunyon recommended that on page two of the draft the bill should read convicted of "a public offense" instead of "a felony." Also he said that those having access to expunged records should be expanded to include criminal justice agencies charged with protecting public safety and national security.

Proposal No. 40 -- Determinate Sentencing

Chief Lamunyon said that he believes the Adult Authority is usurping the sentencing responsibility of the judges; also, stronger minimum sentences should be set by the Legislature. He added that there should be mandatory minimum sentences for first offenders on Class A, B, and C felonies and for repeat offenders on any felony, i.e., time that must be served with no good time credits. Chief Lamunyon thought that a very small group of people are committing crimes and that these are the ones who need to be in prison. He concluded by saying that he felt the Committee's draft represented a positive half step forward and, while it did not go as far as he would like, it would be a step in the right direction.

Mr. Leo Jenkins of the Department of Corrections submitted departmental position papers on contractual agreements, the promulgation of rules, good time credits, and a suggested amendment to the Committee's draft. At the conclusion of discussion with Mr. Jenkins, the Committee requested data from the Department on the average amount of time that prisoners serve by class of felony.

Proposal No. 39 -- Expungement and Annulment

Following Committee discussion, the draft was amended to provide that notice of the ability to expunge a conviction would be extended to include all convictions. On a motion by Representative Glover, seconded by Senator Hein, the draft as amended was approved for introduction, with a recommendation that the bill be introduced in the House.

Proposal No. 38 -- Lien Laws

A motion by Representative Lorentz, seconded by Senator Norvell, to approve the draft on lien laws for introduction in the 1978 Session was adopted, with the bill being recommended to start in the House.

Proposal No. 41 -- Death With Dignity

It was agreed that the Committee would not have time to prepare a bill on Proposal No. 41, but staff was directed to prepare a draft of a favorable Committee report on this proposal.

At 4:05 p.m. the Chairman recessed the meeting until 9:00 a.m. the next day.

October 21, 1977

Morning Session

Chairman Brewster called the meeting to order at 9:15 a.m., and directed the Committee's attention to Proposal No. 40.

Proposal No. 40 -- Determinate Sentencing

The Chairman noted that K.S.A. 1976 Supp. 21-4603 (3) was not being carried out by the courts now and suggested that it would be appropriate for a judge to state in a journal entry the reasons upon which the sentence is based as this information would be beneficial to both the Department of Corrections and the Adult Authority. Representative Glover moved, seconded by Senator Norvell, that an amendment be drafted to require that this be done at the time of imposition of the original sentence and at the time of any order modifying a sentence within the 120-day period. The motion was adopted.

The members then proceeded to review bill draft 7 R.S. 1579.

Senators Hein and Parrish and Representative Glover moved and seconded that subsection (6) on page 20 of the draft be amended to require the Adult Authority to adopt rules and regulations and that restitution be authorized as a condition of parole by the Authority. The amendment was adopted. Staff was directed to make special notice of this amendment in the Committee's report, indicating that the members believe this to be feasible and that they urge its early implementation.

On page 12, subsections (2)(c) and (d) were similarly amended to include restitution when the court releases a defendant on probation or suspends imposition of sentence.

Various provisions of the draft were amended to add reference to the adoption of rules and regulations by the Adult Authority in carrying out its duties.

On a motion by Representative Glover, seconded by Senator Norvell, Section 24 of the draft was amended to authorize, but not require, the giving of notice to inmates in any state correctional institution with regard to the adoption of any rules and regulations relating to inmates or parolees.

The meeting recessed at 12:00 noon for lunch.

Afternoon Session

The meeting reconvened at 1:30 p.m.

Proposal No. 40 -- continued

On a motion by Senator Norvell, seconded by Representative Glover, Section 20 of the draft was rewritten to require the Adult Authority to adopt rules and regulations for contractual agreements between inmates, the Department of Corrections, and the Adult Authority, with language being added to specify that no inmate would have the right to enter into such an agreement.

As amended, the draft was recommended for introduction in the House on a motion by Representative Foster, seconded by Representative Glover.

Proposal No. 37 -- Juvenile Code

After noting that the draft was the result of three drafting sessions of the subcommittee, Chairman Brewster called on Mr. Griggs for a review of the changes contained in 7 R.S. 1606. During the course of the review, various amendments were made by the members to the draft. Mr. Griggs was directed to revise the draft in accordance with the day's action. In addition, Mr. Griggs was also directed to prepare a separate bill amending K.S.A. 1976 Supp. 21-3611 which would state that only 16 or 17 year olds could be found guilty of aggravated juvenile delinquency.

There being no further business, the Chairman adjourned the meeting at 4:15 p.m.

Prepared by Paul J. Purcell

Approved by Committee on:

December 16, 1977
(date)

PJP/dmb