

MINUTES OF THE House COMMITTEE ON Judiciary

Held in Room 522, at the Statehouse at 3:30 ~~a.m.~~ p. m., on March 21, 1978.

All members were present ~~except~~.

The next meeting of the Committee will be held at 3:30 ~~a.m.~~ p. m., on March 22, 1978.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

The meeting was called to order by the Chairman who asked Rep. Martin for a report from his subcommittee on Senate Bills 550, 551 and 583.

Rep. Martin stated the subcommittee recommends no change in the provisions which conferees said were controversial--in particular, the language regarding children. There was a question regarding (e) concerning liability, and there was feeling that the paragraph may not be necessary at all. Rep. Augustine told the committee they had talked with Judge Schowengerdt and in fact had asked all conferees, and none of them addressed themselves to that particular subsection. Most of the concern seemed to be relative to age and Judge Schowengerdt's other concern.

It was moved conceptually by Rep. Augustine to amend the bill on page 1 and page 12, reverting to existing law and deleting the language referred to, along with lines 415, 416, 421, 422, 423 and 424. Motion was seconded by Rep. Martin. The Chairman stated as he understood it, this would mean striking lines 348 and 349 on page 10, along with lines 356 through 359, lines 415 and 416, and lines 421 through line 424. Rep. Ferguson expressed opposition because of the burdens involved and Rep. Martin agreed he understood what Rep. Ferguson was saying, but thought the most important thing is to not prohibit action by someone because they are reluctant to get involved. Upon vote, motion carried by a majority, with Rep. Ferguson voting No.

Rep. Martin inquired if the committee feels (e) is needed. Mr. Griggs explained it had been the intention of the interim to provide protection when a person is placed in a facility for emergency observation without his consent. He noted he did not know of any instances of people being sued, and there had been no testimony to that effect during the interim.

It was moved by Rep. Mills and seconded by Rep. Hurley that subsection (e) be stricken. Motion carried by a majority.

It was then moved by Rep. Martin and seconded by Rep. Augustine that SB 550, as amended, be recommended favorably. Motion carried by a majority.

Rep. Baker reported on subcommittee work regarding HCR 5046. He distributed a proposed balloon amendment. (See exhibit.) Rep. Roth noted they had worked on language in response to questions raised in committee. Mr. Griggs noted it limits initiative to the 15 articles except for 11 and 14. He explained there is no way to tighten down on Article 15 because it includes just about everything except the Bill of Rights. Rep. Frey inquired why "may" is changed to "shall" in line 48, and Rep. Baker explained they wanted to limit initiative to the Constitution only.

The Chairman suggested separating the individual amendments rather than dealing with them all at once, and suggested the amendments on page one, and the first and last on page 2 are merely technical in nature. It was moved by Rep. Hoagland and seconded by Rep. Hayes that these amendments be adopted. Motion carried.

Rep. Hoagland stated he had problems with the other amendments because it would seem with the restrictions would mean a lawsuit everytime there is an attempt at initiative. Also, he expressed concern about the ten year limit. Rep. Roth stated he felt the ten year restriction had merit and moved the adoption of that amendment. Motion was seconded by Rep. Frey.

Rep. Whitaker offered a substitute motion that the Resolution, as previously amended, be recommended for adoption. Motion was seconded by Rep. Hoagland. Upon vote, motion carried 9 yes to 5 no.

Martin
Rep. Martin distributed a balloon on SB 551 (see exhibit), and moved to amend the report to allow appropriate language to refer to the bill which has passed. Motion was seconded by Rep. Frey and carried.

Rep. Frey suggested and the committee agreed the word "within" was missing in the report and should be incorporated. It was moved by Rep. Augustine and seconded by Rep. Foster that the subcommittee report be accepted. Rep. Lorentz noted a person could be incompetent and still not dangerous to self or others, and asked what will protect such people. Rep. Martin explained it is similar to the present mental illness statutes. Mr. Griggs stated the safeguard is the fact the hospital is supposed to release the person when he is not dangerous to himself or others.

Rep. Hoagland commented there was concern about the fiscal note involved in bringing medical staff in for hearing, and Rep. Frey agreed there is some travel involved, but during the interim he had gotten the impression there were not that many people involved. He expressed the opinion the hearing should take place in the jurisdiction where the original hearing was held.

Upon vote, motion carried.

The Chairman noted the language in line 29 regarding the location is separate and apart from the committee report, and would need a separate amendment. It was moved by Rep. Hayes and seconded by Rep. Gillmore that this amendment be adopted, making the hearing in the original jurisdiction. Rep. Martin offered a substitute motion to allow the patient to decide on the location. Motion was seconded by Rep. Augustine. Rep. Hayes noted he doubted any patient would opt to go back to the county where he was tried, and Rep. Frey agreed that counsel should make that decision. Rep. Martin withdrew his motion. Upon vote of the original motion, it carried by a majority.

It was moved by Rep. Hayes and seconded by Rep. Martin that the bill as amended be recommended favorably. Motion carried.

Rep. Martin reported the subcommittee suggests SB 583 be recommended favorably. He moved the bill be reported favorably. Motion was seconded by Rep. Augustine. Rep. Heinemann suggested line 46 needed to be cleaned up by striking "or" and putting in a comma, and the same thing on line 48. Rep. Martin agreed and upon vote the motion carried for the bill as amended, to be reported favorably.

Rep. Gastl reported the subcommittee has discussed SB 845 and had talked with a number of conferees. It is their recommendation that the bill should be heard before the full committee. The Chairman inquired if there were people who would like to be heard.

Mr. Mark Bennett, representing the American Insurance Association stated that there are a number of people who would like to be heard but as no meeting had been announced they were not there. He stated this bill really creates another cause of action in automobile cases. He explained there is great concern about the cost of insurance and such legislation will certainly mean more payouts resulting in higher premiums. He expressed fear this kind of proposal would result in coniving between husbands and wives and that the committee should be aware there are plenty of people willing to participate in fraud.

Rep. Heinemann noted the present law says that married persons can sue and be sued the same as if they were not married, and the Chairman stated he did not see how the court can uphold inter-spousal immunity.

Mr. Gary Pauley, State Farm Insurance Company of Bloomington, Illinois, noted he had not been aware there was to be a hearing. He stated he had talked to some insurance executives and their reaction was one of surprise that the legislature would be considering a new right under the law.

The Chairman noted that State Farm writes in Oklahoma where they do have this kind of law, and inquired if Mr. Pauley has any figures. He stated he attempted to get some information recently but there is no way they can come up with a dollar figure on any individual issue, but that he is sure there would be an impact although they cannot isolate it.

Mr. Ed Johnson, Kansas Association of Casualty and Property Companies, testified he would underline what had been said; that they feel lines 25 and 26 invites contrived situations and urged striking all after "tort" through "vehicle" in line 26.

The Chairman asked the subcommittee to continue study and deliberations in this matter.

The Chairman noted SB 468 is a carry over from last session and would give hired investigators in the District Attorneys' offices law enforcement authority. Mr. Gene Olander, Shawnee County District Attorney appeared in favor of the bill. He stated some people in the Senate would like to require such investigators to attend the law enforcement training school and he had no objection to that amendment. He explained the problem has arisen because the sheriff refuses to deputize them and they have no authority.

It was moved by Rep. Heinemann and seconded by Rep. Hayes that the bill be amended to include the training requirement. Motion carried. It was moved by Rep. Hayes and seconded by Rep. Heinemann that the bill as amended be recommended favorably.

Rep. Stites expressed concern about starting a new policy which he feels could be abused, and Rep. Hoagland agreed. Rep. Mills stated it seemed everyone who has law enforcement officers want to build their on private army. Rep. Lorentz stated the need is really in the rural areas and if the committee really wanted to do something they should fill that void. Upon vote, motion lost six yes to eight no.

The Chairman noted SB 911 creates a District Attorney in Douglas County, and that he has talked with the delegation, all of whom indicate they have no problem with the bill. It was moved by Rep. Foster and seconded by Rep. Frey that the bill be reported favorably. Mr. Griggs pointed out there should be a clean-up amendment on line 29 and on page four, which he believes is a printing error. Rep. Foster amended his motion to include those amendments. Upon vote, motion carried by a majority.

The Chairman handed out proposed amendments to HCR 5085 and announced this Resolution as well as HCR 5062 would be considered the next day. With regard to HCR 5062, he stated he felt the statute is self-executing and the regulations are not necessary, but that KCCR feels they need them. He explained the original regulations were far in excess of statutory authority; that he had met with the Commission and several others and they have compromised with the proposed amendments.

The meeting was adjourned.

House
Judiciary
3-21-78

Name	Address	Organization
Lou Frydman	Lawrence	Advocates for Freedom in Mental Health
E.T. Jansson	Box 829, Topeka	Ks Psychiatric Soc, Mission Forum
W.D. Huggins	L.C. Lane	Holds - Motel Assoc
Judy Vensink	Topeka	KLDPC
Ed Janson	Topeka	Kans. Assoc of Prop. + Cas. Ins. Cos.
Sam Paulig	Bloomington, Ill.	Hlt. Home Ins. Cos.
Bill Abbott	Wichita	Beechey Co.
Mark Bennett	Topeka	Am Bus Assoc
J. Olander	Topeka	County + Dist attys
Richard Taylor	Topeka	KUDF
Bob Hartsook	Topeka	KTFA
Jim Clouse	1268 Western	Mental Health Assn.

As Amended by House Committee

Session of 1978

House Concurrent Resolution No. 5046

By Special Committee on Judiciary—A

Re Proposal No. 36

0017 A PROPOSITION to amend article 14 of the constitution of the
0018 state of Kansas by adding a new section thereto, relating to
0019 constitutional amendments initiated by the people.

0020 *Be it resolved by the Legislature of the State of Kansas, two-thirds*
0021 *of the members elected to the House of Representatives and*
0022 *two-thirds of the members elected to the Senate concurring*
0023 *therein:*

0024 Section 1. The following proposition to amend the constitu-
0025 tion of the state of Kansas shall be submitted to the qualified
0026 electors of the state for their approval or rejection: Article 14 of
0027 the constitution of the state of Kansas is amended by adding a
0028 new section thereto to read as follows:

0029 “§ 3. Propositions for the amendment of this constitution
0030 may be initiated by the people and submitted to the electors of
0031 the state for their approval or rejection at any general election
0032 held in November of an even-numbered year. In order for the
0033 people to initiate a constitutional amendment, the following
0034 requirements for signatures of registered voters on a petition
0035 ~~must~~ be met:

0036 “(a) In each of at least seventy-five (75) counties, there must
0037 be obtained at least the number of signatures that is equal to
0038 ten percent (10%) of the total vote cast in the county for the
0039 office of secretary of state governor at the last election for such
0040 office; and

0041 “(b) The total number of signatures obtained statewide
0042 must be at least equal to ten percent (10%) of the total vote cast
0043 statewide for the office of secretary of state governor at t' last
0044 election for such office.

Proposal of amendments initiated by the people; procedure; power of legislature.

electors

shall

2-2-78

0045 "The legislature shall prescribe the form of the petitions, the
 0046 time and manner of filing petitions, a method for determining
 0047 the validity thereof and publication requirements. An amend-
 0048 ment initiated by the people may amend one or more articles of
 0049 the constitution and related subject matter in other articles as
 0050 necessary to accomplish the objectives of the amendment. Not
 0051 more than five three amendments proposed by initiative shall
 0052 be submitted at the same election. In the event that more than
 0053 five three validly submitted amendments are filed, the five
 0054 three amendments which are filed the earliest shall be sub-
 0055 mitted at the next general election held in November of an
 0056 even-numbered year. ~~The legislature may provide for the~~
 0057 ~~withdrawal of an initiated amendment by its sponsors at any~~
 0058 ~~time prior to its submission to the electors.~~

0059 "If a majority of the electors voting on any amendment
 0060 proposed by initiative shall vote in favor thereof, the amend-
 0061 ment shall ~~become a part of this constitution~~. If any conflicting
 0062 amendments to the constitution shall be approved by the
 0063 people at the same election, the amendment that receives the
 0064 largest number of affirmative votes shall prevail and in the
 0065 case of a tie vote ~~the constitution, as it was constituted imme-~~
 0066 ~~diately prior to the election, shall prevail and the conflicting~~
 0067 amendments shall be of no force or effect."

0068 Sec. 2. This resolution, if concurred in by two-thirds of the
 0069 members elected to the house of representatives and two-thirds of
 0070 the members elected to the senate, shall be entered on the jour-
 0071 nals, together with the yeas and nays. The secretary of state shall
 0072 cause this resolution to be published as provided by section 1 of
 0073 article 14 of the constitution, and shall cause the proposed
 0074 amendment to be submitted to the electors of the state at the
 0075 general election in the year 1978.

the method of determining the sponsors of petitions,

, the procedure for the withdrawal of petitions, the procedure for appeals from a finding that the same or a substantial similar amendment was rejected within ten (10) years before its proposed resubmission

and all amendments authorized by this section shall be initiated by the people in accordance therewith

No amendment proposing to repeal or amend any section in article 11 or 14 of this constitution and no amendment relating to taxation or constitutional amendment and revision may be proposed by the people pursuant to this section. In addition, propositions for the amendment of this constitution initiated by the people shall not change the ordinance, preamble, bill of rights, schedule or resolutions nor shall such amendment enact a new article to this constitution; otherwise,

shall

If a proposed amendment to this constitution which was initiated by the people pursuant to this section is thereafter rejected at an election thereon, the same or a substantially similar amendment, as determined by the secretary of state may not thereafter be resubmitted by the initiative of the people until the general election that occurs ten (10) years after the general election at which such amendment was rejected.

approved and this constitution shall be changed accordingly

of conflicting amendments

SENATE BILL No. 551

By Special Committee on Judiciary—A

Re Proposal No. 31

12-7

12-7

0016 AN ACT relating to criminal procedure; providing a procedure
0017 for annual hearings for certain persons found not guilty be-
0018 cause of insanity.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. (1) Any person found not guilty because of insan-
0021 ity who remains in the state security hospital or a state hospital
0022 for over one year pursuant to a commitment under K.S.A. 1977

0023 Supp. 22-3428 shall be entitled ~~to an annual~~ hearing to determine
0024 whether or not such person continues to be dangerous to himself,
0025 herself or others. ~~At least thirty (30) days prior to the end of each~~
0026 ~~one year period that any such person remains committed,~~ the

0027 chief medical officer of the state security hospital or state hospital
0028 where the person is committed, ~~or such officer's designee,~~ shall

0029 ~~send the committing court district court of the county where the~~
0030 ~~person is hospitalized notice of the annual commitment date and~~

0031 a report of ~~a medical~~ examination ~~made by a member of the~~
0032 ~~hospital staff within the preceding thirty (30) days.~~ ~~With respect~~

0033 ~~to any person who on the effective date of this act has remained in~~
0034 ~~the state security hospital or a state hospital for eleven months or~~

0035 ~~more pursuant to a commitment under K.S.A. 1977 Supp. 22-~~
0036 ~~3428, the notice and report provided by this subsection shall be~~

0037 ~~given within fifteen (15) days after the effective date of this act.)~~

0038 (2) Upon receipt of ~~a notice and~~ report provided for in sub-
0039 section (1), the court shall set a date for the hearing, giving notice
0040 thereof to the county or district attorney *of the county where the*

0041 *person is hospitalized, the county or district attorney of t*
0042 *county in which the person was originally ordered committed,*

annually to request a

The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or such person's counsel. When the request is filed, the court shall forthwith give notice of the request to

and such officer

conduct a mental examination of the person and such

twenty (20) days from the date upon which notice from the court was received

the

within

0043 the committed person and such person's counsel. If there is no
0044 counsel of record, the court shall appoint a counsel for the
0045 committed person. The committed person shall have the right to
0046 procure, at his or her own expense, a mental examination by a
0047 physician of his or her own choosing. If a committed person is
0048 financially unable to procure such an examination, the aid to
0049 indigent defendants provisions of article 45 of chapter 22 of the
0050 Kansas Statutes Annotated shall be applicable to such person. A
0051 committed person requesting a mental examination pursuant to
0052 K.S.A. 22-4508 may request a physician of his or her own choos-
0053 ing, whereupon the judge shall inquire as to the estimated cost
0054 therefor. If such physician agrees to accept compensation in an
0055 amount in accordance with the compensation standards set by the
0056 board of supervisors of panels to aid indigent defendants, the
0057 judge shall appoint the requested physician; otherwise, the court
0058 shall designate a physician to conduct the examination. Copies of
0059 each mental examination of the committed person shall be filed
0060 with the court *at least five days prior to the hearing* and copies
0061 thereof, *when requested, shall be supplied to the prosecuting*
0062 *attorney county or district attorneys receiving notice pursuant to*
0063 *this section* and the committed person's counsel *at least five days*
0064 *prior to the hearing.*

0065 (3) At the hearing the committed person shall have the right to
0066 present evidence and cross examine the witnesses. *Both county*
0067 *or district attorneys receiving notice pursuant to this section*
0068 *shall be permitted to participate in the hearing.* If the court finds
0069 the committed person is no longer dangerous to himself, herself
0070 or others, the court shall order the person discharged; otherwise,
0071 the person shall remain committed.

0072 (4) *Costs of a hearing held pursuant to this section shall be*
0073 *assessed against and paid by the county in which the person was*
0074 *originally ordered committed.*

0075 Sec. 2. This act shall take effect and be in force from and after
0076 its publication in the statute book.

STATE OF KANSAS

JIM PARRISH
STATE SENATOR NINETEENTH DISTRICT
SHAWNEE AND JEFFERSON
COUNTIES
909 TOPEKA AVENUE
TOPEKA, KANSAS 66612



TOPEKA
—
SENATE CHAMBER

Comm
COMMITTEE ASSIGNMENTS
ASSISTANT MINORITY LEADER
MEMBER: JUDICIARY
LOCAL GOVERNMENT
LEGISLATIVE, CONGRESSIONAL AND JUDICIAL
APPORTIONMENT
CLAIMS AND ACCOUNTS
Suggested Amendment

April 3, 1977

The Honorable Dick Brewster
Chairman of the House Judiciary Committee
Statehouse
Topeka, KS 66612

Dear Dick:

Senate Bill No. 468 passed the Senate Thursday, March 31, 1977. Because I was presiding over the Committee of the Whole, I was unable to submit a needed amendment.

The bill gives law enforcement powers to certain investigators who work for district attorneys. However, there is no requirement for training or qualifications.

I attempted to insert a requirement that investigators attend the law enforcement training academy during committee discussion, but my attempts failed on a partisan vote. Enclosed with this letter is a copy of the bill with language suggested by Art Griggs.

If this bill is worked this year, I would appreciate your help in getting it amended. If the bill is held over, perhaps it can be amended next year.

Thanks for your cooperation.

Most sincerely,

Jim Parrish

JP:jm

enclosure
cc Speaker John Carlin, Pat Hurley, Jim Slattery

3-22

3-21

SENATE BILL No. 468

By Committee on Federal and State Affairs

3-24

0016 AN ACT relating to district attorneys; concerning the powers of
0017 investigative personnel; amending K.S.A. 22a-106 and repeal-
0018 ing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 22a-106 is hereby amended to read as fol-
0021 lows: 22a-106. (a) Within the limits of appropriations therefor, the
0022 district attorney shall appoint such assistant district attorneys,
0023 deputy district attorneys and other stenographic, investigative
24 and clerical ~~hire~~ *personnel* as may be necessary to carry out the
0025 functions of the district attorney's office in such judicial district,
0026 and ~~he~~ *the district attorney* shall determine the annual compen-
0027 sation of each assistant district attorney and other persons ap-
0028 pointed pursuant to this subsection. The county commissioners
0029 shall determine and allow such reasonable sums from funds of
0030 the county for the compensation of assistants, deputies and other
0031 stenographic, investigative and clerical ~~hire~~ *personnel* and for
0032 other expenses of such office as may be necessary to carry out the
0033 function of such office.

0034 (b) Each assistant and deputy district attorney shall have been
0035 regularly admitted to practice law within the state of Kansas prior
0036 to ~~his~~ appointment. Each district attorney and his *or her* assistant
0037 district attorneys shall devote full time to official duties and shall
0038 not engage in the civil practice of law, except as required in
0039 performing ~~his~~ official duties while serving as district attorney or
0040 assistant district attorney, and shall not refer any client or other
0041 person or any matter to any designated attorney or firm of attor-
42 neys.

0043 (c) The board of county commissioners of each county con-

0044 tained in judicial districts 3, 10, 18 and 29 shall provide suitab.
0045 office space within such county for the district attorney, his or her
0046 assistants, deputies, office personnel and equipment.

0047 (d) Notwithstanding any of the provisions of this act the
0048 district attorney, with the approval of the board of county com-
0049 missioners, may appoint and employ special counsel when nec-
0050 essary to assist the district attorney in the discharge of his the
0051 district attorney's duties, such special counsel not to be subject to
0052 the restrictions contained in paragraph (b) herein.

0053 (e) Any county contained in judicial districts 3, 10, 18 or 29
0054 may receive and expend for the operation of the office of district
0055 attorney any federal moneys made available therefor.

0056 (f) Investigative personnel appointed pursuant to this section
0057 shall have the same authority as law enforcement officers have to
0058 arrest a person but such investigative personnel, in any civil or
0059 criminal action arising from the exercise of the authority of a
0060 law enforcement officer, shall not have any immunity provided
0061 to county or district attorneys and their assistants.

0062 Sec. 2. K.S.A. 22a-106 is hereby repealed.

0063 Sec. 3. This act shall take effect and be in force from and after
0064 its publication in the official state paper.

*investigative personnel
appointed by the district
attorney*

~~Sec. 3.~~ All officers regularly appointed by the board shall be qualified under the provisions of article 56 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, but any officer ^{such personnel} may receive a temporary appointment pending completion of the requirements for a certificate attesting to the satisfactory completion of the required number of hours of accredited instruction at the law enforcement training center.

*If they are given powers to arrest, etc,
they should have the necessary training.
Art Criggs worked up the
above possible amendment.*