

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on February 1, 1979.

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on February 5, 1979.

These minutes of the meeting held on January 31, 1979 were considered, corrected and approved.

JOSEPH J. HOAGLAND  
*Chairman*

The conferees appearing before the Committee were:

Rep. Heinemann, Sponsor of HB 2119  
Rep. Gillmore, Sponsor of HB 2164  
Rep. Stites, Sponsor of HB 2174 and HB 2177

Chairman Hoagland opened the meeting at 3:30 p.m. The minutes of the last meeting were approved. The Chairman then introduced Rep. Heinemann, sponsor of HB 2119, who explained the bill and answered questions of several committee members.

HB 2164 was then explained to the committee by the Sponsor, Rep. Gillmore.

Rep. Stites, sponsor of HB 2174 and HB 2177, explained those bills and there were no questions from the committee members.

Chairman Hoagland then turned the meeting over to Rep. Heinemann, Chairman of the Criminal Law Sub-Committee, to report to committee on their study of HB 2042 and 2160. Rep. Heinemann explained the recommendations section by section and a proposed amendment (SEE ATTACHMENT # 1). The sub-committee further recommended for Section 13, no specific method of execution and cleanup amendments in Sections 14 through 22. A second amendment by the sub-committee, regarding an appointment by the Secretary of Corrections, of a panel to decide the substance or substances for the mode of execution, was explained to the committee. (SEE ATTACHMENT # 2).

Rep. Brewster moved that the first sub-committee proposed amendment (ATTACHMENT # 1) be adopted into HB 2160. Seconded by Rep. Baker. The amendment was approved.

Rep. Roth then explained the second amendment proposed to be inserted into the section on mode of execution. (SEE ATTACHMENT # 2).

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Rep. Brewster then recommended two substitute amendments to HB 2160. The first on Page 5, Line 175, to strike the period and insert a comma and add the words, "for a Class A or B Felony." The second on Page 5, Line 179, after the word a, add, "Class A or B." Rep. Brewster then moved these two amendments be adopted. Seconded by Rep. Gillmore. Rep. Roth asked for the question to be divided. Rep. Ferguson then offered a substitute motion for Page 5, Line 175, to read; strike the period and add a comma and the words, "to effect a lawful escape from custody." Rep. Roth seconded the motion. This substitute amendment passed.

Rep. Brewster then moved the second amendment for Page 5, Line 179, be passed. Rep. Baker seconded, and the amendment passed by a vote of 8 "for" and 7 "against."

A motion was then made by Rep. Heinemann to incorporate the recommended amendment of the sub-committee for HB 2160 (SEE ATTACHMENT # 2). Motion seconded by Rep. Roth.

Rep. Brewster then offered a substitute conceptual amendment to strike the death by injection clause and add, "death by hanging, with the penalty open to the public." Seconded by Rep. Martin. Following several questions, the vote for the substitute conceptual amendment was adopted with a count of 10 "for" and 7 "opposing." Representatives Roth, Harper and Whitaker asked to be recorded as voting "NO."

Rep. Baker then moved that an amendment be adopted as "NEW SECTION 3," deleting the death penalty and replacing with a 30-year mandatory prison term. Seconded by Rep. Glover.

Rep. Gillmore offered a substitute motion that we report the bill adversely. Seconded by Rep. Miller. A roll call vote was called for. Chairman Hoagland then read two opinions from the 1978 session and ruled that it was not in order to have a roll call vote. The vote on the substitute motion was 9 "in favor" and 9 "against," and the motion lost. For the records, Rep. Douville, Rep. Crow voted "YES." Rep. Harper asked to be recorded as voting "NO" on this substitute motion.

Rep. Stites then offered a substitute motion that the committee report HB 2160 without recommendation. Seconded by Rep. Whitaker. The motion failed by a vote of 8 "in favor" and 9 "opposing."

Rep. Brewster offered a substitute motion that HB 2160 be tabled. Seconded by Rep. Miller. As a point of reference, it takes a simple majority to untable a bill. Motion failed.

It was then moved by Rep. Baker to adopt his amendment (SEE ATTACHMENT # 3). Seconded by Rep. Glover. The vote was 10 "in favor" and 8 "opposing" and the motion carried to adopt the amendment of "New Section 3."

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Rep. Miller moved that the committee report the bill favorably. It was seconded by Rep. Douville.

Rep. Brewster then made a substitute motion that the committee adjourn and reconsider this bill after the necessary cleanup work is done by the Revisor's Office. Seconded by Rep. Martin. The vote was 8 "in favor" and 9 "opposing." Motion Failed.

Rep. Brewster moved that final consideration of HB 2160 be made on Wednesday, February 7, and it was seconded by Rep. Harper. Rep. Frey rose to a point of order. The Chair indicated the motion by Rep. Brewster was in order. The vote was taken on the motion and the motion failed.

Rep. Glover moved that all sections be removed by the Revisor's office other than Section 1, Section 2, New Section 3, and the amendments in Section 7. Seconded by Rep. Baker. The motion carried.

Rep. Glover moved that HB 2160 be reported without recommendation as amended. Mr. Gillmore seconded.

A substitute motion was made by Rep. Frey to report the bill favorably. Seconded by Rep. Harper. Rep. Miller asked to be recorded in favor. The motion failed.

Rep. Glover's motion to report without recommendation as amended, was then put to vote. Motion carried. Rep. Brewster, Rep. Frey and Rep. Whitaker asked to be recorded as voting "NO" on this motion.

Chairman Hoagland adjourned the meeting at 5:35 p.m.

0084 Kansas code of criminal procedure.  
 0085 New Sec. 5. Upon conviction or adjudication of guilt of a  
 0086 defendant of murder in the first degree, as defined by K.S.A.  
 0087 21-3401 and amendments thereto, and a finding that the defend-  
 0088 ant was less than eighteen (18) years of age at the time of the  
 0089 commission thereof, the court shall sentence the defendant to  
 0090 imprisonment for life.

0091 New Sec. 6. (1) Except as provided in section 5, upon con-  
 0092 viction or adjudication of guilt of a defendant of murder in the  
 0093 first degree, as defined in K.S.A. 21-3401 and amendments  
 0094 thereto, the court shall conduct a separate sentencing proceeding  
 0095 to determine whether the defendant should be sentenced to death  
 0096 or life imprisonment. The proceeding shall be conducted by the  
 0097 trial judge before the trial jury as soon as practicable. ~~If, through~~  
 0098 ~~impossibility or inability, the trial jury is unable to reconvene for~~  
 0099 ~~a hearing on the issue of penalty,~~ the trial judge may summon a  
 0100 special jury of twelve (12) persons which shall determine the  
 0101 question of the sentence to be imposed. Jury selection proce-  
 0102 dures, qualifications of jurors and grounds for exemption or  
 0103 challenge of prospective jurors in criminal trials shall be appli-  
 0104 cable to the selection of such special jury. The jury at the sen-  
 0105 tencing proceeding may be waived in the manner provided by  
 0106 subsection (1) of K.S.A. 22-3403 for waiver of a trial jury. If the  
 0107 jury at the sentencing proceeding has been waived or the trial jury  
 0108 has been waived, the sentencing proceeding shall be conducted  
 0109 by the court.

0110 (2) In the sentencing proceeding, evidence may be presented  
 0111 concerning any matter that the court deems relevant to the ques-  
 0112 tion of sentence and shall include matters relating to any of the  
 0113 aggravating circumstances enumerated in section 7 or any  
 0114 mitigating circumstances. Any such evidence which the court  
 0115 deems to have probative value may be received regardless of its  
 0116 admissibility under the rules of evidence, provided that the  
 0117 defendant is accorded a fair opportunity to rebut any hearsay  
 0118 statements. Only such evidence of aggravating circumstances as  
 0119 the state has made known to the defendant prior to the sentencing  
 0120 proceeding shall be admissible, and no evidence secured in

If any person that served on the trial jury is unable to serve on the jury for the sentencing proceedings, the court shall substitute any alternate juror that had been empaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding,

22-1006. Procedure when convict appears to be insane, (1) If any convict under sentence of death shall appear to be insane, the director of the correctional institution or sheriff having custody shall forthwith give notice thereof to a district judge of the judicial district in which such convict was tried and sentenced, and the district judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convict. If the district judge shall determine that there is not sufficient reason for the appointment of a commission, such judge shall so find and refuse to suspend the execution of such convict.

(2) If the district judge shall determine that a commission ought to be appointed to examine such convict, such judge shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convict was sentenced, and, if necessary, the judge shall suspend the execution and appoint the superintendents of the Topeka state hospital, the Osawatimie state hospital, the Rainbow mental health facility and the Larned state hospital as a commission to examine such convict. The commission shall examine the convict with a view of determining whether the convict is sane or insane and shall report its findings in writing to such judge within ten (10) days after appointment. If for any reason any of such superintendents cannot serve in such capacity, the district judge shall appoint in his or her place one of the assistant superintendents of the hospital or facility.

(3) If three of the members of such commission shall find such convict insane, the district judge shall suspend the execution until further order.

(4) Any time thereafter, when it shall be made to appear to the district judge that such convict has become sane, such judge shall appoint a commission in the manner aforesaid, who shall make another investigation as to the sanity of such convict, and in case such convict is again declared insane his or her execution shall be suspended by the judge until further order, and such proceedings may be had at such times as the district judge shall order until it is either determined that such convict is sane or insane.

History: K.S.A. 22-1006; L. 1976, ch. 145,

22-1007. Finding of sanity; execution day. In case said judge has suspended the execution of said convict pending an investigation as to his sanity, and said convict shall be found to be sane, said judge shall appoint a day for his execution, which shall be carried into effect in the same manner as provided in the original sentence, a certified copy of which shall be transmitted by mail to the execution agency. [L. 1970, ch. 129, § 22-4007; July 1.]

secretary of corrections  
secretary of corrections

Insert to section on mode of execution

Section on mode of execution

(5) In order to provide the secretary of corrections assistance in selecting the type substance or substances to be administered in carrying out a sentence of death by intravenous injection in a swift and humane manner, the secretary shall appoint a panel of three persons to advise the secretary, one of whom shall be a pharmacologist, one of whom shall be a toxicologist, and one of whom shall be an anesthesiologist. The panel shall meet upon the call of the secretary and, for the performance of their official duties, panel members shall receive mileage, compensation, subsistence and expenses as provided in K.S.A. 75-3223.

*Polymunity*

*Atch. 2*

New Sec. 3. Notwithstanding the provisions of K.S.A. 1978 Supp. 21-4603 and 22-3717, a defendant convicted of murder in the first degree, as defined by K.S.A. 21-3401, as amended, shall not be eligible for probation nor suspension of sentence and shall be sentenced to imprisonment for life with parole eligibility as hereafter provided. A defendant sentenced pursuant to this section shall not be eligible for parole prior to serving thirty (30) years imprisonment, and such thirty (30) years imprisonment shall not be reduced by the application of good time credits.

NOTE: If the above section is adopted, then sections 5 to 11 of both HB 2042 and HB 2160 would be deleted. Additionally, conforming amendments would be necessary to the other sections of either HB 2042 or HB 2160.