

House Bill No. 2501 - Court costs in mental illness cases.

The chairman referred to the letter received from Nick Tomasic, the Wyandotte County District Attorney. Committee discussion followed concerning possible amendments to the bill and to other statutes. The chairman reviewed possible amendments to K.S.A. 22-3428a. Senator Steineger moved to amend the bill by including a section amending K.S.A. 22-3428a to provide that on request of the district attorney in the county where the original proceeding was held, the hearing on the release of the patient could be transferred to the original county; Senator Gaines seconded the motion, and the motion carried. Senator Steineger moved to further amend the statute to provide for an appeal procedure; Senator Hein seconded the motion, and committee discussion followed. Following committee discussion, the motion was withdrawn. Senator Steineger then moved to amend the statute, and also K.S.A. 22-3428 concerning release, to provide that the standard should be whether the patient would be dangerous in the community; Senator Gaar seconded the motion, and the motion carried. Senator Steineger moved to further amend the statutes to provide that the burden of proof would be on the petitioner, by clear and convincing evidence. Committee discussion followed; Senator Mulich seconded the motion, and the motion carried. Senator Steineger moved to further amend the statutes to provide that if there is a reentry program ordered, the supervision of that reentry program shall be transferred to the district court where the reentry program is to take place; senator Mulich seconded the motion, and following committee discussion, the motion carried. Senator Hess moved to desex the bill; Senator Parrish seconded the motion, and the motion carried. Senator Gaines moved to report the bill favorably as amended; Senator Steineger seconded the motion, and the motion carried.

House Bill No. 2612 - Fee for resignation of resident agents.

Senator Berman moved to report the bill adversely; Senator Burke seconded the motion. Following committee discussion, the motion failed on a vote of four in favor to six opposed. Following further committee discussion, Senator Parrish moved to report the bill favorably; Senator Werts seconded the motion, and the motion carried.

House Bill No. 2177 - Appraisements of real estate prior to sale or lease by a representative at private sale. Following committee discussion, there was no motion for any action on the bill.

House Bill No. 2034 - Criminal procedure, prohibiting disclosure of certain arrests. Following committee discussion, Senator Gaines moved to report the bill favorably; Senator Burke seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved
by the committee on 4-25-79.

3-26-79

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
<i>Martin C. Minkoff</i>	<i>Lawrence</i>	<i>KCU</i>
<i>Don E. Cloze</i>		<i>Topeka Capital - Journal</i>

STATE OF KANSAS

ELWAIN F. POMEROY
SENATOR - 11TH DISTRICT
PRIVATE OFFICE
1415 - 10TH AVENUE
TOPEKA, KANSAS 66612
PHONE 347-0111



TOPEKA

SENATE CHAMBER

March 23, 1979

COMMITTEE ASSIGNMENTS

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VICE CHAIRMAN: BUDGETARY COOPERATION
COMMISSION
MEMBER: ASSESSMENT AND TAXATION
LEGISLATIVE, CONGRESSIONAL AND
JUDICIAL APPROPRIATION
LOCAL GOVERNMENT
ORGANIZATION, CALENDAR AND RULES

Mr. James R. James
Judicial Administrator
Kansas Judicial Center

Dear Mr. James:

As you know, the Senate Judiciary Committee has been considering House Bill No. 2059 and various proposed amendments to that bill. Recognizing the need to have sufficient statistical information, the committee is nevertheless reluctant to pass legislation that addresses a situation that conceivably could be resolved with the mutual cooperation of the agencies involved.

The committee has instructed me to write to you to inquire whether the gathering of statistical information on juveniles could be accomplished to the mutual satisfaction of SRS, GCCA and the judicial department without legislation, whether that is accomplished by means of changes on your forms or simply your issuing a directive to the various district court clerks instructing them to fill out the SRS "stat" cards.

The committee will hold action on House Bill No. 2059 pending receipt of an answer from you in regard to this matter. We would hope that your answer can be received prior to March 30, 1979.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elwain F. Pomeroy". The signature is written in dark ink and is positioned above the typed name.

Elwain F. Pomeroy, Chairman
Senate Judiciary Committee

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STATE OF KANSAS

ELWAINE F. POMEROY
SENATOR EIGHTEENTH DISTRICT
PRIVATE OFFICE
1415 TOPEKA AVENUE
TOPEKA, KANSAS 66612
PHONE 357-0311



COMMITTEE ASSIGNMENTS
CHAIRMAN JUDICIARY
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LEGISLATIVE, CONGRESSIONAL AND
JUDICIAL APPORTIONMENT
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TOPEKA

SENATE CHAMBER

M I N U T E S

CONFERENCE COMMITTEE ON HOUSE BILL NO. 2501

April 24, 1979

Room 519 - State House

The Conference Committee on House Bill No. 2501 was called to order by Senator Elwaine F. Pomeroy at 8:00 a.m. on April 24, 1979. Members present were Senator Elwaine F. Pomeroy, Senator Paul Hess, Senator Jack Steineger, Representative David J. Heinemann, and Representative Phil Martin. The Conference Committee proceeded to receive testimony from conferees who were present.

Mr. Nick Tomasic, the District Attorney from the 29th Judicial District (Wyandotte County) testified in support of the senate amendments to House Bill No. 2501. He stated that if any doubt exists whether the insanity defense acquitee might engage in future harmful conduct, then the matter should be resolved in favor of protection of the community. He further suggested additional amendments to House Bill No. 2501. His suggestions included, among others, a requirement that the judge make express findings of fact and conclusions of law; provision for a stay of an order to release the patient if the prosecution appeals the court's decision; a specific list of factors the court must take into consideration in determining whether or not to release the acquitee; and a provision to allow the district or county attorney to request an additional patient evaluation, at a place designated by the court.

Mr. Robert L. Feldt, an attorney from Great Bend, Kansas, stated that in his opinion, the senate amendments to House Bill No. 2501 might be likened to performing cosmetic surgery on a terminally ill patient. He stated that K.S.A. 1978 Supp. 22-3428 is subject to Constitutional challenge. He related that in his opinion, the reasoning of the United States Court of Appeals for the District of Columbia decision in Bolton v. Harris, 395 Fed. 2d 642 (1968) would apply to the Kansas statute pertaining to the insanity defense, because that decision struck down a similar statute for the District of Columbia. In addition, he believes that a recent United States Court of Appeals, Fifth Circuit, decision -- Powell v. Florida, 579 Fed. 2d 324 (1978) is indicative of a trend in the way the federal courts will review the insanity defense statutes. He believes both cases stand for the proposition

that to satisfy the constitutional due process requirements there must be no substantial differences between statutes authorizing the commitment of a defendant based upon an acquittal because of insanity and a patient committed to a hospital under civil commitment provisions. In answer to a question from Senator Pomeroy, Mr. Feldt stated that in his opinion, it would be possible for Kansas to do away with the insanity defense, if there was a subsequent hearing on the matter of disposition of the defendant upon a finding of guilty. He pointed out that this would be a very far-reaching decision, and he urged the Conference Committee to request an interim study of the entire matter, rather than adopting the senate committee amendments.

Mr. Bill Ryan, a part-time counsel for Larned State Hospital, testified on problems the hospital faces in complying with statutory requirements pending a proposed release of the insanity defense acquitee from the hospital. In answer to one question, he pointed out that upon release from the hospital, the law provides for a probation-type arrangement to oversee patient compliance with the terms and conditions of release. If the acquitee fails to comply, the district or county attorney may then file to have the person involuntarily committed to the hospital.

Bruce Roby, an attorney with the Department of Social and Rehabilitation Services, stated that he agrees with Mr. Feldt that there does appear to be a trend -- beginning in the eastern states -- to treat the insanity defense acquitee in the same way as a person committed under civil provisions. There may be some constitutional risk to the Kansas commitment provisions if this trend continues. He stated that there was a recent report issued by the New York Department of Mental Hygiene which advocated abolishing the insanity defense and which recommended that the New York Legislature adopt a rule of diminished capacity under which evidence of abnormal mental condition would be admissible to affect the degree of the crime for which an accused could be convicted.

Mr. Max Moses, representing the Kansas Association of County and District Attorneys, spoke in support of the senate amendments to House Bill No. 2501.

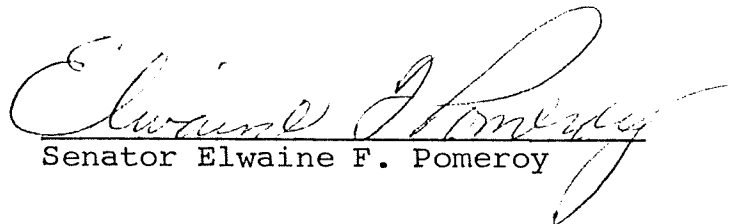
Thereupon, the meeting adjourned until 12:15.

The Conference Committee was called to order again at 12:15 by Senator Elwaine F. Pomeroy. Discussion of the merits of the senate amendments followed. Following committee discussion, it was agreed that the House should accede to the Senate amendments to House Bill No. 2501, and that further amendments to the bill should be made. The members agreed that although the burden of proof should be placed on the acquitee, that burden should be by a preponderance of the evidence, rather than by

clear and convincing evidence as provided in the Senate amendments. The committee agreed to provide that a copy of the medical report would be furnished to the county or district attorney of both the county where the hospital is located and the committing county, and that the county or district attorney of the committing county would have five days after receipt of that medical report in which to move to have the venue transferred to the committing county.

The committee members agreed that abolition of the insanity defense presents issues much too complex to be resolved by the Conference Committee, and that an interim study should be requested.

It was further agreed that the Senate amendments which added the language "or a danger to persons in the community if the patient is discharged or conditionally released" following the phrase "continues to be a danger to the patient's self or others" was not needed, because the present law presently should be interpreted in that manner, and that it was the legislative intent when the present statute was adopted that the phrase "or others" includes persons in the community if the patient is discharged or conditionally released. Therefore, the additional language suggested by the Senate amendments are not necessary, since the law presently includes a consideration of the potential for danger to persons in the community.


Senator Elwaine F. Pomeroy