

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./~~p.m.~~ on January 16, 1984 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence - Revisor of Statutes  
Mike Heim - Legislative Research Department  
Jerry Donaldson - Legislative Research Department

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council  
Marjorie Van Buren, Office of Judicial Administration  
Ron Smith, Kansas Bar Association  
Dr. Robert Harder, Social and Rehabilitation Services  
Bill Ewing, Southwestern Bell Telephone Company  
Bud Grant, Kansas Chamber of Commerce and Industry

Randy Hearrell presented seven proposals for requests for introduction of committee bills. The first proposal concerned comparative fault; the second proposal concerned amendments to the probate code; the third proposal concerned the increase in the number of judges for the Court of Appeals; the fourth proposal concerned court-ordered mediation relating to child custody and visitation; the fifth proposal concerned civil procedure relating to subpoena of certain records; the sixth proposal concerned court procedure relating to change of judge; and the seventh proposal concerned corporate fiduciaries to amend K.S.A. 59-1701. Following Mr. Hearrell's explanation of the proposals, Senator Burke moved to introduce the proposals as committee bills. Senator Feleciano seconded the motion, and the motion carried.

Marjorie Van Buren presented seven proposals requesting the introduction of committee bills. The first proposal concerned state defense and indemnification of state employees sued under federal civil rights laws; the second proposal concerned the remainder of unexpired term for elected judges; the third proposal concerned the restriction of driver's license, after the second conviction; the fourth proposal concerned presentence investigation report; the fifth proposal concerned notice period for request for jury trial in misdemeanor cases; the sixth proposal concerned eligibility for consideration for parole; and the seventh proposal concerned the "Care and treatment" proceedings for certain prisoners. Following the explanation of the proposals, Senator Talkington made the motion to introduce the proposals as committee bills. Senator Parrish seconded the motion, and the motion carried. Copies of her handout are attached (See Attachments No. I).

Ron Smith presented three proposals for requests to be introduced as committee bills. The first proposal concerned the uniform transfers to minors act; the second proposal concerned the uniform commercial code dealing with investment securities; and the third concerned the language on the ballot when request to determine when judges in judicial district should be elected or not. Mr. Smith explained the three proposals, and he also stated the bar had concerns with changes in the probate code dealing with wills which do not qualify for probate in Kansas. The wills are taken to other states and brought back

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 16, 1985

as a will. They are not sure whether they want it introduced and will get back with the committee later. Senator Burke moved to introduce the three proposals as committee bills. Senator Hoferer seconded the motion, and the motion carried.

Dr. Robert Harder presented four proposals for requests to be introduced as committee bills. The first proposal concerned mandatory reporting of incidents of abuse or neglect of residents of adult care homes, adult family homes and certain medical facilities. The second proposal concerned adoption relating to procedures relating to the filing of adoption petitions and the retention of records. The third proposal concerned the interstate compact on adoption and medical assistance. The fourth proposal concerned adoption of children; persons who may adopt and the venue of proceedings for adoption. Following Dr. Harder's explanation of the proposals, Senator Gaines made a motion that the four proposals be introduced as committee bills. Senator Feleciano seconded the motion, and the motion carried. A copy of Dr. Harder's handout is attached (See Attachment No. II).

Bill Ewing presented a request for a committee bill that would change the way utilities are classified in existing statutes. Senator Gaines moved the proposal be introduced as a committee bill. Senator Burke seconded the motion, and the motion carried.

Bud Grant presented a request for a committee bill concerning shoplifting; changing the civil penalty for theft to a criminal penalty. He explained this was Senate Bill 354 last year but it did not pass. The problem of shoplifting is not better, and he would like the committee to look at the bill again. Senator Burke made a motion the proposal be introduced as a committee bill. Senator Talkington seconded the motion, and the motion carried.

Senator Gaines read a letter from Judge Carpenter requesting the introduction of a committee bill concerning judges of the district court relating to method of selection. Senator Gaines moved that the proposal be introduced as a committee bill. Senator Talkington seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment No. III).



1-16-85

OFFICE OF JUDICIAL ADMINISTRATION

1985 PROPOSALS

1. Clarification of K.S.A. 75-6116 (state defense and indemnification of state employees sued under federal civil rights laws).
2. Remainder of unexpired term for elected judges (K.S.A. 25-312a).
3. Restriction of driver's license, after second conviction (K.S.A. 8-1567).
4. Presentence investigation report (K.S.A. 21-4604).
5. Notice period for request for jury trial in misdemeanor cases (K.S.A. 22-3404).
6. Eligibility for consideration for parole (K.S.A. 22-3717).
7. "Care and treatment" proceedings for certain prisoners.

1/16/85

Attach. I'

**LIABILITY UNDER FEDERAL CIVIL  
RIGHTS LAWS**

**75-6116.** Payment of liability and defense costs in civil cases; compromise or settlement of claim; not a waiver of immunity. (a) If an employee of a governmental entity is or could be subject to personal civil liability on account of a noncriminal act or omission which is within the scope of the employee's employment and which allegedly violates the civil rights laws of the United States or of the state of Kansas, the governmental entity shall provide for the defense of any civil action or proceeding which arises out of the act or omission and which is brought against the employee in the employee's official or individual capacity or both to the extent and under the conditions and limitations provided by K.S.A. 1982 Supp. 75-6108 and amendments thereto for the defense of actions and proceedings under the Kansas tort claims act. If the employee's act or omission giving rise to the action or proceeding was not the result of actual fraud or actual malice and the employee reasonably cooperates in good faith in defense of the action or proceeding, the governmental entity, subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, shall pay or cause to be paid any judgment or settlement of the claim or suit and all costs and fees incurred by the employee in defense thereof.

, including any  
award of attorney  
fees,

(b) A municipality may pay for the cost of providing defense, judgments and other costs involving actions for alleged civil rights violations in the same manner as that provided in the Kansas tort claims act.

(c) In actions described in subsection (a), a claim against the state or an employee of the state may be compromised or settled for and on behalf of the state or employee under the conditions and procedures provided by K.S.A. 1982 Supp. 75-6106 and amendments thereto for settlements of actions pursuant to the Kansas tort claims act.

(d) Nothing in this section or in the Kansas tort claims act shall be construed as a waiver by the state of Kansas of immunity from suit under the 11th amendment to the constitution of the United States.

History: L. 1979, ch. 186, § 16; L. 1983, ch. 299, § 2; April 28.

**Law Review and Bar Journal References:**

"A Practitioner's Guide to the Kansas Tort Claims Act," Jerry R. Palmer, 48 J.B.A.K. 299, 309 (1979).

"Constitutional Law: Governmental Immunity Statute Violates Equal Protection as Applied to Kansas Turnpike Authority," Robert G. Martin, 19 W.L.J. 581 (1980).

"The Kansas Tort Claims Act and School Districts," Susan C. Jacobson, 28 K.L.R. 619, 623, 625, 626 (1980).

*attach. I<sup>2</sup>*

**25-312a.** Vacancy in office of judge of the district court; how filled. Except as otherwise provided in K.S.A. 20-2903 to 20-2913 and amendments thereto, whenever a vacancy shall occur in the office of judge of the district court, it shall be filled by appointment by the governor ~~until~~ the next general election that shall occur more than thirty (30) days after such vacancy, ~~when such vacancy~~ shall be filled by election. Any appointment made by the governor as required by this section shall be made within sixty (60) days after the vacancy occurs.

History: L. 1959, ch. 174, § 2; L. 1970, ch. 137, § 1; L. 1972, ch. 131, § 8; L. 1974, ch. 137, § 18; L. 1976, ch. 145, § 138; Jan. 10, 1977.

At

the office

with the term of office commencing as provided in K.S.A. 25-313.

**8-1567. Driving under influence of alcohol or drugs; penalties; restriction, sus-**

**pension or revocation of driver's license; plea bargaining prohibited; community service in lieu of fine; "conviction" defined; record and reports of convictions; return of license; ordinance limitations.** (a) No person shall operate any vehicle within this state while under the influence of alcohol.

(b) No person shall operate any vehicle within this state if the person is a habitual user of or under the influence of any narcotic, hypnotic, somnifacient or stimulating drug or is under the influence of any other drug to a degree which renders such person incapable of safely driving a vehicle. The fact that any person charged with a violation of this subsection is or has been entitled to use the drug under the laws of this state shall not constitute a defense against any charge of violating this subsection.

(c) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 hours' nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which (1) places restrictions on the person's driver's license as provided in K.S.A. 1984 Supp. 8-292 and (2) requires that the person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs. If the person convicted has a suspended or revoked driver's license, the court shall not make the restricted license, provided under this subsection, applicable until the suspension or revocation is terminated. No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 22

**8-1567**

2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

(d) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least five days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto. In addition, the court shall suspend the driver's license of the convicted person for one year or until the person completes the treatment program approved by the court, whichever is directed by the court. No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance.

(e) On the third or subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008 and amendments thereto. In addition, the court shall revoke the driver's license of the convicted person for the period of time specified for the revocation of a driver's license under subsection (j) and in accordance with the procedure for revoking a driver's license under subsection (k). No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordi-

After the person completes the treatment, the court may restrict the person's driver's license as provided in K.S.A. 1984 Supp. 8-292.

of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance.

(f) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(g) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(h) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(i) For the purpose of determining whether a conviction is a first, second or third or subsequent conviction in sentencing under this section, the term "conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section. For such purpose "conviction" also includes being convicted of a violation of a law of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance. For the purpose of determining whether a conviction is a first, second or third or subsequent conviction in sentencing under this section, only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable.

prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance shall not be less than nor exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed for the same violation.

(j) In addition to any fine or imprisonment imposed under this section and in lieu of any restrictions on or suspension of a driver's license under this section, the judge of any court in which any person is convicted of violating this section or of violating any municipal ordinance which prohibits the acts prohibited by this section may revoke the person's driver's license or privilege to operate a motor vehicle on the public highways of this state. Whenever a license or privilege to operate a motor vehicle is revoked pursuant to this section, the person whose license or privilege has been revoked shall not be entitled to have such license or privilege restored until the expiration of one year from the date of revocation. On conviction of a third or subsequent violation of this section, revocation pursuant to this subsection shall be mandatory for a period set by the court at not less than one year.

(k) Upon suspending or revoking any license pursuant to this section, the court shall require that such license be surrendered to the court. The court shall transmit the license to the division to be retained by the division until further order of the court. Whenever the court restores the privilege to operate a motor vehicle on the public highways of this state to any person whose license was suspended or revoked pursuant to this section, the court shall notify the division, and if the person has successfully completed the examination required by K.S.A. 8-241 and amendments thereto, and the other conditions established by law have been met, the division shall issue the appropriate license to the person upon proper application and payment of the required fee.

(l) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts

**21-4604. Presentence investigation and report.** (1) Whenever a defendant is convicted of a misdemeanor, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever a defendant is convicted of a felony, the court shall require that a presentence investigation be conducted by a probation officer or in accordance with K.S.A. 21-4603, unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources.

(2) Whenever ~~an investigation~~ is requested, the ~~probation officer shall promptly inquire into~~ the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; ~~and~~ the criminal record, social history, and present condition of the defendant. Except where specifically prohibited by law, all local governmental and state agencies shall furnish to the officer conducting the presentence investigation such records as such officer may request. If ordered by the court, the presentence investigation shall include a physical and mental examination of the defendant.

(3) Presentence investigation reports shall be in the form and contain the information prescribed by rule of the supreme court, and shall contain such other information as may be prescribed by the district court.

(4) The judicial administrator of the courts shall confer and consult with the secretary of corrections when considering changes or revisions in the form and content of presentence investigation reports so that the reports will be in such form and contain such information as will be of assistance to the secretary in exercising or performing the secretary's functions, powers and duties.

court services

and mitigating and aggravating factors involved in the defendant's behavior; (b)

a presentence report

secure, except for good cause shown, information concerning: (a)

(c)

and (d) other information that may aid the court in sentencing, which may include, but is not limited to, any harm including financial, social, psychological, and physical harm done to, or loss suffered by, any victim of the offense, and the restitution needs of any victim of the offense.

**22-3404. Misdemeanor cases; method of trial.** (1) The trial of misdemeanor cases shall be to the court unless a jury trial is requested in writing by the defendant not later than ~~48 hours prior to the trial.~~

(2) A jury in a misdemeanor case shall consist of six members.

(3) Trials in the municipal court of a city shall be to the court.

(4) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor cases.

**History:** L. 1970, ch. 129, § 22-3404; L. 1976, ch. 163, § 19; L. 1977, ch. 112, § 8; L. 1981, ch. 154, § 1; July 1.

10 days after appointment, retention, or waiver of counsel, except that this requirement may be waived by the court upon a showing and finding of good cause therefor.

**22-3609. Appeals from municipal courts.** (1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas. The appeal shall be assigned by the administrative judge to a district judge or associate district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be taken more than 10 days after the date of the judgment appealed from.

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) Hearing on the appeal shall be to the court unless a jury trial is requested in writing by the defendant not later than ~~48 hours prior to the trial.~~ A jury in an appeal from a municipal court judgment shall consist of six members.

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

**History:** L. 1970, ch. 129, § 22-3609; L. 1971, ch. 114, § 10; L. 1975, ch. 202, § 1; L. 1976, ch. 163, § 21; L. 1977, ch. 112, § 10; L. 1981, ch. 154, § 3; L. 1982, ch. 149, § 1; L. 1982, ch. 144, § 18; L. 1983, ch. 115, § 1; July 1.

10 days after the date of the judgment appealed from, except that this requirement may be waived by the court upon a showing and finding of good cause therefor.

*Amend. I*

**22-3717. Parole eligibility; procedure for granting parole; rules and regulations; conditions of parole.** (a) Except as provided in subsection (b), an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) An inmate sentenced for a class A felony, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

20

(c) If an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

or, after 20 years of confinement, whichever is less

(d) Subject to the provisions of this section, the Kansas adult authority shall have power to release on parole those persons confined in institutions who are eligible for parole when, in the opinion of the authority, there is reasonable probability that such persons can be released without detriment to the community or to themselves.

(e) The Kansas adult authority shall hold a parole hearing for any inmate who achieves eligibility for parole under subsections (a), (b) and (c).

(f) Prior to each parole hearing and if parole is not granted at such intervals thereafter as it determines by its rules and regulations, the Kansas adult authority shall

## CARE AND TREATMENT PROCEEDINGS

It is recommended that the Secretary of Corrections be directed by statute to initiate care and treatment proceedings (Art. 29, Ch. 59) for any inmate, within 30 days prior to the time of the inmate's release, if the Secretary deems the inmate to be dangerous to self or others. This recommendation is made because it is realized that there will be inmates who, because of mental illness, will still constitute a threat to the community should they be released after serving their sentence. The Secretary is in the best position to initiate proceedings before the inmate is released and poses a real threat to the community.

*Attach. I<sup>10</sup>*

Social and Rehabilitation Services

SENATE JUDICIARY  
January 16, 1985

1. AN ACT concerning mandatory reporting of incidents of abuse or neglect of residents of adult care homes; adult family homes and certain medical facilities; amending K.S.A. 1983 Supp. 39-1402 and repealing the existing section.

EXPLANATION: This proposed legislation would provide for the mandatory reporting of abuse and neglect in nursing homes and require mandatory reporting on the part of nursing home personnel and psychologists as it relates to possible abuse or neglect. Includes a penalty provision.

2. AN ACT concerning adoption; relating to procedures therefor; amending K.S.A. 59-2278 and repealing the existing section.

EXPLANATION: This legislation deals with issues related to the filing of adoption petitions and the retention of records.

3. AN ACT concerning the interstate compact on adoption and medical assistance.

EXPLANATION: This legislation would provide a mechanism for the State of Kansas to pay medical expenses for children with special needs who are adopted and move out-of-state.

4. AN ACT relating to adoption of children; concerning persons who may adopt and the venue of proceedings for adoption; amending K.S.A. 59-2101 and 59-2203 and repealing the existing sections.

EXPLANATION: Non-residents would be prohibited from adopting children in Kansas unless they were working through an institution or agency authorized by Kansas law to place children for adoption.

Office of the Secretary  
296-3271

4466E

1/14/85  
Attach. II