

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 February 11, 1985 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Marjorie Van Buren, Office of Judicial Administrator  
Ron Smith, Kansas Bar Association  
Elizabeth Taylor, Kansas Association of Domestic Violence Programs  
Jim Clark, Kansas County and District Attorneys Association

Senate Bill 63 - Attorney fees in civil rights actions.

Marjorie Van Buren, Office of Judicial Administrator, explained this bill does not change current Kansas law, it clarifies it. In some cases, attorney fees can have the same impact as an award of damages. Unless it is clearly understood that these fees are to be paid as part of a judgment in a civil rights case, the protection to government employees acting in good faith currently afforded by Kansas law cannot be said to be complete. She pointed out the attached attorney general's letter also supports this proposal. A copy of her testimony and the attorney general's letter is attached (See Attachments I).

Ron Smith, Kansas Bar Association, testified this is a good amendment and the bar supports the bill. A copy of his testimony is attached. (See Attachment II).

Senate Bill 64 - Presentence investigation; victim impact.

Marjorie Van Buren explained this bill expands the statutory mandate for collection and reporting of victim information. A copy of her testimony is attached (See Attachment III). Discussion was held with the chairman concerning striking "psychological" in line 41 of the bill.

Ron Smith testified in support of the bill. He stated allowing the court services officers to gather information from victims on what the crime has done to them physically or economically, and report that information in the presentence report to the Court, is an appropriate amendment. A copy of his testimony is attached (See Attachment IV).

Elizabeth Taylor, Kansas Association of Domestic Violence Programs, testified in support of the bill. She stated she is pleased to see strengthening of the language.

Jim Clark testified his association is in support of the bill. They are now starting to see the criminal justice system being concerned about the victim. He stated his concern is in Section 2, in line 39, with the word "may". He feels the language should be stronger. Mr. Clark stated he still thinks that a recommendation can be made under the wording of this without serious attempt to contact the victims.

The hearings on Senate Bills 63 and 64 were concluded.

Senate Bill 63 - Attorney fees in civil rights actions.

Senator Burke moved to report the bill favorably. Senator Gaines

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on February 11, 1985

Senate Bill 63 continued

seconded the motion. The motion carried. AG's opinion (See Attachment VI).

Senate Bill 64 - Presentence investigation; victim impact.

Senator Gaines moved to report the bill favorably. Senator Burke seconded the motion. The motion carried.

Senate Bill 40 - Informal administration of estates.

Senator Gaines moved to report the bill favorably. Senator Hoferer seconded the motion. The motion carried.

The meeting adjourned.

The guest list is attached (See Attachment V).



Testimony on Senate Bill No. 63

Offered by Marjorie Van Buren

Office of Judicial Administration

February 11, 1985

Senate Bill No. 63 does not change current Kansas law; it clarifies it. Under current law, if a government official or employee is sued under the civil rights act for an action within the scope of his or her employment, the agency for which he or she works must pay for the legal defense of the suit. If the employee has acted in good faith, the agency is responsible for any judgments entered against him or her.

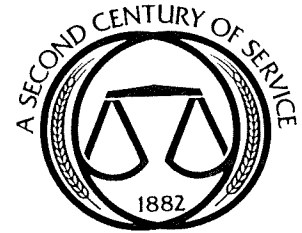
Senate Bill No. 63 specifies that attorney fees, if awarded, are part of such a judgment. The bill does not increase the opportunities for attorney fees to be awarded.

In some cases, attorney fees can have the same impact as an award of damages. Unless it is clearly understood that these fees are to be paid as part of a judgment in a civil rights case, the protection to government employees acting in good faith currently afforded by Kansas law cannot be said to be complete.

*Attch. I*  
*2/11/85*

2-11-85

RON SMITH  
Legislative Counsel



KANSAS BAR  
ASSOCIATION

SB 63  
Senate Judiciary Committee  
February 11, 1985

Mr. Chairman. Members of the committee. My name is Ron Smith. I am Legislative Counsel for the Kansas Bar Association.

The Kansas Bar Association represents 4,200 of the state's 5,800 attorneys. Our Legislative policies are considered by the Legislative Committee of the KBA, which makes recommendations to the Executive Council. Our legislative policy is established by the KBA's Executive Council, a group of 21 lawyers from across the state. Ten members are elected by geographic districts.

We believe our Legislative Positions constitute a considered, rational and even-handed approach to the important issues facing the Kansas Legislature and the Congress.

After the Pulliam v. Allen decision, KBA decided that if judicial immunity was going to mean anything, it must be absolute. We must maintain a judiciary which is free from intimidation by actual civil damages. We believe this extends to the award of attorneys fees.

Even though actual damages are not paid out of the employee's pocket, to allow payment of attorneys fees out of an employee's own pocket would be just as intimidating as if actual damages were awarded.

Allowing governments to insure against any of its employees from having to pay attorneys fees when they are sued for activities which are within the scope of their employment is appropriate. Judges are included in this law.

KBA thinks this is a good amendment, and supports SB 63.

2/11/85  
Attch. II

2-11-85

TESTIMONY ON SENATE BILL NO. 64  
OFFERED BY MARJORIE VAN BUREN  
OFFICE OF JUDICIAL ADMINISTRATION  
FEBRUARY 11, 1985

SB 64 expands the statutory mandate for collection and reporting of victim information. Current law recognizes this factor and CSO's routinely inquire into victim impact in their presentence investigations. The procedures manual used by our state's CSOs make clear the importance of such information.

The Judges' Sentencing Committee, appointed by the Judicial Administrator, recommended these changes to strengthen the statutory basis for consideration of victim information in sentencing decisions. At the same time, the judges recognized that there may be instances in which the victim is unidentifiable, uncooperative, or otherwise unavailable. Thus the provision for a showing of good cause why certain information is not secured.

2/11/85

Attach. III

2-11-85

**RON SMITH**  
Legislative Counsel



**KANSAS BAR  
ASSOCIATION**

SB 64  
Senate Judiciary Committee  
February 11, 1985

Mr. Chairman. Members of the committee. My name is Ron Smith. I am Legislative Counsel for the Kansas Bar Association.

The Kansas Bar Association represents 4,200 of the state's 5,800 attorneys. Our Legislative policies are considered by the Legislative Committee of the KBA, which makes recommendations to the Executive Council. Our legislative policy is established by the KBA's Executive Council, a group of 21 lawyers from across the state. Ten members are elected by geographic districts.

We believe our Legislative Positions constitute a considered, rational and even-handed approach to the important issues facing the Kansas Legislature and the Congress.

In previous years there has been a request to allow the victims of a crime more input into the sentencing process of criminals. While this goal is appropriate, such input must be structured properly so that the Court's docket is not delayed.

Allowing the court services officers to gather information from victims on what the crime has done to them physically or economically, and report that information in the presentence report to the Court, is an appropriate amendment. We assume, of course, that these officers will include only prudent, relevant and verifiable information in their reports.

KBA supports SB 64.

2/11/85  
Attch. IV



2-11-85 ←

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 7, 1985

MAIN PHONE: (913) 296-2215  
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The Honorable Robert G. Frey  
Chairperson  
Senate Committee on Judiciary  
The Capitol, Room 128-S  
Topeka, Kansas 66612

Dear Mr. Frey:

This office is aware of Senate Bill No. 63 which amends K.S.A. 75-6116 by adding "including any award of attorney fees" to the last sentence of the first paragraph of said statute.

In our opinion, that addition makes no change in the statute. An award of attorney fees is a "judgment," and the statute clearly requires payment or reimbursement for judgments already.

We also understand this change was requested because of the unrest caused by the 1984 United States Supreme Court decision in Pulliam v. Allen. This office supports the amendment to K.S.A. 75-6116 because it does clarify what we believe the statute already states.

Very truly yours,

ROBERT T. STEPHAN  
Attorney General

MC

2/11/85  
Attch. VI