

Approved March 24, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~xxx~~ on March 20, 1987 in room 519-S of the Capitol.

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

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

T. C. Anderson, Kansas Society of Certified Accountants
Ron Smith, Kansas Bar Association
Becky Matin-Johns, Kansas City Outside Connection
Sister Thesese Bangert, Kansas Council of Crime and Delinquency
Elwaine Pomeroy, Kansas Parole Board
Senator Richard Gannon
Vanessa Freeman, Wichita
John Thomas, Kansas Parole Board
Joan Hamilton, Kansas Parole Board

Sub. House Bill 2024 - Comparative negligence, economic loss.

T. C. Anderson, Kansas Society of Certified Accountants, appeared in support of the bill. He testified the original House Bill 2024 was introduced by the Special Committee on Tort Reform and Liability Insurance to address concerns raised in the recent Kansas Supreme Court case of Federal Savings and Loan Insurance Corporate v. Huff, 237 Kan. 873. In that case, the Supreme Court construed K.S.A. 60-258 (a), at least in part, as having no application because the plaintiff suffered nothing more than economic loss. The House Judiciary Committee decided it best to separate the issues. As a result Sub. House Bill 2024 contains the change relative to economic loss and House Bill 2533, also in this committee, addresses the comparative fault issues. A copy of his testimony is attached (See Attachment I).

Ron Smith, Kansas Bar Association, testified the KBA supports this bill which clarifies that negligence cases resulting solely in economic loss should have benefit of the several liability rule. A copy of his testimony is attached (See Attachment II).

Senate Bill 372 - Kansas parole board, membership, decisions.

Becky Matin-Johns, Kansas City Outside Connection, testified in support of the bill. She stated the decisions made by the parole board are not simple business ones. They impact profoundly the future lives of each inmate, their family and eventually their entire community. A copy of her testimony is attached (See Attachment III). The chairman asked her to give some background on her organization. She reported the organization was organized 1½ years ago, and it is a support group for inmates' families. Their funding is from various foundations. They work with parole planning, provide medical care, mental health counseling and family counseling. Their membership

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 20, 1987

Senate Bill 372 continued

is now a little over 200 with a mailing list of over six hundred. They deal primarily with Kansas, and work some with Missouri.

Sister Thesese Bangert, Kansas Council of Crime and Delinquency, appeared in support of the bill. She testified her organization has a membership of approximately 125 people across Kansas who are interested in corrections issues. They have been very concerned over the past years about parole board policies.

Elwaine Pomeroy, Kansas Parole Board, stated the purpose in appearing before the committee is to provide any response to questions the committee might have. He introduced the other two members of the parole board, Joan Hamilton and John Thomas. He stated they are the only agency that can release prisoners from prison. There is no other mechanism under Kansas law. The parole board has the policy all three board members are present at all hearings and comment sessions to have uniformity in their decision and because they come from other backgrounds. This is not true of other states. Colorado has five full time members, and they function in teams of two members each. If there is a split decision, a tie breaker is brought in. Missouri has five full time board members. If the team does not agree, the case is referred to two other board members. Nebraska has five member board, three full time and two part time. Nebraska is considering changing to three full time members. Oklahoma has three full time members. In Kansas we have a policy instituted at the request of former governor John Carlin the vote has to be unanimous. The parole board members have four year terms. Chairman Pomeroy said with the increase workload we have trouble keeping up with everything. It is hard to keep up with three members attending all meetings. There are proposals for doubling the size of Winfield. If this is doubled, the board will have to spend more time there. With Osawatomie increase, this creates larger workload. Also serious consideration is being given to add facility at Norton. Chairman Pomeroy stated the board drives some 2,000 miles a month. They have to review files, act on correspondence the board receives. When they receive request of inmate for consideration of prior decision, the board has to make recommendations to governor when make application for clemency. When the board goes to the institution, they see all inmates who become parole eligible that month. The hearing takes about 15 minutes. He said I don't see how we can continue as we are with increasing number of inmates and facilities that are coming, and I don't know what the answer is. If expand the parole board to five members, and if all five have to attend all meetings, you won't be gaining anything. The board estimates a fiscal note of \$163,365 if increase the board. The board is moving their office April 10 to the Landon State Office Building. That facility is designed for their present size and have no additional room for five members so this would require additional rental. In response to a question Chairman Pomeroy replied, if increase the board to five, and not all five have to attend, the fiscal note could be less.

Senator Richard Gannon stated he requested Senate Ways and Means Committee to introduce the bill to try to provide some form by which as a legislature we could exchange dialogue with the parole board. He said he feels something has to be done and has to be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m. ~~p.m.~~ on March 20, 1987

Senate Bill 372 continued

done soon. A committee member said he felt there should be a way the balance of the membership could be used more wisely. Senator Gannon stated he feels the chairman of the parole board be allowed a lot of authority. Now the chairman of the parole board has no real authority or control. Discussion was held concerning mail received by legislators of people complaining of decrease in numbers of who have been paroled and the unanimous voting requirement, and the morale of the inmates in the institutions and the problem with good time behavior. A committee member suggested giving authority to that chairman and hold him responsible and the members of the board serve at the discretion of the governor. The board would consist of five members, two republican and two democrat and the chairman, and they split up in panels of two. Senator Gannon stated he hoped the committee can discuss this type of approach.

Vanessa Freeman, Wichita, appeared in total support of the bill. She testified her husband received the results of his parole hearing that he had a four year set-off to January 1991 and has not to date received an explanation as to why he was denied parole. It is inconceivable to me, that a man who has, to our knowledge, met all requirements of parole eligibility, who was until two days ago assigned to the Wichita Work-Release Center, taking furloughs, working and functioning in society should today be back at the Kansas State Penitentiary under maximum security and assigned to a one man cell. A copy of her testimony is attached (See Attachment IV).

During committee discussion, a committee member inquired what position the chairman has on behalf of the board. Chairman Pomeroy replied he had no position. The purpose is only to expand the situation. In response to a question, Chairman Pomeroy stated less than 20 inmates will be denied parole a year. A committee member inquired why the good-time credits not being utilized. Chairman Pomeroy explained good-time credit is used as a management tool to arrive at parole eligibility date. The Department of Corrections does not use it as a management tool as they could. Another committee member said if the legislature does not address this problem this year, a federal judge should do it for us. Chairman Pomeroy reported there is an increasing number of sex offenders. One out of every five that is in prison is a sex offender. They don't feel child molesters should be released without counseling. He stated money spent on programs would be money very well spent.

John Thomas was recognized to respond to questions from the committee. He explained he had been in the Department of Corrections and then on the parole board. He said he agrees with Chairman Pomeroy concerning the addition of programs. People should not be released if they are not ready because they will come back. He added if prisons are overcrowded, the federal people come in, and we are knocking on that door now. The chairman inquired why should the state spend money to provide programs if there is a system presently out of the state structure the inmate can utilize. Mr. Thomas replied, there is the potential for lack of structure and reoccurrence of crime for sex offenders, because there are not that many programs for sex offenders.

Joan Hamilton testified she is not opposed to the bill because of the really crucial caseload. If the problem is because of overcrowding, the policy was established by the governor and both parties. The

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 20, 1987

Senate Bill 372 continued

present board members take their job very seriously. She said we are talking about less than 20 inmates denied parole. Last year there were 13 denied, and this year there are 16 that are A and B felons. We are talking about major violent offenders. She explained more victims and victim's families appear at the parole hearings. Ninety people showed up yesterday for a hearing. She emphasized when inmate is parole eligible, the inmate only has the right to that hearing, and then they have gained the privilege to go forth. There is no rehabilitation program. She stated some of the fault is not the inmate but because there are not enough programs available. The mental health facilities only take so many inmates. A committee member inquired of the feasibility of putting inmates into outside programs. She replied, we have done that. Some of the judges feel their hands are tied too.

The chairman announced this bill would be taken up at the noon meeting scheduled for today.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-20-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Sister Therese Bangert	Topeka	Kansas Council Crime + Delinquency - K.C.S.
<i>Elwaine J. Ramsey</i>	<i>Topeka</i>	<i>K.S. Parole Bd</i>
<i>Joan Hamelby</i>	<i>Topeka</i>	<i>Ks Parole Bd</i>
<i>George Jones</i>	<i>Salina Lake</i>	<i>Ks Parole Board</i>
<i>Jim H. Towar</i>	<i>Topeka</i>	<i>Ks Parole Bd</i>
<i>Rose L. Evans</i>	<i>2403 N 60th Ter KCK</i>	<i>Main of State Prison</i>
Bryan T. Wheeler	Topeka	Aide to Sen. Mulick
Bonnie M. Herd	Kansas City Kansas	K.C. Outside Connection
Becky Martin-Johns	Edwardsville, Ks.	K.C. Outside Connection
<i>Quelga Hatis</i>	<i>Topeka Ks</i>	<i>OJA</i>
<i>Jim Clark</i>	<i>Topeka</i>	<i>KC PAA</i>
<i>Sail J. Hamilton</i>	<i>Lawrence</i>	<i>162 N.O.W.</i>
<i>Paula H.</i>	<i>Topeka</i>	<i>K CCI</i>
VANESSA FREEMAN	729 S. MARTINSON-WICHITA KS	

*Attach. V
Sen. Jud.
3-20-87*



Kansas Society of Certified Public Accountants

FOUNDED OCTOBER 17, 1932

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460

KANSAS SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

SUB FOR HB 2024

Senate Judiciary Committee

March 19, 1987

Mr. Chairman and members of the Committee, I am T. C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants.

Original H. B. 2024 was introduced by the Special Committee on Tort Reform and Liability Insurance to address concerns raised in the recent Kansas Supreme Court case of Federal Savings and Loan Insurance Corporate vs Huff, 237 Kan. 873. In that case, the Supreme Court construed K.S.A. 60-258 (a), at least in part, as having no application because the plaintiff suffered nothing more than economic loss.

The Interim Committee agreed with us that the public policy of this state supports including negligence claims for economic loss within the purview of the comparative negligence statute K.S.A. 60-258 (a).

Also, Mr. Chairman, original H.B. 2024 also attempted to codify the Supreme Court determination in Brown vs. Keill, 224 Kan. 195, that joint and several liability among joint tortfeasors no longer exists in Kansas.

Every group appearing before the House Judiciary Committee seemed to agree that the rule abrogating joint and several liability should be codified, but there was some question on how this could best be accomplished.

*Attach. I
Sen. Jued.
3-20-87*

Sub For H.B. 2024
March 19, 1987
Page 2

Thus, the House Judiciary Committee decided it best to separate the issues. As result Sub. for H.B. 2024 contains the change relative to economic loss and H.B. 2533, which also has been assigned to this committee, addresses the comparative fault issues.

The Kansas Society supported H.B. 2024 and continues its support for Sub. for H.B. 2024, as well as H.B. 2533.

Mr. Chairman, I'd be happy to stand for questions.

A-I

3-20-87



March 19, 1987
Sub. HB 2024

**KANSAS BAR
ASSOCIATION**

1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601
(913) 234-5696

Mr. Chairman. Members of the Senate Judiciary Committee. I am
Ron Smith, KBA Legislative Counsel.

KBA supports this bill which clarifies that negligence cases resulting solely in economic loss should have benefit of the several liability rule.

But for narrowly defined exceptions, joint and several liability for damages in comparative negligence cases has been abolished by the 1974 K.S.A. 60-258a. Recent Kansas case law contains dicta, however, that claims of negligence which cause only economic loss might still have benefit of the joint liability rule. Since we do not believe that was the intent in 1974, we support this legislation as correcting that dicta.

*Attch. II
Senate Judiciary
3-20-87*



KANSAS CITY OUTSIDE CONNECTIONS

229 South 8th Street
Kansas City, Kansas 66101
(913) 621-1504

Becky Matin-Johns
President / Project Director

BOARD OF DIRECTORS

Grace Ketterman, M.D.
President

Carl Cornwell, Attorney
Treasurer

Pat Dysart, Business owner
Secretary

Joan Finney
Kansas State Treasurer

Rev. Bob Hill
Associate Pastor,
Com. Christian Church

Rev. Tommy Goode
Social Ministries,
Southern Baptist Assoc.

Bob Harrity
Wyandotte & Johnson Co.
Parole Supervisor

Pam Reiz, R.N., B.S.W.
Social Worker / Nurse

Robert Jenkins
Attorney

Phil Villanueva
Dir of Min. Structures,
KCK City Hall

Gary Minsey
President: Sunbelt
Trading Ks., Inc.

Richard Ney
Sedgwick County
Public Defender

My name is Becky Matin-Johns. I am Project Director of the Kansas City Outside Connection. I am here to speak in favor of Senate Bill # 372.

The decisions made by the Parole Board are not simple business ones -- they impact profoundly the future lives of each inmate, their family and eventually their entire community.

We favor passage of this bill (#372) for the following reasons:

1. Because it provides a broad base of information regarding true readiness of inmates for parole.
2. It will provide for sharing of responsibility in decision making by a greater variety of persons.
3. It will prevent as much personal bias or emotions, as now seems to exist, from swaying the board - thereby preventing subjective decisions and encouraging objectivity.
4. The elimination of a unanimous decision will permit more paroles to be granted while still maintaining excellent safeguards against risky paroles.

Attch. III
Senate Jural.
3-20-87



KANSAS CITY OUTSIDE CONNECTIONS

229 South 8th Street
Kansas City, Kansas 66101
(913) 621-1504

Becky Matin-Johns
President/Project Director

BOARD OF DIRECTORS

Grace Ketterman, M.D.
President

Carl Cornwell, Attorney
Treasurer

Pat Dysart, Business owner
Secretary

Joan Finney
Kansas State Treasurer

Rev. Bob Hill
*Associate Pastor,
Com. Christian Church*

Rev. Tommy Goode
*Social Ministries,
Southern Baptist Assoc.*

Bob Harrity
*Wyandotte & Johnson Co.
Parole Supervisor*

Pam Reiz, R.N., B.S.W.
Social Worker/Nurse

Robert Jenkins
Attorney

Phil Villanueva
*Dir. of Min. Structures,
KCK City Hall*

Gary Minsey
*President: Sunbelt
Trading Ks., Inc.*

Richard Ney
*Sedgwick County
Public Defender*

5. For all the above reasons, this bill should create a climate in which precautions are excellent, but in which more inmates, truly ready to re-establish productive lives in the community, will be released. This will reduce and prevent prison over-crowding, therefore reducing the need to build more prisons, thus save money; it will, far more importantly, prevent the mushrooming resentment and hardening process that dehumanizes otherwise rehabilitated and potentially productive persons.

March 20, 1987

Robert G. Frey
P.O. Box 1177
Liberal, KS 67901

Dear Mr. Frey,

In addressing the members of the Senate Judiciary Committee concerning Senate Bill #372, which in effect would increase the Kansas Parole Board to include five members and would require that all decisions of the board be by majority vote, I express my total support.

We are all aware of the problems currently facing the Kansas Legislature and the Department of Corrections in regard to the issues of prison overcrowding, which in itself should justify the need for additional board members, and the controversy concerning the current Parole Board policies. While it is not an easy task to ask for just treatment of those who are incarcerated in the state penal institutions, I am also aware that once subjected to the despotic actions of those who confine them one begins to share the inmates sense of frustration and helplessness.

Since the development of the indeterminate sentence the parole board, ideally, was to be used to remove the sentencing power from a possibly prejudiced and vindictive trial judge and place it in the hands of skilled experts in human behavior. These experts would look at the individual rather than the crime, take into account all circumstances that might have driven him to break the law, keep close track of his progress while in prison and release him when he has demonstrated by his behavior that he is ready to return to the community. It is then assumed, by the inmate, that he is to be imprisoned for a term and that it is theoretically up to him to shorten the time served by meeting the criteria established by the Department of Corrections and the Parole Board. Also taking into account the award of legislative good time credits.

*Attach. IV
Senate Judiciary
3-20-87*

Unfortunately, the difficulty with the procedure of the parole board lies in its practical application. I have found that to many inmates, who have been before the present Kansas Parole Board, the process is much like running a race where someone keeps moving the finish line. A world unto itself, like a game of monopoly where the players don't understand the rules. As we have all witnessed, the required unanimous decision gives any one board member the unfettered authority to inflict whatever punishment that person deems fit. Thus, it seems, in the case of our Kansas Criminal Justice System, the arbitrary power has simply been shifted from the hands of one "possibly prejudiced and vindictive" person to another.

It troubles me a great deal that we should so much as question whether or not a change is needed, concerning this required unanimous decision, when the mere concept of such a policy, wherever it might be applied, is so unbelievably opposite our great American Democracy. I strongly urge your support of Senate Bill #372 and thank you all for your efforts.

Sincerely,

Vanessa V. Freeman

Vanessa V. Freeman

VANESSA V. FREEMAN
729 S. Martinson
Wichita, KS 67213

SENATE JUDICIARY COMMITTEE
March 20, 1987

I wish to address this committee concerning Senate Bill #372, which in effect would increase the Kansas Parole Board to include five members and would require that all decisions of the board be by majority vote.

"And I gave my heart to know wisdom, and to know madness and folly: I perceived that this is also vexation of spirit. For in much wisdom is much grief: and he that increaseth wisdom increaseth sorrow."


I read these words for the first time a few days ago, while sitting with my husband. I pointed out to him how ironic that I should open the pages to these verses, as they so accurately describe my feelings toward all that we have been faced with in years past, but especially toward what we are facing now.

Until a few years ago I knew nothing of the penal system, specifically what happens to an individual upon conviction of a crime. In my naiveness I thought the process was rather simple; he would go to jail for a term and then be released when he had served his sentence. I have since learned, through personal experience, there is much more to it than that. I find the actual process is increasingly disturbing; from ones initial confinement, to the years spent exposed to acts described as rehabilitation, to the eventual meeting with the parole board. This issue is obviously of special interest to me and my concern is great, that someday constructive changes will be made. For when we take an individual and sentence him to confinement for two or three or ten years, this is our act. And whether we like it or not we have made him our collective responsibility. We are free to do something about him; he is not.

My husband, a few days ago, received the results from his parole hearing. A four year set-off, to January 1991, was the decision of the board and we have not, to date, received an explanation as to why he was denied parole. I, of course, do not know the voting pattern of the board members in regard to my husband. They obviously were not "unanimously" in favor of his release.

It is inconceivable to me, that a man who has, to our knowledge, met all requirements of parole eligibility, who was until two days ago assigned to the Wichita Work-Release Center, taking furloughs, working and functioning in society should today be back at the Kansas State Penitentiary under maximum security and assigned to a one man cell. If these are the methods we have chosen in order to return a person to society as a productive individual, I implore you, the need for change is great and Senate Bill #372 is at least a start.

I thank you for this opportunity to speak before this committee and urge you to contact me if I may be of any assistance.


Vanessa V. Freeman