

Approved \_\_\_\_\_

Date

2/1/89

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Senator Edward F. Reilly at  
Chairperson

11:05 a.m./~~p.m.~~ on January 30, 19<sup>89</sup> in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Mary Ann Torrence, Revisor of Statutes Office  
Emalene Correll, Legislative Research Department  
Marty Robison, Secretary

Conferees appearing before the committee:

Chairman Reilly called the meeting to order.

Senator Daniels moved the minutes from the January 24, 25, and 26 meeting be approved. Senator Walker seconded and the motion carried.

Staff reviewed SB 38 section by section for committee members.

Senator Walker suggested making the death penalty mandatory rather than being left up to the discretion of the county or district attorney (Attachment 1).

Senator Walker moved that Section 5, subsection 1 be stricken and the words "upon motion of the county or district attorney" be stricken in subsection 2. Senator Anderson seconded. The motion was defeated.

Senator Bond made a conceptual motion to clarify the language in New Section 6 so the references to "the crime" would be "aggravated first degree murder". Senator Morris seconded and the motion passed.

Senator Daniels expressed concern that the mentally retarded were not addressed in the bill. Criteria would need to be established for determining mental retardation since no statutory standard is now used.

Senator Daniels made a conceptual motion stating prohibition of executing anyone mentally retarded. Senator Yost seconded and the motion passed. Staff was directed to see what language is available for criteria in determining mental retardation. Committee members felt this could be a section by itself or possibly be included in Section 4.

Senator Vidricksen moved the bill be reported favorably for introduction. Senator Morris seconded the motion.

Senator Strick made a substitute motion that the bill be reported unfavorably. Chairman Reilly did not allow the substitute motion because it was directly opposite of the motion.

Senator Morris made a substitute motion that the bill be reported without recommendation, as amended. Senator Ehrlich seconded and the motion passed. Senators Anderson, Daniels, McClure, Strick and Walker asked to be recorded as voting no. Senator Anderson asked that a letter from him be made part of the official minutes (Attachment 2).

The meeting was adjourned at 12:05.



52 not more than three years and a maximum of not less than five years  
53 not more than 10 years.

54 (c) Class E, the sentence for which shall be an indeterminate  
55 term of imprisonment, the minimum of which shall be one year and  
56 the maximum of which shall be fixed by the court at not less than  
57 two years nor more than five years.

58 (d) Unclassified felonies, which shall include all crimes declared  
59 to be felonies without specification as to class, the sentence for which  
60 shall be in accordance with the sentence specified in the statute that  
61 defines the crime. If no sentence is provided in the statute, the  
62 offender shall be sentenced as for a class E felony.

63 New Sec. 4. Upon conviction or adjudication of guilt of a de-  
64 fendant of the crime of aggravated murder in the first degree and  
65 a finding that the defendant was less than 18 years of age at the  
66 time of the commission thereof, the court shall sentence the de-  
67 fendant to imprisonment for life.

SFA  
SA

1-30-89

Attachment

68 New Sec. 5. (1) ~~If a defendant is charged with aggravated murder~~  
69 ~~in the first degree, the county or district attorney shall file written~~  
70 ~~notice if such attorney intends, upon conviction or adjudication of~~  
71 ~~guilt of the defendant, to request a separate sentencing proceeding~~  
72 ~~to determine whether the defendant should be sentenced to death.~~  
73 ~~Such notice shall be filed with the court and served on the defendant~~  
74 ~~or the defendant's attorney at the time of arraignment. If such notice~~  
75 ~~is not filed and served as required by this subsection, the county~~  
76 ~~or district attorney may not request such a sentencing proceeding~~  
77 ~~and the defendant, if convicted of aggravated murder in the first~~  
78 ~~degree shall be sentenced to imprisonment for life.~~

79 (2) Except as provided in section 4, upon conviction or adjudication  
80 of guilt of a defendant of any crime for which a sentence of  
81 death may be imposed, the court, ~~upon motion of the county or~~  
82 ~~district attorney,~~ shall conduct a separate sentencing proceeding to  
83 determine whether the defendant should be sentenced to death. If  
84 the trial jury has been waived, the sentencing proceeding shall be  
85 conducted by the court. If the trial was by jury, the jury at the  
86 sentencing proceeding may be waived in the manner provided by  
87 subsection (1) of K.S.A. 22-3403 and amendments thereto for waiver  
88 of a trial jury and if so waived, the sentencing proceeding shall be

Renumber remaining subsections

STATE OF KANSAS

EUGENE (GENE) ANDERSON

SENATOR, DISTRICT TWENTY-NINE  
SEDGWICK COUNTY  
P.O. BOX 4598  
WICHITA, KANSAS 67204-0598



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: CONFIRMATIONS  
EDUCATION  
PUBLIC HEALTH AND WELFARE  
RANKING MINORITY MEMBER: FEDERAL AND STATE  
AFFAIRS

January 31, 1989

Senator Edward Reilly  
Room 255-E

Dear Senator Reilly:

The members of the minority party would like to express our displeasure regarding your handling of Senate bill 38 in the Federal and State Affairs committee on January 30, 1989.

Earlier in the Session when you wished to place this measure on a fast track hearing during a four day week, we expressed our concern to you by letter.

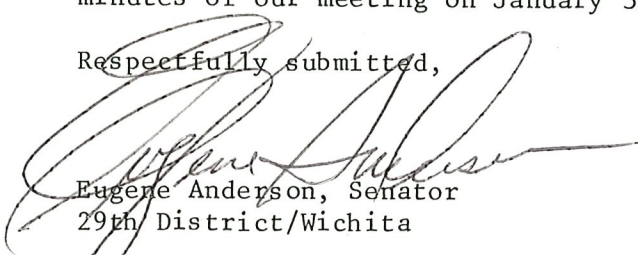
We fail to understand your desire to apparently deny an appropriate forum a proper duration of time to hear the concerns of all our members, three of whom have never dealt with this issue before.

We do appreciate your not holding the hearing while a member of the minority party was on an official business trip, which is often done for any Senator when possible.

Hopefully, should Capital Punishment become law, it will be carried out more judiciously than the hearings on this very emotional subject have been.

As a matter of record we hereby request this letter be made part of the official minutes of our meeting on January 31, 1989.

Respectfully submitted,

  
Eugene Anderson, Senator  
29th District/Wichita

EA/vld

cc: Senators Burke, Johnston, Strick, Daniels, McClure and Walker

SF & SA  
1-30-89

Attachment 2