

Approved 1-30-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on January 26, 1989 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Winter, Yost, Moran, Feleciano, D. Kerr, Martin, Morris, Oleen, Parrish, Petty, Bond and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes

Conferees appearing before the committee: None

Senator Yost moved to approve the minutes of January 24, 1989. Senator Petty seconded the motion. The motion carried.

Senate Bill 8 - An Act concerning criminal procedure; relating to commitment of persons found not guilty by reason of insanity.

The chairman reviewed the amendments adopted by the committee last week. The committee adopted the proposed amendment by SRS and added new Subsection (e), and changed the word patients to persons.

The motion pending on the bill made by Senator D. Kerr and seconded by Senator Parrish is to delete in the future and insert if discharged. Following committee discussion on the pending motion, the motion carried.

Senator Rock moved to amend the bill in lines 42 by changing 15 to 30, and in line 43 changing may to shall. Senator Petty seconded the motion. Following Senator Rock's explanation, the motion carried.

Senator Parrish moved to amend the bill by making it mandatory a hearing be required when the charge is a crime against a person. Senator D. Kerr seconded the motion. Following committee discussion, the motion failed.

Senator Moran moved to amend the bill by inserting the language by clear and convincing evidence. Senator Yost seconded the motion. Following committee discussion, the motion carried.

Senator Rock moved to report the bill favorably as amended. Senator Oleen seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment I).

Copy of a letter from from Clark V. Owens is attached (See Attachment II).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-26-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bucky Shinky	Topeka	Intercom
Mary Slaybaugh	Topeka	SRS
Bob A. M. Naly	"	KPR
Kim R. Self	Topeka	---
Judith Penshell	Topeka	OJA
Richard H. ...	"	KTRA
RG Frey	Topeka	KTLA
Jacque Dakes	Topeka	KPOA
Connie Beggs	Lawrence	
Pat Kauf	Topeka	League of Municipalities
M. Haver	"	Law Journal
Ron Smith	"	TS Bar Assoc

Clark V. Owens II
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Wichita, Kansas 67209
(316) 722-2771

January 22, 1989

Sen. Wint Winter, Jr.
State Capitol Room 120-S
Topeka, Kansas 66612-1594

Re: S.B. 8

Dear Senator Winter:

Please excuse my informal letterhead. I am in the process of setting up my private law practice and my letterhead is still at the printer.

I would like to thank you for the opportunity to speak before the Senate Judiciary Committee on S.B. 8. At the hearing you had requested that I research whether the standard of proof on an insanity acquittee at a release hearing can be "clear and convincing evidence".

The United States Supreme Court has not specifically ruled on this issue. In the case of Jones v. United States 463 US 354, 77 L Ed 2d 694, 103 S Ct 3043 (1983) the Supreme Court ruled that the burden and standard of proof for the release of an insanity acquittee may be different than a civil commitment standard. In the Jones case, the relevant statute required the insanity acquittee to meet his burden of proof by a preponderance of the evidence. Therefore, the Court was not faced with the issue of a higher standard of proof.

In Kansas, the statute regarding release of insanity acquittees, K.S.A. 22-3428 is silent as to the burden of proof. In 1979, the Kansas Legislature amended the statute (L. 1979, ch 97 sec. 2) to place the burden of proof on the insanity acquittee by a preponderance of the evidence. This was deleted by the 1982 Legislature (L. 1982 ch. 148 sec. 2).

Attachment II
AJC
1-26-89

There are a collection of cases on this issue that can be found at 95 ALR 2d 54, 108. Several states have approved of statutes that require the insanity acquittee to prove his recovery by clear and convincing evidence. Re King (1983) 114 Ill App 3d 346, 70 Ill Dec 9, 448 NE2d 887; Taylor v. Commissioner of Mental Health & Mental Retardation (1984, Me) 481 A2d 139. One state even permits the burden of proof to be placed on the insanity acquittee with the standard of proof to be beyond a reasonable doubt. State ex rel. Allen v. Radack (SD) 246 NW2d 661.

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In conclusion, although the United States Supreme Court has not ruled specifically on the issue, there is support in the state appellate courts to require an insanity acquittee to prove by clear and convincing evidence that he will not become dangerous if released back into the community.

Victims Notice? →
There is one additional point that I would like to mention. At the Senate Judiciary hearing on January 18, Lynn Nicholson who was the victim of an insanity acquittee testified about the need for a statutory procedure for notifying victims prior to a release hearing. Presently, victims are not required to be notified prior to the insanity acquittee's release. They have no way of knowing if an insanity acquittee has been released or have input at the release hearing.

An amendment to S.B. 8 to require notification of victims prior to the release hearing would be a very good addition to the bill and an important step forward for victims rights. A similar concept is found in the statute regulating sentence reduction hearings in K.S.A. 21-4603(4).

I thank you for your interest in this bill. If you would like any additional information or if I can be of further assistance I can be contacted at my home telephone (316) 722-2771 prior to February 1 or at my office 940 N. Main, 265-1844 after February 1.

Very truly yours,



Clark V. Owens II