

Approved: 4-5-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 5:20 p.m. on March 18, 1996 in Room 529-S of the Capitol.

All members were present except: Senator Rock (excused)
Senator Moran (excused)
Senator Vancrum (excused)
Senator Brady (excused)
Senator Petty (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The Chair called the meeting to order at 5:20 p.m. on Monday, March 18, 1996 in room 522-S.

Subcommittee Reports:

Senator Parkinson presented his subcommittee report.

SB 241--Life in prison sentence for persistent sex offender.

Senator Parkinson stated that during subcommittee hearings and discussion the subcommittee looked at two possible options. One would be to enhance penalties for new sexual offenders, the other would be to try to adjust the old bill, allowing people who are already in jail to be incarcerated under the same law. Senator Parkinson reported that the subcommittee recommended the option of not making this bill retroactive.

Senator Parkinson reported that the subcommittee recommends not making the penalty for all offenses listed in **SB 241** are subject to the Hard 40. The Senator stated that while some offenses are more serious than others, the option would be to double the grid box on all these offenses on a second conviction. Senator Parkinson stated that doubling the grid box would still have significant ramifications on the prison population. Senator Parkinson stated that in all probability this approach will increase the prison population gradually. Senator Parkinson continued by stating that in 20 years the impact of this bill would be somewhere between 88 and 223 additional inmates and at that point it levels off. If the Hard 40 approach were adopted, there will be somewhere between 102 and 297 additional inmates. However, the Hard 40 approach continues to escalate the number of inmates. Senator Parkinson reported that the subcommittee felt like the doubling of the grid box makes more sense because it does give the judge more discretion, and the judge could possibility depart.

The Chair stated that the subcommittee's recommendation is to amend the bill to provide for doubling on all crimes that are listed and recommend **SB 241** favorably.

A motion was made by Senator Parkinson, seconded by Senator Harris to amend SB 241, by doubling the sentences on the grid box, applying this bill to those sex offenders convicted after its enactment; and recommend the bill favorably for passage. The motion carried.

HB 2506--Amendments to the district court nominating commission statutes.

Senator Parkinson reported that the purpose of this bill was to clean up judicial nominating commission statutes and to clarify some things dealing with those statutes. The Senator reported that the bill was

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introduced by Carol Greene, Clerk of the Appellate Court. Senator Parkinson stated that an amendment was added on the floor of the House that would provide that in counties with elected judges, when there is a vacancy, instead of that vacancy being filled by the governor, that vacancy would be filled by a vote of the precinct committee. The subcommittee recommended removing that amendment; and the subcommittee recommended the addition of an amendment that would allow Judge Smith who is a judge in Southeast Kansas, Franklin County, to transfer a judge from one part of the district to another. The conferee explained that there will still be a judge or magistrate in every county, and this amendment will improve efficiency.

Paul Shelby, OJA stated that the statute now reads that there are two magistrates judges in that district, position one is in Osage, position two is Coffey, so Judge Smith wants to transfer position two to Franklin County.

A motion was made by Senator Parkinson, seconded by Senator Bond to recommend **HB 2506** favorably as amended by deleting the House Floor amendment and amending to allow Judge Smith to transfer a judge from one part of the district to another.

HB 2774--Supervision of person conditionally released after finding of not guilty by reason of mental state.

Senator Parkinson stated that currently when someone is found not guilty by reason of mental state, the statute allows that person to be turned over to the custody of the county or DOC. This bill would provide that DOC does not take those persons, they are returned to the custody of the county. The subcommittee recommended **HB 2774** favorably.

A motion was made by Senator Parkinson, seconded by Senator Reynolds to recommend **HB 2774** favorably for passage. The motion carried.

HB 2778--County may be reimbursed for cost of sexual assault evidence collection kit, cost considered an additional court cost.

Senator Parkinson stated that this bill would provide that when there is a sex crime, and a rape kit was ordered the cost of the rape kit can be charged to the defendant, if convicted as a part of the court cost. Senator Parkinson reported that according to testimony rape kit exams cost between \$250 and \$1,500. The Wyandotte County District Attorney stated in testimony that this county had spent approximately \$65,000 a year. Senator Parkinson stated that the revisor indicated that a technical change is needed to reconcile this with the law passed last year.

Senator Parkinson made a motion, seconded by Senator Bond to recommend **HB 2778** favorably with the technical amendment. The motion carried.

HB 2875--Foreign adoption decrees may be filed and entered into district court records.

Senator Parkinson reported that under current law when a child is adopted from a foreign county, state law then requires a resident of Kansas to have a full adoption procedure in Kansas. This bill would provide that as long as a person is a Kansas resident, and that person enters into legitimate adoption in an other country, an adoption proceeding in Kansas will not be necessary. Senator Parkinson reported that many attorneys and families testified in favor of this bill: Senator Parkinson concluded by stating that those conferees cautioned the Committee that there are bad adoption bills which might appear as floor amendments.

A motion was made by Senator Parkinson, seconded by Senator Bond to recommend **HB 2875** favorably for passage. The motion carried.

SB 177--Enhanced penalties for repeated acts of battery.

Senator Parkinson discussed **SB 177** and stated that this is a bill of Senator Ranson, the Attorney General and others that would provide that on the third commission of a simple battery it would constitute a level 5 person felony. Senator Parkinson related that bill was defeated on the floor of the Senate by a vote of 21 to 19. Senator Parkinson stated that as a result of discussion with Senator Ranson a bill that would be more focused on domestic violence was proposed.

Senator Parkinson reported that a bill was drafted and recommended by the subcommittee that creates a definition of domestic violence, and mirrors the DUI statute.

Senator Parkinson discussed the complexity of **SB 177** because of additional expenses counties may incur

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and because assigning penalties to the type of battery defined by this bill could preclude sentencing for a more serious offense.

A motion was made by Senator Parkinson, seconded by Senator Bond to recommend SB 177 favorably as amended by subcommittee. The motion carried.

HB 2410--Non-payment of child support; contempt of court; interest on arrearages; suspension of driving privileges; names in sheriff's office.

Senator Parkinson stated that this bill calls for the suspension of a person's driver's license for failure to pay child support, but there is an exemption for driving to and from work. Senator Parkinson reported that some conferees stated that this bill will not allow parents to visit their kids. Senator Parkinson stated that this bill provides for the payment of interest on late child support.

A person speaking from the audience reported that there is a House amendment that would set 7% as the interest rate for child support, so that amendment simplifies the calculation. The person speaking from the floor stated that if someone is picked up on a bench warrant, and a cash bond is posted, the cash bond shall be applied toward child support arrearage. The conferee in the audience stated that there are three parts to the bill. In response to Committee member's question the conferee stated that the drivers license is restricted only if the person ordered to pay child support, is in contempt of court and is six months behind on support payments. In those situations the judge has an option to restrict the license, but it is not a requirement.

Senator Parkinson asked if driver licenses were restricted for non-driving reason.

The conferee testifying from the floor stated that juvenile offenders have their licenses restricted for offenses that maybe totally unrelated. Many states are adopting drivers license restriction as one way of getting the attention of those who are delinquent in child support payments. In some states agencies like SRS notify Division of Motor Vehicle.

HB 2932--Employment and payment of child support is a condition of parole, probation or postrelease supervision

Senator Parkinson stated that this bill provides that the judge in a criminal case as a matter of condition for probation shall require the person to work faithfully at some suitable employment unless some medical condition prohibits work to the extent allowed by law. Senator Parkinson stated that this bill will require the payment of child support as a condition of probation.

Senator Parkinson explained that the front part of the bill is an amendment leaving to the discretion of the employer to provide a report on a new hire be made to the Department of Human Resources. Senator Parkinson reported that the DHR is against that provision because of cost. The Senator stated that this bill will also provide for loss of disability payments due to unpaid child support.

Senator Harris reported on bills heard in his committee.

HB 2391--Authority and benefits of certain special deputy sheriffs.

Senator Harris stated that **HB 2391** will apply to several of the large counties. Senator Harris stated that there is also some cleanup language to allow for law enforcement training. The Senator explained that this bill provides for law enforcement authority in four counties. The use of special deputies is restricted to the four counties. Senator Harris stated that the subcommittee did not approve that retired law enforcement officers can carry concealed weapons. Senator Harris related that law enforcement officers do have more background and training, and this bill will provide general law enforcement authority, approved by the sheriff.

A motion was made by Senator Harris, seconded by Senator Parkinson to amend by removing the language referring to retired law enforcement officers. Motion carried.

A motion was made by Senator Harris, seconded by Senator Reynolds, to recommend HB 2391 favorably as amended for passage. The motion carried.

HB 2695--Battery against a law enforcement officer to include correctional officer/employees of the city.

Senator Harris reported that this bill makes it a level 7 person felony to assault a local correctional employee, which is still presumptive probation. The Senator reported that a floor amendment was added to this bill in the

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House to make it a class A misdemeanor to assault or to batter a school employee, currently it is a class B. The subcommittee recommended taking the school employee amendment off. Senator Bond related that Senator Marge Petty requested to put it back on. The NEA and the school boards supported it.

HB 2110--Hearing for probate; uncontested consent

Senator Harris reported that **HB 2110** allows the judge to waive the requirement to prove the signatures on wills.

A motion was made by Senator Harris, seconded by Senator Parkinson to recommend **HB 2110** favorably for passage. The motion carried.

HB 2775--Repeal of statute requiring department of corrections to furnish religious materials to inmates.

Senator Harris stated that Secretary Simmons, DOC reported that the Religious Freedom and Restoration Act makes him want to quit furnishing bibles and other religious material at the expense of the state. This Act requires the DOC to furnish material by request of the inmate if it has been donated to the correctional facility. Additional language (a balloon) was requested by Secretary Simmons allowing the DOC to check the material to make sure that it is not detrimental to prison management. Senator Harris stated that the balloon uses the language contained in the DOC rules.

A motion was made by Senator Harris, seconded by Senator Reynolds to amend to include language requested by the Secretary of Corrections and recommend the bill favorably. The motion carried.

HB 2795--Immunity from liability for volunteers of nonprofit homeowners organizations

Senator Harris reported that the purpose of this bill was to protect those who volunteer in homeowner organizations from liability while in the scope of their duties.

A motion was made by Senator Harris, seconded by Senator Parkinson to recommend **HB 2795** favorably for passage. The motion carried.

HB 2996--Reporting traffic convictions and adjudications from the district courts to the division of vehicles.

Senator Harris reported that a representative from OJA testified during the subcommittee hearing.

John Smith, Department of Revenue, Division of Vehicles, explained the purpose of **HB 2996** was to report traffic convictions by the state mainframe to motor vehicles.

A motion was made by Senator Parkinson, seconded by Senator Harris to recommend **HB 2996** favorably for passage. The motion carried.

The Chair adjourned the meeting at 6:30 p.m.

The next meeting is scheduled for March 19, 1996.

