

Approved: 3/3/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice-Chairperson Terry Presta at 3:30 p.m. on March 25, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Carmody (excused)
Representative Kline (excused)
Representative Mayans (excused)
Representative Wilk (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Ron Smith, Kansas Bar Association

Others attending: See attached list

Vice-Chairman Presta called the meeting to order at 3:45 p.m.

The Vice-Chair informed the Committee members that a number of bills will be considered for action at this meeting.

SB 66: Payment of demands and medical assistance by conservators.

A motion was made by Representative Adkins, seconded by Representative Dahl to recommend SB 66 favorably for passage. The motion carries.

SB 68: Amendments to the care and treatment act for mentally ill persons

A motion was made by Representative Adkins, seconded by Representative Ruff to recommend SB 68 favorably for passage. The motion carries.

SB 106: Making of gifts by conservators in certain circumstances.

A motion was made by Representative Adkins, seconded by Representative Dahl to recommend SB 106 favorably for passage. The motion carries.

A motion was made by Representative Adkins, seconded by Representative Klein to reconsider the motion.

A substitute motion was made by Representative Swenson, seconded by Representative Howell to amend SB 105 into SB 106. The motion was withdrawn.

The motion carries to reconsider the motion.

The Revisor read a balloon for SB 105 as submitted by Ron Smith, Kansas Bar Association. (Attachment 1)

Upon consensus of the Committee members, the Vice-Chair allowed SB 106 to be passed over until copies of the bill and balloon were available.

SB 262: Responsibilities of attorney general in capital murder and hard 40 sentencing proceedings.

SB 264: Assistance of counsel for persons convicted of capital murder.

A motion was made by Representative Adkins to recommend SB 262 favorably for passage. Representative Powell seconded the motion.

Representative Mays suggested combining SB 262 and SB 264.

A substitute motion was made by Representative Mays and seconded by Representative Swenson to amend

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SB 264 into SB 262. The motion carries.

A motion was made by Representative Garner to amend SB 262 regarding Sections 1, 2 and 3 to provide language that would codify that the Kansas Attorney General can not overturn local prosecutor's decision to not seek the death penalty. The motion was seconded by Representative Haley. The motion carries.

A motion was made by Representative Adkins and seconded by Representative Powell to recommend SB 262 favorably as amended. The motion carries.

Representative Mays discussed the need for a bill that penalizes those who make bomb threats. Representative Mays cited several occurrences in Shawnee County where bomb threats were made. Representative Mays discussed the problem this activity causes to those affected and the expense of handling those threats which are paid by the taxpayers. (Attachment 2)

A motion was made by Representative Mays and seconded by Representative Swenson to amend into SB 264 the contents of a bill draft defining and classifying the crime of aggravated criminal threat and establishing punishment for such crime(s) thus making SB 264 Substitute SB 264.

The Committee members discussed the severity of the penalties and the cost taxpayer incur as a result of bomb threats.

The motion carries.

A motion was made by Representative Mays, seconded by Representative Powell include in Substitute 264 the effective date as being upon publication on the registry. The motion carries.

A motion was made by Representative Mays, and seconded by Representative Howell to recommend Substitute SB 264 favorably. The motion carries.

SB 87: Cigarette or tobacco infractions; classification and trials.

Representative Adkins made a motion to amend HB 2260 into SB 87. The motion was seconded by Representative Swenson.

Representative Adkins explained the contents of HB 2260. The Committee members discussed the graduated sanctions for those charged with subsequent conviction.

The motion carries.

A motion was made by Representative Haley and seconded by Representative Ruff to amend HB 2409 into SB 87.

The Revisor noted the possibility that placing HB 2409 into SB 87 may violate the two subject rule. The Vice-Chair stated that the Revisor's comments are acknowledged and the amendment to be offered will be allowed.

Representative Haley withdrew the motion to amend with agreement of Representative Ruff.

Representative Garner made a motion to amend SB 87 as requested by the Oil Marketers Association regarding the keeping of records at one centralized location.

Representative Garner withdrew his motion after being advised of the insertion of that provision in the bill by the Senate Committee.

A motion was made by Representative Adkins and seconded by Representative Pauls to recommend HB 87 favorably as amended. The motion carries.

Representative Haley made a motion to reconsider SB 262. The motion was seconded by Representative Sawyer. The motion carries.

A motion was made by Representative Haley and seconded by Representative Kirk to amend HB 2409 into SB 262. The motion carries.

A motion was made by Representative Haley, seconded by Representative Mays to recommend SB 262

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favorably as amended.

Substitute motion was made by Representative Sawyer and seconded by Representative Garner to amend SB 262 on page 3, line 18 and 26 to replace " a reasonable" with "any."

The Committee members discussed issues regarding whether this legal standard was appropriate for the circumstances.

The substitute motion fails with 7 members in favor and 9 members opposing.

A motion was made by Representative Adkins and seconded by Representative Powell to recommend SB 262 favorably for passage as amended. The motion carries.

Since the previous motion on SB 106 had been withdrawn, the Vice Chair opened discussion on that bill.

Ron Smith, Kansas Bar Association, discussed the amendment he provided which includes the contents of SB 105 with some technical amendments. The conferee discussed language used in federal law referring to guardian instead of conservator.

A motion was made by Representative Pauls, and seconded by Representative Howell to amend the balloon for SB 105 into SB 106. The motion carries.

A motion was made by Representative Pauls and seconded by Representative Howell to recommend SB 106 favorably as amended. The motion carries.

SB 214: Law enforcement; sheriffs; qualifications and officer training requirements.

A motion was made by Representative Adkins and seconded by Representative Ruff to amend the contents of SB 292 concerning conservation officers enforcement authority into SB 214.

Representative Powell expressed concerns with the power granted federal law enforcement authorities.

A substitute motion was made by Representative Klein, and seconded by Representative Swenson to amend HB 2432, (concerning due process protection for law enforcement officers) into SB 214.

Representative Powell stated that he had a concern that this would bring a major change in the law. Representative Adkins stated that he rejects this amendment because the bill would undermine the chain of command, affect public safety, and there are already adequate remedies for handling personnel disputes. Representative Haley opposes the amendment and suggested that HB 2432 should be studied.

Representative Howell spoke in support of amending HB 2432 into SB 214 stating that political considerations can influence personnel decisions.

The substitute motion carries with a vote of 10 in favor and 5 opposing.

Representative Mays made a substitute motion, seconded by Representative Howell to amend SB 214 on page 6 by striking the colon(period) and inserting "within one year of re-appointment" to satisfy requirements 1, 2, and 3 on page 7.

A substitute motion was made by Representative Powell and seconded by Representative Dahl to table SB 214. The substitute motion fails.

The substitute motion to amend by allowing one year for re-appointed officers to complete requirements carries.

Representative Adkins renewed his motion to amend SB 292 into SB 214, seconded by Representative Powell.

A substitute motion was made by Representative Pauls and seconded by Representative Swenson to recommend SB 214 favorably as amended.

Representative Adkins states his opposition to the substitute motion.

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The substitute motion carries.

The Vice Chair adjourned the meeting at 5:25 p.m.

The next meeting is scheduled for March 27, 1997.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/25/97

NAME	REPRESENTING
DAVID TRUMAN	KS BAR ASSN
Kyle Smith	KBI
Jim Clark	KCOA
Jerry Sloan	OJA
Paul Johnson	PACK
DONALD SVOGRAS	KS FOOD DEALERS ASSOC
John House	SRS/Judicial Council
Dr. Hearrell	Judicial Council
Jamie Corkhill	SRS/CSE
Michelle Peterson	Peterson Public Affairs
Sydney DeCoursay	KS Insurance Dept
Chuck Stokes	KBA
Kathy Taylor	KBA
STEVE KEARNEY	KOMA
Tom Grace	Court
JOHN C. BOTTENBERG	AmVestor's
William W. Sneed	AmVestors

1 **SENATE BILL No. 105**
2 **By Committee on Judiciary**
3 **1-24**
4 -----
5

6 AN ACT concerning conservators; relating to creation of trusts
7 in certain circumstances.

8
9 *Be It Enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) A conservator, with or without notice,
11 upon the order of the district court, may transfer property of the
12 conservatee to a trust created by the conservator for the benefit
13 of the conservatee, if the court finds **such transfer will enable**
14 **the conservatee to qualify for benefits from any federal,**
15 **state or local governmental program or will accelerate such**
16 **qualification.**

17 (b) For purposes of this section, a trust to which
18 **property of a conservatee is transferred includes:**

19 ~~—— (1) Such transfer will enable the conservatee to qualify~~
20 ~~for benefits from any federal, state or local governmental~~
21 ~~program or will accelerate such qualification;~~

22 ~~—— (2) the conservator is to serve as sole trustee of such~~
23 ~~trust;~~

24 ~~—— (3) the conservatee is the sole beneficiary of such trust~~
25 ~~during its term;~~

26 ~~—— (4) the term of such trust does not extend beyond the~~
27 ~~conservatee's lifetime;~~

28 ~~—— (5) the provisions of such trust provide for the~~
29 ~~distribution of the trust estate for the benefit of the conservatee~~
30 ~~to the extent not satisfied from governmental benefits, in the~~
31 ~~same manner and under the same circumstances the property of~~
32 ~~the conservatee would have been distributed for the benefit of~~
33 ~~the conservatee pursuant to the provisions of article 30 of~~

34 chapter 59 of the Kansas statutes annotated and amendments
35 thereto had such transfer not occurred; and
36 ~~—— (6) upon the termination of such trust, the provisions of~~
37 ~~the trust require the entire trust estate, to the extent not~~
38 ~~required to be expended to reimburse governmental entities for~~
39 ~~benefits provided as a condition for qualification for such~~
40 ~~benefits, is to be paid over and assigned to the conservatorship,~~
41 ~~should such termination occur during the conservatee's lifetime,~~
42 ~~and to the legal representative of the conservatee's estate,~~
43 ~~should such termination occur by virtue of the conservatee's~~
44 ~~death.~~

45 (1) a trust established by the conservator for the
46 benefit of the conservatee when the conservator, or its
47 successors as appointed by the court, serve as sole trustee of
48 such trust, and the conservatee is the sole beneficiary of
49 such trust during its term; or

50 (2) a pooled trust established and managed by a
51 nonprofit corporation, certified in accordance with KSA
52 59-3037 and amendments thereto, when a separate account
53 is established and maintained for the sole benefit of the
54 conservatee during the term of the account.

55 (c) Any property of a conservatee transferred to such
56 a trust or account within a trust shall be transferred upon a
57 finding by the district court that:

58 (1) the term of such a trust or account within a trust
59 does not extend beyond the conservatee's lifetime;

60 (2) the provisions of such trust or account within a
61 trust provides for the distribution of the trust estate for the
62 benefit of the conservatee to the extent not satisfied from
63 government benefits, in the same manner and under the
64 same circumstances the property of the conservatee would
65 have been distributed for the benefit of the conservatee
66 pursuant to the provisions of article 30 of chapter 59 of the

House Judiciary
Attachment 1
3/25/97

1 **Kansas statutes annotated and amendments thereto, had**
2 **such transfer not occurred; and**

3 **(3) upon the termination of such trust or account**
4 **within a trust, the provisions of the trust require the entire**
5 **trust estate or account, to the extent not required to be**
6 **expended to reimburse governmental entities for benefits**
7 **provided as a condition for qualification for such benefits,**
8 **is to be paid over and assigned to the conservatorship,**
9 **should such termination occur during the conservatee's**
10 **lifetime, and to the legal representative of the conservatee's**
11 **estate, should such termination occur by virtue of the**
12 **conservatee's death.**

13 **(b) (d)** To the full extent not inconsistent with the
14 provisions of this section, any such trust created pursuant to the
15 provisions of this section **and to which property of a**
16 **conservatee is transferred pursuant to the provisions of this**
17 **section,** and the trustee thereof shall be subject to the
18 provisions of article 30 of chapter 59 of the Kansas statutes
19 annotated and amendments thereto, including but not limited to,
20 investment authority, bonding and annual and final accounting
21 requirements and appointment of successor trustees, in the same
22 manner such provisions would have applied had the property of
23 the conservatee not been transferred to such trust.

24 **Sec. 2.** This act shall take effect and be in force from and
25 after its publication in the statute book.

COPY
HOUSE BILL NO. _____

By Committee on Federal and State Affairs

AN ACT concerning crimes and punishments; defining and classifying the crime of aggravated criminal threat.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Aggravated criminal threat is the commission of one or more crimes of criminal threat, as defined in K.S.A. 21-3419 and amendments thereto, when a public, commercial or industrial building is evacuated as a result of the threat or threats.

(b) Aggravated criminal threat is a severity level 6, person felony when the loss of productivity measured by the total wages and salaries of all persons evacuated as a result of the threat or threats for the period of evacuation is less than \$500.

(c) Aggravated criminal threat is a severity level 5, person felony when the loss of productivity measured by the total wages and salaries of all persons evacuated as a result of the threat or threats for the period of evacuation is at least \$500 but less than \$25,000.

(d) Aggravated criminal threat is a severity level 4, person felony when the loss of productivity measured by the total wages and salaries of all persons evacuated as a result of the threat or threats for the period of evacuation equals or exceeds \$25,000.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

115-5

Rep. Carnody

Rep. Mang asked me to give you a copy of this draft. He may offer it as an amendment to a bill in Judiciary Committee today. It has also been approved for introduction by House Federal and State Affairs.

Thom Lawrence
6-5239

House Judiciary
Attachment 2
3/25/97