

Approved: February 22, 1999
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:00 a.m. on February 15, 1999 in Room 254-E of the Capitol.

All members were present:

Committee staff present: Mary Galligan, Legislative Research Department
Russell Mills, Legislative Research Department
Theresa Kiernan, Revisors of Statutes
Judy Glasgow, Committee Secretary

Conferees appearing before the committee: Secretary Charles Simmons

Others attending: See Attached Sheet

Chairman Oleen requested introduction of two bills. One bill deals with planning and zoning and the other relates to enforcement of county resolutions. Senator Vidricksen moved for the introduction of the two bills. Senator Vratil seconded the motion. Motion carried.

Chairman Oleen recognized Senator Harrington. Senator Harrington introduced Jeff Johnson and Nick Carpenter, students from Goddard High School, who are serving as pages. They are seniors, attending school where Senator Harrington's son attends. They were welcomed to the committee.

Chairman Oleen opened hearing on **SB 238:an act concerning autopsies of certain persons**

Secretary Simmons, Department of Corrections addressed the committee as a proponent of **SB 238. (Attachment 1)** This bill will authorize the Secretary of Corrections, a warden, administrator of a correctional facility, jail or other institution for the detention of persons accused or convicted of crimes to order that an autopsy be performed on persons who die in custody. The reasons for correctional officials wanting an autopsy performed on a person who died while incarcerated is for gathering and documenting any evidence that may be relevant in civil litigation or for evaluating the medical services provided by the correctional facility. The department has correctional facilities in 12 counties and in the past have experienced a reluctance on the part of some county coroners to request that an autopsy be performed. The bill makes it clear that the agency requesting the autopsy will pay for the autopsy. The cost of an autopsy runs between \$600 and \$800. Last year there were 21 deaths of inmates while incarcerated. The department recommends amendments of SB 238 be made to specify that the secretary of corrections may also direct that an autopsy be performed; to clarify that the responsibility for the cost of the autopsy lies with the governmental entity rather than the individual official and to clarify "custody" and give it favorable consideration.

Discussion of the bill was held by the committee. Senator Gooch moved that amendments recommended by the Secretary be adopted and that the amended bill be passed favorably to the whole senate. Senator Biggs seconded the motion. The motion passed on a voice vote.

Chairman Oleen went through the bills in the committee. She explained that **SB 101** and **SB 174** had been incorporated in the Substitute **SB 55** and were no longer needed in the bill book. Senator Harrington moved that **SB 101** and **SB 174** be reported unfavorable. Senator Bleeker seconded the motion. The motion carried.

Chairman Oleen called the committees' attention to minutes of the regular committee meeting for February 2, February 3 and February 5. Senator Jones moved that the minutes for February 2, 3, and 5 be approved. Senator Vratil seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:10 a.m. on February 15, 1999

Russell Mills, Legislative Research Division, had a prepared a summary of the provisions of **Substitute SB 55** for the committee to use (Attachment 2).

The meeting adjourned at 11:55 a.m. The next meeting of the committee will be February 16, 1999.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: Feb 15, 1999

NAME	REPRESENTING
<i>Melody Omy</i>	
<i>Charles Simmons</i>	<i>Dept. of Corrections</i>



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Bill Graves
 Governor

Charles E. Simmons
 Secretary

MEMORANDUM

DATE: February 15, 1999
 TO: Senate Federal and State Affairs Committee
 FROM: Charles E. Simmons
 Secretary of Corrections *[Signature]*
 RE: SB 238

SB 238 is part of the Department's legislative initiatives. SB 238 amends K.S.A. 22a-233 to authorize a warden, administrator of a correctional facility, jail or other institution for the detention of persons accused or convicted of crimes to order that an autopsy be performed on persons who die in custody. SB 238 further provides that the cost of autopsies performed at the direction of correctional officials be borne by the correctional agency.

Current law provides that autopsies are to be performed at the direction of the coroner or at the request of the county or district attorney. Additionally, K.S.A. 22a-233 provides that the cost of autopsies are to be paid by the county. Without statutory authority, an autopsy cannot be performed without the authorization of the decedent's representative. SB 238 would not alter the authority of a coroner or prosecutor to order that an autopsy be performed.

The reasons for correctional officials wanting to have an autopsy performed on a person who died while incarcerated are typically much broader than the reasons for a coroner or prosecutor to seek an autopsy. Coroners and prosecutors are usually interested in whether a death was caused by criminal intervention. However, corrections officials have the additional interests of gathering and documenting any evidence that may be relevant in civil litigation or for evaluating the medical services provided by the correctional facility. Additionally, correctional officials may have to respond to concerns or allegations of family members even though a coroner or prosecutor had no reason to believe a death was the result of criminal activity and therefore do not order an autopsy. These differences may reasonably be expected to be germane when coroners and prosecutors are confronted with the expenditure of county funds in situations where only the Department of Corrections has an interest in having the cause of death fully investigated and documented.

The Department of Corrections has long followed a policy of seeking from coroners the authorization to have an autopsy for all deceased inmates. During calendar year 1998, 21 persons died while in the custody of the Department. An autopsy was performed for each death, with the cost of the autopsy being paid by the Department for all but 4. Due to the fact that

Senate Federal and State Affairs
February 15, 1999
Page 2

several county coroners had jurisdiction over these deaths, the Department is unable to determine whether local coroners would have authorized an autopsy without the willingness of the Department to pay the cost of that service. It has, however, been the Department's experience that on occasion, repeated requests to coroners and even the intervention of prosecutors has been necessary to obtain authorization for an autopsy. In those situations, it is believed that the willingness of the Department to bear the cost of the autopsy was beneficial in obtaining the necessary authorization.

Finally, the Department has encountered coroners raising the issue of whether they had the authority to order that an autopsy be performed when the inception of a chronic fatal illness occurred in one county and death occurred in a hospital located in another county.

SB 238 would appropriately allocate the cost of an autopsy to the governmental entity that believes it is necessary to have it conducted. SB 238 would also serve to avoid the dilemma imposed upon local officials in deciding whether to burden their county with the expense of an autopsy when the interests of the county are not implicated.

The Department recommends amendment of SB 238 to specify that the secretary of corrections may also direct that an autopsy be performed. Additionally, SB 238 should be amended to clarify that the responsibility for the cost of the autopsy lies with the governmental entity rather than the individual official. Finally, SB 238 should be amended to clarify that correctional officials are not provided the authority pursuant to this bill to order the autopsy of deceased offenders who have been released from confinement. A balloon amendment incorporating these recommendations is attached.

The Department requests that the Committee amend SB 238 and give it favorable consideration.

w/attachment

CES/TGM/rb

cc: Legislation file w/attachment

SENATE BILL No. 238

By Committee on Federal and State Affairs

2-5

9 AN ACT concerning autopsies of certain persons; amending K.S.A. 22a-
10 233 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 22a-233 is hereby amended to read as follows: 22a-
14 233. (a) If, in the opinion of the coroner, an autopsy should be performed,
15 or if an autopsy is requested in writing by the county or district attorney
16 or if the autopsy is required under K.S.A. 22a-242, and amendments
17 thereto, such autopsy shall be performed by a qualified pathologist as may
18 be designated by the coroner. A pathologist performing an autopsy, at
19 the request of a coroner, shall be paid a usual and reasonable fee to be
20 allowed by the board of county commissioners and shall be allowed and
21 paid the travel allowance prescribed for coroners and deputy coroners in
22 accordance with the provisions of K.S.A. 22a-228, and amendments
23 thereto, the same to be paid by the board of county commissioners of the
24 county in which the cause of death occurred except that autopsies per-
25 formed under K.S.A. 22a-242, and amendments thereto, shall be paid for
26 in accordance with K.S.A. 22a-242, and amendments thereto.

27 (b) ~~If, in the opinion of the warden or administrator of a correctional~~
28 ~~facility, jail or other institution for the detention of persons accused or~~
29 ~~convicted of crimes, an autopsy of a person who died while in the warden's~~
30 ~~or administrator's custody should be performed, such autopsy shall be~~
31 ~~performed by a qualified pathologist as may be designated by the warden~~
32 ~~or administrator. A pathologist performing an autopsy, at the request of~~
33 ~~a warden or administrator, shall be paid a usual and reasonable fee, the~~
34 ~~same to be paid by the warden or administrator from moneys available~~
35 ~~therefor. This subsection shall not limit the authority of a coroner pur-~~
36 ~~suant to subsection (a).~~

37 (b) (c) The pathologist performing the autopsy shall remove and re-
38 tain, for a period of three years, such specimens as appear to be necessary
39 in the determination of the cause of death.

40 (e) (d) A full record and report of the facts developed by the autopsy
41 and findings of the pathologist performing such autopsy shall be promptly
42 made and filed with the coroner and with the clerk of the district court
43 of the county in which decedent died. If, in any case in which this act

secretary of corrections,

official's

secretary,

such official

correctional facility, jail or other institution

For the purposes of this subsection, custody does not include general supervision of a person on probation, parole, postrelease supervision or constraint incidental to release on bail.

SB 238

2

1 requires that the coroner be notified, the body is buried without the
2 permission of the coroner, it shall be the duty of the coroner, upon being
3 advised of such fact, to notify the county or district attorney, who shall
4 communicate the same to a district judge, and such judge may order that
5 the body be exhumed and an autopsy performed.

6 Sec. 2. K.S.A. 22a-233 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the statute book.

1-3

LEGISLATIVE COMPENSATION PLAN APPROVED BY SENATE COMMITTEE (February 11, 1999)

Annual Salary. Members would receive an annual salary of \$12,000, payable over 26 pay periods. This salary will begin being paid with the last half of the pay periods in 1999.

Constituent Allowance. Members would receive a constituent allowance of \$9,000, payable over 20 pay periods during the interim. This allowance will begin being paid with the last half of the pay periods in 1999. The amount paid during the 1999 interim will be prorated at the new rate.

Interim Meetings. Members would receive daily pay of \$83.40 for attendance at any authorized meetings during the interim. This daily rate would apply to any meetings held after July 1, 1999.

COLA. Members' pay would be indexed to the average of any classified state employee pay increases, including step movement and cost-of-living adjustments.

Choice. Members would have the option of refusing to accept the new annual salary or constituent allowance and could continue their current rate of pay.

Subsistence. Subsistence would remain at \$80 per day, as in current law.

Retirement. Effective January 8, 2001, members will have the option of enrolling in KPERS (with a state contribution set in statute, currently 4 percent), or enrolling in the deferred compensation plan, with the state contributing 8 percent.

State retirement contributions and benefits under either plan would be based on the combined annual salary and constituent allowance only. Members of the Legislature would have the option of not participating in either state retirement plan. Prior to the effective date of the new retirement options, members' KPERS contributions would be unchanged.

Effective Date. The bill would take effect upon publication on July 1, 1999.