

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on February 25, 2003, in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department  
Lisa Montgomery, Office of the Revisor of Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee: None

Others attending: see attached list

**Final action on:**

**SB 63 - Changing the law enforcement telecommunications committee to the criminal justice information system committee**

Chairman Vratil briefly reviewed **SB 63**. Senator Goodwin moved that SB 63 be passed out favorable, seconded by Senator Schmidt, and the motion carried.

**SB 67 - Open records after a child fatality**

Chairman Vratil summarized **SB 67** briefly, and reminded the Committee that there were proposed amendments for consideration including the changes recommended by SRS along with clarifications.

Senator Goodwin moved to amend the bill by deleting the phrase "life threatening injuries" and replacing it with the phrase "near fatality", and also to amend the bill by deleting "child abuse or neglect" and changing it to "alleged child abuse or neglect". The motion was seconded by Senator Schmidt, and the motion carried.

The Chairman directed the Committee's attention to the balloon amended recommended by Senator Adkins which would add an additional situation in which records may be disclosed to the Department of Health and Environment for the purpose of caring out the responsibilities relating to licensure or registration of child care providers as required by Kansas statutes.

Senator Schmidt moved to amend the bill as recommended by Senator Adkins, seconded by Senator Umbarger, and the motion carried.

Senator Allen moved to pass the bill out favorably as amended, seconded by Senator Goodwin, and the motion carried.

**SB 70 - Repeal SRS pass through assistance to family**

Chairman Vratil reviewed **SB 70**, and that it had a significant positive fiscal note of about \$1,176,894.00. Senator O'Connor stated she strongly opposed the bill as it should not be passed on the backs of families receiving support. Senator Goodman commented that originally she had felt the same way as Senator O'Connor, but then found out that it cost the state \$64 to pass through \$40, and it didn't seem prudent in the state's budget crisis to pay \$40 to the family and \$24 to Health and Human Services. She said because of this she would be supporting the bill.

After further discussion, Senator Goodwin moved that the bill be passed favorably and seconded by Senator Oleen. Th motion carried on a count of five to four, with one abstaining and one absent.

**SB 171 - Changes the lower dollar limit of felony theft**

Following the Chair's review of **SB 171** and discussion regarding prison bed space and potential negative impact on private industries, the Chairman called for a vote on the bill. Senator Oleen moved to recommend the bill be passed out favorably, seconded by Senator Goodwin, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 25, 2003 in Room 123-S of the Capitol.

**SB 187 - Allows Kansas City, Kansas community college forensic laboratory to charge fees for forensic services**

Chairman Vratil reviewed **SB 187**, and stated he had requested a balloon amendment on this bill to treat the Kansas City, Kansas Community College forensic laboratory in the same manner as the Sedgwick County and Johnson County forensic laboratories are dealt with in the current statute. He said there should be an addition made to the amendment on page 2, at the very end and should read, "shall be deposited in Wyandotte County General Fund".

Senator Schmidt made a motion to amend the bill as proposed, seconded by Senator Donovan, and the motion carried.

Senator Donovan moved to pass the bill out favorably as amended, seconded by Senator Haley, and the motion carried.

**SB 110 - Criminal and civil penalties for unlawful acts relating to securities**

The Chairman called upon Senator Schmidt to give the subcommittee's report on **SB 110**. Senator Schmidt gave an oral report and said that the proposed bill was brought to the Committee by the Securities Commissioner. He said it proposes to increase the criminal and civil penalties for violations of the Securities Act for commission of securities fraud. He stated that it would also provide the investigators and prosecutors with some additional tools. Senator Schmidt related that the subcommittee reviewed the bill and was quite supportive of it, but did have a recommendation for an amendment to increase the civil penalties from a maximum of \$10,000 to a maximum \$25,000 which would be consistent with the Secretary of State's bills that were heard earlier this year. He said they also wanted to add language borrowed from the Consumer Protection Act regarding fraud against the disabled and the elderly, and was included in the proposed amendment submitted. (Attachment 1)

Committee discussion followed regarding the fiscal note and bed space impact. Senator Schmidt moved to adopt the subcommittee's amendment, seconded by Senator Donovan, and the motion carried.

Senator Donovan made a motion to recommend the bill favorably as amended. The motion was seconded by Senator Schmidt, and the motion carried.

**SB 206 - One year time limitation on writs of habeas corpus**

Chairman Vratil reviewed **SB 206**, and explained the proposed balloon amendment submitted by the Office of Attorney General. The amendment called for striking the words "at any time" on page 1, line 21, and replacing those words with ", pursuant to the time limitations imposed at paragraph (f)". (Attachment 2)

Senator Schmidt made a motion to adopt the proposed amendment, seconded by Senator Oleen, and the motion carried. Senator Pugh requested his vote be recorded as no.

Senator Schmidt moved the bill be passed out favorably as amended, and seconded by Senator Goodwin. Committee discussion followed. The Chair called for a vote on the motion, and the motion carried.

**SB 188 - Amending the No-Call Act to include the FTC No-Call list**

Chairman Vratil reviewed **SB 188**, and discussion involved possibly amending the bill regarding cellular phone numbers.

Senator Goodwin made a motion to amend SB 188 to show that all reference to cell phone numbers be deleted from the bill. The motion was seconded by Senator Schmidt. After Committee discussion, the Chair called for a vote on the motion, and the motion carried.

The Chairman explained that the bill did two other things: (1) if the Federal Trade Commission establishes a No-Call list it would allow the Kansas No-Call list to be transferred to the Federal No-Call list, and (2) it would also remove the Kansas No-Call list from designation as a public record under the Kansas Open Records Act. He further clarified how these provisions would work if they were approved.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 25, 2003 in Room 123-S of the Capitol.

Senator Schmidt stated he supported the bill, but the second amendment would open up many questions and therefore would like to table the bill at this time. Senator Schmidt made a motion to table the bill, seconded by Senator Donovan, and the motion carried.

**SB 111 - Presumed imprisonment at minimum security correctional facility for certain persons convicted of burglary and construction of additional housing therefor**

Chairman Vratil asked Senator Schmidt to address this bill and explain its provisions. Senator Schmidt said there was a provision included that would authorize the construction of minimum security beds in the state. He briefly reviewed the fiscal note on **SB 111** which indicated facilities at Winfield and Larned could be converted to minimum security space at a lower cost. He stated that this bill was an alternative for adding medium security capacity. Senator Goodwin spoke in opposition of the bill, and felt public policy should not be going in that direction. Senator Umbarger said he didn't think this alternative would usurp the Department of Corrections.

After further discussion and comments, Senator Schmidt made a motion to pass **SB 111** favorably, seconded by Senator Umbarger, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is March 5, 2003.



## Subcommittee Report

Be amended:

On page 10, in line 10, after "of" by inserting "at least";  
in line 13, after "of" by inserting "at least";

On page 12, in line 34, by striking "\$10,000" and inserting "\$25,000"; also in line 34, before the semicolon, by inserting:  
". If any person is found to have violated any provision of this act, and such violation is committed against elder or disabled persons, as defined in K.S.A. 50-676, and amendments thereto, in addition to any civil penalty otherwise provided by law, the court may impose an additional penalty not to exceed \$15,000 for each such violation";

Senate Judiciary

2-25-03

Attachment 1-1



State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

PHILL KLINE  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

PROPOSED BALLOON AMENDMENT  
TO SENATE BILL 206  
FOR CONSIDERATION BY THE SENATE JUDICIARY COMMITTEE

February 25, 2003

At Page 1, Line 21 of S.B. 206, strike the words "at any time" and replace those words with  
", pursuant to the time limitations imposed at paragraph (f)".

Please see attached pages for the proposed amendment in balloon form.



SENATE BILL No. 206

By Senators Oleen, Adkins, Buhler, Bunten, Donovan, Goodwin,  
Kerr, Lee, Schmidt, Taddiken, Vratil and Wagle

2-11

AN ACT concerning civil procedure; relating to habeas corpus; amend-  
ing K.S.A. 60-1507 and repealing the existing section.

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

Section 1. K.S.A. 60-1507 is hereby amended to read as follows: 60-  
1507. (a) *Motion attacking sentence.* A prisoner in custody under sentence  
of a court of general jurisdiction claiming the right to be released upon  
the ground that the sentence was imposed in violation of the constitution  
or laws of the United States, or the constitution or laws of the state of  
Kansas, or that the court was without jurisdiction to impose such sen-  
tence, or that the sentence was in excess of the maximum authorized by  
law, or is otherwise subject to collateral attack, may ~~at any time~~ move the  
court which imposed the sentence to vacate, set aside or correct the  
sentence.

[ , pursuant to the time limitations  
imposed at paragraph (f), ]

(b) *Hearing and judgment.* Unless the motion and the files and re-  
cords of the case conclusively show that the prisoner is entitled to no  
relief, the court shall cause notice thereof to be served upon the county  
attorney, grant a prompt hearing thereon, determine the issues and make  
findings of fact and conclusions of law with respect thereto. The court  
may entertain and determine such motion without requiring the produc-  
tion of the prisoner at the hearing. If the court finds that the judgment  
was rendered without jurisdiction, or that the sentence imposed was not  
authorized by law or is otherwise open to collateral attack, or that there  
has been such a denial or infringement of the constitutional rights of the  
prisoner as to render the judgment vulnerable to collateral attack, the  
court shall vacate and set the judgment aside and shall discharge the  
prisoner or resentence said prisoner or grant a new trial or correct the  
sentence as may appear appropriate.

(c) *Successive motions.* The sentencing court shall not be required to  
entertain a second or successive motion for similar relief on behalf of the  
same prisoner.

(d) *Appeal.* An appeal may be taken to the appellate court as provided  
by law from the order entered on the motion as from a final judgment  
on application for a writ of habeas corpus.

1 (e) *Exclusiveness of remedy.* An application for a writ of habeas cor-  
2 pus in behalf of a prisoner who is authorized to apply for relief by motion  
3 pursuant to this section, shall not be entertained if it appears that the  
4 applicant has failed to apply for relief, by motion, to the court which  
5 sentenced said applicant, or that such court has denied said applicant  
6 relief, unless it also appears that the remedy by motion is inadequate or  
7 ineffective to test the legality of said applicant's detention.

8 (f) *Time limitations.* (1) *Any action under this section must be*  
9 *brought within one year of: (i) The final order of the last appellate court*  
10 *in this state to exercise jurisdiction on a direct appeal or the termination*  
11 *of such appellate jurisdiction; or (ii) the denial of a petition for writ of*  
12 *certiorari to the United States supreme court or issuance of such court's*  
13 *final order following granting such petition.*

14 (2) *The time limitation herein may be extended by the court only to*  
15 *prevent a manifest injustice.*

16 Sec. 2. K.S.A. 60-1507 is hereby repealed.

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

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43