

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Tuesday, January 13, 2004 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jerry Ann Donaldson, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Kathy Porter, Office of Judicial Administration
Randy Hearrell, Kansas Judicial Council

Others attending:

See Attached List.

Chairman Vratil presented organizational information, and reviewed the Committee meeting schedule for the remainder of the week.

The Chair called for bill introductions. Kathy Porter, Office of Judicial Administration, requested the introduction of five (5) bills. The first bill was to reintroduce the provisions of 2003 SB 18, which would have judges, rather than clerks, sign executions and orders of sale. Ms. Porter said that SB 18 passed the Senate on a vote of 40 to 0, but then became a vehicle for other provisions in the House. The second bill would amend K.S.A. 22-4012 to have the judge, before whom conviction was rendered, issue the order of conviction and sentence in capital cases. The third bill requested removal of the three-day waiting period for marriage licenses, and the fourth bill related to amending K.S.A. 60-1621 to provide that the \$20 domestic post-decree motion fee be applicable to any domestic post-decree motion. The fifth bill requested elimination of the requirement in current law that business records subpoenaed by a party in a civil suit be held indefinitely by the clerk of the district court. (Attachment 1) Senator O'Connor moved to introduce the five requested bills, seconded by Senator Goodwin, and the motion carried.

Randy Hearrell, Kansas Judicial Council, requested the introduction of five bills. The first bill proposed amendments to K.S.A. 21-4623 and 21-4634 relating to the death penalty. The second bill proposed an amendment to K.S.A. 22-3609 to clarify how appeal time is calculated when appealing from municipal court to district court. The third bill related to a proposed amendment to K.S.A. 12-4106 and 22-3609 to clarify that municipal judges have both direct and indirect contempt powers. The fourth bill proposed an amendment to K.S.A. 12-4203 and 12-4213 to clarify a municipal court's pre-trial authority to detain, to provide the same authority for issuance of arrest warrants that exists for judges of the district court in misdemeanor cases, and to follow U.S. Supreme Court rulings which allow 48 hours for arraignment and issuance of warrants. The fifth bill requested amendments to the Kansas Administrative Procedure Act which phases in, over a five year period, the requirement that agencies under the K.A.P.A. utilize the Office of Administrative Hearings to conduct administrative hearings. (Attachment 2)

Chairman Vratil stated that he had been requested to have a bill drafted to allow juries in capital crimes cases to have an option of either a death sentence or life without the possibility of parole. He inquired if that was one of the subjects the Judicial Council was considering. Mr. Hearrell responded that there had been discussion on the topic, and it would likely be approved by the Judicial Council and a report drafted within the next two weeks. The Chair said he would wait and see what the Judicial Council recommended, and not request the bill drafted at this time.

Senator Donovan moved to introduce the five requested bills by the Kansas Judicial Council, seconded by Senator Goodwin, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on January 13, 2004 in Room 123-S of the Capitol.

Chairman Vratil asked the staff from Legislative Research to give a review of recommendations from the interim report of the Special Committee on Judiciary. Mike Heim briefed the Committee members on allocation of judicial resources which was a review of Sub. For **HB 2307** which deals with the allocation of judicial resources, including granting the Supreme Court the ability to eliminate or reassign district magistrate judge positions and eliminate a district court judge position and replace the position with one or more district magistrate positions. Mr. Heim explained the history of the bill in the House and the amendments made on the House floor. He said the bill was killed on final action in the House Committee of the Whole on a 61 to 62 vote. He stated the interim committee believed that the Judicial Branch must be adequately funded, which it is not, if it is to perform its constitutional duty, and that the Legislature must provide more money for the Judicial Branch to meet its constitutional responsibilities. Mr. Heim also reported that the Committee further believed that the Judicial Branch can more effectively and efficiently use existing resources. (Special Committee on Judiciary Interim Report can be accessed in the Legislative Research Department)

After Committee discussion and questions, Mr. Heim explained the proposed changes in the laws regarding the "one judge per county" requirement which would be met with either a district judge, a district magistrate judge, or a part-time district judge or district magistrate judge. He said there would be a judge assigned in every county but not necessarily in residence within that county. Senator Oleen requested that the Committee be furnished with information regarding how many lay judges and law trained judges the State of Kansas has and where they are located. The Chair asked staff to provide that information to Committee members.

Senator Schmidt, as a member of the interim committee, commented on this issue and the reasoning for the interim committee's suggested amendments to the current law. He said that the reason they were having the discussion on this was not that there was something wrong with the caseload disparity, but that there was not enough money in the system to pay for the judicial resources needed in some parts of the state.

Chairman Vratil further explained that the interim committee only requested the suggested amendments if the Judiciary could not be adequately funded.

Senator Pugh questioned where docket fees go and said they should be used to fund the court system and not other projects. He said the Judiciary Committee should take a hard look at this issue. The Chair pointed out pages 5-7 and 5-8 of the interim report outlined the distribution of docket fees.

Committee discussion continued with clarification on the allocation of district and magistrate judges wherever they were needed. Chairman Vratil explained that part of the problem perceived by the interim committee was that Kansas has statutes on the books requiring magistrate judges in certain counties and those counties are specified in the statutes. He added that Kansas also has statutes that require district court judges in certain counties, and a certain number of district court judges in certain counties. He said the interim committee suggested repeal of those statutes in order to give the Supreme Court more flexibility to move judicial personnel to where the needs are within the state which is what is reflected in **HB 2495**.

Mr. Heim continued his briefing on the interim report, and explained the Judicial Docket Fees. He said the Committee made three recommendations outlined on page 5-9 off the interim report. He talked about the Kansas Surety Recovery Agents Act which is legislation proposed by the KBI and the Lawrence Police Department. The Committee reviewed 2003 **SB 248** which would create the Kansas Surety Recovery Agents Act and defined "a surety recovery agent" (bounty hunter). The Committee recommended legislation to require bounty hunters or sureties to notify local law enforcement before attempting to apprehend a person who has violated terms of the bail bond and to prevent persons convicted of felonies and certain misdemeanors from acting as a bounty hunters. **SB 299** is the alternative legislation proposed by representatives of the KBI and the Lawrence Police Department which contains appropriate definitions from **SB 248**.

CONTINUATION SHEET

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Chairman Vratil explained briefly the interim committee's review of the bill on the Liquor Control Act which has been assigned to the Senate Judiciary Committee. He explained that the interim committee recommended that the Liquor Control Act be made uniform and local governments be specifically precluded from chartering out of the Act, or doing anything that is not authorized by the Liquor Control Act. He said proposed legislation would allow Sunday sales of liquor and cereal malt beverage, but would not allow holiday sales. The Chair added that it included a provision which would authorize an individual to purchase wine out of state and have it shipped into Kansas for delivery by a Kansas retail liquor dealer. He stated that he would try and have a hearing on that bill as soon as reasonably possible.

Meeting adjourned at 10:30 a.m. The next scheduled meeting is January 14, 2003.



State of Kansas

Office of Judicial Administration

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January 13, 2004

Senate Judiciary Committee

Requested Bill Introductions – 2004 Legislative Session
Office of Judicial Administration

On behalf of the Kansas Association of District Court Clerks and Administrators (KADCCA), the Office of Judicial Administration requests the introduction of the following bills during the 2004 legislative session. These requests have been reviewed by the Kansas District Judges Association (KDJA) Executive Board.

- ① Reintroduce the provisions of 2003 SB 18, which would have judges, rather than clerks, sign executions and orders of sale. Although 2003 SB 18 passed the Senate on a vote of 40 to 0, the bill became a vehicle for other provisions in the House.
- ② Amend K.S.A. 22-4012 to have the judge before whom the conviction was rendered issue the order of conviction and sentence in capital cases. Current law provides that the clerk shall issue the order.
- ③ Remove the three-day waiting period for marriage licenses required by K.S.A. 23-106. The clerks believe that this would save some judicial resources, as well as clerk time, because there are a significant number of requests for judicial waiver of the three-day waiting period for "emergency or extraordinary circumstances," as the statute allows. The clerks believe that the three-day waiting period was included in statute when a blood test was required before a marriage license was issued.
- ④ Amend K.S.A. 60-1621 to provide that the \$20 domestic post-decree motion fee is applicable to any domestic post-decree motion. Current law requires the fee for post-decree motions for a change in legal custody, residency, visitation rights, or parenting time, or for a modification of child support.
- ⑤ Eliminate the requirement in current law that business records subpoenaed by a party in a civil suit must be held indefinitely by the clerk of the district court. This would be amended so that thirty days after the termination of the case, the clerks may return or destroy any records that are not introduced into evidence or required as part of the record after giving notice.

Senate Judiciary

1-13-04

Attachment 1



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas Judicial Council - Randy M. Hearrell
DATE: January 13, 2004
RE: Judicial Council Bill Requests

The Judicial Council requests introduction of the following bills:

1. Proposed amendments to K.S.A. 21-4623 and 21-4634 relating to the death penalty. This proposal and a report were prepared as a result of a request by the Legislature that the Judicial Council study the U.S. Supreme Court case of Atkins v. Virginia, 536 U.S. 304; 122 S. Ct. 2242; 153 L. Ed. 2d 335 (2002) which held that capital punishment of a mentally retarded person is cruel and unusual punishment under the Eighth Amendment.
2. A proposed amendment to K.S.A. 22-3609 to clarify how appeal time is calculated when appealing from municipal court to district court.
3. A proposal to amend K.S.A. 12-4106 and 22-3609 to clarify that municipal judges have both direct and indirect contempt powers.
4. A proposal to amend K.S.A. 12-4203 and 12-4213 to clarify a municipal court's pre-trial authority to detain, to provide the same authority for issuance of arrest warrants that exists for judges of the district court in misdemeanor cases and to follow U.S. Supreme Court rulings which allow 48 hours for arraignment and issuance of warrants.
5. Proposed amendments to the Kansas Administrative Procedure Act which phases in, over a five year period, the requirement that agencies under the K.A.P.A. utilize the Office of Administrative Hearings to conduct administrative hearings.

Senate Judiciary

1-13-04

Attachment 2