

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Tuesday, February 17, 2004, in Room 123-S of the Capitol.

All members were present except:
Senator Lana Oleen (E)

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Senator Phillip Journey
Richard Mauser, U.S. Testing Laboratory, Wichita

Others attending: See attached list.

SB 429 - Worthless checks; more than once within a seven-day period

Chairman Vratil opened the hearing on **SB 429**. Senator Phillip Journey testified as the sponsor and proponent of the proposed legislation. Senator Journey stated that **SB 429** mirrors modifications made in the last year or two to KSA 21-3729, which deals with the criminal use of a financial card. He said that statute was modified by the Kansas Legislature and Governor to allow the aggregate of financial transactions within a seven-day period to be made a felony. Senator Journey explained that **SB 429** accomplishes the same thing in dealing with worthless checks.

Senator Journey said there were two operative sections in the bill amending KSA 21-3707: (1) Adding Section (e)(1)(B) makes a level 7 nonperson felony out of giving multiple worthless checks, drafts, or orders in a seven-day period in an aggregate amount of \$25,000 or more; and (2) an amendment adding to KSA 21-3707 Section (e)(2) a new Section (B) which makes it a level 9 nonperson felony to give multiple worthless checks in a seven-day period if the combined total of those checks, drafts, or orders is at least \$500 but less than \$25,000. He said that the basic structure of the statute is not changed, but simply imposes a presumption of criminal intent. (Attachment 1)

Chairman Vratil called the Committee's attention to the distributed copies of the Fiscal Note for **SB 429** which noted that according to the Kansas Sentencing Commission, passage of this bill may require two to seven additional prison beds by the end of FY 2014. (Attachment 2)

Following brief Committee questions and discussion, the Chairman closed the hearing on **SB 429**.

SB 438 - Automated teller machine robbery; aggravated automated teller machine robbery

Chairman Vratil opened the hearing on **SB 438**. Senator Phillip Journey testified in support of the proposed legislation, and stated that it was important to the residents of Sedgwick County and the State of Kansas. He said that the bill supplements KSA 21-3426 and 21-3427 with two new classes of robbery. He explained that **SB 438** increases the criminal penalties imposed for the crimes of robbery and aggravated robbery at an automatic teller machine from a Level 5 Person Felony (PF) to a Level 4 PF and from a Level 3 PF to a Level 2PF, respectively. (Attachment 3)

Chairman Vratil called the Committee's attention to the distributed copies of the Fiscal Note for **SB 438** which showed that according to the Kansas Sentencing Commission, passage of the bill could result in the need for 6 to 35 additional prison beds by FY 2014. He said this bill had a greater bed space impact than the previous bill heard. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Tuesday, February 17, 2004, in Room 123-S of the Capitol.

Brief Committee discussion and questions followed. The Chairman closed the hearing on **SB 438**.

SB 431 - Criminal use of weapons; certain subsections not apply to laboratories certified by the U.S. department of justice

Chairman Vratil opened the hearing on **SB 431**. Richard Mauser, owner of United States Test Laboratory (USTL) in Wichita, testified in support of the proposed bill. He explained his company was a ballistic test laboratory that conducted tests on bullet resistant products, handguns, firearm locks, etc. He said they also perform ballistic tests for the manufacturers of armor, the United States Department of Defense and law enforcement agencies such as the United States Secret Service, Customs and Boarder Patrol, etc.

Mr Mauser stated that his was one of only two (2) laboratories in the world, certified by the U.S. Department of Justice, National Institution of Justice to perform the type of testing USTL is certified to perform. He explained that most of the testing is performed with a firearm type device that is bolted to the floor, but some testing requires the use of sub-machine guns carried by many law enforcement agencies. Mr. Mauser stated that state law prohibits anyone from owning or purchasing such a firearm to conduct the tests, which results in a lot of testing going to the other certified laboratory in Maryland. He requested the Committee to support a change in the state law so USTL could be more competitive in this field. He suggested that wording in the statute permit employees of a test laboratory certified by the National Institute of Justice to possess the necessary firearm equipment in performance of their employment. Mr. Mauser outlined in his written testimony the changes in the laws that would allow USTL to own or purchase the needed firearms. (Attachment 5)

Final Action:

Chairman Vratil announced that the Committee would work **SB 431** since Mr. Mauser was from out of town, and it was a fairly simple bill.

Kyle Smith, Kansas Bureau of Investigation, suggested that the Committee may want to add an exception to KSA 21-4201 that would ensure that automatic weapons could be transported to or sold to the testing laboratory. Chairman Vratil asked Mr. Smith to provide appropriate language to the Revisor.

Senator Donovan made a motion to amend SB 431 to provide legislative authority for licensed testing labs such as USTL to purchase those objects which they would otherwise be prohibited from purchasing under the current law. The motion was seconded by Senator Goodwin, and the motion carried to amend.

Senator Donovan moved to recommend the bill favorably as amended, seconded by Senator Umbarger, and the motion carried.

Announcement:

Chairman Vratil communicated to Committee members his concern that several members have developed a habit of arriving 10 to 20 minutes late for scheduled Committee meetings, and he asked that they do their best to arrive on time. When Committee members arrive late it shows disrespect for the conferees who are present to testify, and it limits the ability of the Committee to work effectively. Chairman Vratil said he did not want to take any Committee action without everybody having an opportunity to be present, especially at this time of the session when we are facing turn-around.

Final Action:

SB 355 - Changes requirements for determining mental retardation for purposes of applying the death penalty

Chairman Vratil called for discussion and final action on **SB 355**. He explained that the bill concerned the death penalty and individuals with cognitive disability. A balloon amendment was distributed containing proposed technical amendments prepared by the Revisor clarifying the intent of the bill and correcting some drafting errors. (Attachment 6) He said he had reviewed the technical amendments and saw no problem with them. He stated that basically the bill amends Kansas Statutes to comply with the U.S. Supreme Court's decision in the *Atkins* case which dealt with mental retardation. The Chair explained further that under the definition of mental retardation there is a requirement that the state of mental retardation "occur before an individual reaches age 18", but the Judicial Council committee that

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Tuesday, February 17, 2004, in Room 123-S of the Capitol.

dealt with this topic went beyond the limited requirement of *Atkins* and expanded the definition of cognitive disability to include, i.e. a traumatic head injury that occurs to an individual that is more than 18 years of age. The essence of the Judicial Council committee's recommendation is that whether a person is mentally retarded at birth, or whether a person suffers a traumatic injury after age 18 and has a cognitive disability, that person should not be subject to the death penalty for a capital murder conviction in Kansas. Chairman Vratil said their recommendation is supported by a study and recommendation of the Joint Committee on Corrections and Juvenile Justice Oversight which occurred this past summer. He noted that Committee members are aware there is an opposite point of view expressed by Kevin O'Connor from the Sedgwick County's District Attorney's Office and supported by a number of County Attorneys and District Attorneys around the state. That point of view holds that the law should be changed only as necessary to comply with *Atkins*.

Senator Schmidt offered a proposed balloon amendment, and distributed copies to the Committee members. (Attachment 7) He explained his proposed amendment, and shared the contents of an email from the Chief Deputy District Attorney of Sedgwick County, who also was the Prosecuting Attorney on three of the seven convictions that sent individuals to death row in Kansas. (Attachment 8) Ms. Parker is familiar with the current death penalty law, and has an even more critical opinion of the process that occurred in the Judicial Council's Criminal Law Committee. He quoted two passages from her email: "A Deputy District Attorney from the her office, Deborah Peterson, serves on the Judicial Council's Criminal Law Committee. Her protests were basically ignored in the development of this bill, yet I imagine that a claim was also made to the committee that the development bill was comprised by both prosecutors and defense attorneys. The truth is that one prosecutor was ignored, and the other never attended the meetings." It goes on at a later point in the email: "I am hopeful that this email will prompt your Committee to scrutinize this bill. It would make more sense to eliminate the death penalty entirely then to pass this bill."

Senator Schmidt said he did not know if that were an accurate assessment of what happened. He had discussed some of these concerns with Randy Hearrell of the Kansas Judicial Council. Mr. Hearrell's assessment of what happened within the committee was somewhat different, and Senator Schmidt did not know who to believe, and that was why he was offering the amendment. Senator Schmidt explained that the proposed bill does two things: (1) it makes changes in Kansas' current statute that are necessary to conform Kansas law with the *Atkins* decision; (2) it proposes to expand Kansas law by creating the new definition of cognitive disability. He noted in the report from the Judicial Council that Professor Ellis, whose expertise was relied on and who has argued a case before the Supreme Court, stated that "removing the causation clause from our current definition of mental retardation would be sufficient to cure the Constitutional infirmity in Kansas law." Professor Ellis then he goes on to recommend doing what the Council did and expanding it.

Senator Schmidt stated that his amendment would do exactly what Professor Ellis says is sufficient to cure the Constitutional deficiency in Kansas statute. It would strike the new definition of cognitive disability and replace it with the existing definition of mental illness minus that portion of the definition which is Constitutionally affirmed. The rationale is that if he was not certain what he was doing, and if he did not have full and complete confidence in the process that lead to the language in the bill; then he would prefer to do the minimum amount that is necessary to conform the law with the Constitution, particularly in an area as sensitive and emotional as this is. He concluded that this was what his amendment is suppose to do.

Senator O'Connor questioned the redundant wording in the definition on line 19. Senator Schmidt agreed, and said in the drafting of the balloon lines 18 through 20 on Page 1 of the bill should have been deleted. Discussion continued about the standard of deviation in the wording regarding IQ's.

Senator Goodwin commented that she had no objection to an amendment coming into the Committee for consideration, but was concerned that the bill had been in the Judiciary Committee since January 29, 2004. She agreed that the technical cleanup amendments were needed. Senator Goodwin stated she was not in favor of bringing in amendments of substantive nature at this point in the game, especially when members have not heard why and how the bill needed to be changed. She added that the Committee had heard from a lot of experts, and trusted the Judicial Council explicitly in their studies and had seen their

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Tuesday, February 17, 2004, in Room 123-S of the Capitol.

work. She said she would object to the amendment. If someone wants testify against or ask for changes next year, then she conceded it would be appropriate in letting hearings be held on everything that is trying to be changed by prosecutors or attorneys involved.

Additional discussion followed with questions regarding mental retardation and that in Kansas law a proven mentally retarded individual cannot get the death penalty. Chairman Vratil clarified that if the members wanted to limit the bill to the *Atkins*' fix they should vote for Senator Schmidt's amendment. However, if members don't want to limit it to the *Atkins*' problem and wanted to expand it to traumatic head injury after age 18, then members should vote against traumatic head injury after age 18, the they should vote against Senator Schmidt's amendment.

Senator Schmidt said he would add one component to the explanation. He had a concern that when he read the proposed definition of cognitive disability that it was significantly different then the definition of mental retardation in current law. It does more than take the current definition and say in appropriate legal words "and we mean that to apply if the cause of the disability is something that occurred after the time of birth". It creates a new definition. Senator Schmidt stated that when the Legislature is dealing with something as carefully scrutinized by the courts as the death penalty, every word matters. He said it would ordinarily be his practice to defer to the good judgment of the Judicial Council. In this case, however, he was not sufficiently comfortable to give the Council complete trust on the wording. He felt the Committee should go slow.

Senator Umbarger pointed out that the proposed amendment should also include the deletion of lines 32 and 33 on Page 3, and the Chairman agreed.

Discussion continued. Chairman Vratil called for the motion and Committee vote. Senator Schmidt made the motion to adopt his proposed balloon amendment with the addition of deletions on Page 1, lines 18-20 and on Page 3, lines 32 and 33. The motion was seconded by Senator Umbarger. The vote was 5 to 5, and the motion failed for a lack of majority with Senator Oleen not being in attendance.

Motion was made by Senator Goodwin to adopt the technical amendments offered in balloon form by the Revisor, seconded by Senator Betts, and the motion carried.

Chairman Vratil called for a motion on the amended bill. Senator Haley made a motion to pass SB 355 out favorably as amended, and seconded by Senator Betts. Discussion on the motion followed. The Chair called for the Committee vote, and the motion carried.

SB 460 - Taxpayer identification numbers not to be used in obtaining drivers' licenses and other identification cards

Chairman Vratil called for discussion and final action on **SB 460**. The Chairman explained the bill. Senator Schmidt made a motion to recommend the bill favorably for passage, seconded by Senator Allen, and the motion carried. Senators Haley and Betts requested they be recorded as abstaining on the vote.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 18, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues, Feb. 17, 2004

NAME	REPRESENTING
Phil Kewmy	26th sen Dist.
Chuck Stokes	Ks Bankers Assn
Randy M. Hance	KQC
Rocky Nichols	KAPS
Jane Rhys	KCDD
Ann Lee	En Adkins
Emily Watson	Sen. Allen
Jaclyn Reish	SAS/HCP/CSS
KAT SCALIA	BIDS
RICHARD MOUSER	US TOX LAB
Jim Clark	KBA
Bill Henry	KCA
Michael White	KCDAA
Brenda Hammer	KSC
COOPER ALDEN	KDOR
Jane Albert	"
Terry Mitchell	"
Dan Anderson	KDOR
Charlie Keller	H... ..

SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT
P.O. BOX 471
HAYSVILLE, KS 67060STATE CAPITOL
300 S.W. 10TH AVENUE
TOPEKA, KANSAS 66612-1504
(785) 296-7367
E-mail: journey@senate.state.ks.us

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: ASSESSMENT & TAXATION
NATURAL RESOURCES
PUBLIC HEALTH AND WELFARE

Testimony in Support of Senate Bill 429 Presented by State Senator Phillip B. Journey, 26th
District

On February 17th, 2004, before the Senate Judiciary Committee, the Honorable John Vratil,
Chair.

First I'd like to thank the committee for allowing me to testify in support of Senate Bill 429. I
would also like to thank the committee for allowing me to make this a committee bill for your
consideration.

Senate Bill 429 mirrors modifications made in the last year or two to K.S.A. 21-3729. That
statute deals with the criminal use of a financial card. That statute was modified by the Kansas
Legislature and the Governor to allow the aggregate of financial transactions within a seven-day
period to be made a felony. For example, if someone made eleven \$50 fraudulent credit card
transactions in a seven-day period, it could be charged as a felony as opposed to eleven separate
counts of misdemeanor counts. Senate Bill 429 accomplishes the same thing in dealing with
worthless checks. There are two operative sections of the bill amending K.S.A. 21-3707.
Adding Section (e) (1) (B), which makes a level 7 nonperson felony out of giving multiple
worthless checks, drafts, or orders in a seven-day period in an aggregate amount of \$25,000 or
more; and, an amendment adding to K.S.A. 21-3707 Section (e) (2) a new Section (B) which
makes it a level 9 nonperson felony to give multiple worthless checks in a seven-day period if the
combined total of those checks, drafts, or orders is at least \$500 but less than \$25,000. It is
important to remember that the basic structure of the statute is not changed. An individual who
mistakenly writes a number of checks in excess of the balance in their account, would still have
an opportunity to cure that problem as state law requires that a certified letter be sent to the
drawer of the check or the maker of the check giving them up to 21 days to make good on the
worthless check. The statute simply imposes a presumption of criminal intent, but that is still a
rebuttable presumption in criminal court.

I have now practiced law in excess of 20 years in Sedgwick County, Kansas, working on over
60,000 criminal and traffic cases. For eight years I served my penance for being a lawyer,
working under contract for one or two days a week in Wichita Municipal Court on misdemeanor
cases. I can recall on many instances where the defendant had multiple checks in excess of
\$2500 in the aggregate, but was simply charged with 50 misdemeanor counts as opposed to one
felony count. Municipal Courts do not have the probation resources necessary to monitor
restitution to the victims in these financial crimes. Municipal Courts do not have the probation
resources necessary to monitor defendants to insure their compliance with court orders for drug

Senate Judiciary

2-17-04
Attachment 1

or alcohol treatment which in many cases is the trigger for this criminal behavior. In these times when the state legislature is contemplating tax increases on many individuals and businesses in the State, we should with the other hand help these businesses maintain their financial solvency and send a message to people who would abuse the privilege of having a checking account in this State. District Court Probation Services and Community Corrections Probation Services in the State of Kansas are generally not available in Municipal Court cases. In many cases Community Corrections is not available for misdemeanor charges in District Court placing these defendants, upon conviction, with Court Services or Community Corrections as the Court may desire increases the likelihood that these persons while being granted probation would be monitored closely enough to hopefully motivate them to correct the behavior that precipitated these issues.

I sincerely appreciate the committee's time and attention in these matters and would urge the committee to pass this legislation out of committee with a favorable recommendation.

Respectfully submitted,



Phillip B. Journey

February 17, 2004

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 522-S
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 429 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 429 is respectfully submitted to your committee.

SB 429 would establish severity levels for crimes of writing multiple worthless checks within a seven-day period based upon the monetary value of the offense. If the combined value of the checks is at least \$500, but less than \$25,000, the crime would be a severity level 9 nonperson felony. If the combined value is \$25,000 or more, the crime would be a severity level 7 nonperson felony.

According to the Kansas Sentencing Commission, passage of this bill may require two to seven additional prison beds by the end of FY 2014. Because the state correctional system is near capacity, if this legislation or the cumulative effect of similar legislation causes an increase in the prison population, additional space could be required. Although a precise fiscal effect cannot be determined, the Department of Corrections indicates it would consider constructing 128-cell living units at the El Dorado Correctional Facility for medium or maximum custody inmates, constructing a cell house at Hutchinson Correctional Facility for medium custody inmates, or leasing additional space from facilities in Groesbeck, Texas. If the bill does not require an expansion of existing space, the additional costs would be approximately \$2,000 per capita for basic support, including food service, and adjustments might have to be made in the

Senate Judiciary

2-17-04

Attachment 2

The Honorable John Vratil, Chairperson
February 17, 2004
Page 2—429

health service contract. In addition, the fiscal effect could involve additional resources to cover field supervision caseloads beyond the level that can be supervised by existing staff.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Brandy Wheeler, Judiciary
Jeremy Barclay, Department of Corrections
Patti Biggs, Sentencing Commission
Brenda Harmon, Sentencing Commission

SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT
P.O. BOX 471
HAYSVILLE, KS 67060STATE CAPITOL
300 S.W. 10TH AVENUE
TOPEKA, KANSAS 66612-1504
(785) 296-7367
E-mail: journey@senate.state.ks.us

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: ASSESSMENT & TAXATION
NATURAL RESOURCES
PUBLIC HEALTH AND WELFARE

Testimony in Support of Senate Bill 438 Presented by State Senator Phillip B. Journey, 26th District

On February 17th, 2004, before the Senate Judiciary Committee, the Honorable John Vratil, Chair.

Mr. Chairman, ladies and gentleman of the committee, it is a pleasure to be before you today not only as a proponent of this bill but for the first time as one of your colleagues. Senate Bill 438 is a piece of legislation that is very important to the residents of Sedgwick County and the state of Kansas. It is a simple piece of legislation with two sections. It is important to the residents of Sedgwick County and the state of Kansas due to the extraordinary nature of crimes perpetrated involving automatic teller machines and their customers. In an effort to deal with this issue in a comprehensive way, I've also introduced through the Committee on Financial Institutions and Insurance, Senate Bill 333 that requires banks install the emergency notification system. This bill supplements K.S.A. 21-3426 and 21-3427 with two new classes of robbery. Senate Bill 438 which increases the criminal penalties imposed for the crimes of robbery and aggravated robbery at an automatic teller machine, from a Level 5 PF to a Level 4 PF and from a Level 3 PF to a Level 2 PF, respectively.

While many of us are aware of the violent and sadistic nature of the Carr murders in Wichita, other ATM crimes in Wichita have been similarly brutal. ATM crimes are not your normal everyday robbery where the criminal approaches the victim, demands money or property and then leaves upon receipt. These crimes tend to go on for hours, or even days, as the criminal must repeatedly approach the ATM machines to remove more and more money each time. In many cases, the victim is terrorized for an extended period of time far greater than a normal robbery.

My experience in the criminal justice system consists of working on over 60,000 criminal and traffic cases with over 20 years of experience in Kansas court. I practice mainly in the area of criminal and traffic law and have reviewed thousands of police reports. I have spoken with hundreds of victims of violent crime and understand in many respects the pain they are forced to endure.

I want to thank the committee for it's time and attention in this matter and urge the committee to pass this bill out with a favorable recommendation, and I will stand for questions.

Respectfully submitted,

Phillip B. Journey

Senate Judiciary

2-17-04
Attachment 3

February 13, 2004

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 522-S
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 438 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 438 is respectfully submitted to your committee.

SB 438 would create new crimes of automated teller machine robbery and aggravated automated teller machine robbery. The bill defines automated teller machine robbery as the taking of property from a person by force or threat of bodily harm to effect a transaction at an automatic teller machine. Aggravated teller machine robbery would be by use of a dangerous weapon. The crime of automated teller machine robbery would be a severity level 4 person felony. Aggravated automated teller machine robbery would be a severity level 2 person felony.

According to the Kansas Sentencing Commission, passage of SB 438 could result in the need for 6 to 35 additional prison beds by FY 2014. Because the state correctional system is near capacity, if this legislation or the cumulative effect of similar legislation causes an increase in the prison population, additional space could be required. Although a precise fiscal effect cannot be determined, the Department of Corrections indicates it would consider constructing 128-cell living units at the El Dorado Correctional Facility for medium or maximum custody inmates, constructing a cell house at Hutchinson Correctional Facility for medium custody inmates, or leasing additional space from facilities in Groesbeck, Texas. If the bill does not require an expansion of existing space, the additional costs would be approximately \$2,000 per capita for basic support, including food service, and adjustments might have to be made in the

Senate Judiciary
2-17-04
Attachment 4

The Honorable John Vratil, Chairperson
February 13, 2004
Page 2—438

health service contract. In addition, the fiscal effect could involve additional resources to cover field supervision caseloads beyond the level that can be supervised by existing staff.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Jeremy Barclay, Department of Corrections
Patti Biggs, Sentencing Commission
Brenda Harmon, Sentencing Commission

4-2



7447 W. 33rd St. N. 316-832-1600
Wichita, KS. 67205 Fax 316-832-1602

State of Kansas
Judiciary Committee
Topeka, KS

February 16, 2004

Dear Senators and Representatives,

I am Richard Mouser, owner of United States Test Laboratory (USTL) in Wichita. USTL is a ballistic test laboratory that conducts tests on bullet resistant products, handguns, firearm locks, etc. We perform ballistic tests for the manufacturers of armor, the United States Department of Defense and law enforcement agencies such as the United States Secret Service, Customs and Border Patrol, etc. We started in business in 1998 after I retired from the Wichita Police Department after 20 years of service. We are a growing business, starting with two employees and have grown to eight. In addition, we have just moved into a newly constructed building.

There are only two (2) laboratories in the world certified by the United States Department of Justice, National Institute of Justice to perform the type of testing we are certified to perform. The methodology for testing is conducted in a scientific manner with oversight by the United States government.

While most of our testing is performed with a firearm type device that is bolted to the floor, some testing requires the use of sub-machine guns that are carried by many law enforcement agencies. Unfortunately state law prohibits us from owning/purchasing such a firearm to conduct the tests. As a result, this testing all goes to the other certified laboratory. Some customers prefer to do all their testing at one lab so we not only loose the specialized testing, but potentially all of their other business as well.

I am asking for your support to change the state law so we can be more competitive in this market. While I am sure you do not want to change the entire law so everyone can purchase a fully automatic weapon, it would be easier to make a change for owners of a

Senate Judiciary

2.17-04
Attachment 5

laboratory certified by the National Institute of Justice. The laws that I would ask that you change are outlined below.

KSA Chapter 21-4201 Criminal Use of Weapons

- (a) (6) “possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;”

Comment: Some factory made firearms (such as one owned by the Wichita Police Dept.), like the Heckler & Koch MP5SD is a suppressed 9mm sub machinegun. Most agencies always test their body armor against the types of firearms and ammunition that the agency issues. We cannot perform this test due to state law.

- (a) (7) “selling, manufacturing, purchasing, possessing or carrying a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, or”

Comment: Nearly all SWAT type teams across the country carry some type of fully automatic weapon. For the same reasons as noted above, we cannot perform this test.

- (a) (8) “ possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic coated bullet that has a core of less than 60% by weight.”

Comment: The whole reason for this section (8) is to eliminate the possession of the “cop killer” bullet since they allegedly penetrate body armor. Isn’t it ironic that it is illegal for a certified laboratory to perform a test to see if the bullet will penetrate a vest. This hampers the body armor designers ability to test their designs against the potentially more lethal bullets.

I would suggest wording in the statute to permit employees of a test laboratory certified by the National Institute of Justice to possess the above in the performance of their employment.

Thank you for your time, I look forward to hearing your comments.

Best regards,

Richard Mouser
President

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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

SENATE BILL No. 355

By Committee on Judiciary

1-26

Proposed Technical Amendments
Revisor of Statutes Office
February 17, 2004

~~AN ACT concerning the death penalty; relating to cognitive disability; amending K.S.A. 21-4634 and repealing the existing section; also repealing K.S.A. 21-4623.~~ 21-4624 and

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

New Section 1. As used in ~~(this act)~~,
(a) "Cognitive disability" means a disability characterized by significant limitations both in intellectual functioning and deficits in adaptive behavior as expressed in conceptual, social and practical adaptive skills; and

(b) "significant limitations" in intellectual functioning means two or more standard deviations below the norm.

New Sec. 2. (a) No person having cognitive disability at the time of the commission of a capital ~~crime~~ is eligible for the death penalty. murder pursuant to K.S.A. 21-3439, and amendments thereto,

(b) Cognitive disability shall be determined at a pre-trial hearing pursuant to sections 3 and 4 ~~[of this act]~~ and amendments thereto.

New Sec. 3. (a) If the defense counsel has a good faith belief that the defendant in a capital murder case has cognitive disability, counsel shall file a motion with the court, requesting a finding that the defendant is not eligible to be sentenced to death because of cognitive disability. Such a motion shall be filed at any time, but not later than 180 days after the prosecution files notice of intent to seek the sentence of death unless the information in support of the motion came to the counsel's attention at a later date.

(b) Upon receipt of such a motion, the trial court shall conduct a hearing for the presentation of evidence regarding the defendant's possible cognitive disability. Both the defense and the prosecution shall have the opportunity to present evidence, including expert testimony. After considering the evidence, the court shall find the defendant is not eligible for the sentence of death if the defendant proves, by a preponderance of the evidence, that the defendant had cognitive disability at the time of the commission of the capital murder. If the defendant is not eligible for the sentence of death because of cognitive disability, the trial may proceed as a ~~first degree~~ capital murder trial, and, if convicted, the defendant may be sentenced to any penalty under state law, other than death.

Senate Judiciary
2-17-04
Attachment **6**

1 (c) If the court finds that the defendant is eligible for the sentence
2 of death, the case may proceed as a capital murder trial. The jury shall
3 not be informed of the prior proceedings or the judge's findings con-
4 cerning the defendant's claim of cognitive disability.

5 (d) If the capital murder trial results in a verdict of guilty, the parties
6 shall be entitled to present evidence to the jury on the issue of whether
7 the defendant had cognitive disability at the time of the commission of
8 the capital murder. Having heard the evidence and arguments, the jury
9 shall be asked to render a special verdict on the issue of cognitive disa-
10 bility. The special verdict shall ask the jury to answer the question: "Do
11 you unanimously find, beyond a reasonable doubt, that the defendant did
12 not have cognitive disability at the time of the commission of the capital
13 murder?" If the jury answers "yes," the case shall proceed to a penalty
14 phase under K.S.A. 21-4624, and amendments thereto. If the jury answers
15 the question "no," the defendant may be sentenced to any penalty avail-
16 able under state law, other than death.

17 New Sec. 4. In cases in which the defendant has been convicted of
18 capital murder, sentenced to death and is in custody pending execution
19 of the sentence of death, the following procedures apply:

20 (a) The Kansas state board of indigents' defense services shall arrange
21 to provide counsel to any such person who is unrepresented at the time
22 this act takes effect to determine whether to file a petition for relief from
23 the sentence of death on the grounds that the defendant was an individual
24 having cognitive disability at the time of the commission of the capital
25 offense.

26 (b) If such a petition is filed, it shall proceed under section 3 ~~of this~~
27 ~~act~~ and amendments thereto.

28 Sec. 5. K.S.A. 21-4634 is hereby amended to read as follows: 21-
29 4634. (a) If a defendant is convicted of the crime of capital murder and
30 a sentence of death is not imposed, or if a defendant is convicted of the
31 crime of murder in the first degree based upon the finding of premedi-
32 tated murder, the defendant's counsel or the director of the correctional
33 institution or sheriff having custody of the defendant may request a de-
34 termination by the court of whether the defendant ~~is mentally retarded~~
35 *has cognitive disability*. If the court determines that there is not sufficient
36 reason to believe that the defendant ~~is mentally retarded~~ *has cognitive*
37 *disability*, the court shall so find and the defendant shall be sentenced in
38 accordance with K.S.A. 21-4635 through 21-4638 *and amendments*
39 *thereto*. If the court determines that there is sufficient reason to believe
40 that the defendant ~~is mentally retarded~~ *has cognitive disability*, the court
41 shall conduct a hearing to determine whether the defendant ~~is mentally~~
42 ~~retarded~~ *has cognitive disability*.

43 (b) At the hearing, the court shall determine whether the defendant

New Sec. 5. Sections 1 through 4, and amendments thereto, shall be a part of and
supplemental to the Kansas criminal code.
Renumber remaining sections accordingly.

6-2

6.3

1 ~~is mentally retarded~~ *has cognitive disability*. The court shall order a psy-
 2 chiatric or psychological examination of the defendant. For that purpose,
 3 the court shall appoint two licensed physicians or licensed psychologists,
 4 or one of each, qualified by training and practice to make such exami-
 5 nation, to examine the defendant and report their findings in writing to
 6 the judge within 10 days after the order of examination is issued. The
 7 defendant shall have the right to present evidence and cross-examine any
 8 witnesses at the hearing. No statement made by the defendant in the
 9 course of any examination provided for by this section, whether or not
 10 the defendant consents to the examination, shall be admitted in evidence
 11 against the defendant in any criminal proceeding.

12 (c) If, at the conclusion of a hearing pursuant to this section, the court
 13 determines that the defendant ~~is not mentally retarded~~ *does not have*
 14 *cognitive disability*, the defendant shall be sentenced in accordance with
 15 K.S.A. 21-4635 through 21-4638 *and amendments thereto*.

16 (d) If, at the conclusion of a hearing pursuant to this section, the court
 17 determines that the defendant ~~is mentally retarded~~ *has cognitive disabil-*
 18 *ity*, the court shall sentence the defendant as otherwise provided by law,
 19 and no mandatory term of imprisonment shall be imposed hereunder.

20 (e) Unless otherwise ordered by the court for good cause shown, the
 21 provisions of this section shall not apply if it has been ~~determined~~ *section 3,*
 22 ~~pursuant to [K.S.A. 21-4623] and amendments thereto, that the defendant is~~
 23 ~~not mentally retarded~~ *does not have cognitive disability*.

24 ~~(f) As used in this section, "mentally retarded" means having signif-~~
 25 ~~icantly subaverage general intellectual functioning, as defined by K.S.A.~~
 26 ~~76-12101 and amendments thereto, to an extent which substantially im-~~
 27 ~~pairs one's capacity to appreciate the criminality of one's conduct or to~~
 28 ~~conform one's conduct to the requirements of law; (1) "cognitive dis-~~
 29 ~~ability" means a disability characterized by significant limitations both in~~
 30 ~~intellectual functioning and deficits in adaptive behavior as expressed in~~
 31 ~~conceptual, social and practical adaptive skills; and~~

32 (2) ~~"significant limitations" in intellectual functioning means two or~~ *Sec. 7. K.S.A. 21-4624 [see attached]*
 33 ~~more standard deviations below the norm.~~ *Renumber remaining sections accordingly.*

34 Sec. 6 K.S.A. 21-4623 and 21-4634 are hereby repealed.

35 Sec. 7. This act shall take effect and be in force from and after its
 36 publication in the statute book. *, 21-4624*

37
 38
 39
 40
 41
 42
 43

Sec. 7. K.S.A. 21-4624 is hereby amended to read as follows. (a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than five days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced as otherwise provided by law, and no sentence of death shall be imposed hereunder.

(b) Except as provided in K.S.A. 21-4622 and ~~21-4623~~ section 3, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403 and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of imprisonment as provided by law and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed hereunder. Whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

Proposed amendment
Senator Schmidt
February 17, 2004

Senate Judiciary
2-17-04
Attachment **7**

Session of 2004

SENATE BILL No. 355

By Committee on Judiciary

1-26

AN ACT concerning the death penalty; relating to cognitive disability; amending K.S.A. 21-4634 and repealing the existing section; also repealing K.S.A. 21-4623.

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

New Section 1. As used in this act:

(a) ~~“Cognitive disability” means a disability characterized by significant limitations both in intellectual functioning and deficits in adaptive behavior as expressed in conceptual, social and practical adaptive skills.~~

having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01 and amendments thereto

(b) “significant limitations” in intellectual functioning means two or more standard deviations below the norm.

New Sec. 2. (a) No person having cognitive disability at the time of the commission of a capital crime is eligible for the death penalty.

(b) Cognitive disability shall be determined at a pre-trial hearing pursuant to sections 3 and 4 of this act, and amendments thereto.

New Sec. 3. (a) If the defense counsel has a good faith belief that the defendant in a capital murder case has cognitive disability, counsel shall file a motion with the court, requesting a finding that the defendant is not eligible to be sentenced to death because of cognitive disability. Such a motion shall be filed at any time, but not later than 180 days after the prosecution files notice of intent to seek the sentence of death unless the information in support of the motion came to the counsel’s attention at a later date.

(b) Upon receipt of such a motion, the trial court shall conduct a hearing for the presentation of evidence regarding the defendant’s possible cognitive disability. Both the defense and the prosecution shall have the opportunity to present evidence, including expert testimony. After considering the evidence, the court shall find the defendant is not eligible for the sentence of death if the defendant proves, by a preponderance of the evidence, that the defendant had cognitive disability at the time of the commission of the capital murder. If the defendant is not eligible for the sentence of death because of cognitive disability, the trial may proceed as a first degree murder trial, and, if convicted, the defendant may be sentenced to any penalty under state law, other than death.

1 (c) If the court finds that the defendant is eligible for the sentence
2 of death, the case may proceed as a capital murder trial. The jury shall
3 not be informed of the prior proceedings or the judge's findings con-
4 cerning the defendant's claim of cognitive disability.

5 (d) If the capital murder trial results in a verdict of guilty, the parties
6 shall be entitled to present evidence to the jury on the issue of whether
7 the defendant had cognitive disability at the time of the commission of
8 the capital murder. Having heard the evidence and arguments, the jury
9 shall be asked to render a special verdict on the issue of cognitive disa-
10 bility. The special verdict shall ask the jury to answer the question: "Do
11 you unanimously find, beyond a reasonable doubt, that the defendant did
12 not have cognitive disability at the time of the commission of the capital
13 murder?" If the jury answers "yes," the case shall proceed to a penalty
14 phase under K.S.A. 21-4624, and amendments thereto. If the jury answers
15 the question "no," the defendant may be sentenced to any penalty avail-
16 able under state law, other than death.

17 New Sec. 4. In cases in which the defendant has been convicted of
18 capital murder, sentenced to death and is in custody pending execution
19 of the sentence of death, the following procedures apply:

20 (a) The Kansas state board of indigents' defense services shall arrange
21 to provide counsel to any such person who is unrepresented at the time
22 this act takes effect to determine whether to file a petition for relief from
23 the sentence of death on the grounds that the defendant was an individual
24 having cognitive disability at the time of the commission of the capital
25 offense.

26 (b) If such a petition is filed, it shall proceed under section 3 of this
27 act, and amendments thereto.

28 Sec. 5. K.S.A. 21-4634 is hereby amended to read as follows: 21-
29 4634. (a) If a defendant is convicted of the crime of capital murder and
30 a sentence of death is not imposed, or if a defendant is convicted of the
31 crime of murder in the first degree based upon the finding of premedi-
32 tated murder, the defendant's counsel or the director of the correctional
33 institution or sheriff having custody of the defendant may request a de-
34 termination by the court of whether the defendant ~~is mentally retarded~~
35 *has cognitive disability*. If the court determines that there is not sufficient
36 reason to believe that the defendant ~~is mentally retarded~~ *has cognitive*
37 *disability*, the court shall so find and the defendant shall be sentenced in
38 accordance with K.S.A. 21-4635 through 21-4638 *and amendments*
39 *thereto*. If the court determines that there is sufficient reason to believe
40 that the defendant ~~is mentally retarded~~ *has cognitive disability*, the court
41 shall conduct a hearing to determine whether the defendant ~~is mentally~~
42 ~~retarded~~ *has cognitive disability*.

43 (b) At the hearing, the court shall determine whether the defendant

7-2

1 ~~is mentally retarded~~ *has cognitive disability*. The court shall order a psy-
 2 chiatric or psychological examination of the defendant. For that purpose,
 3 the court shall appoint two licensed physicians or licensed psychologists,
 4 or one of each, qualified by training and practice to make such exami-
 5 nation, to examine the defendant and report their findings in writing to
 6 the judge within 10 days after the order of examination is issued. The
 7 defendant shall have the right to present evidence and cross-examine any
 8 witnesses at the hearing. No statement made by the defendant in the
 9 course of any examination provided for by this section, whether or not
 10 the defendant consents to the examination, shall be admitted in evidence
 11 against the defendant in any criminal proceeding.

12 (c) If, at the conclusion of a hearing pursuant to this section, the court
 13 determines that the defendant ~~is not mentally retarded~~ *does not have*
 14 *cognitive disability*, the defendant shall be sentenced in accordance with
 15 K.S.A. 21-4635 through 21-4638 *and amendments thereto*.

16 (d) If, at the conclusion of a hearing pursuant to this section, the court
 17 determines that the defendant ~~is mentally retarded~~ *has cognitive disabil-*
 18 *ity*, the court shall sentence the defendant as otherwise provided by law,
 19 and no mandatory term of imprisonment shall be imposed hereunder.

20 (e) Unless otherwise ordered by the court for good cause shown, the
 21 provisions of this section shall not apply if it has been determined, pur-
 22 suant to K.S.A. 21-4623 and amendments thereto, that the defendant ~~is~~
 23 ~~not mentally retarded~~ *does not have cognitive disability*.

24 (f) As used in this section, "mentally retarded" means having signif-
 25 icantly subaverage general intellectual functioning, as defined by K.S.A.
 26 76-12b01 and amendments thereto, to an extent which substantially im-
 27 pairs one's capacity to appreciate the criminality of one's conduct or to
 28 conform one's conduct to the requirements of law. (1) "*cognitive disa-*
 29 *bility*" means ~~[a disability characterized by significant limitations both in~~
 30 ~~intellectual functioning and deficits in adaptive behavior as expressed in~~
 31 ~~conceptual, social and practical adaptive skills] and~~

having significantly subaverage general intellectual functioning, as defined by
 K.S.A. 76-12b01 and amendments thereto

32 (2) "*significant limitations*" in intellectual functioning means two or
 33 more standard deviations below the norm.

34 Sec. 6. K.S.A. 21-4623 and 21-4634 are hereby repealed.
 35 Sec. 7. This act shall take effect and be in force from and after its
 36 publication in the statute book.

NOTE: For reference purposes, K.S.A. 76-12b01 is attached.

37
38
39
40
41
42
43

76-12b01. Definitions. When used in this act:

(a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of that person's age, cultural group and community.

(b) "Care" means supportive services, including, but not limited to, provision of room and board, supervision, protection, assistance in bathing, dressing, grooming, eating and other activities of daily living.

(c) "Institution" means a state institution for the mentally retarded including the following institutions: Kansas neurological institute, Parsons state hospital and training center and Winfield state hospital and training center.

(d) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from birth to age 18.

(e) "Respite care" means temporary, short-term care not exceeding 90 days per calendar year to provide relief from the daily pressures involved in caring for a mentally retarded person.

(f) "Restraint" means the use of a totally enclosed crib or any material to restrict or inhibit the free movement of one or more limbs of a person except medical devices which limit movement for examination, treatment or to insure the healing process.

(g) "Seclusion" means being placed alone in a locked room where the individual's freedom to leave is thereby restricted and where such placement is not under continuous observation.

(h) "Secretary" means the secretary of social and rehabilitation services or the designee of the secretary.

(i) "Significantly subaverage general intellectual functioning" means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified by the secretary.

(j) "Superintendent" means the chief administrative officer of the institution or the designee of the chief administrative officer.

(k) "Training" means the provision of specific environmental, physical, mental, social and educational interventions and therapies for the purpose of halting, controlling or reversing processes that cause, aggravate or complicate malfunctions or dysfunctions of development.

Re: Email - Schmidt's Amendment

Received: from KSLEG1.STATE.KS.US

([172.16.25.17])

by LEGISLATURE.STATE.KS.US; Tue, 10 Feb 2004 16:47:36 -0600

Received: from unknown [165.201.29.59] by KSLEG1.STATE.KS.US smtp(3.0f)

id 18686; Tue, 10 Feb 2004 16:44:51 -0600 (CST)

Received: by dioex55.sedgwick.gov with Internet Mail Service (5.5.2653.19)

id <CV9LSMJY>; Tue, 10 Feb 2004 16:47:35 -0600

Message-ID: <7A62CC7D4AAF574C8EED0716190358B6022B06A3@dioex55.sedgwick.gov>

From: "Parker, Kim" <kparker@sedgwick.gov>

To: "'schmidt@senate.state.ks.us'" <schmidt@senate.state.ks.us>

Subject: FW: SB 355

Date: Tue, 10 Feb 2004 16:47:32 -0600

MIME-Version: 1.0

X-Mailer: Internet Mail Service (5.5.2653.19)

Content-Type: multipart/alternative;

boundary="----_=_NextPart_001_01C3F027.DE8403E2"

This message is in MIME format. Since your mail reader does not understand this format, some or all of this message may not be legible.

-----_=_NextPart_001_01C3F027.DE8403E2

Content-Type: text/plain;

charset="iso-8859-1"

> -----Original Message-----

> From: Parker, Kim

Senate Judiciary

2-17-04
Attachment 8

> Sent: Tuesday, February 10, 2004 3:53 PM

> To: 'schmidt@senate.state.ks.us.'

> Subject: FW: SB 355

>

>

>

>

>

> Dear Senator Schmidt,

>

> I am sorry that we have not yet met and to contact

> you on such short notice. I am Kim Parker Chief Deputy in the District

> Attorney's office in Sedgwick County. I have prosecuted three individuals

> that are currently on death row and I have been involved in every death

> penalty prosecution in this county as well as numerous homicide

> prosecutions over 22years. My father Gary Parker from Allen County tells

> me how wonderful you are and your interest in GOOD LAW. SB355 is

> extremely problematic as it will essentially eliminate the ability to

> prosecute anyone under the death penalty.

> This bill may be promoted as necessary to comply

> with the recent U.S. Supreme Court 'Atkins' decision but that claim is

> false. In fact, Ron Wurtz who testified today in your committee, will

> upon inquiry confirm SB355 goes beyond what is required under the 'Atkins'

> decision. [A Deputy District Attorney Debra Peterson from our office serves

> on the Judicial Council Criminal Law committee and her protests were

8-2

> basically ignored in the development of this bill. Yet I imagine that a
> claim is also made that the committee that developed this bill was
> comprised of both prosecutors and defense attorneys. The truth is, one
> prosecutor was ignored and the other never attended the meetings. This
> bill is flying low on the radar screen and has caught prosecutors off
> guard.

> The current statutes on Mental Retardation do not
> violate the Constitution or conflict with the 'Atkins' decision. The
> "cognitive disability" standard contained in the bill will add unnecessary
> layers and costs to capital cases. The so-called "standard" goes well
> beyond the Supreme Court decision and would effectively GUT the DEATH
> PENALTY. It is driven by death penalty opponents not the by the state of
> the law.

> Our death penalty law is a conservative law and
> has been applied and used very conservatively. We handle numerous
> murders a year and have only pursued the death penalty against Six
> individuals in only five cases, over the last 10 years in the most brutal
> and heinous of cases.

> It is disappointing that when major issues of this
> type come before the legislature you have little opportunity to consult
> with those who have actually been involved in the process. Instead you
> often hear from individuals who have a political motive I am hopeful that
> this e-mail will prompt your committee to scrutinize this bill. It would
> make more sense to eliminate the death penalty entirely than pass this
> bill.

8-3

>

> Sincerely,

> Kim T. Parker

> Chief Deputy District Attorney

> 18th Judicial District Sedgwick County Kansas

-----_=_NextPart_001_01C3F027.DE8403E2

Content-Type: text/html;

charset="iso-8859-1"

Content-Transfer-Encoding: quoted-printable

<!DOCTYPE HTML PUBLIC "-//W3C//DTD HTML 3.2//EN">

<HTML>

<HEAD>

<META HTTP-EQUIV="Content-Type" CONTENT="text/html;

charset=iso-8859-1">

<META NAME="Generator" CONTENT="MS Exchange Server version

5.5.2656.60">

<TITLE>FW: SB 355</TITLE>

</HEAD>

<BODY>

<P>&nbsp;<FONT SIZE=1

FACE="Tahoma">-----Original Message-----

From: &nbsp; <FONT

SIZE=1 FACE="Tahoma">Parker, Kim&nbsp;

8-4