

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:33 A.M. on February 7, 2007, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen arrived, 9:34 A.M.
Terry Bruce arrived, 9:36 A.M.
Julia Lynn arrived, 9:36 A.M.
Dwayne Umbarger arrived, 9:34 A.M.
Derek Schmidt arrived, 9:37 A.M.
Donald Betts arrived, 9:59 A.M.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Rick Guinn, Chief Counsel, Attorney General's Office

Others attending:

See attached list.

Approval of Minutes

Senator Journey moved, Senator Donovan seconded, to approve the committee minutes of January 22, 2007, and January 23, 2007. Motion carried.

The hearing on **SB 166--Clarifying amendments to hard 40 sentence for sex crimes and sexual exploitation of a child** was opened.

Rick Guinn appeared in support, indicating this bill makes clarifications to legislation passed in 2006 known as "Jessica's Law". The technical changes address a potential loophole for second-time offenders and offenders convicted under K.S.A. 21-3516. Mr. Guinn stated the clarifications are necessary to fulfill the legislative intent of "Jessica's Law" (Attachment 1).

Written testimony in support of SB 166 was submitted by:

Roger Werholtz, Secretary, Department of Corrections (Attachment 2)

There being no further conferees, the hearing on **SB 166** was closed.

Final action on **SB 85--Authorizing employment of retired justices and judges with the Kansas Judicial Council to assist the Commission on Judicial Performance.**

There were no proposed amendments to the bill heard on January 30. Senator Journey moved, Senator Donovan seconded, to recommend SB 85 favorably for passage. Motion carried.

Final action on **SB 81--Fingerprinting and criminal history background checks required by the board of healing arts.**

Chairman Vratil reviewed the bill heard January 25 and referred to a proposed amendment by Charles Wheelan to Section 1(a), to insert the word "original" between "As part of an" and "application".

Senator Haley moved, Senator Donovan seconded, to amend the bill as indicated. Motion carried.

Senator Bruce moved, Senator Goodwin seconded, to recommend SB 81 as amended favorably for passage. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:33 A.M. on February 7, 2007, in Room 123-S of the Capitol.

The Chairman called for final action on **SB 76--Probate, small estates, transfer of personal property.**

Senator Haley distributed a proposed amendment (Attachment 3). Following discussion Senator Haley withdrew his proposed amendment. Senator Bruce moved, Senator Donovan seconded, to recommend SB 76 favorably for passage. Motion carried.

Final action on **SB 73--Mortgage registration fees, exemptions.**

The Chairman reviewed the bill heard on January 29 and indicated there were no proposed amendments. Senator Bruce moved, Senator Donovan seconded, to recommend SB 73 favorably for passage. Motion carried.

The Chairman called for final action on **SB 40--Creating the crime of automated teller machine robbery and aggravated automated teller machine robbery.**

Senator Journey reviewed the bill heard on January 25. There were no proposed amendments. Following discussion, Senator Journey moved, Senator Lynn seconded, to recommend SB 40 favorably for passage. Motion failed.

Final action on **SB 45--Chief judge of the judicial district elected by district judges, not designated by the supreme court.**

Senator Journey distributed two amendments and provided brief descriptions of the proposed changes in both (Attachment 4 & 5). Following discussion, the committee indicated a preference for the second version which would create a pilot program. Senator Journey moved, Senator Lynn seconded, to amend SB 45 as described in Senator Journey's balloon. Motion carried.

Senator Journey moved, Senator Lynn seconded, to recommend SB 45 as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:28 A.M. The next scheduled meeting is February 8, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-7-07

NAME	REPRESENTING
Linda Uleva	KDOC
Honey Poole	KDOC
Jeff Boltenbom	Kansas State HS
Bartie HARRIS	KDOC
Tina Davis	KDOC
Greg Piper	KDOC
Kewal Jeeva	KDOC
Alan Edger	KSB
LARRY BUENING	BD OF HEALING ARTS
Rob Arnold	KDOC
Jennifer Klating	KDOC
Jeannie Wark	KDOC
Colene Fischli	KDOC
Cathy Clayton	KDOC
Robbie Berry	JJA
Katrina Kosma	JJA
MARIL D. MARTE	OHA ARTISTIC HEALTH SYSTEM



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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Senate Judiciary Committee
SB 166
Chief Counsel Rick Guinn
Office of Attorney General Paul Morrison
February 7, 2007

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

I am here to testify on behalf of the Office of Attorney General in support of Senate Bill 166. SB 166 makes two clarifications in last session's HB 2576, also known as "Jessica's Law." While these clarifications are technical in nature, it is extremely important that they are implemented, in order to comply with the original intent of the legislation.

The first clarification involves a potential loophole for second-time offenders who would otherwise be sentenced to a term of imprisonment of not less than 40 years, also known as the "Hard 40." The current language of the law does not take into account the fact that the elements of the crime of aggravated indecent liberties with a child were significantly different prior to the implementation of the 1993 Sentencing Guidelines Act.

Prior to 1993, if you had intercourse with, or sexually touched, a child under the age of 16, you were guilty of indecent liberties with a child. Aggravated indecent liberties with a child, K.S.A. 21-3504, was defined as the act of indecent liberties committed by a guardian, proprietor or employee of a foster home or other institution to whose charge a child has been entrusted by a court or agency acting under the color of law.

As you know, current law states that the acts an offender commits and the age of the child determines whether one is guilty of aggravated indecent liberties or the "standard," indecent liberties with a child.

Therefore, the second-time offender provision of Jessica's Law does not apply to the offenders who were originally convicted of touching or having intercourse with young children prior to 1993. Instead, these offenders would be treated as first-time offenders.

The language inserted by SB 166, "a crime in effect at any time prior to the effective date of this act that is comparable to an offense defined in subsection (a)(1)," will resolve this issue and ensure that second-time offenders receive the 'Hard 40' sentence.

Senate Judiciary

2-7-07
Attachment 1

The second clarification to Jessica's Law involves offenders who are convicted of the crime of sexual exploitation in K.S.A. 21-3516. As it stands, the law covers offenders guilty of sexual exploitation in subsections (a)(5) or (a)(6) who are *over* 18 years of age, but not those offenders of who are being tried as adults but are *under* 18 years of age.

SB 166 contains language that establishes that for all violations of K.S.A. 21-3516 the offense shall be a severity level 5 person felony except when the subsections violated are (a)(5) or (a)(6) and the defendant is over the age of 18 (in which case it would remain an off-grid felony offense).

Jessica's Law was a worthwhile piece of legislation that imposed tough sentences on sex offenders. SB 166 contains clarifications that are necessary to fulfill the legislative intent of Jessica's Law.

Thank you for your time and I look forward to answering any questions.

Testimony on SB 166
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 7, 2007

The Department of Corrections supports SB 166. SB 166 clarifies the criminal penalty provided for the Sexual Exploitation of a Child and the definition of crimes committed against children that pursuant to the Aggravated Habitual Sex Offender Act would subjected a defendant to an enhanced sentence. The language of the amendments to K.S.A. 21-3516 and 21-4643 contained two omissions that are addressed by SB 166.

K.S.A. 21-3516 (Sexual Exploitation of a Child)

SB 166 addresses the omission in K.S.A. 21-3516 by providing a criminal penalty for persons being tried as an adult but who are under that age of 18 convicted of violating subsections (a)(5) or (a)(6). The current law clearly provides for sentencing as an off grid offense if the defendant is over the age of 18 for crimes committed in violation of those two subsections. However, due to the language used to define violations of subsections (a)(1), (a)(2), (a)(3) and (a)(4) as severity level 5 person felonies, commission of offenses in violation of those subsections by a person being tried as an adult but who is under the age of 18 does not include a sentencing provision for violations of subsections (a)(5) or (a)(6). SB 166 addresses that omission by establishing that for all violations of K.S.A. 21-3516 the offense shall be a severity level 5 person felony except when the subsections violated are (a)(5) or (a)(6) and the defendant is over the age of 18.

K.S.A. 21-4643 (Aggravated Habitual Sex Offender)

The purpose of K.S.A. 21-4643 is to provide an enhanced sentence for persons who have repeatedly committed sex offenses against children. This is accomplished by that statute specifying by reference to the statute number of the crimes committed in the past that serve as the basis for determining whether the defendant is a repeat offender for enhanced sentencing purposes. Unfortunately, the statute numbers used in the past do not necessary correspond to the criminal elements of the crimes currently defined by the same statute number.

SB 166 addresses the fact that in 1993 the elements of the crime of Aggravated Indecent Liberties (K.S.A. 21-3504) were amended. Prior to 1993, the crime of Aggravated Indecent Liberties with a child was defined by whether the defendant was a guardian or custodian of the child placed in the defendant's care by the court or other agency acting under color of law. After 1993, Aggravated Indecent Liberties is defined by the age of the child victim. Thus, a person who had committed a sexual act with a child under the age of 14 but who was not the child's court appointed guardian would not have been convicted of Aggravated Indecent Liberties prior

to 1993. SB 166 provides that when determining whether a defendant had previously committed a sex offense against a child, a previous conviction for a crime that is comparable will establish the necessary criminal history for an enhanced sentence as an aggravated habitual offender.

legatee filing the notification:

(4) The relationship between the decedent and the heir,
devisee or legatee filing notification:

(5) The taxes on such real property are not delinquent and
are currently being paid by the heir, devisee or legatee.

(6) I am filing notification of interest in title and am
filing a claim to be the vested owner of such real property.

(heir, devisee or legatee)

STATE OF KANSAS)
) ss:
COUNTY OF WYANDOTTE)

The foregoing instrument was acknowledged before me this
_____ day of _____, year ____ by _____.

SUBSCRIBED AND SWORN to before me on _____.

(Notary Public)

My Appointment Expires:

SENATE BILL No. 45

By Senator Journey

1-10

z45c1

Senate Judiciary
2-7-07
Attachment 4

9 AN ACT concerning district courts; relating to the chief judge; amending
10 K.S.A. 2006 Supp. 20-329 and repealing the existing section.

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

13 Section 1. K.S.A. 2006 Supp. 20-329 is hereby amended to read as
14 follows: 20-329. ~~In every judicial district, the supreme court shall design-~~
15 ~~ate a district judge as~~ *district judges of such judicial district shall elect*
16 *a district judge to serve as the chief judge of such judicial district. The*
17 *chief judge shall serve for a term of two years. If the chief judge is not*
18 *reelected or retained in office or resigns or declines to serve, the district*
19 *judges of such judicial district shall elect another district judge to serve*
20 *as the chief judge. District judges designated as chief judges on July 1,*
21 *2006, shall serve for the remainder of such judge's existing term. The chief*
22 *judge who shall have general control over the assignment of cases within*
23 *the district, subject to supervision by the supreme court. Within guide-*
24 *lines established by statute, rule of the supreme court or the district court,*
25 *the chief judge of each district court shall be responsible for and have*
26 *general supervisory authority over the clerical and administrative func-*
27 *tions of such court.*

28 Sec. 2. K.S.A. 2006 Supp. 20-329 is hereby repealed.

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

(a) Except as provided in subsection (b), in every judicial district, the supreme court shall designate a district judge as the chief judge of such district.

(b)

with nine or more judges

(c)

SENATE BILL No. 45

By Senator Journey

1-10

z45c2

Senate Judiciary
2-7-07
Attachment 5

9 AN ACT concerning district courts; relating to the chief judge; amending
10 K.S.A. 2006 Supp. 20-329 and repealing the existing section.

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

13 Section 1. K.S.A. 2006 Supp. 20-329 is hereby amended to read as
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22 *judge who shall have general control over the assignment of cases within*
23 *the district, subject to supervision by the supreme court. Within guide-*
24 *lines established by statute, rule of the supreme court or the district court,*
25 *the chief judge of each district court shall be responsible for and have*
26 *general supervisory authority over the clerical and administrative func-*
27 *tions of such court.*

(a) Except as provided in subsection (b), in every judicial district, the supreme court shall designate a district judge as the chief judge of such district.
(b) In the 18th

(c)

28 Sec. 2. K.S.A. 2006 Supp. 20-329 is hereby repealed.
29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.