

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:31 A.M. on February 13, 2007, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived, 9:33 A.M.
Les Donovan arrived, 9:39 A.M.
David Haley arrived, 9:39 A.M.
Derek Schmidt arrived, 9:43 A.M.
Dwayne Umbarger arrived, 9:45 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:

Brad Bryant, Elections Director, Secretary of State's Office
Richard Hayse, Kansas Bar Association

Others attending:

See attached list.

The Chairman opened the hearing on **SB 124--Illegal aliens, certain sentences not subject to suspended sentence, conditional release, community service or probation.**

Senator Journey testified in support, providing background on the bill (Attachment 1).

There being no further conferees, the hearing on **SB 124** was closed.

The hearing on **SB 133--Election crimes; advance voting ballot suppression** was opened.

Brad Bryant appeared in support, indicating enactment of the bill would provide a tool for law enforcement to stop improper activities regarding voting suppression (Attachment 2). Following questions, Mr. Bryant was requested to work with the revisors to develop a balloon amendment to clarify that if a voter destroyed his/her own ballot, the act will not be a level 9 felony.

There being no further conferees, the hearing on **SB 133** was closed.

The hearing on **SB 162--Corporations, actions taken without meeting, notice or vote** was opened.

Richard Hayse spoke in support, indicating legislation passed in 2004 revising the corporation code created a needlessly burdensome procedure of requiring stockholders to return written consent to corporate actions (Attachment 3). Mr. Hayse also noted a technical change needed to page 1, line 15, to insert "(a)" between the first and second sentences.

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

Following Mr. Hayse testimony the Chairman suggested working the bill immediately if there was no opposition. The committee agreed.

Senator Donovan moved, Senator Goodwin seconded, to amend SB 162 by inserting "(a)" before the second sentence of Section 1. Motion carried.

Senator Donovan moved, Senator Goodwin seconded, to recommend SB 162 as amended favorably for

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:31 A.M. on February 13, 2007, in Room 123-S of the Capitol.

passage. Motion carried.

The hearing on **SB 119--Authorizing dismissal of certain traffic infractions for certain armed forces** was opened.

Senator Betts testified in support, providing background on the intent of the bill (Attachment 4).

There being no further conferees, the hearing on **SB 119** was closed.

Final action on **SB 17--Docket fees; eliminating certain funds from receiving part of docket fees** continued.

Chairman Vratil reminded the committee that the committee had discussed the bill extensively and adopted a balloon amendment on Friday, February 9.

Senator Umbarger moved, Senator Schmidt seconded, recommend **SB 17**, as amended, favorably for passage. Motion carried.

Final action on **SB 56--Increasing fees for county law libraries** continued.

Staff distributed a proposed amendment from Senator Allen (Attachment 5). Following discussion, Senator Allen moved, Senator Donovan seconded, to adopt the proposed amendment. Motion carried.

Senator Allen moved, Senator Donovan seconded, to recommend **SB 56**, as amended, favorably for passage. Motion carried.

Final action on **SB 103--Fingerprints and photos of juveniles in custody.**

The Chairman indicated **SB 103** had been favorably passed out of committee but had been referred back to make a technical change. Chairman Vratil indicated the changes needed were on page 2, line 19, to strike the word "a" and insert "the" and strike the word "or" and replace it with "and" so it would read "Fingerprints and photographs may be sent to the state and federal repository if authorized by a judge of the district court having jurisdiction;".

Senator Bruce moved, Senator Lynn seconded, to amend **SB 103** as noted by Senator Vratil. Motion carried.

Senator Schmidt moved, Senator Haley seconded, to recommend **SB 103**, as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is February 14, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/13/07

NAME	REPRESENTING
Arlen Rodigo	Sensencing Commission
Brenda Thuman	Sensencing Commission
Whitney Damra	KS Bar Assn.
JIM CLARK	" " "
Rick Hayso	" " "
Kimberly Gee Vines	Wichita East Darfur Action Group
Karen Lichteig	" "
Brad Bryant	Sec. of State
Sandy Barnett	KCSO
Leanne Wilse	Judicial Branch
Jeff Bo Honbrg	State Form
Melissa Wenzemann	Sec of State

SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

VICECHAIR: SPECIAL CLAIMS AGAINST THE STATE
(JOINT), VICECHAIR
MEMBER: HEALTH CARE STRATEGIES
JUDICIARY
PUBLIC HEALTH AND WELFARE
TRANSPORTATION
CORRECTIONS AND JUVENILE JUSTICE
OVERSIGHT (JOINT)

**Testimony Before the Kansas Senate Judiciary Committee
In Support of Senate Bill 124
February 13th, 2007**

Thank you Mr. Chairman, members of the Committee. Senate Bill 124 amends Kansas Sentencing Statutes as follows. It requires the court to impose the sentence of imprisonment in all cases where the defendant is an individual whose presence in the United States is a violation of Federal Immigration law. It applies to crimes committed after July 1st, 2007.

In the last few elections, the issues of illegal aliens and immigration reform has taken a larger role in the public debate. Each year immigration seems to move higher and higher on the list of priorities for both voters and candidates. Senate Bill 124 recognizes the situation when an individual is placed on probation. The primary condition of probation requires that the individual live within the jurisdiction of the State of Kansas and not violate any laws. When an individual whose immigration status is that of an individual illegally in this country, it is impossible for them to reside in Kansas and not violate federal law. Some courts refuse to recognize the fiction required to place an illegal alien on probation. While I recognize, as I'm sure all of us do, that the vast majority of individuals who have chosen to enter this country illegally, do so with the intent to provide a better life for their families without violating criminal statutes other than those that are necessary to facilitate their seeking employment and entry into the United States. There is a small distinct and very violent minority of illegal aliens who have entered this country with the intent to enrich themselves by committing crime in the United States and in the State of Kansas. There are others of a sociopathic/antisocial nature that do their crimes here for reasons only known to their distorted mental state.

I have attached to my testimony nearly ninety pages of supporting documentation, news analysis, quotations from individuals who deal with these cases everyday in our courts, and a summary of the United States Government Accountability Office interpreting a study of illegal aliens arrested in the United States.

While compared to states like Texas, California, and Arizona, Kansas' problems with illegal aliens seem insignificant as verified by the Kansas Division of Budget letter dated February 5th, 2007, in which this legislation by 2017 would require an additional 13 beds in the Kansas Department of Corrections. I suspect that number will actually become larger as law enforcement and the courts become more sophisticated in the interpretation of application of Federal Immigration law to the Kansas Criminal Justice System subsequent to enactment of Senate Bill 124.

Senate Judiciary

2-13-07
Attachment 1

As an attorney I have worked on several immigration cases including aliens charged in United States District Court for violation and returning to the United States after a deportation order. Along with the process of adjusting status to permanent resident alien for a limited number of individuals particularly after the 1986 Immigration Reform Control Act.

I have in the Supplementary Appendix for my testimony enclosed many local news articles regarding cases of individuals charged with crime who have been deported or have been determined to be inside the United States in violation of federal immigration law. And while the numbers may seem insignificant, it is significant to the families of the victims of these violent offenses and those who have been the victims of property crimes such as identity theft like one of my daughters and the violent crimes such as an individual who was a close friend of our family and was murdered. It is believed that the murderer is an illegal alien from Mexico who has since fled our state. Without the ability to interrogate the chief suspect in the case, the evidence developed thus far has failed to meet a level of probable cause required to file charges.

I suspect that we will have opponents to this legislation who want to protect individuals illegally inside the United States from such court determinations. The irony of those positions is that illegal aliens are in many cases the majority of the victims of these violent and/or financial crimes. Those who prey on individuals who lack lawful residency in the United States understand that should their victims come into contact with law enforcement in reporting the crime, the victims run the risk of deportation themselves so chose not to report crimes.

Currently in the United States, it is estimated that about 80,000 illegal criminal aliens including convicted murders, rapists, drug dealers, and child molesters who have served their prison sentence and were released are on the USA's streets. According to 2002 figures, INS and ICE report over 375,000 known illegal aliens have been ordered deported but have failed to abide by their voluntary deportation orders. (Pg. 22) in the syllabus, "Since September 11, the NCIC data base has been expanded to include these criminals who have failed to attend their deportation hearings. In September 2006, it was reported that 261 inmates in Kansas prisons reported foreign citizenship, 175 of which were Mexican citizens."

Over the past 10 years the number of Federal Jurisdiction Criminal cases involving at least one person who is not a U.S. citizen has grown from 10% to 50% of the entire courts' docket. Assistant United States Attorney, Brent Anderson, attributed the jump in the state's federal cases involving foreign nationals to the increase in population of immigrants living in Kansas and Mexico's growing involvement as a transportation conduit in the drug trade.

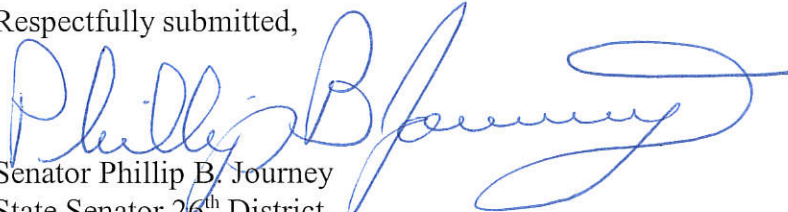
I submit that the crest of this wave of crime by illegal aliens is coming at Kansas. Should we fail to become proactive in our efforts to deal with this increase in criminal activity, we could all suffer as a result of this trend. Those criminal aliens who have a pattern or a history of criminal activity present a significantly higher likelihood of committing additional crimes and being rearrested. (Pg 29) In the syllabus there is an AP story in which the United States Department of Justice Inspector Glen A. Fine examined the criminal histories of 100 illegal immigrants arrested and then released by

local and state authorities in 2004. Of the sample group of 100, 73 were later arrested 429 times on charges ranging from traffic tickets to weapons and drug charges. The data suggests, “the rate at which released criminal aliens are re-arrested is extremely high”.

As you can see the balance of the syllabus is comprised of local and regional articles involving criminal activity of illegal aliens, their employers, and finally closing with United States Accountability Office Summary of GAO-05-337R report by GAO information on criminal aliens incarcerated in federal and state prisons and local jails dated April 7th, 2005. In reviewing a study population of 55,302 illegal aliens, GAO found that they were arrested at least a total of 459,614 times averaging a mean of about eight arrests per illegal aliens. Nearly all had more than one arrest, 38%, about 21,000, had between two and five arrests, 32%, about 18,000, had between six and ten arrests, and 26% had 11 or more. All arrests occurred after 1990. Those 55,000 aliens were arrested for 700,000 criminal offenses. Approximately, 13 offenses as a mean average per illegal alien. Of course, one arrest incident might have included multiple offenses or could be resulting from multiple incidences. 45% of the offenses were for drug or immigration offenses. 15% were for property crimes such as burglary theft, motor vehicle theft, etc. 12% were for violent offenses such as murder, robbery, assault, rape, and other sex related crimes. Many offenses also included such things as driving under the influence, fraud, forgery, counterfeiting, weapons, and obstruction of justice cases.

I hope that my testimony and the syllabus provided the Committee provides some information regarding the necessity of enacting Senate Bill 124. I hope this Committee would consider to recommend SB 124 favorably for passage.

Respectfully submitted,



Senator Phillip B. Journey
State Senator 26th District

RON THORNBURGH
Secretary of State



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STATE OF KANSAS
Senate Committee on Judiciary

Testimony on Senate Bill 133

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

February 13, 2007

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 133. This bill was proposed by the Secretary of State to improve the security of the electoral process by creating a crime of advance voting suppression. Under this legislation it would be illegal to destroy or alter ballots, to fail to deliver ballots, obstruct or delay their delivery, exercise undue influence on an advance voter, and open an envelope or disclose the contents of a ballot.

We offer this bill for the following reasons:

- It is a tool needed by local and state prosecutors to stop improper activities.
- It mirrors a law passed in 2001 creating the crime of voter registration suppression. If it is illegal to destroy or fail to deliver a person's *voter registration application*, it should be illegal to destroy or fail to deliver the *ballot*.

Our office receives complaints about all the activities detailed in Senate Bill 133. Although we do not investigate or prosecute, we sometimes work with local and state authorities who have that authority. We have discovered that many of the improper activities are not technically illegal, and law enforcement authorities have nothing to base their cases on. Senate Bill 133 seeks to address that situation.

We urge the committee to report Senate Bill 133 favorably and give election officials and law enforcement officials a much-needed tool to improve the security and integrity of the ballot.

Thank you for your consideration.



KANSAS BAR
ASSOCIATION

BEFORE THE KANSAS SENATE JUDICIARY COMMITTEE
FEBRUARY 13, 2007
TESTIMONY IN SUPPORT OF SB 162
BY RICHARD F. HAYSE
ON BEHALF OF THE KANSAS BAR ASSOCIATION

This bill originated out of concerns expressed by lawyer members of the Kansas Bar Association over a change to prior practice in Kansas concerning consents to corporate action. The Kansas corporation code has long permitted corporate directors, stockholders of for-profit corporations, or members of non-profit corporations, to consent to a proposed action without a meeting by following the statutory procedures. For action by directors, such statutory authorization is found in KSA 17-6301(f); for stockholders or members, the authority is in KSA 17-6518.

The 2004 session of the Legislature adopted an extensive revision of the corporation code as a result of a study by an ad hoc KBA committee to update the code and bring it into conformity with ongoing revisions to the Delaware corporation code. Consistent with the Delaware changes, the KBA committee had recommended amending KSA 17-6518 to require stockholders or members to return their written consents to the corporation by hand or by return receipt delivery, as used for service of process and other purposes under KSA 60-303. There is no comparable requirement for directors.

However, in practice this has proved needlessly burdensome since most companies which utilize the consent procedure are closely held. For instance, there seems no real reason to require the only two shareholders in a plumbing company to return a written consent to the corporation by certified mail or Federal Express. Likewise, it should be unnecessary to ask members of an incorporated church to use such methods.

For this reason we propose deleting the requirements for delivery of stockholder or member consents by return receipt delivery to allow reverting to the previous practice of using regular mail service.

This bill would also resolve an inadvertent ambiguity in voting procedures. Under Subsection (a) of KSA 17-6518, stockholders in a stock corporation must unanimously agree for any action by consent to be effective, while under Subsection (b), members of a non-stock corporation need only consent by the number that would be required to take action at a meeting. Subsection (e) of KSA 17-6518 muddled that distinction, and we propose to clarify the language to be consistent with Subsections (a) and (b).

As is apparent from the explanation above, this is a technical corrections bill.

* * *

Senate Judiciary
2-13-07
Attachment 3

STATE OF KANSAS

DONALD BETTS JR.

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COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: • ELECTIONS & LOCAL GOVERNMENT
MEMBER: • WAYS & MEANS
• JOINT COMMITTEE ON ADMINISTRATIVE RULES & REGULATIONS
• JUDICIARY

February 13, 2007

Chairman Vratil, Esteemed Colleagues,

Senate Bill 119 is a fairly simple piece of legislation meant to help out Kansans serving in Iraq or Afghanistan who face a somewhat complicated situation.

My vision is that this bill will refer only to Kansans who have served in the war zones of Iraq or Afghanistan. It will apply only to traffic citations that occurred before or during each Kansan's deployment to Iraq or Afghanistan. It will not apply to any future traffic citations.

Something a voter said to me recently got me to thinking about the disruption deployment causes to the lives of Kansas military personnel. I imagined a young soldier being ticketed for a traffic or parking infraction in the days just before deployment and not finding the time to take care of that ticket before reporting to deployment. I imagined the court day approaching and the absence of the soldier at that date being noted. I imagined a second court day passing, also with the absence of the soldier. I imagined a third court date at which the judge issued a bench warrant for the arrest of that soldier serving in Iraq or Afghanistan. Then I imagined that soldier returning from deployment and being met with that bench warrant. What would have been a very simple matter, were it not for the soldier's deployment, had become a very complicated matter.

I decided that I didn't want any soldier returning from Iraq or Afghanistan to be met with those complications. I approached the Revisors' office with the idea, and we developed the bill in front of you.

I realize that some military personnel would have taken care of that ticket by paying it before leaving or by having a family member or friend attend that first court date. But I also realize that what happens in Kansas might seem not only unimportant but unreal to someone who is risking his or her life daily. That daily risk is taken in the service of all of Kansans. It seemed to me that this was one way we could acknowledge that risk and say, "Thank you."

Sincerely,

Donald Betts Jr.
Senator, 29th District

Senate Judiciary

2-13-07
Attachment 4

SENATE BILL No. 56

By Committee on Judiciary

1-10

[Z

Senate Judiciary
2-13-07
Attachment 5

9 AN ACT concerning law libraries; relating to fees; amending K.S.A. 2006
10 Supp. 20-3129 and repealing the existing section.

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

12 Section 1. K.S.A. 2006 Supp. 20-3129 is hereby amended to read as
13 follows: 20-3129. (a) Subject to the limitations contained in this section,
14 the clerks of the district courts shall tax a library fee in an amount deter-
15 mined by the trustees of the law library in each county for the benefit
16 and account of the law library in each county. Such library fee shall be
17 not less than \$2 nor more than ~~\$10~~ ~~\$15~~ in all cases commenced pursuant
18 to chapter 60 of the Kansas Statutes Annotated and in all felony criminal
19 cases and shall be not less than ~~\$.50~~ nor more than ~~\$7~~ ~~\$10~~ in all other
20 cases. The trustee of the law library in each county may increase law
21 library fees under this subsection once per calendar year as of July 1.
22 Changed law library fees shall be effective as of that date and when filed
23 with the clerk of the supreme court. The trustees of the law library in
24 each county shall file with the respective clerks the fees to be charged in
25 that court.

26 (b) The fees provided for by subsection (a) shall be deducted from
27 the docket fee.

28 (c) In criminal cases where the case is dismissed by the state, the
29 county shall be liable for the library fee. Where appeals from conviction
30 in the municipal court are dismissed for want of prosecution, or by the
31 defendant, the state or city shall collect the library fee. Upon failure of
32 the state or city to do so within 90 days after the dismissal, the county
33 from which the appeal is taken shall be liable therefor.

34 Sec. 2. K.S.A. 2006 Supp. 20-3129 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the statute book.
37

\$10

\$7

(b) The clerks of the district courts may tax an additional fee in an amount determined by the trustees of the law library in each county for the benefit and account of the law library in each such county. Such additional library fee shall not be more than \$4 in all cases.

(c)

(d)

The fees provided for by subsection (b) shall be in addition to the docket fees established by law.

(e)

(f) The additional library fee under subsection (b) shall be considered a docket fee for purposes of K.S.A. 60-2001 et seq., and amendments thereto.

Allen's Amend.