

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 19, 2008 in Room 313-S of the Capitol.

All members were present except:
Annie Kuether- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

HB 2727 - sexual assault, evidence

Chairman announced that the committee was back on Representative Wolf's motion regarding hospitals not being required to report rapes to law enforcement.

Again, committee members expressed concern that the circumstance that brought the victim to the hospital is that they have been raped and are seeking treatment. The amendment is overly broad. The amendment needs to be narrowed to situations where the victim is going solely for the purpose of having a rape kit examination and does not have any actual injuries.

The committee agreed that the call to law enforcement shouldn't be made the minute the victim walks into the door.

Other members stated that women are reluctant to come in to have rape kits because of the fear the crime will be reported to law enforcement. While the state has an interest in placing criminals in prison there is the physical and emotional issues women deal with when they are raped. There is the fear that there will be prosecution and will be required to testify. With the proposed amendment there will be better prosecutions by letting women choose when to notify law enforcement.

The motion carried.

Representative Wolf proposed an amendment that would exempt hospitals from criminal liability as a result from not notifying a law enforcement agency. (Attachment #1) Representative Colloton seconded the motion. The motion carried.

Revisor requested a technical amendment which would strike the word "hospital" and replace with "medical care facility". With consent of the committee the technical changes will be made.

Representative Goyle made the motion to have rape kits not be performed on a minor 16 or older unless by minors consent. The motion was seconded. The motion failed 6-9.

Representative Goyle made the motion to clarify that the fee for the rape kit cannot be charged to the victim or the victims insurance company. Representative Colloton seconded the motion. The motion carried.

Representative Goyle made the motion to delete the amendment adopted on 2-14-08 to have the KBI store the rape kits for five years and go back to 180 days. He was notified by KBI that keeping the kits that long would require the purchase of additional refrigerators. Representative Roth seconded the motion. It was pointed out that going to all this trouble of getting victims in to have the rape kits done and then not store them till at least the statute of limitations ran. If it goes back to 180 days it creates a statute of limitations for a select group of victims and therefore would defeat the purpose of the amendment that was passes on 2-14. With permission of the second, Representative Goyle withdrew his motion.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 19, 2008 in Room 313-S of the Capitol.

Representative Colloton motion to report **HB 2727** favorably for passage, as amended. Representative Wolf seconded the motion. The motion carried.

HB 2644 - revises sections of the guardianship and conservator act concerning the procedure for appointing a guardian or consevator

Representative Colloton made the motion to report **HB 2644** favorably for passage. Representative Owens seconded the motion.

Representative Pauls made the substitute motion to insert into the bill "proposed conservatee" in seven places the bill. This amendment was proposed by the Disability Rights Center of Kansas at the 1-20-08 committee meeting. Representative Kinzer seconded the motion. The motion carried.

Representative Owens made the motion to report **HB 2644** favorably for passage, as amended. Representaitve Crow seconded the motion. The motion carried.

HB 2707 - theft, intent to deprive, leased or rented motor vehicles

Representative Watkins made the motion to report **HB 2707** favorably for passage. Representative Whitham seconded the motion.

Representative Watkins made a substitute motion to make the first & second conviction a misdemeanor with jail time and third or subsequent convictions would receive presumed imprisonment. Representative Patton seconded the motion. The motion carried.

Representative Owens made the motion to expand the scope of the penalties to cover dealership demonstrators and loaner vehicles. Representative Whitham seconded the motion. The motion carried.

Representative Watkins made the motion to report **HB 2707** favorably for passage, as amended. Representative Goyle seconded the motion. The motion carried.

HB 2816 - driver's license suspension; possession of illegal drugs or weapons in school

Representative Watkins made the motion to report **HB 2816** favorably for passage. Representative Wolf seconded the motion.

Representative Watkins made a substitute motion on page 3, line 20 that notice should be given as soon as practicality but not to exceed 10 days excluding holidays and weekends. Representative Wolf seconded the motion. The motion carried.

Representative Watkins made the motion to report **HB 2816** favorably for passage, as amended. Representative Wolf seconded the motion. The motion carried.

The committee meeting adjourned at 5:15 p.m. The next committee meeting is scheduled for February 20, 2008.

HOUSE BILL No. 2727

By Committee on Judiciary

1-31

9 AN ACT concerning sexual assault; relating to evidence; amending
10 K.S.A. 65-448 and repealing the existing section.

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

13 Section 1. K.S.A. 65-448 is hereby amended to read as follows: 65-
14 448. (a) Upon the request of any law enforcement officer and with the
15 written consent of the reported victim, *or upon the request of the victim*,
16 any physician, a licensed physician assistant, who has been specially
17 trained in performing sexual assault evidence collection, or a registered
18 professional nurse, who has been specially trained in performing sexual
19 assault evidence collection, on call or on duty at a medical care facility of
20 this state, as defined by subsection (h) of K.S.A. 65-425, and amendments
21 thereto, shall examine persons who may be victims of sexual offenses
22 cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505,
23 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas
24 bureau of investigation sexual assault evidence collection kits or similar
25 kits approved by the Kansas bureau of investigation, for the purposes of
26 gathering evidence of any such crime. If the physician, licensed physician
27 assistant or registered professional nurse refuses to perform such physical
28 examination the prosecuting attorney is hereby empowered to seek a
29 mandatory injunction against such physician, licensed physician assistant
30 or registered professional nurse to enforce the provisions of this act. Any
31 refusal by a physician, licensed physician assistant or registered profes-
32 sional nurse to perform an examination which has been requested pur-
33 suant to this section shall be reported by the county or district attorney
34 to the state board of healing arts or the board of nursing, whichever is
35 applicable, for appropriate disciplinary action. The department of health
36 and environment, in cooperation with the Kansas bureau of investigation,
37 shall establish procedures for gathering evidence pursuant to this section.

38 A minor may consent to examination under this section. Such consent is
not subject to disaffirmance because of minority, and consent of parent
or guardian of the minor is not required for such examination. The hos-
pital or medical facility shall give written notice to the parent or guardian
of a minor that such an examination has taken place.

41 (b) ~~Costs of~~ All sexual assault kits collected that are not released to
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House Judiciary
Date 2-19-08
Attachment # 1

1 law enforcement shall be sealed and kept for 180 days by either the sexual
2 assault nurse examiner program or the facility that provided the exami-
3 nation. After 180 days, such kits shall be destroyed by or at the direction
4 of the facility where stored.

5 (c) The fee chargeable for conducting an examination of a victim as
6 herein provided shall be established by the department of health and
7 environment, in consultation with the attorney general. Such fee, includ-
8 ing the ~~costs~~ cost of the sexual assault evidence collection ~~kits~~ kit shall be
9 charged to and paid by the county where the alleged offense was com-
10 mitted, and refusal of the victim to report the alleged offense to law en-
11 forcement shall not excuse or exempt the county from paying such fee.
12 Such county may charge the defendant for the costs paid herein as court
13 costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments
14 thereto.

15 Sec. 2. K.S.A. 65-448 is hereby repealed.

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

(d) No medical care facility shall incur any civil, administrative or criminal liability as a result of notifying or failing to notify any law enforcement agency if an examination has taken place solely upon the request of the victim and such notification is not otherwise required by law.