

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 17, 2008, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen arrived, 9:36 A.M.  
David Haley arrived, 9:36 A.M.  
Phil Journey arrived, 9:38 A.M.  
Derek Schmidt arrived, 9:42 A.M.

Committee staff present:

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

Conferees appearing before the committee:

Willa DeCastro, American Adoptions

Others attending:

See attached list.

Bill Introductions

Melissa Wangeman, Office of the Secretary of State, requested the introduction of three bills. The first bill would remove outdated U.C.C. forms from statute and allow the Secretary of State to prescribe the forms.

The second bill would add a reference to the general corporate code governing cooperatives to clarify that cooperative associations are subject to the corporate code. Without the default to the corporate code, cooperatives are unable to file certain documents with the Secretary of State.

The third bill repeals the authority of a cemetery to use its permanent maintenance fund to build a mausoleum. The maintenance fund is a fund designed exclusively for the perpetual care of the cemetery and using the money for capital improvements contravenes the purpose of the law.

Senator Umbarger moved, Senator Goodwin seconded, to introduce the bills. Motion carried.

Chairman Vratil indicated the sponsor of **SB 236–Hospitals and doctors' offices, not authorized to carry concealed weapon** has requested the bill not be pursued and there will be no further action on the bill this session.

The Chairman opened the hearing on **SB 301–Criminal procedure, expungement**.

Senator Betts testified in support, as sponsor of the bill (Attachment 1). The Senator explained the bill would reduce the waiting period for a request of expungement of criminal records from three years to two years. The reduced waiting period would enable individuals to get on with their lives once they have served their time.

There being no further conferees, the hearing on **SB 301** was closed.

The hearing on **SB 48–Municipal court, accused person's competency to stand trial, mental health evaluation** was opened.

Senator Journey testified in support as the sponsor of the bill (Attachment 2). The Senator indicated the bill would allow municipal courts the ability to place a case with the district court for determination of competency when there is a high likelihood the defendant is incompetent to stand trial. Senator Journey suggested amending page 2, line 5, which only refers to defendants charged with a felony to include all crimes in district court along with the resolution of this matter for municipal court. Enactment of this bill would enhance Kansas criminal procedure and provide aid to municipal courts under difficult circumstances.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 17, 2008, in Room 123-S of the Capitol.

Written testimony in support of **SB 48** was submitted by:

Karen Arnold-Burger, Presiding Judge, Overland park Municipal Court (Attachment 3)

There being no further conferees, the hearing on **SB 48** was closed.

The Chairman called for final action on **HB 2186-Restrictions on advertising for adoption and child placement agencies.**

At the request of the Chair, Willa DeCastro, American Adoptions, provided a review of the bill heard March 6, 2007. Ms. DeCastro distributed a balloon amendment based on recommendations from the Office of the Attorney General addressing concerns raised during the hearing (Attachment 4).

Senator Umbarger moved, Senator Donovan seconded, to amend **HB 2186** as reflected in the balloon amendment. Motion carried.

Senator Umbarger moved, Senator Goodwin seconded, to recommend **HB 2186** favorably for passage. Motion carried.

Approval of Minutes

Senator Donovan moved, Senator Haley seconded, to approve the Committee minutes of January 15 and January 16. Motion carried.

The meeting adjourned at 10:03 A.M. The next scheduled meeting is January 22, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: JANUARY 17, 2008

NAME	REPRESENTING
Jenni Rose	KESL
Lance Walsh	OJA
Melissa Wanyemana	SOS
Austin Hayden	Hein Law Firm
Joseph Keene	KDFE
Jeff Bo Hen Log	KSOA
Sky Westerland	KS chapter, NA SW
Bob Williams	KAOM
Willie DeCastro	am adaptations
SEAN MILLER	CAPTIVE STRATEGIES
Richard Sammons	Kumy ASSOC.
ERIK SARTORIUS	City of OVERLAND PARK

**DONALD BETTS JR.**

SENATOR, 29TH DISTRICT  
SEDGWICK COUNTY

STATE CAPITOL BUILDING  
ROOM 404-N  
TOPEKA, KANSAS 66612-1504

(785) 296-7387 • 1-800-432-3924

1505 N. MATLOCK DR.  
WICHITA, KANSAS 67208  
(316) 393-9203



COMMITTEE ASSIGNMENTS

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

Testimony  
Senate Judiciary Committee  
January 17, 2008

Senator Donald Betts Jr.  
SB 301

It is unfortunate that thousands of Kansas citizens have a legal record that continues to make it difficult for them to start being a productive member of society long after they have served their sentences and/or paid the penalties. Both civil and criminal records often become a life sentence making it impossible for many Kansans to enjoy life's freedom and pursue their goals and ambitions.

Criminal records resulting from a simple traffic infraction such as parking tickets, driving over a fire hose, or refusing to submit to a breath test could result in up to a \$500.00 fine and up to one year imprisonment. After an individual has served his/her time, under K.S.A. 12-4516, they will have to wait an additional three years before they go through the tedious process of getting their record expunged.

Senate bill 301 will untie the hands of many Kansas citizens, and although this change in law is not substantial, it allows an individual to petition the court for expungement if two or more years have elapsed, instead of three. If Kansas citizens have paid for their crime, they should not be restrained from turning their lives around to be productive Kansas citizens.

If it is the will of the committee, I ask that SB 301 be passed out of this committee favorably.

Senate Judiciary

1-17-08

Attachment 1



**SENATOR PHILLIP B. JOURNEY**

STATE SENATOR, 26TH DISTRICT  
P.O. BOX 471  
HAYSVILLE, KS 67060

STATE CAPITOL—221-E  
300 S.W. 10TH AVENUE  
TOPEKA, KANSAS 66612  
(785) 296-7367

E-mail: [journey@senate.state.ks.us](mailto:journey@senate.state.ks.us)



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 in Support of Senate Bill 48  
Presented by State Senator Phillip B. Journey, 26<sup>th</sup> District  
on January 17th, 2008  
for the Senate Judiciary Committee  
The Honorable John Vratil, Chair**

First, I would like to thank the Committee for allowing me to testify in support of Senate Bill 48. Senate Bill 48 amends K.S.A. 22-3302.

Senate Bill 48 addresses an important issue that has placed many Kansas Municipal Courts in the quandary of what to do with a criminal or serious traffic case when presented with circumstances where there is a high likelihood that the defendant is incompetent to stand trial. In many instances those defendants are dual diagnoses, both substance abuse and mental health issues. They present the most difficult set of circumstances for municipal courts to deal with.

Senate Bill 48 allows the court on its own motion or based upon the motion of either party to ask the court to remove the case from municipal court and place it with the district court in the Judicial District of the Municipal Court for a determination of competency. In many instances, municipal courts are presided over by non-attorneys who have limited experience with these difficult circumstances. In some instances, of course, the defendant is before the court on criminal charges that resulted from the defendant being off his medication and initiating irrational or criminal behavior that results directly from their mental health issues. This legislation allows the case to be removed from municipal court and placed with the district court for evaluation similar to what occurs in criminal cases in the district court, and once competency is determined and that the defendant is determined to be competent to stand trial, the case is referred back to municipal court where it belongs for trial or further disposition. One thing I have noticed in review subsequent to the original drafting of the legislation is that on Page 2, Line 5, current statute only refers to defendants charged with a felony. I would suggest that the Committee amend the bill so that it includes all crimes in district court along with the resolution of this matter for municipal court.

I have dealt with many clients, particularly when I served two days a week for eight years as an appointed attorney, in the Wichita Municipal Court with individuals who were less than competent. Attorneys under our current statutory system are forced to

Senate Judiciary

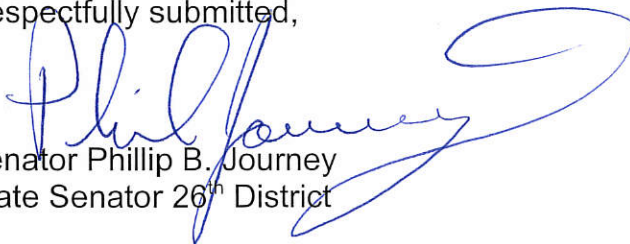
1-17-08

Attachment 2

violate the rules of ethics and plead their client no contest to the charges they have pending without their approval so they can get them in front of a district court judge for a determination of competency when current law does not provide for such an order.

I appreciate the Committee's time, and I hope that you can help me close this hole in Kansas Criminal Procedure.

Respectfully submitted,



Senator Phillip B. Journey  
State Senator 26<sup>th</sup> District



8500 Santa Fe Drive  
Overland Park, Kansas 66212  
913-895-6100 • Fax: 913-895-5003  
www.opkansas.org

**SB 48**  
**Testimony Before the Senate Judiciary Committee**  
**Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court**  
**January 17, 2008**

My name is Karen Arnold-Burger, and I am submitting this testimony in support of SB 48. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

This bill allows a municipal judge to refer a defendant to a district judge for a determination of competency to stand trial. If the defendant is deemed competent, the case is sent back to the municipal court for trial. If the defendant is deemed incompetent, the district judge can commit the defendant into various treatment options. Currently, if a municipal judge believes a defendant is incompetent to stand trial, the only option is to dismiss the charge because there is not authority for the municipal judge to commit the defendant for mental health evaluation and treatment. This often results in a continuation of the problem with no real resolution. It also is very frustrating to the victims of these crimes.

As an example, a person with a long history of mental health issues is often found trespassing on private property (sometimes sleeping in a randomly selected residential front yard). In order to remove him from the situation, he is arrested and charged through municipal court with trespassing. It is clear he is incompetent to stand trial, so as soon as he comes before the judge, the judge has no other option but to dismiss the case, just to start the whole cycle again. This legislation would allow the municipal judge some other options in an effort to get the person the treatment needed.

There are not a lot of these cases, but when they do come up they are very frustrating for all involved. The Overland Park Municipal Court estimates there would probably be less than 10 a year that would be referred to such a process.

Thank you for the opportunity to address you on this topic.

HOUSE BILL No. 2186

By Committee on Judiciary

1-24

10 AN ACT concerning adoptions; relating to advertising and placing chil-  
11 dren; prescribing certain restrictions and requirements; amending  
12 K.S.A. 59-2123 and repealing the existing section.  
13

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

15 Section 1. K.S.A. 59-2123 is hereby amended to read as follows: 59-  
16 2123. (a) Except as otherwise provided in this section:

17 (1) ~~No person shall advertise. Any person who advertises that such~~  
18 ~~person will adopt, find an adoptive home for a child or otherwise place a~~  
19 ~~child for adoption shall be licensed by the state of Kansas in such person's~~  
20 ~~profession and in any such advertisement shall place such person's license~~  
21 ~~number.~~ **state in such advertisement whether or not such person is**  
22 **licensed and if licensed, under what authority such license is issued**  
23 **and in what profession.**

be licensed by the state of Kansas in such person's profession and in any such advertisement shall place such person's license number

24 (2) ~~no person shall offer any person who offers~~ no person shall offer  
25 to adopt, find a home for or otherwise place a child as an inducement to  
26 a woman to come to such person's maternity center during pregnancy or  
27 after delivery ~~shall be licensed by the state of Kansas in such person's~~  
28 ~~profession;~~ and

29 (3) ~~no person shall offer any person who offers~~ no person shall offer  
30 to adopt, find a home for or otherwise place a child as an inducement to  
31 any parent, guardian or custodian of a child to place such child in such  
32 person's home, institution or establishment ~~shall be licensed by the state~~  
33 ~~of Kansas in such person's profession.~~

34 (b) The provisions of subsection (a)(1) shall not apply to a licensed  
35 child placement agency operating as authorized by Kansas law or to the  
36 department of social and rehabilitation services or to an individual  
37 seeking to adopt a child.

38 (c) As used in this section:

39 (1) "Advertise" means to communicate by newspaper, radio, televi-  
40 sion, handbills, placards or other print, broadcast, *telephone directory* or  
41 electronic medium.

42 (2) "Person" means an individual, firm, partnership, corporation,  
43 joint venture or other association or entity.