

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Vice-Chair Joe Patton at 1:30 p.m. on February 9, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

HB 2096 - Electronic solicitation, child 14 to 16 years of age.

Vice-Chair Patton announced to the Committee they would be working on **HB 2096**.

After a short discussion, Representative Pauls moved HB 2096 out favorably for passage. Representative Dillmore seconded. Motion carried.

Vice-Chair Patton called for a short recess.

HB 2097 - Criminal jury trials, alternate or additional juror selection.

Chairperson Colloton called the meeting to order and announced to the Committee they would now work **HB 2097**.

After a short discussion Representative Roth moved HB2097 out favorably for passage. Representative Brookens seconded. Motion carried.

HB 2098 - Kansas rape shield law, adding aggravated trafficking and electronic solicitation.

Chairperson Colloton called the Committee's attention to **HB 2098**. A short discussion followed.

Representative Pauls made a motion to move HB 2098 out favorably for passage. Representative Frownfelter seconded. Motion carried.

HB 2099 - Withdrawal of guilty plea, time limitation.

Chairperson Colloton called the Committee's attention to **HB 2099**. A discussion followed.

Chairperson Colloton recognized Richard Saminiego who provided a balloon amendment for the bill.

In order to inidate discussion of the bill, Representative Spalding made a motion to move HB 2099 out favorable for passage. Bethel seconded.

A discussion followed. Chairperson Colloton referred the Committee to written copy of the revised **HB 2099**. (Attachment 1)

Representative Kinzer made a motion to move the balloon amendment with changes adding (e)(1) line 38, page 1. Representative Bethel seconded.

A lengthy discussion followed.

Chairperson Colloton called for a vote on the amendment. Motion carried.

Chairperson Colloton moved the Committee's attention back on **HB 2099** as amended. The discussion

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continued.

Representative Patton made a motion to add on lines 39 through 43 on page 1, "must be brought with in one year after plea" and strike the rest of that paragraph. Representative Brookens seconded.

A discussion followed.

Chairperson Colloton stated she would like to table the discussion and have the Revisor work further with the Kansas County and District Attorneys Association to bring new language on the bill.

Representative Dillmore made a motion to table the discussion. Representative Brookens seconded. Motion carried.

HB 2059 - Proceeds derived from violation of the uniform controlled substances act or any substantially similar offense from another jurisdiction.

Chairperson Colloton moved the Committee's attention to **HB 2059**.

Representative Dillmore recommended to move HB 2059 out favorable for passage. Brookens 2nd. Motion carried.

HB 2039 - Identification of defendant by unique DNA profile sufficient for reasonable certainty requirement of warrant.

Chairperson Colloton called the Committee's attention to HB 2039. Representative Brookens moved 2039 out favorable for passage. Representative McCray-Miller seconded.

A short discussion followed.

Chairperson Colloton called for a vote on HB 2039. Motion carried.

HB 2040 - Giving the Kansas parole board the authority to defer subsequent parole hearings for up to 20 years for crimes involving two or more victims or a minor.

Chairperson Colloton moved the Committee's attention to **HB 2040**.

Representative McCray-Miller moved the bill out favorable for passage. Representative Kinzer seconded.

A discussion followed. During the discussion Representative McCray-Miller withdrew her motion.

Representative Brookens made a motion to move the bill out favorably for passage as amended changing 10 years to 20 years in all the appropriate places and on Page 8, and to delete 3 through 9. Representative Pauls seconded.

A discussion followed and **Jason Thompson, Revisors office, stated there would be some technical clean up needed on the bill. The technical clean up was accepted by the mover of the motion and the second of the motion on the floor.**

Chairperson Collation called for a vote on the amendment. Motion carried.

Chairperson Collation moved the Committee's attention back to the HB 2040 as amended and the discussion continued.

Representative Dillmore made a motion to move the HB 2040 out favorably as amended for passage. Representative Bethel seconded. Motion carried.

Chairperson Collation announced to the Committee that a formal motion was need to withdraw the original proportionality bill which was requested in the meting on January 14, 2009.

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Representative Patton made a motion to withdraw the bill request for the proportionality recodification bill. Representative Bethel seconded. Motion carried.

Chairperson Colloton reviewed what was on the agenda for February 10, 2009 and adjourned the meeting at 2:23 p.m. with the next meeting scheduled for February 10, 2009 at 1:30 p.m. in room 535 N.

RS - J Thompson - 02/09/09

Session of 2009

HOUSE BILL No. 2099

By Committee on Corrections and Juvenile Justice

1-27

9 AN ACT concerning criminal procedure; relating to withdrawal of guilty
10 pleas; amending K.S.A. 22-3210 and repealing the existing section.

11

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

13 Section 1. K.S.A. 22-3210 is hereby amended to read as follows: 22-
14 3210. (a) Before or during trial a plea of guilty or *nolo contendere* may
15 be accepted when:

16 (1) The defendant or counsel for the defendant enters such plea in
17 open court; and

18 (2) in felony cases the court has informed the defendant of the con-
19 sequences of the plea, including the specific sentencing guidelines level
20 of any crime committed on or after July 1, 1993, and of the maximum
21 penalty provided by law which may be imposed upon acceptance of such
22 plea; and

23 (3) in felony cases the court has addressed the defendant personally
24 and determined that the plea is made voluntarily with understanding of
25 the nature of the charge and the consequences of the plea; and

26 (4) the court is satisfied that there is a factual basis for the plea.

27 (b) In felony cases the defendant must appear and plead personally
28 and a verbatim record of all proceedings at the plea and entry of judgment
29 thereon shall be made.

30 (c) In traffic infraction, cigarette or tobacco infraction and misde-
31 meanor cases the court may allow the defendant to appear and plead by
32 counsel.

33 (d) (1) A plea of guilty or *nolo contendere*, for good cause shown and
34 within the discretion of the court, may be withdrawn at any time before
35 sentence is adjudged.

36 (2) To correct manifest injustice the court after sentence may set
37 aside the judgment of conviction and permit the defendant to withdraw
38 the plea. ~~Any action under this paragraph must be brought within one~~ (e)(1)
39 year of: (A) The final order of the last appellate court in this state to
40 exercise jurisdiction on a direct appeal or the termination of such appellate
41 jurisdiction; or (B) the denial of a petition for a writ of certiorari to the
42 United States supreme court or issuance of such court's final order fol-
43 lowing the granting of such petition.

Corrections and Juvenile Justice

Date: 2-9-09

Attachment # 1-1

① ~~(3) The time limitation herein may be extended by the court only upon~~
② ~~an additional, affirmative showing of excusable neglect based upon a fail-~~
③ ~~ure of a defendant to learn of the termination of appellate jurisdiction of~~
④ ~~defendant's direct appeal.~~

(2)

5 Sec. 2. K.S.A. 22-3210 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its
7 publication in the Kansas register.

by the defendant,
as related to the
discovery of the
defendant's claim