

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:38 a.m. on March 17, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes  
Doug Taylor, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Karen Clowers, Committee Assistant

Others attending:

See attached list.

Senator Schodorf moved, Senator Bruce seconded, to approve the Committee minutes of January 26, January 27, and January 28. Motion carried.

The Chairman called for final action on **SB 92 - Child in need of care; jurisdiction on CINC proceedings.**

Staff distributed a balloon amendment reflecting agreement between SRS and interested parties as requested by the Committee during the hearing on March 5. (Attachment 1)

Don Jordan, Secretary, Department of Social and Rehabilitation Services, reviewed the balloon amendment.

Senator Vratil moved, Senator Schodorf seconded, to amend SB 92 as reflected the distributed balloon amendment. Motion carried.

Senator Schodorf moved, Senator Kelly seconded, to provide the revisor latitude to adjust the title, make technical corrections and recommend SB 92 as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 94 - Child in need of care; placement of child in custody.** Jason Thompson, staff revisor, reviewed the bill.

Senator Schodorf moved, Senator Schmidt seconded, to amend SB 94 with the balloon amendment offered by Secretary Jordan during testimony on March 5 and to recommend it favorably as amended for passage. Motion carried.

The Chairman called for final action on **SB 269 - Conduct and offenses giving rise to forfeiture; adding prostitution and related offenses.**

Senator Donovan moved, Senator Lynn seconded, to recommend SB 269 favorably for passage. Motion carried.

The Chairman called for final action on **SB 279 - Mandatory minimum sentence for involuntary manslaughter while driving under the influence of alcohol drugs.**

Senator Vratil moved, Senator Lynn seconded, to table SB 279 and refer it to the DUI Commission if and when the bill passes the legislature and is signed by the Governor. Motion carried. Senator Schodorf voted no and requested her vote recorded.

The Chairman called for final action on **HB 2236 - Recodification of certain drug crimes.**

Senator Vratil moved, Senator Haley seconded to recommend HB 2236 favorably for passage. Motion carried.

The Chairman called for final action on **HB 2164 - Judges and justices, mandatory retirement at 75, may elect to serve till end of current term.** Jason Thompson, staff revisor, reviewed the bill.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:38 a.m. on March 17, 2009, in Room 545-N of the Capitol.

Senator Vratil moved, Senator Schmidt seconded, to amend **HB 2164** by changing the mandatory retirement age from 75 to 73. Motion carried.

Senator Bruce moved, Senator Umbarger seconded, to conceptually abolish the mandatory retirement age of all judges and justices. Motion carried.

The Chairman notified the Committee that the Committee Report for **SB 277 - Funding the recodification commission from judicial council funds; judicial performance commission not required to evaluate retired senior judges** which was passed favorably in Committee on March 3, was never turned in to the Senate Secretary for scheduling before the full Senate. The Committee then discussed placing **SB 277** into **HB 2164**.

Senator Schmidt moved, Senator Vratil seconded, to amend **HB 2164** by adding the amended versions of **SB 277** and **SB 282**.

Senator Haley requested to consider each bill separately. Senator Schmidt withdrew the motion.

Senator Schmidt then moved, Senator Vratil seconded, to amend **HB 2164** by adding the amended version of **SB 277**. Motion carried. Senator Haley voted no and requested his vote recorded.

Senator Schmidt moved, Senator Vratil seconded, to amend **HB 2164** by adding the contents of **SB 282**. Motion carried.

Senator Schmidt moved, Senator Vratil seconded, to recommend **HB 2164** as amended, favorably for passage. Motion carried.

The next meeting is scheduled for March 18, 2009.

The meeting was adjourned at 10:25 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-17-09

NAME	REPRESENTING
On John	SRS
Janice Keys	SRS
Raf Wood	SRS
Robin Clements	Child Welfare Companies
Joan Schultz	KCSL
Jimmie Roe	KCSL
Tom Laine	InterHab
Richard A. Smurphy	Kealey & Assoc
Lara WWS	Judicial Branch
Joseph Molina	KS BAR ASSN.
Mack Smith	KS ST Bd of Mortuary Arts
Chip Wheelen	HCSF Bd of Governors
Amy Gimpall	KMHIC
Doug Wareham	KBA
Kathy Olsen	
Josh Smith	Intern, Sen. Pyle

SENATE BILL No. 92

By Committee on Ways and Means

1-26

9 AN ACT concerning the Kansas code for care of children; relating to
10 jurisdiction; amending K.S.A. 2008 Supp. 38-2203 and repealing the
11 existing section.

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

14 Section 1. K.S.A. 2008 Supp. 38-2203 is hereby amended to read as
15 follows: 38-2203. (a) Proceedings concerning any child who may be a child
16 in need of care shall be governed by this code, except in those instances
17 when the court knows or has reason to know that an Indian child is in-
18 volved in the proceeding, in which case, the Indian child welfare act of
19 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare act may
20 apply to: The filing to initiate a child in need of care proceeding (K.S.A.
21 2008 Supp. 38-2234, and amendments thereto); ex parte custody orders
22 (K.S.A. 2008 Supp. 38-2242, and amendments thereto); temporary cus-
23 tody hearing (K.S.A. 2008 Supp. 38-2243, and amendments thereto); ad-
24 judication (K.S.A. 2008 Supp. 38-2247, and amendments thereto); burden
25 of proof (K.S.A. 2008 Supp. 38-2250, and amendments thereto); dispo-
26 sition (K.S.A. 2008 Supp. 38-2255, and amendments thereto); perma-
27 nency hearings (K.S.A. 2008 Supp. 38-2264, and amendments thereto);
28 termination of parental rights (K.S.A. 2008 Supp. 38-2267, 38-2268 and
29 38-2269, and amendments thereto); establishment of permanent custo-
30 dianship (K.S.A. 2008 Supp. 38-2268 and 38-2272, and amendments
31 thereto); the placement of a child in any foster, pre-adoptive and adoptive
32 home and the placement of a child in a guardianship arrangement under
33 chapter 59, article 30 of the Kansas Statutes Annotated, and amendments
34 thereto.

35 (b) Subject to the uniform child custody jurisdiction and enforcement
36 act, K.S.A. 38-1336 through 38-1377, and amendments thereto, the dis-
37 trict court shall have original jurisdiction of proceedings pursuant to this
38 code.

39 (c) The court acquires jurisdiction over a child by the filing of a pe-
40 tition pursuant to this code or upon issuance of an ex parte order pursuant
41 to K.S.A. 2008 Supp. 38-2242, and amendments thereto. When the court
42 acquires jurisdiction over a child in need of care, jurisdiction may con-
43 tinue until the child has: (1) Attained the age of 21 years. Become 18 years

Section 1. K.S.A. 2008 Supp.
38-2202 is hereby amended
to read as follows:
(see attached)

2

ATTACHMENT

**38-2202. Definitions.** As used in the revised Kansas code for care of children, unless the context otherwise indicates:

(a) "Abandon" or "abandonment" means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

(b) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) "Child in need of care" means a person less than 18 years of age who:

(1) is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 21-4204a, 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a, and amendments thereto; or

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2007 Supp. 38-2207 and 38-2208, and amendments thereto.

public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(r) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A. 2007 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 2007 Supp. 38-2217, and amendments thereto.

(t) "Parent" when used in relation to a child or children, includes a guardian and every person who is by law liable to maintain, care for or support the child.

(u) "Party" means the state, the petitioner, the child and any parent of the child.

(v) "Permanency goal" means the outcome of the permanency planning process which may be reintegration, adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(w) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2007 Supp. 38-2272, and amendments thereto.

(x) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

(y) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(z) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(aa) "Secretary" means the secretary of social and rehabilitation services or the secretary's designee.



WWW.INTERHAB.ORG

March 17, 2009

TO: Senator Tim Owens, Chair, and Members of the Senate Judiciary Committee  
FR: Tom Laing, Executive Director, InterHab  
RE: Senate Bill 92

Pursuant to the committee's request, InterHab representatives met with representatives of the Court and the Administration to discuss potential amendments to SB 92. We appreciate the collaborative effort put forth by the parties, and we agree that the amendments brought to you will improve the bill from the version you reviewed in the committee's hearing on the bill. That notwithstanding, we remain convinced that significant safeguards are still needed to protect the interests of young persons with disabilities or mental health issues who will be transitioned from the foster care.

We have been assured by the Secretary that safeguards for young people, such as we have articulated, can and will be addressed in other ways – namely through SRS policies, or rules, and via the contracting process by which the child welfare system is designed and implemented. We look forward to those discussions beginning and that we will reach agreements in principle, while this bill is making its way through the process. Additionally, it was clear from the responses from the Court personnel with whom we met, that additional training for the District courts should be devised, to include the input of the specialized expertise of community service networks, in order that Courts can more completely exercise their informed discretion in the handling of transitions of young persons from foster care.

We appreciate the Committee's interest in this issue, and ask that the following principle be noted as the legislative intention of the committee, as SRS and the Courts proceed to implement this bill (if it is passed and signed into law).

That the unique needs of children with developmental disabilities, mental illness, behavior disorders, etc. be clearly addressed in the transition planning process; and, that transition plans submitted to the Courts show clear evidence that the service networks which will be responsible for the implementation of such plans have been meaningfully involved in the planning process.

Thank you for your thoughtful consideration of these issues.

Senate Judiciary  
3-17-09  
Attachment 2