

Approved: May 22, 2012  
(Date)

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 a.m. on January 26, 2012, in Room 548-S of the Capitol.  
All members were present.

### Committee staff present:

Jason Thompson, Office of the Revisor of Statutes  
Bob Allison-Gallimore, Kansas Legislative Research Department  
Lauren Douglass, Kansas Legislative Research Department  
Theresa Kiernan, Committee Assistant

### Conferees appearing before the Committee:

Marc Bennett, Deputy District Attorney, 18<sup>th</sup> Judicial District and KCDA  
Jennifer Roth, Kansas Association of Criminal Defense Lawyers  
Tamara Hicks, Deputy County Attorney Finney County, and KCDA  
Stephen M. Howe, District Attorney Johnson County

The Chairman opened the hearings on **SB 305–Time for criminal trials; competency decision time not counted against the state.**

Jason Thompson, Staff Revisor, reviewed the bill, which was introduced at the request of the Kansas County and District Attorneys Association. Mr. Thompson stated the bill would make several changes to the speedy trial statute, K.S.A. 22-3402.

Marc Bennett testified in support of **SB 305 (Attachment 1)**. Mr. Bennett stated the new language in subsection (c) attempts to formalize the analysis of *State v. Lawrence* 38 Kan App. 2d 473 (2007). The language added in subsection (e)(2) addresses delays necessitated to determine the defendant's competency to stand trial. Language in subsection (g) is designed to prevent punitive reversals when the state has detrimentally relied on a previous continuance granted by the court. Language in subsection (h) is designed to prevent punitive reversals that occur when the time it takes a judge to rule on a motion or resolve matters raised by the court is held against the state.

The Chairman closed the hearings on **SB 305**.

Jennifer Roth testified in opposition to SB 305 (**Attachment 2**). Ms. Roth stated the purpose of K.S.A. 22-3402 is to carry out the constitutional right to a speedy trial and the bill proposes to do unconstitutional things and would allow an attorney to violate the ethical duty to communicate with the client. The right to a speedy trial belongs to the accused, not the accused's attorney. Subsection (g) would allow the state to commit misconduct with no speedy trial repercussions. Ms. Roth also expressed concern with the retroactive application of the bill and asserted that it would be an unconstitutional *ex post facto* provision.

The Chairman closed the hearings on **SB 305**.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on January 26, 2012, in Room 548-S of the Capitol.

The Chairman opened the hearings on **SB 306–Intimidation of a witness; including SRS personnel and mandatory abuse reporters as protected witnesses.**

Jason Thompson, Staff Revisor, reviewed the bill, which was introduced at the request of the Kansas County and District Attorneys Association. Mr. Thompson stated the bill amends crimes of intimidation of a witness and aggravated intimidation of a witness to include preventing or attempting to prevent reports of victimization to the SRS or any mandatory reporter.

Tamara Hicks testified in support of **SB 306 (Attachment 3)**. Ms. Hicks stated the bill would assist in determining what has happened to a victim. The bill would make it a crime for a person to persuade, or coerce, a victim to fabricate a statement when disclosing what happened to the victim in discussing the situation with a social worker, teacher, counselor or medical professional.

There were no opponents to **SB 306.**

The Chairman closed the hearings on **SB 306.**

The Chairman opened the hearings on **SB 307–Jury instructions on lesser included crimes in felony murder cases.**

Jason Thompson, Staff Revisor, reviewed the bill, which was introduced at the request of the Kansas County and District Attorneys Association. Mr. Thompson stated the bill concerns jury instructions in cases in which the charge is murder in the first degree for killing a person while committing or attempting to commit or fleeing from an inherently dangerous felony. He stated jury instructions on any lesser included crimes would not be required unless the evidence of the underlying felony is weak or inconclusive. He added the bill would be applied retroactively to any charge or conviction of murder in the first degree involving flight from an inherently dangerous felony.

Marc Bennett testified in support of **SB 307 (Attachment 4)**. Mr. Bennett stated the bill was introduced in response to a 2011 Supreme Court opinion, *State v. Berry*, in which the Court abandoned the felony murder rule. The bill would provide that jury instructions on any lesser included crimes would not be required unless the evidence of the underlying felony is weak or inconclusive.

Stephen M. Howe testified in support of **SB 307 (Attachment 5)**. Mr. Howe offered an amendment for consideration by the Committee. The amendment would provide there are no lesser degrees of felony murder as defined in K.S.A. 2011 Supp. 21-5102. In addition, the amendment would address the retroactivity of the provisions.

There were no opponents to **SB 307.**

The Chairman closed the hearings on **SB 307.**

The next meeting is scheduled for January 30, 2012.

The meeting was adjourned at 10:30 a.m.