

Approved: 3/5/09  
Date

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 11, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Jason Watkins- excused  
Representative Kevin Yoder- excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Jill Wolters, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the committee:

Representative Mike O'Neal  
Senator Terry Bruce  
Marcia Knight, Assistant City Attorney-Lenexa, Kansas  
Mike Kautsch, Professor of Law-Kansas University  
Doug Anstaett, Kansas Press Association  
Richard Gannon for Judge Eric R Yost, District Court, 18<sup>th</sup> District, Wichita, Kansas  
Kevin O'Connor, Deputy District Attorney-Wichita, Kansas  
Scott Schultz, Association General Council-Securities Commission  
Kathy Porter, Office of Judicial Administration

Others attending:

See attached list.

The hearing on **HB 2164 - Judges and justices, mandatory retirement at 75, may elect to serve until the end of current term**, was opened.

Representative Mike O'Neal, appeared as a sponsor of the bill that would establish a new mandatory retirement age provision for Kansas Judges of 75, while allowing any judge reaching age 75 to continue until the end of his or her pending term. The "hard 75" does result in term interruption in most cases and is problematic in the sense that it limits by law the term of a duly elected judge. He added that judges in the federal system are not age limited and Kansas is noted for federal judges who have remained active after reaching a senior status. ([Attachment 1](#)).

Senator Terry Bruce also appeared in support of the bill adding that judges are the only public official required to retire at a mandatory age, and that while this bill does offer some relief, it does not go far enough so as to remove the cap altogether. ([Attachment 2](#)).

Following a few questions and answers regarding other professions and mandatory retirement, and no opponents to the bill, the hearing on **HB 2164** was closed.

The hearing on **HB 2154 - Conduct and offenses giving rise to forfeiture; adding prostitution and related offenses**, was opened.

Marcia Knight, Assistant City Attorney of Lenexa, Kansas presented testimony in support of this bill which would allow cities and the State to pursue civil forfeiture of property recovered in an investigation of prostitution or prostitution related activities. Common tools and resources used in prostitution activities include computers, money and cars. ([Attachment 3](#))

In answer to questions, Marcia further added that many of these people are using the internet, Craigs List, and newspaper Pitch and make a lot of money. She further stated that while prostitution is a misdemeanor, and even if found not guilty, the forfeiture, identified as proceeds or facilitating, is a civil action through the courts and this bill provides a means to transfer the tools and resources used by the offenders from their

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criminal enterprises to the public good.

There were no opponents to the bill.

The hearing on **HB 2154** was closed.

The hearing on **HB 2204 - Affidavits and sworn testimony in support of probable cause for issuance of warrant are open court records following execution of a warrant or summons; certain exclusions** was opened.

### Proponents:

Mike Kautsch, a Professor of Law-Kansas University, and former Dean of Journalism, spoke as a proponent and said if enacted into law, it will serve the public interest in a way that other states have done, and it will serve as a significant affirmation of the Kansas Legislature's commitment to open government. He also advised the newspaper editor in Emporia confirmed that arrest warrant affidavits are open there by virtue of a local district court rule that was adopted about twenty years or more ago. ([Attachment 4](#))

Doug Anstaett, Executive Director-Kansas Press Association, appeared in support of the bill. He stated that only in Kansas are probable cause affidavits systematically closed to the public unless a judge rules otherwise. He further stated that judges do not rule otherwise, except in Lyon and Chase counties, where judges have routinely opened these records because of the leadership three decades ago by then District Judge and now-Court of Appeals Judge Gary Rulon, and since then by his successors. ([Attachment 5](#))

Richard Gannon, presented the testimony on behalf of Judge Eric R. Yost, Eighteenth District Court, Wichita, Kansas. Judge Yost expressed his personal view of concern that government wishes to exercise search warrants as a power of secrecy. He stated that he does not recall any search warrant applications which were of a nature as to justify keeping its contents secret once the investigation has concluded and an arrest made. ([Attachment 6](#))

Chairman Kinzer addressed the issue of adding the language of Lines 28 and 29 back into the bill which would allow the defendant or defendant's counsel to have immediate access as under current law.

Professor Kautsch agreed he did not see a problem with adding that language back into the bill and stated it was not the intent of this bill to restrict the defendants access to the information.

### Opponents:

Kevin O'Connor, Deputy District Attorney-Wichita, appeared as an opponent stating that under current law, the accused has immediate access to the affidavit and that Kansas also has open preliminary hearings unlike most States that use secret grand jury proceedings. He explained that in 1979, the Senate Judiciary Committee recommended the changes currently contained in K.S.A. 22-2302 and that proponents of this bill fail to suggest why there is a need to change the law other than their own desire to obtain the affidavits in high profile cases in those relatively few cases. Current law does not prohibit the media from requesting the affidavit of probable cause. He advised the change will result in defense and/or prosecution motions to seal affidavits causing hearing on the motions, interested parties will need to be notified and court personnel will be needed, resulting in some very real costs associated the proposed change. ([Attachment 7](#))

Scott Schultz, Association General Council-Securities Commission, testified as an opponent of this bill and explained their office has statutory authority to investigate and prosecute securities fraud. As a natural part of such an investigation, they routinely prepare and file affidavits in support of the issuance of arrest warrants, which could include a number of financial entities such as banks, credit unions, savings and loans broker-dealers and investment advisors which contain specific account information as well as personally identifiable victim information. While there are exclusions in Section 1(b) of the proposed bill, the list does not exclude personal identifiable information. Contained within the Kansas Open Records Act, is a provision which excludes release of "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of privacy. K.S.A. 2008 Supp. 45-221(a)(30); therefore they request similar language be inserted into HB this proposed bill. Without exclusionary language, victims of financial fraud could be victimized again with their financial account information becomes available to the general public.

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(Attachment 8)

Kathy Porter, Office of Judicial Administration, appeared as an opponent and stated the clerks of the district are not staffed to perform the redaction required by all the exclusion of information listed in this bill. It would require someone to read each page of an affidavit or sworn testimony plus trying to make each determination just what information would reveal an identity, interfere with a law enforcement action, endanger a life, or any of the other consequences specified in the bill. She added it is particularly burdensome at a time when staffing is impaired by a hiring freeze and the current status of the state financials. (Attachment 9)

The hearing on **HB 2204** was closed.

**HB 2250 - Rules of evidence; admissibility of prior acts or offenses of sexual misconduct.**

Representative Whitham moved to report **HB 2250** favorably for passage. Representative Patton seconded the motion.

Representative Goyle made a substitute motion to amend the bill with revisors technical amendments. (Attachment 10) Representative Wolf seconded. After discussion, with the permission of the second, Representative Goyle changed his amendment to read from “sex crimes” to “sex offense”. Motion carried.

The Attorney General’s staff spoke in support of the Representative Goyle amendment because the wording has been tested in courts.

Representative Patton moved to amend to add Sec b, Items (1) through (F). ( Attachment 11). Representative Jack seconded the motion. Motion failed.

Representative Brookens made a motion to change Item 6 on last page from “any federal conviction” so it reflects convictions in cities and counties.

Representative Patton seconded the motion. Motion carried.

Representative Whitham makes a motion to report **HB 2250** favorably for passage with revisors technical amendments. Representative Jack seconded. Motion carried.

The next meeting is scheduled for February 12, 2009.

The meeting was adjourned at 6:10 p.m.