

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:25 a.m. on Friday, March 19, 2004 in Room 527-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee: None

Others attending: See attached list.

Chairman Vratil announced that final action would have to be postponed on **HCR 5033** until Monday, March 22, as the alternate conference room, Room 527-S, was too small for the public to attend and observe Committee deliberations. He said he would have **HCR 5033** as the first item on the agenda for Monday's, March 22, meeting at 9:30 a.m. in the regular conference room, Room 123-S.

The Chair communicated that Senator Allen had two bills in the House that were not getting the attention they deserved, and he recommended to the Committee that **SB 460**, regarding drivers license and other identification cards relating to taxpayer identification numbers, which passed the Senate by a vote of 40-0, and **SB 466**, concerning drivers licenses and relating to medical information reported to the Division of Motor Vehicles, which passed the Senate by a vote of 34-6, be put into **HB 2404**. The contents of **HB 2404** were placed in another bill last session and passed.

Senator Allen moved to amend **HB 2404** with a substitute bill by deleting everything in it and inserting the contents of **SB 460** and **SB 466**. The motion was seconded by Senator Schmidt.

Upon request, Senator Allen explained the two bills, and stated the bills would strengthen confidentiality in current law. Brief discussion followed.

The Chair called for a vote on the motion. The motion carried. Senator Pugh requested that his "no" vote be recorded.

Senator Jay Emler appeared before the Committee, and requested consideration of three bills not receiving attention in the House. Chairman Vratil said that **SB 388** affects Capitol area security and passed the Senate by a vote of 24-16. **SB 354** concerns pretrial authority of a municipal court judge to detain an individual and passed the Senate by a vote of 40-0. **SB 321** clarifies contempt powers of a municipal court judge and passed the Senate by a vote of 39-1.

Senator Emler explained that for years the Legislature attempted to clean up some provisions of the Municipal Court Procedures Act. Senate votes made it apparent that the Senate understood the intent of these measures. He stated that the bills were supported by the Kansas Judicial Council. Senator Pugh's sub-committee made a few changes and recommended the bills be passed.

The Chair recommended that the contents of **HB 2391** be struck, and the contents of **SB 388** be inserted.

Senator Schmidt made a motion to amend **HB 2391** with a substitute bill by striking the entire contents and inserting the contents of **SB 388**. The motion was seconded by Senator Donovan, and the motion carried.

The Chairman recommended that the contents of **HB 2352** be deleted the contents of **SB 354** and **SB 321** be inserted.

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Senator Goodwin made a motion to amend **HB 2352** with a substitute bill by deleting the entire contents and inserting the contents of **SB 354** and **SB 321**. The motion was seconded by Senator Betts, and the motion carried.

Final Action on:

HB 2889 - KORA; records not required to be open

Chairman Vratil called for discussion and final action on **HB 2889**. He explained the bill, and recalled that the General Council for the Kansas Board of Regents had concerns relating to sub-section (4), lines 30 through 31, on page 1 of the bill. Senator O'Connor had suggested to delete the words "or agreement" because there were redundant. The Chair said there was discussion regarding private money and public money being used to fund employment contracts. He distributed copies of a balloon amendment which would change the language on line 30 to read "employment contracts of employees which provide for compensation funded in whole or in part by public funds appropriated by the state or public funds of any political or taxing subdivision of the state, ...". The language came directly from the definition of a public agency in the Open Records Act, so it embodies the intent of the Open Records Act. (Attachment 1)

Senator Allen moved to adopt the proposed amendment as presented, seconded by Senator O'Connor, and the motion carried. Senators Pugh and Schmidt requested there "no" vote be recorded.

Senator Allen made a motion to recommend **HB 2889** favorably as amended, seconded by Senator Goodwin, and the motion carried.

HB 2603 - Clarifying that prior DUI's are converted to person felonies for criminal history purposes when convicted of involuntary manslaughter while DUI

Chairman Vratil called for discussion and final action on **HB 2603**. The Chair requested Senator Schmidt to explain the bill and give the sub-committee report. (Attachment 2) Committee members received a copy of the Kansas Sentencing Commission's bed space impact which showed minimal or no impact on offender population. (Attachment 3)

Senator Schmidt stated that there were no opponents on **HB 2603**, and recommended the bill for passage with no amendments offered.

Senator Schmidt made the motion to pass **HB 2603** out favorably, seconded by Senator Umbarger, and the motion carried.

HB 2554 - Amendments to the Kansas power of attorney act

Chairman Vratil called for discussion and final action on **HB 2554**. He explained the bill and the amendments to the Kansas Power of Attorney Act. The Kansas Bar Association recommended an amendment, but there were some differences of opinion among groups within the Kansas Bar Association as to the proper language. The Chair said that on page 4 of the bill, the Committee needed to amend line 16 to strike the word "by addendum to the power of attorney" and insert in its place the words "in a written document". It should read then: "The principal spouse in a written document, duly acknowledged by the spouse....".

The Chairman called for discussion on the proposed amendment, and comments and discussion followed.

Senator Goodwin made a motion to adopt the motion as outlined, seconded by Senator Donovan, and the motion carried.

Senator Goodwin moved to recommend **HB 2554** favorably as amended, seconded by Senator Umbarger, and the motion carried.

Sub HB 2777 - Controlled substances; unlawfully manufacturing, compounding is manufacturing, not a part of selling, in response to State v. McAdam

Chairman Vratil called for discussion and final action on **Sub HB 2777**. He explained the bill, and said that the bill strikes the words "or compound" that appear in statute. There are new Sections 3 and 4, but they are not significant.

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Senator Umbarger said that he visited with some of his county attorneys and Randall Hodgkinson, Deputy Appellate Defender in Topeka, who testified before this Committee. The individuals he talked with expressed the desire to have another option in addition to Level 1. They felt there would be still many departures if they were not given another sentencing option like Level 2. He offered a proposed balloon amendment in response to Mr. Hodgkinson's comments. The new language would drop the severity Level 1 or a drug severity Level 2 felony if such person was manufacturing such controlled substance or controlled substance analog for the person's own use. (Attachment 4)

Senator Umbarger made the motion to amend **Sub HB 2777** as reflected in the balloon amendment presented, and seconded by Senator Pugh.

Committee discussion and questions followed.

The Chairman called for a vote on the motion to amend. The motion carried.

Chairman Vratil stated another concern with this bill regarded the retroactive provisions in new Section 3, page 3, beginning on line 24. There were several opinions on this subject, one of which stated that it was unconstitutional to apply the provision retroactively. The other opinion held that "we don't necessarily believe that is true, but if it is let the Supreme Court tell us that and we don't do any harm".

Committee discussion and questions followed. The Revisor clarified application of the retroactivity provision.

Senator Pugh moved to remove any retroactivity provisions within the bill. There was no second, and the motion failed.

Senator Schmidt offered an amendment to **Sub HB 2777** and passed out copies of the original language of a bill that was passed out of the Senate last year relating to endangering a child by having children around a meth lab. The bill did not move out of House Committee, but he had visited with the House Chairman this year and the bill was revived by the House Committee, altered and sent out of the House Committee and was pending House floor action. However, the bill was killed by the House. (Attachment 5)

Senator Schmidt made a motion to adopt this amendment and add it to **Sub HB 2777**, seconded by Senator Umbarger, seconded by Senator Umbarger, and the motion carried.

Senator Schmidt offered a second amendment which he distributed to Committee members. (Attachment 6) He explained a discrepancy he questioned during the hearing on the bill. He had asked the Sentencing Commission why Frazier showed a bed space impact and McAdam did not even though the cases were the exact same scenario. He said that the amendment was from the Sentencing Commission and explained the difference occurred because the Legislature just got unlucky with the timing. He stated that this was an attempt to fix Frazier/**SB 243**, too. Senator Schmidt disseminated copies of the amended **SB 243**, passed by the Senate last year, for the Committee's pursuit. (Attachment 7)

Senator Schmidt made a motion to amend the contents of **SB 243** into **Sub HB 2777**, seconded by Senator Umbarger, and the motion carried.

Brief discussion followed.

Senator Schmidt made a motion to pass **Sub HB 2777** favorably as amended, seconded by Senator Donovan, and the motion carried.

HB 2649 - Unlawful use of controlled substance

Chairman Vratil called for discussion and final action on **HB 2649**. He explained that the bill had no fiscal note or bed space impact, and it was passed by the House by a vote 114-11. The Highway Patrol

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recommended an amendment to Section 2, line 31, removing the words "Sec. 1" which would allow the officers to stop anyone and request a drug test.

Senator O'Connor made the motion to adopt the Highway Patrol's requested amendment, seconded by Senator Betts, and the motion carried.

Committee discussion followed with concerns expressed regarding two different bed space impacts and the changes to the same, and if any other states have done the same type of legislation. (Attachment 8)

Further discussion and comments followed.

Senator Allen made a motion to table **HB 2649**, seconded by Senator Haley.

Senator Schmidt asked for a Point of Order. He suggested an alternative in a substitute motion for when the Committee worked this bill to recommend that the Committee add to the bill the provisions of **SB 410** which relates to drug testing with respect to Unemployment Compensation law but ran into some difficulty because of politics surrounding Workmen's Compensation in the House. The Revisor had that revision prepared for the Committee, and the Committee could strike the text of **HB 2649** and insert in lieu thereof the text of **SB 410** insuring this bill will get to conference. (Attachment 9)

Discussion followed with the indication of possibly using another bill to do this.

Senator Allen withdrew her motion to table, and Senator Haley agreed to withdraw his second.

Senator Schmidt made a motion to insert **SB 410** into **HB 2649** as a substitute bill, seconded by Senator Umbarger, and the motion carried.

Following discussion, Senator Schmidt withdrew his motion to amend **HB 2649**, with Senator Umbarger agreeing to withdraw his second.

Senator Oleen made a motion to direct the Committee Chairman to request an interim study on **HB 2649** as amended. The motion was seconded by Senator Haley, and the motion carried.

Senator Schmidt made a motion to amend **HB 2375** by striking its contents in entirety inserting in lieu thereof the text of **SB 410** as it passed the Senate designating it as a substitute bill and recommend it favorably for passage. The motion was seconded by Senator Umbarger, and the motion carried.

The meeting adjourned at 10:35 a.m. The next scheduled meeting is Monday, March 22, 2004.