

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 3, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Judge Eric R. Yost, 18<sup>th</sup> Judicial District  
Senator Journey  
Hal Hudson, Director, National Federation of Independent Business

Others attending:

See attached list.

Chairman Vratil called the meeting to order and asked if there were bill introductions.

Senator Bruce introduced a conceptual bill that would correct language in a statute. The Senator explained that *State of Kansas vs. Campbell*, in December, fixed the *Frazier* problem, which was an appellate court decision that lowered the intent to use a precursor to manufacture methamphetamine from a severity level 1 to level 4. The *Campbell* decision reversed that. A couple days ago the Supreme Court reversed itself by reconsidering the motion. Senator stated the bill that would address the Supreme Court's concern with the statutory language so that intent to use amphetamines as a precursor to manufacture methamphetamine would be changed from a severity level 4 to a severity level 1. Senator Bruce moved, seconded by Senator Umbarger, and the motion carried.

Senator Schmidt introduced a bill that would expand "drug free zones" to include licensed day cares, public parks and playgrounds. Senator Schmidt moved, seconded by Senator Goodwin, and the motion carried.

Senator Bruce introduced a bill, on behalf of Senator Journey, to fix a loophole in the Brady law. Currently, a background check is required to purchase a gun. The problem being addressed by the bill is to make information available to law enforcement so when an NCIC check is done, persons found mentally incompetent by the courts will show up in the system. Senator Bruce moved, seconded by Senator Journey, and motion carried.

Chairman Vratil opened the hearing on **SB 61**.

**SB 61 Divorce/child custody; shared residency, child resides with both parents on an equal/near equal basis**

Proponent:

Judge Eric R. Yost serves as Presiding Judge in Family Law for Sedgwick County, which has around 8,000 cases filed annually involving child custody. In a number of cases the court currently awards joint custody with shared residential arrangements with the parents. The bill takes the list of residency options found in K.S.A. 60-1610 (a) 5 and adds the language of "shared residency" as an option in the statutes. Chairman Vratil clarified with Judge Yost that the bill be amended on page 4, line 28 to add "primarily", strike the words "or both" and strike the "s" on parents, so it reads "in which the child resides primarily with one parent on a basis consistent with the best interests of the child". Judge Yost concurred. (Attachment 1)

Chairman Vratil closed the hearing on **SB 61** and opened the hearing on **SB 71**.

**SB 71 Creating the crime of automated teller machine robbery and aggravated automated teller machine robbery**

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 3, 2005, in Room 123-S of the Capitol.

### Proponent:

Senator Journey stated the bill supplements K.S.A. 21-3426 and 21-3427 with two new classes of robbery. The Senator stated that ATM robberies last longer than an average robbery, due to the fact that often the robber goes with the victim from ATM machine to ATM machine, and the victim is terrorized for an extended period of time. Senator Journey stated that the bill reflects the societal policy against the new and more violent crime, and gives prosecutors one more "tool" in their toolbox with which to charge a criminal with besides robbery and kidnaping. Senator Journey answered several questions from the Committee regarding the severity level of the crime. Chairman Vratil stated that on the bill, lines 16-17, rather than "to effect an automated teller machine transaction," a more clear phrase might be "through the use of an automated teller machine transaction." Senator Journey concurred. (Attachment 2)

Chairman Vratil closed the hearing on **SB 71** and opened the hearing on **SB 72**.

### **SB 72 Worthless checks, more than once in a seven-day period, increased penalty**

#### Proponents:

Senator Journey testified that the bill increases the threshold for felony giving a worthless check from \$500 to \$1,000, and that there are two operative sections of the bill amending K.S.A. 21-3707. Section (e) (1) (B) makes a severity level 7 nonperson felony out of giving multiple worthless checks, drafts, or orders in a seven-day period an aggregate amount of \$25,000 or more. Section (e) (2) (B) makes it a severity level 9 nonperson felony to give multiple worthless checks in a seven-day period if the combined total of those checks, drafts, or orders is at least \$1,000 but less than \$25,000. (Attachment 3)

Hal Hudson testified on behalf of the National Federation of Independent Business, stating that many small businesses feel they must accept checks as payment for goods and services in order to be competitive with larger businesses. However, when it comes to recovering their losses from bad checks, getting a judgment in court is of little help if enforcement and collection cannot be completed. (Attachment 4)

Senator Donovan stated that, as business owner, for the fiscal year ending August 31, his company wrote off thousands of dollars of insufficient checks, and that was after paying many dollars to try and collect the funds. The Senator stated that this is costly to the State of Kansas as well, because taxes were not collected and paid on these write-offs.

Chairman Vratil closed the hearing on **SB 72**.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 7, 2005.