

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 17, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused

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:

Sue Lockett

Judge Daniel Mitchell

Gary Daniels, Acting Secretary, Department of Social and Rehabilitation Services

Pamela Johnson-Betts, Department on Aging

Barbara Hinton, Legislative Post Auditor

John Badger, Chief Legal Counsel, Department of Social and Rehabilitation Services

Jared S. Maag, Deputy Attorney General

Julene Miller, Attorney General's Office

Others attending:

See attached list.

Chairman Vratil opened the meeting and continued the hearing on **Sub HB 2038**.

**Sub HB 2038 Multidisciplinary teams for adults**

Chairman Vratil stated that two questions were before the Committee: 1) why do we need to pass this legislation, and 2) is it not possible, under current law, for the Secretary of Social and Rehabilitation Services (SRS) or the Secretary of the Department on Aging to appoint multidisciplinary teams (MDTs) now.

Sue Lockett, Board President of Prairie Advocacy Center, gave testimony before the Committee regarding these questions. Ms. Lockett suggested that the reason the bill was drafted was so that credibility would be given to the team and to ensure that the team is neutral and does not represent any particular state entity. Ms. Lockett stated that there are approximately 15-20 states that have MDTs through legislation.

Judge Dan Mitchell stated that to have specific statutory authorization gives more credibility to an adult MDT. The MDT should have a level of independence that is validated by statute and should be able to make recommendations that would be appropriate, notwithstanding whether a social service agency agreed with their position. Chairman Vratil asked the Judge why the Mayor of Topeka, or city or county commissioners could not appoint an MDT. Judge stated that he wasn't sure that any of these officials would have a real interest to participate in the delivery of services to infirm or disabled persons other than from a general overview. However, on a case by case basis, they may not be familiar with the court systems and what needs to be done, in guardianships or conservatorships, or applications for mental illness. Those are judicial proceedings, and not subject to mayorial monitoring or monitoring by the commissions. He questioned why Kansas would not want statutory parameters set as to how an MDT should work, who is going to monitor, and what their powers are. Judge Mitchell stated that judges do not want to be tagged as proactive judges out doing and creating things that the law has not empowered them to do. Judge Mitchell stated that, personally, he would wait for statutory authority before he appointed an MDT.

Senator Goodwin asked how much contact does the Judge has with the children's MDT now. Judge Mitchell stated that he gets a report that comes from the chairman of the team before the team takes any action on cases. The court cannot do anything until there is a case filed, which then gives the court jurisdiction to be able to do something.

Senator Donovan asked how this bill varies from children's statute, and could not the children's statute be

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amended to add “adults”. The Judge stated that the primary thing is the informed consent aspect, when dealing with children.

Senator Bruce stated he was looking at K.S.A. 38-1523 (a) the MDT childrens task force, and there are some striking differences between the statute and and the statutory structure of **Sub HB 2038**. The children’s MDT establishes subpoena powers and access to certain confidential records. A children’s MDT gets together and looks at specific alleged cases of child abuse and child molestation, and brainstorms how to prove a case, or what type of services can be provided to protect children.

Gary Daniels, Acting Secretary of SRS, stated that yes, he does have some authority to appoint groups informally and formally. However, SRS views the bill as beneficial, as it creates a more formal authority to establish a team and provide a model that could be adapted to any community. The judge, as the authority to appoint team members, would provide a degree of oversight. ([Attachment 1](#))

Secretary Pamela Johnson-Betts, stated that she could appoint teams outside of statutory authority. However, one of the barriers about placing this MDT is that there is no staff to accomplish this. The Department on Aging supports adult MDTs conceptually because there is a need for advocacy and it appears that more safeguards might be established to care for the infirm, disabled and elderly

Chairman Vratil closed the hearing on **Sub HB 2038** and opened the hearing on **HB 2128**.

### **HB 2128 Expansion of SRS access to criminal history records**

Chairman Vratil stated that, upon the recommendation of Barb Hinton, Legislative Post Auditor, an amendment would be added at the end of the bill, and would indicate that nothing in this bill would “prohibit the disclosure of any information to the post auditor in accordance with and subject to the provisions of the Legislative Post Audit Act.” Chairman Vratil handed out copies of the proposed change. ([Attachment 2](#)). A motion was made to adopt the amendment. Senator Donovan moved, seconded by Senator Schmidt, and the motion carried.

John Badger, Chief Legal Counsel for SRS, stated that this was a bill that SRS had requested. Under current law SRS is generally able to obtain criminal history information relating primarily to convictions occurring within the state of Kansas. This bill would clarify what SRS may obtain and expand access to include information involving such things as arrests, expungements, juvenile offenses, diversions and other criminal history record information in possession by the KBI. Mr. Badger offered a balloon amendment deleting the inconsistent language by striking “relating to criminal convictions” on page 1, line 21. Also, “juvenile expungements” would be added to the list of records to which the Secretary of SRS is given access in subsection (b). ([Attachment 3](#)).

Chairman Vratil closed the hearing on **HB 2128** and opened the hearing on **Sub HB 2261**.

### **Sub HB 2261 Statute repealed relating to searches incident to lawful arrest includes evidence of the crime**

Jared Maag, Deputy Attorney General, stated that this bill was initially drafted to change a word, from “the” crime to “a” crime. There are six states, including Kansas, that prescribe limits of a law enforcement officer’s right to search, subsequent to the arrest of a suspect. Searches basically are allowed to protect the officers from attack, to prevent the detained persons from escaping, and to discover the fruits of the crime.

Mr. Maag stated that *Thornton vs United States* was a case where a car was stopped and the suspect left the car and scene. The question arose whether the officer could still search the car. The court found the officer could still search the car. This is known as a “Belton” search. Justice Scalia, in a concurring opinion, argued that the “Belton” searches should be limited to instances where it is reasonable to believe that evidence relevant to “the” crime of arrest might be found in the vehicle. Chairman Vratil stated that the existing Kansas statute, K.S.A. 22-2501, makes reference to evidence of “the” crime, not “a” crime. Mr. Maag stated that he and the Attorney General’s office recommends repealing the statute because it causes confusion and

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because law enforcement relies on developing case law rather than the statute. (Attachment 4) Mr. Maag stated that even the Kansas Supreme Court has questioned the very reach of the statute finding that the statute “may possibly be more restrictive than prevailing case law on the Fourth Amendment would permit” in *State v Anderson*.

Senator Journey questioned that if the statute was repealed, would not the Kansas courts interpret under the U.S. Constitutional protections rather than the State Constitutional protections, which are drafted quite differently than the federal constitution. Mr. Maag stated that Kansas courts have specifically said that in the area of Fourth Amendment law, they will generally follow the U.S. Supreme Court’s guidance.

Kyle Smith, Special Agent, Kansas Bureau of Investigation, and on behalf of the Kansas Peace Officers Association, stated support for the repeal of K.S.A. 22-2501. Mr. Smith cited examples of problems with leaving the statute in place. (Attachment 5)

Chairman Vratil closed the hearing on **Sub HB 2261** and opened the hearing on **HB 2380**.

### **HB 2380 Duties of the attorney general and assistants**

Julene Miller, Deputy Attorney General, stated two issues in the bill are important to the Attorney General. The first issue regards removing the requirement from K.S.A. 75-704 (a) that their office prepare an annual index of Attorney General Opinions. All current opinions are now available on-line through outside entities, and the Attorney General’s website provides links to these services. The second request is to amend the statute to allow the Attorney General to delegate certain functions that he is statutorily required to perform, particularly sitting on certain boards and commissions. There are over 500 statutes that provide some role for the Attorney General to play; some specifically state that this can be either the Attorney General or his designee; others do not. An Opinion issued recently dealing with the Governor’s authority to do this brought the tradition into question for all state-wide elected officials. This bill would clarify and codify that tradition that has been established in the Attorney General’s Office.

(Attachment 6)

Chairman Vratil questioned if all of the Attorney General’s opinions were on their website. Ms. Miller stated that the current opinions, back to 1982, are on their website, and that the index is being maintained, but is no longer published.

Chairman Vratil closed the hearing on **HB 2380** and asked the Committee to turn its attention to **Sub HB 2457**.

### **Sub HB 2457 Civil procedure; service of process, by return receipt delivery**

Chairman Vratil stated that a member of the Committee had a proposed amendment that would radically alter the bill, and he wanted the Committee to have time to review it over the next few days. Senator Schmidt stated that he did have the amendment but would like to distribute copies to the Committee members later in the day. The amendment sets appeals bond caps: for a judgement from \$1 million to \$100 million dollars, the appeals bond cap would be \$1 million dollars; for judgements in excess of \$100 million, the appeals bond cap would be \$25 million dollars. Senator Schmidt stated there would also be authority for a court to adjust the bond higher if there was a showing that there was actual dissipation of assets, or there is a likelihood that assets were going to dissipate. Chairman Vratil asked the Committee members to look at the amendment today so that they could take final action on the bill after the weekend.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 21, 2005.