

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

August 27-28, 2007
Room 123-S—Statehouse

Members Present

Senator John Vratil, Chairperson
Representative Mike O'Neal, Vice-Chairperson
Senator Greta Goodwin
Senator Derek Schmidt
Representative Sydney Carlin
Representative Marti Crow
Representative Lance Kinzer
Representative Bill Light
Representative Jan Pauls
Representative Marc Rhoades
Representative Vern Swanson

Members Excused

Senator Julia Lynn
Senator Phil Journey

Staff

Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Bruce Kinzie, Revisor of Statutes Office
Duston Slinkard, Revisor of Statutes Office
Jason Thompson, Revisor of Statutes Office
Carol Benoit, Chief of Staff for Senator Vratil
Ann McMorris, Committee Secretary

Conferees

Topic No. 3 – Operation of the Kansas Parole Board (August 27)

Paul Feleciano, Chairperson, Kansas Parole Board
Robert Sanders, Member of the Kansas Parole Board
Patricia Biggs, Member of the Kansas Parole Board

Topic No. 4 – Medical Assistance for Trust Beneficiaries (August 27)

Eric N. Anderson, Attorney
Molly M. Wood, Attorney
Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority
Reid Stacey, Senior Medicaid Counsel, Kansas Health Policy Authority

Topic No. 2 – Kansas Administrative Procedure Act and the Act for Judicial Review of Agency Actions (August 28)

Sandy Praeger, Commissioner of the Kansas Department of Insurance
Rick Fleming, General Counsel, Office of the Securities Commissioner
Thomas Thull, Bank Commissioner
Virginia Powell, CPA, Past Chairperson of the Board of Accountancy
Sherry Diel, Executive Director, Kansas Real Estate Commission
Professor Rick Levy, Member of the Kansas Judicial Council Administrative Procedure Advisory Committee

Monday, August 27 Morning Session

Approval of Minutes

Moved by Representative Rhoades, seconded by Representative O'Neal, the minutes for the meeting of the Special Committee on Judiciary held on August 17 and 18, 2007, be approved. Motion carried.

The Chairperson opened the hearing on Topic No. 3 – Operation of the Kansas Parole Board.

Paul Feleciano, Chairperson, Kansas Parole Board, reviewed the history and composition of the Kansas Parole Board (KPB). The vision and mission of the KPB is to contribute to the safety of Kansas citizens by providing sound, rational decision making in extending the privilege of parole to offenders. The various work areas and the workload of the KPB were discussed. These work areas include: (1) parole suitability hearings; (2) special hearings; (3) final revocation hearings; (4) public comments sessions; (5) full board reviews; (6) special conditions of post-incarceration supervision; (7) offender release planning; (8) file reviews; (9) travel; and (10) committees and special projects ([Attachment 1](#)).

Robert Sanders, member, Kansas Parole Board, gave more detail on how the Board operated in the various work areas and elaborated on considerations made in parole requests. He provided information on the Level of Service Inventory-Revised (LSI-R) method of assessing risk to reoffend. On questioning, he noted the parole hearings are closed to the public except for the public comment

sessions. The Parole Board decisions are not subject to appeal by another board (see Attachment 1).

Patricia Biggs, member, Kansas Parole Board, explained the workload measures and provided graphs and data on the prison population subject to release by KPB. She stated that the travel and time spent by the KPB monthly to conduct public comment sessions in various locations in the state and the various offender hearings is considerable (see Attachment 1).

Committee members asked questions about the KPB budget, proportionality of “old” and “new” law sentences, how the LSI-R is working, closed hearings of the KPB, and on the “Hard 10.”

Chairperson Vratil requested staff to provide the Committee with the legislative history and rationale as to why Parole Board meetings are closed.

The Chairperson closed the hearing on Topic No. 3 – Operation of the Kansas Parole Board.

Afternoon Session

The Chairperson opened the hearing on Topic No. 4 – Medical Assistance for Trust Beneficiaries.

Eric Anderson, attorney, Clark, Mize & Linville, Salina, offered four recommendations for changes in Senate Bill 32 which was introduced in the Senate Judiciary Committee in 2007. Mr. Anderson’s written testimony elaborated on the four recommendations. He reasoned it is critical to the practical application to any statute concerning trusts that trustees of trusts drafted prior to 2004 be permitted to take the appropriate steps to amend the trust in light of subsequent statutory changes. He stated that he believes the Kansas Uniform Trust Code permits such amendments (Attachment 2).

Molly M. Wood, Attorney, Stevens & Brand, Lawrence, noted her concerns were addressed by Mr. Anderson, but she commented briefly on the changes made in 2004 to KSA 39-709(e)(3) which she stated invented a gratuitous technical trap by requiring “magic words” to create a supplemental needs trust and the meaning of “contemporaneous” in the context of the same law. She urged consideration of the changes suggested by Mr. Anderson (Attachment 3).

Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority (KHPA), explained the Authority’s objectives, noted the programs transferred to KHPA in 2006, and named the voting and nonvoting members of the Board. She provided background information on the 2004 law and how the proposed changes in SB 32 would have a possible negative impact. She informed the Committee that the Kansas Judicial Council will be meeting on September 21, 2007 to study this matter (Attachment 4).

Reid Stacey, Senior Medical Counsel, Kansas Health Policy Authority (KHPA), explained the KHPA suggested amendments are designed to deal with three main issues related to Medicaid eligibility and discretionary trusts: (1) the law, as amended in 2004, does not “grandfather” in older trusts; (2) the law requires a specific reference to Medicaid for a trust to be considered a Medicaid-sheltering trust; and (3) the overly restrictive phrase, “funded exclusively,” in KSA 39-709(e)(3). He provided a detailed explanation of the suggested amendments (Attachment 5).

The Chairperson closed the hearing on Topic No. 4 – Medical Assistance for Trust Beneficiaries.

Recommendations on Topics Covered at the August 17-18, 2007 Meeting

The Chairperson opened the meeting for discussion and recommendations on Topic No. 8 – Aggravated Incest.

Committee members presented their views, *i.e.*, the suggested amendment would have unforeseen results; this change would not be in agreement with Jessica’s Law; more time to study the language may be needed; or make no changes. The Chairperson said that it would appear there were two directions indicated from the discussion: (1) do nothing; or (2) rewrite the Criminal Code to incorporate the incest statutes into Jessica’s Law.

Moved by Representative O’Neal, seconded by Representative Crow, that the Legislature take no action on Topic No. 8 – Aggravated Incest, in the 2008 Session and that a letter be sent to the Recodification Commission pointing out the problems perceived by the Committee in the incest statutes and ask the Recodification Commission to address those problems in the recodification of the Criminal Code Act. Motion carried. (The Chairperson asked the staff of the Revisor of Statutes to draft the letter.)

The Chairperson opened the meeting for discussion and recommendations on Topic No. 7 – Allow a Parent to Remove a Child from the Custodial Parent to Protect the Child from Abuse (Interference with Parental Custody).

The Committee voiced their concerns on the language in 2007 SB 182 which would allow a non-custodial parent to remove a child from a custodial parent based only on the non-custodial parent’s belief that the child is being abused and not be required to have a judicial determination prior to that action. Sandra Barnett, Executive Director of the Kansas Coalition Against Sexual and Domestic Violence, indicated she is working with the Kansas Attorney General’s Office on some new language and would be bringing it to the Committee. The Chairperson noted the Committee needed some definite language in order to consider this matter further and discussion would be continued for Ms. Barnett to present the proposed new language.

The meeting was adjourned.

Tuesday, August 28 Morning Session

The Chairperson opened the hearing on Topic No. 2 – Kansas Administrative Procedure Act and the Act for Judicial Review of Agency Actions

Sandy Praeger, Commissioner of the Kansas Department of Insurance, opposed 2007 SB 51 and any other bill that would transfer the Insurance Commissioner’s authority to regulate insurance companies and agents to attorneys in the Department of Administration. She cited that the Kansas Administrative Procedure Act (KAPA) was originally limited to creating, “...only procedural rights and imposes only procedural duties.” In 2004, KAPA was expanded with the

creation of the Office of Administrative Hearings (OAH). In the Commissioner's opinion, an agency should be able to make a final decision after a fact-finding hearing. The Commissioner opines that some of the proposals being considered take away the accountability of the Department. She urged the Committee to reject the elimination of an agency head serving as a presiding officer. It would remove important protections currently in existence for insurance consumers and be a costly burden on the industry (Attachment 6).

Chairperson Vratil asked for details on steps taken to revoke an agent's license. John Campbell, General Counsel, Department of Insurance, enumerated the various steps starting with a complaint from a consumer or agent, beginning the investigation in the fraud department, and the final summary being handed to the Commissioner. Chairperson Vratil noted his concern with the revoking of the license by the same department that held the hearings.

Rick Fleming, General Counsel, Office of the Securities Commissioner, spoke on behalf of 18 listed state agencies, and verbally added the Board of Barbering, in opposition to any proposal to prohibit agency heads from serving as presiding officers in administrative hearings conducted in accordance with KAPA. The agencies also opposed any proposal to make findings of the OAH binding upon the agency heads. He provided possible solutions to any perceived weaknesses in KAPA, and suggested consideration be given to Sections 402 and 409 of the revised Model Act. Prohibiting agency heads from serving as presiding officers in administrative hearings would change the fundamental character of regulatory agencies in Kansas. Additionally, the negative impact on their budgets will be significant if agencies have to use an outside hearing officer for every routine motion, prehearing conference and hearing, as well as hiring expert witnesses (Attachment 7).

Professor Rick Levy, Member of Kansas Judicial Council Administrative Procedure Advisory Committee, presented the views of the Administrative Procedure Advisory Committee on the important issues surrounding the relationship between the Office of the Administrative Hearings and administrative agencies. The purpose of his testimony was to provide general information to assist the Committee in its review and to inform the Committee of the advisory committee's views on this difficult issue. He cited the legislative options and offered suggestions for amending the relevant provisions of Kansas law (Attachment 8).

Thomas Thull, Bank Commissioner, described the process of hearings in his agency and the need for an attorney with a financial background.

Virginia Powell, CPA, past chairperson of the Board of Accountancy, voiced her opposition to the proposal which would prohibit agency heads from serving as presiding officers in administrative hearings. She noted the ability of a Board member to bring experience and familiarity into the equation will, more often than not, result in practical, reasonable resolutions. The cost of retaining administrative hearing officers would adversely impact the budget (Attachment 9).

Sherry Diel, Executive Director, Kansas Real Estate Commission, opposes any revision to KAPA that would preclude commissions and boards from serving as the presiding officer. She set forth the reasons for opposing revisions to KAPA, and concluded that the Commission does not oppose reasonable protections being included in KAPA to ensure that applicants and licensees are treated fairly (Attachment 10).

The Chairperson closed the hearing on Topic No. 2 – Kansas Administrative Procedure Act and the Act for Judicial Review of Agency Actions.

Recommendations on Topics Covered at the August 17-18, 2007 Meeting (continued)

The Chairperson opened the meeting for discussion and recommendations on Topic No. 9 – Establishment of District Attorney Offices.

Senator Schmidt noted this legislation was crafted to allow areas in the state who have difficulty obtaining qualified county attorneys an opportunity to change from the county attorney system to a district attorney system. Committee member comments were as follows: (1) this would not provide a property tax savings; (2) concern about state funding for this system; (3) how would this affect the current Judicial District system; (4) combining more than one county would require contiguous county participation; (5) set some minimal felony caseload thresholds; and (6) set out counties with exceptions.

The Chairperson concluded this Committee may wish to consider a proposal that would allow the majority vote of the county commissioners of any one county, or two or more counties, to place on the ballot a proposition to establish a district attorney office. The salary (benefits not included) of the district attorney would be paid by the state. Under current law, the district attorney is an elected official. The caseload threshold would be a factor in order for the state to pay the district attorney's salary. Staffing in the district attorney's office would be determined and paid for by each county. A tiered concept could be considered in one draft.

Chairperson Vratil asked Legislative Research staff to draft a preliminary Committee Report. He requested staff from the Revisor's Office draft two bills incorporating the Committee's recommendations – one to include the tiered concept and one without the tiered concept.

Afternoon Session

The Chairperson continued the discussion and possible recommendations on Topic No. 7 – Allow a Parent to Remove a Child from the Custodial Parent to Protect the Child from Abuse (interference with Parental Custody).

Sandra Barnett, Executive Director, Kansas Coalition against Sexual and Domestic Violence, presented the Committee with suggested new language for inclusion into KSA 21-3422, interference with parental custody; and KSA 21-3422a, aggravated interference with parental custody. This proposed language was drafted with the assistance of the Attorney General's Office, but was not endorsed by the Attorney General at this time (Attachment 11).

Ed Klumpp, Legislative Chairperson, Kansas Association of Chiefs of Police, stated that a time frame is needed so law enforcement officers are able to determine who is to blame. A majority of the Committee expressed an interest in creating an affirmative defense rather than providing absolute immunity to a parent who removes a child from the custodial parent in order to protect the child from abuse. There was a question on what other states are doing. Ms. Barnett stated 30 states have some form of affirmative defense. It was suggested the proposed language prepared by Ms. Barnett for KSA 21-3422 also be used in KSA 21-3422a.

Staff was directed to prepare a draft incorporating the language and time frame as discussed for future consideration by the Committee.

The meeting was adjourned.

Prepared by Ann McMorris
Edited by Athena Andaya

Approved by Committee on:

September 18, 2007
(date)