

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 25, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused  
Representative Tom Klein - Excused  
Representative Doug Patterson - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research  
Jill Wolters, Department of Revisor of Statutes  
Sherman Parks, Department of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Barbara Tombs, Executive Director, Kansas Sentencing Commission  
Paul Morrison, Kansas Sentencing Commission  
Ed Collister, Kansas Bar Association  
John Parisi, Kansas Trial Lawyers Association  
John Reinhart, AARP  
Tim Madden, Kansas Department of Corrections  
Mark Stafford, Kansas State Board of Healing Arts  
Jerry Slaughter, Kansas Medical Society  
Gail Edson, Kansas Hospital Association  
Jim Sergeant, Wesley Medical Center  
Chip Wheelen, Kansas Association of Osteopathic Medicine  
Bud Burke, Association Health Information Outsourcing Services

Hearing on **SB 521 - Departure sentencing procedure under sentencing guidelines act**, was opened.

Barbara Tombs, Executive Director, Kansas Sentencing Commission, reminded the committee that the United States Supreme Court held that in *Apprendi v. New Jersey* "other than the fact of a prior conviction, any fact that increases the penalty for that crime beyond the statutory maximum, must be submitted to the jury and proved beyond a reasonable doubt." The decision of the U.S. Supreme Court raises questions of constitutionality in all upward departures under the Kansas Sentencing Guidelines. ([Attachment 1](#)) A subcommittee was appointed by the Kansas Sentencing Commission to address this issue and proposed the current bill.

Paul Morrison, Kansas Sentencing Commission, explained that the proposed bill would enact a bifurcated jury proceeding which would first determine the innocence or guilt and then in the event of a guilty verdict the same jury would determine in a separate proceeding if any aggravating circumstance were present that would serve to enhance a maximum sentence. ([Attachment 2](#))

Ed Collister, Kansas Bar Association, was concerned that the proposed legislation would place additional work on the courts that are already under funded. He opposed the bifurcated jury system and proposed simply increasing the grid boxes so the sentences could be doubled if the judge sees fit to do so. ([Attachment 3](#))

Written testimony was provided in by Representative Jim Garner. ([Attachment 4](#))

Hearing on **SB 521** was closed.

Hearing on **SB 377 - Access to health care records by patients and authorized representatives**, was opened.

John Parisi, Kansas Trial Lawyers Association, appeared before the committee as a proponent of the bill. He stated that currently 32 states have statutes that set rates for coping medical records. Health Insurance

CONTINUATION SHEET

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Portability and Accountability Act (HIPPA) does not become fully enacted until next year and that the proposed bill would take care of Kansas citizens today. He suggested that the problem with HIPPA is that it does not specify what a “reasonable” charge is. ([Attachment 5](#))

Mark Stafford, Kansas State Board of Healing Arts, proposed amendments to their regulations that would be consistent with HIPPA regarding a patient’s right to access records containing health information. He stated that in 2000 the Board received only thirty complaints about not receiving medical records that were requested and all except one of those complaints have been resolved. ([Attachment 6](#))

Tim Madden, Kansas Department of Corrections, requested the committee amend the proposed bill to include access exemptions provided for by federal law in regard to inmate health care records as well as information obtained from confidential sources. ([Attachment 7](#))

John Reinhart, AARP, preferred that Kansas adopt similar legislation as Arizona, Kentucky and Montana who do not allow charges to consumers for obtaining a copy of their own medical records. ([Attachment 8](#))

Jerry Slaughter, Kansas Medical Society, had concerns with the proposed bill, specifically the costs. It would be confusing to Kansas providers as to which law they follow if Kansas statute sets a fee and HIPPA allows for a reasonable fee. He proposed the following amendments: requiring a good faith effort to meet the request before the filing of a suit, allowing providers to get reasonably reimbursed for the costs of providing such medical required; use the term “costs of supplies and labor” and sunset the bill to April 14, 2003, which is when HIPPA will take effect. ([Attachment 9](#))

Gail Edson, Kansas Hospital Association, informed the committee that HIPPA actually became effective April 14, 2001 but won’t be enforceable until April 14, 2003. **SB 377** does not require anything different than HIPPA does and therefore is not needed. By passing the proposed bill there would be the potential for confusion. ([Attachment 10](#))

Jim Sergeant, Wesley Medical Center, stated that the largest costs in making copies is the actual labor it takes to review, make copies and mail. In 2001 they had 1,800 requests for copies of medical records. He suggested an amendment to the cost so it would be a \$20 fee for costs of supplies and labor and \$.50 per page for copies. ([Attachment 11](#))

Chip Wheelen, Kansas Association of Osteopathic Medicine, appeared in opposition to the proposed bill as currently worded. He proposed a \$15 fee for service fees and \$.35 per page for copies. ([Attachment 12](#))

Bud Burke, Association Health Information Outsourcing Services, was opposed to the proposed bill and requested that it be amended to provide for an escalator for costs in the future so the legislature would not have to visit the issue every several years. ([Attachment 13](#))

Written testimony was provided by:

- Keys for Networking ([Attachment 14](#))
- Kansas Association for Medically Underserved ([Attachment 15](#))
- American Cancer Society ([Attachment 16](#))
- Kansas AFL-CIO ([Attachment 17](#))
- Kansas Retired Teachers Association ([Attachment 18](#))
- CASA of Shawnee County ([Attachment 19](#))
- Internal Medicine Associates ([Attachment 20](#))
- Kansas Academy of Family Physicians ([Attachment 21](#))
- Kansas Optometric Association ([Attachment 22](#))
- Kansas Bar Association ([Attachment 23](#))

Hearing on **SB 377** was closed.

The committee meeting adjourned at 6:30 p.m.