

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

December 13, 2006
Room 514-S—Statehouse

Members Present

Representative Lance Kinzer, Chairperson
Senator Terry Bruce
Senator Greta Goodwin
Senator Vicki Schmidt
Senator Ruth Teichman
Senator John Vratil
Representative Tom Burroughs
Representative Harold Lane
Representative Charlie Roth
Representative Jason Watkins
Representative Kevin Yoder

Staff Present

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

Conferees

Judge Sam Bruner, Chairperson, Kansas Judicial Council's Guardianship and Conservatorship
Advisory Committee
Rocky Nichols, Disability Rights Center
David Hollis, Citizen
Representative Bonnie Huy
Brad Harrelson, State Policy Director, Kansas Farm Bureau
Brent Haden, Kansas Livestock Association
Jill Benson, Citizen
Sandy Jacquot, League of Kansas Municipalities
Mike Taylor, Unified Government of Wyandotte County
Cindy Cash, Kansas City, Kansas Chamber of Commerce
Ashley Jones, Greater Kansas City, Local Initiatives Support Corporation
Reid Holbrook, Indian Springs Business Park
Kevin Morris, Community Housing Wyandotte County (CHWC), Director of Urban Planning,
Kansas City, Kansas

Morning Session

Topic No. 3 - Uniform Child Abduction Prevention Act (UCAPA)

Chairperson Kinzer directed the staff to have the report reflect that there was mild concern with the new standard of proof, "credible risk," being added to the current standards of proof, preponderance of evidence, and clear and convincing evidence.

Representative Roth made the motion to have the UCAPA be introduced as a bill for the 2007 Legislative Session. Senator Schmidt seconded the motion. The motion carried.

Topic No. 4 - Revised Uniform Anatomical Gift Act (RUAGA)

Chairperson Kinzer asked that the Committee report reflect some concerns with the following sections and that the committee assigned to the bill would make note of the following concerns:

- Section 5a - three persons making a gift can be done orally in the presence of two witnesses. However, there is no obligation from the witnesses to record it in writing.
- Section 8b - is confusing; it seems to suggest a donor's revocation is not a refusal and would not restrict another person from making a gift on a person's behalf in the future.
- Section 8e - is also confusing in that refusal of giving one part of one's body does not create a presumption that any other organs would not be restricted.
- Section 9 - lists who can make a gift of a deceased person. Item number 10 needs to make sure there is a clear grasp of Kansas law with regard to "who has authority to dispose of a body."
- Section 18 - provides immunity from civil action if "knowledge of representation was not true," needs to be clarified.

Also, the standing committee should look at the regional and national registries of organs.

Senator Teichman made the motion to have the RUAGA introduced as a bill. Representative Lane seconded the motion. The motion carried.

Topic No. 1 - Court Docket Fees

Senator Vratil provided the Committee with a proposed bill that would eliminate the following docket fees and require them to request monies through the appropriations process:

- Crime Victims Assistance Fund;
- Protection from Abuse Fund;
- Kansas Juvenile Delinquency Prevention Trust Fund;
- Juvenile Detention Facilities Fund;

- Trauma Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Center Fund;
- Kansas Law Enforcement Training Fund;
- Indigents' Defense Services Fund; and
- Judicial Performance Fund.

The proposed bill would not affect municipal docket fees and their distribution. It would be effective upon publication in the *Kansas Register* and, therefore, would have no impact until FY 2008.

Senator Bruce voiced his objection to the Kansas Law Enforcement Training Fund being cut from receiving docket fees, because it is directly related to the courts and performs services for the courts.

Senator Vratil made the motion to amend the balloon to strike Judicial Performance Fund from the elimination list, so the Fund would continue to receive docket fees. Senator Goodwin seconded the motion. The motion carried, with Senator Bruce voting no.

Topic No. 5 - Guardians and Conservators

Judge Sam Bruner, Chairperson of the Kansas Judicial Council's Guardianship and Conservatorship Advisory Committee, provided the Committee with copies of specific sections out of the Guardianship and Conservatorship Act; KSA 59-3068, 59-3075, 59-3076, and 59-3089 ([Attachment 1](#)).

Rocky Nichols, Disability Rights Center, suggested that Kansas law gives too much power to guardians and conservators and provides for conflicts of interest. He provided the Committee with copies of 2005 SB 240, as amended, which would bring Kansas law into substantial conformity with the National Guardianship Association's 2002 Standards of Practice. Specifically, relating to a conflict of interest on the part of an unrelated, non-family member guardian or conservator. SB 240 also would create better checks and balances and establish greater accountability in the guardianship system ([Attachment 2](#)).

David Hollis, citizen, relayed his story with a court-appointed guardian for his mother-in-law, Bertha. The guardian placed Bertha in a nursing home, and did not allow family to visit. According to the conferee, the guardian also spent a large portion of Bertha's money. He proposed that all guardians and conservators should be required to take training, certification, and continuing education classes. The fees they charge also should be capped. In addition, a monitoring board should be put in place to work with the courts while overseeing guardians ([Attachment 3](#)).

Representative Bonnie Huy informed the Committee that Mr. Hollis was a constituent of hers. She asked the Committee to consider making the following recommendations:

- Create a guardianship accountability program through an entity other than the courts;
- Require guardians and conservators to take training or certification classes;
- Require mediation for disputes and complaints;
- Establish a monitoring entity separate from the courts to review and investigate complaints from family members or interested parties; and

- Establish a fee structure.

Afternoon Session

Topic No. 8 - Eminent Domain

Jerry Ann Donaldson, Kansas Legislative Research Department, provided the Committee with an overview of the topic of eminent domain. Seven states, including Kansas, recently have enacted eminent domain legislation (Alabama, Colorado, Delaware, Nevada, Texas, and Utah). She also handed out a sheet that shows different states' definitions of "blight" ([Attachment 4](#)).

Brad Harrelson, State Policy Director, Kansas Farm Bureau, supported the passage of 2005 Substitute for SB 323. However, his organization is concerned that the Legislature not "undo" what private property rights opponents found objectionable in the bill. In the event that the Committee addresses the definition of "blight," he urged that it be restricted to only those structures that are uninhabitable, or constitute a threat to the public. Any agricultural land or land associated with farm homes and structures should be specifically exempt ([Attachment 5](#)).

Brent Haden, Kansas Livestock Association, also expressed support for Substitute for SB 323 because predictable and enforceable private property rights are a fundamental underpinning to a sound economy and free society. However, private property should not be taken from one person and transferred to another, regardless of the perceived public benefit that might result. The conferee supported blight legislation, but only if it was narrowly drawn to ensure that local governments are only allowed to remedy true urban blight, not simply to take land away from an individual ([Attachment 6](#)).

Jill Benson, citizen, explained that she was currently going through a partial taking by the Unified Government of Wyandotte County under eminent domain. While Ms. Benson did not disagree with the utilization of eminent domain to acquire property, she was concerned with the process that subjects property owners to undervaluations of their property and no attorney representation, which is often cost prohibitive for the average property owner ([Attachment 7](#)).

Sandy Jacquot, League of Kansas Municipalities, expressed many concerns with Substitute for SB 323, but focused her remarks on the inability of cities to remediate blighted properties without consent of the Legislature ([Attachment 8](#)).

Mike Taylor, Unified Government of Wyandotte County, supported eminent domain, but requested that the Legislature not need to approve the taking of a blighted house so cities and counties can clean up neglected and abandoned properties ([Attachment 9](#)).

Cindy Cash, Kansas City, Kansas Chamber of Commerce, encouraged the Committee to recommend that control of eminent domain be turned back to the local units of governments ([Attachment 10](#)).

Ashley Jones, Greater Kansas City, Local Initiatives Support Corporation (LICS), supported the use of eminent domain as a critical tool in the redevelopment of blighted urban core neighborhoods and nonprofit community developments. Using the definition of "blight" allows cities

to acquire properties which are almost always used for drug houses, prostitution, and other illegal activities (Attachment 11).

Kevin Morris, CHWC Director of Urban Planning, represents a nonprofit community development organization that is revitalizing neighborhoods in Kansas City. The issue of eminent domain is relevant to the organization's process because it allows for use of the process to acquire blighted properties in situations when the owners are unwilling to sell. When the current development project is completed, it will bring 150 new homes to a neighborhood where there was once blight and vacant land.

Reid Holbrook, Indian Springs Business Park, had been working with owners of a large retail mall to lease a building to the state for a period of ten years. Once the negotiation was nearly complete, the property owners learned that the Unified Government of Wyandotte County planned to declare the property "blighted," create a tax increment financing district, and condemn the 55 acres to pave the way for a Wal-Mart super center and a Sam's Club. The property owners received a notice at 3:00 p.m. on November 16 stating that a hearing would take place at 7:00 p.m. that evening. Because the state received notice that the Unified Government of Wyandotte County declared the area "blighted," the lease agreement was dropped.

According to the conferee, this use of eminent domain is not what the Legislature had in mind when it enacted SB 323. The owner of this property was victimized by the Unified Government of Wyandotte County. Their only remedy other than a lawsuit was for the Legislature to take immediate remedial action at the start of the 2007 Session (Attachment 12).

Topic No. 5 - Guardians and Conservators

The Committee recommended that the report reflect that while the Committee has sympathy for the Kaufman situation, the Legislature cannot legislate common sense and human error.

The Committee will request that the Kansas Judicial Council Advisory Committee review the following issues:

- Mandatory education for guardians and conservators;
- Unrelated persons as guardians or wards;
- Oversight safety issues; and
- Proposed amended version of SB 240 and a report be made to the Legislature, as soon as possible.

The Committee made no specific recommendations on changes to the guardian and conservator statutes, but ensured that the Legislature would continue to monitor the issue and be open to further discussion.

Topic No. 8 - Eminent Domain

The Committee recommended that further discussions are needed on the issue of eminent domain, specifically, in the area of "blight." Individuals who appeared are encouraged to work together. This issue affects the entire State of Kansas and should remain an important issue. Citizens who are secure in the ownership of their property make better citizens. The Committee concluded that a balanced approach is needed on this issue.

Senator Teichman made the motion to approve the minutes from November 15 and 16, 2006. Senator Bruce seconded the motion. The motion carried.

Prepared by Cindy O'Neal
Edited by Jerry Ann Donaldson

Approved by Committee on:

May 18, 2007

(Date)