

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 12, 2005, in Room 123-S of the Capitol.

Committee members absent:

Committee staff present: Mike Heim, Kansas Legislative Research Department
Jerry Donaldson, 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: Kathy Porter, Office of Judicial Administration
Randy M. Hearrell, Kansas Judicial Council
Barbara Hinton, Legislative Division of Post Audit
Jill Ann Wolters, Office of Revisor of Statutes

Others attending: See attached list

Chairman Vratil called the meeting to order. Kathy Porter requested the introduction of a bill to amend Kansas K.S.A. 59-2233, which deals with the notice sent to the surviving spouse in probate cases. (Attachment 1) Currently, the court mails a notice and a copy of the will to the surviving spouse. The amendment would make the administrator, executor, or petitioner, or the attorney for the administrator, executor, or petitioner, responsible for mailing the notice and copy of the will. Ms. Porter additionally requested the introduction of a bill to allow the Supreme Court to pay the employer portion of health insurance costs for senior judges, to be effective July 1, 2006. Senator Journey moved to introduce the bills, seconded by Senator O'Connor, and the motion carried.

Randy Hearrell requested the introduction of three bills. (Attachment 2) The first bill would repeal the existing Kansas Juvenile Justice Code and replace it with a proposed revised code. The proposed code was prepared at the request of the Legislature and is the work of the Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee. The proposed revision includes numerous technical and organizational changes and a number of policy changes, almost all of which are minor. The second bill removes legal forms from the Kansas Statutes Annotated in chapters 48 through 64, as the Kansas Judicial Council is preparing a Kansas Legal Forms publication which will include the removed forms. The third bill changes the reference of "Soldiers and Sailors Civil Relief Act" where it appears in the statutes to the recently passed "Servicemembers Civil Relief Act", which replaced it. Senator Goodwin moved to introduce the bills, seconded by Senator Donovan, and the motion carried.

Mr. Hearrell presented a report of the Death Penalty Advisory Committee on certain issues related to the death penalty (Attachment 3). Six issues were studied. Issue No. 1 found that capital murder cases are charged similarly in all areas of the state, but there is a geographic disparity in whether capital charges are brought to trial. On Issues No. 2 and 3, the Committee found no evidence which supports an inference that the race of the victim or the race of the defendant influences the charging decision of the prosecutor, plea bargaining or the ultimate disposition of a capital murder case in Kansas. On Issue No. 4, the Committee found that additional study would be necessary in order to conclude that current Kansas law is sufficient to ensure, to the extent reasonably possible, that no innocent person is ever sentenced to death. On Issue No. 5, the Committee concluded that the social science community generally agrees that the death penalty does not have a general deterrent effect on would-be murderers. On Issue No. 6, the Committee found no evidence of discriminatory treatment in Kansas of murder victims' families who oppose the death penalty.

Senator Donovan noted that by having the ultimate penalty of death hanging over a potential trial, it stands to reason that clients and their attorneys plea bargain down for a lesser penalty than death, and in the process, save the state money.

Senator Bruce commented on the procedural due process rights of defendants on appeal and a brief discussion followed with opinions given on how Kansas was meeting those due process rights requirements.

Senator Betts, referencing Issues 2 and 3, cited the breakdown of the race of defendants in potential capital cases indicating 41 were black defendants (page 13, Attachment 3). He wondered if there was information

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on how many jury members in those cases were of the same race, or all white, hispanic, etc., and were selected by their peers. Mr. Hearrell indicated that they had to look at pictures to complete their study findings. Discussion followed. Kim Parker, Sedgwick County District Attorney's Office, a guest, volunteered to answer Senator Betts' question, as she was on the Death Penalty Advisory Committee. She shared her knowledge of the ethnic background on several cases, and additionally pointed out that federal law doesn't allow the prosecutor or defense attorney to strike a potential juror on the basis of race.

Chairman Vratil noted that three death penalty bills have been assigned to this committee. One abolishes the death penalty, one deals with the definition of mental retardation and how the death penalty applies to defendants with mental retardation, and a third one fixes the Supreme Court's decision in the *Marsh* case. Chairman Vratil announced that he was introducing at this time a bill reflecting 2004 **SB 355**, as it came out of the Senate Judiciary Committee from last year's session and went to the Senate floor (Attachment 4). The bill's purpose is to give the committee a contrast between what was done by Judiciary Committee on the subject of mental retardation and the death penalty last session, and what the interim Judiciary Committee did this past summer. Senator O'Connor moved to introduce the bill, seconded by Senator Goodwin, and the motion carried.

Barbara Hinton provided a brief synopsis on the results of a 2003 audit which addressed how the cost of death penalty cases in Kansas compared with the costs of cases involving non-death sentences (Attachment 5). The audit found that cases in which the death penalty was sought and imposed could cost about 70 percent more than cases in which the death penalty wasn't sought. Also, death penalty cases tended to have higher costs at the trial and appeal stages. Discussion followed regarding this audit. Ms. Hinton covered the findings from a second audit question which addressed whether there may be steps Kansas could take to reduce the overall costs in capital punishment cases.

Chairman Vratil announced that death penalty bill hearings would be scheduled for the week of January 24, 2005. The Chair stated that the Committee needed to look at the Supreme Court decisions on the death penalty in Kansas to understand how the system works and some of the problems that the legislature and the courts face.

Jill Wolters began a staff presentation on, "The Death Penalty from *Kleypas* to *Marsh*", covering what the death penalty statute is in Kansas. Kansas' statute was enacted in 1994. Capital murder is an off-grid person felony and is limited to seven specific crimes (Attachment 6). The sentencing procedures provide that a person under 18 or a mentally retarded person cannot be sentenced to death. When a defendant is found guilty of capital murder, there is a procedure followed when the District Attorney intends to request a separate sentencing proceeding to determine whether a defendant should be sentenced to death. The court then conducts a separate sentencing proceeding to determine whether the defendant should be sentenced to death. If jurors are unable to serve for the sentencing proceeding, there are alternative procedures followed to replace jurors. In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the eight aggravating circumstances enumerated in K.S.A. 21-4625 and nine mitigating circumstances listed, but mitigating is not limited to these nine. Any evidence which the court deems has probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. (Only those aggravating circumstances that the state has made known to the defendant prior to the sentencing proceeding shall be admissible.) At the conclusion of the evidentiary portion of the sentencing proceeding, the judge provides oral and written instructions to guide the jury in its deliberations.

Ms. Wolters indicated that sub-section (e) of K.S.A. 21-4625, is key to what will be addressed in *Kleypas* to *Marsh*." At issue is what happens if, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances exist, and further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, then the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole. A strict reading of this would mean that a tie goes to the state. With a conviction resulting in a sentence of death, a judge is required to review the jury's verdict to ascertain that the verdict is supported by the evidence. A conviction is also subject to automatic review by the Supreme Court. Article 40 of Chapter 22 of the Kansas Statutes Annotated provides for how the execution is to be carried out. The statutes were

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amended in 1999 to update and clarify these procedures.

Chairman Vratil noted that the meeting time was up. Senator Journey moved to adjourn, seconded by Senator O'Connor, and the motion carried. Meeting adjourned at 10:30 A.M. The next meeting is scheduled for January 13, 2005.