

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 24, 2005, in Room 123-S of the Capitol.

All members were present.

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:

Phill Kline, Kansas Attorney General
Ron Wurtz, Assistant Federal Public Defender
Pat Scalia, Executive Director, Board of Indigent Services
Nola Foulston, Sedgwick County District Attorney

Others attending:

See attached list.

Chairman Vratil called the meeting to order and asked if there were any bill introductions.

Melissa Wangemann, Legal Counsel for the Secretary of State, stated that the Secretary requested the introduction of a bill that would amend the charitable organization and solicitations act. Currently, charitable organizations with solicitations of more than \$100,000 in a year have to file an audited statement, and the bill would raise the threshold to \$500,000. This would take the burden off of small charities. (Attachment 1) Senator Goodwin moved, Senator Bruce seconded and the motion carried.

Chairman Vratil opened the hearing on **SB 28**.

SB 28 Death penalty; if aggravating circumstances outweigh mitigating circumstances, the sentence is death; if circumstances are equal, the defendant is not sentenced to death

Neutral:

Phill Kline, Kansas Attorney General, stated that, the day before, he and thousands of others honored the life of Sheriff Samuels, 42, who was shot dead while trying to serve a warrant on a repeat felony defendant for the manufacture and use of methamphetamine. General Kline stated he brought this up to help explain the difficult decision that the Committee faces, because, today, Kansas does not have an operable death penalty.

General Kline said no one can predict what tragedies lie ahead for the people of Kansas because of those who would perpetrate such heinous actions against innocent citizens and law enforcement personnel. If the legislature fails to act, Kansas will probably not have a death penalty for such future actions. Yet if the body does act, the opportunity for the U.S. Supreme Court to grant *certiorari* and prevail on the pending appeal is lessened. On average, the U.S. Supreme Court docketed between 8,000 and 9,000 cases a year and hear 80 cases a year. In short, 1 percent of cases seeking review are granted. General Kline believes Kansas has a one in seven chance of receiving *certiorari*.

General Kline outlined the sequence of events that will occur if *certiorari* is granted and indicated a decision in the case could be handed down between when it is scheduled for argument and the third week of June, 2006. If *certiorari* is denied, the mandate in the *Marsh* case will then stand. (Attachment 2)

Ron Wurtz, Assistant Federal Public Defender, stated his purpose in testifying was to highlight problems which are not directly tied to the death penalty statutes, but ultimately impact the reliability of decisions of prosecutors, judges, and juries in death penalty cases.

Mr. Wurtz stated that video-taping the entire interrogation of persons accused of a crime would render evidence more reliable and ease the court's job in making its admissibility determinations, and may shorten

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cases when a defendant is confronted with his or her own words and behavior on video.

Mr. Wurtz stated that the biggest area where innocent people are convicted is through mistaken identification. The Illinois and Connecticut reports, as well as a number of other studies, are recommending that eyewitness viewings, whether line-ups or photos, be presented sequentially rather than as a group. The purpose is to eliminate "relative judgement" through which the witness identifies the person who looks most like the perpetrator. (Attachment 3)

Pat Scalia, testified on behalf of the Board of Indigent Defense Services. Ms. Scalia briefly stated the status of the current death penalty cases. As a result of the current appeal filed with the United States Supreme Court, Ms. Scalia stated there was no advantage to creating a new death penalty statute until there is a final decision on the last one. (Attachment 4)

Opponents:

Nola Folston, Sedgwick County District Attorney, encouraged that the Kansas Legislature not pursue any premature legislative action based upon the *Marsh* decision until the judicial review process is allowed to run its course. (Attachment 5)

Paul Morrison, Johnson County District Attorney, testified that he believes restraint from taking action is important and in everyone's best interest at this time. Mr. Morrison stated if the legislature takes action now, it will lessen the chances of the U.S. Supreme court hearing the case on appeal. If that happens, the seven inmates currently on death row will most likely have their sentences converted to life terms of confinement, which in his opinion, would be a travesty. (Attachment 6)

Written testimony in opposition to the bill was provided by Mr. Thomas Drees, President of Kansas County and District Attorney Association, and Kristi Smith, south Central Coordinator, Murder Victims' Families for Reconciliation. (Attachments 7-8).

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for January 25, 2005.