

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 25, 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:

Kathy Lobb, South Advocates Coalition of Kansas
Jane Rhys, Kansas Council on Developmental Disabilities
Rocky Nichols, Disability Rights Center of Kansas

Others attending:

See attached list.

Chairman Vratil introduced a bill, in conjunction with the Attorney General, to provide for a three-judge panel to deal with school finance litigation. The bill would apply only when there was a lawsuit filed with an alleged violation of Article Six of the Kansas Constitution. Senator Schmidt moved, seconded by Senator O'Connor, and the motion carried.

Senator Schmidt introduced four bills. The first bill was requested by the Allen County Attorney and amends a bill passed several years ago that allows a County to seek reimbursement for prisoners who have means to pay medical costs incurred while in jail. Some judges are requiring counties to file civil actions as opposed to making the reimbursement part of the restitution order. This bill will allow restitution orders to cover this issue. The second bill was requested by Chief Judge Fred Lorenz and is related to medical malpractice screening panels, giving judges discretion to exceed the \$500 cap on attorney fees for those serving on the screening panels. The third bill, also requested by Chief Judge Lorenz, deals with community service organizations that use offenders sentenced to do community service. The bill sets limitations on liability for those organizations who agree to receive people doing community service. The fourth bill relates to tort reform liability and provides that where punitive damages are awarded, those punitive damages would not go the plaintiff or to pay attorney's fees, but would go to the state. Senator Goodwin moved to introduce all 4 bills, seconded by Senator O'Connor, and the motion carried.

Dan Hermes, representing Kansas Coordinators of Projects, requested the introduction of a bill that would allow the Department of Revenue to look back more than five years to discover DUIs. Senator Schmidt moved, Senator Goodwin seconded, and the motion carried.

Tom Whitaker, Kansas Motor Carriers Association, requested the introduction of a bill that would prohibit indemnification process in transportation contracts between shippers and motor carriers. Senator Donovan moved, Senator Umbarger seconded, and the motion carried.

Kyle Smith, on behalf of the Kansas Bureau of Investigation, requested the introduction of a bill to make needed updates to the statutes used to investigate criminal activity on and using the Internet. The changes would be in criminal procedure and deal with inquisition subpoenas and interstate search warrants. (Attachment 1) Senator Donovan moved, Senator O'Connor seconded, and the motion carried.

Kevin Graham, on behalf of the Attorney General, requested the introduction of a bill related to sex crimes against children, increasing penalties by one level for indecent liberties of a child and aggravated indecent liberties of a child. The bill also deals with the number of counts someone may be charged with regarding sexual exploitation of a child. Mr. Graham gave the example of a person that has child pornography pictures. If caught with ten pictures, ten counts may be brought against the person. However, if that person has one million pictures of children on his computer hard drive, only one count may be brought against the person.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 25, 2005, in Room 123-S of the Capitol.

Mr. Graham also requested the introduction of a bill to change the general statute of limitations for all crimes from two years to five years. This simplifies the procedures for many white collar felony crimes. Senator Donovan moved to introduce both bills, seconded by Senator O'Connor, and the motion carried.

Chairman Vratil opened the hearings on **SB 14** and **SB 32** and announced the Committee would hear testimony on both bills, as many of the witnesses were speaking on behalf of both. The bills are similar, with the major difference being one deals with the definition of cognitive disability and the other with the definition of mental retardation.

SB 14 Definition of mentally retarded for the purposes of imposing the death penalty; pre-trial hearing and special verdict question to the jury

SB 32 Persons with a cognitive disability not eligible for death penalty

Proponents:

Kathy Lobb, South Advocates Coalition of Kansas, testified in support of the bills. Ms. Lobb stated it was very important to protect people with severe intellectual disabilities from the death penalty and asked the Committee to support one of the two bills. (Attachments 2 &3)

Randy Hearell, Kansas Judicial Council, testified regarding **SB 32**, stating that in 2003, the legislature requested the Judicial Council to study the United States Supreme Court case of *Atkins v. Virginia*, 122 S Ct. 2242 (2002), which held that the execution of a person with mental retardation violates the Eighth Amendment prohibition against cruel and unusual punishment. Mr. Hearell stated that a copy of the study was attached to his testimony. (Attachment 4)

Mr. Hearell also testified that **SB 32** was similar to **SB 355** introduced in 2004. It was also similar to **SB 14** in that both bills remove the "age of onset" language found in K.S.A. 76-12b01; delete the "casual link" language found in 21-4634; provide a pretrial hearing on the question of disability; provide for a special question to the jury and require the state Board of Indigents' Defense Services provide counsel for a person under the sentence of death to determine if that person is mentally retarded (or cognitively disabled).

Mr. Hearell stated that **SB 32** defines the term "cognitive disability" and originally was drafted to exempt a broader class of persons with functional disabilities from the death penalty than those with mental retardation exempted. The reason the Judicial Council chose to define "cognitive disability" as opposed to "mentally retarded" is that the reasons the U.S. Supreme Court gave in the *Adkins* case for not executing persons who are mentally retarded seemed to apply equally to persons with other forms of cognitive disabilities.

SB 32 is different from **SB 14** in that in **SB 14**, the definition of "significantly sub-average general intellectual functioning" utilizes a standardized test chosen by the Secretary of Social and Rehabilitation Services to measure such functioning. In **SB 32**, the means of measuring such functioning is not mentioned in the definition and is presumed to be professionally accepted standards.

Jane Rhys, Kansas Council on Developmental Disabilities, testified that the Council supports **SB 14** but prefers **SB 32**. Ms. Rhys stated that they support the elimination of the "age of onset" language from the current definition of mental retardation and the definition found in **SB 14**, page 4, lines 40 through 43 and page 5, lines 1 through 3.

Ms. Rhys was concerned with the addition that the standardized intelligence test be specified by the Secretary of Social and Rehabilitation Services. The individual who holds that position is selected by the Governor and may or may not have knowledge of various standardized tests that are available. Ms. Rhys recommended that if **SB 14** was being considered, that an amendment be considered to the bill on page 5, line 2, to eliminate "specified by the secretary of social and rehabilitation services". (Attachments 5 & 6)

Rocky Nichols, Disability Rights Center of Kansas, testified in support of the goals and merits of both bills. Both bills use two or more deviations as the standard for defining who is excluded from the death penalty. However, **SB 32** says "two or more standard deviations below the norm" whereas **SB 14** says "two or more standard deviations from the mean score on a standardized intelligence test specified by the Secretary of

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 25, 2005, in Room 123-S of the Capitol.

SRS”, which literally means two or more deviations below or above the mean. Mr. Nichols stated the Disability Rights Center of Kansas recommends the language in **SB 32**, defining “significant limitations” in intellectual functioning. (Attachments 7 & 8)

Written testimonies were provided by: Kerrie Bacon, Legislative Liaison for the Kansas Commission on Disability Concerns, supporting **SB 14** and **SB 32** (Attachments 9 & 10); Tonya Dorf, Kansas Association of Centers for Independent Living, supporting **SB 14** (Attachment 11); Rud Turnbull, Beach Center on Disability, supporting **SB 14** and **SB 32** (Attachment 12).

Opponent:

Written testimony opposing **SB 14** and **SB 32** was provided by Kevin O’Connor, Kansas County and District Attorneys Association (Attachments 13 & 14).

Chairman Vratil asked the Committee to read the written testimony from Mr. O’Connor before the Committee works the bill, as it is the only testimony in opposition of the bills.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for January 26, 2005.