

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Monday, February 2, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley (E)
Senator Edward Pugh (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator David Jackson
Frank S. Henderson, Jr., Executive Director, Kansas Attorney General's Crime Victims Compensation Board
Jeanette Stauffer, mother of murder victim
Jodie Dietz, President, Kansas Organization for Victim Assistance (written)

Others attending:

See Attached List.

Chairman Vratil called for bill introductions. Senator Phillip Journey requested the introduction of two bills; (1) an act concerning crimes and punishment relating to automated teller machines, and (2) crimes relating to worthless checks, amending K.S.A. 2003 Supp. 21-3707 and repealing the existing section. (Attachments 1 and 2)

Senator Donovan made a motion to introduce the bills, seconded by Senator Umbarger, and the motion carried.

SB 256 - Victim compensation for residents who are victims of crimes committed outside of the United States

Chairman Vratil opened the hearing on **SB 256**, and explained what the proposed bill was about. Senator David Jackson testified in favor of proposed legislation, and stated that the bill serves to correct an inequity in Kansas' victim compensation law. He told the Committee that Shannon Martin, a Kansas University graduate student studying abroad, was viciously murdered in Costa Rica.. Kansas statutes, as currently written, do not contemplate such a circumstance; therefore, Shannon's family was ineligible for reparation of damages under the Crime Victims Compensation Act. Senator Jackson sponsored the bill, and asked for its introduction. (Attachment 3)

Senator O'Connor requested clarification on what the bill actually included. She asked whether or not the problem was carried by the lack of a category of compensation. The Chair explained the bill would authorize a family to make application for compensation. Under the existing law families are not authorized to make application. He added that the categories of compensation are provided by statute, and the amount of compensation is decided by the Crime Victims Compensation Board.

Frank Henderson, Office of the Attorney General, testified in support of **SB 256**. He said that currently eligibility outside the U.S., its possessions and territories, is limited to those who are victimized through acts of terrorism. **SB 256** would allow Kansas residents, who are victims of violent crimes, to apply for compensation to ease a portion of the financial loss the families experience. Mr. Henderson stated the fiscal impact of the requested change would be minimal. (Attachment 4)

Mr. Henderson distributed copies of a letter from Jodie Dietz, President, Kansas Organization for Victim Assistance in support of **SB 256**. (Attachment 5)

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Jeanette Stauffer, mother of murder victim, Shannon Martin, testified in support of **SB 256**. She related the events of her daughter's murder in Costa Rica, and the problems endured with the red tape, and the expenses she and her husband incurred trying to get their daughter's body released by the Costa Rican government and returned to the U.S. Mrs. Stauffer related that trying to track the progress or lack of progress for a two and a half year investigation was an expensive endeavor for the family.

Mrs. Stauffer said that the FBI stated that it was satisfied with the investigation, but a year and a half later she realized that she had been misled by the FBI. She said she discovered she could not count on the FBI, and if they had have been truthful with her, the case could have been solved within six months of the murder. Mrs. Stauffer related how the investigation was mishandled in Costa Rica, plus all the expenses, time, required travel and the frustration and mental anguish incurred. She could not get any support or assistance from the FBI in the investigative process or court proceedings. She stated that the KBI's response was profoundly different and came from KBI Director Larry Welch and KBI SAC Larry Thomas.

Mrs. Stauffer expressed her disappointment in the University of Kansas not relaying information they had regarding the underlying dangers in Golfito before the KU study abroad program was developed in 1992. She stated that universities have a duty to learn about a community before students are sent to the area, and they also have a duty to warn its students about the underlying dangers within the community. She said she was working with Dr. Gary Rhodes, University of Southern California, Safety Abroad First - Education Travel Information (SAFETI), to draft a federal proposal, since currently there is no federal mandate for study abroad programs, only guidelines that may be followed by universities. She urged the Committee to pass **SB 256** amending the Crime Victims Compensation Board Act to include a citizen of Kansas who is victimized outside of the United States. (Attachment 6)

Having no Committee questions, the Chairman closed the hearing on **SB 256**.

Final Action:

SB 141 - Phasing in the use of administrative hearings over years

Chairman Vratil called for discussion and final action on **SB 141**. Senator Umbarger offered an amendment and explained it related to concerns of the Kansas Department of Agriculture (KDA). He said that the language on page 36, new Section (d), would be amended on line 4, as it relates to the cost of the agency in going through the administrative hearing process. He explained the concerns about the Office of Administrative Hearings' (OAH) expertise to represent KDA in many of the matters that are somewhat unique to that department, and KDA having the flexibility to represent itself or schedule hearings relating to rural environment issues and the availability of participants. Senator Umbarger stated that KDA felt the amending language would not mandate KDA to go to the Office of Administrative Hearings, but would be an option KDA could consider. (Attachment 7)

Chairman Vratil explained that during his conversations last week with representatives from KDA, KDA suggested a claimant be allowed to elect to have a hearing conducted by a hearing officer designated by the KDA or a hearing conducted by a hearing officer from OAH. He said he told KDA this type of amendment would not be inconsistent with the purpose of the bill because the claimant would then have the choice whether the hearing officer would come from KDA or OAH. The Chair clarified that one of the main purposes of **SB 141** was to eliminate the appearance of impropriety or influence which occurs when hearing officers come from within an agency.

Senator Umbarger drew the Committee's attention to the last sentence of the proposed language which stated, "Costs for the hearing shall be paid by the non-prevailing party". He questioned whether it should be included since the Committee had previously held discussions on that subject. Chairman Vratil stated that would be new law, and would be inconsistent with the rest of **SB 141**. He said that would be a major change in law as there are no provisions in **SB 141** to provide attorney's fees to the prevailing party.

Following Committee questions and discussion, Chairman Vratil explained what the amendment actually did. Senator Umbarger clarified that the bill with the proposed amendment would give a claimant three options for a hearing, i.e. (1) the agency head would hold the hearing, (2) a subordinate of the agency

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head would be appointed to hold the hearing, or (3) a hearing officer from the Office of Administrative Hearings would conduct the hearing.

Senator Umbarger made a motion to amend SB 141 with his submitted language on page 36 of the new Section (d), but striking the last sentence of the amendment. The motion was seconded by Senator Oleen, and the motion carried.

Senator Donovan proposed an amendment requested by the Department of Revenue to page 37, Section 34, line 21 to add the following language, "except that any Kansas Administrative Procedure Act hearing in which the presiding officer is Director of Taxation, the Director of Motor Vehicles, or the Director of Alcohol Beverage Control, shall remain at the Department of Revenue and shall not be transferred to the Office of Administrative Hearings". He referenced last year's Legislative Post Audit Report relating to automobile dealers involving tax collection and remission to the State. He said there were a number of used automobile dealers around the state who had been collecting the tax but not remitting all of it or not doing so in a timely manner. He stated that when working with automobile dealers and non-payment of taxes, the Secretary of Revenue should be able to designate the Director of Motor Vehicles or someone in that office because of the possibility of the dealer losing his license. He said also in dealing with the large number of cases relating to Alcohol and Beverage Control, it made better sense to have those hearings within the Alcohol and Beverage Control. (Attachment 8)

Senator Donovan made a motion to amend SB 141 with his submitted language, and seconded by Senator Umbarger. Following brief discussion and clarification, the Chairman called for the vote, and the motion failed.

Chairman Vratil referred the Committee to the balloon amendment proposed by the Kansas Judicial Council which contained numerous technical corrections. The Chair stated that most of the corrections change the calendar year by adding one year because the bill was drafted a year ago. The balloon also contains some corrections for drafting errors, as well as a correction to the erroneous statutory reference identified earlier by Senator O'Connor on page 3, line 15. The Chairman said the correct statutory reference should be K.S.A. 77-551 and not 75-551. (Attachment 9)

Chairman Vratil called the Committee's attention to a letter from Randy Hearrell which under Item No. 1 referred to an attached a letter from Kansas Public Employees Retirement System (KPERS) which suggested a change that would have KPERS' Executive Director be authorized to hear administrative hearings. Mr. Hearrell stated in his letter that this change would not be consistent with the philosophy of the act because KPERS' Executive Director is not the agency head; the Board is the agency head. The Committee took no action on Item No. 1 of Mr. Hearrell's letter. (Attachment 10)

Under Item No. 2 of Mr. Hearrell's letter he suggest that in order to be consistent with the philosophy of the act, "director of vehicles or a" should be stricken on page 5, lines 36 and 37. Senator Oleen made a motion to adopt that amendment, seconded by Senator Umbarger.

Senator Donovan expressed his concern of taking specific jobs, i.e. dealer plates and full privilege license plates and having a department handle administrative hearings covering these specific issues they do not deal with on a daily basis. Senator Oleen stated that the same case could be made for a number of agencies, but what we are looking for is a fair and independent review. She referred to page 14 of the Legislative Post Audit Report showing that eight state agencies already contract with OAH to handle administrative hearings. Senator Oleen stated other states save money using this method. Additionally they save time as well as provide faster response in handling hearings.

Following discussion, Chairman Vratil called for a vote by a show of hands on the motion to amend in regard to Item 2 of Mr. Hearrell's letter. The motion to amend carried 3 to 2.

Senator Oleen suggested that final action on **SB 141** be delayed until a later meeting as she would like to visit with Committee members and staff as to the confusion that exists about different agencies having a choice in how administrative hearings are handled. Chairman Vratil agreed. He announced that final action on **SB 141** would be delayed until a later meeting.

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The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 3, 2004.