

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 14, 2006 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused

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

HB 2414 - penalties for battery against a law enforcement officer and aggravated battery against a law enforcement officer

The committee was provided with a balloon amendment which separates battery into two different penalties: class A person misdemeanor would apply to battery against a law enforcement officer as defined in subsection (a)(1) and battery against a law enforcement officer as defined in subsection (a)(2) or (a)(3). (Attachment 1)

Representative Garcia made the motion to amend in the provisions of the balloon. Representative Colloton seconded the motion. The motion carried.

Representative Davis made the motion to report **HB 2414** favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

HB 2606 - theft of services

Chairman O'Neal reminded the committee that Representative Johnson, the sponsor of the bill, requested an amendment which would include rural water districts and rural electric cooperatives be consider as public utilities.

Representative Loyd made the motion to include the above reference in **HB 2606**. Representative Owens seconded the motion. The motion carried.

Representative Loyd made the motion to report **HB 2606** favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

HB 2616 - state may request a preliminary examination of a felony charge

Representative Loyd made the motion to report **HB 2616** favorably for passage. Representative Kiegerl seconded the motion. The motion carried.

HB 2617 - violation of a protective order includes an order issued in a criminal case ordering the defendant to refrain from having contact with another person

Staff provided the committee with a balloon amendment that would reflect, more accurately, the intent of the sponsor. (Attachment 2)

Representative Owens made the motion to adopt the proposed balloon. Representative Crow seconded the motion. The motion carried.

Representative Owens made the motion to report **HB 2617** favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

CONTINUATION SHEET

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Chairman O'Neal directed the committee toward discussing the following bills:

HB 2576 - persistent sex offender life without possibility of parole

Jill Wolters, Revisor of Statute, expressed her concern that **HB 2576** contains both criminal and civil provisions. Many cases that have been handed down talking about offender registration as being a civil aspect and comparing it to *Kansas v. Hendricks*, which was a civil proceeding completely separate from the criminal proceeding. The distance restrictions as to how far a person listed on the offender registration have to live from a school have been discussed in civil proceedings. The retroactivity case *Smith v. Doe* talked about the Alaska sex offender registration act, but stressed that it is a civil proceeding. (Attachment 3)

While revisors placed the offender registration in the criminal statutes, she stressed that once re-codification occurs it should be placed in the civil proceedings chapter. However, the courts have spoken that, for now, it doesn't matter where the registration has been placed, because it is placed by staff, not the legislature.

She proposed two options: split the criminal and civil provisions into separate bills in committee or wait and split the provisions in conference committee.

The committee discussed several possible amendments some of which were:

- concern that it is possible that the crime that is listed in the sexual offender registry is not the original crime they were charged with but the one they were found guilty of or plea bargained to. Some members want the original crime listed so the public would have a truer sense of what the individual is capable of.
- victims having the right to request a hearing in front of a judge before a plea bargain is agreed to
- consider decaying some juvenile offenses so they don't follow the person for the rest of ones life
- make a clearer distinction between the terms "sexual offender" and "sexual predators"

Chairman O'Neal directed committee members to contact the revisor to have their amendments drafted so they would be ready to be offered when the committee worked the bill.

The Department of Corrections provided the committee with a balloon (Attachment 4) that would:

- change the name of those offenders subject to the enhanced penalty from "persistent offender" to "aggravated habitual sex offender"
- excludes offenses that are not specifically defined as sex offenses from the "instant offenses" for which the enhanced penalty can be applied, but retaining those types of offenses for establishment of prior criminal history
- deleting the statutory listing of risk factors
- establishing "aggravating circumstances" that are related to sex offenses

HB 2557 - sex offenders shall not reside within 1,500 feet of a school or 1,000 feet of a child care facility

Members understood that the reason for the bill was to limit the visual stimulation for sexual offenders. Kansas Department of Corrections provided information from Iowa County Attorneys Association on their states' sex offender residency restrictions which states that the number of convicted sex offenders who are unaccounted for increased 100% since the residency restriction went into place. (Attachment 5)

HB 2554 - DNA collection of all arrested for person felony and drug severity level 1 & 2

Representative Colloton provided the committee with a balloon that would raise the severity level to a 10 non-person felony if one refuses to give a DNA sample and provide immunity for those who are authorized to withdraw blood and collect samples. (Attachment 6)

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Some members felt that DNA is vastly different from fingerprints and therefore should be excluded from the database if one is not convicted. Others had concerns with the numerous amount of bills that are labeling individuals as felonies and not taking into account the impact it will have on ones life.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on February 15, 2006 in room 313-S.