

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairman Derek Schmidt at 9:32 a.m. on February 9, 2009, in Room 545-N of the Capitol.

All members were present except:
Senator Jean Schodorf- excused

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Others attending:
See attached list.

The Vice Chairman called for final action on **SB 67 - Creating the crime of endangering a dependent adult; amending mistreatment of a dependent adult.**

Senator Schmidt reviewed the bill and a letter from Ed Klumpp in opposition to **SB 67.** (Attachment 1)

Helen Pedigo, Kansas Sentencing Commission, was called upon to provide additional information on the reported fiscal note. Following discussion, Senator Vratil moved, Senator Haley seconded, to table SB 67. Motion carried.

The meeting was turned over to Chairman Owens. Chairman Owens called for final action on **SB 70 - Trusts; unitrust conversion; uniform principal and income act.** Jason Thompson, staff revisor, reviewed the bill. Senator Vratil moved, Senator Lynn seconded, to recommend SB 70 favorably for passage. Motion carried.

Chairman Owens called for final action on **SB 61 - Prison-made goods act; additional authorization to contract for certain work projects.** Jason Thompson, staff revisor, reviewed the bill. Senator Haley moved, Senator Lynn seconded, to recommend SB 61 favorably for passage. Motion carried.

Chairman Owens called for final action on **SB 66 - Change of venue in care and treatment cases; transmittal of documents.** Jason Thompson, staff revisor, reviewed the bill. Senator Lynn moved, Senator Donovan seconded, to recommend SB 66 favorably for passage. Motion carried.

Chairman Owens called for final action on **SB 112 - Kansas act against discrimination amendments regarding disability.** Jason Thompson, staff revisor, reviewed the bill. Senator Haley moved, Senator Kelly seconded, to recommend SB 112 favorably for passage.

Senator Vratil made a substitute motion, Senator Donovan seconded, to table SB 112. Motion carried.

Chairman Owens informed the Committee of his desire to refer **SB 27 - Presumption of paternity; genetic testing** to the Judicial Council for consideration of the entire Parenting Act. Senator Bruce moved, Senator Lynn seconded, to refer SB 27 to the Judicial Council for a review of the Kansas Parentage Act, K.S.A. 38-1110 et seq. Motion carried.

Chairman Owens reported to the Committee on work currently in progress by the Judicial Council regarding adult guardianship which would include the issues addressed in **SB 235 - Uniform adult guardianship and protective proceedings jurisdiction act.** Chairman Owens suggested referring **SB 235** to the Judicial Council. Senator Bruce moved, Senator Vratil seconded, to refer SB 235 to the Judicial Council. Motion carried.

The next meeting is scheduled for February 10, 2009.
The meeting was adjourned at 10:00 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-9-09

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
JOSEPH MOLINA	KS BAR ASSOC.
TERRY HEARRELL	JUDICIAL COUNCIL

Ed Klumpp
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Senate Judiciary Committee

Subject: SB 67 Creating crime of endangering dependant adult

Chairman Owens and Committee Members,

I apologize for giving this to you at the last minute. Over this past weekend I gave much thought to what I had heard in testimony on this bill. I want to share with you some thoughts from my perspective based on my work with the sentencing proportionality committee and the recodification commission. I support the general concept of adding the provision of protecting the dependant adult from being endangered. But I was shocked at the prosecutor's testimony when she gave the example of wanting to criminally charge someone for not replacing worn carpet.

From a proportionality perspective, the sentencing provision amendments on page 2, lines 22-42, have absolutely no sense of proportionality to level of harm. While I understand the fiduciary responsibilities, it does not justify all levels of dollar losses being a SL5 person felony. The fiduciary responsibility perhaps should increase the penalty one or two levels above that of a theft case without that factor, or perhaps making it a person felony instead of a nonperson felony is meant to do that. This proposal would make it a SL5 felony if the caregiver misappropriated a \$1, if they misdirected thousands of dollars, if they caused very minor physical injury or if they caused a major life threatening injury. I understand the direct unauthorized siphoning of funds is serious. But if the person is really doing that to illegally build their own wealth it won't be in lesser amounts. It will be in larger sums.

The proportionality recommendations soon to be considered by the legislature recognize that all types of thefts need to consider the relative harm by dollar amount, including those with fiduciary responsibilities. I encourage you to give serious thought to whether or not the amended sentences are the right thing to do and to consider retaining the various levels of sentencing severity in lines 22-42 on page 2. Adjust them up a level if you feel it is necessary, but don't make them all one severity level.

KSA 21-3437 currently or as proposed in this bill does not recognize the difference between mistreatment causing physical or mental harm from mistreatment causing financial harm. All are treated as a person felony. A broken arm resulting in an \$800 medical bill would be treated the same as an \$800 theft of funds. I would argue that causing the broken arm is more serious. It seems appropriate to me to consider the scale of the current statute for property losses and acts resulting in personal injury should be one severity level higher than aggravated battery for causing great bodily harm or disfigurement and one severity level higher than simple battery, or perhaps a level 10 person felony, for an injury not meeting the great bodily harm or disfigurement standard.



Ed Klumpp

Senate Judiciary

2-9-09

Attachment 1