

Approved: March 27, 2012

(Date)

**MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE
COMMITTEE**

The meeting was called to order by Chairperson Pat Colloton at 1:30 PM on Wednesday, March 7, 2012 in 144-S of the Capitol.

All members were present except:

Lance Kinzer

Committee staff present:

Jackie Lunn, Committee Assistant
Lauren Douglass, Legislative Research
Robert Allison-Gallimore, Legislative Research
Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Jennifer Roth, Kansas Association of Criminal Defense Attorneys
Marc Bennett, Deputy District Attorney for the Eighteenth Judicial District, Kansas
County & District Attorneys Association
Tamara Hicks, Kansas County & District Attorneys Association
Steve Howe, District Attorney, Johnson County

Others in attendance:

See attached list.

Chairperson Colloton opened the meeting announcing to the committee she was opening the floor for consideration of adding language to **HB 2748**–**Discharging a firearm inside or into a city; crime; exceptions**, and recognized Representative Kelly.

Representative Kelly made a motion to add the original language of his original bill regarding firearms dealers and entrapment and criminal penalties. Representative Cassidy seconded. Motion carried.

Next, the Chair moved the Committee to the attention of the knife bill language. ***Representative Smith made a motion to put the language of the knife bill into HB 2748. Representative Kelly seconded. Motion failed by a show of hands.***

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Chairperson Colloton announced to the Committee they had an invitation for dinner from one of the lobbyist for the next Tuesday night and they needed to let the committee secretary know if they were available to go.

Chairperson Colloton told the committee she would be out of town tomorrow and Representative Kinzer would be chairing the committee meeting.

The Chair opened the hearing on **SB 305–Time for criminal trials; competency decision time not counted against the state** and called on Marc Bennett, Deputy District Attorney for the Eighteenth Judicial District and also representative Kansas County & District Attorneys Association to give his testimony as a proponent of the bill. Mr. Bennett provided written copies to the committee and staff (Attachment 1). He stated the proposed bill would make several changes to the speedy trial statute in the Kansas Criminal Procedure. A defendant’s attorney would be allowed to request a continuance without consulting the defendant or over the defendant’s objection. Such continuance would be charged to the defendants regardless of the reason of the continuance. When the continuance is granted to the defendant or the defendant’s attorney, the deadline for the trial would be the original trial deadline, plus 90 days and the time tolled during the continuance. A delay while a decision is pending on competency would not be counted against the state in the speedy trial computation. If a motion for a new trial is granted, the speedy trial computation would begin on the date a new trial is ordered. A delay initially charged to the defendant, but subsequently charged to the state for any reason, would not be considered against the state in the speedy trial computation. A continuance granted to the state for any reason under the statute would not be counted against the state if an appellate court later determines that the district court erred in granting a continuance. In closing, he stated that none of the proposed changes will prevent a defendant from seeking relief under constitutional speedy trial. He urged the Committee to support the bill.

A question and answer session followed with the committee and Mr. Bennett.

Chairperson Colloton introduced Jennifer Roth, Kansas Association of Criminal Defense Attorneys, to give her testimony as an opponent of the bill. Ms. Roth provided written copies of her testimony for the committee and staff (Attachment 2). She stated the bill makes dramatic changes to the K.S.A. 22-3402, these changes are contrary to over a century of legislative action and are unconstitutional. She went on to say the purpose of K.S.A. 22-3402 is to carry out the constitutional speedy trial right, yet this bill proposed to do things that are unconstitutional. For example, the provisions allowing a defendant’s attorney to request a delay “without consulting the defendant and/or the objection which would be charged to the defendant regardless of the

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reasons for making the request is unconstitutional. They feel that the new subsection (g) would permit defense counsel to violate the ethical duty of communication. The language in this section also leaves no speedy-trial repercussions for misconduct by the State. They also have issues with the proposed language in (h). The policy changes in this section are, at best, contrary to decades of Kansas appellate case law and, at worst, unconstitutional. In closing she sighted words of the US Supreme Court in *Baker v Wingo*, “A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, for the reasons earlier expressed, society has a particular interest in bringing swift prosecutions, and society’s representatives are the ones who should protect that interest.” She urged the committee not to pass this bill out.

A question and answer session followed.

Chairperson Colloton called for any others wishing to testify or speak to the bill; being none, she closed the hearing on **SB 305** and opened the hearing on **SB 306–Intimidation of a witness; including SRS personnel and mandatory abuse reporters as protected witnesses.** She introduced Tamara Hicks, a prosecutor in Garden City, Finney County and representing the Kansas County & District Attorneys Association, to give her testimony as proponent of the bill. Ms. Hicks provided written copies of her testimony for the Committee and Staff (Attachment 3). She stated the bill expands the existing statute to include mandatory reporters and not just law enforcement personnel. She went on to say this bill is necessary to help prevent criminals from persuading their victims not to report the criminal activity which has been inflicted on them. She went on to say the bill would make it a crime if the suspect tells the victim to fabricate a statement when disclosing what happened to them when discussing the situation with a social worker, teacher, counselor or medical professional. It expands the Intimidation of a Victim/Witness to include all mandatory reporters. In closing, she stated the bill should be adopted so that suspects do not dissuade the victim from telling any mandatory reporter what has happened to them.

A question and answer session followed.

Chairperson Colloton called for others wishing to testify or speak to the bill; there were none so she closed the hearing on **BS 306** and opened the hearing on **SB 307– Sub for SB 307 - Lesser included crimes; felony murder.** She introduced Marc Bennett, Deputy District Attorney for the Eighteenth Judicial District, Kansas County & District Attorneys Association, to give his testimony as a proponent of the bill. Mr. Bennett provided written copies of his testimony for the committee and staff (Attachment 4). He stated the bill would amend the statute

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governing convictions for lesser included crimes to establish there are no lesser degrees of first-degree murder under felony murder. This provision would apply retroactively in felony murder cases except in cases where an instruction for a lesser included crime between July 1, 2011, and July 1, 2012. In closing, he asked the Legislature to clarify the legislative intent in Kansas is to hold accountable to the fullest extent of the law, those who would endanger the lives of their fellow citizens by engaging in inherently dangerous crimes.

A question and answer session followed.

Chairperson Colloton introduced Steve Howe, District Attorney, Johnson County, also representing the Kansas County and District Attorneys Association, to give his testimony as a proponent of the bill. Mr. Howe provided written copies of his testimony for the committee and staff ([Attachment 5](#)). He stated that the Kansas Supreme Court recently reversed a first-degree felony murder conviction for failure to instruct on lesser included offenses of second-degree reckless murder, involuntary manslaughter, and vehicular homicide. This bill is the most appropriate means to address the Supreme Court's ruling. The bill simply states that there are no lesser homicides that should be instructed in felony murder cases. This is clearly reflected in this bill. The bill will clarify the law of lesser included offenses in felony murder cases. In closing, he urged the committee to pass the bill out favorably.

A short question and answer session followed.

Chairperson Colloton introduced Jennifer Roth representing the Kansas Association of Criminal Defense Attorneys to give her testimony as an opponent of the bill. Ms. Roth provided written copies of her testimony for the committee and staff ([Attachment 6](#)). She stated in the Kansas County and District Attorneys Association's testimony they indicate the felony murder rule is dead. In fact, the felony murder rule is alive and well; it is now simply subject to the same rules for jury consideration as every other crime in the Kansas Criminal Code. The State v. Berry ruling simply clarified that they should be given in felony murder cases just like every other prosecution involving possible lesser included offenses. In every other prosecution involving possible lesser-included offenses, when instructions are given regarding lesser-included offenses, the district court will also give pattern instructions directing the jury to only consider lesser-included offenses if they cannot agree upon the greater offense. If prosecution proves felony murder beyond a reasonable doubt to twelve Kansas citizens, the prosecution will obtain a conviction for felony murder. This was true before State v. Berry and is true after State v. Berry. She stated that the bill will introduce uncertainty and raise federal and state constitutional issues and will radically change the relationship between premeditated murder and felony murder. She

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went on to say that by providing for the possibility of consideration of lesser-included offenses, the Kansas Constitution and Kansas law properly assigns to twelve Kansas citizens the role of being final arbiters of guilt across the criminal code. The proponents of this bill have not suggested any reason why Kansas citizens should have any different or lesser role in felony murder cases. In closing, she stated this all or nothing approach could increase the number of hung juries, instead of allowing juries to appropriately resolve these different cases. She urged the committee to reject the bill in its entirety.

A short question and answer session followed.

Chairperson Colloton called for others wishing to testify or speak to the bill; there were none so she closed the hearing on **SB 307**.

She announced to the committee they would be hearing the DUI bill next Wednesday and adjourned the meeting at 3:25 PM. The next scheduled meeting will be on March 8, 2012, at 1:30 PM in room 144 S.

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