

Approved: March 30, 2012

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(Date)

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 PM on Wednesday, January 25, 2012 in 346-S of the Capitol.

All members were present except:

Gene Suellentrop  
Brett Hildabrand

Committee staff present:

Katherine McBride, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Eric Stafford, Kansas Chamber of Commerce  
Eric Carter, Carter LLP Attorneys  
Representative Mitch Holmes  
Austin DesLauriers, Ph.D., Larned State Hospital  
Bill Ossmann, Kansas Department of Commerce

Others in attendance:

See attached list.

Chairman Kinzer announced **HB 2261–Enacting the revised uniform limited liability company act** would be handled differently and heard over two days. Tomorrow's hearing on **HB 2261** will address the fiscal issues of the bill and Professor David Walker, from Drake University, will testify a week from Thursday as the more substantive issues are addressed at that time.

David Heinemann, on behalf of the American Heart Association, requested a bill that would address individuals providing emergency care at the scene of accidents. Representative Brookens moved the request be accepted, seconded by Representative Pauls, and the bill was accepted without objection. (Attachment 1)

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The hearing on **HB 2253–Private rights of action; restrictions** was opened. Katherine McBride provided an overview of the bill content.

Eric Stafford testified in support of **HB 2253**, advising the Chamber conducts an Annual Competitive Index (ACI) study to review how Kansas rates regionally and nationally on a variety of issues, and Kansas has historically maintained strong rankings in the legal climate. However, a combination of the lack of legal reform bills in Kansas and strong efforts to improve legal climates in other states has made Kansas slip out of the top 10 percent and into the top 15 percent. Mr. Stafford stated **HB 2253** will help improve the legal climate by preventing new, unintended causes of action from occurring. (Attachment 2)

Eric Carter testified in support of **HB 2253**, stating on many litigation filings, the courts have had to determine if an individual has a case for a private cause of action. The Kansas courts have historically said individuals do not have a private cause of action, because there has to be some specific indication of legislative intent, and a statute has to specifically appear on its face to protect a specific group of people. Mr. Carter recommended if there is going to be a private cause of action by a statute the Legislature wants to create, then the Legislature should create it, and not the courts. The courts look to see what the legislative intent was with a statute and this bill answers the question. (Attachment 3)

The hearing on **HB 2253** was closed.

The hearing on **HB 2313–Exhaustion of administrative remedies for patients in the custody of secretary of social and rehabilitation services** was opened. Katherine McBride provided an overview of the bill content.

Representative Mitch Holmes testified in support of **HB 2313**, which will help reduce the number of unwarranted lawsuits against Larned State Hospital filed by patients in the Sexual Predator Treatment Program. The bill would require patients to exhaust their administrative remedies prior to filing any civil action, and patients would have to demonstrate they have done so before filing any civil action. (Attachment 4)

Bill Ossmann testified in support of **HB 2313**, advising there were over 116 habeas corpus cases filed in Pawnee County last year. Chief Judge Gatterman, 24<sup>th</sup> Judicial District, has to screen the cases to determine if there is a basis to issue a writ. If a writ is issued, the administration of the Larned State Hospital and the legal division of SRS have to file a response to it. Typically, there are claims alleging continued unconstitutional treatment. Habeas cases are not the only types of

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cases they must deal with. As an example, Mr. Ossman shared he was filing a brief this week with a court case where the resident patient filed a lawsuit for property taken when he was moved from the intensive treatment unit back to the regular unit. The rules and regulations had changed and he was no longer allowed to possess some of his property. The property included two wooden stands, a metal protractor, and a table lamp. The superintendent examined the items and determined they could be used as weapons and disallowed the patient to have them, which made them contraband. The significance is this is a civil case, which allows the patient to do discovery, to serve interrogatories, requests for productions, and to require staff to go through and provide copies of records and other things. Most of these cases are filed *pro se*, by the residents themselves, but in some habeas cases the judge has on occasion appointed counsel to represent them as well. (Attachment 5)

Mr. Ossmann advised that section one of the bill is identical to K.S.A. 75-52,138 and provisions already are in place for inmates in the custody of the secretary of corrections. Section (1) (b) is based on the federal provisions, which allow the court to screen cases out without requiring the need to file a motion to dismiss. Often times in federal court, they find out a case has been filed against one or more of the administrators of the hospital or the secretary of the agency, and the case has already been dismissed because the federal judge has screened it out as frivolous or groundless. Section (1) (c) is modeled after language found in the Prison Litigation Reform Act, which provides a prisoner may not bring a civil action or appeal if the prisoner has, on three or more prior occasions, brought an action or appeal dismissed on the grounds it was frivolous, malicious, or failed to state a claim, unless the prisoner is under imminent danger of serious physical injury. Section 2 amends K.S.A. 60-1501 to require patients in the Sexual Predator Treatment Program file any habeas action in a timely fashion, within 30 days from the date the action was final, with a provision that their time limit is extended while administrative remedies are pursued.

Representative Colloton inquired whether there was any review of the other 17 states that have the same civil commitment as Kansas, with regard to administrative remedies. Mr. Ossmann offered he had not. Chairman Kinzer requested that research staff look to see if there are states that have codified any kinds of limitations of habeas rights of people in sexual predator programs.

Austin DesLauriers testified in support of **HB 2313** advising the bill would be a step toward a way to identify which cases may not merit a great deal of the Court's time or that of the Larned State Hospital. Dr. DesLauriers stated there were 50 active cases filed that he was aware of, plus the Attorney General's office had 15 post-commitment cases. The resident patients receive legal services at no cost. Preparation time for a hearing may involve a good deal of staff time.

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Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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Dr. DesLauriers noted staff recently spent a week going through the records for one individual's case, and they had to supply other materials and run down information to aid the patient in his case. Staff also take residents to court, which requires two staff members' time to travel and be at court proceedings. Dr. DesLauriers usually takes a patient's entire record when he goes to court in case the Court needs copies. (Attachment 6)

Dr. DesLauriers stated this was not just a Kansas problem. He had seen drafts of similar legislation in Wisconsin, Florida, Ohio, Connecticut and Texas, all dealing with civil commitment. It is a function of this type of situation. Dr. DesLauriers offered their organization is trying to create a leaner and more effective agency in using state resources. At Larned State Hospital, they are presently staffed for 176 residents, but currently have 216 residents. Dr. DesLauriers stressed this is why it is quite important their time and resources are used effectively, and this bill would be a step toward curtailing excesses and legal enthusiasm on the part of the residents.

Representative Colloton asked about the grievance procedure residents must follow and whether it is easy to accomplish and in a reasonable time. Dr. DesLauriers shared there are two process streams. The grievance process is designed for more low level types of events and involves several steps. Residents are to state what their problems are, identify the source of the problem, and try to address the issue and resolve it with the source first. A typical grievance might be a resident took another's property. If the resident cannot resolve the issue personally, the next level is the program level. They fill out a piece of paper stating what the problem is and what happened. It may go to the doctor, if it is medical issue, or up the line to the Hospital Superintendent. Typically, in three to four steps it gets to the Superintendent. Before a resident can go to court, he must go through these other processes first. For more severe cases, for example if a patient has broken a rule, a hearing officer is assigned and listens to the resident's side of the case and the staff's side, and makes a decision. If the resident appeals, it would come to Dr. DesLauriers or to the administration program director. The resident would have to present some type of new evidence in order to be heard. Then it would go to the administrator and then the secretary. Chairman Kinzer requested Dr. DesLauriers to provide a copy of Larned State Hospital's grievance policy.

Chairman Kinzer noted that written testimony is provided from Chief Judge Bruce Gatterman, 24<sup>th</sup> Judicial District, serving Pawnee County. (Attachment 7) The hearing was closed on **HB 2313**. The next meeting is scheduled for January 26, 2012. The meeting was adjourned at 4:30 p.m.