

Approved: August 25, 2011  
(Date)

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 8:35 A.M. on March 18, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

### Committee staff present:

Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

### Conferees appearing before the committee:

Representative Barbara Bollier, M.D.  
Representative John Rubin  
Representative Susan Mosier, M.D.  
Jim O'Connell  
Eric Stafford, The Kansas Chamber  
Anna Lambertson, Executive Director, Kansas Health Consumer Coalition

### Others attending:

See attached list.

The Chairman re-opened the hearings on **HB 2218 -- Abortion regulation based on capacity of unborn child to feel pain** as a courtesy to Representative Bollier, who was unable to attend yesterday's meeting.

Representative Barbara Bollier, M.D. testified as a neutral party to **HB 2218** (Attachment 1). She stated that she is a board certified anesthesiologist and that she has extensive education and training in pain and pain management. She noted pain is a complex area of medicine that is not completely understood. She expressed concern with the language in Section 1, especially the language in subsections (f) (g) and (h). In order to perceive pain, a fetus needs a functioning cortex and thalamus. She suggested defining a "pain-capable fetus" as a fetus that has reached 26 weeks gestational age and which has a functioning cerebral cortex.

Senator Pilcher-Cook asked, "What is the date of the edition of the books cited in your testimony?"

Representative Bollier responded, "I will have to check on the date. It is not the most recent edition of the book, but the portion of the text quoted or cited in the testimony has not changed.

Senator Pilcher-Cook asked, "Have neonatologists spoken on the issue of when a fetus feels pain?"

Representative Bollier responded, "I will answer after researching the question."

The Chairman closed the hearings on **HB 2218**.

The Chairman announced that the hearings on **SCR 1604 -- Amendment of state constitution; concerning health care** and **HCR 5007 -- Constitutional amendment to preserve right to choose health care services and participate in health insurance plan** would commence at 9:30 following Committee Action on bills previously heard.

### Committee Action:

The Chairman called the committee's attention to **SB 159 Parole and postrelease supervision for violent offenders and sex offenders**. He reminded the members that the committee

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amended the bill on March 11, but further action on the bill had been delayed until a revised fiscal note was received; the revised fiscal note has been received and distributed (Attachment 2).

Senator Pilcher-Cook renewed her motion, Senator Lynn renewed her second, that SB 159 be passed as amended in the form of a substitute bill. The motion was adopted.

Senator Haley voted no on the motion and asked that his vote be so recorded.

The Chairman called the committee's attention to **SB 217 -- Civil commitment of sexually violent predators; reimbursement for costs related to habeas corpus actions to the county from the sexually violent predator expense fund.**

Jason Thompson, Staff Revisor, reviewed the bill and reminded the committee that the Attorney General had requested an amendment.

Action on **SB 217** was deferred until March 21, 2011.

The Chairman called the committee's attention to **HB 2008 -- Making identity theft a person felony.**

Senator Bruce expressed concern with making identity theft a person felony. He suggested treating identity theft in the same manner as burglary for the purposes of criminal history.

Senator Bruce moved, Senator Lynn seconded, that the penalty for identity theft, identity fraud, and attempt or conspiracy to commit those crimes would be presumptive imprisonment when the person being sentenced has a prior conviction of identity theft, identity fraud, or attempt or conspiracy to commit those crimes. The motion was adopted.

Senator Bruce moved, Senator Lynn seconded, that HB 2008 be passed as amended in the form of a substitute bill. The motion was adopted.

The Chairman called the committee's attention to **HB 2010 -- Offenses and conduct giving rise to forfeiture.**

Senator Lynn moved, Senator Schodorf seconded, that HB 2010 be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 142 -- Kansas Adverse Medical Outcome Transparency Act.**

Senator Vratil moved, Senator Kelly seconded, to amend SB 142 as follows: On page 1, in line 12, by striking "acknowledges or implies" and inserting "admits". The motion was adopted.

Senator Pilcher-Cook moved, Senator Bruce seconded, to amend SB 142 as follows: On page 1, in line 8, after "condolence" by inserting ", or waivers of charges for medical care provided.".  
The motion was adopted.

Senator Vratil moved, Senator Bruce seconded, that SB 142 be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **HB 2104 -- Medical confidentiality exception for law enforcement at crime scenes.**

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Senator Bruce has concern with what the proponents said the bill would accomplish. He believes the language of the bill has Constitutional issues.

Senator Bruce moved, Senator Lynn seconded, to amend **HB 2104** as follows: On page 3, in line 18, by striking “detained” and inserting “arrested”. The motion was adopted.

Senator Schodorf moved, Senator Kelly seconded, that **HB 2104** be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **HB 2118 -- Amending the requirements of offender appearance bonds and supervision costs.**

Senator Lynn moved, Senator Bruce seconded, that **HB 2118** be amended by adding the language proposed by Judge Tatum (Attachment 3) that would allow magistrate judges to impose costs up to \$15 per week for court services supervision of a person's compliance with conditions of release and any costs in addition to the \$15 per week associated with supervision and conditions for compliance. The motion was adopted.

Senator Vratil moved, Senator Lynn seconded, that **HB 2118** be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **HB 2227 -- Allowing for the issuance of arrest warrants based on DNA profiles.**

The Chairman recognized Kyle Smith, Office of the Attorney General, to address concerns of members of the committee. Mr. Smith explained that there is DNA on CODIS but often there is no identifier. He stated the issuance of a warrant identifying a suspect by a description of the suspect's DNA would be useful in cases in which there is a statute of limitations issue. **HB 2227** would allow a prosecutor to file charges against a suspect based solely on a DNA profile, thus staying the statute of limitations, which normally requires charges be filed within a specific time following commission of the crime. If the suspect is later identified through the KBI's Combined DNA Identification System or any other method, prosecution could proceed.

Mr. Smith stated that Senator Vratil was correct when he stated that having a warrant on file, not just charges filed also would be useful in providing a way to place a detainer or hold on a suspect being held elsewhere who was recently identified through their DNA.

Senator Lynn moved, Senator Bruce seconded, that **HB 2227** be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 39 -- Creating the classification of "aggravated sex offender;" creating additional penalties and restrictions for sex offenders.**

The Chairman reminded the committee that Senator Olson previously had distributed balloon amendments to the committee [See Minutes of March 14, 2011, Attachment 14]. The Chairman also noted that Ray Roberts, Secretary of Kansas Department of Corrections, had submitted additional written information (Attachment 4).

Senator Vratil asked, “Would there be cities in which an offender could not live because of the residential restrictions on page 14?”

Senator Olson responded, “It is his intent to prevent offenders from living near schools.”

Senator Kelly noted that day care homes are no longer registered; the bill should state “licensed” day care home.

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Senator Kelly asked, "Is there a restriction in current law relating to the location of licensed day care facilities?"

Senator Olson responded that he did not know.

Senator Kelly asked, "Would an offender be required to move if a licensed day care home or facility opens after the offender establishes residency?"

Senator Olson responded that he would be willing to delete the day care provision.

Senator Vratil asked, "Would an offender be required to move if a newly-constructed school opens after the offender establishes residency?"

Senator Olson responded, "Yes."

Senator Haley asked, "Would you oppose a grandfather provision?"

Senator Olson responded, "He would not oppose a grandfather provision."

Senator Olson agreed to add, to his balloon, a suggestion by Senator Kelly to delete the day care provision.

Senator Lynn moved, Senator Pilcher-Cook seconded, that SB 39 be amended in the manner proposed in the balloon distributed by Senator Olson and to delete the residency restrictions as they relate to day care homes and facilities. The motion was adopted.

Senator Lynn moved, Senator Pilcher-Cook seconded, that SB 39 be passed as amended.

Senator Vratil stated, "The issue of safe-zones had been the subject of extensive hearings in the past. Legislative committees have been told that the creation of safe-zones drives sex offenders underground and to the rural areas of the state."

Senator Pilcher-Cook noted that the provision that imposes the residential restriction applies only to aggravated sex offenders.

Senator Bruce stated that current law provides sufficient information on these offenders in order for people to be aware. He added that safe-zones create a false sense of security because they simply drive the offenders underground.

Senator Kelly asked, "If the safe-zone provision is deleted from the bill, what is left in the bill?"

Jason Thompson, Staff Revisor, responded, "The new class of aggravated sex offender, the driver's license provisions and other policy changes."

Senator Vratil made a substitute motion, Senator Kelly seconded, that SB 39 be tabled. The motion was adopted.

**Hearings:**

The Chairman opened the hearings on SCR 1604 -- Amendment of state constitution; concerning health care and HCR 5007 -- Constitutional amendment to preserve right to choose health care services and participate in health insurance plan.

The Chairman requested that conferees that desired to appear on both resolutions to express their comments and testimony in support of, and opposition to, the resolutions when first recognized.

Jason Thompson, Staff Revisor, reviewed the resolutions.

Senator Schodorf asked, "What would happen if the U.S. Supreme Court upheld the federal law?"

Mr. Thompson replied that he could not say for sure and would respond after researching the

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question.

Senator Kelly stated that she would like to know the fiscal impact of the resolutions.

Senator Schodorf noted that certain provisions of the federal law are in effect. The language in the resolutions state that a person cannot be compelled to participate or pay for insurance, but the resolutions do not apply to the requirement that insurance companies offer the insurance.

Representative John Rubin testified in support of **HCR 5007** (Attachment 5). He stated that the resolution would preserve the right and freedom of Kansans to provide for their own health care. He added that the Supremacy doctrine is an issue, but believes the resolution is constitutional.

James J. O'Connell testified in support of **HCR 5007** (Attachment 6). He expressed concerns relating to the constitutionality of the federal Patient Protection and Affordable Care Act as well as for the cost of the Act. He stated that the 10<sup>th</sup> Amendment to the U.S. Constitution is intended to protect the rights of states.

Eric Stafford testified in support of **HCR 5007** and **SCR 1604** (Attachment 7). He stated that the resolutions offer Kansans the chance to vote on whether the state should comply with the federal Patient Protection and Affordable Care Act.

Representative Susan Mosier, M.D. testified in support of **HCR 5007** (Attachment 8). She stated that the resolution is about the freedom to choose; it provides additional protection of freedoms for patients and doctors at the state level and allows the citizens of the state to have their voices heard.

Written testimony in support of **HCR 5007** and **SCR 1604** was submitted by Ilya Shapiro, CATO Institute (Attachment 9).

Anna Lambertson testified in opposition to **HCR 5007** and **SCR 1604** (Attachment 10). She stated the federal act raises legitimate questions about the limits of federal authority and the relationship between the state and national government. She added that the adoption of the resolutions would add to the confusion surrounding the health care system. The federal act is currently being challenged by 28 states, including the state of Kansas.

Senator Haley asked, "How much money has, or will, the state received under the federal act?" Ms. Lambertson responded, "So far, the state has received, or will receive, a grant of \$31.5 million for the health insurance exchange."

Senator Pilcher-Cook submitted petitions, containing over 6,000 signatures, in support of **SCR 1604** and **HCR 5007**.

The Chairman closed the hearings on **HCR 5007** and **SCR 1604**.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 21, 2011.