

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on March 10, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Haley (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Sheila Reynolds, Kansas Judicial Council
Denise Everhart, Acting Commissioner, Juvenile Justice Authority

Others attending: see attached list

HB 2035 - Children in need of care; right to counsel

Chairman Vratil opened the hearing on **HB 2035**. Sheila Reynolds, Professor at the Washburn Law School, testified on behalf of the Kansas Judicial Council in support of **HB 2035**. Ms. Reynolds said there was ambiguity in KSA 38-1505(a), which provides that courts must appoint an attorney for a child alleged to be in need of care, to serve as the child's guardian *ad litem* (GAL). She explained that most attorneys believe that the statute means the GAL must represent not the child, but the best interests of the child, as determined by the GAL. She added that the Kansas Supreme Court interprets the statute this way in its Guidelines for Guardians Ad Litem, which state that the GAL must determine the best interests of the child, present all relevant facts to the court, and make recommendations to the court, which may vary from what the child desires.

Ms. Reynolds stated that if the legislature intends that the appointed lawyer serve as a GAL, the statute should be amended to remove the ambiguity by adding the phrases "represent the best interests of the child" in subsections a and d. She said there was no cost in clarifying the role of the attorney. She added that the interests of children are better served by providing the judges who must decide how to protect them with the best information and ideas available. Ms. Reynolds said this proposed bill just seeks to clarify what most people understood what the role to be so there will not be confusion over that. She stated that there should be a provision in the bill that if the GAL disagrees with the child's position, the GAL should be required to inform the court of what the child's position is, so the child's wishes can be factored into the judge's decision. (Attachment 1)

Committee discussion regarded questions pertaining to the House amendment in section 1, which deleted lines 24 through 29, but required the reporting to the court when there is a conflict and did not give any guidance to the court as to what to do afterwards.

The Chair closed the hearing on **HB 2035**.

HB 2015 - Modification of sentence of juvenile offender by the court based on medical condition

Chairman Vratil opened the hearing on **HB 2015**. Denise Everhart, Acting Commissioner for the Juvenile

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 10, 2003 in Room 123-S of the Capitol.

Justice Authority, testified in support of **HB 2015**. She explained that this bill will allow sentence modification, based on a serious medical condition, of the juvenile offender sentenced to a juvenile correctional facility. She said that this bill will allow for the Commissioner to apply through the sentencing judge for a sentence modification based on a serious medical condition at any time during an offender's incarceration in a juvenile correctional facility. (Attachment 2)

The Chair noted that the fiscal note on this bill indicated that there could be a positive bed space impact. (Attachment 3)

Final action on:

SB 195 - Kansas Parole Board; membership reduced to three

Chairman Vratil reviewed **SB 195**, and brief discussion was held regarding possibly cross referencing to another statute regarding two members constituting a quorum. The Revisor advised there was no need to cross reference.

Senator O'Connor moved to delete lines 18 through 27 on page two of the bill as it was not needed. The motion was seconded by Senator Umbarger, and the motion carried.

Senator Oleen asked for language clarification regarding page 1, lines 39 and 40 relating to the confirmation process. The Chair stated he thought the sentence was unnecessary as requested staff to find out why the sentence was added. He also suggested that staff look at other statutes dealing with other appointed bodies to see if the language in this bill is consistent with language in those other statutes. Chairman Vratil said the Committee would hold up final action on this bill until staff had furnished the requested information.

SB 243 - Uniform controlled substances act schedule IV substances

Chairman Vratil reviewed **SB 243**. Senator Schmidt said he had a proposed amendment and explained the purpose of the amendment was to return the law regarding the relationship between K.S.A. 65-4150 and K.S.A. 65-7006 to the situation that existed before the 2002 Kansas Court of Appeals decision in *State v. Frazier*. He said the proposed amendment was contained in **HB 2317**. He distributed copies of a proposed amendment to the bill, and said his amendment was the italicized language on lines 28 through 32, and only changes the definition of drug paraphernalia to make clear that the general definition of drug paraphernalia does not include the same items in the methamphetamine statute. (Attachment 4)

Following Committee discussion and questions, Senator Schmidt stated he would obtain a bed impact report from Barbara Tombs, Kansas Sentencing Commission, and other information that might be pertinent to this discussion before taking final action on this bill. Chairman Vratil stated that the Committee would not take action on this bill today in order to allow time to study the proposed amendment.

SB 197 - Alcoholic beverages; furnishing to and consumption by persons under age 21

Chairman Vratil reviewed **SB 197**, and explained that the bill had two separate and distinct aspects. He said one of them was to increase the penalty for a minor in possession, and to stair step that penalty, i.e. on a first conviction a driver's license would be suspended for 30 days, on a second conviction it would be 90

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 10, 2003 in Room 123-S of the Capitol.

days, and on a third conviction the suspension would be for one year. He stated that portion of the bill did not get much discussion during the hearing so it appeared to be acceptable to the Committee members. The Chair stated that the controversial aspect of this bill appears to be on page 1, which deletes lines 35 through 37, and he was proposing to leave the stricken language on page 1, lines 35 through 37, and remove the strikeout on page 2, lines 35 through 39.. He called for discussion on this proposed amendment. Senator O'Connor said she would like to see some more work done on the bill to make sure it is correct before sending it out of Committee. After considerable discussion, the Chair announced that the Committee would continue to work this bill at a later meeting.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is March 11, 2003.