

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Vratil at 9:30 a.m. on January 21, 2003 in Room 123-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:

Janet Schalansky, Secretary of SRS  
Paul Degener, Topeka  
Senator Derek Schmidt  
Mike Kautsch, KU Professor, Law  
Policy Program  
Edward Seaton, Publisher of the Manhattan Mercury  
Murrel Bland, Editor/Publisher-Wyandotte West  
Nick Tomasic, Wyandotte County District Attorney  
Jerry Palmer, Topeka Attorney

Others attending: see attached list

Chairman Vratil called the Committee's attention to two handouts that were given to the members. The first was a memorandum from Senator Goodwin, as a member of the Kansas Sentencing Commission, outlining the proposed alternative sentencing policy for nonviolent offenders. (Attachment 1) The second was an article that Chairman Vratil furnished by William E. Quick, KBA Corporate Statute Review Committee, entitled "Pending Changes to the Kansas General Corporation Code" from the January 2003 issue of *The Journal*. (Attachment 2)

The Chairman called for bill introductions. Kyle Smith, Kansas Bureau of Investigation, requested introduction of two bills. The first bill would update the Kansas Offender Registration Act relating to changing the term 'resident' to 'person' as non-residents who have been convicted of the predicate offenses, and in order to comply with the Campus Sex Crimes Prevention Act. (Attachment 3) Senator Schmidt moved to introduce the bill, Senator Umbarger seconded, and the motion carried.

The second bill Mr. Smith requested on behalf of several criminal justice organizations, including the Criminal Justice Coordinating Council, that would update the board overseeing law enforcement communications which is currently called ASTRA. (Attachment 4) Senator O'Connor moved to introduce the bill, Senator Goodwin seconded, and the motion carried.

**SB 16 - Application requirements for drivers' licenses and identification cards**

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Chairman Vratil reopened the hearing on **SB 16** continued from the January 16 meeting. Conferee Janet Schalansky testified in favor of the proposed legislation and its relationship to the Child Support Enforcement (CSE) Program. Secretary Schalansky spoke about the many changes in Kansas' child support laws and procedures during the past seven years in order to keep the CSE Program in compliance with Title IV-D, especially with the requirements flowing from federal welfare reform legislation. She stated that one final change in Kansas law needed to be made in order to assure that we remain in compliance and avoid the loss of IV-D federal funding, and that change would be to clearly require all applicants for a driver's license to furnish their social security number on their driver's license application. She said it would not be necessary to display the social security number on the face of the license itself, just on the application to receive a driver's license. She was sincerely concerned with regard to losing federal funding if Kansas was sanctioned by the U.S. Department of Health and Human Services. (Attachment 5)

Ms. Schalansky included a copy of a letter addressed to Chairman Vratil, dated January 14, 2003 with her written testimony from the Department of Health & Human Services, Region VII, in Kansas City. Chairman Vratil questioned Ms. Schalansky about this correspondence which he had not received, but her department had without being formally copied on the letter. He also clarified that this proposed legislation contains a provision requiring a licensed applicant to submit their social security number on the license application and that information is confidential. He questioned that what he heard her testify was that provision would bring Kansas into compliance with the federal requirements, and Secretary Schalansky agreed.

Committee discussion included concerns expressed about the confidentiality issue regarding the social security numbers, and who all would have access to that confidential information. Chairman Vratil referred Committee members to SB 16, page 2, line 4 through line 6, in which an applicant shall submit the applicant's social security number, which shall remain confidential. He reiterated that only the DVM would have access to that information and no one else. He asked if any member of the Committee disagreed with that interpretation of that sentence because he wanted it in the record as legislative history on this bill. Vice Chairman Pugh said he disagreed because he didn't believe that anything once it is submitted in this way would be confidential. Chairman Vratil stated that it was the intent of this Committee in considering this bill that the social security number would confidential information limited solely to the Division of Motor Vehicles, and he intended to express that same intent on the Senate floor if this bill comes to the Senate floor for vote.

Committee discussion continued, with question being asked of Sheila Walker, Division of Motor Vehicles, if they shared information with law enforcement agencies. With consent of the Chairman, Ms. Walker responded that under the Open Records Act and specifically by law, law enforcement does have access to Motor Vehicle records. She preferred that the Committee address the issue of confidentiality.

Conferee Degener testified in opposition to **SB 16**. He stated that he was opposed to this bill primarily because it calls for applicants to provide their social security number. He urged the Committee not to let social security numbers be used in an attempt to establish a national identification card, but also to help stop identity theft in this country. (Attachment 6)

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After brief discussion, Chairman Vratil closed the hearing on **SB 16**.

**SB 3 - Repealing the criminal defamation statute**

Chairman Vratil opened the hearing on **SB 3**. Senator Schmidt testified in support of repealing the criminal defamation law, K.S.A. 21-4004, copy of which he attached to his written testimony. (Attachment 7) He pointed out that violation of this criminal law was a Class A misdemeanor, punishable by up to one year incarceration in the county jail and/or a fine up to \$2,500 which in essence the law makes certain lies a crime in Kansas. He gave detailed history of the current law, and said this law was bad public policy for our state when it may be applied to political speech directed at public officials. Senator Schmidt stated that in his view that those whose false words defame public figures and others in a manner that properly subjects them to legal punishment should be at risk of civil liability, not at risk of criminal prosecution.

Committee discussion included clarification between criminal and civil penalties. Senator Oleen told the Committee that the statute came into being in 1969 and then there were some changes in lessening the penalties. She asked the Research Staff to furnish the members with a copy of the Federalization of State Defamation Law as information.

Conferee Kautsch testified in support of **SB 3**. In his detailed written testimony (Attachment 8), Mr Kautsch pointed out that the statute 21-4004 rather than explicitly requiring proof that damage to reputation included a demonstrable, actual loss, calls only for a showing that defamation of someone was "tending" to subject him or her to hatred or other kinds of social rejection. He said that the proposal for repeal of 21-4004 comes at a time when criminal defamation statutes are on the wane, and such statutes are on the books in less than half the states. He noted that criminal defamation is falling into disfavor outside the United States, and that the United Nations has issued a call for their member states to "review their defamation laws to ensure that they do not restrict the right to freedom of expression and to bring them into line with their international obligations."

Conferee Seaton testified in support of **SB 3**, and spoke from a journalist position on this issue. He stated that while journalists must be responsible for their reporting, sending them to jail for what they write, especially about a public official, is an egregious violation of freedom of the speech. He said that criminal punishment for political speech defies both U.S. and international standards and sets a terrible precedent for the rest of the world. (Attachment 9)

Chairman Vratil announced that the hearing on **SB 3** would be continued at the next meeting.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is January 22, 2003.

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